Pre-Budget Memorandum 2016-17

Indirect Taxes

American Chamber of Commerce in India

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Central Excise				
1	**Capital goods cleared as waste and scrap**	Sub-rule (5A) of Rule 3 CENVAT Credit Rules,2004 was substituted vide Notification No 12/2013 CE (NT) dated 27 September 2013 by the following:- (5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely (i) for computers and computer peripherals: for each quarter in the first year @ 10% for each quarter in the second year @ 8% for each quarter in the third year @ 5% for each quarter in the fourth and fifth year @ 1% (ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter: Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value (b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.	The amendment provides that in case the Capital Goods are cleared as waste and scrap by a manufacturer, then the amount to be reversed by the manufacturer should be equal to the duty leviable on the transaction value. However, the Rule is silent in respect of similar clearances made by an output service provider. Prior to the amendment, both manufacturer as well as output service provider were required to reverse an amount equal to the higher of the duty leviable on the transaction value or credit of the duty availed, reduced by the percentage specified for each quarter i.e. 2.5%.	It is hereby suggested that clause (b) should be amended, to bring output service provider at par with a manufacturer, by allowing the output service provider to pay an amount equal to the duty leviable on transaction value on removal of capital good as waste and scrap. Hence, the amount to be paid on clearing capital goods (on which CENVAT credit has been availed) as waste and scrap may continue to be the amount equivalent to the duty liable on transaction value. This is a rational approach as any manufacturer or commercial organization under normal circumstances business/ person would scrap any plant and machinery only after fully utilizing the asset. It means that the cost of asset has been fully built in the assessable value of the final product.

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2	**Excise duty reduction on Packaged Drinking water**	Under Central Excise law, valuation of mineral water is based on Maximum Retail price. The law prescribes suitable abatement for the purpose of payment of Excise duty. Presently, mineral water is allowed abatement of 45%. Given that packaged drinking water is a common man's product, it should be under NIL or near concessional duty categories. Further, it is important to analyze that the benefit to the total system by way of reducing / eliminating health concerns carries greater importance than offset any marginal decline that may occur in the short term as a result of removal of excise duty. A total macro view would be necessary than a sectional view focusing only on the revenue generating potential of levy of excise duty on packaged drinking water.	Packaged drinking should be put in the NIL or near concessional duty categories. However, if the Government, on account of revenue consideration, is not able to remove the excise duty completely, it may look at reducing the excise duty in a calibrated manner and in the first stage Excise duty may be brought down to 4% or 6% and taken to NIL Excise duty next year. Further, there are several food items that are exempt from the levy of excise duty. This decision was taken recognizing the fact that food processing sector needs to be encouraged to grow. The facility so extended should be continued as the revenue implications on the same are very minimal.	It is thereby suggested that the GOI shall reduce Excise duty on mineral water to NIL or near concessional duty categories, primarily to encourage such sector to grow and to focus on eliminating health concerns.
3	**Definition of input**	Definition of "input" specifically excludes any goods used inter alia for laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Finance Act, 1994.	Companies setting up new factories are thus not permitted to avail CENVAT credit on cement, iron, steel, plates etc. either as part of civil structure or supporting capital goods (machines etc.). It results in increased cost of construction. This provision goes against the very spirit of CENVAT.	It is suggested that capital structures should be included in the definition of "inputs" in Rule 2(k) of CENVAT Credit Rules, 2004 for CENVAT purposes
4	**Integration and rationalization of CENVAT Credit Scheme**	Negative Service tax regime was introduced in July 2012, wherein all services have been taxable, apart from those mentioned in the negative list or have been specifically exempted. However restrictions, exceptions and limitations on availability of CENVAT	Restrictions on availment of CENVAT credit on services related to civil construction, services related to motor vehicles i.e. cab services and services which are used for personal use or consumption of any employee. Further, with effect from 1 April, 2011,	It is thereby recommended to ensure that CENVAT Credit scheme meets its objectives and that unnecessary qualifications/ categorizations like 'input', 'input service' and 'capital goods' be done away with and all input side tax costs in relation to business activity should be allowed as credit.

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		credit continue. This creates an inequitable situation whereby the taxation of services is universal while the credit for the tax paid on inputs and input services used by a Manufacturer or a Service tax provider continues to be restricted.	the definition has specifically omitted input services used in 'activities relating to business '. This seeks to restrict the ambit of CENVAT credit and also leads to ambiguities in interpretation. Such as, cascading of Service tax for Brand Owners when manufacture is undertaken by job-workers. In the said case CENVAT credit pertaining to inputs and capital goods is available to the assessee irrespective of whether manufacture is in-house or at job worker premises whereas the benefit of service tax credit is available only if the manufacture is at the assessee's own unit. This inequity dilutes the cost competitiveness of assessee's who own brands and use job-workers exclusively for manufacture of goods.	Further, it is suggested that specific amendment should be made in the definition of "input service" to allow credit when the immovable property is used for manufacture of excisable goods or for provision of taxable services. Credit should be denied only in cases where the immovable property is used for sale or for non-taxable purposes. Further, we understand that Finance Minister had set up a Study Team to examine the possibility of a common tax code for service tax and central excise. The Study Team had interacted with the trade and industry, and CENVAT credit scheme was one of the items on which FICCI had given certain suggestions for its rationalization. It is requested that the Report of the Study Team should be placed in public domain and its recommendations should be considered for implementation
5	**Non-payment of Additional Excise Duty (AED) on stocks manufactured prior to midnight of the effective date**	Per Union Budget announced in July'2014 imposed a new levy under the head of Additional Duty of Excise (AED) on manufacture and sale of 'waters including mineral water and aerated waters containing sugar or other sweetening matter or flavored falling under chapter heading 220210' @ 5 % in addition to the basic excise duty of 12 %. Duty was effective from midnight of 10th/11th July'2014. It is a settled position of law as laid down by the Hon'ble Supreme Court in the case of Collector of Central Excise, Hyderabad Vs. Vazir Sultan Tobacco Co. Ltd. , reported in 1996 (83) E.L.T. 3, that the said levy would only be applicable on finished goods	Despite the settled legal position, excise authorities are taking a contrary view by levying AED on the finished goods manufactured prior to 10th/11th July'2014 and cleared thereafter, which is causing undue hardship to the manufacturers.	It is requested that a suitable clarification may be issued to settle this dispute.

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		manufactured and cleared post-midnight of 10th/11th July'2015..		
6	**Amendment to Notification 10/96 dated 23 July 1996 in parity with Central Excise Tariff Act**	With a view to encourage the Fruit and Agro Industry, 'Fruit pulp based drinks' falling under Chapter 22 was exempt from duty. As a corollary, intermediate goods captively used in the manufacture of above products were also exempt from duty vide Notification No. 10/96 dated 23 July 1996. Thereafter, in view of the confusion between 'fruit pulp' & 'fruit juice' based drinks, the entry under Chapter 22 was amended w.e.f 19 May 1997 to include 'Fruit pulp or fruit juice based drinks'.	However, corresponding changes were not made in the intermediate goods exemption which continued to refer to 'Fruit pulp based drinks' only.	It is therefore suggested that exemption under notification 10/96 dated 23 July 1996 may be suitably amended and aligned with the tariff to read as 'fruit pulp and fruit juice based drinks'. We also request that a suitable notification be issued under Section 11C to safeguard the interest of the industry for the past period.
7	**Time limit for availing CENVAT credit**	CENVAT credit can be availed based on supporting document as prescribed in Rule 9 of the CENVAT Credit Rules, 2004 ('Credit Rules'). Up to 31 August 2014, there was no time limit for availing such credit. However, w.e.f. 1 September 2014, time limit of 6 months from the date of specified document was prescribed. Vide Union Budget 2015 this time limit was changed to 1 year.	Restriction on availment of CENVAT credit within 1 year from the date of specified documents results in disallowance of credit even in bonafide cases thereby leading to tax cascading.	It is recommended that the Credit Rules may be suitably amended to eliminate the time limit for availing credit and allow the assessee to avail credit without any such time restriction.

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		These amendments restricting availment of CENVAT credit beyond 1 year has a significant impact on the industries where inputs and input services are in large volumes. This due to the fact that to have a proper control, accounting for goods receipts, quality inspection etc. is done before the CENVAT is taken. Due to the large volumes in some cases time taken in availing CENVAT exceeds much more than a year. Further it has been held by Supreme Court in case of Collector of Central Excise Vs Dai Ichi Karkaria Ltd (1999(112) ELT 353(SC) that CENVAT credit is an indefeasible right. CENVAT is a benefit for any assesse and the same cannot be denied based on such provision. Further, if CENVAT credit is not availed it will also result in tax cascading and will defeat the basic purpose of CENVAT mechanism.		
8	**External warehouse for storing inputs outside the factory without duty payment**	Rule 8 of CENVAT Credit Rules, 2004 ('Credit Rules') permits storage of inputs outside registered factory without any reversal of CENVAT credit availed subject to the nature of goods and shortage of storage space. Warehousing can only be done on an approval from AC/DC. Typically, this permission is discretionary and granted only in exceptional circumstances for a shorter period of time.	The benefit of external warehousing facility is not available for all the inputs.	The benefit of external warehousing facility should be extended all the inputs irrespective of their nature. Further, although the Rule does not specify the period of storage, the authorities should consider granting approval for a longer period of time, to accommodate even regular business exigencies on a case to case basis.

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9	**Allowing refund of unutilized CENVAT credit for duty paid on imports**	Import of inputs and capital goods attracts customs duties which includes CVD and SAD aggregating to 17% approx. for which CENVAT credit can be taken by manufacturers. Generally, the final product manufactured is liable to Excise duty at 12.50%. This difference of 5% (approx.) leads to accumulation of CENVAT credit.	Accumulation CENVAT credit on import of inputs leads to blockage of funds.	It is recommended that the Credit Rules should be suitably amended to provide for refund of unutilized credit amount periodically to a unit at par with refund given to exporters.
10	**Allow CENVAT credit for other duties for payment of National Calamity Contingency Duty (NCCD)**	NCCD is imposed on various products including motor cars. NCCD can only be paid by utilizing the CENVAT credit of NCCD. The non-availability of set-off of CENVAT Credit of other duties against NCCD liability results in unnecessary blockage of funds.	Ineligibility of CENVAT credit for other duties for payment of NCCD results in blockage of funds.	It is recommended that Credit Rules should be appropriately amended to allow assesses to pay NCCD utilizing CENVAT credit of other duties.
11	**Denial of CENVAT credit of Sugar Cess paid on Sugar purchased by Industrial Consumers**	Sugar is presently subject matter of multiple tax levies i.e. enhanced basic excise duty (including additional duty of excise imposed in the past), Sugar cess and VAT. Sugar cess is being levied at Rs. 24 per quintal. Sugar cess is not creditable to manufacturers of food articles and beverages and therefore, levy of Sugar Cess leads to cascading effect of taxes and higher input costs. (Industries in areas such as Biscuits, Cakes, Chocolates, Sugar Boiled Confectionary Juice based Drinks and Carbonated Beverages, Malted Milk Foods) Any non-creditable taxes are against the stated present and proposed indirect tax policy, causing a cascading effect on tax costs and distorting the economic environment. This has been recommended in the report of Thirteenth Finance	Food Industry uses Sugar as a principal raw material and the denial of credit affects the entire industrial consumption of approximately 27% of total sugar consumption. Given that sugar represents significant manufacturing cost for food and beverage industry, higher sugar cost has a significant impact on prices of these commodities, thereby fueling inflation. It is pertinent to understand that Education cess (Central Levy) levied on Sugar is cenvatable and also the State VAT levied by States like AP, Bihar, Orissa and Karnataka (1/8/2013) is also vatable. Hence it's a paradox if Sugar cess alone is not cenvatable for industrial purposes	Allow CENVAT Credit of Sugar cess against output excise duty levied under Central Excise Act, 1944 by way of an amendment to CENVAT Credit Rules, or Exempt Sugar cess when sold to industrial consumers by issuing an exemption notification to this effect

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		Commission that share of special purpose cesses (such as Sugar cess) in the gross tax revenues of the Central Government should be reduced since the proceeds of such cesses is not available for sharing with the States. It is pertinent to highlight the fact that Food and Beverage Industry has been persistently articulating and making representation on this major concern leading to unwarranted cascading of taxes since 2006 but till date there is no whisper by the Government on this concern.		
12	**Allowing CENVAT credit on specified services**	Services such as transportation of employees, rent-a-cab, catering etc. represent significant business expenditure which are incurred during the course of business by companies. We would like to highlight that some of these expenses are incurred due to mandatory State laws e.g. Transportation services for women employees. However, Cenvat credit of these services is not allowed.	Non-availability of Cenvat credit on transportation, rent-a-cab, catering services.	Necessary amendments must be made in the definition of Input Service as mentioned in Credit rules by specifically allowing the credit of services such as transportation of employees, rent-a-cab, catering which are availed in relation to the business activities.
13	**To allow utilization of credits of Higher Education Cess (HE) and Secondary and Higher Education (SHE) Cess**	Service tax and Excise duty rates have been enhanced from 12% to 14% and 12 to 12.5% respectively. With such increase in tax/ duty rates HE and SHE) Cess previously levied, has now been subsumed and no longer charged along with Excise duty and Service tax.	The provisions contained in Rule 3(7)(b) of the CENVAT credit Rules, 2004 allows credit of HE and SHE paid on inputs, capital goods and input services to be utilized against output Excise duty and Service tax liability. However, such credit has limited to HE and SHE paid on inputs and input services on or after 1 March 2015/ 1 June 2015 (as the case may be), which has resulted in accumulation of HE and SHE balances	It is strongly recommended that enabling provisions should be incorporated to allow credit on HE and SHE paid on capital goods, inputs and input services prior to 1 March 2015/ 1 June 2015 to offset against Excise duty/ Service tax liability

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14	**Strict timelines to be adhered for finalization of audit and adjudication.**	At present, no time limit is prescribed under the law for adjudication of the show cause notices issued by the department. As a result, there are certain cases, where the show cause notices are not adjudicated by the authorities for a number of years. This practice is more common where the show cause notices are issued pursuant to audit objection raised by CERA. These show-cause notices are transferred to call books and not adjudicated and no action is taken on them for a long period of time. Similarly, the refund proceedings are often delayed for an indefinite period of time, generally by requesting additional/ detailed information / documentation from the taxpayer. There are several cases where guidelines as sought by CBEC are not implemented at the ground level. This creates an uncertainty for the assessee as a number of business decisions are kept on hold due to lack of clarity on the issues for which the dispute is raised by the department vide issuance of show cause notice.	Due to such delays, taxpayers are put to undue hardship due to continued delay in adjudication proceedings. Therefore, at the adjudication stage itself, matters take 1 to 2 years to get finalized. In fact, refund cases at times take a longer period of 2 to 4 years to attain finality at adjudication level. It has also been observed, that very frequently the department invariably issues show cause notices invoking larger period of limitation of 5 years by alleging fraud, collusion, any wilful mis-statement, suppression of facts, contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. These allegations are made by default without any substance or evidence to sustain this same in the Appellate forums. It has been observed that in most of the cases, proceedings involving extended period are not sustained by the appellate forums. Hence, extended period should be invoked by the department only in exceptional cases where department is in possession of documentary evidence to substantiate such serious allegations of suppression or evasion of duty on the part of the assessee.	It is thereby suggested that strict statutory timelines should be introduced for finalization of a matter and failure to adhere to these timelines should attract adverse consequences for the department. It should further be ensured that show cause notice questioning eligibility for refunds are issued within a specified period from the date of submission of a complete refund application so as to ensure timely disbursement of refund amounts. In case where show cause notice is not issued within the prescribed period of filing the claim, prescribed percentage of the refund amount should be sanctioned. Further, it is strong recommended that all the processes involved in adjudication are recorded online and are accessible to the public at large. The data recorded should start from the stage of issue of show-cause notice, the date on which a reply has been furnished by the assessee, the date of personal hearing, the date of issuing the adjudication order, the stages in the first appeal, second appeal etc. SMS functionality to be provided for the litigants to keep a track of all hearings. Additionally, the Government should monitor case where the department issues show cause notice invoking extended period. Further, extended period of limitation shall be invoked for matters where there is a dispute and not in cases of interpretation of law of factual circumstances.

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15	**Extending concessional excise duty of 2% to e- readers**	The domestic manufacturers of electronic goods (like mobile phones, tablets etc.) have an option to avail benefit of Notification No. 1/2011 and charge excise duty at 2% subject to restriction on availment of Cenvat. On the contrary, import of such product into India is subjected to additional customs duty in lieu of excise duty at 12.50%. We understand that the intention is to provide a duty differential advantage only to those manufacturing in India. However this advantage is not available to manufacturers of e-readers. Hence it is not advantageous for them to manufacture in India. We submit that this existing duty differential is unreasonable, given that e-Readers support creation of content, and is of immense literary and educational value to students.	Higher excise duty incidence on manufacture of e-readers	A rationalization of excise duties for e-readers in line with smart phones/ tablets would further drive foreign players to start manufacturing these devices locally in line with the Make in India campaign. This will further reduce India's dependence on imports for electronic products; create employment opportunities in the IT sector, and revive the hardware manufacturing industry in India. It is thereby recommended that under these circumstances, Notification 1/2011 Central Excise should be amended to include e-readers.
16	**Ambiguity on the Excise duty / CVD Exemption granted to parts of Wind Operated Electricity Generator (WOEG)**	In pursuance of Supreme Court Ruling dated 13 August 2015 in the case of Gemini Instratech; CBEC vide circular no. 201/08/2015-cx.6 dated 20 October 2015 has clarified (in para 3 of the circular) that Towers, Nacelle (consisting of various equipment), Rotor (blade, hub, main shaft, special bearings, nosecone), Wind Turbine Controller & Control cables are eligible for exemption under Notification 12/2102 (Entry No. 332 read with List 8).	Para no. 5 of the said circular states that for goods not specifically covered in para 3 of the circular, CBEC can be approached for suitable clarification.	Clarification is required for the following products for Wind Operated Electricity generator (WOEG or Wind Turbine) which are not covered in para 3 of the circular and issues are/ can be raised by the field formulations: - Converter: essential part of modern day Doubly Fed Induction Generator (DFIG) technology WOEG, which enables generation of electricity in varying wind speed conditions. Power generated by WOEG is a function of Speed and Torque. Speed is maintained by Turbine Controller (via pitching) and Torque is controlled by Converter. - Pitch components such as Pitch gearbox, Pitch motor, Pitch batteries, and

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				Pitch auxiliary transformers. These are part of Rotor. - Controller equipment may be situated in different locations in the WOEG e.g. Rotor, Nacelle. All Controller equipment should be eligible for the exemption - Small mechanical & electrical items such as Nuts, bolts, Fasteners, Fuse, Washer, Resistor, Cable, Switch, etc. which are used to assemble / operationalize the WOEG & its parts. These could be used in Nacelle, Rotor, Tower, and Controller. - Winches – used to carry tools/ parts from bottom of the Tower to Nacelle (Tower height of 80 to 120 mtrs) - Safety equipment / gear – used for climbing the Tower to reach the Nacelle /Hub for operation / maintenance work - Scada – Controlling device
17	**Inverted duty structure of Reverse Osmosis (RO) Membrane Elements**	Inverted duty structure has been created on RO Membrane Elements (other than household type filters).	The excise duty exemption granted by the Government vide Notification no. 12/2014 CE dated July 10, 2014 on RO membrane elements has adversely impacted the domestic manufacturers of RO membrane elements vis-a vis traders importing RO Membrane elements. After the exemption, the domestic manufacturers are now unable to avail input credit of excise duty/CVD/SAD paid on domestic and imported raw materials used in manufacture of such membrane elements. This exemption has resulted in creating a grossly unfair duty advantage for traders selling imported RO membrane	The Government could consider any of the following alternate approaches to re-create the level playing field between the domestic manufacturers and importers – Restore the pre-budget duty regime by withdrawing the excise duty exemption to RO water membrane element extended vide Notification no. 12/2014 -CE dated July 10, 2014. OR Extend full exemption from payment excise duty/ CVD and Special Additional Duty of customs levied under Section 3(5) of the Customs Tariff Act, 1975 ('SAD') on at least the major raw materials used in manufacture of RO Membrane elements,

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			elements and making domestic manufacturing wholly unviable. The effective import duty paid by the traders on the imported RO membrane elements post budget is 12.03% out of which 4.31% is available as refund. However, the domestic manufacturers are now burdened with 28.85% import duty on raw materials which is wholly non creditable / refundable While the Budget amendments have removed the anomalies of Inverted Duty structure for some of the Electronic / IT goods, similar redressal is required for RO Membrane elements. This is clearly against the "Make-in-India" campaign as it disincentives domestic manufacturing of these goods.	namely, Thin Film Composite classifiable under Chapter 39 and RO Product Carriers classifiable under Chapter 59 of the Customs and Excise Tariffs.
18	**Anomaly in S.No. 239 sub clause (a) of Notification 12/2012 CE**	Clause (a) of Entry No. 239 of Notification 12/2012-CE grants exemption from excise duty on Water treatment equipment which use Ultra Filtration technology for water purification. However, this exemption is available subject to a condition that the manufacturer to use a specific raw materials namely "polyacrylonite membranes" or "polysulphone membranes"	The list of raw materials mentioned in the above entry does not include "polyvinylidene difluoride (PVDF) membranes" which is a superior quality raw material capable of giving better results than the other two raw materials.	Not including PVDF membrane in the eligible raw material list is adversely affecting the industry since PVDF being widely used in Water treatment plant. Entry no. 239 (a) of Notification 12/2012-CE should be amended to include PVDF membranes also as a qualifying raw material for granting excise duty exemption on Ultra filtration water treatment equipment

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19	**Exemption to Wind Energy Projects to be at par with Solar Energy projects**	The concessions granted to Wind Energy Projects are not at par with the Solar Energy Projects	a) Excise exemption is not available for certain Plant (BoP) equipment for Wind Farm such as Transformer, transmission line/ equipment, meters, testing & control equipment, etc. However, in case of Solar energy farms no Excise duty is levied for all types of equipment (including quality control, research, Transmission line / equipment, etc). b) While all equipment imported by a Solar Project enjoys BCD of 5%, whereas in the case of Wind farm only certain project enjoy the said concession. c) Supplies to Solar Energy project is zero rated i.e. availability of Input Cenvat credit despite NIL Excise duty on Output.	It is suggested to bring Wind projects at par with Solar Projects as regards the following: - Excise exemption to BoP equipment (e.g. control gears, cables, Transformer, transmission line / equipment, meters, testing & control equipment, etc.) - Zero rating i.e. availability of Cenvat credit despite NIL Excise duty on supplies to the Wind Projects - 5% BCD on all equipment for Wind Turbines since current list is very restricted
20	**Abatement for Carbonated Soft Drinks covered by MRP based taxation**	Under Central Excise law, valuation of Carbonated Soft Drinks is based on Maximum Retail price. The law prescribes suitable abatement by the Legislature through the Notification, on the basis of items that lie between the MRP and the transaction value, which is the consideration for sale at arm's length. Such items mainly include dealer margin, distributor margin, taxes, duties and discounts. Further, post VAT regime the National average VAT has moved upwards from RNR 12.5 % to 15% level. Certain States have charged the product to such high doses of taxation in the range of 30.25% i.e. Punjab which has adversely affected the viability of the Industry in the State.	The Central Government has consistently reduced the abatement percentage for products liable to Central Excise Duty on the basis of MRP. The rate of prescribed abatement % applicable to aerated waters was reduced from 42.5% to 40.5% and thereafter to 40% in 2008, when financial stimulus was extended by the Government to the Industry by way of across the board reduction in the excise duty rates. The history of abatements is appended as Table (Annexure I) reveals that reduction of abatement has been made whenever Excise Duty component in MRP was reduced due to Tax policy. It would be important to point out that section 4A (3) suggests that the Central Government may, for the purpose of allowing any abatement under sub-	It is thereby recommended that under these circumstances an abatement increase is justified. We have hereby (Annexure 1) demonstrated the numbers that are eligible for abatement as they lie beyond the accounting price of the goods in question but however are contained within MRP. The numbers reflect the Excise duties, Value added taxes and Octroi duties /Entry taxes that are not abatable against Value Added Taxes. The chart also depicts the margins given at 2 levels of trade and the difference between theoretical abatement and actual abatement granted to us vide Section 4A (3). It is humbly requested that there should be an increase in abatement in the Tariff

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			section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.	heading referred above to at least 45% as evidenced by the numbers in Table in Annexure I
		It is relevant to highlight that with upward movement of VAT rates no increase in abatement percentages have been made and also that States are not taxing Carbonated Soft Drinks at or about the same VAT rate	Resultantly as a consequence of the above intention vide Circular 354/30/2005 –TRU dated 6 September 2005, an abatement committee was to ensure fair representation. Further, through Clause 110 in the Finance Act, 2014, additional duty of excise @ 5% was introduced on aerated waters under the provisions of Section 85 of the Finance Act, 2005, however, no corresponding benefit by way of increase in the abatement % has been given. It was urged that the Government must continue the past trend and extend the benefit of increased abatement on account of aforesaid increase in effective excise duty incidence on the aerated waters. Additionally on discussion, of the Indian Beverage Association with the Finance Ministry officials it was put forth that the increased duty on carbonated	

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			Beverages was made under the Health Cess Category legislation under Schedule VII of the Finance Act 2005, which was an independent legislation and hence it was not appropriate to consider an abatement increase. Which has now been deleted from the Health Cess list based Schedule VII of Finance Act 2005. However, to offset this reduction of 5% and to offset the loss arising on subsuming of Education and Secondary Higher Education Cess the Tariff rate of Duty under the above tariff heading has been increased from 12% to 18% which is a 50% increase in duty rate	

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Service Tax				
21	**Interest rates for default/delay in service tax payments**	The interest rates have been increased substantially for default/delay in payment of service tax. New interest rates have been notified vide Notification No. 12/2014 ST dated 11 July 2014 under Section 75 of the Finance Act, 1994 on delayed payment of Service tax. Such interest rates vary from 18% to 30% depending upon the extent of delay.	The increased interest rates will apply even to those cases where there are disputes between the tax payers and tax authorities on interpretation of service tax applicability or CENVAT eligibility. It seems that the intention of the legislature is to penalize those who collect service tax but do not deposit the same with the government in time.	It is suggested that this amendment should be applicable for those assesses who have collected the tax but not remitted to the government. The assessee making delay in payment of tax due to other reasons and in cases where the liability is fastened due to decisions of appellate authorities on interpretative matters, be not penalized at parity with the evaders It is suggested that the rates of interest be restored to the original rate at 18% irrespective of the period of delay as from the aforesaid calculation effective rate of interest comes to 36% per annum or 3%per month which is very huge. It may be noted that under the Income-tax Act, delay in payment of tax only attract interest that too at the much lower rate of 12% per annum (after return date 18% P.A) and there is no penalty provisions for delay in payment of income tax. Without prejudice to above, it is suggested that a higher rate of interest rate may be charged according to slab rate of the tax demanded to protect the small service providers.
22	**Revision of Return of Service Tax**	As per Rule 7B, an assessee may submit a revised return in Form ST-3 within a period of 90 days from the date of submission of the return under Rule 7		It is recommended to clarify that whether revised return may again be revised. It is suggested that time limit for revision of return be increased to 180days considering the closing of financial accounts of the assessee and audit of the same by 30th September of the next financial year.

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23	**Definition of Service as per Sec 65B (44) excludes service provided by Employee to Employer in the course of employment.**	Definition of Service as per Section 65B(44) excludes service provided by Employee to Employer in the course of employment. Thus, where the director is working in capacity of employee of company i.e. Executive Director, Managing Director then, his service shall not be liable for Service Tax. However, in case where director is working as Non -executive Director or Independent Director, his service attracts Service Tax.		It is suggested that remuneration of a director be exempted from Service Tax. The independent director is discharging a statutory duty and it is not liable to service tax.
24	**Provision for bad debts**	With effect from 1 April 2011, payment of service tax has been shifted from receipt basis to accrual basis vide Point of Taxation Rules, 2011. In the present system, there are no provisions for bad debt adjustments and the service providers are liable to pay service tax from their pockets even if they fail to realize the consideration from the customers. Therefore, in case where the service has already been provided and the invoice has also been issued, service tax would have been paid, at the time when the service is provided or at the time when the invoice is raised, whichever is earlier But if no payment is received from the customers, there are provisions to claim adjustment / refund of the service tax already paid. Such service tax paid is not covered under Rule 6(3) of the Service Tax Rules, 1994 as the service has been provided and can also not be covered under Rules 6 (4A)/ (4B), as this is not	In such a situation where the service provider is unable to recover the amount from the service receiver, the service provider has to deposit the service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the CENVAT credit of the service tax paid on such amount.	Rule 6(3) of the Service Tax Rules, 1994 be suitably amended to allow excess payment of service tax in the event of bad debts with a view to mitigate the genuine financial hardships of the service provider as the assessee is required to deposit service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the CENVAT credit of the service tax paid on such amount.

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		a case of any excess payment of service tax		
25	**Taxability of liquidated damages under the Service Tax law**	Liquidated damages are a form of monetary compensation for loss caused to the service recipient/ contractee due to deficiency in provision of service or delay in completion of work. However, there is an ambiguity with respect to the levy of service tax on the liquidated damages. At times it is argued that liquidated Damages are in the nature of penalty and accordingly not exigible to service tax liability. Contrary to this there is a view that the act of acceptance of the non-performance of service by the service provider qualifies as 'a service of tolerance for receipt of consideration' and accordingly, should be leviable to Service tax.	Liquidated damages are recovered due to deficient or inefficient services. Such damages cannot be deemed to be a service, as the same does not involve any activity and hence, does not qualify as Service. Therefore should not be liable to Service tax. Further, Service tax on liquidated damages and other penal charges leads to incremental tax costs	It is recommended to issue a Circular clarifying that liquidated damages are penal in nature and hence not exigible to the service tax It is recommended that in order to maintain status *quid-pro-quo*, demurrage or penal charges for delay in provision/ non-provision of service should not attract Service tax
26	**Courier services**	In order to determine the taxability of any service (which is otherwise not exempt or covered by the negative list), it needs to be determined whether the said service has been provided in the taxable territory. With respect to same, the Place of Provision of Services Rules, 2012 ('POS Rules') were introduced with effect from 1 July 2012. In relation to goods transportation service, Rule 10 of the POS Rules provides that the place of provision of service should be destination of the goods (except in case of goods transport agency). However, the said rule is not applicable with respect to goods transportation by mail or courier. Further, services that are related to	Service tax is being levied on courier services performed for transportation of goods to a place outside India.	Rule 10 of the POS Rules should be suitably amended so that the place of provision of service in case of mail/ courier is also based on the destination of goods. The words "other than by way of mail or courier" should be deleted from Rule 10 of POS Rules. In view of the above proposed amendment, Rule 10 of the POS Rules would become applicable to courier services instead of Rule 4. It will also bring parity in tax treatment towards freight forwarders and courier service providers with respect to same set of services i.e. transportation of goods from India to a place outside India.

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		goods, and which require such goods to be made available to the service provider so that the service can be performed are covered by Rule 4 of the POS Rules. In such cases, place of provision of services is the location where such services are actually performed. Further, Rule 7 of the said rules provides that where any service referred in Rule 4 is provided at more than one location including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of services is provided. In a scenario when goods are transported from India to a place outside India via mail/ courier, very less proportion of the entire transaction takes place in India but still due to applicability of Rule 7 the same becomes taxable in India.		
27	**Large Taxpayer Unit**	Up to 10 July 2014, Rule 12A(4) of the CENVAT Credit Rules, 2004 ('Credit Rules') allowed Large Taxpayer units to transfer CENVAT credit availed by one registered premise to other registered premise under a single PAN. But Union Budget 2014 has reduced the benefits for LTUs by disallowing such inter-unit transfer of CENVAT credit. The said amendment has restricted cross-utilization of credit between units of a LTU which was one of the key benefits to register under the LTU scheme. This has resulted into accumulation of credits in certain units thereby resulting in blockage of working	Restriction on transfer of credit between units of LTU resulting in credit accumulation.	It is requested that the facility of transferability of CENVAT credit by virtue of the erstwhile Rule 12A(4) of the Credit Rules by one unit of LTU to another unit be reinstated.

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		capital funds and higher interest cost to do business. The LTU scheme was announced to bring some relief for large taxpayers by providing them administrative convenience and other fiscal benefits, but this amendment will hamper the said intent.		
28	**Payment of tax by utilizing credit in reverse charge cases**	Per Section 68(2) of the Act, where the service provider is residing outside taxable territory, service recipient is liable to pay Service tax. Further, as per Rule 3(4) of the Credit Rules, CENVAT credit can only be utilized for payment of service tax on output services. Hence, service tax under reverse charge cannot be paid using CENVAT credit. Service recipients (more specifically exporters having no other output service tax liability) are therefore, not able to utilize the available CENVAT credit to discharge the tax on import of services. This inflates the pool of unutilized CENVAT credit already available with the exporter. Such payment of tax in cash impacts the working capital requirements of the exporters and the issue gets further aggravated in the absence of efficient and effective refund mechanism.	Payment of Service tax under reverse charge is not allowed by utilizing CENVAT credit	Since the payment of Service tax under reverse charge is “revenue neutral”, the exporter should be allowed to pay such tax through CENVAT credit with appropriate mechanism to re-credit the same under Credit rules. This will help exporters to reduce the cash outflow and cost of compliance.

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29	**Dual Levies on Software – VAT and Service tax**	The taxability of software has always been a litigative area because of difficulty in its classification as a 'good' or 'service'. Software can either be customized software or packaged software (off the shelf). Presently, in case when software/ licenses are supplied electronically, VAT and Service tax both are being charged. This has resulted in dual tax levies on same transaction and has impacted the overall viability of business. Sometimes even customers deny the payment of either VAT/ Service tax on same transaction. This results into an additional cost for the companies since the tax burden cannot be passed on to the end customer.	Double taxation of software	Provision of standard software, including license to use such software, whether electronically or on physical media, should not be subject to dual levies, suitable clarifications must be provided whether it is a 'good' and liable to VAT or it is a 'service' and liable to Service tax.
30	**Levy of service tax on facilities provided by employer to employees during the course of employment**	Under the negative list regime services provided by an employee to the employer during the course of employment are specifically excluded from the definition of the 'service' under Section 65B(44) of the Finance Act, 1994. However, no similar exclusion was made for services provided by employer to an employee. During the course of employment, a number of facilities are provided by an employer to the employee. The employer might be having a canteen in his factory / office premises for which a fixed amount may be recovered from the employees. Many employers also charge their employees towards providing transportation facility from their home to work place. Like the above, there may be many other amounts collected by the employers	Levy of Service tax is posing lot of administration & compliance issue for the entire industry. Raising the service tax invoices, maintaining records for all such petty amounts recovered/ deducted from the employee's salary is a cumbersome task Further, draft circular dated 27 July 2012 issued by the Board provides that the activities carried out by the employers for the employees, for a consideration, fall within the definition of "service" and are liable to be taxed unless specified in the Negative List or otherwise exempted.	It is suggested that suitable amendment be made in the definition of 'service' under Section 65B(44) of the Finance Act, 1994 to exclude the services provided by the employer to the employee.

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		from their employees for various facilities such as telephone etc. Going by the strict definition of the term 'service', any amount recovered by the employer from the employee for the above said facilities would attract service tax in the hands of the employer. All these facilities provided by the employers to the employees during the course of employment are nothing but the perquisites which are the part of the salary. There is no activity carried out by the employer for the employee with an intention to receive any consideration. Further, there is no intention between the parties to provide/ receive any service. Moreover, the appropriate service tax is charged by the service provider providing all these facilities for which a reimbursement is claimed by the employer from the employees. Therefore, logically there should not be any service tax liability on such amounts recovered by the employer from the employees. However, in the absence of any specific exclusion, the same are liable to tax in the hands of employer		
31	**Mandatory pre-deposit in cash for admission of appeal in Central Excise / Customs & Service tax need to have an option to submit Bank Guarantee**	All appeals are required to submit a proof of payment of pre-deposit @ 7.5% or 10% as the case may be and this pre-deposit which carries interest @6% payable by government.	Considering the increase in litigation, the Assessee should have an option of making pre-deposit in the form of non-revocable bank guarantee, which will allow the assesse to save case, simultaneously the government will save on interest and the banking sector will also get benefited from bank guarantee business. However, in case where the assesse loses the case, he will be asked	It is suggested that there shall be a provision of paying mandatory pre-deposit through bank guarantee should be allowed under Section 35-F of Central excise act, 1944 and pari materia sections under Customs and Service tax should also be provided

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			to pay interest on the differential demand after appropriating pre-deposit	
32	**Simplified process for Service tax refund**	No service tax is paid by the service provider who is engaged in providing service qualifying as Export. The service provider is eligible to claim refund of CENVAT credit under Rule 5 of CENVAT Credit Rules, 2004 however the process of obtaining refund is very complicated. Further, in absence of any specified time limit for processing of service tax refund applications, the time taken for grant of refund is very high and typically, takes more than 1 year.	Following are the conditions applicable to the same- - The provider of output service cannot submit more than 1 claim of refund for every quarter. - For computation of total turnover, the value of export services shall be determined in accordance with Rule 5 of the CENVAT Credit Rules - For the value of all other services other than export during the quarter the time of provision of services shall be determined as per the provisions of the Point of taxation Rules 2011. - Refund can be claimed maximum to the extent of amount of CENVAT credit lying in balance, at the end of quarter for which refund is claimed or at the time of filing of refund claim, whichever is lower. - CENVAT credit account is required to be debited with the amount of refund claimed at the time of making such claim. - In case refund sanctioned is less than the refund claimed, then the difference amount can be added back to the CENVAT credit account. Further the following documents are required to be submitted for claiming refund - Details of payment received for services exported. - Advances received, for the services exported in the relevant quarter - Advances received, for the services which have not been exported - Details of domestic turnover for the said period. - FIRC wise details of Export Turnover	It is thereby recommended that the procedure for claiming service tax refund must be simplified and timelines be prescribed for processing of the refund applications.

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			- Copies of FIRCs - Co-relation of FIRCs with the invoices issued - Details of CENVAT credit availed for the relevant quarter - Details of CENVAT credit balance available on the last day of quarter - Details of CENVAT credit balance available on the date of filing the refund claim	
33	**Service tax being made applicable on sales/ indenting agents commission**	Till 30 September 2014, services provided by Indian Agents to its overseas customers in relation to promotion of goods were qualifying as export of service and accordingly were not liable for service tax. The definition of Intermediary has been amended w.e.f. 1 October, 2014 to include services provided by broker or agent who arranges or facilitates a provision of service or supply of goods.	Due to the aforementioned amendment, the intermediary services by Indian Agents to overseas customers in relation to supply of goods are getting covered under Rule 9 of Place of provision of services Rule, 2012 and therefore are subjected to service tax. It has the below implications: * These services used to qualify as exports for last 20 years in India * The exports of goods and services from India have becomes more expensive due to levy of service tax on sourcing services provided from India and this is contrary to the "Make in India" Initiative of GOI * The services on which service tax is paid in India are also subject to service tax in the recipient country under reverse charge mechanism which amounts to dual taxation * In other countries where VAT is applicable like European Union, Canada, Thailand etc., these type of services qualify as exports * Levy of Service tax on these services will add to the manufacturing cost for various goods which are used for	Agents in India are promoting goods of its customers which are located outside India. Further Agents are also receiving commission from overseas entity in form of foreign exchange and are complying the conditions prescribed for export of service. Services provided by commission agents to overseas suppliers has always been held to be exports until now and has repeatedly been clarified by Board circulars, Circular No. 111/5/2009-S.T. dated 24-2-2009, and again vide Circular No. 141/10/2011-TRU dated 13-5-2011 Levying service tax on agents providing intermediary services to foreign service recipients is contrary to well established consumption based destination principle followed in EU, NZ, Australia, Canada, S,Africa, Malaysia, Singapore where such services are unequivocally treated as exports. Service tax on intermediaries providing services to foreign suppliers results in higher costs of exports and for infrastructure imports required by domestic industry (as such service tax is not creditable or refundable). Service tax on intermediaries thus makes India globally uncompetitive and not in line with the 'Make in India' campaign. Thus it is suggested that intermediary

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			development of infrastructure in the country like Turbines for generation of electricity, Compressors used in Oil & Gas Industry etc., and makes the product costlier when imported into India.	services for promotion goods as well as services of a foreign Principal may please be excluded from Rule 9 of POPS as the services in essence are in the nature of export of services, to be consistent with the globally accepted VAT precept of not exporting duties and taxes.
34	**Exemption from Service tax for Wind Energy sector**	Exemption from Service tax on services used in or in relation to manufacturing of Wind Operated Electricity Generator (WOEG) and its parts	Presently, Excise and Customs duty concessions are granted for parts used for manufacture of WOEG. However, no such exemption is available on services used in or in relation to manufacture of WOEG. Costs of services contribute to a significant portion of the overall cost of manufacture of a WOEG and a 14% non-creditable Service tax on top of that is negatively impacting the entire industry.	It is suggested that Service tax should either be exempted on the services used in or in relation to manufacture of WOEG or allowed as a Cenvat credit in order to provide a further boost to the renewable energy sector.
35	**Service tax Valuation Rules for works contract**	In case works contract, if the value of goods and services is not separately identified/ identifiable, then Rule 2A(ii) of the Service tax (Determination of Value) Rules, 2006 provide that Service tax will be payable on : - 40% of total amount charged in case of Original works and - 70% of total amount charged in case of other works contract	The term *'total amount'* has been defined as an explanation to the said rules, however following is not clear: a) In case of divisible contract with separate price for equipment (Supply Contract) and for installation & commissioning services (where scope includes both goods and services e.g. civil work scope, cabling, etc), doubts are raised that while value of equipment contract will be added but the same will not be deducted as per clause (i) of the definition of *'total amount'* b) Whether the value of equipment / goods provided FOC by the customer (and the same was not earlier sold by the contractor to the customer) is to be added	Suitable clarification should be issued: a) For value of the equipment contract - If the same is added then the fair value of the said Equipment should also be excluded {as per clause (i) of the definition of 'total amount'} since the equipment contract is a contract for sale of goods and the value of the same should not be considered into the tax base for calculating the Service tax. Suitable clarification should be issued in this regard. b) Value of goods provided by the customer free of cost, where such goods were not supplied by the Contractor earlier, should not be included while determining the value 'total amount' of works contract under the Rules. Suitable clarification should be issued in this regard.

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Customs Duty				
36	**Simplification for claiming refund of Special Additional Duty(SAD)**	Presently, the importer is required to pay SAD at the time of Import and claim the refund of 4% SAD under Notification No.102/2007-Customs dated 14 September 2007 subject to fulfilment of various conditions and procedure as laid down in various circulars, instructions and public notices.	The procedure for claiming refund of SAD refund is very cumbersome and involves filing of number of documents which in itself is very tedious and voluminous. Activities required to be undertaken to obtain SAD refund are as follows: - Submission of Bill of Entry. - Stock Schedule for each & every location, which could be very voluminous. - Sales tax liability computation for every State where imported article are sold. - Copy of sales tax challan evidencing payment of tax. - Reconciliation of sales tax liability with the amount paid to department. - Copies of all invoices through which imported article has been sold to stockists / customer, which could be voluminous. - Ensuring that every invoice has "No Credit of Additional Duty of Customs levied under section 3(5) of Customs Tariff Act has been availed" written on it - An Audit Certificate confirming accuracy of all the above	It is thereby recommended as follows: Instead of paying SAD and claiming refund, move to a self-declaration process whereby importer is not required to pay SAD subject to filing suitable declarations / undertakings to safeguard the interests of revenue. Alternatively the existing procedure can be simplified to enable e- filing of SAD refund claims and the same can be processed / sanctioned based on test check of supporting documents.
37	**Reduction of CST rate from 2% to 1% at par with additional tax proposed in the GST regime**	It was agreed that CST would be phased out before GST is introduced. CST rate was to be reduced long back from 2% to 1%. Industry recommends that CST rate should be reduced to 1% from 1 April 2016 as was agreed by the Govt. and the Empowered Committee earlier.		It is hereby suggested to reduce CST rate from 2% to 1% as a precursor to GST implementation and also in line with 1% additional tax levy proposed in the GST regime

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38	**Concessional customs duty on intermediates for rotors blades of wind energy generators**	As part of the budgetary amendments under Union Budget 2012, benefit of reduced customs duty was proposed to be extended to intermediates of rotor blades for wind energy generators. In this regard, Sub-para 4 of Para 24.2(iii) of JS(TRU) DO 334/3/2012-TRU dated 16 March 2012 states that customs duty is being reduced on *"Raw materials for the manufacture of intermediates, parts and sub-parts of blades for rotor for wind energy generators"* The amending notification issued to extend the aforesaid benefit did not contain the term *'intermediates'*. As a result, the benefit of reduced customs duty as per the budget document was not extended to intermediates.	The parts and sub parts of rotor blades for wind energy generators attract 5% customs duty. However, the intermediates for the blades are not eligible for this benefit due to an inadvertent omission in the amending notification.	It is suggested that in Entry No. 362[5(b)] of Customs Notification No. 12/2012 , the word "intermediates" should be included to extend the benefit of reduced customs duty to these products.
39	**Grant of excise duty exemption on Unsaturated Polyester Resin (UPR)**	Various inputs are used for manufacture of rotor blades for wind energy generators and intermediates thereof. Excise duty on such inputs which are used in manufacture of rotor blades for wind energy generators is exempted vide Entry No. 327 of Notification 12/2012-CE. The relevant inputs for which exemption is available have been specified in List 9 of the said Notification. UPR classifiable under Chapter 28/29 of the First Schedule under the Central Excise Tariff Act is one of the inputs which is used in manufacture of rotor blades and intermediates thereof. However, the excise duty on UPR is	Goods classifiable under chapter 28 and 29 which are used as inputs in manufacture of rotor blades for wind energy generators and intermediates thereof are not able to avail the exemption since they are not covered by exemption notification.	It is suggested that exemption from excise duty should be extended to goods classifiable under Chapter 28 and 29 of the CETA which are used in manufacture of blades of rotor for wind energy generators and intermediates thereof. In this regard, Entry No. 327 of Notification No. 12/2012-CE should be amended to include: - Chapter 28 and 29 in Column 2 - UPR in List 9

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		not exempt since Chapter 28/29 are covered under Entry No. 327 of Notification No. 12/2012 CE.		
40	**Special Additional Duty (SAD) exemption on Wind Operated Electricity Generator (WOEG) parts**	SAD leviable under Section 3(5) of Customs Tariff Act, 1975 was exempted wef July 2014 on parts & components required for manufacture of WOEG.	No such exemption has been provided on parts and components used in maintenance.	It is requested that the exemption from levy of SAD should also be granted to parts/ components used in maintenance. In this regard, it is submitted that BCD and Excise duty has specifically been exempted even in cases of parts/ components used in maintenance.

Goods and Service Tax		
41	**GST Implementation**	It is strongly recommended to introduce and implement a simple and clear GST legislation with the intent that this new legislation will significantly reduce / mitigate future litigation. Following points should be taken care of while framing the GST law: **1. Additional tax at the rate of 1 percent based on origin of goods** Additional tax of 1 percent has been proposed to be imposed on inter-state supply of goods. At the outset, this proposed additional tax being a cascading tax is completely against the objectives (for implementing GST) of establishing India as a common market for goods and services, and in effect destroys the supply-chain neutrality of the tax and will be against the spirit of 'Make in India'. **2. Definition of Goods & Services:** Goods to be defined to include only tangible property and Services to be defined to include intangible property and to exclude supply of goods. **3. Exclusion of GST on Petroleum Products** Exclusion of diesel from the GST base would also mean that no credit would be available for the inputs that are used in exploration of crude, refining of crude and diesel and distribution of diesel. This cost would get embedded in the cost of diesel when used by the industry. The resultant high cost burden would be crippling for the industry. Therefore, it is suggested that petroleum products be made liable to GST alone and Central Excise duties and State Sales taxes on petroleum products be abolished. Further, GST charged should be fully creditable to the Passive Infra companies. **4. Exclusion of Electricity duty from GST framework** Telecom sector incurs huge costs on electricity for efficient functioning of telecom equipment/ running its operations. If electricity duty is not subsumed under GST, it would result in continuation of the resulting tax cascading and the economy as well as the telecom sector would be denied the benefits of the GST reforms.