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By Speed Post

Shri Pranab Mukherjee
Hon'ble Minister of Finance
Government of India
Central Secretariat, North Block
New Delhi - 110 001

Respected Sir,

On behalf of the Calcutta Chamber of Commerce, we have pleasure in forwarding for your kind consideration a Memorandum giving our suggestions and comments on Union Budget 2011-12.

With regards,

Yours sincerely,

SHYAM SUNDER AGARWAL
PRESIDENT

Encl. As stated.

POST BUDGET MEMORANDUM ON UNION BUDGET : 2011-12

A. DIRECT TAX

1. MINIMUM ALATERNATE TAX (MAT) U/S 115JB

(a) Levy on Minimum Alternate Tax had been proposed to increase from 18% to 18.5%. Our suggestion is to bring down the rate of MAT to 7.5% without surcharge and EC etc. thereon which was fixed at the time of introduction of law.

(b) While computing book provided under MAT exempted income of SEZ units are proposed to be added. This proposal amounts to back door levy of income tax on SEZ units. While concept of SEZ is being used as tool for reducing the trade deficit gap in foreign trade, such proposal would damage SEZ policy and units resulting adverse affect on foreign exchange inflow arising from such units.

We, therefore, strongly suggest the proposal of levy of MAT should be withdrawn. Otherwise it carries a wrong signal to investors community in the world and it adversely affects the long term economic policy and budgets of the entrepreneurs of SEZ units.

2. Proposed levy on SEZ units for declaration and distribution of dividend on or after 1st day of June 2011 should be withdrawn, as it was the Government policy to keep SEZ units and developers free from Indian Tax burden in order to make exports from SEZ more competitive in international market. But this proposal would have a counter productive and adverse affect in the minds of international investors about credibility of Indian Government policy.

3. CHARITABLE TRUST

Amendment in the definition of "Charitable Purpose" 2(15) adversely affects the tax liability of Chambers of Commerce, Federation, Apex Bodies, Trade Bodies and Sports Association and Bodies all over India. The role played by such organizations in the national development had always been appreciated by government and public at large. The followings are the relevant extracts from the reply of the Finance Minister to debate in the Lok Sabha on 29.04.2008 on the Finance Bill, 2008.

"6. Clause 3 of the Finance Bill, 2008 seeks to amend the definition of 'Charitable Purpose' so as to exclude any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a

cess or fee or any other consideration, irrespective of the nature or use of application, or retention, of the income from such activity. ***The intention is to limit the benefit to entities which are engaged in activities such as relief of the poor, education, medical relief and***

any other genuine charitable purpose, and to deny it to purely commercial and business entities which wear the mask of a charity. I once again assure the house that genuine charitable organizations will not in any way be affected. . . . .

Ordinarily, Chamber of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility".

A financial limit has been proposed to be enhanced from present Rs.10 lacs to Rs.25 lacs. In addition to the same, we suggest that the Chamber of Commerce, Trade Bodies, Federations, sports bodies etc. should be specifically mentioned in the definition itself as such organizations will not be affected by this amendment. Otherwise present definition is causing great hardship to such bodies at the ground level and a cause of concern and avoidable litigations. Through legislative explanations in the definition itself, place of administrative measures, would bring simplification and rationalization.

B. INDIRECT TAX

1. Interest payable by the assessee to the Government under Central Excise and Service Tax has been enhanced from 13% p.a. to 18% p.a., while the interest payable by government for delay refund has been kept at 6% p.a. only.

   It is, therefore, suggested that the difference between the interest receivable and interest payable should not be more than 5-6% and the interest payable and receivable rates should be modified accordingly.

2. **NEW LEVY ON MEDICAL FACILITIES – AIR CONDITIONED HOSPITALS WITH 25 BEDS AND ON DIAGNOSTIC TESTS.**

   Air conditioning is not a luxury, it is bare necessity to prevent and treat diseases. ICU's, Operation theatre's. , blood banks cannot work without air-conditioning. Patients post-surgery cannot be admitted in a non ac ward. Controlled room temperature prevents various bacterial and viral infections in the hospital. With the levy of service tax on diagnostic tests and increase in another 5% increase in the hospital charges, health care is going to be very expensive.

   Medical facilities provided by Government are not sufficient to meet the demand of Indian Population and therefore, the contribution of private hospitals in the medical field provided to Indian citizens should be encouraged. But the proposed levy of Service Tax

is a step towards discouraging the provision of medical facilities on the criteria of air condition facilities & 25 numbers of beds alone.

3. POINT OF TAXATION RULE –Service Tax:

Point of Taxation Rules is a very impractical provision. For professionals who maintain books on cash basis the problem is even more grave. Liability to pay tax before realization of fees from clients in the hands of professionals would impose practical and working capital bottle necks which would lead to unintended non compliances of procedural law in the shape of delay in payment of tax and filing of returns. Moreover, amount of fees to be received would invariably be uncertain in the case of small practitioners at the time of rendering the services / raising the bill on client. It takes final shape only on receipt. At times bills are kept pending by clients for months and year together. And for such a long period it could not be expected from the small practitioners to pay service tax from their pocket, that too on an uncertain fee amount.

Take the case of the Realty Developers, who are into development of residential complexes. They had no issues paying service tax on the basis of payments or invoices, whichever is earlier. As we know, Developers do enter into construction agreements with their flat buyers which specify milestones for completion of the projects and also specify the associated installment payments. Let's assume that, not withstanding that the milestones have been fulfilled, the flat buyer still does not pay the installment(s). The Developer would be liable to pay service tax, on the basis of the actual work done by him, not withstanding that, the flat buyer has not paid him. Take this logic further. Assume that the Developer has not started the construction activity at all. He would still be liable for paying service tax, based on the agreements entered into by him, as he is deemed to have rendered the service, on the date the said service was to have been provided. Imagine the chaos that this new rule would create, in the case of a Developer constructing a huge residential complex with, let's say, 1000 flats?

4. PROSECUTION

The prosecution can be launched even in respect of transactions covered under Section 68(2). Consequently, even an importer of services can be prosecuted for ‘providing' a taxable service, without an invoice. How can an importer be expected to generate an invoice, for import of services which is accordance with the statutory provisions? Is he required to raise an invoice on himself? Per se, the new Section seems to cover even the small service providers, who are exempted from payment of service tax up to a certain limit. When the service tax is exempted, where is the need to issue an invoice? It seems rather obnoxious that, prosecution can be initiated against service providers when they don't issue invoices.

Opportunity to the assessee to prove **reasonable cause** and **MensRea** is not necessary, for prosecution proceedings to be initiated, in terms of the present draft of Section 89(1).

The section uses the words "shall". This is a very worrisome development. If reasonable cause and mensrea is a necessary ingredient for imposition of penalty in terms of Section

80, under which, penalty can not be levied. If the assessee proves that there was reasonable cause for the failure, one cannot understand as to how, prosecution proceedings can be initiated, as also in cases where no mensrea is involved. The new Section 89 dealing with prosecution powers requires complete modification. One can contrast this, with the Sections that are applicable under the VAT laws, under which, prosecution proceedings can be initiated only in respect of transactions undertaken, "with an intent to defraud". The absence of such a wording in Section 89(1) could make the prosecution provisions extremely obnoxious and dangerous, as aforesaid. One doesn't see a provision, similar to that existed under Section 91 of the Finance Act, 1994, as is existed prior to 16-10-1998, under which, the offences were deemed to be non-cognizable within the meaning of the Code of Criminal Procedure, 1973. Most VAT laws clearly provide that offences which attract prosecution are also bailable. Even if the Government wants to retain the prosecution related provisions, a provision similar that what existed in the erstwhile Section 91, would need to be inserted, if at all, the Government wants to retain Section 89(1) in any form. One hopes that the Government does a complete rethink of the prosecution related provisions contained in Section 89(1) and ideally, this Section would need to be considerably diluted, if not, deleted.

5. CENVAT CREDIT RULES

Recent proposed amendment in Cenvat Credit Rules will unsettle the present settled positions of interpretation of law. Moreover reform in the shape of GST is forthcoming where Cenvat Credit Rules would be totally revamped.

Therefore, it is submitted that for a small period of time introduction of new definitions in the Cenvat Credit Rules will not be a step towards rationalization and simplification of law, rather it will complicate the existing law. It is, therefore, suggested that amendments in Cenvat Credit Rules should be withdrawn. And any changes should be brought through GST only.

6. SERVICE TAX ON CHAMBER OF COMMERCE

It has been proposed that the membership fees collected by the Associations and Chambers of Commerce shall be exempted from Service Tax for the period from 16.2.2005 to 31.3.2008. The rational of keeping the date of 31.3.2008 is not known.

It is suggested that the period should be **up to 31st March 2011 in place of** 31st March 2008 to mitigate past period liability.

C. ACCOUNTABILITY AND DELIVERY SYSTEM

a) Delivery mechanism and transparency in delivery of budgetary allocations are basic requirements of the day. There is a need to publish a comparison of budgetary allocations made and actual amount spent under each category and heads, since the goal

is to make optimum use of limited resources. At the same time, there is a greater need to block the leakage of funds in course of distribution and utilization.

b) Tax Officials' accountability as tax gatherers requires to be strengthened for the purpose. Measures, legal as well as administrative, should be taken to make the officers accountable for raising in fructuous demands, delay in granting refunds, giving effect to appellate orders, carrying out rectifications, issue of official approvals and certificates to tax payers under various provisions of the law and various reports as required under the law.

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