

Tax administration

Reform lower rungs

The rationalising of taxes and duties is one of the chief aspects of the ongoing economic reforms. However, tax administration in the fertiliser industry, which should be a non-issue, is involving the Government tax collecting machinery in a big way. Considering that these levies only cause procedural hassles and result in additional subsidies being paid by the Government, all excise collectorates must be informed that inputs will be completely exempt from taxes and the staff must be oriented to implementing the rules more in spirit than in letter.

says Dr. Uttam Gupta.

yond doubt. And yet excise and customs authorities in different parts of the country have found ingenious ways of taxing the inputs and intermediates used by the industry in the manufacture of fertilisers.

Consider naphtha, the basic feedstock used in production of ammonia which, in turn, is used in the manufacture of various fertiliser products. Under an existing notification, the former attracts a concessional rate of excise duty, i.e. Rs. 5 per kilo litre when used captively in the manufacture of fertiliser; the non-concessional rate applicable for other industrial use being a mind-boggling Rs. 2,255 per kl. The latter by itself defies any justification in the context of liberalisation and overall emphasis on achieving cost competitiveness by the industry.

Whenever there is interruption in power supply or any other exigency forcing complete plant shut down, the consequential loss can be enormous not only in terms of output foregone and delays in plant start-ups, but also damage to costly equipment like the catalyst. The management has an alternative in such eventualities i.e. to keep the front end section of the plant running. Besides, preventing damage to the equipment and ensuring its reliability of service in the long-run, this would also help in quick start-ups and minimising output loss. However, this involves some idle burning of naphtha in the reformer which is vented out into the air.

Amazingly, the excise authorities in some parts of the country are demanding excise duty at the non-concessional rate of Rs. 2,255 per kl on the naphtha thus burnt. The ostensible ground is that such naphtha is not used in the manufacture of fertilisers and, consequently, does not fulfil the requirement of the relevant notification. In doing so, they even forget the very rationale of levying a duty which is done on a product that is manufactured, sold and bought by the users.

In this case, the burning of naphtha is only for venting gases into the air, which, far from being a manufactured product, are not even being collected and sold. It is impossible to think of a practical situation whereby someone would even collect a tax on gases vented into the air except in the nature of an environment tax which is not the issue here.

Besides, the authorities do not even realise that if, in a bid to escape this exorbitant excise duty, the management were to allow the

plant to completely shut down, that would not only cripple the operations entailing loss of fertiliser production and irreparable damage to the plant and machinery, but result in avoidable additional outgo of foreign exchange on imports.

Ironically, the demand is being made with retrospective effect. From where would the company bring money to pay excise duty for the past period? An excise duty on inputs raises the cost of production and selling price of fertiliser controlled by the Government at a low level all along in the past. The money in this case ought to come by way of additional subsidy from the Government.

Will the Government reimburse? If this is not possible because of overall budgetary compulsions, then why should it allow demand and that too when both the functions i.e. tax collection and release of funds for subsidy disbursements come within the overall jurisdiction of the Finance Ministry.

Last year from July 21, 1993, through a notification, the Government imposed countervailing duty (CVD) on imported rock phosphate and sulphur at the rate of 15 per cent ad valorem. In just about two months, and following representation by the industry, people at the top realised that this was inadvertent and issued another notification exempting imported rock phosphate and sulphur from CVD from September 7, 1993.

However, the excise authorities are insisting on payment of CVD for the intervening period i.e. from July 21 to September 6. And, there seems to be no rule that would enable correction of the mistake for this period even as the units concerned lost heavily by way of excise duty having to be paid for this period.

In the 1994-95 Budget, the Government undertook further rationalisation of the tariff duty structure. This time, carbon-dioxide (CO₂) generated and used captively in the manufacture of urea fertilisers fell a victim to the inappropriate handling of the subject. An earlier notification under which carbon-dioxide was exempted, was rescinded and a new notification dated March 1, 1994, which covered majority of the inputs and intermediates used captively in the manufacture of fertilisers for exemption, did not mention CO₂.

The local collectorates jumped on this loophole and raised demand for excise duty at the prescribed rates. Subsequently, although the Government restored exemption from April

12, 1994, there is no respite from the problem of duty payment for the intervening period of March 1 to April 11 as the relevant notification is silent on the subject.

More such cases of excise demand based on purely mechanical interpretation of the relevant notifications have come to force. These include demand for excise duty on ammonia used for refrigeration and purification purposes in the process plant despite the fact that such uses constitute captive consumption for manufacture of fertilisers and should therefore be exempt from payment of duty. Likewise, use of sulphuric acid for treatment of water is also sought to be charged excise duty.

Similar is the case with regard to the items of spares and machinery fabricated at workshops within the factory premises and used for carrying out repairs of the main plant. Prior to March 1, 1994, these were exempt from excise duty which is now sought to be collected. Herein, the revenue implication may not be much, but the inevitable procedural hassles could be devastating for the smooth running of the plant.

The mountain of problems relating to duty on fertiliser inputs is totally unwarranted. The Government must make clear its intention that no duty, custom or excise, would be charged. Otherwise, this would raise the cost to the farmer as in the case of phosphatic fertilisers now decontrolled or lead to increase in subsidy as in nitrogenous fertilisers. The problem can be solved by issuing one circular to all excise collectorates in the country that exemption would be available on all inputs and intermediates used captively in the manufacture of fertilisers.

The circular should not even mention by way of an example, the names of the items qualifying for exemption as the list cannot be exhaustive and any item missed out even inadvertently, could be picked up by local excise authorities for levy of duty.

The possibility that the manufacturers could misuse such an 'all catch' exemption notification by camouflaging an output used for purposes other than fertilisers, does not arise in majority of the plants which are exclusively fertiliser production facilities only. In units that produce other industrial products as well, the excise authorities have sufficient competence to determine such quantities and treat the same separately for excise purposes.

By resorting to a plethora of excise demands, the revenue mobilised may not be significant and is more than offset by additional subsidy having to be paid from the exchequer. At the same time, this would mean unnecessary workload for the excise authorities, infructuous litigation and financial hardship and harassment to the affected manufacturers.

All this can be avoided provided the bureaucracy in the lower rungs of the customs and excise machinery is oriented to implement the laws/rules more in spirit than in letter. That will be the real test of the Government's endeavour to simplify and rationalise the tax laws of the country.

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SIMPLIFICATION and rationalisation of taxes and duties are important aspects of the current economic reforms in the country. The top mandarins in the Finance Ministry are unquestionably alert to this imperative; the idea being to ensure that while the exchequer is not deprived of its legitimate claim on resources for funding Government activities, the growth process is not hampered and the taxpayer is happy.

Going by the buoyancy in both custom and excise collections on the one hand and income/corporation tax on the other during the first two months of current year, i.e. April-May 1994, the Government may have some reason to be happy. But, what about the taxpayer? A survey to assess the extent to which harassment of taxpayers has been minimised may bring out a clear picture.

A random insight into the experience of any given industry could be revealing. Consider fertilisers where tax administration should, in principle, be a non-issue but is involving the Government tax-collecting machinery in a major way. It is even leading to unwarranted litigation, wasting time and energy not only of the industry, but also that of courts. A few fundamentals may be stated at the outset.

Being an important agricultural input in foodgrains production by farmers, way back in 1980, the Government had taken a policy decision not to levy excise duty on finished fertiliser products. There was an added logic. Since, the Government was subsidising the excess cost of production and distribution over the controlled selling price which was low, there was no point in collecting a tax and then reimbursing the same as subsidy to the manufacturers.

This was a wise decision even from the revenue angle as, by not abolishing the excise duty, the exchequer would not only have paid back the excise equivalent, but also interest on additional working capital under the administered pricing scheme. By the same logic, no customs duty was being levied on import of fertilisers which position continues even now.

The treatment given to inputs/raw materials — imported and indigenously supplied — used in the manufacture of fertilisers was not dissimilar. Imported rock phosphate, sulphur and ammonia were all along exempted from payment of customs duty. Recently, based on the recommendations of the JPC, even phosphoric acid, another important input in the manufacture of phosphatic fertilisers, was exempted from duty from August 27, 1992.

The logic was carried forward to cover import of plant and machinery for setting up a new project and even revamping and modernisation of an existing unit from payment of customs duty. Furthermore, indigenous supplies of raw materials/feedstock are either exempt from levy of excise duty, e.g. gas, or are charged a concessional excise duty as in the case of naphtha or fuel oil.

With no duty on finished fertiliser products and nil customs and excise duty on major inputs/raw materials and feedstock used in their manufacture, the status of this industry as an exempt category is therefore, clear be-