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Dy. Director (EA)

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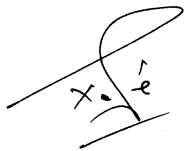
Subject: Pre-Budget proposals for 2012-2013-Suggestions for modification in the Direct and Indirect Tax rate structure-regarding.

Sir,

We refer to your letter no. E.7(9)/2011 dated 3 Nov. 2011 on the subject stated above. As desired by you Pre-Budget Proposal regarding modification in the rate structure of Direct & Indirect Taxes and other issues related to MSME for consideration of Ministry of Finance for inclusion in the Union Budget 2012-2013 are enclosed herewith.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to be 'D.S. Verma', written over a horizontal line.

D.S. Verma
Executive Director

Union Budget Proposals / Recommendations

2012-2013

1- INCOME TAX

(a) Additional Depreciation/Investment Allowance/ Standard Deduction to MSME

Micro, Small and Medium Enterprise Sector enormously contributes to the GDP of the country, but still it perpetually struggles for survival due to lack of financial resources. To remain competitive in terms of quality as well as cost, every enterprise needs to constantly review and upgrade its plant and machinery. In spite of being fully aware of steps that need to be taken to ensure long term survival, MSME entrepreneurs are unable to implement their plans due to their inability to spare cash. Rising bank interests rates have further complicated the prospects of survival for MSME sector. Now it is as much responsibility of the government as of the entrepreneur himself to ensure that necessary capital investment in plant and machinery continues so that survival of MSME sector is endurable.

- Therefore, the rate of depreciation on plant and machinery for MSME sector be enhanced to 50% from 15% at present as an incentives for investment in new plant and machines.
- Also the income tax rate for manufacturing enterprises in MSME sector be reduced to 20% from 30% at present. This would unlock some money in the hand of entrepreneur to make capital investment.

(b) System of reprimand for wrong assessments.

In case of wrong/inflated assessments where assessed income is later on reduced, a system of reprimand should be introduced so that if decision of an Assessing officer is reverted for 25 cases in a year, a reprimand should be issued to the concerned A.O.

(c) Surveys U/S 133 A

Section 133A has become a means of oppression as this provision is being used indiscriminately only for the purpose of 'surrender of income' under duress with a view to collect Advance Tax and to be able to fulfill the 'quotas' allotted to the authorities. The powers of Surveys u/s 133A should be exercised by the Director of Investigations and only in deserving rare & exceptional circumstances and only when on the basis of specific information and only when he has 'reasons to believe' that income exceeding Rs. 10 lacs is being evaded and the same can be unearthed by resorting to Survey operations

(d) Filing Income Tax returns for loss

Delay in filing Income Tax returns in the case of loss return, upto the close of financial year should be condoned. Loss in such cases should be allowed to be carried forward. There should also be provision for carrying back the losses and allowing its set off from profits of prior years. Benefit of carry forward /set off of loss should also be available against future profits. Belated returns filed U/S 139(4) should also be allowed to be revised.

(e) Rationalising the disallowance of cash payment U/S 40 –A(3)

Under the provisions of Income Tax Act, expenses entailing cash payment exceeding Rs 20`000.00 at a time to any person (in case of transporters Rs 35`000.00) is disallowed. It should be noted that the above limits have been in place for nearly a decade, whereas the average inflation in the intervening period has been in the vicinity of 10% per annum. It is impractical to carry on day to day business with such measly limits in place for cash payments. As a result of the above artificially low limit in place, payments have to be made in several installments if the recipient is not in a position to accept payment by cheque. Therefore the above limit be reset to at least Rs 1 lac to enable ease of business.

It is therefore recommended that valuation should be based on actual market value for which proper procedures and norms should be prescribed.

(f) TDS Provisions:

- TDS amounts should be allowed to be adjusted in any of the Assessment Years up to 3 years following the year of issue of certificate. This will take care of the genuine problems of delay in receipt of TDS Certificates especially from Government Departments and will provide convenience to assesseees to get it adjusted in any of the following 3 years also.
- TDS on interest (other than interest on securities) U/S 194-A should be deducted only if interest payment is exceeding Rs. 25000/- P.A. Present limit of Rs.5000/- was fixed long time back and needs revision. In case of Bank, the limit should be increased to Rs 50000 P.A from the present value of Rs 10000/- P.A.
- Threshold limit u/s 194H for payment of commission & brokerage be raised to Rs. 50,000. against the present limit of Rs. 5,000/- fixed long time back. Further the rate of deduction of TDS should be reduced to 5%
- Threshold limit u/s 194J fees for professional or technical services should be raised to Rs. 1,00,000 per annum against the present limit of Rs. 30,000/-
- TDS Deductor is collecting this tax on behalf of the Govt . from the deductee. The onus for its timely payment and its proper reporting including filing of returns is the responsibility of the Deductor . The deductee should not be denied the benefit of credit for any lapse of compliance by the deductor.
- TDS Procedures should be simplified – Periodicity of payment and filing returns should be reduced. Threshold limit of Rs. 50000 per month of TDS should be fixed and any assessee deducting TDS of <50000 per month should be allowed to file annual return. It is pertinent to note here that cost of compliance is prohibitively high

in case of small assesses and needs to be taken into account while prescribing filing/compliance rules.

(g) Online tax payment system

Online tax payment system is cumbersome. For every transaction related to TDS payment under different sections a fresh log in is required. Similarly at the time of Log in full details of the assesses i.e name and address etc is required to be filled in. It is therefore proposed that:

- Assesses should be required to furnish PAN /TAN as the case may be and all other static details should appear automatically.
- In case of TDS payment under different sections facility should be provided for payment under single challan which should have breakup of payment under different sections for departmental accounting purpose.

(h) Advance Tax

Interest U/S 234-B should be applicable only in case advance tax paid falls short of 60 % of the total tax payable on the returned income.

Further, for Micro & SSI entrepreneur it is very difficult to calculate/estimate the tax liability for whole year in September or December, because many times they get good business at the fag end of the year. Hence, their liability of advance, tax should have provision to pay by Mar.15 without and overdue Interest/Penalty and the threshold limit should be enhanced to Rs 50000/- from the present value of Rs 10000/-.

(i) T.C.S. @ 1.133%:

Scrap should be taken out of the list of items for TCS provisions or a limit of Rs 50,000/- should be there for collection TCS in case of Scrap

(j) Compulsory Audit

Under Sec 44AB of Income Tax Act, 1961, if the Gross T.O. of assesses is Rs.60 Lacs and above, Audit is mandatory .This Limit should be enhanced to Rs.1 Crores.

(k) Section 269-SS and 269 T

Threshold limits fixed under section 269SS and 269T for taking or accepting certain loans & deposits and for repayment of loan or deposits, should be raised to Rs. 50,000/-. Present limit of Rs. 20,000/- was fixed long time back.

(l) Section 50-C- Valuation of assets

These provisions should be dropped from the act being inequitable because in many states there is no provisions for the rates being fixed by the district officials and in many places the rates are increased on arbitrary basis as revenue yielding exercise by the state Government.

The Hon'ble Supreme Court has consistently held the Circle Rates are mere guidelines and do not have any statutory force. Legally speaking, Stamp Duty is required to be paid on the market value of the property but for all practical purposes, in order to purchase peace, shun litigation and to get back the sale deed after

registration; the purchaser is constrained to pay stamp duty on the value as per the 'circle rate' declared by the collector. The seller has to face the rigour of section 50C in these circumstances. The procedure for determination of market value by the departmental valuer is cumbersome and promotes unhealthy practices. It is therefore recommended that valuation should be based on actual market value for which proper procedures and norms should be prescribed.

(m) Section 40-A(2)(b) regarding salary payments

At present even if the salary is paid to partners by the firm within the limits of allowability u/s 40(b) the AO is empowered to disallow the salary u/s 40-A(2B). If the salary of partner is paid within limit then the same should not be disallowable u/s 40-A(2B).

2- CENTRAL EXCISE

- (a) Exemption limit of Excise Duty must be minimum Rs.2 Crores instead of Rs. 1.50 Crores and also the figure in para 2(vii) be revised from Rs 300 lacs to Rs 500 lacs.
- (b) Restore the fiscal stimulus by reducing general rate of Excise duty to 8%.
- (c) All the exempted 120 commodity groups that have been brought under excise net should be subjected to 1% rate of duty along with all the benefits of CENVAT credit to the manufacturer as well as the buyers to ensure there is no cascading effect even if it is as little as 1%.
- (d) Central govt has allowed duty free garments imports from Bangla Desh, whereas the Govt has imposed excise duty @10% in march 2011 budget. Direct impact of this is that made up garments imported from Bangladesh are cheaper by up to 15%. This will adversely affect the survival of made up garment industry in India. Keeping in view of the above the govt must roll back the excise duty to save the Indian garment industry

3- SERVICE TAX

- a. The exercise of identifying the Negative List of Services should be taken up with GST. Doing so at present will complicate the system of Service tax unnecessarily.
- b. Among all the services covered under the service tax, "Goods transport service happens to be one peculiar example which is subjected to "Regular Charge" as well as "Reverse Charge" depending up on the category of person who availed the GTS services. To elaborate the issue, in accordance with the notification No. 35/2004 - service tax dtd. 3rd. Dec. 2004, except for a proprietorship firm / an individual, all category of GTS service availers have to themselves deposit service tax on GTS services availed and then file returns. For the individuals / proprietorship firms, the transporter will be required to charge and deposit the service tax and file returns of service tax. Thus GTS service has the distinction of being one service where the Service Provider as well as service availers have to get themselves registered under service tax and file returns. Obviously this is one

of the most cumbersome and administratively inefficient form of tax collection arrangement.

The fundamental basis of Service tax is "Tax collection on value addition".

However, due to one of the most ill-conceived tax collection arrangement in place for GTS services, the concept of tax on value addition is most inefficient as in most of the cases transporters are charging service tax as well as service availers are required to pay service tax because they are unable to claim credit of service tax paid to the transporter. This is leading to huge cascading effect.

Over the years, government has been able to get nearly all the transporters to register under Service Tax and all of them are collecting service tax as well as filing returns.

Therefore, the concept of "Reverse Charge" in the Goods transport services must be done away with. Only transporters must collect and deposit service tax on GTS services. All category of GTS service availers be allowed to de-register from service tax and thus finally put an end to duplication of same work.

- c.** The general rate of tax has been reduced from 12% to 10% w.e.f. 24-02-2009. Historically the rate of service tax has always been less than the Central rate of excise duty. In wake of rampant inflation over the years, cost of services have gone up manifold. On top of this extent of coverage of services under service tax has also widened enormously. Taxing services @ 10% is contributing hugely to general inflation and is also an incentive for evasion.

Therefore, rate of service tax must also be moderated down to not exceeding 8% in line with the general rate of Excise Duty.

- d.** As per service tax notification no. 33/2004 dated 3rd dec 2004, there is no liability of service tax on transportation of Milk, Eggs, Vegetables. This list had been further extended to Pulses also subsequently.

The criteria for exemption appears the perishable nature of foods products being transported. Bread also falls in the same category **hence Service tax on transportation of Bread should be exempted.**

- e.** Service tax was levied on Industry Associations in 2005 by clubbing them under 'Club or Associations Services' (excluding trade unions, political parties, farmers associations). Industry associations representing the cause of Micro Small and Medium Enterprises (MSME) are like Farmers Association / Trade Unions and they work for the public cause and clubbing them with entertainment clubs is unjust and unfair. **Hence the liability of Service Tax on MSME Industry Association membership fee should be exempted.**
- f.** All kinds of surcharges and Cess should be merged with basic Service tax rates.
- g.** Any entity registered under Service Tax Act / Rules should be allowed to render any other service which is taxable under Service Tax Act without requirement of any additional registration or modification in the existing registration.

- h. Threshold for applicability of Service Tax should be enhanced from Rs 10 Lacs to 15 Lacs. There should be a threshold limit of Rs 10.00 Lacs for Service recipients also which at present is nil . The cost of compliance for this is relatively very high for all such assesses who are otherwise not subject to any other service tax /cenvat compliance obligations. Putting a threshold will facilitate taking out the small ticket Service Tax payers under this head.
- i. Entrepreneurs in Micro & Small Sector do not have any social security from Government, so we take Life Insurance, Medical Insurance, General Insurance. Service Tax is applicable on Insurance Premiums also, and recovered from insured. Insurance Premiums should be taken out from Service Tax net.
- j. Service Tax on rent of immovable property should be abolished, because by no stretch of logic “rent” can be construed as “service”. The case of service apartments run on commercial basis may however be different. Treating rent as a service and applying service tax to it has increased the cost of infrastructure for many SME units. Besides, the very jurisdiction of central govt. to impose tax on immovable property which is a State subject raises a debatable constitutional issue.
- k. Service tax payable under works contract category for compounding scheme should be brought down to 2 % from 4%.
- l. Services in relation to representation made by the Chartered accountants before the Statutory Authorities was exempt from levy of service tax vide notification no. 25/2006 dated 13.7.2006. Notification has been withdrawn from 1.5.2011. Exemption to representative services should be continued.

4- CST,VAT, CENVAT AND GST **(Competition on the basis of difference in Tax Rates should be avoided)**

a. **CST –**

At the time of introduction of nation wide Vat, one of the promises held out by the government was that Central sales tax (CST) rates will be gradually reduced from 4% to 0% in phased manner over three to four years. However, it has been a promise that government appears most reluctant to keep. While the first drop of 1% was prompt. Next drop of 1% came only in July`2008 after a delay of nearly two years. But that is where things rest since. It has been nearly four years now but further reduction to 1% is being avoided on one or the other ground. The state governments on their part promised never to charge any tax other than VAT. However, it now turns out that nearly all the states are charging Additional tax over and above VAT ranging from 1 - 2% and also entry tax ranging from 1 to 5%. There is therefore no justification in continuing with CST @2%.

Therefore, the rate of CST should be immediately brought down to 0% without any further delay. One of the major positive fall out of this move would be push the

inflation in to downward spiral and thus hastening the process of normalization of overheated economy.

b. GST should be implemented:

Government proposes to introduce GST in the country as a single tax thereby replacing a whole lot of direct/indirect levies e.g. Centvat, Service Tax, VAT etc. Undoubtedly GST is very progressive mode of taxation and is being successfully run in lot of developed and developing economies. Since introduction of GST would be a major change in the system of levying/collection of tax, it is suggested that before implementing GST enough thought should be given and the concerns of MSME about its impact on them considered appropriately to avoid unwarranted hardship. This can be achieved by an effective dialogue and/or white paper on the proposed system and its modalities which should be discussed with various industry associations representing MSME sector.

c. VAT Rates in all commodities across all States should be uniform

In the white paper on VAT published by Empowered Committee on state level value added tax it was decided that:

"all other existing taxes such as Turn over tax, Surcharge, Additional Surcharge and Special addition tax (SAT) would be abolished. There will not be any reference to these taxes in the VAT bills. The states that have already introduced entry tax and intend to continue with this tax should make it vat able. Entry tax will need to be abolished. However this will not apply to entry tax that may be levied in lieu of octroi",

Further it was decided "there will be only two basic VAT rates of 4% and 12.5%, plus a specific category of tax-exempted goods and a special VAT rate of 1% only for gold and silver ornaments etc."

States are not following these basic principles. It is suggested that the states should be restrained from levying any additional tax in addition to VAT and the rates across the country be not increased from the rates as prescribed by the Empowered Committee.

Any amendment having effect on taxability of goods should not be made retrospectively. Further it should not be made applicable from the mid of the month. Notifications issued should give at least 15 days time to dealer to have his system updated.

5. OTHER MISCELANEOUS ISSUES

a. DENIAL OF RIGHT TO EQUALITY TO SMALL SCALE SECTOR

Though the Government have announced the status of Priority Sector for Micro and Small Industries yet several Central / State Govt. departments are deliberately putting such conditions in their purchase documents so that this sector is kept out of the competition even. These conditions are related to minimum turn over /

exorbitantly high earnest money / reservations of items for purchase from some big companies / Govt. undertakings etc. To explain the issue we are submitting a live example as under:

“Textile sector provides mass employment in the rural sector of India across the country. They are supported by various buying programmes of Government including Defence and they have been catering to such requirement of Defence for the past two decades. In the past certain large composite mills have influenced defence officials at the Secretary level and got issued an order from them to purchase only from composite mills having facilities of spinning, weaving & Processing, which is very detrimental to the interest of Small Scale Industries.”

Micro and Small Scale Sector plays significant and important role in the socio & economic conditions of the Country. Govt. may therefore issue clear instructions not to deny the right to equality to this sector and ensure the implementation of its policies of promotion of this sector in right earnest.

b. STRICTER ACCOUNTABILITY

Enforce stricter accountability for Govt officials delivering various services to citizens. If penal provisions are imposed under taxation laws on assesses for failure to comply with certain rules, the assessing officers should also be liable to penal action if any action by them is found unwarranted or grossly unjustified. In this connection, it is desirable to modify the indemnity clause under section 293 (Chapter XXIII) which, in its present form, provides a blanket protection to erring officials from prosecution or suits or other proceedings. Executive authorities in the implementation of policies/laws/schemes should not be allowed to do wrongs to citizens, abusing the process of law in an unjust or unfair manner in the name of good faith.

Time bound delivery of services should be ensured by making suitable provisions in the Tax Acts / Laws with a provision of fine on Officers for not adhering to the time lines. Wide publicity for these time lines and actions against erring officers should be made.

c. No AMMENDMENT HAVING RETROSPECTIVE EFFECT IN TAX LAWS

Any amendment having effect on taxability should not be made retrospectively. Such amendments causes serious consequences especially for MSMEs.

d. WITHDRAWAL OF RBI GUIDELINES FOR REHABILITATION OF SICK SME UNITS

RBI circular RPCD. NO. PLNFS.BC.57/06.04.01/2001-2002 dated January 16, 2002 prescribed the norms for grant of reliefs and concessions by banks to potentially viable sick SSI units for rehabilitation. The Relief and Concessions to viable/potentially viable sick units under rehabilitation prescribed in the Circular have been withdrawn vide Circular No. RPCD.SME & NFS.BC.No.19/06.02.31/2011-12 dated 12th September 2011 stating that all Scheduled Commercial Banks have been advised to put in place their own Restructuring/ Rehabilitation policy for revival of viable/potentially viable sick units/enterprises duly approved by the Board of Directors.

We all know and the Ministry of Finance as well as Ministry of MSME Govt. of India have realized it that Banks are generally reluctant to finance the MSMEs. We therefore fail to understand how and why Banks will venture into framing and implementing an effective rehabilitation policy of their own for MSME? It is also a known fact that Banks have been flouting the RBI guidelines also in the past. As such withdrawal of the RBI Guidelines for rehabilitation of sick MSME Units will render them totally helpless.

It is therefore recommended that the RBI may be directed by the Govt. to revoke their decision vide circular No. **RPCD.SME & NFS.BC.No.19/06.02.31/2011-12 dated 12th September 2011 and put in place more strict guidelines** to all Scheduled Commercial Banks for rehabilitation of viable / potentially viable sick MSME units. These guidelines should also be monitored strictly.

e. **SOCIAL SECURITY TO MSME ENTREPRENEURS**

MSE entrepreneur is a one man army in his /her enterprise who puts in every thing including all the assets and family members into business. In turn pays various taxes to the Government. However whenever he /she gets old, does not have any social security.

Central govt should introduce the social security system for Micro and Small Scale entrepreneurs after the age of their retirement age. A suitable scheme may be devised by the Government to provide Social Security to Micro & Small Entrepreneurs.

f. **EXIT & INSOLVENCY POLICY FOR MSME**

Exit & Insolvency policy for MSME pending for long should be put in place at the earliest possible