

24-3-2017

Gist of CFI Post-Budget Interaction with Shri Najib Shah, Chairman CBEC

***Request for Inputs on the Rate of GST**

A 8 members delegation of CFI from leading construction industries had the opportunity of meeting **Shri Najib Shah, Chairman, Central Board of Excise & Customs (CBEC)** to discuss Post-Budget Indirect Taxation Issues impacting to Infrastructure Construction Sector on 21st March 2017 at Finance Ministry, New Delhi.

Shri Alok Shukla, Joint Secretary TRU-I dealing with Customs & Central Excise and **Shri Amitabh Kumar**, Joint Secretary TRU II - Service Tax, CBEC also participated in this meeting.

CFI delegation members comprised of **Mr. P R Subramaniyan**, Joint General Manager & Head, Indirect Taxes Dept., L&T Construction, **Mr. N. Viswanathan**, Advocate & former Assistant Commissioner of Customs & Central Excise, **Mr. Shyam Ramadi**, Consultant Taxation – Hindustan Construction Co. Ltd., **Mr. Sanjay Pusrala**, CFO E&C and **Mr. Satish Gopal**, General Manager Indirect respectively from Shapoorji Pallonji & Co. Ltd., **Mr. Sandeep Shetty**, Assistant General Manager Taxation, IRB Infrastructure Developers Ltd., **Mr. A R Babu**, Chief General Manager (Taxation), NCC Ltd. and **Mr. Shiv Rawat**, Deputy Director, CFI.

CFI members submitted a detailed Post-Budget Memorandum 2017-18 to the Chairman CBEC on some of the crucial issues faced by the infrastructure sector and also **raised concern of the members in the case of RMC wherein the field officers are proceeding against them for demand of the duty on the Ready mix concrete (RMC) manufactured at site and used in construction work at site covering the past period from 01.03.2011 to 29.02.2016.** An updated representation on this important issue submitted to Chairman CBEC is attached for the information of members.

CFI representation highlighted that on account of the proceedings being initiated by the Central Excise officers for recovery of the duty inspite of the fact that RMC having been admittedly manufactured at site and used in construction of the projects awarded mainly by the union and state without including or charging the duty on such goods to the project authorities . If not avoided by issuing a Notification under Section 11C of the Central Excise Act, 1944 immediately it will result in huge financial liabilities in the form of duty recovery with interest for no fault of the contractors who have been starving with financial crisis in the recent years. .

Federation members urged the Chairman to consider this crucial issue and take appropriate measures to relieve their members of the impending tax liability and interest which will befall on them contrary to the intention of the Government and the public interest involved necessitating the grant of the exemption retrospectively or by way of clarification as deemed fit & proper and render justice to the sector in national interest.

Chairman CBEC agreed to examine the issue.

Following key issues were discussed in the meeting:

Amendment to Sr. No. 233 of Notification No. 12/2012-C.E. dated 17.03.2012 for Water Treatment Plant:

Excise duty exemption presently available only for **water treatment plant** may be extended to all stages/units of water supply project since all stages are part of a complete water supply project.

CFI has suggested that "Water supply projects" are exempted from payment of Service Tax.

Duty Exemption to goods supplied for setting up of Sewerage Projects:

There is no specific notification providing exemption to goods used for setting up of Sewerage Projects.

Suggestion: Being a Sewerage Project, all excisable goods to be supplied for setting up of a Sewerage project including manufacturing of Pre-Cast RCC Pipes, Pre – Cast RCC Manhole Slab & other materials to be supplied for civil construction need to be exempted from payment of excise duty by way of a notification to so that the project becomes viable and cost effective.

Withdrawal of CVD exemption and SAD on specified construction equipment:

S. No. 368 under list 16 of customs notification 12/12, specified equipment for construction of roads were given CVD exemption and now it has been withdrawn. Several road projects are in the execution stage and currently there are two lists i.e 16 and 16 A wherein specified equipment are allowed for import for construction of roads as per S. No. 368 and 368 A of customs Notification. Prior to Interim budget all these equipment were allowed under nil rate now after interim budget and in current budget, for all these equipment CVD is leviable. Once CVD is leviable, special duty of customs also would be charged.

Suggestion: Considering the large numbers of road projects in the country, Federation has suggested to restore the CVD exemption.

Section 104 inserted to prescribe special provision for exemption in certain cases relating to long term lease of Industrial Plots:

Notification No. 41/2016-ST dated 22.09.16 exempted from Service Tax, one time upfront amount (called as premium, salaami, cost, price, development charges, etc.) payable for grant of long term lease of industrial plots (30 years or more) by State Government Industrial Development Corporations/ Undertakings to industrial units. Vide clause 127 of Union Budget 2017, this exemption has been made effective from 01.06.07 (i.e., the date when the services of renting of immovable property became taxable).

Suggestion: Identical view has been held in so far as Income Tax Act is concerned, whereby CBDT (vide Circular No. 35/2016 dated 13.10.16) has clarified that lump sum premium or one-time upfront lease charges which are not adjustable against periodic rent, paid or payable for acquisition of long term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act, therefore such payments are not liable for TDS u/s 194I of the Act.

Similar principle for Service Tax exemption should be made applicable wherever land/property is taken on long term/perpetual lease (for 30 years or more) by any builder not only from any

Govt. Authority for building construction but also from any non-Governmental body so that amount received as one time upfront payment/lease premium is not subject to levy of Service Tax as the same is not a consideration for leasing/renting of immovable property.

Place of Provision of Service for Projects in J & K, irrespective of location of Service Provider & Service Receiver:

As Service Tax is consumption based, in terms of Rule 14, there could be interpretation by field formation that Rule 8 will prevail over Rule 5 and hence all input services would attract service tax which is not the spirit of the law when services are provided to Immovable property located in J & K which is excluded from taxable territory. By virtue of Rule 13, Federation requested to notify Rule 5 as Place of Provision of Service for Projects in J&K irrespective of location of provider and receiver of services.

Para 5.5 of Education Guide clearly states that "in the case of a service that is directly in relation to immovable property, the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located". In exercise of the powers conferred under rule 13 of the said rules, we request to notify Rule 5 as place of provision of service for projects located in Jammu & Kashmir, irrespective of the location of the service proper and service receiver.

In any case as there is already levy of JKGST of 12.6% on most of the Services by the Government of Jammu & Kashmir, government should clearly spell out that Service Tax will not be applicable for the services provided to a project in the State of Jammu & Kashmir.

Accumulated credit due to partial Reverse Charge Mechanism:

As per Sr. No.1(v) of Not. No. 30/2012-St dated 20.6.2012, an unincorporated JV, being an AOP, for specified services, would be liable to pay only 50 % of its service tax liability, while the remaining 50 % has to be paid by the service recipient. However, JV could avail 100% Cenvat Credit on input services including services provided by sub-contracts. Hence, there will be huge accumulation of cenvat credit in the hands of the JV. Since JVs are formed for a specific project, utilizing the credit for any other purpose is also ruled out.

Other important issues raised by members:

- **Service Tax exemption to services provided within SEZ:**
- **Inclusion of allocation/reimbursement of cost/expenditure within group companies in the Negative List:**
- **Sr. No. 29 (sub clause h) exempts Sub-contractors providing services by way of Works contract to another contractor providing Works Contract Services for exempt services.**
- **Clarification required on Custom Circular No. 49/2011 dated 4.11.2011 issued under F. No. 528/14/2008-Cus related to Construction equipment;**
- **BCD increased from Nil to 10% for plans, design, drawings:**
- **Substantial increase IN basic customs duty of machinery/equipment**
- **Double Taxation on Ocean Freight paid for import of goods |**

CBEC Chairman and CBEC officials very positively have taken note of all the issues and assured the members to consider them.

*** Important Discussion on GST:**

In its interaction with members, CBEC Chairman informed the members that Ministry is going to fix up the GST rates very soon. CBEC Chairman and Joint Secretary TRU asked the members to provide present structures of taxes on input and output services to ensure that Construction Sector attracts a reasonable rate of GST.

It may be noted here that Revenue Secretary will be having a meeting with 31 State Revenue Ministers to fix up GST Rates for various Sectors. Based on the inputs provided by CFI, the GST rate for Construction Sector may be finalized.

Therefore, it is imperative to ensure that the details of figures of S.T./VAT paid on outputs vis-a-vis various taxes on inputs are accurate and placed in the appropriate slab.

We request the members to provide us your inputs by **Wednesday, 29th March 2017** to enable us submit Construction sector feedback on the rate of GST.