APP Suggestions for Tax Proposals for FY 2022-23

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 1 - 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 on the following page:

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. 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. 9 of Customs Notification 52/2017-Customs dated 30th June 2017.

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 (have already entered into long term agreement with PSU Gas marketing companies, which have back to back agreement with PLL), the benefit of customs duty exemption is not available.

Suggestion

As the objective of the above mentioned Customs notification is to provide relief to power generating companies which imports and uses the regasified LNG for generation of power, 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.

C. Inclusion of Railway Receipt in category of eligible documents under Rule 36 of CGST Rules

Railways presently issues Railway Receipt (RR) against transportation of goods by Rail, and applicable GST is also charged by the Railways on such RR. No separate GST Tax Invoice, as provided under Section 31 of CGST Act, 2017 is issued by Indian Railway. Further as per rule 36 of CGST Rules, 2017, Railway Receipt (RR) is not mentioned as a prescribed document on which credit of ITC could be availed. This situation may lead to disallowance of the ITC availed on such RRs.

Suggestion:

In order to overcome this issue, it is proposed that Railway Receipt (RR) issued by Indian Railway may be included in the category of eligible documents under rule 36 of CGST Rules to avail ITC.

D. Finance Bill 2021 Clause 141; Amendment to Central Sales Tax Act 1956, Act 76, effective 1st July 2021

Finance Bill 2021 has proposed an amendment of Sec 8(3)(b) of Central Sales Tax Act prohibiting inter-State purchase of gas against Form-C, when the goods are used in generation of electricity. This will lead to local state VAT applicability leading to higher gas cost as most of the gas is transported over long distances and used in a different state location than where it is produced. As a case in point, non issuance of Form-C will result into levy of AP VAT which is currently 24.50%, for supply of gas to be consumed in power generation in Gujarat.

Points for consideration:

- GoI has time and again taken steps to promote gas based power generation, particularly by way of tax benefits so as to make gas available at a reasonable rate.
- It is to be noted that GoI has exempted LNG (liquid form of natural gas) used for Power Generation from customs duty, so as to promote its use in generation of clean power & keep electricity cost affordable. In this context, the subject amendment in CST belies such consideration by increasing taxes on domestic gas consumption for power generation.
- Gas based power can play a very important supportive role in substantially reducing emissions of coal dominated power generation sector of India.
- There is already an anomalous situation that Natural gas, an alternate & cleaner fuel to coal, is subjected to VAT rate which is as high as 25% for intra state sale whereas coal is charged with 5% GST.

Suggestion:

The inter-state sale of gas for power generation should be reinstated under Finance Bill 2021 under Sec 8(3)(b) of Central Sales Tax Act and C Form issuance be allowed for inter-State purchase of gas.

E. Utilization of Clean Energy Cess for softening tariff impact of Emission Control Equipment and for promotion of stranded Gas based power plants

In line with Ministry of Environment, Forest and Climate Change's notification dated 31.03.2021 on Environment (Protection) Amendment Rules, 2021, most coal based power plants in the country will be installed Flue-gas desulfurization (FGD) equipment over the next few years, entailing large capex of more than Rs.1 lakh crore over the next few years. This large scale expenditure (entailing both capex and opex), which has been classified as 'Change in Law' by the Ministry of Power, will have to be recovered from the electricity distribution companies through supplementary tariff, which will then be recovered from the ultimate end use consumers.

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 for funding FGD installations through partial grants or any other suitable mechanism to ease the financing burden, would be appropriate as it would help to soften the impact of tariff increases on the end consumers of electricity.

The erstwhile Clean Energy Cess can also be utilized to provide budgetary support to stranded gas based power plants, considering the lower carbon emissions from gas based power plants and less usage of limited natural resources such as land and water.