APP Suggestions for Tax Proposals for FY 2020-21

Direct Taxes

Item	Page No.
1. Section 115-O: Applicability of Dividend Distribution Tax Provisions in case of multi-tier companies	**2**
2. Section 115-O: Dividend Distribution Tax: Credit for dividend received from subsidiaries after declaration of dividend by Holding Company in the same financial year	**2**
3. Disallowance of expenses incurred to earn tax-free dividend [Section 14A r.w. Rule 8D]	**3**
4. Disallowances u/s 14A or rule 8D while calculating book profits u/s 115JB	**3**
5. Introduction of Group Relief for treating Parent and Subsidiary SPVs as one assessee for the purposes of Income Tax	**4**
6. Utilization of MAT credit in case of amalgamation	**5**
7. Section 50CA and section 56(2)(x)(c) read with Rule 11U and 11UA - Fair market value of shares in case of stressed companies	**6**
8. Exception to applicability of section 79 to stressed companies	**6**
9. Set off of book losses or unabsorbed depreciation in computation of book profits u/s. 115JB of the Act	**7**
10. CSR expenses be allowed as deduction as revenue expenditure	**7**

Indirect Taxes

Item	Page No.
1. Extending GST to Power Industry	**8**
2. Inclusion of Natural Gas within the GST system at 5%	**8**
3. Levy of IGST on import freight for imported coal	**9**
4. GST on Ocean Freight for Import of LNG	**9**
5. Reduction in GST rate on supply of Natural Gas through pipeline	**10**
6. Inclusion of Power Generating Units in the list of Infrastructure Projects which qualify for getting investment-linked deductions	**10**
7. Cross Charge Exemption to exempted sector	**10**
8. GST Return filing frequency to be made quarterly for entities purely involved in exempted supply	**11**
9. Benefit of Concessional rate of Customs Duty for Oil Marketing Companies which procures Natural Gas from importer and sells to Power Generator for generation of electricity.	**12**
10. Levy of Service Tax/GST on Wheeling / Transmission Charges, Cross Subsidy Charges Deemed Generation, take or pay compensation	**12**
11. Suitable Amendment to Custom Law allowing payment of Safeguard Duty through Duty Scrips	**13**

Policy Related

Item	Page No.
1. Affordable Power - Rationalization of Taxes	**14**
2. Financing avenues for installation of FGD and other emission control equipment as per MOEF norms	**15**

Direct Taxes

A. Section 115-O: Applicability of Dividend Distribution Tax Provisions in case of multi-tier companies

Genesis of the issue

Clarity is required in case of multi-tier companies, whether dividend paid by a step-down subsidiary is to be considered while arriving at DDT liability of the Ultimate Holding Company

Present status

1. Under the existing provisions of section 115-O, in addition to normal income-tax chargeable, a domestic company is also liable to pay tax @ 15% on the amount of dividend declared, distributed or paid by such company.
2. However, as per sub section (1A) to the aforesaid section, for ascertaining the tax liability on the dividend declared, the amount of dividend received during current financial year from its domestic/foreign subsidiary can be reduced from the amount of dividend declared/distributed/paid. Thus, final DDT is payable on the balance dividend. This sub-section was inserted vide Finance Act, 2008.
3. The intention of the legislation seems to be to allow credit for the dividend on which DDT has already been paid. This intention has also been mentioned in the Budget Memorandum for Finance Act 2012, that the intention is to avoid cascading effect in case of multitier companies.
4. However, because of the following proviso to sub section (1A), there is ambiguity which may lead to unnecessary litigation:

"Provided that the same amount of dividend shall not be taken into account for reduction more than once".

Suggestion

To achieve the object of Ease of Doing Business and to have a clear legal position, it is recommended that clarification be provided in sub-section itself. Our recommendations are:

- The definition of subsidiary should include a "step-down subsidiary".
- This proviso to sub section (1A), which is ambiguous should be clarified.

B. Section 115-O: Dividend Distribution Tax: Credit for dividend received from subsidiaries after declaration of dividend by Holding Company in the same financial year

Genesis of the issue

1. As per sub section (1) and (1A), the dividend is taxable after reducing the amount of dividend received from domestic and foreign subsidiaries during the relevant year. But as per sub-section (3), tax has to be paid within 14 days from the date of declaration/ distribution/payment.
2. In case of non-deposit of DDT within time limit, Section 115P provides for penal interest @ 1% per month for the relevant period.
3. In certain cases, the dividend is received from the subsidiary companies post declaration of dividend by the Holding companies.
4. In such case, the Holding company may not be able to compute exact tax liability on the date of dividend payment.

Present status

1. The chargeability of DDT is decided based on sub section (1) and (1A). However, the provision of sub section (3) regarding deposit of due tax is only procedural. Sub-section (1A) comes first in order from Sub-section (3). Thus, what is payable as DDT is to be computed on dividend declared/distribution/paid, as reduced by the amount of dividend received from subsidiary company.
2. However, there are cases where dividend from a subsidiary is received after dividend declared/distributed/paid by the parent company. In those cases, the company is to pay DDT within 14 days following the provision of sub section (3). While arriving at the DDT liability there may be two situations:
   - Not to consider dividend to be received from subsidiary in subsequent period in the same financial year, but it will result in excess payment of DDT. Consequently, the company funds are blocked till grant of refund of tax.
   - Consider the amount of dividend to be received from its subsidiary in subsequent period on estimate basis. This may result into excess/short payment of DDT on such date. This may attract interest and penalty provision for balance amount, if any.

Suggestion

To avoid undue hardship to domestic companies, it is recommended that provisions of sub-section (3) to section 115-O/115P be amended in line with the provision of payment of advance tax and interest provision of section 234B. This should be applicable only if there is shortfall of payment of tax on annual basis.

Further, penal provisions as provided under section 271C should not be applicable in case of postponement of DDT liability on account of receipt of dividend from subsidiary, post declaration of dividend by the Company.

C. Disallowance of expenses incurred to earn tax-free dividend [Section 14A r.w. Rule 8D]

Genesis of the issue / Present status

At present, Rule 8D is applied by the Income Tax Department on all investments capable of generating exempt income (without considering the fact whether actual income was earned or not) based on CBDT circular 5/2014. This results in huge disallowance and thereafter litigation. The said practice is litigated very much and is before various courts of law on various grounds and in many instances, courts have decided in favour of assessee.

Suggestion

Accordingly, it is suggested that the present provision of sec 14A of the Income Tax Act r.w. Rule 8D should be amended and it should be clarified that for the purpose of computation under Rule 8D only those investments which have yielded actual exempt income during the relevant financial year should be considered.

D. Disallowances u/s 14A or rule 8D while calculating book profits u/s 115JB

Genesis of the issue / Present status

1. Under the existing provisions of clause (f) of explanation 1 of Section 115JB, for the purposes of computation of Book Profits, amount of expenditure relatable to any income to which section 10 (other

than long term capital gains tax on transfer of listed shares), section 11 and section 12 apply, is added back to profit as per books of the company.

2. The Minimum Alternative Tax (MAT) provisions were introduced in Act to levy a minimum tax on such companies who have sufficient book profits but escape taxation under set-off, incentives and allowances allowed under the Act. Section 115JB itself provides computation mode for computing 'Book Profit' for levy of MAT.
3. The sanctity of profits declared as per books maintained in compliance with Schedule VI of Companies Act has been accepted by law as well as Hon'ble Supreme Court and only adjustments as provided in explanation 1 to section 115JB are allowed to determine Book Profit for purposes of MAT.
4. Dividend income earned from investments in shares of domestic companies and units of mutual funds have been excluded from book profits and simultaneously any expenditure incurred in respect of such exempt dividend income is also to be excluded. However, income in the nature of capital gains on transfer of such shares and units is taxable under MAT provisions whereas the same is exempt/ taxable at reduced rate under normal provisions.
5. Disallowance u/s 14A and Rule 8D in respect of exempt income under normal provisions is a presumptive action limited to computation of income under Chapter IV. The scope of exempt incomes for section 14A is much larger than clause (f) of Section 115JB. Moreover, capital Gains and capital receipts which are exempt under normal provisions are taxable at uniform rate under MAT provisions as part of book profits.

Suggestion

1. Though there are many favourable judicial pronouncements for the assessee; however, there should be clarity in the section by way of an amendment that disallowance made u/s 14A or rule 8D which have limited applicability in respect of normal computation of income under chapter IV of the Act should not be applied in respect of provisions of section 115JB and disallowance should be restricted to actual expenses debited in books in respect of identified incomes as mentioned in clause (f) of explanation 1 to section 115JB.
2. There is however growing tendency among authorities to import disallowance made u/s 14A and Rule 8D for computation of MAT thereby resulting in hardship to the companies and litigation.
3. It is therefore suggested that necessary clarification may be introduced in law to restrict disallowance of actual expenditure debited to books of accounts in respect of identifiable exempt income for the purposes of MAT.

E. Introduction of Group Relief for treating Parent and Subsidiary SPVs as one assessee for the purposes of Income Tax

Genesis of the issue / Present status

1. Companies engaged in the generation of power and development of infrastructure projects are generally organized as SPVs which are owned by a parent. This is essential for the purpose of project finance as also considering the distinctive nature of each infrastructure project.
2. As a result, for purposes of income-tax assessments, each SPV is treated as a distinct assessee and the profits / losses of one SPV are not available for set off against the profits / losses of other SPVs or of the parent. This creates a mismatch whereby while certain SPVs are necessarily incurring losses (in the initial years of any infrastructure project), the other SPVs or the parent forming part of the Group are required to pay income-tax on their profits.

3. This anomaly is overcome in most countries by instituting Group Taxation. The concept of Group Taxation is to permit companies or SPVs in which the equity holding exceeds a specified percentage, say 75%, to be treated along with their parent and other SPVs as one Group so that the profits and losses of individual SPVs are set off against each other and the net profit of the Group is charged to tax.
4. Group Relief is available under the tax laws of most countries including USA, UK, France, etc. and is an essential reform for the purpose of modernizing India's tax laws and bringing them on par with those of the world.
5. On the Regulatory and Accounting fronts the law has already been amended for example, under the Companies Act 2013, the parent company is mandatorily required to prepare consolidated financial statement including therein accounts of all its subsidiaries and associates. The consolidated financial statements are required to be laid before the annual general meeting (Section 129).

Suggestion

Group Relief be introduced at least for companies engaged in the Infrastructure including Power Sector such that at the option of the parent, the entire Group of the parent and subsidiary SPVs is treated as one assessee for the purpose of income-tax.

F. Utilization of MAT credit in case of amalgamation

Genesis of the issue / Present status

After proposed amendment to current provisions of section 115JAA, credit for MAT paid under section 115JB is allowed in the hands of assessee company for 15 years but the same does not allow carry forward of MAT credit in cases of amalgamation of companies where the amalgamating company has unutilized tax credit.

Suggestion

1. This section should be amended to allow carry forward and utilization of unutilized MAT credit of amalgamating company in the hands of amalgamated company.
2. To rationalize and make business reorganizations tax neutral, carry forward and set off of unabsorbed depreciation and accumulated losses were allowed in the hands of resulting company in amalgamation and demergers etc. Also, in the present GST structure a specific provision has been made to allow the input credit of the amalgamating company to the amalgamated company. However, such benefit has not been extended in respect of MAT paid on deemed income credit in respect of which is allowed to a company for fifteen years.
3. As the amalgamating company loses its identity and becomes part of resulting company, the tax credit paid by it on deemed income should be made available to resulting company under the basic principle of taxation and on principle of natural justice. Further, in light of the current thrust of all stakeholders including government to attempt a speedy resolution of Mergers and Acquisitions of stressed assets/companies, continuation of the MAT credit for the potential amalgamated company will also help in facilitating faster resolution of the same.

G. Section 50CA and section 56(2)(x)(c) read with Rule 11U and 11UA - Fair market value of shares in case of stressed companies

Genesis of the issue / Present status

1. Section 50CA provides that in case of transfer of shares of a company, other than quoted shares, the fair market value of such shares determined in the prescribed manner shall be deemed to be the full value of consideration for the purpose of computing income chargeable to tax as capital gains.
2. Section 56(2)(x)(c) provides that where any person receives any property other than immovable property without consideration or for a consideration which is less than its fair market value, the fair market value or the excess fair market value, as the case may be, shall be subject to tax.
3. In other words, where shares are transferred at a price lower than fair market value, the difference is taxable both in the hands of buyer and seller.
4. Rule 11UA provides formulae for deriving 'fair market value' of unquoted shares. It may be noted that the said formulae takes into consideration the book value of all the assets while computing fair market value.
5. In case of stressed assets, it so happens that book value may not show a correct picture and actual value of those shares would be much lower than the 'fair market value' derived by the prescribed formulae.

Suggestion

1. It is recommended that there should be some clarification / exception in the said formulae while computing 'fair market value' of shares of stressed companies, whose book value of assets is much higher than the actual realizable value.
2. This shall give a much needed impetus to the crisis-ridden power sector entities, which has been finding difficult to find buyers for stressed companies. Also, it shall act as a push for those companies who venture to acquire and turnaround such stressed companies.

H. Exception to applicability of section 79 to stressed companies

Genesis of the issue / Present status

1. Section 79 of the Act restricts carry forward of losses where there is change of shareholding of more than 49%
2. Finance (No. 2) Act, 2019 provided exceptions to this section inter-alia to companies where change in shareholding takes place under Insolvency and Bankruptcy Code 2016.
3. Though the Budget Speech of the Finance Minister while introducing this amendment mentions about granting 'relief to stressed assets' there is no corresponding amendment to this effect.

Suggestion

1. It is recommended that there should be some clarification / exception and the above relief should be granted to 'stressed companies' who have not pursued the IBC route.
2. This shall give a much needed impetus to the crisis-ridden power sector entities, which has been finding difficult to find buyers for stressed companies. Also, it shall act as a push for those companies who venture to acquire and turnaround such stressed companies.

I. Set off of book losses or unabsorbed depreciation in computation of book profits u/s. 115JB of the Act

Genesis of the issue / Present status

Explanation 1 to section 115JB(2) which provides that the amount of loss brought forward or unabsorbed depreciation, whichever is less, can be reduced while computing 'adjusted book profits' for MAT purpose.

However, currently the section does not provide clarity as how should the amount of loss and unabsorbed depreciation eligible for set off be computed - On year to year basis or on an aggregate basis?

Suggestion

It is recommended that section 115JB should provide clarity on the above.

J. CSR expenses be allowed as deduction as revenue expenditure

Under the existing provisions of section 37 of Income Tax Act, any Expenditure not being in nature of capital expenditure or personal expenditure is allowable as deduction if the same is laid out or expended wholly and exclusively for the purposes of business.

The Companies Act 2013 has made it mandatory u/s 135 for certain categories of companies to spend 2% of their average profits on CSR activities prescribed.

Under the current income tax regime, CSR expenses incurred by companies which are of capital nature, donations or not wholly and exclusively related to business are not allowed as deduction while computing taxable income.

It has created genuine hardships to the companies as such CSR expenses incurred under mandatory provisions of the law are not allowed as business deduction.

Suggestion

Hence, it is proposed that the benefit of deduction in respect of CSR expenses should be allowed to companies to the mandated level without subjecting to restrictions of section 37 of the Act.

Indirect Taxes

A. Extending GST to Power Industry

Genesis of the issue

Central Government has introduced GST in India w.e.f. 1st July, 2017 keeping Power Sector outside the GST. This has resulted into increase in cost of Tariff for Power Industry especially for renewal sector wherein under pre-gst regime exemptions towards procurement of goods and services were available.

In addition to above, sale of electricity is subject to Electricity Duty and Tax on sale of Electricity which get added to Tariff Cost.

Due to above cascading effect of Indirect Taxes the Tariff Rate of Power goes up which impacts common man as well as Industry as a whole.

Present status

Under GST regime, power has been kept outside and hence the very objective of GST is not fulfilled as it has led to increase in tariff which in turn will impact on economy as a whole.

Suggestions

Keeping power sector outside the GST regime goes against the very objective of introducing GST which was to reduce the effect of pancaking of taxes. Power sector should be brought under the purview of GST.

B. Inclusion of Natural Gas within the GST system at 5%

The Govt. has ambitious plans to increase the share of Natural Gas in primary energy basket from current 6.5% in 2017 to 15% by 2030. In "business-as-usual" scenario, Gas based power plants are major consumer of gas and can play a vital role in this transition. Natural Gas being a clean fuel when compared with coal, can also help in sharp reductions in emissions (CO2, SOX, NOX, PM10 etc), caused by use of coal in electricity generation.

Though Natural Gas is a much cleaner fuel compared to coal, it has been kept out of GST ambit and subjected to VAT rate which is as high as 15% (or even higher in some States). Since the VAT chain terminates with electricity generators, the input VAT adds to the total cost of gas, resulting into higher cost of electricity generated.

On the other hand, the GST on Coal as fuel is 5% for thermal power plants. It is an anomalous situation, to tax a cleaner fuel at a higher rate, and this requires immediate correction. We therefore urge to take this opportunity to rationalize the indirect tax on Natural Gas to 5% in line with Coal, so as to provide a level playing field to gas based power producers.

Suggestions

Considering the various benefits of Natural Gas & its importance in generation of clean power, inclusion of natural gas in GST @ upto 5% rate is justifiable and will help in maintaining the affordability of cost of electricity.

C. Levy of IGST on import freight for imported coal

Genesis of the issue

In the previous Tax Regime and the legacy Customs Act, there were two levies:

a) Basic customs duty (BCD) on import of Coal &
b) Countervailing duty (CVD) in lieu of Excise Duty

For levy of BCD and CVD the valuation is done @ 101% of the CIF value. Accordingly, the aforesaid value of goods was being charged with duty of import (both BCD as well as CVD). For levy of Custom Duty, the assessable value included the cost of freight as per Custom Valuation Rules.

In the new GST Regime, BCD will continue as above. However, in place of CVD, Integrated GST (IGST) will be levied on CIF value of goods imported. In addition, there will be an IGST levy on import freight as per provisions under GST Law. The said service attracts GST under supply of service category attracting a GST rate of 5%. Service Accounting Code is 996521.

Present status

IGST being paid twice on freight component of coal viz once at the time custom valuation and secondly while making payment of freight to foreign shipping agency.

Suggestion

In view of the above, we request you to consider & address the issue, and provide relief from levy of IGST on import freight for coal.

D. GST on Ocean Freight for Import of LNG

In view of Entry No. 10 of Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017, services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is subjected to GST and Importer, as defined under Customs Act, is liable to discharge applicable GST under Reverse Charge Mechanism. In terms of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017; GST @ 5% of the said service is levied on such service with option to consider 10% of CIF value where freight cost is not available.

At present, there is scarcity of domestic gas in India and also non-allocation of domestic gas to existing gas based power plants. Due to this, the existing gas based power plants are either stranded or operating at lower PLF. Therefore, Gas based Power plants have no other options except to rely on imported LNG for operation of their plants. LNG price in international market is highly volatile and expensive. Therefore, electricity generated with use of imported LNG at such power plants become uneconomical and non-viable as compared to Coal based generation.

Gas based generation is cleaner and more environment friendly as compared to coal based generation. Further, most of the gas based generators are facing difficulty in debt servicing due to non-operation of plants.

Suggestion

In the absence of availability of domestic gas and to encourage environment friendly generation at affordable cost, we propose that GST should be xempted from being levied on services of transportation of LNG for generation of electricity by generating units.

E. Reduction in GST rate on supply of Natural Gas through pipeline

GST rate on supply in the nature of natural gas transmission through pipe line should be reduced to 5% to have minimal impact on Power Tariff. Currently, as per SAC 996513, the GST rate is 18%.

Currently, service in the nature of "Transport services of petroleum & natural gas, water, sewerage and other goods via pipeline" attracts 18% GST. This has resulted in an additional cost for the power generation industry which uses natural gas for generation. Power, being an exempted product from GST, has this additional tax burden add to the final tariff for the consumers. This, in turn, leads to increase in tariff to ultimate consumers.

Suggestion

GST rate on supply of Natural Gas through pipeline should be reduced to 5% as higher rate of GST on transport of natural gas increases cost of generation of power.

F. Inclusion of Power Generating Units in the list of Infrastructure Projects which qualify for getting investment-linked deductions

Reliable and adequate supply of power is a crucial part of the Government's growth agenda. However money inflows into greenfield power projects have dried out as work on several upcoming and almost commissioned projects have come to a halt over financing and fuel related issues.

In the Budget 2016, Hon'ble Finance Minister, Shri Arun Jaitley had introduced a new incentive scheme for the infrastructure sector by which construction of toll roads, sea ports, airports, bridges, railway systems, highway projects and water supply and irrigation projects were included under a new Section 35-AD of the Income Tax Act, allowing investment-linked deductions to projects in these sectors. However, power generating units have been left out from this scheme.

Suggestion

Inclusion of power projects in the scheme for investment-linked deductions retrospectively from 1st Apr 2017 will help attract investments in the power sector as the developers will be able to defer tax payments to future years till the time the project starts generating revenues.

G. Cross Charge Exemption to exempted sector

Genesis of the issue

Due to deeming provision under Schedule I, the supply of goods and services or both between related or distinct persons as specified in Section 25 are liable for GST even if made without consideration.

Further, the place of supply rules mandate business entities to obtain registration in each State from where the supply has been made. As per explanation to Section 15 each registration either within the state or in different state are distinct persons and supplies made between these are liable for GST even if made without consideration.

<u>Present status</u>

As per prevailing GST provisions under

<u>Section 25 (4) which reads as under:</u>

"A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act."

Due to explanation to Section 15 the division of an entity having different registration number falls under the definition of related person and any activity carried out by one division for another tantamount to supply and accordingly liable for GST.

Recent Advance Authority in case of M/s. Columbia Asia Hospitals Private Limited (CAHPL), AR has ruled that amount debited by Corporate Office to its division including the staff cost is liable for GST in line with aforesaid provisions.

<u>Suggestion</u>

The findings of the AR that "Employees working at Corporate Office are employees of Corporate Office only" is incorrect and need to be clarified by GST Council at the earliest. Hence, we suggest:

a) A suitable clarity to be issued in terms of Entry I of Schedule III on non-applicability of GST against services rendered by an employee to the entire organisation irrespective of his/her place of work.

b) Exemption from levy of GST to exempted sector towards common cost (as discussed above) allocated to units having different registrations within or outside the State.

H. GST Return filing frequency to be made quarterly for entities purely involved in exempted supply

<u>Genesis of the issue</u>

Every registered dealer has to file GST returns in Form GSTR-1 / Form GSTR-2 and final return in Form GSTR3. The periodicity of returns as provided u/s 37 (1) of CGST Act is monthly.

<u>Present status</u>

Even though entities engaged in exempted supply, they have to file GST returns on monthly basis resulting into an additional compliance.

<u>Suggestion</u>

GST Act to be amended to provide for quarterly returns for entities dealing in exempted supply.

I. Benefit of Concessional rate of Customs Duty for Oil Marketing Companies which procures Natural Gas from importer and sells to Power Generator for generation of electricity.

At present, customs duty of 2.5% plus 10% swachh bharat cess (effective customs duty of 2.75%), applicable on import of LNG is exempt if the importer supplies the gas to power generating companies vide entry no. 139A of Customs Notification 12/2012-Customs dated 17th March 2013 as amended till date. This is in line with customs duty exemption provided to import of LNG by power generating company for generation of electrical energy under entry No. 138.

However, under the arrangement in existence for many years now, PLL imports LNG from RasGas and sells it to the PSU Gas Marketing Companies viz. IOCL, GAIL and BPCL. These PSU Gas Marketing Companies in turn sell the regasified LNG to various end-users including power generating companies.

Since the regasified LNG is sold by the importer (PLL) to PSU Gas Marketing Companies and not to power generating companies, the benefit of customs duty exemption is not available under Entry no. 139A.

Suggestion

In this regard, we propose that the benefit of nil custom duty should be extended to LNG procured by PLL and sold to Power generating companies through PSU Gas Marketing Companies. This will eventually reduce the cost of electricity generated and provide benefits to the end-consumers.

J. Levy of Service Tax/GST on Wheeling / Transmission Charges, Cross Subsidy Charges Deemed Generation, take or pay compensation

Wheeling/Transmission Charges are collected for use of wires for transmission of electricity. Cross Subsidy Surcharge is the charge paid for loss of cross subsidy to Distribution Licensee when large consumer procure power from other sources.

Deemed Generation Charges are part of two-part tariff structure wherein, the procurer pay certain Fixed Charges inspite of not procuring the entire agreed electricity. Take or pay compensation is levied under single part tariff structure wherein certain charges are collected if the procurer does not off-take the contracted electricity.

All the above activities are part and parcel of distribution/transmission activities on which no service tax is applicable. However, the Service Dept. has issued demand for levy of Service Tax on open access charges, deemed generation and take or pay compensation.

Suggestion:

As the business of generation / transmission / distribution is kept outside service tax, It is requested to issue clarification on this aspect so that litigation may be avoided.

K. Suitable Amendment to Custom Law allowing payment of Safeguard Duty through Duty Scrips

Genesis of the issue

As per current provisions under Clause No. 3.02 of Chapter 3 of FTP. The Duty Credit Scrips can be used for the payment of following duties –

- Basic Customs Duty
- Additional Customs Duty u/s 3(1) & 3(3) of Customs Tariff Act 1975 – Similar to Excise leviable on the like goods in India
- SAG u/s 3(5)

Safeguard Duty is levied under Section 8B of Customs Tariff Act 1975 not covered above. However, DGFT FAQ clarifies the utilization of Duty Credit Scrips against Safeguard Duty Liability. Many articles published by tax experts wherein they have opined the utilization of Duty Credit Scrips against Safeguard Duty liability.

Present status

There is no clarity with respect to utilization of Scrips for payment of Safeguard Duty.

Suggestion

A suitable amendment should be made under Custom Law to allow payment of Safeguard Duty through Scrips.

Policy Related

A. Affordable Power - Rationalization of Taxes

Power cost has shown a progressively increasing trend despite the loss reduction and tariff rationalization undertaken by most of the States. The main factor behind this increase is the significant increase in taxes, duties and levies on coal and transportation, as evident from the table below:

Table 6 Comparative analysis between 2009-10 and 2016-17

Year	2009-10	2016-17	%change
Basic Price {ROM)	0.42	0.56	33.33%
Taxes and Outies	0.13	0.40	207.69%
Coal Transportation	0.33	0.51	54.54%
Taxes and duties on Transportation	0.03	0.12	
	0.91	1.59	74.72%

Source: CERC Consultation Paper on Terms and Conditions of Tariff, 2019-24

This has resulted in the cost of coal almost doubling after the levy of various taxes, cess and royalties as per the table below:

Illustration	
Particulars	**Coal rate (Rs./MT)**
(A) Basic Price	**810.00**
Royalty @ 14%	113.40
NMET@2% Royalty	2.27
DMF@30% Royalty	34.02
Sizing charges	87.00
Surface Transportation Charges	57.00
Forest Cess	15.00
CG Development Tax	7.50
CG Environment Tax	7.50
CIL Evaluation Facility Charge	50.00
(B) Sub-Total of Cess, Taxes and Levies	**373.69**
GST @5%	56.68
GST Compensation Cess	400.00
(C) Sub-Total of GST applicable	**456.68**
(A+B+C) Coal Total Cost	**1640.37**

The above table clearly shows that the components of taxes/ levies/ surcharges are 103% over basic price. While the base price is Rs. 810/ MT (for G-11 Coal), adding up the additional components, with all taxes and duties applicable, leads to the price reaching Rs. 1,640/ MT. This is very high.

Going forward, the implementation of emission control equipment to achieve the new TPP emission norms will result in an increase of 30-40p/kwh after accounting for transmission losses, increased aux consumption etc. Similarly, socializing the cost of the upcoming Green Transmission corridors will further increase transmission costs and thus cost of power, by about 35-45p/kwh.

It is very difficult for consumers to absorb these cost increases and it also goes against the Government's vision of reliable, sustainable and affordable power for all. In order to keep the power cost affordable, either the State Governments would need to subsidize the cost of power or deploy additional cross-subsidies at the cost of other categories of consumers, who are already under the heavy burden of cross-subsidization. Neither of these 2 options are feasible or practical. Therefore, the solution and way forward is, to rationalize the level of taxes and duties on the various components of the electricity generation and distribution supply chain.

B. Provide financing avenues for installation of FGD and other emission control equipment as per MOEF norms.

As estimated by CEA, around 300 coal based power plant units totally up to a capacity of 122,670 MW require installation of FGDs by December 2022. Considering CEA's indicative capex estimates for FGD, this translates into a total funding requirement of almost Rs 45,000 Cr.

However, there has been reluctance from banks/lenders to provide additional financing for installation of emission control equipment due to the following factors:

- Prevalent stress in the Sector.
- Significant capacity without PPA or coal sources.
- Banks past experience with delayed/ denied pay-out in case of Change in Law events by Discoms – delays of 3 to 4 years in the regulatory process.
- Huge outstanding receivables from Discoms which is impacting the debt service of operational plants.

As the implementation deadlines for FGDs for most plants ranges between Sep'21 to Sep'22, and that the installation of FGD takes about 27-30 months, it essentially indicates that final orders for FGDs have to be placed between July'19 to Jan'20. Therefore, there is hardly any time remaining to mobilize funds of this magnitude.

Projects which have a part of their capacity left untied without PPA (around 15-16 GW) and those which have miniscule cash flows in absence of coal linkage/PPAs (around 10-12 GW) are the most affected with absolutely no visibility on financing options.

Suggestions:

- The erstwhile **Clean Energy Cess,** which was initially levied for supporting clean energy initiatives but is now renamed as **GST Compensation Cess**, continues to be levied on coal at present. Considering that the original intent of this cess was to fund clean energy initiatives, **utilizing this amount (approx. Rs 20,000 Cr annually) for funding FGD installations through partial grants or any other suitable mechanism** to ease the financing burden, appears to be an ideal solution.
- Further, Projects which become environmentally compliant after installation of the required equipment, should be **waived from paying this cess**. Such a mechanism would directly benefit the end consumers by helping to keep the cost of power in check.

- **Implementation of payment security mechanism for IPPs** in line with HLEC recommendations – This is the most crucial issue since as long as the backlog of pending receivables keeps increasing, banks will continue to be reluctant to extend further funding.
- **Creation of a separate window of financing** under Banks, FIs including REC and PFC, for installation of emission control equipment on concessional terms.