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PROFESSIONAL PROGRAMME

SUPPLEMENT

FOR

ADVANCE TAX LAWS & PRACTICE

(Relevant for Students appearing in December 2017 Examination)

Module 3-Paper 7

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Reference Material

For better understanding and have an overview of the GST, the Students of Professional Programme are also requested to go through

- Supplement for Executive Students on GST available at the link <https://www.icsi.edu/WebModules/EXECUTIVE%20SUPPLEMENT%20GST.pdf>
- ICSI Educational Series available at: <https://www.icsi.edu/GSTEducationalSeries.aspx>
- ICSI-GST Newsletters are also available at the link http://www.icsi.edu/GST_Newsletter.aspx

Lesson 4

Indirect Tax Laws and Practice - An Introduction

LESSON OUTLINE

Introduction

Constitutional provisions in relation to taxation

Indirect taxes

- Customs
- Provisional Collection of Taxes Act, 1931
- Goods and Services Tax (GST)

Lesson Round Up

Self-Test Questions

LEARNING OBJECTIVES

The major source of revenue to the government is from Indirect Taxes. The Central Board of Excise & Customs ("CBEC") is the apex regulatory body that supervises the levy and administration of indirect taxes in India.

In the recent years, the Indian government has undertaken significant reforms under indirect taxation system. This includes the implementation of Goods and Service Tax. For proper compliance of the indirect tax laws, Company Secretaries with their in-depth knowledge and wide-range experience can offer their professional services to the industry.

Central Board of Excise and Customs (CBEC) is a part of the Department of Revenue under Ministry of Finance, Government of India. The Board is the administrative authority for its subordinate organisations including Custom Houses, and the Central Revenue Control Laboratory.

INTRODUCTION

Government requires funds for the purpose of carrying out its activities, which are mainly maintenance of law and order, defence, public policy etc. These funds are generated through revenue, which comes from corporate tax, Income Tax, Customs duty, GST, other taxes etc. Major portion of the revenue of the country comes from taxes.

Taxes are classified as Direct Taxes and Indirect Taxes, Direct taxes are paid by taxpayer directly. Whereas indirect taxes are paid by taxpayer indirectly i.e. he pays the same at the time of purchasing goods and commodities, paying for services etc. Important indirect taxes are Customs, Goods and Service Tax "GST".

CONSTITUTIONAL PROVISIONS IN RELATION TO TAXATION

The Constitution of India is the supreme law. All other laws emanate from the Constitution. Articles 245 to 255 of the constitution provide for the distribution of taxation powers between the Union and the States. It may be recalled at this stage that India is having a quasi-federal Constitution in which the powers of legislation are shared between the Union and the States.

- **Union List:** Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to the Constitution; this List is referred to usually as Union List.

- **State List:** The legislature of every State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. This list is popularly called as State List.

INDIRECT TAXES

In this study, the following types of indirect taxes have been discussed:

1. Customs Law
2. Goods and Service Tax

Let's discuss in brief the history and developments taken place in above mentioned taxes:

CUSTOMS LAW

Customs duties date back to 18th century when the British East India Company virtually came to political power in India. The three Presidencies namely Bengal, Mumbai and Chennai had their own customs regulations. Until 1859, there was a uniform tariff, however, the tariff underwent important changes in 1867, 1870, 1894, 1932, 1934 and 1939. After independence a major change was effected in 1975 when Customs Tariff was aligned with the Customs Cooperation Council Nomenclature (CCCN) which is the internationally accepted classification. In 1985, the Customs Cooperation Council developed a new system of nomenclature known as the harmonized commodity description and coding system. India also adopted this system by making an amendment to the Customs Tariff Act, 1975 and substituting a new Customs Tariff Schedule. As in the case of central excise, in the case of custom also, the levy is specified in the Customs Act, 1962 whereas the detailed classification of goods is given in the Customs Tariff Act, 1975.

Customs Act, 1962 and Custom Tariff Act, 1975 are the two major Acts governing the subject of Customs. These are supplemented by various set of Rules, Regulations Notifications ,circulars etc.

PROVISIONAL COLLECTION OF TAXES ACT, 1931

Any duty imposed or increased in the budget will have immediate effect if the Finance Minister makes any declaration to that effect on the budget day in the parliament. But any decrease or reduction of duty will have effect only after the finance bill is passed, i.e. Finance Bill becomes Finance Act.

Further, the declaration made under this Act expires on 75th day from the date of introduction of bill, if the bill is not passed by parliament. If the increased duties are reduced / rejected by parliament while passing the finance bill, then the excess amount collected will be refunded.

GOODS AND SERVICES TAX

Despite the success of VAT, there are still certain shortcomings in the structure of VAT both at the Central and at the State level. The shortcoming in CENVAT of the Government of India lies inter-alia in several taxes which are in the nature of indirect tax on goods and services, such as luxury tax, entertainment tax, etc., and yet not subsumed in the VAT and thus keeping the benefits of comprehensive input tax and service tax set-off out of reach for manufacturers/dealers.

The Goods and Services Tax (GST) is a comprehensive destination based tax levy on manufacture, sale and consumption of goods and services at a national level which subsumed other indirect taxes such as octroi, Central Sales Tax, State-level sales tax, entry tax, stamp duty, telecom licence fees, turnover tax, tax on consumption or sale of electricity, taxes on transportation of goods and services, etc. thus avoiding multiple layers of taxation that

currently exist in India. It has created a single, unified Indian market to make the economy stronger. The essence of GST is that the cascading effects of both CENVAT and service tax is expected to be removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level will be established.

In this regard, the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha on December 19, 2014 by the Minister of Finance, Mr. Arun Jaitley. The Bill proposes to insert a new Article in the Constitution to give the Central and State governments the concurrent power to make laws on the taxation of goods and services.

May, 2015: Constitution Amendment (122nd) Bill was passed by Lok Sabha on May 06, 2015.

May, 2015: In Rajya Sabha, Bill was referred to a 21-member Select Committee of Rajya Sabha.

July, 2015: Select Committee submitted its report to Rajya Sabha on July 22, 2015.

June, 2016: On June 14, 2016, the Ministry of Finance released draft model law on GST in public domain for views and suggestion.

August, 2016: On August 03, 2016, the Constitution (122nd Amendment) Bill, 2014 was passed by Rajya Sabha with certain amendments.

August, 2016: The changes made by Rajya Sabha were unanimously passed by Lok Sabha, on August 08, 2016.

September, 2016: The Bill was adopted by majority of State Legislatures wherein approval of at least 50% of the State Assemblies was required

September, 2016: Final assent of Hon'ble President of India was given on 8th September, 2016

April, 2017: Parliament passed the following four bills:

- Central Goods and Services Tax (CGST) Bill
- Integrated Goods and Services Tax (IGST) Bill
- Union Territory Goods and Services Tax (UTGST) Bill
- Goods and Services Tax (Compensation to States) Bill

April, 2017: President's assent was given to four key legislations on Goods and Services tax.

LESSON ROUND UP

- Taxes are classified as Direct Taxes and Indirect Taxes, Direct taxes are paid by taxpayer directly from his income/wealth etc. Whereas indirect taxes are paid by taxpayer indirectly i.e. he pays the same at the time of purchasing goods and commodities, paying for services etc.
- The Constitution of India is the supreme law. All other laws emanate from the Constitution. Articles 245 to 255 provide for the distribution of taxation powers between the Union and the States.
- The levy of custom duty is specified in the Customs Act, 1962 whereas the detailed classification of goods is given in the Customs Tariff Act, 1975.
- Goods and Service Tax "GST" implemented w.e.f. 1st July, 2017

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions need not to be

submitted for evaluation)

1. What are the essential principles of Taxation?
4. What is the importance of Indirect Taxes in the total tax revenues of the Government of India?
5. In what manner the duty of Customs and GST an important source of Indirect Tax?
6. What is Provisional Collection of Taxes Act, 1931? What is its significance in Indirect taxes?

SUGGESTED READING:

- (1) Constitution of India — *Durga Das Basu*
- (3) Budget Documents — *Govt. of India Publication*
- (4) Economic Survey — *Govt. of India Publication.*

Lesson 5

Customs Law

Introduction and Basic Concepts, Valuation, Assessment of Imported and Export Goods and Procedural Aspects

LESSON OUTLINE

This lesson is divided into the following parts:

- I Introduction and Basic Concepts of Customs Law
- II Valuation, Assessment of Imported and Export Goods and Procedural Aspects

LEARNING OBJECTIVES

The Custom duty derived its value from the word "custom" under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king. Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period. After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Indian Customs Act, 1934 was repealed by the [Customs Tariff Act, 1975\(CTA\)](#).

At the end of this lesson, the students will

- Have the understanding of the basic and practical aspects of customs law
- Be able to value the imported and export goods for payment of duty

Understand clearance procedures involved in importation and exportation of goods

As per the Customs Act, 1962 the Central Board of Excise and Customs (the Board) has been given the powers to appoint Customs Ports, Airports and Inland Container Depots (ICD), where the imported goods can be brought in for unloading or loading of export goods. Similarly, powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods imported or exported by land or by inland water.

CUSTOMS LAW

PART I: INTRODUCTION AND BASIC CONCEPTS OF CUSTOMS LAW

After going through this part you will be able to understand:

- Meaning and objects of customs duty
- Definitions and Concepts

- Scope and coverage of custom law
- Types of custom duties
- Rate of custom duties applicable

INTRODUCTION

Custom Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The power to enact the law is provided under the Constitution of India under the Article 265, which states that “no tax shall be levied or collected except by authority of law”. Entry No. 83 of List I to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on import and exports. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to the whole of the India.

Customs Act, 1962 just like any other tax law is primarily for the levy and collection of duties but at the same time it has the other and equally important purposes such as:

- (i) regulation of imports and exports;
- (ii) protection of domestic industry;
- (iii) prevention of smuggling;
- (iv) conservation and augmentation of foreign exchange and so on.

Section 12 of the Custom Act provides that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.

STATUTORY PROVISIONS OF CUSTOMS ACT, 1962

Customs Act, 1962 came into force from 1-2-1963. It extends to whole of India. The whole Act is divided into XVII chapters comprising of 161 sections.

Table showing the contents of Customs Act, 1962

<i>Chapter No. and Title</i>	<i>Sections</i>	<i>Contents</i>
I. Preliminary	Section 1 to 2	Short title, extent and commencement and Definitions
II. Officers of Customs	Section 3 to 6	Appointment and powers of officers of customs
III. Appointment of Customs Ports, Airports, Ware-housing Stations etc.	Section 7 to 10	Appointments of Customs Ports, Airports, Warehousing Stations etc.
IV. Prohibitions on importation and exportation of goods	Section 11	Powers to prohibit import and export of goods
IVA. Detection of illegally imported goods and prevention of the disposal thereof	Sections 11A to 11G	Provisions for illegal importation of notified goods and prevention of the disposal thereof
IVB. Prevention or Detection of Illegal Export of	Sections 11H to 11M	Provisions for illegal export of specified goods

	Goods		
IVC.	Power to exempt from the provisions of Chapters IVA and IVB	Section 11N	Power to exempt
V.	Levy of, and Exemption from, Customs Duties	Sections 12 to 28BA	Chargeable section, valuation of goods, Recovery and refund of duty
VA.	Indicating amount of duty in the price of goods, etc., for purpose of refund	Section 28C to 28D	Price of goods and incidence of duty passed on to the buyer
VB.	Advance Rulings	Section 28E to 28M	Provisions for advance ruling such as authority, application, procedure and powers of authority
VI.	Provisions relating to conveyances carrying imported or exported goods	Sections 29 to 43	Arrival or departure of goods, delivery of export manifest or export report
VII.	Clearance of imported goods and export goods	Sections 44 to 51	Clearance of import and export goods other than by way of baggage and postal articles.
VIII.	Goods in Transit	Sections 52 to 56	Transit and transshipment of goods
IX.	Warehousing	Section 57 to 73	Provision relating to public and private warehouse
X.	Drawback	Sections 74 to 76	Duty drawback on re-export of duty paid goods or material used in the manufacture of goods
XA.	Special Provisions relating to Special Economic Zone	Sections 76A to 76N	Omitted <i>in view of the introduction of a special Act, namely, Special Economic Zones Act, 2005</i>
XI.	Special provisions regarding baggage, goods imported or exported by post, and stores	Section 77 to 90	Special provisions regarding baggage, goods imported or exported by post, and stores
XII.	Provisions relating to coastal goods and vessels carrying coastal goods	Section 91 to 99	Provisions relating to coastal goods and vessels carrying coastal goods other than baggage and stores
XIII.	Searches, seizure and arrest	Section 100 to 110A	Power to search, inspect, examine persons and seizure of goods, documents and things
XIV.	Confiscation of goods and conveyances and imposition of penalties	Section 111 to 127	Adjudication proceedings and confiscation of goods.
XIVA.	Settlement of cases	Sections 127A to 127N	Provisions relating to Settlement Commission

XV.	Appeals and Revision	Sections 128 to 131C	Procedure and time limits for appeals and revisions
XVI.	Offences and Prosecutions	Section 132 to 140A	Offences and cognizance of offences
XVII.	Miscellaneous	Section 141 to 161	Conveyances, duty deferment, licencing of Customs house agent, appearance by authorised representative, delegation of power etc.

LIMBS OF CUSTOMS LAW

Customs Act, 1962 and Customs Tariff Act, 1975 are the two limbs of Customs Law in India which must be read with rules and regulations. The rule making power is delegated to the Central Government while the regulation making power delegated to the Central Board of Excise and Customs (CBEC).

There are a number of rules and regulation prescribed from time to time to carry the objective of the Act. Some of the rules and regulations are enumerated here as follows:

- Baggage Rules , 2016
- Customs , Central Excise Duties and Service Tax Drawback Rules,1995
- Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995
- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- Customs (Advance Rulings) Rules, 2002
- Customs (Appeals) Rules, 1982
- Customs(Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996
- Specified Goods (Prevention of Illegal Export) Rules, 1969
- Customs (Compounding of Offences) Rules, 2005
- Customs (Settlement of Cases) Rules, 2007
- Notified Goods (Prevention of Illegal Import) Rules, 1969
- Bill of Entry (Electronic Declaration) Regulations, 2011
- Customs (Provisional Duty Assessment) Regulations, 2011
- Customs House Agents Licensing Regulations, 2004
- Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

Differences between Rules and Regulations

- (1) *The Central Government is authorized to make the rules and the CBEC is authorized to make the regulations consistent with this Act.*
- (2) *The powers to make the rules is contained in section 156 whereas the power to make regulations is prescribed under section 157.*
- (3) *Rules may provide for all or any of the following matters, namely:*
 - (a) *the manner of determining the transaction value of the imported goods and export goods under sub-section (1) of section 14;*
 - (b) *the conditions subject to which accessories of, and spare parts and maintenance and*

repairing implements for, any article shall be chargeable at the same rate of duty as that article;

- (c) the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation and the information, notices and security to be given and the evidence requisite for the purposes of such detention or confiscation and the mode of verification of such evidence;*
- (d) the reimbursement by an informant to any public officer of all expenses and damages incurred in respect of any detention of any goods made on his information and of any proceedings consequent on such detention;*
- (e) the information required in respect of any goods mentioned in a shipping bill or bill of export which are not exported or which are exported and are afterwards re-landed;*
- (f) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules.*
- (g) the amount to be paid for compounding and the manner of compounding under sub-section (3) of section 137.*

Whereas regulations may provide for all or any of the following matters, namely:

- (a) the form of a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, declaration for transshipment boat note and bill of coastal goods;*
- (b) the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper officer under clause (d) of sub-section (1) of section 26A;*
- (c) the form and manner of making application for refund of duty under sub-section (2) of section 26A;*
- (d) the form and manner in which an application for refund shall be made under section 27;*
- (e) the conditions subject to which the transshipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to another under section 67, may be allowed without payment of duty;*
- (f) The conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.*
- (g) The manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter, as the case may be.*

IMPORTANT DEFINITIONS

Section 2 of the Customs Act, 1962 contains the definitions of various terms used at several places in the Act. Here, some of the important definitions are reproduced as follows;

- (1) **“adjudicating authority”** means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal;
- (2) **“Appellate Tribunal”** means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129;

- (3) **"assessment"** includes provisional assessment, self-assessment, re-assessment and any order of assessment in which the duty assessed is nil; (4) **"baggage"** includes unaccompanied baggage but does not include motor vehicles [Section 2(3)];
- (5) **"bill of entry"** means a bill of entry referred to in section 46[Section 2(4)];
- (6) **"bill of export"** means a bill of export referred to in section 50[Section 2(5)];
- (7) **"Board"** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) [Section 2(6)];
- (8) **"coastal goods"** means goods, other than imported goods, transported in a vessel from one port in India to another[Section 2(7)];
- (9) **"dutiable goods"** means any goods which are chargeable to duty and on which duty has not been paid [Section 2(14)];
- (10) **"entry"** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84; [Section 2(16)];
- (11) **"export"**, with its grammatical variations and cognate expressions, means taking out of India to a place outside India [Section 2(18)];
- (12) **"export goods"** means any goods which are to be taken out of India to a place outside India [Section 2(19)];
- (13) **"exporter"**, in relation to any goods at any time between their entry for export and the time when they are exported, includes ¹⁵[any owner, beneficial owner] or any person holding himself out to be the exporter [Section2 (20)];
- (14) **"foreign-going vessel or aircraft"** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -
- (i) any naval vessel of a foreign Government taking part in any naval exercises;
 - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever [Section 2(21)];
- (15) **"goods"** includes -
- (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;
 - (d) currency and negotiable instruments; and
 - (e) any other kind of movable property [Section 2(22)].
- (16) **"import"**, with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Section 2(23)];
- (17) **"import manifest"** or **"import report"** means the manifest or report required to be delivered under section 30 [Section 2(24)];

- (18) **"imported goods"** means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption [Section 2(25)];
- (19) **"importer"**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes ¹⁸[any owner, beneficial owner] or any person holding himself out to be the importer [Section 2 (26)];
- (20) **"India"** includes the territorial waters of India [Section 2(27)];
- (21) **"Indian customs waters"** means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river [Section 2(28)];

The concept of territorial waters and Indian customs waters are highly relevant for customs law. Territorial waters extend upto twelve nautical miles from the baseline on the coast of India. Indian customs waters extend upto contiguous zone of India which twenty four nautical miles from the nearest point of base line. Thus Indian customs waters extend upto twelve nautical miles beyond territorial waters. The significance of Indian customs waters is that the Customs Officer has powers to arrest a person; to stop and search any vessel; to confiscate a vessel concealing goods; to search any person on board any vessel and; to confiscate goods in the these waters.

- (22) **"person-in-charge"** means -
 - (a) in relation to a vessel, the master of the vessel;
 - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance [Section 2(31)].
- (23) **"prohibited goods"** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with [Section 2(33)];
- (24) **"proper officer"**, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs [Section 2(34)];
- (25) **"shipping bill"** means a shipping bill referred to in section 50 [Section 2(37)];
- (26) **"stores"** means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting; [Section 2(38)];
- (27) **"smuggling"**, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113; [Section 2(39)];
- (28) **"tariff value"**, in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14 [Section 2(40)];
- (29) **"value"**, in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14 [Section 2(41)];
- (30) **"vehicle"** means conveyance of any kind used on land and includes a railway vehicle [Section 2(42)]

(31) **“warehouse”** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A; [Section 2(43)].

(32) **“warehoused goods”** means goods deposited in a warehouse [Section 2(44)];

The definition of warehouse has so as to add a new class of warehouses for enabling storage of specific goods under physical control of the department, as control over the other types of warehouses would be only record based.

OTHER DEFINITIONS AS AMENDED VIDE FINANCE ACT, 2017

“beneficial owner” means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported [Section 2(3A)]

“customs area” means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities; Customs area includes warehouse Section 2(11) .

Note: Since customs area covers warehouse, no IGST is payable for goods removed from customs station to warehouse.

“customs station” means any customs port, customs airport, international courier terminal, foreign post office or land customs station Section (13);

“foreign post office” means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office; [Section 2(20A)]

section (28A) **“international courier terminal”** means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal;]

Establishments under customs

Section 7: Appointment of customs ports, airports, etc - The Board may, by notification in the Official Gazette, appoint -

- (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- (aa) the places which alone shall be inland 5[container depots or air freight stations] for the unloading of imported goods and the loading of export goods or any class of such goods;
- (b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- (d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.
- (e) the post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods;
- (f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

Every notification issued under this section and in force immediately before the commencement of the Finance Act, 2003 shall, on such commencement, be deemed to have been issued under

the provisions of this section as amended by section 105 of the Finance Act, 2003 and shall continue to have the same force and effect after such commencement until it is amended, rescinded or superseded under the provisions of this section.

International courier terminals for the clearance of imported goods or export goods can be now appointed by the Board.

LEVY OF CUSTOM DUTY

There are four stages in any tax structure, viz., levy, assessment, collection and postponement. The basis of levy of tax is specified in Section 12, charging section of the Customs Act. It identifies the person or properties in respect of which tax or duty is to be levied or charged. Under assessment, the liability for payment of duty is quantified and the last stage is the collection of duty which is may be postponed for administrative convenience.

As per Section 12, customs duty is imposed on goods imported into or exported out of India as per the rates specified under the Customs Tariff Act, 1975 or any other law. On analysis of Section 12, we derive the following points:

- (i) Customs duty is imposed on goods when such goods are imported into or exported out of India;
- (ii) The levy is subject to other provisions of this Act or any other law;
- (iii) The rates of Basic Custom Duty are as specified under the Tariff Act, 1975 or any other law;
- (iv) Even goods belonging to Government are subject to levy, though they may be exempted by notification(s) under Section 25.

Custom Tariff Act, 1975 has two schedules. Schedule I prescribes tariff rates for imported goods, known as "Import Tariff" and Schedule II contains tariff for export goods known as "Export Tariff".

TAXABLE EVENT

The basic condition for levy of customs duty is import/export of goods i.e. goods become liable to duty when there is import into or export from India.

- Import means bringing into India from a place outside India [Section 2(23)].
- Export means taking out of India to a place outside India [Section 2(18)].
- "India" includes the territorial waters of India [Section 2(27)]. The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

Though the taxable event is import/export yet it is difficult to determine the exact time of levy. The provision of assessment and collection of duty will be discussed in other parts.

Here in this part, we will discuss the types of duties leviable under Custom Tariff Act.

As per section 12, Customs duties are levied on the goods imported into, or exported from, India at the rates specified in the schedules to the Customs Tariff Act, 1975. The first schedule prescribed the rates of duty on imports and Second schedule prescribe the rates of duty on exports.

TYPES OF DUTIES UNDER CUSTOMS

IMPORT DUTY

There are various types of Customs import duties:

(1) BASIC CUSTOM DUTY

It is levied under Section 12 of Customs Act, 1962, and specified under Section 2 of the Customs Tariff Act, 1975. Normally, it is levied as a percentage of Value as determined under section 14(1). There are different rates for different goods. But the general basic rate is 10%. This basic duty may be exempted by a notification under Section 25. The basic duty may have two rates under the First Schedule to Customs Tariff Act, 1975; viz. standard rates and preferential rates.

Standard and Preferential Rates

Duty at the "Standard rate" is charged where there is no provision for preferential treatment. To be eligible, for the preferential treatment the goods should be the one which are imported from any preferential area covered under the Government of India Agreements for charging preferential rate of duty. The Central Government has the power to increase or reduce or discontinue the preferential rate in respect of any article specified in the First Schedule provided it considers it to be necessary in the public interest. Preferential rate is applied only where the owner of the article (importer) claims at the time of importation, with supporting evidence, that the goods are chargeable with the preferential rate of duty.

(2) ADDITIONAL CUSTOM DUTY/COUNTERVAILING DUTY [Section 3(1)]

This is levied under Section 3(1) of the Customs Tariff Act, 1975. The amount of this duty is equivalent to the amount of excise duty payable on like goods manufactured or produced in India. In *S.K. Patnaik v. State of Orissa*, 2000 S.C. it was held that countervailing duty is imposed when excisable articles are imported in order to counter balance the excise duty, which is leviable on similar goods if manufactured in India:

- Countervailing Duty is payable at effective rates.
- When excise duty is exempt/nil rate is applicable on goods imported, no Countervailing Duty is levied (*Collector v. J. K. Synthetics* 2000 (120) E.L.T. 54(SC))
- Countervailing Duty is leviable even if similar goods are not produced in India.
- Exemption of basic customs duty doesn't automatically mean exemption of Countervailing Duty.
- Countervailing Duty is payable in case of goods leviable under State Excise also.
- When the imported goods are valued under Section 4A [valuation based on retail price], or Tariff Values under section 3(2) the amount of Countervailing Duty is calculated accordingly if the goods are sold in retail in India.

Value for calculation of duty: Additional duty/ IGST is calculated on a value of the imported article determined under section 14 of the Customs Act and basic custom duty under section 12 of the Customs Act and any other law for the time being in force but does not include;

- additional duty referred to in section 3(5) of The Customs Tariff Act, 1975
- The safeguard duty referred to in section 8B of The Customs Tariff Act, 1975.
- The countervailing duty referred to in section 9 of The Customs Tariff Act, 1975
- The anti dumping duty referred to in section 9A of The Customs Tariff Act, 1975

In other words, the additional customs duty is payable on assessable value plus basic customs duty plus NCCD of customs. While calculating additional customs duty, Anti Dumping Duty, education cess of customs and safeguard duty is not required to be considered.

In case of alcoholic liquor for human consumption imported into India, the Central Government may specify rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Note: Under GST regime, alcoholic liquor is still under state excise which has not been subsumed under GST. So, IGST is not leviable on its import.

Rate of duty: Such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

Input Tax Credit of CVD/ IGST: If imported goods are used in manufacture of final products or for provision of output service, **Input Tax credit** of CVD/ IGST paid on imported capital goods is also available.

Important Note: GST has already been brought into effect in India. By virtue of it, IGST (Integrated goods and service tax) is chargeable on goods imported into India. CVD is still payable, wherever applicable on the imported goods for which GST Laws are not applicable.

National Calamity Contingent Duty will be levied only on tobacco products and crude oil. Additional duty of Customs is to be levied on pan masala and tobacco products imported.

Petroleum products such as motor spirit, high speed diesel, aviation turbine fuel, and tobacco products will be outside the scope of GST and additional duties of Customs will be levied on the import of the same.

(3) ADDITIONAL DUTY/SPECIAL ADDITIONAL DUTY (SAD) UNDER SECTION 3(5)

It is levied to offset the effect of sales tax, VAT, local tax or other charges leviable on articles on its sale, purchase or transaction in India. It is leviable on imported goods even if article was not sold in India.

The Central Government may levy additional duty to counter balance the sales tax, value added tax, local tax or any other charges leviable in the like article on its sale, purchase or transportation in India. The rate shall be notified by the Central Government which cannot exceed 4%.

The value of the imported article shall, be the aggregate of the value determined under section 14(1) of the Customs Act, 1962 and any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to such additional duty of custom under section 3(1) and section 3(3), but does not include—

- (a) the duty referred to in sub-section (5);
- (b) the safeguard duty referred to in sections 8B
- (c) the countervailing duty referred to in section 9; and
- (d) the anti-dumping duty referred to in section 9A.

This additional duty is eligible for Cenvat Credit for a manufacturer but not for a provider of taxable service. In respect of capital goods, 100% credit of SAD is available to manufacturers in the first year itself.

Note: Special CVD is subsumed now under IGST, as such this duty is leviable only on the

imported goods for which GST Laws are not applicable. It may be noted that petroleum products are yet to be brought under GST.

Provisions under IGST Act, 2017 Applicable for imported goods

Integrated Goods and Services Act came to effect from June 22, 2017. Through ordinance, The President of India extended the Act to the state of Jammu & Kashmir also with effect from 8th July, 2017.

Accordingly, goods imported into India are now subjected to IGST, not CVD and Special CVD. However, petroleum products and tobacco products are outside the scope of GST and hence CVD and special CVD are applicable to them as usual.

Relevant Provisions under IGST Act:

As per section 5 of the IGST Act that Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

DETERMINATION OF NATURE OF SUPPLY [SECTION 7(2)]

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

Section 8. (1) Proviso:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India;

Part (ii) above is dealing with high sea purchases for which IGST is payable.

Section 3 of Customs Tariff Act, 1975 has been amended and new subsections added as given below:

Section 3(7) (Substituted): Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the

value of the imported article as determined under sub-section (8).

Section 3(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of:

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

Section 3(9) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10).

Section 3(10) For the purposes of calculating the goods and services tax compensation cess under sub-section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of:

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

Section 3(11) The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

Section 3(12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

Summary of Customs Duty Payable under GST Laws

The following example shows the calculation the above three duties if the assessable value is Rs. 100.

<i>eq.</i>	<i>Duty Description</i>	<i>Duty %</i>	<i>Amount (in Rs.)</i>	<i>Total Duty (in Rs.)</i>
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A	Assessable Value		100	
B	Basic Customs Duty	10	10	10
C	Subtotal for calculating IGST(A+B)		110	
D	Add IGST@18%	18	19.8	19.8
E	Sub total		129.8	29.8
F	Education Cess of Customs- 2% of BCD+IGST above	2	0.596	0.596
G	Secondary and Higher Education Cess of BCD+IGST above - 1%	1	0.298	0.298
H	Total		130.694	30.694
I	Total Duty rounded off (The importer is eligible to take input tax credit on IGST paid.			31

(4) PROTECTIVE DUTY - SECTION 6 & 7 OF THE CUSTOMS TARIFF ACT, 1975

- The protective duties should not be very stiff so as to discourage imports.
- It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.
- Section 6 provides that the protective duties are levied by the Central Government upon the recommendation made to it by the Tariff Commission established under the Tariff Commission Act, 1951, and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India.
- As per section 7(1), the protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule.
- Section 7(2) provides that the Central Government may reduce or increase the duty by notification in the Official Gazette. However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India.
- If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval.
- As per section 7(3), every notification in so far as it relates to increase of such duty,

shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes. However, anything done pursuant to the notification before the recommendation by the Parliament shall be valid.

(5) SAFEGUARD DUTY - SECTION 8B OF CUSTOMS TARIFF ACT, 1975

- The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry.

However, the safeguard duty shall not be imposed in the following cases:

- Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.
- Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.
- Unless specifically made applicable in the notification, the articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone.
- The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

However, the total period of levy of safeguard duty is restricted to 10 years.

- Under section 8B(2), the Central Government is also empowered to impose provisional safeguard duty pending determination of the final duty. This provisional duty may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.

Further on final determination, if the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected. Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

Safeguard duty is leviable on goods imported by EOU to the extent of their clearance in Domestic Tariff Area.

- **Section 8B(2A)** : The provisions shall not apply to articles imported by a hundred percent Export-Oriented Undertaking or a unit in a special economic zone unless,-
 - (i) Specifically made applicable in such notifications or such impositions, as the case may be; or
 - (ii) The articles imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Comment: if an EOU imports a product which attracts safeguard duty in India EOU is also

required to pay safeguard duty to the extent of its sale in DTA India.

Example: Caustic soda attracts safeguard duty in India. The same has been imported by an EOU and used in manufacture of detergent cake. 30% of the detergent cake has been sold in DTA. Then it has to pay safeguard duty on 30% of caustic soda imported.

The provisional duty shall be in force for a maximum period of 200 days from the date of its imposition.

If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the duty collected shall be refunded.

- As per section 8B (4), the duty imposed under this section shall be in force for a period of 4 years from the date of its imposition.

Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and it is necessary that the safeguard duty should continue to be imposed.

- Section 8B(4A) provides that the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

- ✓ *Safeguard duty is product specific i.e. the safeguard duty is applicable only for certain articles in respect of which it is imposed.*
- ✓ *Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.*
- ✓ *Safeguard duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.*
- ✓ *Education Cess and Secondary and Higher Education Cess are not payable on safeguard duty.*

(6) COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES - SECTION 9 OF THE CUSTOMS TARIFF ACT

- Section 9(1) provides that the countervailing duty on subsidized articles is imposed if any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article. Such articles are imported into India. The importation may or may not directly be from the country of manufacture or production. The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Subsidy shall be deemed to exist if

- (a) there is financial contribution by a government, or any public body in the exporting or producing country or territory, that is, where -
 - a government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

- government revenue that is otherwise due is foregone or not collected (including fiscal incentives)
- a government provides goods or services other than general infrastructure or purchases goods;
- (b) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the government and the practice in, no real sense, differs from practices normally followed by governments; or
 - The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.
 - Countervailing duty shall not be levied unless it is determined that -
 - (i) The subsidy relates to export performance;
 - (ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or
 - (iii) The subsidy has been conferred on a limited number of persons engaged in manufacturing producing or exporting the article unless such a subsidy is for-
 - Research activities conducted by or on behalf of such persons engaging in manufacture, production, export;
 - Assistance to disadvantaged regions within the territory of the exporting country; or
 - Assistance to promote adaptation of existing facilities to new environmental requirements.

- Unless revoked earlier, the duty imposed under this section shall be in force for a period of 5 years from the date of its imposition.

Central Government may extend the period of such imposition from the date of such extension provided it, in a review, is of the opinion that such cessation is likely to lead to continuation or recurrence of such subsidization and injury.

However, the extension can be for a maximum period of 5 years. If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

- When the determination of the amount of subsidy is pending, the Central Government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it.

If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected.

- As per section 9(4), if the Central Government is of the opinion that
 - (a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies and
 - (b) to preclude recurrence of such injury, may by notification levy countervailing duty with retrospective effect;

The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification.

- The provisions of the Customs Act, 1962 and the rules and regulations made

thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

- No education cess or SAH cess is payable on CVD on subsidised goods.

(7) ANTI-DUMPING DUTY (ADD) ON DUMPED ARTICLES - SECTION 9A OF THE CUSTOMS TARIFF ACT, 1975

Where any article is exported by an exporter or producer from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article. The anti dumping duty is dumping margin or injury margin whichever is lower.

Dumping means exporting goods to India, at prices lower than the ones in the domestic market of the exporting country, subject to certain adjustments.

To prevent dumping, the Central Government may levy ADD up to margin of dumping (MOD). MOD is the difference between the normal value and the price charged for exports to India.

Normal value means comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

Injury margin means difference between fair selling price of domestic industry and landed cost of imported product.

ANTI DUMPING DUTY CAN BE IMPOSED RETROSPECTIVELY AND PROVISIONALLY

(i) Determination of duty provisionally

The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined,-

- (a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and
- (b) refund shall be made of so much of the antidumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(ii) Determination of duty retrospectively:

If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

- (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and
- (ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the antidumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty but not beyond ninety days from the date of notification, and notwithstanding anything contained in any other law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

Period of Duty: The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

However, if the Central Government is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.

Where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

Important points

- √ *Safeguard duty is product specific and anti dumping duty is country specific*
- √ *Refund of anti dumping duty is subject to doctrine of unjust enrichment. [Automotive Tyre Manufacturers Association, 2011(SC)]*
- √ *Education cess and Secondary and Higher Education cess are not payable on Safeguard duty, countervailing duty on subsidized articles, anti dumping duty and any other protective duty.*

Emergency power of Central Government

Under section 8, if the Central Government is satisfied that the export duty leviable thereon should be levied, and that circumstances exist which render it necessary to take immediate action the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

Similarly, Central Government may, by notification in the Official Gazette, direct an amendment in the First Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Government actively encourages export, so there is export duty on every few products. Articles on which export is leviable are given in second schedule to Customs Tariff. Out of these, many have been exempted by way of notification. Export duty will be calculated on FOB price. If duty rate is 15% and FOB price is Rs. 100, the export duty will be Rs. 15.

Section 26 of Customs Act makes the provision for refund of export duty. Export duty is refundable if (a) Goods are imported within one year (b) the goods returned are not 're-sale' and (c) refund claim is lodged within six months from the date of clearance by customs officer for re- importation.

Emergency powers of Central Government to increase or levy export duty.- section 8 of Customs Tariff Act empowers Central Government to amend second schedule to Customs Tariff (which contains articles on which export duty is leviable) and increase or impose export duty on any product, by issue of a notification. Such notifications should be placed before the Parliament within 15 days after it assembles.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions need not be submitted for evaluation)

1. What is the object of levying of duties on Import and Export of goods?
2. How are the territorial limits of India fixed for the purpose of Import and Export of

goods?

3. What kinds of Import duties are provided under the Customs Act, 1962?

SUGGESTED READING

(1) Customs Law Manual — *R. K. Jain's*

(2) Indirect Taxes Law and Practice — *V.S. Datey*

CUSTOMS LAW

PART II: VALUATION, ASSESSMENT OF IMPORTED AND EXPORT GOODS AND PROCEDURAL ASPECTS

After completion of this lesson, the student will have the clear understanding of;

- Concept of Transaction Value
- Valuation of imported goods and applicable rules
- Valuation of Export goods and applicable rules
- Assessment of imported and export goods
- Provisional assessment
- Remission of duty on pilfered or lost or destroyed goods.
- Levy of duty on goods derelict, wreck, jetsam etc.
- Rules for denaturing or mutilation of goods
- Power of Central Government to grant exemption
- Recovery and refund provisions

INTRODUCTION

The expression "levy", "assessment" and "collection" have legal import and significance. The term "levy" is superior legislative function, "assessment" a quasi-judicial function and "collection" is an administrative function. In view of Article 265 of the Constitution of India, which lays down that "no tax shall be levied or collected except by authority of law", it has been held that the words "levy" and "collection" were used in the said Article in a "comprehensive manner and that they are intended to include and envelop the entire process of taxation, commencing from the taxing statute to the taking away of the monies from the pocket of the citizen" [Rayalaseema Constructions v. Deputy Commercial Tax Officer, MR (1959) Madras 382 p. 386].

The following observations of the Punjab High Court in *Hazarimal Kuthalia v. Income-tax Officer*, AIR (1957) Punjab 5, will give an insight to the most important expressions used in taxing statutes:

- (i) To levy a tax means to impose or assess or collect under the authority of law. It is a unilateral act of superior legislative power to declare the subjects and rates of taxation and to authorise the collection to proceed to collect the tax.
- (ii) Assessment is the official determination of liability of a person to pay a particular tax.
- (iii) Collection is the power to gather money for taxes, by enforced payment if necessary.

"These three expressions levy, assessment and collection are of the widest significance and embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by the exercise of the power of taxation from the inception to the conclusion of the proceedings". The assessing authorities are thus under obligation in law to assess correctly and properly and give reasons for their findings in assessment proceedings.

The process of assessment underwent major changes in the Budget 2011, wherein the self assessment scheme was introduced thereby the work of assessment is no more the official determination of liability however, the proper officer can verify and reassess the duty leviable on the goods.

Charging of Customs Duty

The Customs Act, 1962, provides vide its section 12, for levy of duties on goods imported or exported from India.

- Customs duty is imposed on goods imported into or exported out of India as per the rates specified under the Customs Tariff Act, 1975.
- Levy of custom duty on ad valorem (i.e. as a percentage to the value) basis is the predominant mode of levy.
- For this purpose, the value of the imported goods is required to be determined as per provisions of section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of prices of Imported Goods) Rules, 2007.
- Likewise, in respect of export goods the value is determined as per provisions of section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of value of Export Goods) Rules, 2007.

VALUATION OF GOODS FOR LEVY OF CUSTOMS DUTY

The method of valuation of goods for both import and export for the purposes of levy of customs duty on the basis of transaction value has been set out under Section 14 of the Customs Act, 1962 (effective from 10.10.2007). The transaction value is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and the price is the sole consideration for sale, subject to such other conditions as may be specified in the rules made in this behalf.

Accordingly, the old Customs Valuation (Determination of Imported Goods) Rules, 1988 (relevant for old section 14) have also been replaced by new Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

VALUATION OF IMPORTED GOODS

Section 14(1) provides that the value of imported goods shall also include various items of costs and services to the extent provided by the rules. Proviso to section 14(1) states that the price shall be calculated as per the rate of exchange as in force on the date of presentation of bill of entry or shipping bill or bill of export under section 46 or section 50, as the case may be. Further, if transaction value is not determinable (in case of no sale or buyer or seller being related or price not being sole consideration), value is determined in accordance with valuation rules. Hence, the value of imported goods shall be computed in accordance with section 14(1) read with the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.

Let's discuss the valuation rules of import in detail:

CUSTOMS VALUATION (DETERMINATION OF PRICE OF IMPORTED GOODS) RULES, 2007

As per Notification No. 94/2007-Customs (N.T.), dated 13.9.2007, in exercise of the powers conferred by Section 156 read with Section 14 of the Customs Act, 1962 (62 of 1962), the Central Government hereby makes the following rules, namely:

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 3	Determination of the method of valuation
Rule 4	Transaction value of identical goods
Rule 5	Transaction value of similar goods

Rule 6	Situation where the above methods cannot be applied
Rule 7	Deductive value method
Rule 8	Computed value

DETERMINATION OF THE METHOD OF VALUATION - RULE 3

Rule 3 of Import valuation rules provides that the value of the imported goods shall be transaction value adjusted on accordance with rule 10. However, where for any reason the transaction value cannot be determined, or the same is not acceptable for any reason, then, the value shall be determined as per the methods laid down in Rules 4 to 9, which are to be preceded sequentially.

As per rule 2(g): **"transaction value"** means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.

As already discussed, transaction value as per section 14 of the Customs Act, 1962 is the price actually paid or payable;

- when sold for export to India for delivery at the time and place of importation in case of imports and
- when sold for export from India the price for delivery at the time and place of exportation,

where the buyer and seller are not related and price is the sole consideration for the sale subject to such other conditions as "may be specified in the rules" made in this behalf.

The first proviso to Section 14(1) states that the transaction value shall include in addition to the price paid or payable on imported goods any amount paid or payable for costs and services including:

- commissions and brokerage,
- engineering,
- design work,
- Royalties and license fees,
- costs of transportation to the place of importation,
- Insurance,
- loading, unloading and handling charges.
 - The costs and services required to be included in the price actually paid or payable are exhaustive.
 - "Loading" and "unloading" charges have also been included along with the "handling charges".
 - The rate of exchange shall be as in force on the date of submission of bill of entry under section 46 or shipping bill or bill of export is presented under section 50 as the case may be. - *[Third Proviso to section 14(1)]*

As per clause (ii) of second proviso to section 14(1) value of goods shall be determined as per Valuation Rules if the transaction value cannot be determined. It may be in situations where there is no sale at the time and place of importation or exportation, or buyer or seller are related or price is not the sole consideration for sale.

Rule 3(1) of the Valuation Rules provide that the value of imported goods shall be

the transaction value adjusted in accordance with provisions of rule 10 (detailed later).

Further, as per rule 3(2), transaction value of the imported goods, as determined under rule 3(1) shall be acceptable as the value of such goods only if the following conditions are fulfilled [Rule 3(2)]-

(a) No restriction on buyer for disposal of goods: there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

- (i) are imposed or required by law or by the public authorities in India; or
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods.

An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

(b) Sale not subject to conditions of which value cannot be determined: the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

Examples of such conditions: If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

- (i) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (ii) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (iii) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value.

For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

(c) No further consideration to seller of which adjustment cannot be made: no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) Unrelated buyer and seller except where value is acceptable under rule 3(3):

the buyer and seller are not related (definition of related persons as per rule 2(2) given below), or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of rule 3(3).

As per rule 3(3), in the following two cases the transaction value shall be acceptable even if goods are sold to related persons:

- i. Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicates that the relationship did not influence the price.

Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer.

For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

- ii. In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued **closely approximates** to one of the following values ascertained at or about the same time.
 - the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
 - the deductive value for identical goods or similar goods;
 - the computed value for identical goods or similar goods:

"Unrelated buyers" means buyers who are not related to the seller in any particular case.

However, in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include

- the nature of the imported goods,
- the nature of the industry itself,
- the season in which the goods are imported, and
- whether the difference in values is commercially significant.

Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case.

For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values.

- iii. Substitute values shall not be established under the provisions of clause (b) of this sub-rule.

As per rule 2(2), Persons shall be deemed to be "related" only if -

- (i) they are officers or directors of one another's businesses;
- (ii) they are legally recognised partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other *;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

*One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Explanation I - The term "person" also includes legal persons.

Explanation II - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

As per rule 3(4), if the value cannot be determined under the provisions of rule 3(1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Before moving to other rules, first discuss the adjustments for costs and services, inclusions and exclusions in accordance with rule 10 as mentioned in Rule 3(1).

ADJUSTMENTS IN TRANSACTION VALUE (RULE 10)

I. Adjustments specified in Rule 10(1)

In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, —

- (a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-
 - (i) commission and brokerage, except buying commissions;

Buying commission refers to fees paid by an importer to his agent for service of representing him abroad in purchase of goods being valued. Commission paid to canalising agent in India is not buying commission – Hyderabad Industries Ltd. v. UOI (2009) 115 ELT 593 (SC)
 - (ii) the cost of containers imported along with the goods;
 - (iii) the cost of packing whether for labour or materials;
- (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent not included in the *price actually paid or payable* (refer the box), namely:-
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work, and plans and sketches

undertaken elsewhere than in India and necessary for the production of the imported goods;

- (c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in *the price actually paid or payable*(refer the box),.
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the *price actually paid or payable* (refer the box),.

Explanation- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

Points for consideration regarding Price actually paid or payable

- The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.
- he payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments.
- Payment may be made directly or indirectly. **An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.**

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

- The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
 - (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
 - (b) The cost of transport after importation;
 - (c) Duties and taxes in India.
- The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

II. Adjustments specified in Rule 10(2)

The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance actually incurred

The following points shall also be considered while determining the assessable value:

- (i) Where the cost of transport is not ascertainable, such cost shall be 20% of the free on board value of the goods. In the case of goods imported by air, even where the cost of transportation is ascertainable, such cost shall not exceed 20% of free on board value of the goods.
- (ii) where the cost of insurance is not ascertainable, such cost shall be 1.125% of free on board (FOB) value of the goods;
- (iii) loading, unloading and handling charges shall be 1% of the free on board (FOB) value of the goods + the cost of transport + cost of insurance i.e. CIF Value

Computation where FOB value and Cost of Insurance & Transport not ascertainable:

Where the free on board value of the goods is not ascertainable, then

- Costs of transportation shall be 20% of the FOB value of the goods + cost of insurance and
- Cost of insurance shall be 1.125% of the free on board value of the goods + cost of transport.

Other points for consideration

In case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport.

The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

In Wipro vs. ACC (2015) 319 ELT 177 (SC), the apex court held that the objective of section 14 of the Act is to accept actual cost paid or payable for customs valuation. Any fictional cost (like landing charges, insurance, freight etc.) can be added only when actual cost is not ascertainable.

As per the scheme of valuation, transaction value shall be applied to the goods imported into or exported from India. Where it is not possible to apply transaction value, alternative methods have to be applied in sequence. That means first of all, apply Rule 4, where Rule 4 cannot be applied, apply Rule 5 and so on.

DETERMINATION OF TRANSACTION VALUE IN CASE OF IDENTICAL GOODS (RULE 4)

Rule 4(1): If the value cannot be determined under the provisions of rule 3(1), the value shall be the transaction value of the identical goods (for definition of identical goods as per rule 2(1)(d) given below), which are sold for export to India and imported at or about the same time as the goods being valued.

However, such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

The transaction value of identical goods will be used in determining the value of imported goods only when such identical goods fulfill the following conditions:

- (i) These goods are in a sale at the same commercial level and
- (ii) These goods are substantially of the same quantity as the goods being valued.

Where these two conditions are not satisfied then the transaction value in a sale of identical goods shall be used under any of the following circumstances;

- sale at a same commercial level but in different quantities or
- sale at a different commercial level but in substantially the same quantity
- sale at a different commercial level and in different quantities.

However, such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

In simple words, while applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities; or*
- (b) a sale at a different commercial level but in substantially the same quantities; or*
- (c) a sale at a different commercial level and in different quantities.*

Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;*
- (b) commercial level factors only; or*
- (c) both commercial level and quantity factors.*

Adjustment in the transaction value referred in Rule 10(2) [Rule 4(2)]

Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

Transaction value where more than one transaction value found

If more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods [Rule 4(3)].

Identical goods [Rule 2(1)(d)]

"Identical goods" means imported goods -

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

If the price of such goods is not available, price of goods produced by another manufacturer in the same country can be taken.

TRANSACTION VALUE OF SIMILAR GOODS (RULE 5)

If the value cannot be determined under the provisions of rule 3(1), the value of imported goods shall be the transaction value of similar goods [definition of similar goods as per rule 2(1)(f) given below] sold for export to India and imported at or about the same time as the goods being valued:

However, such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

The provisions of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.

Similar Goods

Similar Goods [Rule 2(1)(f)]: "similar goods" means imported goods -

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

DETERMINATION OF VALUE WHERE VALUE CAN NOT BE DETERMINED UNDER RULES 3, 4 AND 5 (RULE 6)

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

However, at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

DEDUCTIVE VALUE (RULE 7)

Rule 7(1), subject to the provisions of rule 3, if the goods being valued or identical or similar

imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : —

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

Rule 7(2): If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

Rule 7(3): If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of rule 7(1).

The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

Example:

Goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

<i>Sale quantity</i>	<i>Unit price</i>	<i>Number of sales</i>	<i>Total quantity sold at each price</i>
1-10 units	100	10 sales of 5 units, 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units, 1 sale of 50 units	80

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

Example:

In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of

units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

Example:

A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity Sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

COMPUTED VALUE (RULE 8)

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under rule 10(2).

RESIDUAL METHOD (RULE 9)

Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

However, the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale [Rule 9(1)].

As per rule 9(2), no value shall be determined under the provisions of this rule on the basis of;

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the

two alternative values;

- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

Some examples of reasonable flexibility are as follows:

- (a) *Identical goods* - The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.
- (b) *Similar goods* - The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.
- (c) *Deductive method* - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

DECLARATION TO BE FURNISHED BY THE IMPORTER (RULE 11)

The importer or his agent shall furnish -

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
 - (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.
- (2) The proper officer of customs has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
- (3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished.

REJECTION OF DECLARED VALUE BY CUSTOMS OFFICER (RULE 12)

When the proper officer has reason to doubt the truth or accuracy of the value declared in

relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of rule 3(1).

At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision.

Other points for consideration (Explanation to rule 12)

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents.

The process of assessment involves value and rate of duty. Value is found out under section 14 and rate of duty is ascertained as per Section 15 and 16 of the Customs Act.

RELEVANT DATE FOR DETERMINATION OF THE RATE OF DUTY AND TARIFF VALUATION (SECTION 15)

Under section 15(1), the rate of duty and tariff valuation, if any, applicable to any *imported goods*, shall be the rate and valuation in force,

- (a) In the case of goods entered for home consumption under section 46: The date on which a bill of entry is presented [Section 15(1)(a)]
- (b) In the case of goods cleared from a warehouse under section 68: The date on which a bill of entry for home consumption is presented [Section 15(1)(b)].
- (c) In the case of any other goods: The date of payment of duty [Section 15(1)(c)].

However, if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be [Proviso to section 15(1)].

The provisions of this section shall not apply to baggage and goods imported by post [Section 15(2)].

VALUATION OF EXPORT GOODS

Customs value of export goods, whether liable to ad valorem duty or not is to be determined under Section 14(1) of the Customs Act, 1962 read with Section 2(41) thereof. By virtue of Section 2(41), 'value' in relation to any goods will mean the value thereof determined under Section 14(1) read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Rule 3	Determination of the method of valuation
Rule 4	Determination of export value by comparison
Rule 5	Computed value method
Rule 6	Residual method
Rule 7	Declaration by the exporter
Rule 8	Rejection of declared value

DETERMINATION OF THE METHOD OF VALUATION (RULE 3)

The value of export goods shall be its transaction value. However, the transaction value may be rejected as per the provisions of Rule 8.

As per rule 3(2), the transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

If the value cannot be determined under the provisions of Rule 3(1) and (2), the value shall be determined by proceeding sequentially through Rules 4 to 6 [Rule 3(3)].

DETERMINATION OF EXPORT VALUE BY COMPARISON (RULE 4)

As per Rule 4(1), the value of the export goods shall be based on the transaction value of "*goods of like kind and quality*" exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of Rule 4(2).

"goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person;

"Transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

For the purposes of these rules, persons shall be deemed to be "related" only if -

- (i) they are officers or directors of one another's businesses;*

- (ii) they are legally recognised partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Adjustments under Rule 4(2):

In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,
- (ii) difference in commercial levels and quantity levels,
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- (iv) difference in domestic freight and insurance charges depending on the place of exportation.

COMPUTED VALUE METHOD (RULE 5)

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

- (a) cost of production , manufacture or processing of export goods;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit.

Computed value = Cost of production + Charges if any for design or brand +An amount towards profit.

The board has clarified that while determining the value under this rule, the proper officer shall give due consideration to the cost certificate issued by the Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

RESIDUAL METHOD (RULE 6)

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

DECLARATION BY THE EXPORTER (RULE 7)

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

REJECTION OF DECLARED VALUE (RULE 8)

As per rule 8(1), when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with Rule 3(1).

Under rule 8(2), at the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under Rule 8(1).

OTHER IMPORTANT POINTS

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.
- (iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –
 - (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
 - (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.
 - (c) the mis-declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

RELEVANT DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION OF EXPORT GOODS (SECTION 16)

As per section 16(1), the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -

- (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.
- (b) in the case of any other goods, on the date of payment of duty.

The provisions of this section shall not apply to baggage and goods exported by post [Section 16(2)].

Illustration: Compute export duty from the following data:

- (i) FOB price of goods: US \$ 2,00,000.
- (ii) Shipping bill presented electronically on 26-02-2016.
- (iii) Proper officer passed order permitting clearance and loading of goods for export on 04-03-2016.

(iv) Rate of exchange and rate of export duty are as under:

	<i>Rate of Exchange</i>	<i>Rate of Export Duty</i>
On 26-02-2016	1 US \$ = Rs. 69	10%
On 04-03-2016	1 US \$ = Rs. 59	8%

(v) Rate of exchange is notified for export by Central Board of Excise and Customs.
(Make suitable assumptions whenever required and show the workings)

Solution:

FOB price of goods:	US \$ 2,00,000
Exchange rate	Rs. 60
Value in INR	120,00,000
Rate of Customs Duty	8%
Duty	Rs. 9,60,000

Notes:

1. Rate of exchange has been taken as on the date of submission of Shipping Bill as per Section 14 of the Customs Act.
2. Rate of Duty has been taken as on the date of order permitting clearance and loading of goods for export as per section 16(1)(a).

Note: Landing charges and education cess are not applicable to export duty payable.

Illustration

Import by Air

CIF Value: 1,000 Euros.

Freight: 300 Euros

Insurance: 15 Euros

Find the assessable value.

The exchange rate notified by CBEC as on the date of submission of Bill of Entry was ₹ 70 per euro.

Solution:

Since the freight charges cannot exceed 20% of FOB value, it is necessary to find out FOB value.

		Euros	
FOB value:			1,000
Less: Freight	300		
Insurance	<u>15</u>	315	
FOB		685	
Add: Freight @20% on 685		137	
Add: Insurance		<u>15</u>	837.00
Add: Landing charges @1%			<u>8.37</u>
			<u>845.37</u>

Assessable value in Indian Rupees = Rs. 70 x 845.37 = Rs. 59,176/- (rounded off)

Illustration

Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 20% under section 8B of the said Act with the following details given below:

Import of Sodium N from a developing country from 25th September, 2016 to 24th September, 2017 (both days inclusive)	20,00,000
Share of imports of Sodium N from the developing country against total imports of Sodium N to India	3.5%
Basic Customs Duty	10%
IGST payable on such goods in India	18%
Education cess	2%
Secondary & Higher Education cess	1%

Solution:

Computation of customers duties of Sodium Nitrate

Particulars	Value ₹	Duties ₹
Value of Sodium N	20,00,000	
Add: BCD @ 10%	2,00,000	2,00,000
	22,00,000	
Add: IGST@ 18%	3,96,000	396,000
Total	25,96,000	596,000
Add: Cess @3% on 596,000	17,880	17,880
	26,13,880	613,880
Add: Safeguard duty @ 20% on 20,00,000	4,00,000	4,00,000
Total	30,13,880	10,13,880

Total duty including safeguard duty = Rs. 10, 13,880

Working Notes:

1. Since the share of developing country is more than 3% of total imports into India, Safe guard duty is leviable under section 8B of Customs Tariff Act, 1975.
2. Safeguard duty @ 20% has been added on the assessable value of Rs.20,00,000
3. IGST is payable on imported goods as import is an interstate supply.
4. Input tax credit is available to the importer on IGST.

Illustration

Customs value (assessable value) of imported goods is Rs. 4,00,000. basic customs duty payable is 10%. If the goods were supplied in India, IGST would have been 18%. Education cess is as applicable. No state compensation cess is payable Find out the customs duty payable. How much input tax credit can be availed of by importer?

SOLUTION:

Particulars	Value ₹	Duties ₹
Assessable Value	4,00,000	
Add: BCD @ 10%	40,000	40,000
	440,000	
Add: Cess @ 3% on 40,000	1,200	1,200
Total	441,200	
Add: IGST @ 18% on 441,200	79,416	79,416
Total	520,616	120,616
Total (rounded off) Rs	520,616	120,616

Illustration

Ranga Ltd., an Indian company located at Raipur. imported into India certain commodities in August. 2017 from a country which attracts anti dumping duty by a Notification issued under Section 9A of the Customs Tariff Act. 1975.

The relevant particulars relating to import are as follows:

(1) CIF value of the consignment — US \$ 30,000

(2) Quantity imported — 500 kgs.

(3) Exchange rate applicable — US \$ = Rs 66

(4) Basic Customs Duty (BCD) — 10%

(5) As per the Notification, the anti-dumping duty leviable will be 60% of the difference between the cost of the commodity calculated @ US \$ 100 per kg. and the landed value of the commodity as imported.

You are required to calculate the amount of total Customs duty (including anti-dumping duty) payable by Ranga Ltd.

Note: Assume IGST and compensation cess payable under Section 3(7) and 3(9), respectively of the Customs Tariff Act. 1975 are exempt but Education Cess and Secondary & Higher Education Cess are payable wherever applicable. Working notes with brief reasons should form part of the answer.

SOLUTION:

Margin of Injury is calculated as given below:

Fair market value= 500 x 100 = 50,000 USD

Landed value is computed as follows:

Assessable value= 101% of CIF= 30,000 x 1.01 = 30,300 USD	
Add BCD @ 10%	= 3,030 USD
Education CESS @ 3% on 3,030	= 90.9 USD
Landed value	= 33,420.90 USD

Difference between (1) and (2) above is 50,000 USD - 33,420.90 USD = 16,579.10 USD

Anti-dumping duty = 60% of 16,579.10 USD = 9947.46 USD

Anti-dumping duty INR = 66 x 9947.46 USD = 656,532 INR

Total customs duty Rs. = (3120.90 USD + 9947.46 USD) x 66 = 862512 INR

NOTE: Where compensation cess is payable it is added on the total value of (AV+ BCD+ Education cess) but not on IGST

Illustration:

Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 20% under section 8B of the said Act with the following details given below:

<i>Import of Sodium N from a developing country from 25th September, 2016 to 24th September, 2017 (both days inclusive)</i>	<i>20,00,000</i>
<i>Share of imports of Sodium N from the developing country against total imports of Sodium N to India</i>	<i>3.5%</i>
<i>Basic Customs Duty</i>	<i>10%</i>
<i>IGST payable on such goods in India</i>	<i>18%</i>
<i>Education cess</i>	<i>2%</i>
<i>Secondary & Higher Education cess</i>	<i>1%</i>

SOLUTION:

Computation of customs duties of Sodium Nitrate

<i>Particulars</i>	<i>Value</i> <i>Rs.</i>	<i>Duties</i> <i>Rs.</i>
Value of Sodium N	20,00,000	
Add: BCD @ 10%	2,00,000	2,00,000
	22,00,000	
Add: Cess @3% on 2,00,000	6,000	6,000
Total	22,06,000	2,06,000
Add: Safeguard duty @ 20% on 20,00,000	4,00,000	4,00,000
	26,06,000	6,06,000
Add IGST @ 18% on 26,06,000	469,080	469,080
Total	30,75,080	10,75,080

Total duty including safeguard duty = Rs. 10,75,080

Notes:

1. Since the share of developing country is more than 3% of total imports into India, Safe guard duty is leviable under section 8B of Customs Tariff Act, 1975.
2. Safeguard duty @ 20% has been added on the assessable value of Rs.20,00,000
3. IGST is payable on imported goods as import is an interstate supply as per Section 5 of IGST Act
4. Input tax credit is available to the importer on IGST
5. IGST is payable on Safeguard duty also.

Illustration:

Where CVD and IGST both are payable together with compensation cess:

Given Assessable Value: Rs. 1,00,000

BCD @10%; CVD @12%

IGST payable 28% and G ST Compensation cess payable is 15%

Show the calculations:

Solution:

COMPUTATION OF CUSTOMS DUTIES:

<i>Particulars</i>	<i>Value Rs.</i>	<i>Duties Rs.</i>
Assessable Value:	1,00,000	
1.Add: BCD @ 10%	10,000	10,000
	110,000	
2.Add: CVD @12% on 110,000	13,200	13,200
Total	123,200	23,200
3.Add: CESS @ 3% on 23,200	696	696
	123,896	23,896
4.Add IGST @ 28% on 123,896	34,691	34,691
5. Add compensation cess @ 15% on 123,896	18,584	18,584
Total	177,171	77,171

Notes:

1. IGST is payable on CVD also.
2. Compensation cess is payable on all except IGST

ASSESSMENT OF DUTY

Section 17 of the Customs Act, prescribes the method for assessment of duty. For example, under Sub-section (1), after an importer has entered any imported goods or an exporter has entered any export goods, the importer and exporter self assess the duty if any leviable on such goods. As per sub-section 2 the self assessed goods may be verified, examined or tested by the proper officer.

Section 17 reads as follows:

- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
- (2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
- (3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be,

can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
- (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment 25 done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.
- (6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,

- (a) where the importer or exporter is unable to make self-assessment under section 17(1) and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed [Section 18(1)].

When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then -

- (a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
- (b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to

twice the amount of the excess duty [Section 18(2)].

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order, at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof [Section 18(3)].

Subject to section 18(5), if any refundable amount referred to in clause (a) of section 18(2) is not refunded under that sub-section within three months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount [Section 18(4)].

As per section 18(5), the amount of duty refundable under section 18(2) and the interest under section 18(4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to:

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

DETERMINATION OF DUTY WHERE GOODS CONSIST OF ARTICLES LIABLE TO DIFFERENT RATES OF DUTY (SECTION 19)

Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows:-

- (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
- (b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- (c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b) :

However,

- (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- (b) if the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

RE-IMPORTATION OF GOODS (SECTION 20)

When goods are re-imported into India, after exportation there from, such goods are liable to

duty and are subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof. The provisions relating to these matters are found in Section 20 of the Customs Act, 1962.

Section 20 reads as under:

If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

Notification Nos. 94/96 and 158/95 provide for certain relaxations for reimported goods.

DUTY ON PILFERED GOODS (SECTION 13)

If any imported goods are

- pilfered after the unloading thereof and
- before the proper officer has made an order for clearance for home consumption or deposit in a warehouse,

the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

As per section 45(3), if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person approved by the Commissioner u/s 45(1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer u/s 30 for the arrival of the conveyance in which the said goods were carried.

GOODS DERELICT, WRECK, ETC. (SECTION 21)

Section 21 lays down that all goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty free under this Act.

“Derelict” is a term applied to any property, whether vessel or cargo, left or abandoned in open sea by persons in charge of it without any hope of recovering or intention of returning to it.

“Jetsam” is where the goods are thrown into the sea with a view to lighten the ship in order to prevent it from sinking.

“Flotsam” is where the goods having been at sea in a ship, are separated from it by some peril. The property in this case is not renounced by the owner by throwing them overboard and the owner is entitled to recover the possession.

“Wreck” refers to the property cast ashore within the ebb and flow of the tide after shipwreck. The property involved may be a ship, a cargo or portion thereof.

ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS (SECTION 22)

If any goods are found damaged and are examined by customs authority for that purpose on an application made therefor, the duty can be charged only on the goods which are serviceable or on the reduced value as may be determined by customs authority. Provisions in this regard have been made under Section 22 of the Customs Act, 1962.

Under Section 22, there is allowed abatement of duty on damaged or deteriorated goods under Sub-section (1), where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs—

- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
- (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under Section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
- (c) that any warehoused goods have been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner his employee or agent.

Such goods are chargeable to duty in accordance with the provisions of Sub-section (2).

Sub-section (2) lays down that the duty to be charged on the goods referred above shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bear to the value of the goods before the damage or deterioration.

Under Sub-section (3), the value of damaged or deteriorated goods may, be ascertained by either of the following methods at the option of the owner, viz.:

- (a) the value of such goods may be ascertained by the proper officer, or
- (b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner and the gross proceeds shall be deemed to be the value of such goods.

REMISSION OF DUTY ON LOST, DESTROYED OR ABANDONED GOODS (SECTION 23)

Where any goods are lost or destroyed, except by way of pilferage, whether totally or partially, even after the "out of charge" is signed but before they are physically removed from customs area, the owner is entitled for remission of duty on such goods.

Further, an owner of goods can surrender the title to the goods to customs before an order for home consumption has been made and no duty need be paid on such goods.

Section 23 relates to remission of duty on lost, destroyed or abandoned goods. It reads as follows:

- (1) Without prejudice to the provisions of Section 13, where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed, at any time before clearance for home consumption, the Assistant/Deputy Commissioner of Customs shall remit the duty on such goods.
- (2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon".

Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

DENATURING OR MUTILATION OF GOODS (SECTION 24)

The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one

purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Denaturing is connected with liquid items and mutilation is associated with solid items. After the process of mutilation or denaturing, the goods are classified as per the latest condition and the lower rate as applicable after mutilation or denaturing will be taken for assessment. This provision is importer friendly and this benefit is given to encourage him to undertake the mutilation/ denaturing process in India.

For example, you may import pure ethyl alcohol attracting 150% of BCD and you may denature it by adding copper sulphate. Then after denaturing it is classified as denatured ethyl alcohol which attracts only 5% BCD.

POWER TO GRANT EXEMPTION FROM DUTY (SECTION 25)

Under the section, exemptions are of two kinds. One type which is in common use, is under Sub-section (1), in public interest, where there is a general exemption in respect of any article or class of articles. Such exemptions may be absolute or subject to certain conditions specified in the relevant notifications. Other is under Sub-section (2), the exemptions granted may be applicable to specific cases and these will be by a special order. These have to be done in respect of any goods of strategic or secret nature or for charitable purpose, which are stated in such order.

Notifications exempting goods under Sub-section (1) have to be laid before Parliament, as soon as may be, after their issue and the Parliament may amend or reject them. This shows that such notifications are in exercise of 'sovereignty' i.e. legislative powers. On the other hand, special order under Sub-section (2) is an executive order because it is not required to be published and it grants exemption specifically and not generally.

<p>Every notification issued under sub-section (1) or sub-section (2A) shall, -</p> <p>(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;</p>	<p>Now there is no requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of</p>
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Sub-sections (4) and (5), puts it beyond doubt that every exemption notification shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette. The Finance Act, 2016 has removed the statutory obligation for publication of notifications by the Directorate of Publicity and Public Relations and for their sale to the public. The notifications shall however, also continue to be published in the Gazette of India, as usual.

This amendment has been made in order to do away with the practical problem caused about effective date of notifications by recent Supreme Court judgement in *Collectors v. New Tobacco Co.* (1998) 97 E.L.T. 388 (S.C.).

However, exemptions granted under Section 25(1) of the Customs Act, can operate only in respect of such duty as is specifically mentioned in the particular notification. Thus, a notification exempting goods from the levy of basic customs duty can not by itself exempt such goods from the levy of countervailing duty or additional duty leviable under the Tariff Act nor can exemption from levy of countervailing duty or additional duty, wholly or partially, result in

exemption of the goods from the levy of basic customs duty, wholly or partially.

In order to obtain a keen insight and to understand the philosophy or rationale underlying the grant of exemptions under Section 25 it is pertinent to note the explanation given by the Ministry of Finance to the Public Accounts Committee of the Lok Sabha, which had made some observations regarding manner and reasons underlying grant of exemptions from customs duty [PAC (5th Lok Sabha) (1974-75), 135th Report p. 55]. The Ministry of Finance had explained that the exemptions from customs duty were granted for one or more of the following reasons:

- (i) in accordance with the General Agreement on Trade and Tariff certain concessions agreed to by India have to be implemented through exemption notifications;
- (ii) in cases, where indigenously manufactured finished products using imported raw materials are placed at a disadvantageous position vis-a-vis imported finished products on account of high incidence of import duties leviable on imported articles, the industries concerned have to be given tariff assistance by bringing down, through exemption notifications, the import duties applicable in the case of imported raw materials to a level necessary for the removal of the disadvantages;
- (iii) in cases where component/raw materials required for the initial setting up, assembly or manufacture of machinery/finished product are assessable to duty at a higher rate than what is leviable on the machinery/finished product, the tariff anomaly has to be set right through exemption notifications, equalising the two rates;
- (iv) certain raw materials/semi-finished products are imported for producing finished products which are to be exported later. In such cases, exemptions from import duties have to be given in the interest of export promotion; and
- (v) some exemptions have to be given on humanitarian grounds like relief, rehabilitation, and repatriation of Indians, etc.

Accordingly, exemptions of the types enumerated above are given under Section 25(1) of the Customs Act, 1962. Ad hoc exemptions, however, are given under Sub-section (2) of the said section only under the designed conditions after the amendment of this sub-section by the Finance Act, 1999. The amended policy guidelines issued by the Finance Ministry for grant of such exemption are reproduced below:

POLICY GUIDELINES FOR *AD HOC* EXEMPTIONS UNDER SECTION 25(2)

In supersession of the Office Memorandum dated 8th October, 1996, the Finance Minister has approved the following guidelines for consideration of request for exemption from customs duty under Section 25(2) of the Customs Act, 1962 as amended by the Finance Act, 1999:

- (a) Imports of secret goods by Government.
- (b) Imports for India's defence needs relating only to military hardware and software or for R&D units under the DRDO may be allowed free of duty.
- (c) Imports by Central Policy Organisation for equipping their forces may be allowed free of duty.
- (d) State Police Organisations may be allowed to import free of duty equipments required for anti-subversion, anti-terrorism and intelligence work.
- (e) Imports by Charitable Institutions which are providing all their services free where the imports are required for use in hospitals, educational institutions, etc., may be allowed free of duty.

The imports by these charitable organisations should fulfill the following conditions:

- (i) The imports should be received as donations or gifts and the donor should be known institution, but not an individual, say a society or a foundation. No payment for imports should be involved.
- (ii) The recipient should also be an institution/organisation, but not an individual, which is registered as charitable organisation.
- (iii) The said organisation/institution should be providing services, such as running hospitals, educational institutions etc., on either 'free' or 'no loss or no profit' basis.
- (iv) The charitable nature of the organisation and the fact of rendering services on 'free' or 'no loss no profit' basis should be certified by the concerned district authorities.
- (v) The organisation/institution should certify that the goods under import are for its use and provide an undertaking to the effect that they would fulfill the conditions.

2. All ad hoc exemptions from duty to non-governmental organisation will be issued subject to the conditions that the imported goods will not be put to any commercial use and will not be sold, gifted or parted by the importer in any manner without the prior permission of the Ministry of Finance. The imported goods will be kept available for inspection by Customs Officers.

3. Import of goods which are not covered in any of the categories mentioned in para 1 will not be considered for grant of ad hoc exemptions under Section 25(2) of the Customs Act, 1962.

Section 25 read as follows:

- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.
- (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.
- (2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under subsection (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.
- (3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

- (4) Every notification issued under sub-section (1) or sub-section (2A) shall, -
(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

- (5) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

Sub section (7) inserted vide Finance Act, 2014 provides that the mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of India or exclusive economic zone of India as referred to in section 6 and section 7, respectively, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and imported prior to the 7th day of February, 2002 shall be deemed to be and shall always be deemed to have been exempted from the whole of the duties of customs leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils and accordingly notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

- (6) Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made.

REFUND AND RECOVERY PROVISIONS (SECTION 26 TO 28D)

REFUND OF EXPORT DUTY IN CERTAIN CASES (SECTION 26)

Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

- (a) the goods are returned to such person otherwise than by way of re-sale;
- (b) the goods are re-imported within one year from the date of exportation; and
- (c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

REFUND OF IMPORT DUTY IN CERTAIN CASES (SECTION 26A)

Section 26A provides for refund of import duty in certain cases.

As per sub section (1) of section 26A, where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if;

- (a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

However, no duty shall be refunded where the goods have been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications.

- (b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;
- (c) the importer does not claim drawback under any other provisions of this Act; and
- (d) (i) the goods are exported; or
(ii) the importer relinquishes his title to the goods and abandons them to customs; or
(iii) such goods are destroyed or rendered commercially valueless in the presence of

the proper officer, in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:

The period of thirty days may be extended by the Commissioner of Customs for a period not exceeding three months where sufficient cause being shown (first proviso to section 26A).

However, these provisions shall not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force (Second proviso to section 26A).

An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed [section 26(2)].

“Relevant date” means,—

(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;

(b) in cases where the title to the goods is relinquished, the date of such relinquishment;

(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

As per section 26(3), no refund shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

Section 26(4) provides that the Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.

CLAIM FOR REFUND OF DUTY (SECTION 27)

(1) Section 27 of the Customs Act deals with the refund of the duty. As per this section—

- (a) Any person who has paid the duty or interest or who has borne the incidence of duty or interest can claim refund of duty by way of application.
- (b) The application for refund is to be made to the Assistant Commissioner of customs or Deputy Commissioner of customs.
- (c) The application should be made before the expiry of one year from the date of payment of such duty or interest. However the limitation period of one year shall not apply where duty or interest is paid under protest.
- (d) The application should be accompanied by such documentary or other evidence to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and incidence of such amount is not transferred to any other person.

The period of one year shall be computed from the following date:

- (1) Where goods are exempt from payment of duty by a special order under Sub-section (2) of Section 25 — Date of issue of such order.*
- (2) Duty becomes refundable because of judgement, decree, order or direction of appellate authority, appellate tribunal, or court — Date of such judgement decree, order or direction*

(3) Duty is paid provisionally under Section 18 — Date of adjustment of duty after final assessment

Where the amount of refund claimed is less than rupees one hundred the same shall not be refunded.

(2) If, on receipt of any such application, the Assistant/Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty and interest, if any, paid on such duty as determined by the Assistant/Deputy Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to:

- (a) the duty and interest, if any, paid on such duty paid by the importer or exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in Section 26;
- (e) drawback of duty payable under Sections 74 and 75;
- (f) the duty and interest if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.
- (g) the duty paid in excess by the importer before an order permitting clearance of goods for homeconsumption is made where: (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

The above amendment was to keep outside the ambit of unjust enrichment, the refund of duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made in the above cases

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgement, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

(4) Every notification under clause (f) of the first proviso to Sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the

People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to Sub-section (2), including any such notification approved or modified under Sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

INTEREST ON DELAYED REFUNDS (SECTION 27A)

Section 27A incorporated in the Customs Act by the Finance Act, 1995 (w.e.f. 26.5.95) provide for payment of interest on refunds of duty which is not paid to the applicant within three months from the date of receipt of application under Sub-section (1) of Section 27.

It has also been provided that in case where appellate remedies are resorted to either by the Department or by the assessee, the refund finally payable shall bear interest for the period starting from the date immediately after the expiry of three months from the date of receipt of applications under Sub-section (1) of Section 27 till the date of refund of duty. It may be specifically noted that:

(a) interest will be paid only on the amount of duty which is finally held to be refunded.

Example: in case the assessee has claimed a refund of `60,000/- the Assistant/Deputy Commissioner allows a refund of `10,000/- and on appeal the amount decided to be refunded is `30,000/- then the interest would be payable on the amount finally decided to be refunded viz. `30,000/- for the period commencing from the expiry of three months from the date of the refund application till its payment. Conversely, if the Assistant/Deputy Commissioner has determined the amount due as refund at `30,000/- which on appeal by the Department is reduced to `10,000/- interest would be payable for the aforesaid period only on the amount of `10,000/-

(b) the interest will be paid at the rate to be fixed by the Central Government by issue of Gazette Notification as simple interest, Interest on interest is not payable;

(c) no interest is to be paid on any refund of fines or penalties; the provision has been made for payment of interest only on delayed refund of duty amounts;

(d) it is to be clearly noted that interest if any would be payable on the amount of duty to be refunded arising only from proceedings initiated under Section 27 i.e. where an application for refund has been filed.

Recovery of duties not levied or not paid or short-levied or short- paid (SECTION 28)

Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest has not been paid or erroneously refunded, for—

(1) any reason other than the reason of collusion or any willful mis-statement or suppression of facts then the proper officer shall within two years from the relevant date serve notice on the person chargeable with duty or interest requiring him to show cause why he should not pay the amount specified in the notice.

However the person chargeable with duty or interest may pay before the service of notice any amount of duty along with interest or interest on the basis of—

(i) his own ascertainment of such duty or

(ii) the duty ascertained by the proper officer

the amount of duty along with the interest payable thereon under section 28AA @ fifteen per cent. per annum w.e.f 1.4.2016 vide notification no. 33/2016 - Customs (N. T.) dated 1st March, 2016) or the amount of interest which has not been so paid or part-paid.

Provided that where notice has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA @ fifteen per cent. per annum w.e.f 1.4.2016 vide notification no. 33/2016 - Customs (N. T.) dated 1st March, 2016) or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served shall be deemed to be concluded.

and inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice in respect of duty or interest so paid. However proper officer can issue notice for the remaining amount.

The proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

(2) the reason of—

(i) collusion; or

(ii) any willful mis-statement; or

(iii) suppression of facts,

by the importer or exporter or the agent or employee of the importer or exporter, the proper officer shall within 5 years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

However the person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under Section 28AA @ fifteen per cent. per annum w.e.f 1.4.2016 vide notification no. 33/2016 - Customs (N. T.) dated 1st March, 2016) and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of notice and inform the proper officer about the payment in writing.

The proper officer then determine the amount of duty or interest and on determination, if proper officer is of the opinion—

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other person to whom the notice is served, under Sub-section (1) or Sub-section (4) shall, without prejudice to the provision of Section 135, 135H and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty paid falls short of the amount actually payable, then proper officer shall proceed to issue the notice in respect of the amount which falls short within a period of two years from the date of receipt of information about such payment.

The proper officer shall determine the amount within—

(a) six months from the date of notice in respect of cases where duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any

interest has been paid, part-paid or erroneously refunded, for any reason other than the reason of collusion or any willful mis-stated or suppression of facts.

- (b) within one year from the date of notice in respect of cases where reasons for non-levy, short levy or erroneous refund are collusion, any willful misstatement or suppression of facts.

“relevant date” means—

- (a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under Section 18, the date of adjustment of duty after the final assessment thereof;
- (c) in a case where duty or interest has been erroneously refunded, the date of such refund;
- (d) in any other case, the date of payment of duty or interest.

For removal of doubts it is declared that, where a notice under clause (a) of sub-section (1) or sub-section (4) of section 28, has been served but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 received the assent of the President, i.e. 14th May, 2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the case may be, is made in full within 30 days from the date on which such assent is received

POWER NOT TO RECOVER DUTIES NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE (SECTION 28A)

(1) Notwithstanding anything contained in this Act, if the Central Government is satisfied –

- (a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and
- (b) that such goods were, or are, liable -
 - (i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or
 - (ii) to a higher amount of duty than what was, or is being, levied, according to the said practice, then,

the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27:

However, where the person is claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.

INTEREST ON DELAYED PAYMENT OF DUTY (SECTION 28AA)

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty. The Central government has fixed the rate of interest at fifteen per cent. per annum w.e.f 1.4.2016 under the section.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.”.

RECOVERY OF DUTIES IN CERTAIN CASES (SECTION 28AAA)

Section 28AAA(1) Instruments obtained by collusion, willful misstatement or suppression of facts for the purpose of Customs Act/Foreign Trade (Development & Regulation) Act and utilized will be subject to action for recovery.

The amount is recoverable from the person to whom such instrument was issued.

As per Proviso to Section 28AAA(1), importer may also be subject to action under Section 28.

Explanation 1: Instrument means any scrip, authorization, license or certificate issued under FTDR Act with respect to a reward scheme under Foreign Trade Policy.

Explanation 2: This section is applicable to utilization made after the Finance Act, 2012 became effective.

(2) Interest @18% is also payable from the date of utilization of the instrument till the date of recovery.

(3) A show cause notice has to be issued by proper officer for recovery.

- A 30 days time shall be given to respond and make representation if any.
- Order should be passed by giving opportunity of being heard for recovery of duty, interest or both.
- The amount in the order passed shall not exceed the amount specified in the show cause notice.
- The amount shall be paid within 30 days of receiving the order.
- Interest is payable whether specifically mentioned in the order or not.

(4) An order need not be passed separately if an order has been passed under Section 28.

(5) The amount if not paid within 30 days, shall be recovered under Section 142(1).

Difference between refund under Section 26, 26A and 27

Section 26 deals with refund of export duty which is rarity. It is granted under the conditions that the goods same goods by same party were re-imported within 1 year and an application was made for refund within 6 months. Moreover, doctrine of unjust enrichment is not applicable to this refund.

Section 26A on the other hand is the refund of import duty in special cases though limitation period to claim the refund under this section is also 6 months.

Section 27(1) deals with general cases of refund (other than those under Sections 26 and 26A) and it is more procedural in nature. Under this, limitation period is 1 year for all claimants. Moreover, refund in majority of cases is subject to doctrine of unjust enrichment.

Section 27(2) gives the list of instances where refund is possible. Those instances include both the cases which undergo the test of doctrine of unjust enrichment and which do not require to take the test.

Duties collected from the buyer to be deposited with the Central Government (Section 28B)

(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder, every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

(1A) Every person who has collected any amount in excess of the duty assessed or determined or paid on any goods or has collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1A), as the case may be, and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (1A) or sub-section (3) as the case may be, shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in subsection (1) or sub-section (1A).

(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and such person may make an application under that section in such cases within

six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount.

Provisional attachment to protect revenue in certain cases (Section 28BA)

(1) Where, during the pendency of any proceeding under section 28 or section 28B, the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Principal Commissioner or Commissioner of Customs as the case may be, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (4) of section 28, as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Principal Chief Commissioner or Chief Commissioner of Customs as the case may be, may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso.

PRICE OF GOODS TO INDICATE THE AMOUNT OF DUTY PAID THEREON (SECTION 28C)

Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

PRESUMPTION THAT INCIDENCE OF DUTY HAS BEEN PASSED ON TO THE BUYER (SECTION 28D)

Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

SELF TEST QUESTION

(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).

1. How is the 'assessment value' of imported goods determined for the purpose of levying of Import duties under the Customs Act, 1962? Is there any change in the law in this regard in the recent past? Explain.
2. What cost elements constitute the value of imported goods for the purpose of assessable value?
3. What is the concept of 'Transaction Value' introduced through the newly enacted Valuation Rules, 1988?
4. Under what circumstances 'Transaction Value' may not be accepted for valuation of

imported goods?

5. How is the custom duty levied in case imported goods are pilfered before clearance?
6. How is the rate of Duty and Tariff Valuation determined in case of imported goods?
7. How is the rate of duty determined in case of export goods?
8. What is the procedure of assessment of Customs Duty in case of import and export of goods?
9. What are the circumstances under which customs duties may be assessed provisionally?
10. What is the procedure and conditions of provisional assessment of customs duties?
11. How is the customs duty determined where goods consist of articles liable to different rates of duty?
12. State the circumstances when the abatement of customs duty may be allowed under the Act?
13. What are the provisions with regard to levying of duties of customs on goods found derelict, wreck, etc. on importation?
14. What are the provisions of Customs Act, 1962 with regard to remission of duty on lost, destroyed or abandoned goods ?
15. What are the provisions of Customs Act, 1962 with regard to grant of exemption from custom duty ?
16. State the circumstances and reasons for providing of exemptions from customs duty under the Customs Act, 1962.
17. Who has the power to grant exemptions of customs duty and what kinds of exemptions can be granted within the provisions of Customs Act, 1962?
18. State the circumstances under which refund of export duty is permitted.
29. When can the claim for refund of customs duty be made and what is the procedure for the same?
20. What are the provisions under the Customs Act, 1962 regarding recoveries of duties with retrospective effect? State the circumstances and reasons.

SUGGESTED READINGS:

- (1) Customs Law Manual — *R.K. Jains*
- (2) *Indirect Taxes Law and Practice* — *V.S. Datey*

Lesson 6

Customs Law

Arrival or Departure and Clearance of Imported or Export Goods, Warehousing, Duty Drawback, Baggage and Miscellaneous Provisions

LESSON OUTLINE

This lesson is divided into the following parts:

- I Arrival or Departure and Clearance of Imported or Export Goods
- II Warehousing, Duty Drawback, Baggage and Miscellaneous Provisions

LEARNING OBJECTIVES

The Custom duty derived its value from the word "custom" under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king. Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period. After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Indian Customs Act, 1934 was repealed by the [Customs Tariff Act, 1975\(CTA\)](#).

At the end of this lesson, the students will

- Familiar with the provision related to Arrival or Departure and Clearance of Imported or Export Goods

Familiar with the warehousing, duty drawback and baggage provisions

As per the Customs Act, 1962 the Central Board of Excise and Customs (the Board) has been given the powers to appoint Customs Ports, Airports and Inland Container Depots (ICD), where the imported goods can be brought in for unloading or loading of export goods. Similarly, powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods imported or exported by land or by inland water.

CUSTOMS LAW

PART I: ARRIVAL OR DEPARTURE AND CLEARANCE OF IMPORTED OR EXPORT GOODS

After completion of this part the students will

- Understand the procedure for import and export of goods
- Be familiar with the types of documents used for import and exports

- Have clear understanding of the arrival or departure provisions

INTRODUCTION

Goods are imported in India or exported from India through sea, air or land. Goods can come through post parcel or as baggage with passengers. Different procedures are there for import and export of goods by different mode of transportation.

The word conveyance is defined in section 2(9), "Conveyance includes a vessel, an aircraft and a vehicle".

As per section 2(42), the word "Vehicle" means conveyance of any kind used on land and includes a railway vehicle.

Here in this part, the provisions pertaining to import or export of goods through vessel or aircraft are discussed and the import and export of goods through post or as baggage with passenger are discussed in other parts.

This part is divided in three sub-parts namely;-

- I. Provisions relating to conveyances carrying imported or export goods (Section 29 to 43)
- II. Clearance of Imported goods and Export goods (Sections 44 to 51)
- III. Goods in transit (Section 52 to 56)

SECTIONS	CONTENT OF THE SECTIONS
Sections 29-36	Arrival of Ship/ Air Craft and unloading of Imported Goods
Sections 37-38	Powers of The Proper Officer to Board Conveyances and Ask Questions
Sections 39-43	Duties and Responsibilities of Conveyances in Export of Goods
Sections 44-49	Clearance of Imported Goods
Sections 50-51	Clearance of Export Goods
Sections 52- 56	Transit And Transshipment of Goods

I. PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORT GOODS

Chapter VI contains section 29 to 43 prescribing the provisions for arrival or departure of goods by vessel or aircraft. Let's understand some important terms before moving to the main procedure of arrival or departure of goods.

1. **"Customs airport"** means any airport appointed under clause (a) of section 7 to be a customs airport [Section 2(10)].
2. **"Customs area"** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11)].
3. **"Customs port"** means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot [Section 2(12)].
4. **"Customs station"** means any customs port, customs airport or land customs station [Section 2(13)].

Section 7 of the Customs Act, 1962 envisages that the unloading/clearance of imported goods and loading/clearance of export goods shall be allowed only at places notified by the Board as Customs ports or Customs airports or Land Customs Stations or Inland Container Depots. At each such Customs ports or airport, the Commissioner of Customs is empowered to approve proper places for the unloading and loading of goods, and specify the limits of such Customs area under section 8 of the Act. It is further provided vide Section 29 ibid that the person in charge of the vessel or an aircraft shall not call or land at any place other than a Customs port/airport, except in cases of emergencies.

5. **'Import'** with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Section 2(23)].
6. **'Import goods'** means "any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption" [Section 2(25)].
7. **'Importer'** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer [Section 2(26)].
8. **'Import Manifest'** or **'import report'** means the manifest or report required to be delivered under section 30. [Section 2(24)]
9. **"Person-in-charge"** means, -
 - (a) in relation to a vessel, the master of the vessel;
 - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance; [Section 2(31)]
10. **"Land Customs Station"** means any place appointed under clause (b) of section 7 to be a land customs station [Section 2(29)]

The organisations which play vital roles in the clearance of Import cargo are:

- (i) **The Steamer Agents/Airline Companies** as the case may be (who are "appointed by the person in charge of a conveyance and who represent to any officer of Customs as an agent, (Section 148) who transport the goods to India, (carriers).
- (ii) **The Port Trust Authorities or International Airport Authorities of India (IAAI)** (in case of air consignments) who are approved by the Principal Commissioner of Customs as Custodians of Imported Cargo, (Section 45) who act as bailees and are responsible for the receipt, storage, custody and delivery of the goods, after the customs formalities are complied with by the Importers.
- (iii) **The Custom House Agents** now renamed as customs brokers, who are licenced by the Principal Commissioner of Customs (Section 45) to carry on business as an agent relating to the entry or departure of a conveyance or the Import or the Export of goods at any customs station. The agents are licensed in accordance with the Custom House Agents (Licensing) Regulations which inter alia provide for:
 - (a) the validity of any such licence, the fees payable therefore;
 - (b) the qualification of persons who may apply for a licence;
 - (c) the qualifications of persons to be employed by a licensee to assist him in his work as an agent;

- (d) the restrictions and conditions subject to which a licence may be granted.
- (iv) **The Custom Houses** comprising particularly Customs Officers of the Appraising Department, viz., the Deputy Commissioner, Appraisers, Examiners and supporting ministerial staff as well as various other units in the Customs House.

PROVISIONS RELATING TO ARRIVAL OR DEPARTURE OF GOODS

(1) NOT TO LAND AT ANY PLACE OTHER THAN CUSTOMS PORT OR CUSTOMS AIRPORT (SECTION 29)

The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land at any place other than a customs port or a customs airport -

- (a) for the first time after arrival in India; or
- (b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft as the case may be, unless permitted by the Board.

However, any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft -

- (a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;
- (b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and
- (c) shall comply with any directions given by any such officer with respect to any such goods, and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft :

The departure of any crew or passengers shall not be prohibited from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

(2) DELIVERY OF IMPORT MANIFEST (SECTION 30)

In accordance with Section 30 of the Customs Act, 1962 the person in charge (Master / Agent) of the vessel or an aircraft has to deliver an import manifest electronically (an import report in case of a vehicle), prior to arrival in the case of a vessel and an aircraft or within 12 hours of arrival in case of a vehicle in the prescribed form. The time limit for filing the manifest is extendable on showing sufficient cause, but otherwise a penalty not exceeding ₹ 50,000/- can be imposed on account of any delay. A person filing the manifest/report declarations under this section has to declare the truthfulness of contents, which has legal consequences.

Now, it is mandatory to file Import manifest electronically. However, the commissioner of Customs may in cases where it is not feasible to deliver import manifest by presenting electronically allow the same to be delivered in any other manner.

The forms of the Import Manifest are prescribed in the Import Manifest (Vessels) Regulations, 1971 and Import Manifest (Air Craft) Regulations, 1976, which have been made under Section 157 of the Customs Act, 1962.

In practice the Steamer Agents, acting on behalf of the Master of the Ship, file the Import Manifest in the Import Department of the Customs House before the actual arrival of the ship

at the port. This is done to enable the importers to file their documents and complete as much of the Customs formalities as possible, before the arrival of the ship so that, there is no delay in the clearance of the cargo when they are landed. Proviso (a) to Section 30(1) of the Customs Act provides for presentation of Import Manifest even before the arrival of the Steamer.

The Import Manifest is required to be delivered in duplicate in the Import Department with full particulars in respect of the following:

- (i) General declaration (giving information mainly about the vessel, its Master, number of crew, passengers);
- (ii) Cargo declaration;
- (iii) Vessel's Store List; and
- (iv) List of private property in the possession of Master, Officers and Crew.

Separate particulars are required to be furnished in the cargo declaration in respect of:

- (a) Cargo to be landed;
- (b) Same Bottom Cargo - 'Cargo in transit';
- (c) Cargo for transshipment; and
- (d) Unaccompanied Baggage.

The information required to be given with regard to the Cargo to be landed at the Port, includes identifying particulars (marks and numbers) of the packages etc. The Serial Number in the Manifest for a particular consignment is known as the "Line number" of the Manifest. The documents filed for clearance bear this line number for purposes of co-relating the clearance documents with the entry in the Manifest.

Steamer Agents acting on behalf of the master of the vessel are accountable to the department for all the goods mentioned in the Manifest as for import into India (Section 116 of the Customs Act, 1962). Steamer Agents in this regard file undertaking(s) and also a guarantee to pay any penalty that may be imposed under Section 116, if they do not account for, to the satisfaction of the Assistant Commissioner of Customs, or for their failure to unload any goods or for any deficiency in the unloaded goods.

In regard to Air Consignments, the 'Import Cargo Manifest' is presented in Triplicate or Quadruplicate by the persons concerned immediately on landing of the Aircraft and the cargo as detailed in the Manifest as intended for landing are checked by the Customs Officers (Import Freight Officers of the Preventive formation) and then made over for custody to the International Airports Authority of India (IAAI).

The cargo manifest is then sent to the Customs Appraising Formation (Air Cargo Complex) by the Import Freight Officer.

Now, E-filing of import manifest is mandatory.

Assignment of Import Rotation Number

On receipt of the Import Manifest in the Import Department of the Customs House and at the Air Cargo Complex as the case may be, it is checked and an import rotation number assigned to the vessel/Aircraft for the particular voyage. The rotation number is the running serial number for each calendar year in respect of the Manifest filed.

Passenger and crew arrival manifest and passenger name record information [Section 30A]

(1) The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer:

- i. the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and
- ii. the passenger name record information of arriving passengers,

in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding fifty thousand rupees, as may be prescribed.

Insertion of Section 30A in the Customs Act:

New Section 30A has been introduced to make it obligatory on the person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and passenger name record information of arriving passengers in such form, containing such particulars, in such manner and within such time as may be prescribed. The said section also intends to provide for imposition of a penalty not exceeding Rs. 50,000/- as may be prescribed, in the case of delay in delivering the information.

(3) IMPORTED GOODS NOT TO BE UNLOADED FROM VESSEL UNTIL ENTRY INWARDS GRANTED (SECTION 31)

The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

(4) IMPORTED GOODS NOT TO BE UNLOADED UNLESS MENTIONED IN IMPORT MANIFEST OR IMPORT REPORT (SECTION 32)

No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

(5) UNLOADING AND LOADING OF GOODS AT APPROVED PLACES ONLY (SECTION 33)

Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

(6) GOODS NOT TO BE UNLOADED OR LOADED EXCEPT UNDER SUPERVISION OF CUSTOMS OFFICER (SECTION 34)

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

However, the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

(7) RESTRICTIONS ON GOODS BEING WATER-BORNE (SECTION 35)

No imported goods shall be water-borne for being landed from any vessel and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form.

However, the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

(8) RESTRICTIONS ON UNLOADING AND LOADING OF GOODS ON HOLIDAYS, ETC. (SECTION 36)

No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any.

However, no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

(9) POWER TO BOARD CONVEYANCES (SECTION 37)

The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

(10) POWER TO REQUIRE PRODUCTION OF DOCUMENTS AND ASK QUESTIONS (SECTION 38)

For the purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

(11) EXPORT GOODS NOT TO BE LOADED ON VESSEL UNTIL ENTRY-OUTWARDS GRANTED (SECTION 39)

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

(12) EXPORT GOODS NOT TO BE LOADED UNLESS DULY PASSED BY PROPER OFFICER (SECTION 40)

The person-in-charge of a conveyance shall not permit the loading at a customs station -

- (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;
- (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

(13) DELIVERY OF EXPORT MANIFEST OR EXPORT REPORT (SECTION 41)

The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest electronically and in the case of a vehicle, an export report, in the prescribed form.

The export manifest may be presented in manner other than electronically if it is allowed by Principal Commissioner of customs.

The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

(14) NO CONVEYANCE TO LEAVE WITHOUT WRITTEN ORDER (SECTION 42)

The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

No such order shall be given until -

- (a) the person-in-charge of the conveyance has answered the questions put to him under section 38;
- (b) the provisions of section 41 have been complied with;
- (c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;
- (d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
- (e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
- (f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, -
 - (i) such goods have been unloaded, or
 - (ii) where the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

(15) EXEMPTION OF CERTAIN CLASSES OF CONVEYANCES FROM CERTAIN PROVISIONS OF THIS CHAPTER (SECTION 43)

The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.

The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter -

- (a) conveyances belonging to the Government or any foreign Government;
- (b) vessels and aircraft which temporarily enter India by reason of any emergency.

II. CLEARANCES OF IMPORTED GOODS AND EXPORT GOODS (SECTION 44 TO 51)

Chapter VII contains the provisions pertaining to clearances of imported or export goods under section 44 to 51. As per Section 44, the provisions of this chapter shall not apply (a) Baggage and (b) Goods imported or to be exported by post.

The following terms need to know before moving to the provisions of clearances:

1. "bill of entry" means a bill of entry referred to in section 46 [Section 2(4)]
2. "bill of export" means a bill of export referred to in section 50 [Section 2(5)]
3. "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 [Section 2(16)]

ENTRY OF GOODS ON IMPORTATION (SECTION 46)

Entry of goods on importation: (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented within thirty days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

BILL OF ENTRY

The Bill of Entry inter alia, has columns for indicating description of goods, value, quantity, marks and numbers, country of origin etc.

Kinds of Bills of Entry

There are three kinds of Bills of Entry viz., (i) Bill of Entry for Home-consumption (White Colour) (ii) Warehousing (into-Bond) Bill of Entry (Yellow Colour) (iii) Bill of Entry for Clearance 'Ex-Bond' (Green Colour).

Forms of the Bill of Entry

The home-consumption Bill of Entry which is printed on white paper is referred to as "white Bill of Entry", the "into Bond" or "Warehousing Bill of Entry" is printed on yellow paper and "ex-bond" is printed on green paper. Each Bill of Entry has to be filed in quadruplicate. The columns in original are printed in black, in blue in duplicate and in violet in triplicate and in green in quadruplicate.

Circular No. 16/ 2012 Cus dated 13-06-2012 provides for procedure followed for import of Indian vessels and filing of import manifest, Bill of Entry.

Section 29 of the Customs Act, 1962 read with Section 2(22) and 2(25), the term 'imported goods', *inter alia*, includes vessels entering India from any place outside the country (India). These vessels may fall into any of the following category (i) Foreign flag vessels i.e., vessels that have been registered outside India and which carry imported/ exported goods or passengers, during its foreign run (voyage from a port outside India to an Indian port, whether touching any intermediate port in India or not); (ii) Vessel entering India for the first time on arrival in the country, for registration as Indian Flag vessel; (iii) Vessels which are intended for conversion from foreign run to coastal run/ trade (voyage between two or more Indian ports); and (iv) Vessels which are brought into India for breaking up.

Foreign flag vessels: These are the vessels that are registered abroad and its entry into the country is for carrying cargo or passengers, as a conveyance. Hence, there is no requirement for filing an IGM, Bill of Entry for foreign flag vessel which is being used as conveyance. However, the requirement for filing an import manifest in the prescribed manner for the goods or passengers which are being carried in the vessel, on its entry into an Indian port in terms of the provisions under Section 30 of the Customs Act needs to be complied with.

Indian Flag Vessel: In terms of the provisions of Part-V of the Merchant Shipping Act, 1958, vessels entering into India for the first time, are required to be registered with specified authority of the Mercantile Marine Department as Indian ship, which can then display the national character of the ship as Indian Flag Vessel for the purpose of Customs and other purposes specified in the said Act. Such Indian ship or vessel may be used for foreign run or exclusively for coastal run/ trade. Further, any ship or vessel may be taken outside India or chartered for coastal trade in India, only after obtaining the requisite licence from the Director General of Shipping, under the provisions of Section 406 or 407, respectively, of the said Merchant Shipping Act. Hence, in all such cases the Customs declarations such as IGM, Bill of Entry is required to be filed with jurisdictional Customs authority.

Vessels for conversion into coastal run: Any vessel could be used for coastal run/ trade after obtaining requisite clearance from Director General of Shipping and on fulfilment of certain specified conditions under Section 407 of the Merchant Shipping Act, 1958. In case of foreign going vessel, exemption from import duties, including CVD, have been extended vide serial No.462 of notification No.12/2012-Cus. dated 17.03.2012, subject to prescribed conditions,

which binds the importer to file fresh Bill of Entry at the time of its conversion for coastal run/ trade and payment of applicable duty on such conversion of vessel for coastal run/ trade. Similarly, excise duty is also payable on vessels which are being used for coastal trade vide serial No.306 of notification No.12/2012-Cus. dated 17.03.2012. Hence, if any Indian Flag vessel which is used for time being as foreign going vessel is converted for use in coastal trade or any vessel which is to be used for coastal trade, there is a need to file a Bill of Entry for payment of applicable duty as CVD.

Vessels for breaking up: Vessel and other floating structures intended for breaking up are liable to payment of applicable duty. All vessels for the transport of persons or goods, falling under heading 8901 (excluding those which are imported for breaking up) are fully exempt from payment of import duty under vide serial No.461 of notification No.12/2012-Cus. dated 17.03.2012, subject to the condition that the importer should file fresh Bill of Entry at the time of its breaking up of the vessel after its importation. Hence, in these cases the importer has to file an IGM and Bill of Entry, claiming the exemption as may be applicable, at the time of initial import and later file fresh Bill of Entry at the time of breaking up of the vessel as per the condition attached to the aforesaid exemption.

In view of the above, it is clarified that in respect of foreign flag vessels, for Indian flag vessels, there is no requirement of filing of IGM and Bill of Entry, since its usage is as conveyance. In respect of Indian flag vessels and vessels for breaking up as explained in para 3.3 and 3.5 above, the importer has to file IGM and Bill of Entry, under the provisions of the Customs Act, 1962. As regards the vessel for conversion into coastal run/ trade as detailed in para 3.4, since the changes in the duty structure for levy of CVD on vessels which are being converted for coastal trade was initially imposed from 1.3.2011, and subsequently retrospective exemption has been provided for the period 1.3.2011 to 16.3.2011 vide clause 129 of the Finance Act, 2012, the requirement for filing IGM and Bill of Entry may be insisted in all such cases w.e.f. 17.03.2012, that is the date from which levy of CVD has come into force.

It is also clarified that all vessels including foreign going vessels for its entry into / exit from the country during its journey as foreign going vessel and the Indian flag vessel / Indian Ship for subsequent use as foreign going vessel would not require filing of IGM and Bill of Entry as conveyance, since the same are not imported goods to be cleared for home consumption.

Accordingly, the field formations may adjudicate the cases involving any violation where the IGM or Bill of Entry in respect of import of vessel were not filed at the time of import, on its first arrival in India or on its conversion into coastal trade and appropriate penal action be taken against the offenders.

The above instructions may be brought to the notice of all the concerned immediately through appropriate Public Notice.

The following basic documents are to be filed along with the Bill of Entry:

1. Invoice.
2. Indent and acceptance correspondence pertaining to the Imported goods.
3. Bill of Lading in respect of sea-consignments/Airway Bill in respect of Air Consignments.
4. Letter of credit or Bill of exchange.
5. Insurance policy or Insurance certificate.
6. Import licence (Customs purpose copy).
7. Small Scale Industries Certificate in respect of Imports sought to be covered under

Open General Licence (OGL) and Imports subjected to Actual Users (AU) conditions.

8. Catalogue, drawing, write up, analysis certificate as the case may be, in respect of the goods sought to be cleared.
9. Any other connected/relevant document.

Important Notes: Bill of Entry submitted under Section 46 for clearance of imported goods and shipping bill submitted for export of goods require to be filed electronically.

PROCEDURE OF BILL OF ENTRY UNDER E-FILING [BILL OF ENTRY (ELECTRONIC DECLARATION) REGULATIONS, 2011]

Notification No. 79/2011 – Cus (N.T.), Dated 25.11.2011 prescribes the procedure of bill of entry under E-filing [Bill of Entry (Electronic Declaration Regulations), 2011]

The following terms are defined under this notification as under:

- (a) "authorised person" means an importer or a person authorised by him who has a valid licence under the Customs House Agents Licensing Regulations, 2004;
- (b) "annexure" means annexure to these regulations;
- (c) "bill of entry" means electronic declaration accepted and assigned a unique number by the Indian Customs Electronic Data Interchange System, and includes its print-outs;
- (d) "electronic declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System;
- (e) "ICEGATE" means Indian Customs Electronic Data Interchange Gateway, an e-commerce portal of the Central Board of Excise and Customs;
- (f) "service centre" means the place specified by the Commissioner of Customs where the data entry of an electronic declaration, is carried out;

The authorised person may enter the electronic declaration in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service centre by furnishing the prescribed particulars.

The bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

After the completion of assessment, the authorised person shall present the original bill of entry (customs copy) and duty-paid challan and supporting import documents to the proper officer of customs for making an order permitting clearance, after examination of the imported goods if so required.

After making an order under regulation 5, the proper officer shall generate duplicate bill of entry (importer's copy) and the triplicate bill of entry (exchange control copy).

The original bill of entry (customs copy) along with supporting import documents shall be retained by the proper officer of customs and after suitable endorsements the duplicate bill of entry (importer's copy) and the triplicate bills of entry (exchange control copy) shall be handed over to the authorized person.

RESTRICTIONS ON CUSTODY AND REMOVAL OF IMPORTED GOODS (SECTION 45)

All imported goods unloaded in a customs area shall remain in the custody of such person as

may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped.

The person having custody of any imported goods in a customs area -

- (a) shall keep a record of such goods and send a copy thereof to the proper officer;
- (b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

If any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person, that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

CLEARANCE OF GOODS FOR HOME CONSUMPTION (SECTION 47)

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Sub-section (2) of Section 47 has been amended as follows: The importer shall pay the import duty:

- a) on the date of presentation of the bill of entry in the case of self assessment; or
- b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
- c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent but not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that] where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section.

Provided also that] if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

This is to provide the manner of payment of duty and interest thereon in the case of self-assessed bills of entry or, as the case may be, assessed, reassessed or provisionally assessed bills of entry.

PROCEDURE IN CASE OF GOODS NOT CLEARED, WAREHOUSED, OR TRANSHIPPED WITHIN THIRTY DAYS AFTER UNLOADING (SECTION 48)

If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof.

However, the time period of 30 days shall not be applicable in the following cases:

- (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
- (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE (SECTION 49)

Storage of imported goods in warehouse pending clearance or removal:

Where:

- a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;
- b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time,

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days.

Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time

CLEARANCE OF EXPORT GOODS

While there is very urgent need to promote exports and earn the most needed valuable foreign exchange/it does not necessarily mean that the export goods can be allowed without restriction and/or, without observing any formalities.

Export should be in accordance with rules and regulations to be implemented "at the point of exit" and the authority which can enforce such rules and regulations is the Customs Department. The following are the provisions pertaining to Exports of goods under Customs Act:

ENTRY OF GOODS FOR EXPORTATION (SECTION 50)

The exporter of any goods shall make entry thereof by presenting electronically to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

However, the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.

The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

- (i) The Customs allow imports/exports only through authorised places along the coast/across the land frontier and by air. For this purpose "customs ports", "customs Airports", "land customs stations" are notified by the Central Govt. under Section 7(a), (b) and (c) Customs Act, 1962.
- (ii) The master of the vessel should not permit loading of the cargo before 'Entry Outwards' is granted by the Customs Department and export cargos can be taken on board the vessel or aircraft or a vehicle (for the land route), only under cover of a duly passed Shipping Bill/Bill of export with the permission of the proper (Customs) officer - (vide Sections 39 and 40 of the Customs Act, 1962).
- (iii) In terms of Section 50 of the Customs Act, 1962 a shipping Bill or Bill of Export (in respect of exports through land route) is to be filed by the exporter or his authorised agent, in the prescribed form [prescribed under Shipping Bill and Bill of Export (Form) Regulations 1976 made under Section 157 of the Customs Act, 1962]
- (iv) The Shipping Bill so filed should be assessed. The term "assessment" as defined under Section 2(2) of the Customs Act includes assessment to `nil' duty also. Under Section 18 of the Customs Act, 1962 provisional assessment to duty of goods meant for export is possible under the circumstances indicated in that section. Thereafter the goods shall be examined physically and permitted shipment by means of passing on the shipping bill a 'Let Export' or 'Let Ship' order.
- (v) The 'assessable value' for export as declared in the shipping bill should be in accordance with the provisions of Section 14 of the Customs Act, 1962. (Declared value is subject to verification as to its correctness or otherwise by Customs authorities).
- (vi) For assessing the goods for export to duty and granting an order of 'Let Export' under Section 51 of the Customs Act, the export goods, should not be "prohibited goods" - prohibited for export under the Customs law or prohibited for export under any other law for the time being in force - The Customs Department in pursuance of Section 11(2)(u) of the Customs Act, 1962 is also empowered to prevent the contravention of any other law noticed in the course of export.
- (vii) Power to confiscate the export goods, "attempted to be improperly exported" etc. has been endowed on the Customs Department under Section 113(a) to (l) of the Customs Act, 1962.
- (viii) Under Section 114 of the Customs Act, "penalty for attempt to export goods improperly", on persons concerned could be imposed (in addition to confiscation of the goods), not exceeding five times the value of the goods.
- (ix) It is also provided in Section 127 of the Customs Act, that award of confiscation and penalty by Customs shall not prevent infliction of any punishment by way of prosecution (in deserving deliberate and grave offences) under Section 132 and 135 read with Section 137 of the Customs Act, 1962.

CLEARANCE OF GOODS FOR EXPORTATION (SECTION 51)

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under

this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette."

DOCUMENTATION FOR EXPORT

For effecting shipments, the exporter or his agents should file a shipping bill electronically (Section 50 of the Customs Act), (the quadruplicate copy is filed for purposes of Export promotion). These shipping bills could be filed in the Custom House or Air Cargo Complex, 14 days before the arrival of the loading vessel/aircraft. However, the commissioner of customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. Steamer agents normally file applications in the custom House in advance of 'grant of Entry outwards' of the vessel. In the application they furnish, the particulars of the vessel viz. Name, Nationality, Tonnage, the port for which the vessel will load cargo, the nature of cargo, etc. Immediately on presentation of the application, a number called 'Rotation No.' (Export Manifest No. or Export General Manifest No.) is assigned. After the compliances of the above requirements the exporters or their agents may present the shipping bills for the export of their goods. Subsequently, after arrival of the vessel and when she is about to start loading export cargo, orders for 'Entry Outwards' are given by the Customs Authorities. In terms of Section 39 of the Customs Act, the person in charge of the vessel should not allow loading of cargo before the grant of Entry outwards. The facility afforded to the intending Exporters to file shipping bills immediately after the filing of "Application for Entry outwards" by steamer agents, which is normally done 14 days ahead of the arrival of the vessel, is to enable the exporters to complete all the customs formalities and keep the goods ready for loading.

(a) Documents to be filed along with the Shipping Bill

1. G.R.(Guarantee Remittance)/SDF (Statutory declaration Form, used in e-filing) form in duplicate in respect of exports to all countries except Afghanistan and Pakistan.

Note: To Pakistan and Afghanistan - EP forms in triplicate are to be prepared in lieu of GR forms and are to be filed along with the shipping bill, with the approval of the Reserve Bank of India.
2. Four copies of Export Invoices/ indicating all particulars such as, the number of packages, quantity, unit price, full description of the goods value in total, CIF; FOB or C&F, as the case may be.
3. Packing List.
4. Export Contract; Letter of Credit and all connected correspondence.
5. Inspection/Examination certificates from Agmark grading authorities in respect of agricultural commodities.
6. Pre-shipment and compulsory quality control certificates in respect of goods covered under the compulsory quality control and preshipment inspection scheme (under the

Export (Quality Control and Inspection) Act, 1963).

7. ARE-1 or ARE-2 as applicable under Rules 18 or 19, Central Excise Rules, 2002 Forms (Application for Removal of Excisable Goods for Export) in duplicate duly completed in all respects for the export of excisable goods.
8. In regard to 'handicraft exports' items which fall under the category "India items" e.g., wall hangings/woolen carpets/mirror or bidriware/ etc. should be covered by a certificate issued by All India Handicrafts Board.
9. Garments and Textile for their export, should be validly covered by an "Inspection Certificate" from the Textile Committee. In addition, for export to USA "visas" should also be endorsed by the Textile Committee in the format "Special Customs Invoice".

In addition, the exporter should make and subscribe to a declaration at the bottom of the copies of shipping Bills as to the truth of the contents, in terms of Section 50(2) of the Customs Act, 1962 and other laws.

(b) Kinds of Shipping Bill

There are four categories of shipping bills viz. those

- (i) for Free goods;
- (ii) for Dutiable goods, assessable to duty and/or cess;
- (iii) for shipment under claim for drawback (Green Shipping bill); and
- (iv) for shipment from bond i.e., 'Ex-bond'.

Notification No. 80/2011- Cus (N.T.), Dated 25.11.2011 prescribes the **Shipping Bill (Electronic Declaration) Regulations, 2011**.

These Regulations shall apply to export of goods from all customs stations where the Indian Customs Electronic Data Interchange System is in operation.

The Following terms are defined under this regulation as under:

- (a) "authorised person" means an exporter or a person holding a valid licence under the Custom House Agents Licensing Regulations, 2004 and authorised by such exporter;
- (b) "annexure" means annexure to these regulations;
- (c) "electronic declaration" means particulars relating to the export goods entered in the Indian Customs Electronic Data Interchange System;
- (d) "ICEGATE" means Indian Customs Electronic Data Interchange Gateway, an e-commerce portal of the Central Board of Excise and Customs;
- (e) "service centre" means the place specified by the Commissioner of Customs where the data entry for an electronic declaration, is carried out;
- (f) "shipping bill " means an electronic declaration accepted and assigned a unique number by the Indian Customs Electronic Data Interchange System, and includes its print-outs;

The authorised person may enter the electronic declaration in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service centre by furnishing the prescribed particulars.

The shipping bill shall be deemed to have been filed and where applicable self assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service

centre, a number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

The checklist together with the supporting export documents and challan evidencing payment of duty and/or cess, if any, shall be presented to the proper officer of customs for making an order permitting clearance, for loading of goods for exportation, after examination of the export goods if so required.

After making an order, the proper officer shall generate the original (customs copy), exporter's copy, exchange control copy and the export promotion copy of shipping bills.

The original (customs copy) of the shipping bill and the checklist shall be retained by the proper officer. The exporter's copy exchange control copy and the export promotion copy of shipping bill shall after suitable endorsements be handed over to the authorised person. Transference copies of shipping bill shall be generated wherever necessary.

EXPORT GOODS AND TARIFF SCHEDULE

The goods are properly classified for collection of export duty (under Second Schedule to Customs Tariff Act, 1985 – Export Tariff) and Cess (under Cess schedule) as the case may be, by indicating the rates there against. The Export Tariff is a selective Tariff and contains only 49 items. Articles not covered by any of these 49 items are not leviable to Export duty. Even in respect of these 49 items, the effective rate of duty has to be determined with reference to 'exemption notifications' issued under Section 25 of the Customs Act. Thus, very few items are actually liable to duty on export. The purpose/intention of the Government in having a "selective tariff" on the Export side is not to burden the Export goods with "duty" which would/may render them, not competitive, to whatever little extent, in foreign markets. Export duty is, therefore, levied and collected mostly on items in respect of which India enjoys a sellers market.

Commodities, as enumerated in the Cess Schedule, which forms part of the Customs Tariff (Working Schedule) attract cesses under various enactments (as detailed thereunder). Most of the commodities mentioned in the cess schedule require levy of cess at 1/2% ad-valorem (in addition to Export duty wherever export duty in respect of the commodity is leviable). In respect of some of the commodities "tariff values" are fixed by the Ministry (as indicated in the cess schedule) with effect from the first July of every year. In such cases/ the cess is calculated on the "tariff value" irrespective of the "invoice value".

The assessable value of Export goods leviable to *ad valorem* duties (other than tariff valued items) is always the FAS (Free Alongside) values. In the shipping Bill this is indicated as "Real Value" also. This is derived from the contract value or the price contracted upon for export, between the Indian Exporter and the Foreign buyer. If the contracted price is anything other than FAS, then the value for customs purposes-FAS (the price for delivery at the place of Exportation - Section 14 of the Customs Act, 1962) is arrived at and duty is calculated on the FAS value so arrived at.

SHIPMENT (EXPORT) UNDER CLAIM FOR DRAWBACK

The term 'drawback' is applied to certain amount of duties of customs, sometimes the whole, sometimes only a part, paid back by Government on the exportation of commodities on which they were levied. To entitle goods to drawback, they must be exported to a foreign port, the object of the relief afforded by the drawback being to enable the goods to be disposed of in the foreign market as if they have never been taxed at all.

For Customs purposes "drawback" means the refund of custom duty, service tax and the Central Excise duty that are chargeable/charged on imported and indigeneous materials and

services used in the manufacture of goods exported.

From the point of view of "Export Promotion" it is a relief of duty given to exporters, both manufacturer and merchant exporters.

There are two categories of materials which are used in the manufacture of goods exported, namely imported and indigenous. Consequently, drawback is to be paid in respect of three types of taxes: Import duty, service tax and Excise duty.

The provisions relating to drawback are enumerated in Chapter X, Sections 74 to 76 of the Customs Act, 1962. Of these, Section 75 deals with the payment of "drawback on Imported materials used in the manufacture of goods which are exported".

Under Section 75(2) of the Customs Act, 1962, the Central Government is empowered to make rules for payment of drawback and such rules provide:

- (a) for the payment of drawback equal to the amount of duty paid on the Imported materials used in the manufacture of goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description of goods either by manufacturers generally or by any particular manufacturer.
- (b) for the production of such certificates documents and other evidence in support of each claim of drawback, as may be necessary etc.

The rules made in this regard, read with Section 37 of the Central Excise Act, 1944 are called "The Customs and Central Excise Duties Drawback Rules, 1995.

CLAIM FOR DRAWBACK — EXPORTERS DECLARATIONS AND DOCUMENTS

In terms of the above said rules at the time of export of the goods the exporter inter alia shall:

- (i) File a Shipping Bill "under claim for Drawback". (Green Shipping Bill)
- (ii) State in the above said Shipping Bill, the description quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback and if so at what rate or rates.
- (iii) File the documents as enumerated already and the Customs formalities to be completed for shipment are the same as detailed above in respect of goods shipped under claim for drawback also under cover of a "Green Shipping Bill".

On completion of shipments the drawback claimed on exports is scrutinised in the drawback department or the drawback unit of the Custom House or Air Cargo Complex and payments are made by cheques drawn in favour of banks as nominated by Exporters.

PROCEDURE FOR EXPORTS THROUGH INLAND CONTAINER DEPOTS

(i) Introduction

Shipping is the cheapest way to transport goods. The cost per mile of water borne cargo is half the cost of any other form of long distance transport. Cargo comes in all shapes and sizes.

Each item of cargo must be individually arranged, counted, handled and put on board the ship according to a detailed cargo plan. This involves time and man-power and is costly. Therefore, it is quicker and cheaper to have cargo of a standard shape and size which is easy to handle and stack. Such a cargo type is termed a "Unit load" which in transportation usually means a "container".

(ii) Evolution

In response to "Cost cutting" and "time saving" requirements of modern trade

"containerisation" has come about in the past decade. This system was introduced in "sea transport" in 1949 when John Wollan sent a "box" of sports goods across Irish sea. The "white pass and Yukon route" introduced deep sea container traffic from Canada and the world's first fully integrated container service came into being in 1955. The world's largest container shipping service was founded in USA-Malcolm Mc Clean Service.

A modified version of 'containerisation' arose in 1968. It is known as "Lighter" aboard ship"-FLASH. In the flash system, lighters are loaded on the shore and floated out to the ship waiting off-shore. The ship lands the lighters on board with its own crane (Gantry crane) and stacks them there high like containers. At the port of arrival the lighters are unloaded and floated to shore. This saved/saves both port costs and cuts time spent waiting for an empty berth.

(iii) Conventional cargo ships vis-a-vis container ships

Conventional cargo ships are not being swept away from the seas by containerisation. Only on certain busy routes as the North Atlantic run/ has the switch over to containers been near complete. Elsewhere, the conventional cargo, ship has maintained its hold. For a small port handling a few thousand tonnes of cargo, it does not make economic sense to instal a container berths handling equipment and road and rail connections. Conventional cargo ships are helped by the fact that not all cargoes will economically containerise. Such cargoes are usually large (logs for instance) or heavy (steel plates). Another requirement in respect of containers is that for "every box" at sea another three are needed on land; one at the port of departure, one at the port of arrival and one being repaired.

(iv) What is a Container?

A container is simply a box. It is no more complex than a truck body, a railway freight van or a ship's hold. Containers are made of aluminium, steel, fibre glass or plywood for lightness with steel frames to give strength. Standard sizes for containers are 40, 20, or 10 feet long, 8ft. wide and 8ft. in height. Some have open tops or sides for loading special cargo. Liquids are carried in boiler shaped tanks surrounded by rectangular frame work. Other containers are insulated or refrigerated and are constructed according to International standards and inspected by Insurance companies.

(v) How are they loaded on the ship

Container ships are built in vertical cells. The container slips into position in each cell down guide rails. The containers sit on the top of each other in the ship's hold. Container ships towards insuring loss over board, are designed with distinctive concave low shapes to keep waves clear of the decks.

(vi) Handling of containerised cargo in India

In India, procedures have been drawn up for handling containerised cargo both on the Import and Export side. The Import and Export Cargo containerisation presupposes formation of In-land Container Depots and should have the necessary arrangement and infrastructure of rail and road connections.

Inland Container Depots can be opened or can come up only in places which are appointed places for unloading of Imported goods and the loading of Export goods or any class of such goods by Central Government, by notification in the official gazette as contemplated under Section 7 of the Customs Act, 1962. In the Southern Region, Bangalore, Coimbatore and Anaparte (near Guntur) have been declared as I.C.Ds.

(vii) Categories of Containerised Cargo

Containerised Cargo is divided into two categories viz. Full Container Load (FCL) and Loose Container Load (LCL). By FCL, it is understood that the entire cargo in a particular container belongs to a single consignee of a particular port, place, while LCL denotes container containing several consignments (Break Bulk) belonging to various consignees of a particular port/place.

(viii) Short Shipment Notice

In the event of the Export goods passed for shipment, not shipped (shut out) or short shipped, Short Export Rules, 1963, framed in exercise of powers conferred on the Central Government, under Section 156 Customs Act, 1962, require information of short shipment non-shipment (shut out) to be given to the customs department before the expiration of 7 days from the date of the departure of the vessel. Failure to comply with this provision entails penalty not exceeding `100/-.

No particular form for intimating short shipment or non-shipment (shut out) of goods has been "prescribed" as "form of Notice" under Short Export Rules. But for the convenience, the trade has been notified to file such notices in Triplicate with the required particulars in Annexures `A' and `B' to this study.

On receipt of Short-shipment/non-shipment (shut out) notices, the Customs Department returns one copy to the Exporters or to their agents duly acknowledging the receipt of the notice; sends one copy to Reserve Bank of India who are policing the repatriation of Export sale proceeds from abroad, as declared on the GR form and the third copy is connected to the relative Shipping Bill in the Export Manifest of the vessel filed by the Steamer agents. One Short shipment/non-shipment notice is required to be filed for each Shipping Bill. Failure to comply with the above requirement, apart from causing inconvenience to the Exporters, in explaining the short realisation of the export sale proceeds to the Reserve Bank of India, at the appropriate time, will render the Exporters and/or their agents liable for penal action under Rule (3) of the Short Export Rules, 1963.

(ix) Amendment application in lieu of Short Shipment Notices

In the event, the goods covered by a Shipping Bill have been "shut out" in full, the Shippers/Exporters are allowed to amend the ship's/vessel's name on the shipping bill, when the new ship had "entered outwards" in the port, and ship the goods. This can be done provided the period allowed under the notice of Short Export Rules, 1963 (viz. 7 days) had not lapsed.

PROCEDURE FOR EXPORTS OF CONTAINERISED CARGO FROM INLAND CONTAINER DEPOTS

The exporters file shipping bills at the I.C.D. The Shipping Bills will be filed in five copies, original, duplicate, triplicate and two transference copies which are in distinct colors for easy identification and handling. The documents that are to be filed along with the shipping bills are as detailed earlier. In addition to the usual information given on the shipping bills the exporters should mention the Port of Exit and the serial number of the containers. Each container will have different marks and numbers.

Classification and assessment will also be completed at the I.C.D, following usual prescribed checks and formalities as detailed already. The original shipping bill will be retained and the other copies handed over to the exporters for completion of examination and other formalities.

The exporters will submit alongwith the shipping bills the set of G.R. forms (original/duplicate). The "Full Export Value" will be verified as usual on the G.R. Form; original copy of G.R. will be detached at the I.C.D. and will be sent direct to the Reserve Bank of India. The duplicate copy of the G.R. form will be handed over to the exporter alongwith the shipping bills.

The export goods, will be presented to the 'Customs Officer in the "I.C.D. alongwith the Shipping Bills". The examination will be conducted in accordance with the procedure prescribed for examination of export goods after which the goods will be allowed to be "stuffed" into the containers under Customs supervision. The quantity of goods loaded (number of packages etc. shut out) will be recorded on the shipping bill. Once the goods are loaded into the container, the containers will be sealed with "one time lock" containing identification details as supplied by the Railway and record maintained for the same with the I.C.Ds. Simultaneously, with the stuffing of the goods inside the containers, the exporters will prepare in quadruplicate, the invoices and container-wise packing weight specifications indicating inter alia the number of packages (with marks and numbers, if any), description and total quantity, net weight/packed in each container along with the corresponding shipping bill number. The Customs officers will certify these details on the invoice/packing list. Duplicate copy of the shipping bill will be retained in the I.C.D. and triplicate handed over to the exporter.

The two transference copies of the Shipping bills will be placed in a sealed envelope and handed over to the carriers (Railways) who will be responsible for its being carried alongwith the container and its production to the Customs officer at the port of exit.

At the exit Ports the containers will be allowed to be exported under customs (preventive) supervision on checking of the seals without any further examination (examination will only be done if the seals of the containers are found to have been tampered with or on the basis of any information, doubts etc.) The Preventive officer who will be supervising the loading of the containers will suitably endorse the two transference copies of the shipping bills regarding the fact of shipment.

At the Port of Exit, the Steamer Agents will also file the export manifesto in duplicate regarding the containerised cargo in the 'container cell' to the Preventive Department of the respective Custom House. After shipment of the goods, one transference copy of the shipping bill will be returned to the respective I.C.D.

The Export Manifest transference copies of the shipping Bill and the weekly statement received from the Custom House (Exit ports) will be correlated for finalisation of drawback claims/ Closure of export manifest, etc. at the ICD.

III. GOODS IN TRANSIT (SECTION 52 TO 56)

A conveyance / vessel may reach a port but may not unload the goods at that port. It may halt at the port for any other purpose such as repairs, replenishment of supplies, refueling etc. Once the purpose is over, it may start sailing to the destination port. In this case two ports are involved. Halting port (known as transit port) intermediate port and destination port (called as port of clearance). Such a phenomenon of temporary stay at a port other than a destination port is called transit goods. In transit goods same vessel reaches the port of clearance.

In transshipment, the vessel reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the 1st vessel, carries the goods to the destination port.

Example: a ship A comes to Mumbai from South Africa and some goods are transhipped (transferred) to some other ship B and the goods are meant to be delivered at Cochin port (destination port) A goes back to South Africa after delivery at Mumbai port and the B reaches Cochin, transshipment took place at Mumbai port.

In brief, in case of transit goods, same vessel reaches the port of clearance after some halt at an intermediate port, but in transshipment some other vessel carries the goods to the destination port. Thus, in transshipment, at least two vessels are involved. And in the case of

both transit and transshipment, the destination port may be Indian Port or Foreign port but the transit/transshipment port is necessarily Indian.

Customs Act, 1962 contains separate provisions for goods in transit in Chapter VIII of the Act. This Chapter consists of Sections 52 to 56. Section 52 of the Act makes it very clear that the provisions of Chapter VIII do not apply to:

- (a) baggage;
- (b) goods imported by post;
- (c) stores.

Sections 53, 54 and 55 also allow for the transit and transshipment of goods in the following circumstances:

- (a) where goods have arrived in India at a land customs station and are intended to be transhipped to another land customs station or to a port or airport outside India;
- (b) where goods have been carried in a conveyance other than a vessel or aircraft; and
- (c) where goods that have arrived at the port or airport on a vessel or aircraft are required to be transhipped to a land customs station.

The details of the provisions of the Chapter are discussed herein below:

TRANSIT OF CERTAIN GOODS WITHOUT PAYMENT OF DUTY (SECTION 53)

Section 53 of the Act deals with this. Accordingly, any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the conveyance to any place outside India or any Customs station may be allowed to be so transited without payment of duty, subject to such conditions, as may be prescribed.

The provisions of Section 53 are subject to the provisions of Section 11. It should be noted that Section 53 talks about transit of goods in the same conveyance and not transshipment of goods from one conveyance to another. (Section 54 deals with transshipment of goods imported into India, from one land customs station to another land customs station or to a port or airport outside India).

TRANSHIPMENT OF CERTAIN GOODS WITHOUT PAYMENT OF DUTY (SECTION 54)

Section 54 of the Act provides that where any goods imported into a Customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. But where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.

Section 54(2) provides that where any goods imported into a Customs station are mentioned in the Import Manifest or import report as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty. The provisions of Sub-section (2) of Section 54 are subject to the provisions of Section 11.

Sub-section (3) of Section 54 provides that where any goods imported into a Customs station are mentioned in the Import Manifest or import report, as the case may be, as for transshipment:

- (a) to any major port as defined in the Indian Ports Act, 1908 or the Customs Airport at Mumbai, Calcutta, Delhi or Chennai or any other Customs port or Customs airport

which the Board may, by Notification in the Official Gazette, specify in this behalf, or

- (b) to any other Customs station and the proper officer is satisfied that the goods are bona fide intended for transshipment to such Customs station, the proper officer may allow the goods to be transhipped without payment of duty subject to such conditions as may be prescribed for the due arrival of such goods at the Customs station to which transshipment is allowed.

LIABILITY OF DUTY ON GOODS TRANSITTED UNDER SECTION 53 OR TRANSHIPPED UNDER SECTION 54 (SECTION 55)

Under Section 55 of the Act, where any goods are allowed to be transitted or transhipped under Sections 53 and 54 respectively, to any Customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules shall so far as may be, apply in relation to such goods.

TRANSPORT OF CERTAIN CLASSES OF GOODS SUBJECT TO PRESCRIBED CONDITIONS (SECTION 56)

Sometimes imported goods may be transported from one part of the country to another part of the country through a foreign territory because of geographical and other constraints. Under the circumstances, Section 56 provides that imported goods may be transported without payment of duty through any foreign territory subject to the Transportation of Goods (Through Foreign Territory) Regulations, 1965. These regulations contemplate the following procedure. Regulations 3 and 10 of these Regulations are extracted herein below:

1. Consignor to deliver a Bill:

- (a) Whenever any goods to which these regulations apply are to be transported, the consignor of the goods shall make entry to that effect by presenting to the proper officer a bill (in duplicate) in the form specified in Appendix C to these Regulations.
- (b) Every such consignor shall, while presenting the bill, make and subscribe to a declaration at the foot thereof as to the truth of its contents.

2. Permission to load goods, etc.: No person-in-charge of a vessel shall permit the loading of such goods on a conveyance unless:

- (a) the bill relating to them after approval by, and
- (b) a written permission to load the goods from, proper officer are received by him.

3. Execution of Bond: Before any such goods are permitted to be loaded on the conveyance, the consignor or the person-in-charge of the vessel shall be required to execute a bond in such form and with such surety or sufficient security as the proper officer may demand, binding himself in an amount not exceeding the value of the goods.

4. Duties of the person-in-charge of the conveyance:

- (1) On receipt of the documents referred to in regulation 4, the person-in-charge of the conveyance shall prepare as many sets of Manifest (in triplicate) in the Form specified in Appendix B to these regulations in respect of such goods as there are customs stations to be passed through on the route.

He shall, immediately, on arrival at an customs station of delivery or re-entry, deliver a set of the manifest along with the bill or bills relating to the goods to the proper officer at the customs station.

- (2) The proper officer shall, after making the necessary checks, make an endorsement on the manifest, retain one copy of the manifest and return the other two copies to the person-in-charge of the conveyance.
 - (3) The person-in-charge of the conveyance shall retain one of the two copies for carrier's record and present the other to the proper officer at the loading station.
 - (4) The person-in-charge of the conveyance carrying such goods shall not leave the customs station until a written permission has been given by the proper officer after checking the manifest presented to him under the regulation.
- 5. Delivery of bills at the destination station:** The person-in-charge of the conveyance shall carry with him on the journey all the bills relating to the goods delivered to him and shall immediately on arrival at any customs station. deliver to the proper officer such of the bills as relate to the goods unloaded at that station.
- 6. Clearance of goods:** Such goods, after being unloaded at any customs station, shall not be cleared unless the proper officer gives a written permission that all the goods so unloaded are entered in the bill or bills delivered to him under these Regulations.
- 7. Terms of the bond:** The condition of the bond to be executed under Regulation 5 shall be that if the person-in-charge of the conveyance or the consignor produces proof within a time stipulated in the bond or such extended time as the proper officer may permit that the goods have been produced before the proper officer at destination the bond shall be void; and if such proof be not furnished the executor of the instrument shall be liable to pay an amount equal to the export duty leviable on the goods and such penalty as may be adjudged or imposed by the proper officer under the Customs Act, 1962, the Imports and Exports (Control) Act, 1947 (18 of 1947) or the Foreign Exchange Management Act, 1999 and shall also be liable to forfeit the whole amount of the bond.
- 8. Execution of general bond:** Notwithstanding anything contained in these Regulations, the proper officer may permit the person-in-charge of the conveyance or the consignor of goods to enter into a general bond in such form and with such surety or security as the proper officer may deem fit, in respect of transport of goods as above said to be effected from time to time".

DISTINCTIONS BETWEEN TRANSIT AND TRANSHIPMENT GOODS

TRANSIT GOODS	TRANSHIPMENT OF GOODS
1. Goods are <i>lying</i> in the ship at an intermediate port.	Goods are <i>transferred</i> at the intermediate port.
2. Only import manifest has to be submitted for entry.	Bill of transshipment/ declaration is also required for transshipment.
3. Transit is allowed in every port normally.	Transshipment is allowed in specified ports only.
4. No supervision is required for transit goods.	Transshipment takes place under the supervision of the proper officer.
5. No additional conditions or formalities are required.	Specific conditions are imposed if the goods are deliverable at Indian port.
6. Only one conveyance is involved in transit of goods and the same carries the goods to the	At least two conveyances are involved in transshipment and the transferee ship reaches

port of clearance.

the destination port.

SELF TEST QUESTION

(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).

1. Which main documents are required to be prepared for effecting Export of Goods?
2. What is Import manifest? Give the details of its contents.
3. What is a 'Shipping Bill'? How it is prepared and used?
4. What are the kinds of Shipping Bills?
5. What is 'GR' form and how it is obtained?
6. What is the procedure with regard to obtaining of 'Export Trade Licence'?
7. What are the provisions regarding 'Draw back' of duties on Exported goods under Customs Act, 1962?
8. Explain the concept of 'Containerisation' in Import-Export trade and how does it compare with the conventional ships ?
9. How the various customs ports, airports and places are fixed for the purpose of loading/unloading of goods subject to levy of duties of Customs ?
10. Which organisations are involved in clearance of import Cargo ?
11. What is 'Bill of Entry' ? What are the different kinds of 'Bill of Entry' ?
12. What is the procedure of preparation and filing of 'Bill of Entry' ?
13. How are the goods Imported but not cleared by Customs dealt with?
14. What are the provisions in the Customs Act, 1962 with regard to examination of goods before order of clearance?
15. What is "Out of Customs charge" order for delivery of goods?
16. What specific points one should keep in mind in the clearance of imported cargo for home consumption?
17. When are the goods said to be in transit within the meaning of Customs Act, 1962?
18. Distinguish between transit and transshipment of goods.
19. How are the goods in transit treated for the purpose of levying of duties of customs.
20. When does the officer of Customs may permit the transshipment of goods without payment of duty?

SUGGESTED READINGS

- (1) Customs Manual — *Taxmann*
- (2) Customs Law Manual — *R.K. Jain*
- (3) Customs Tariff — *R.K. Jain*
- (4) Indirect Taxes Law and Practice — *V.S. Datey*

CUSTOMS LAW

PART II: WAREHOUSING, DUTY DRAWBACK, BAGGAGE AND MISCELLANEOUS PROVISIONS

After completion of this part students will be familiar with

- Warehousing provisions
- What are the conditions to be satisfied for warehousing of goods
- The duty drawback provisions
- Baggage provisions and rules thereon
- Provisions pertaining to postal goods
- Goods imported or exported by post and store
- Provisions relating to coastal goods and vessels carrying coastal goods

This part is divided into six sub parts:

- I. Warehousing (Section 57 to 73)
- II. Drawback
- III. Baggage (Section 77 to 81)
- IV. Goods imported or export by Post (Section 82 to 84)
- V. Stores (Section 85 to 90)
- VI. Provisions relating to Coastal goods and Vessels carrying coastal goods (Section 91 to 99)

I. WAREHOUSING (SECTION 57 TO 73)

Goods imported from abroad may be cleared straightaway by the Importers by filing the Customs Clearance document, the Bill of Entry for Home Consumption (White Bill of Entry) along with all the documents, such as Invoice, Purchase Contract, Import Licence (Wherever necessary) and all connected and relevant documents. The above requirements for clearance are stipulated in Section 46 of the Customs Act, 1962.

Section 46 of the Customs Act, 1962 provides that importer shall file a Bill of Entry, either for Home consumption or for Warehousing, in the "prescribed form". Therefore, the importers who do not intend clearing the imported goods for "Home consumption" may choose to "warehouse" the goods (store the goods under Customs control/custody) and clear the same subsequently either wholly or in part, in piecemeal, on payment of Customs duty.

Warehousing is a very useful facility in export import business. Importer can deposit the dutiable goods in a bonded warehouse without payment of duty. This facility is available to traders as well as importers.

Warehousing facility is availed for the following reasons:

- (i) *The importer may not require the goods immediately.*
- (ii) *He may intend to clear the goods under advance authorisation scheme without payment of import duty if authorization is not on hand at the time of import then he can deposit first and submit the authorization at the time of clearance.*

- (iii) *The importer may not have enough funds to make payment of duty immediately.*
- (iv) *He intends to re-export the imported goods after some process/ repacking, repairing etc.*
- (v) *He wants to avoid heavy demurrage charges imposed by the port.*
- (vi) *Any other reason the importer feels it convenient.*

The prescribed form' referred to in Section 46 of the Customs Act 1962 also includes the Bill of Entry for warehousing. This form is also referred to and understood by the following names:

- (a) "Into Bond" Bill of Entry;
- (b) "Yellow" Bill of Entry;
- (c) "Warehousing" Bill of Entry; and
- (d) "Buff" Bill of Entry.

The term "warehouse" for the purposes of the application of the provisions of the Customs Act, 1962 has been defined under Section 2(43) of the Act, as under:

"warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A;

Warehouses either "public" or "private", could be "licensed" as above said, only at the places declared by the Central Board of Excise and Customs to be "warehousing stations" by means of notifications in the official gazette. Therefore, warehouses cannot be "licensed" in all places. [Section 9 of the Customs Act, 1962].

In earlier years, the port towns adjacent to the major ports and contiguous areas thereto, which were easily accessible and which could be kept under control of the respective Customs "Warehouse" only was declared as "warehousing stations". For the purpose of convenience, entire cities, talukas, in such cases were generally declared as warehousing stations, generally or for specific purposes.

Consequent upon the increased requirements for adequate warehousing facility, of the trade and industry, now the Government of India's policy in respect of Public (Bonded) warehousing, is to declare selected places, in the areas other than port areas, namely in Inland/Interior areas, as "warehousing stations" under Section 9 of the Customs Act, 1962.

The object behind "licencing of Public (Bonded) warehouses Private (Bonded) warehouses or special warehouses" is to afford a facility to the Importers to deposit the imported goods for the specified period, before they are cleared for home consumption or re-export.

Chapter IX (Sections 57 to 73) deals with various provisions relating to warehousing of import goods. These provisions may be broadly divided into the following headings:

1. *Appointment of public warehouses (Section 57).*
2. *Licensing of Private warehouses (Section 58).*
3. *Warehousing bond (Section 59).*
4. *Permission for deposit of goods in a warehouse (Section 60).*
5. *Period for which goods may remain warehoused (Section 61).*
6. *Control over warehoused goods (Section 62).*
7. *Payment of rent and warehouse charges (Section 63).*

8. *Owner's right to deal with warehoused goods (Section 64).*
9. *Manufacture and other operations in relation to goods in a warehouse (Section 65).*
10. *Power to exempt imported materials used in the manufacture of goods in warehouse (Section 66).*
11. *Removal of goods from one warehouse to another (Section 67).*
12. *Clearance of warehoused goods for home consumption (Section 68).*
13. *Clearance of warehoused goods for exportation (Section 69).*
14. *Allowance in case of volatile goods (Section 70).*
15. *Procedure for taking out/removal of goods from warehouse (Sections 71 and 72).*
16. *Cancellation and return of Warehousing bond (Section 73).*

The above provisions, as amended, are explained as under:

1. APPOINTMENT OF PUBLIC WAREHOUSES (SECTION 57)

At any warehousing station, the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed licence public warehouses wherein dutiable goods may be deposited (Section 57). Goods meant for re-export can be warehoused in these warehouses without payment of duty. The scope and functions of the scheme of appointment of public warehouses as well as the procedure to be followed are normally explained in detail through the Commissionerate's trade notices issued from time to time.

The Government of India's policy in respect of Customs Public Bonded Warehousing is mainly to provide adequate warehousing facilities at selected places in the interior keeping in view the requirement of the trade and industry, the proximity to the ports of import and the availability of Customs expertise. Such public bonded warehouse in inland area are generally managed and controlled by the Central Warehousing Corporation.

2. LICENSING OF PRIVATE WAREHOUSES (SECTION 58)

At any warehousing station, the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence private warehouses wherein dutiable goods imported by or on behalf of the licensee may be deposited. [Section 58].

The object of warehousing is to allow the facility to trade of deferring payment of duty on imported goods upto the period permissible under Section 61.

The Finance Act, 2016 has inserted section 58 A in chapter IX of the Customs Act. The objective is provide for a new class of warehouses which require continued physical control and will be licensed for storing goods, as may be specified.

Section 58 A reads as under:

SECTION 58A. Licensing of Special Warehouses – (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

The Board has issued a notification under sub-section (2) of section 58A (66 / 2016 – Cus (NT)

dated 14th May 2016) notifying the class of goods to which the provisions shall apply. The Board has also notified Special Warehouse Licensing Regulations, 2016 and the Special Warehouse (Custody and Handling of Goods) Regulations, 2016. Goods which shall be deposited in the special warehouses are as follows:

- Gold, silver, other precious metals & semi-precious metals and articles thereof
- Goods warehoused for the purpose of:
 - Supply to duty free shops in a customs area
 - Supply as store to vessels or aircrafts
 - Supply to foreign privileged persons.

CANCELLATION OF LICENCE (SECTION 58B)

A New section 58B has been inserted by Finance Act, 2016 so as to regulate the process of cancellation of licences which is a necessary concomitant of licencing. The section provides that where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.

The licensee shall, however, be given a reasonable opportunity of being heard before any licence is cancelled.

The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under section 58B(1).

Where the operation of a warehouse is suspended in the above case, no goods shall be deposited in such warehouse during the period of suspension. Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

3. WAREHOUSING BOND (SECTION 59)

Pursuant to the enactment of the Finance Bill 2016, section 59 of the Customs Act, 1962 stands amended consequent to which, an importer is to execute a triple duty bond at the customs station of import with respect to the goods to be cleared for deposit in a warehouse. The bond will remain valid till the warehoused goods are duly cleared for home consumption or for export from the warehouse and will also cover the movement of goods from the customs station of import to the warehouse or from one warehouse to another as well as for the due accounting of goods while stored in a warehouse.

The amended section 59 reads as under:

The importer of any goods in respect of which a bill of entry for warehousing has been

presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself—

- (a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
- (b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and
- (c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period. [Section 59 (2)].

The importer shall, in addition to the execution of a bond under furnish such security as may be prescribed. [Section 59(3)].

Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse. [Section 59(4)].

Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified. [section 59(5)]

4. PERMISSION FOR DEPOSIT OF GOODS IN A WAREHOUSE (SECTION 60)

When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse. (Section 60).

Where an order is made the goods shall be deposited in a warehouse in such manner as may be prescribed.

Procedure towards clearance of imported goods for warehousing needs to be explained in brief at this stage.

- *Section 46 of the Customs Act, requires an importer (or his agent) (Custom Broker) to file a Bill of Entry either for Home consumption or for Warehousing.*
- *If an importer intends to deposit his consignment in a private or public (bonded) warehouse he will have to file a Bill of Entry for warehousing (yellow in colour) in quadruplicate in the Import Department of the Custom House/or in Air Cargo Complex.*
- *The Bill of Entry is "noted" in the import manifest of the respective vessel or aircraft and returned to the importer or his agent for presentation in the concerned Appraising/assessing Group in the Custom House/Air Cargo Complex.*
- *The Assessing Officer checks the quantity, value, description etc. of the goods imported and as declared in the Bill of Entry.*
- *He classifies the imported goods in accordance with the Customs Tariff and Central Excise Tariff (for countervailing duty) and indicates the classification and the rates of duties applicable to the goods.*
- *The Bill of Entry so assessed is subject to counter-check by the Group Assistant Commissioner.*
- *After counter check the amount of duty is calculated/quantified and indicated suitably on*

the Bill of Entry.

- *In the above process of assessment, the assessing officer also verifies the coverage of the goods by the Import Licence produced, particularly wherever the goods are to be covered by an Import Licence validity. It is pertinent to note that the goods could be permitted to be warehoused only on their Valid Import. Thus, the Import Licence and other connected formalities are also completed.*
- *The Bill of Entry is thereafter returned to the importer.*
- *The importer should execute a bond as required in Section 59 of the Customs Act for thrice the amount of duty leviable/balance on the goods.*
- *Instead of executing bonds for each consignment imported, an importer may also furnish a general bond for a lumpsum covering thrice the amount of duty leviable on goods to be imported by him during a specified period (6 months, one year, etc.).*
- *The bond Department after completing all the required formalities including acceptance of the triple duty bond, will return the warehousing Bill of Entry to the Importer/Customs Broker after stamping the Bill of Entry with an endorsement "returned to the importer". This endorsement on all the copies of the Bill of Entry will also indicate the date on which the Bill of Entry has been returned to the Importer/Customs Broker.*
- *In cases where the Assessing Officer in the Group desires that the goods should be examined or tested before assessment, examination of the goods and verification of fitness for bonding are done by the Docks Air Cargo Appraising Staff.*

Thereafter, the Assessing Officer makes the assessment by indicating the rates of duties applicable to the goods. In such cases the "pass into bond" order is signed by the Preventive Superintendent incharge of the Bonds Department after Assistant Commissioner (Bonds) has accepted the importer's bond for thrice the amount of duty payable.

5. PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED (SECTION 61)

Sub section (1) of section 61 provides that any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—

- (a) in the case of capital goods intended for use in any hundred per cent export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;
- (b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and
- (c) in the case of any other goods, till the expiry of one year

from the date on which the proper officer has made an order section 60(1)

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time.

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse

beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,—

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
- (c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

Explanation.— For the purposes of this section,—

- (i) “electronic hardware technology park unit” means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;
- (ii) “hundred per cent. export oriented undertaking” has the same meaning as in clause (i) of *Explanation 2* to sub-section (1) of section 3 of the Central Excise Act, 1944; and
- (iii) “software technology park unit” means a unit established under the Software Technology Park Scheme notified by the Government of India.’

RELEVANT POINTS TO BE NOTED UNDER SECTION 61

As per Budget 2016, hundred per cent export oriented undertaking or electronic hardware technology park unit or software technology park unit can deposit capital goods or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse.

- Interest @ 15% is payable for the goods deposited beyond the permissible period. This is calculated on the amount of duty payable.
- No interest is payable when no duty is finally payable at the time of clearance from the warehouse [Pratibha Processors, 1996. S.C. and National Steel Industries Ltd. (H.C.) 2002].
- When the permission for extension was not granted, the importer has an option to prefer an appeal before CESTAT.

CBEC Circular 15/ 2009 Issue: Whether interest for delayed payment on goods cleared from warehouse after the clearance of B/E is payable as per Section 47(2) of the Act.

Clarification: No, Section 47 is applicable for direct clearance of goods from port area. So, interest provisions under section 47 are not applicable for clearance made from warehouse under Section 68.

Note: Under Section 47(2), interest is payable if the duty is not paid within 2 working days after the clearance of white B/E submitted for clearance for home consumption.

WAREHOUSING—GRANT OF EXTENSION IN THE WAREHOUSING PERIOD UNDER

SECTION 61 OF THE CUSTOMS ACT, 1962 AFTER EXPIRY OF THE WAREHOUSING PERIOD

1. Section 61 of the Customs Act, 1962 lays down the period for which the imported goods can be warehoused. The first proviso to this section provides that the period of warehousing prescribed, on sufficient cause being shown, can be extended for a period not exceeding one year at a time by the Principal Commissioner of Customs or Commissioner of Customs.

2. A doubt has arisen whether extension in the warehousing period can be granted when the application for extension is moved after the expiry of the initial or extended warehousing period. Section 61 of the Customs Act, 1962 is silent on this issue.

3. In order to arrive at a uniform practice in granting such extensions, the matter was examined in consultation with Ministry of Law. Consequently, it was been decided that the importers may be advised to file such applications for extensions in the warehousing period to the proper authority well before the expiry of initial/ extended period of warehousing.

4. However, in cases of exceptional circumstances, the extensions in the warehousing period can be considered and granted even after the expiry of initial/ extended warehousing period. In all such cases, the jurisdictional Chief Commissioner may himself decide the request for extension after taking into consideration the exceptional circumstances, the nature of the commodity, the rate of duties, particularly, whether the same results in loss of revenue to the government, the licensing aspects involved etc. [M.F. (D.R.) Circular No. 12/98-Cus., dated 6.3.1998].

Section 62 relating to physical control over warehoused goods has been omitted by Finance Act, 2016 since the conditions for licensing different categories of warehouses and exercising control over the same have now been provided under sections 57, 58 and 58A. Section 63 relating to payment of rent and warehouse charges has also been omitted in view of the privatization of services, and free market determination of rates, including those by facilities in the public sector.

6. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS (SECTION 64)

The owner of any warehoused goods may, after warehousing the same,—

- (a) inspect the goods;
- (b) deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (c) sort the goods; or
- (d) show the goods for sale.

(Section 64).

7. MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE (SECTION 65)

The owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods, with the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed [Section 65(1)].

Where in the course of any operations permissible in relation to any warehoused goods under Sub-section (1) there is any waste or refuse, the following provisions will apply:

- (a) if the whole or any part of the goods resulting from such operations are exported,

import duty shall be remitted on the quantity of the goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported, provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;

- (b) if the whole or any part of the goods resulting from such operation are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption [Section 65(2)].

Treatment of Waste and Scrap: Dutiability of scrap is as follows:

Final product exported →	Scrap destroyed /exported →	No duty on either.
Final product exported →	Scrap cleared for home consumption →	Pay import duty on scrap as if scrap has been imported.
Final product cleared for home consumption →	Pay import duty on the entire quantity of goods imported. There is no special treatment for scrap.	

8. POWER TO EXEMPT IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS IN WAREHOUSE (SECTION 66)

Under Section 66, if any imported materials are used in accordance with the provisions of Section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interest of the establishment or development of any domestic industry, it is necessary, so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

9. REMOVAL OF GOODS FROM ONE WAREHOUSE TO ANOTHER (SECTION 67)

The owner of any warehoused goods may with the permission of the proper officer, remove them from one warehouse to another subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted. (Section 67).

Vide Notification No. 67/2016-Customs (N.T.) dated 14 May 2016 the Warehoused Goods (Removal) Regulations, 2016 have been issued in supersession of Warehoused Goods (Removal) Regulations, 1963.

Owner of the goods can make a request by filing a prescribed form, where warehoused goods are to be removed from one warehouse to another, or from a warehouse to a customs station for export.

Transportation of the warehoused goods shall be made under one-time lock affixed by the proper officer or licensee or the bond officer, as the case may be. The owner of the goods shall produce to the bond officer or proper officer, within one month (or extended period as the officer may allow), an acknowledgement stating that the goods have arrived the destined warehouse or customs station of export. In case of failure to file such an acknowledgement, the owner shall be liable to pay full amount of duty on the goods with interest, fine and penalties.

Further, CBEC has also issued the Warehouse (Custody and Handling of Goods) Regulations, 2016 *Vide* Notifications No. 68/2016 – Customs (N.T.) dated 14 May 2016 and the Special Warehouse (Custody and Handling of Goods) Regulations, 2016 *Vide* Notifications No. 69/2016 – Customs (N.T.) dated 14 May 2016 .

These regulations deal with the compliance requirements of storage, transfer and removal of goods from a warehouse. Inter alia they require appointment of a warehouse keeper and state the procedures to be followed in cases of receipt, transfer and removal of goods. The regulations require that goods arriving at the warehouse from a customs station shall be affixed with a one-time-lock (bottle seal) with its serial number endorsed upon the bill of entry for warehousing and the transport document. The warehouse keeper or bond officer, as the case may be, is required to inspect the seal and when it is found intact, permit the goods to be unloaded at the warehouse

CBEC has *Vide Circular No. 17/2016-Customs dated 14 May 2016* instructed its field formations⁹ to affix a one-time-lock and endorse the one-time-lock number on the bill of entry when goods are removed from a customs station for deposit into a warehouse. CBEC may exempt any class of goods from any of the provisions of these regulations.

CBEC has 10 *Vide* Notifications No. 70/2016, 71/2016 & 72/2016-Customs (N.T.) dated 14 May 2016 also issued:

- Public Warehouse Licensing Regulations, 2016,
- Private Warehouse Licensing Regulations, 2016 and
- Special Warehouse Licensing Regulations, 2016.

The regulations deal with requirements and procedures for obtaining warehouse licenses. Inter alia, they state that an applicant shall be a citizen of India or an entity incorporated or registered under any law for the time being in force and shall furnish an undertaking and a solvency certificate from a scheduled bank, for an amount of INR 2 crores in the case of public warehouses and for an amount to be specified by the Principal Commissioner / Commissioner of Customs in the case of private / special warehouses

The regulations also provide for a number of conditions to be fulfilled by the applicant, which include providing an all risk insurance policy in favour of the President of India and providing undertakings to pay any duties, interest, penalties and indemnify the Principal Commissioner / Commissioner of Customs from liabilities. Furthermore, the regulations deal with validity and surrender of licenses.

With respect to the special warehousing in the cases of duty free shops / ship stores / airline stores / diplomatic stores, to enable smooth transition it has been clarified that: Existing public and private warehouse storing goods for above purpose must apply for special warehouse license if they propose to continue to store such goods beyond the transitional period of three months. Existing warehouses engaged in supply of such goods are allowed to continue operations during the transitional period, under customs lock, for a period of three months. Application must be made within one month from 14 May 2016 Timeline for application and grant of the license has been prescribed. It has also been clarified that the duty free shops in the airport should not be treated as warehouse as it is not possible to be under a customs lock.

Duty Free Shop operators store goods in large warehouses in the city and / or in smaller warehouses in and around the precinct of the airport. These warehouses in the city and / or precinct of the airport qualify to be licensed as bonded warehouses as they are capable of being under the lock of customs.

10. CLEARANCE OF WAREHOUSED GOODS FOR HOME CONSUMPTION (SECTION 68)

Under Section 68, any warehoused goods may be cleared from the warehouse, if:

- (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
- (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and; and
- (c) an order for clearance of such goods for home consumption has been made by the proper officer.

However that the owner of any warehoused goods may, at any time before an order for clearance of goods for consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

However that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

In the case of BICCO Lawrie Ltd. 2008 (S.C.) it was held that once assessment of warehoused goods is complete and duty liability is discharged, the goods are no longer warehoused goods even-though they are further retained in the warehouse.

In this case the goods (kerosene) were assessed and duty paid. But the goods were not removed from the warehouse. There was a change in the tariff rate at the time of actual removal and the department demanded the duty as per the increased rate. Held that once assessment was over and duty liability was discharged, no further assessment is necessary and no further liability arises.

11. CLEARANCE OF WAREHOUSED GOODS FOR EXPORT (SECTION 69)

Clearance of warehoused goods for exportation - Any warehoused goods may be exported to a place outside India without payment of import duty if:

- a. a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;
- b. the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- c. an order for clearance of such goods for exportation has been made by the proper officer.

Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

Important points

Under Section 15(1)(b), the rate of duty applicable to warehoused goods (as and when cleared for home consumption) is the rate of duty prevailing on the date of actual removal of the goods from the warehouse. Hence, the warehouse keeper or Bond Officer endorses the date (or dates) on which the goods are physically removed from the warehouse. If any further duty has become due on account of a change in the rates of duty before such removal, the Bond Clerk who receives the duplicate bill of entry from the warehouse keeper initiates necessary action. More than one clearance of a single warehoused consignment can also be effected by filing different bills of entry (Green Bill of Entry) under Section 68. As far as the rate of exchange (applied for conversion of value declared in foreign currency to Indian currency for collection of duty, on the value) is concerned, the same exchange rate that prevailed and applied for

conversion on the date of filing of the warehousing (info-bond) bill of entry by the importer is applicable to all clearances ex-bond.

WAREHOUSED GOODS CLEARED AFTER THE EXPIRY OF WAREHOUSING PERIOD - RELEVANT DATE FOR DETERMINING CUSTOMS DUTY

The issue has been considered in the light of Hon'ble Supreme Court's judgment (in Civil Appeal No. 4459 of 1989) delivered on August 23rd, 1996 in the case of Kesoram Rayon v. Commissioner of Calcutta, 1996 (86) E.L.T. 464 (S.C.), 1996 (66) ECR 201 (SC) report. In the said judgement the Hon'ble Apex Court has held that goods which are not removed from a warehouse within the permissible or extended period are to be treated as goods. Importer is required to pay the full amount of duty chargeable at the rate applicable on the date of their deemed removal from the warehouse, that is, the date on which the permitted or extended period expired.

In other words, a clear interpretation of the Hon'ble Supreme's Court's judgement is that the date of payment of duty in the case of warehoused goods removed after the expiry of the permissible or extended period would henceforth be the date of expiry of the warehousing period or such other extended period as the case may be and not the date of payment of duty. [CBEC Circular No. 31/97-Cus, dated 14.8.1997].

12. ALLOWANCE IN CASE OF VOLATILE GOODS (SECTION 70)

When any warehoused goods to which this section (Section 70) applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency [Section 70(1)].

Sub-section (2) of Section 70 lays down that this section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner or their storage, may, by notification in the Official Gazette specify.

The Government has issued Notification No. 122/63 Cus. dt. 11.5.1963 (as amended), under Sub-section (2), which details such goods namely:

- (1) aviation fuel, motor spirit, mineral turpentine, acetone, menthol, raw naphtha, vaporising oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride kept in tanks and liquid helium gas kept in containers;*
- (2) wine, spirit and beer, kept in casks,*

to which the provisions of this section shall apply when they are deposited in a warehouse.

The above provisions in the Customs Act however does not preclude the application of Sections 22 and 23 to warehoused goods (viz.) for remission of Customs duty on damaged and deteriorated goods and on lost, destroyed and abandoned goods. When any warehoused goods are damaged at any time before clearance for home consumption on account of an account not due to any wilful act, negligence or default of the owner, proportionate abatement of duty is available to the importer. Similarly when any warehoused goods have been lost or destroyed at any time before clearance for home consumption, remission of duty can be allowed by the Assistant Commissioner.

When all the imported goods warehoused have been cleared for home consumption on payment of duty or exported or otherwise duly accounted for, the bond furnished by the importer under Section 59 is cancelled and returned to the importer.

13. PROCEDURE FOR TAKING OUT REMOVAL OF GOODS FROM WAREHOUSE

(SECTION 71)

Section 71 provides that no warehoused goods shall be taken out of a warehouse except on clearance for home consumption or export or for removal to another warehouse or as otherwise provided by this Act.

14. GOODS IMPROPERLY REMOVED FROM WAREHOUSE ETC. (SECTION 72)

Section 72 lays down provisions in respect of goods improperly removed from warehouse etc.

In any of the following cases, that is to say —

- (a) Where any warehoused goods are removed from a warehouse in contravention of Section 71;
- (b) Where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 to remain in a warehouse;
- (c) omitted
- (d) Where any goods in respect of which a bond has been executed under Section 59 and which have not been cleared for home consumption or export or are not duly accounted for to the satisfaction of the proper officer;

the proper officer may demand and the owner of such goods forthwith pay the full amount of duty chargeable on account of such goods, together with interest, fine and penalties payable in respect of such goods [Section 72(1)];

If any owner fails to pay amount demanded under Sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.

15. CANCELLATION AND RETURN OF WAREHOUSING BOND (SECTION 73)

Section 73 lays down that when the whole of goods covered by any bond executed under Section 59 have been cleared for home consumption or exported or or transferred are otherwise duly accounted for and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full and shall on demand deliver it, so cancelled, to the person who had executed or is entitled to receive it.

16. CUSTODY AND REMOVAL OF WAREHOUSED GOODS (SECTION 73A)

A new section 73A of the Customs Act is inserted by Finance Act, 2016 to provide for the custody of warehoused goods till their removal would be that of the person who has been granted the warehouse licence (licencee). It is now provided that, if the goods are removed in contravention to the provisions of section 71, licensee would be liable to pay duty, interest, fine and penalty.

CASE STUDIES

SBEC SUGAR LTD. 2011 (S.C.) – (Warehousing- delayed clearance)

Facts: The importer was to remove goods from warehouse on 25-12-1996. Department issued demand notice under Section 72 of Customs Act for removal. The importer filed B/E on 21st Jan 1998. The duty was nil by exemption notification at the time of submission of B/E (21st Jan 1998.)

Issue: What is the relevant date for rate of duty.

Contentions: The importer argued that relevant date for rate of duty as per Section 15(1) (b)

is date of submission of Green Bill of Entry. Since rate of duty applicable on that date is nil by exemption, no duty is payable.

Department: Section 68 and Section 15 are applicable to cases for proper removal of goods. This is a case of improper removal governed by Section 72. Hence, rate of duty applicable shall be the one prevailing at the official due date of removal ie. 25-12- 1996 and not 21st Jan 1998. Hence, duty is payable.

Decision: The contention of the department is correct and the rate applicable on the deemed (due) date of removal shall be taken for assessment.

DECORATIVE LAMINATES (I) PVT. LTD. 2010 (H.C)–(Remission on warehoused goods)

Facts: The goods were deposited in a warehouse and due to lack of demand, extension was sought and granted. Even the extended period was over by 31st Dec 2001. Still the goods were not removed. In the meantime the goods were destroyed in the warehouse. Then the importer applied for remission under Section 23 of the Act.

Held: No remission under Section 23 of the Customs Act for warehoused goods if they are lost or destroyed in the warehouse after the expiry of warehousing period.

Further held that the benefit of **remission under Section 23 is available only to proper removals.**

Illustration

Bholaram imported certain goods in November, 2015 and an 'into bond' bill of entry was presented on 28th November,2015. Assessable value was US \$1,00,000. Order permitting the deposit of goods in warehouse for 3 months was issued on 2nd December, 2015. Bholaram neither obtained extension of warehousing period nor cleared the goods within the permitted warehousing period of 1st March, 2016. Only after a notice was issued under section 72 of the Customs Act, 1962 demanding duty and other charges, Bholaram removed the goods on 15th April, 2016.

Compute the amount of duty payable by Bholaram while removing the goods from warehouse, assuming that no additional duty or special additional duty is payable. You are supplied with the following information:

	28.11.2015	01-03.2016	15.04.2016
Rate of exchange per US \$	₹ 56	₹ 55	₹ 54
Rate of basic customs duty	15%	10%	5%

Solution:

Assessable value is	₹ 56,00,000
Add: BCD @ 10%	5,60,000
Add: Cess @3% on BCD	<u>16,800</u>
Total duty payable	<u>576,800</u>

Rate of Exchange: ₹ 56; Rate of basic custom duty: 10 %;

Illustration

Vipin imported certain goods in December, 2016. An 'into Bond' bill of entry was presented on

14th December, 2016 and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 50,000. The order permitting the deposit of goods in warehouse for four months was issued on 21 December, 2016. Vipin deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period was over on 20th April, 2017.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipin cleared the goods on 14th May, 2017. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2016	20-04-2017	14-05-2017
Rate of exchange per US \$ (as notified by Central Board of Excise & Customs)	Rs.65.20	Rs.65.40	Rs. 65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

Notes:

1. Rate of duty as on the deemed date of removal of goods shall be taken, not the actual date of removal. Section 15 is not applicable here because it is a default case under section 72. Hence applicable rate of duty is 10%.
2. Rate of exchange as on the first submission of bill of entry for depositing the goods in a warehouse shall be taken. Hence applicable rate of exchange is Rs.65.20
3. Interest @15% is payable for the period of storage beyond 90 days of clearance order by the customs officer for deposit in a warehouse.

II. DUTY DRAWBACK (SECTION 74 TO 76)

Indirect taxes are taxes on domestic consumption. They are destination based. Goods exported shall be free from local taxes. It is in tune with the slogan 'export goods and services, don't export taxes'. To implement the policy, govt of India introduced export promotion schemes making the exports tax free. Duty Drawback scheme is an export promotion scheme under customs. Sections 74 to 76 deal with duty drawback scheme.

Under the scheme, if import duty paid goods are exported with or without any value addition, the import duties and other taxes paid on such goods at input level are refunded in the form of duty drawback. Duty drawback is basically a refund of import duties. There are two variants of duty drawback scheme under Customs.

1. Re-exportation of duty paid imported goods [Section 74]
2. Export of final products/ processed goods using duty paid imported material [Section 75]

In both the cases, there are three common features.

- (i) There is import of some goods;
- (ii) The imported goods suffered import duty;

- (iii) The same goods in same form or in a different form have been exported.

STATUTORY PROVISIONS IN THE CUSTOMS ACT, 1962

The provisions relating to drawback are enumerated in Chapter X, in Sections 74, 75, 75A and 76 of the Customs Act, 1962. Drawback is allowed subject to conditions mentioned in Sections 74 to 76 and notifications issued thereunder, in respect of duty paid on:

- (a) imported goods, which are re-exported as such (without use),
- (b) imported goods, which are re-exported after use,
- (c) imported material used in the manufacture of goods exported.

DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS (SECTION 74)

The elements necessary to consider a claim for Drawback under Section 74 Customs Act, 1962 are:

- (i) The goods on which the drawback is claimed must have been previously imported;
- (ii) Import duty must have been paid on these goods when they were imported;
- (iii) The goods must be entered for re-export within two years from the date of payment of duty. However, it is provided that in any particular case this period of two years may, on sufficient cause being shown, be extended by the Board by such further period it may deem fit;
- (iv) The goods are identified to the satisfaction of the Assistant Commissioner of Customs as the goods that were imported;
- (v) The goods must be actually re-exported to any place out-side India;
- (vi) The goods must be capable of easy identification; and
- (vii) The market price of such goods must not be less than the amount of drawback claimed.

The Central Government has been empowered to make rules for the purpose of carrying out the provisions of Section 74 and, in particular, such rules may:

- (a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;
- (b) specify the goods which shall be deemed to be not capable of being easily identified; and
- (c) provide for the manner and the time within which a claim for payment of drawback is to be filed."

RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES, 1995

In exercise of the powers conferred under the amended Rule 74 [under clause (c) of Sub-section (3) of Section 74, above], the Central Government has framed the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. These rules have been issued specifying the procedure for filing a claim in respect of goods exported under a claim for drawback under Section 74 as it had become necessary to prescribe a procedure for filing of a claim in view of Section 75A of the Customs Act which now requires the Government to pay interest at the specified rates in case drawback is not paid to the exporter within one month from the filing of his claim.

Rates of Drawback of Import Duty Admissible under Section 74

Two types of cases are covered in the above category. They are:

- (i) Imported goods exported as such, without putting into use — the drawback given is 98% of duty paid on import. (The idea behind withholding 2% is to cover administrative expenses).*
- (ii) Imported goods exported after use.*

If the goods had been used after import and then exported the rate of drawback i.e. the percentage of duty refunded will be according to the period of usage, between the date of clearance for home consumption and the date when the goods are "placed under Customs Control" for exports. The rate of drawback in this case is not fixed and progressively decreases as the period of use increases as enumerated in Customs Notification No. 19 dated 6.2.1965 as amended by Customs Notification No. 45/70 dated 2.5.1970. In satisfying the condition "placed under Customs Control", it is necessary that the "Shipping Bill" should be filed and the goods "physically brought in to Customs area" for export and placed under the control of Customs.

Customs Notification No. 19 dated 6.2.1965 (as amended) while setting out the rates of drawback, differentiates as between two categories of goods, in the grant of drawback:

- (i) Goods imported by a person for his personal and private use and motor cars; and
- (ii) Other goods

(i) Goods imported by a person for his personal and private use and motor cars:

The goods imported by a person for his personal and private use, may be exported as "baggage" and he shall make a declaration, (Baggage declaration - the format used for clearance of unaccompanied baggage) which declaration shall be deemed to be an "Entry for Export".

The drawback rates are calculated, by reducing the Import duty paid by 4%, 3%, 2-1/2% and 2% for use, for each quarter or part thereof during the period of First, Second, Third and Fourth year respectively.

Even though the rates are provided as above, in the notification, for grant of drawback for goods imported for personal and private use, and used for more than 2 years, the Principal Commissioner of Customs could grant extension of time limit (beyond two years) but no drawback is admissible beyond 4 years.

On the category of goods covered by (b) above,

(ii) Other goods: *In this case, the percentage of import duty payable as drawback depends on the period of usage of such goods as detailed below:*

Rate fixed by Government under Section 74(2) by Notification No. 23/2008-Cus., dt. 1.3.2008.

Period of use	Draw Back Rate
Not more than 3 months	95%
3-6 months	85%
6-9 months	75%
9-12 months	70%
12-15 months	65%
15-18 months	60%
Above 18 months	NIL

For Motor Vehicles

Use per quarter during	Percentage of Reduction
1st Year	4%
2nd Year	3%
3rd Year	2.5%
4th Year	2%

For use over 24 months extension of time-limit by the Commissioner is required before grant of drawback. Also drawback shall not be given on the following goods if used after their importation:

- (i) Wearing apparel.
- (ii) Tea-chests.
- (iii) Exposed cinematograph films passed by the Board of Film Censors in India.
- (iv) Unexposed photographic films, paper and plates and X-ray films.

DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE, PROCESSING OR OPERATION OF GOODS WHICH ARE EXPORTED (SECTION 75)

As distinct from Section 74 of the Customs Act, 1962, Section 75 postulates repayment of a part or whole of the duty paid on materials imported and used in manufacturing of goods which are exported as manufactured items outside India. Section 75 has been amended by the Finance Act, 1995 to permit drawback not only on materials/inputs used in the manufacture but also processed or subjected to any other operation for export of goods from India. The amendment is made to overcome the difficulty caused by the restricted meaning of the word "manufacture" in Section 75(1) of the Customs Act.

Drawback, as the name itself suggests, particularly with reference to Section 75 of the Customs Act, 1962, is a procedure to relieve the export goods of duties borne by goods at various stages of their manufacture, processing or any other operation carrying out on them. Such relief is allowed in respect of duties paid on raw-materials, and components utilised in the manufacture, processing etc. of goods. The wastages involved in the manufacture, processing etc. and the duty incidence(s) on the packing materials used in the Export of the goods are also taken into account. Drawback is allowed not only on duties incurred in the "Direct Imports" of materials or components utilised in the manufacture, processing etc. of Export goods but also on earlier inputs that go into the raw-materials and manufacture, processing etc. of components. Therefore, the rates of drawback are fixed by the Government on "average basis", on the basis of the relevant data obtained from the leading manufacturers or the persons carrying out any process or any other operation either for a class of goods or for specific goods. The procedure set out in Section 75 of Customs Act, 1962, as reproduced hereunder, the Customs and Central Excise Duties Drawback Rules, 1995 allow of drawback, of Customs duties and Central Excise duties that are chargeable on imported and indigenous materials respectively, used in the manufacture, processing or any other operation carried out on goods exported under claim for Drawback.

DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS WHICH ARE EXPORTED (SECTION 75)

- (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under Section 51 by the proper officer, in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a

class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with and subject to the rules made under Sub-section (2).

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under Sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act 1999, such drawback shall except under such circumstances as the central government may, by rules, specify be deemed never to have been allowed and the Central Government may, by rules made under Sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.

- (1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured processed, or on which any operation has been carried out in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in goods exported shall, for the purpose of Sub-section (1), be deemed to be imported material.
- (2) The Central Government may make rules for the purpose of carrying out the provisions of Sub-section (1) and, in particular, such rules may provide:
- (a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operations on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation and interest if any, payable thereon;
 - (aa) for specifying the goods in respect of which no drawback shall be allowed;
 - (ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under Sub-section (1) or interest chargeable thereon.
 - (b) for the production of such certificates, documents and other evidence in support of each claim of drawback, as may be necessary;
 - (c) for requiring the manufacturer or the person carrying on any process or any other operation to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Commissioner of Customs to enable such authorised officer to inspect the process of Manufacture, process or any other operations carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback.

- (d) for the manner and the time within which claim for payment of drawback may be filed;
- (3) The power to make rules conferred by Sub-section (2) shall include the power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in export goods.

PAYMENT OF INTEREST ON DRAWBACK (SECTION 75A)

Section 75A of the Customs Act provide for levy of interest on delayed payment of drawback. Interest at such rate as may be fixed by the Board would be allowed in case payment against a claim for drawback is not made within one* month of filing the claim in the prescribed manner. Likewise, when a drawback claim has been allowed erroneously, interest at the prescribed rate would be payable if the excess amount is not deposited with the Government within one month of the amount being demanded.

Section 75A reads thus:

- 75A (1) Where any drawback payable to a claimant under Section 74 or Section 75 is not paid within a period of *one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under Section 27A from the date after the expiry of the said period of *one month till the date of payment of such drawback.
- (2) Where any drawback has been paid erroneously or it becomes otherwise recoverable under the Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay interest. The amount of interest shall be calculated from the date of payment of such drawback to the claimant till the date of recovery of such drawback. [Section 75A(2)].

PROHIBITION AND REGULATION OF DRAWBACK IN CERTAIN CASES (SECTION 76)

Independent of other conditions which are laid down in Sections 74 and 75 of Customs Act, 1962 and in the Drawback Rules, no drawback will be granted:

- (a) in respect of any goods the market price of which is less than the amount of drawback due thereon; and
- (b) where drawback due on any goods is less than ` 50.

Also, if the Central Government is of opinion that specified goods on which drawback is claimed are likely to be smuggled back into India, it may stipulate that drawback be paid subject to certain conditions. There are three notifications in this regard:

Notification 50/63 dt. 1.2.63 as amended by 153/68 dt. 29.10.68 lays down that goods if exported on vessels less than 1,000 tons are likely to be smuggled back into India than export under claim for drawback may be permitted on the following conditions:

- (i) The agent of the vessel executes a bond in a sum equal to the amount of drawback and in such form and manner as the proper officer deems fit. The terms of the bond shall be that if the agent of the vessel produces to the proper officer, within three months or within such extended period as the proper officer may allow, a certificate issued by the Customs authorities at the port of destination that the goods have been landed at the port the bond shall stand discharged; but otherwise a sum equal to the amount of drawback allowed on the goods in respect of which the said certificate is not produced shall stand forfeited. The above bond shall be with such surety or security or both as is required by the Customs.

- (ii) The exporter produces to the proper officer a certificate issued by the Customs Authorities at the port of destination that the goods have been landed at the port or a certificate from the authorised dealer.

Under Notification 51/1.2.63 the following goods put on board a vessel less than 200 tons for use as stores are not to be given drawback:

- (i) alcoholic liquors;*
- (ii) cigarettes;*
- (iii) cigars;*
- (iv) pipe tobacco.*

Notification 208/1.10.77 lays down that drawback is not to be allowed on exports to Bhutan, Nepal or by land to Burma, Tibet or Sikiang except on certain conditions given in the said Notification.

CUSTOMS AND CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES, 1995

The duty drawback scheme is presently administered by the Directorate of Drawback in the Ministry of Finance. Drawback on exports is sanctioned and paid by the concerned Commissioner of Customs or Central Excise incharge of the port/airport/Land Customs Station through which the goods are exported, at the rates determined by the Directorate. These drawback rates are fixed either for a class of products manufactured in the country which are available to all exporters, and known as All-industry Rates or for a product of a particular manufacturer — known as Brand Rate. The rates are reviewed and revised periodically taking due note of variation in consumption pattern of inputs and duties suffered thereon. The Drawback is admissible irrespective of mode of export i.e. whether despatched by Sea, Air, Land Customs Station or Parcel Post.

Pursuant to the amendments made in sections dealing with drawback in the Customs Act and to streamline the existing rules, it was considered necessary to revise the Customs and Excise Duties Drawback Rules, 1971. Accordingly, Customs and Central Excise Duties Drawback Rules, 1995 were issued in supersession of 1971 Rules.

PROCEDURE FOR FIXATION OF ALL-INDUSTRY RATES

Under Rule 3 of the Drawback Rules, the Central Government determines the rate(s) of drawback in respect of certain classes of goods and notifies the same through public notices. Any exporter of these goods can claim Drawback at All Industry Rates. He is, however unless otherwise specifically provided, debarred from availing these rates as per General Notes laid down in the relevant Public Notice issued annually if he has been otherwise permitted certain concessions e.g. facility of manufacture in Bond, duty free imports under Advance Licensing/Import-Export Pass Book Scheme, facility of exports under Central Excise Rules, etc. (In such cases, for any unrebated customs or central excise duties, facility of Brand Rates is generally provided).

All Industry rates are reviewed by the Government annually, taking due note of Budgetary changes and revised wherever necessary, taking into account the changes in the duty incidence consequent to changes in the rate of Customs or Central Excise Duties and or the variations in the prices of various inputs (where the rates of duties are ad valorem). The revised All Industry Rates are generally made effective from 1st June and are normally kept unchanged for 1 year. If changes in duties on basic inputs of a product at any point of time (after the presentation of Budget) are substantial, the corresponding All industry Rates are reviewed and appropriate change is also effected in between the year. From time to time new products are also added to the list of goods having All Industry Rates.

In determining the All Industry Rates, for a particular class of goods, as per Rule 3(2) of Drawback Rules, the Central Government takes into account the following:

- (i) the average quantity or value of each class or description of the materials from which a particular class of goods are ordinarily produced or manufactured in India;
- (ii) the average quantity or value of the Imported material or excisable materials used for production or manufacture in India;
- (iii) the average amount of duties paid on Imported materials or excisable materials used in the manufacture of the semis, components and intermediate products used in the manufacture;
- (iv) the average amount of duties paid on materials wasted in the manufacturing process and catalytic agents (If such waste or catalytic agent is re-used in any process of manufacture or sold, the average amount of the duties on the waste or catalytic agent re-used/sold shall be deducted);
- (v) the average amount of duties paid on imported materials or excisable materials used for containing or packing the export product; and
- (vi) the average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the exports goods.
- (vii) any other information considered relevant for determining the drawback rate.

BRAND RATES

Where the Central Government has not determined the All Industry rates of drawback in respect of any export product eligible for such drawback (set out in Schedule to the Drawback Rules), or where the rate is not eligible because the manufacturer of the product has availed of certain duty free facilities (like Advance Authorization) but where sufficient duty paid inputs are also used, any manufacturer or exporter of such goods may apply under Rule 6 of the Drawback rules to the Central Government for the determination of the drawback rate for his product of specified description/characteristics.

SPECIAL BRAND RATES

In case any manufacturer/exporter finds that the All industry rate of drawback for any class of goods is less than four-fifth of the duties paid on the materials or components used in the production/manufacture and packing of same goods being exported by him, he can make an application for fixation of an appropriate amount or rate of drawback (under Rule 7 of the Drawback Rules) for his products of specified description/characteristics. Such rates, wherever determined, are termed as 'Special Brand Rates'.

PROVISIONAL RATE OF DRAWBACK

Exporters have also the facility to apply for fixation of a provisional drawback rate as per provisions of Rule 6(2)(a) of Drawback Rules, in cases where they have already applied for fixation of brand rates/special brand rates of their products whose finalisation is pending. The payment at provisional rates is, however, subject to execution of a suitable bond (with surety/security) by the Exporter with the concerned Custom House. On finalisation of the rate, the differential amount is appropriately adjusted.

MINIMUM RATE OF DRAWBACK

As per Rule 8 of the Drawback Rules, for any export product where the duties paid on inputs work out to less than 1% of F.O.B. value thereof (except where the amount of drawback per shipment exceeds rupees Five hundred), no Drawback rate (All-industry Rate or Brand Rate) is determined. However, this condition of minimum 1% of F.O.B. value will not be applicable in

case exports are made by post and exports are made in discharge of obligation against Advance authorization issued under Duty Exemption Scheme. Thus, in case of exports made by post and exports under Duty Exemption Scheme, drawback shall be payable in all cases wherever the amount of drawback is more than ₹ 50/-, the minimum limit specified statutorily in Section 76 of the Customs Act.

Further, under sub-rule (2), of Rule 8 it is provided that no amount or rate of drawback shall be determined in respect of any goods or class of goods under Rule 6 or Rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as Central Government may, by notification in the Official Gazette, specify in this behalf.

An 'Explanation' added to Sub-rule (2) provides that "Export Value" in relation to any export goods means the value thereof, determined in accordance with the provisions of Sub-section (1) of Section 14 of the Customs Act, 1962.

Customs, Central Excise Duties, Service Tax Drawback Rules, 1995, students may refer to the latest Customs Law Manual.

In *U.O.I. v. Rajindra Dyeing and Printing Mills, 2005 (180) ELT 433 (SC)* it was held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and DDBK not payable.

ILLUSTRATION: ZXY Ltd. has exported following goods to JAPAN. Compute the duty drawback admissible under Section 75 of the Customs Act, 1962 in each of the following cases:

Products	FOB value of Exported Goods Amount In Rs.	Market Price of goods Amount in Rs.	Duty drawback rate
1	5,00,000	390,000	30% OF FOB
2	7,00,000	7,60,000	2.50% OF FOB
3	75,000	60,000	0.7% OF FOB
4	3,00,000	3,50,000	1.50% OF FOB

Note:

- (1) Imported value of Product 2 is Rs. 8,00,000
- (2) Product 4 is manufactured out of inputs for which no duty has been paid
- (3) Working notes should be stated clearly

Solution:

Products	FOB value of Exported Goods Amount In Rs	Market Price of goods Amount in Rs	Duty drawback rate	Amount of Duty Drawback	Eligible Amount of Duty Drawback
1	5,00,000	390,000	30% OF FOB	150,000	130,000
2	7,00,000	7,60,000	2.50% OF FOB	nil	nil
3	75,000	60,000	0.7% OF FOB	525	525
4	3,00,000	3,50,000	1.50% OF FOB	nil	nil

Notes:

Product 1: Maximum DBK is 1/3 of market price. (Rule 8A of DBK Rules)

Product 2: Value of export goods (FOB) is less than value of imported goods

Product 3: Minimum amount of drawback is 1% of FOB or above Rs. 500 per shipment. (Rule8)

Product 4: No duty paid, no DBK can be claimed

III. BAGGAGE (SECTION 77 TO 81)

Chapter XI of the Customs Act, 1962 contains special provisions regarding baggage, goods imported or exported by post and stores. This Chapter is divided into three Parts,

- Part I deals with baggage (Sections 77 to 81),
- Part II deals with goods imported or exported by post (Sections 82, 83 and 84), and
- Part III deals with Stores (Sections 85 to 90).

These provisions are discussed herein below:

DECLARATION BY OWNER OF BAGGAGE [SECTION 77]

Section 77 provides that the owner of any baggage shall for the purpose of clearing it make a declaration of its contents to the proper officer.

The word 'baggage' is a comprehensive term which means luggage of a passenger accompanied or unaccompanied and comprises of the trunks or bags and the personal belongings of the passenger contained therein. It is in this comprehensive sense that the term "baggage" has been used in Sections 77 and 80 of the Customs Act. Thus, 'baggage' has been given a larger and ordinary meaning. (*Union of India v. Khalil Kecherim*, 1970 Cri. L.J. 417).

Section 2(3) of the Customs Act defines baggage as including unaccompanied baggage but excluding motor vehicle.

DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION IN RESPECT OF BAGGAGE [SECTION 78]

According to Section 78 of the Customs Act, 1962, the rate of duty and tariff-valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under Section 77.

BONA-FIDE BAGGAGE EXEMPT FROM DUTY [SECTION 79]

Section 79(1) provides that the proper officer may, subject to any rules made under Sub-section (2) pass free of duty —

- (a) Any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in use for such minimum period as may be specified in the rules.
- (b) Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona-fide gift or souvenir.

Provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules [Section 79(1)].

The Central Government may make rules for the purpose of carrying out the provisions of this section and in particular, such rules may specify -

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of Sub-section (1).
- (b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of Sub-section (1).
- (c) the conditions (to be fulfilled before or after clearance), subject to which any baggage may be passed free of duty. [Section 79(2)].

Section 79(3) lays down that different rules may be made under Sub-section (2) for different classes of persons.

In the Act a distinction has been made between 'baggage' and 'bona-fide baggage' which is exempt from customs duty and in respect of which the proper officer has been empowered to pass free of duty any article which is in the baggage of a passenger and which has souvenir. Therefore, any article in the baggage of a passenger, even though it may be 'goods' within the meaning of Section 2(22) of the Act, will be allowed to be imported free of duty, if it is passed under Section 79 of the Act.

The Government of India in the Ministry of Finance, Department of Revenue and Excise has in exercise of powers conferred by Sub-section (2) of Section 79 framed the Baggage Rules, 1998, the Tourist Baggage Rules, 1998 and the Transfer of Residence Rules, 1978. The text of these rules is given in Annexure 1 to this Study.

TEMPORARY DETENTION OF BAGGAGE [SECTION 80]

Section 80 of the Customs Act, provides that, where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

REGULATION IN RESPECT OF BAGGAGE [SECTION 81]

Baggage is exempt from CVD. Section 81 lays down that the Board may make regulations:

- (a) providing for the manner of declaring the contents of any baggage;
- (b) providing for the custody, examination, assessment to duty and clearance of baggage;
- (c) providing for the transit or transshipment of baggage from one customs station to another or to a place outside India.

The Government of India, Department of Revenue and Excise has framed Baggage Rules, 2016; (vide notification No.30/2016 - Customs (N. T.) dated 1st March, 2016. ;

- (1) Baggage includes unaccompanied baggage but does not include motor vehicles [section 2(3)].

Baggage includes all dutiable articles imported by passenger or crew but does not include motor vehicles, alcoholic drinks (beyond limits) and goods imported through courier.

- (2) Duty free allowances generally allowed to the Indian resident or foreigner residing in India:

The new Baggage Rules [as amended by Baggage (Amendment) Rules, 2016 vide Notification

No. 43/2016-Customs (N.T.) dated 31st March, 2016] have come into force on the 1st day of April, 2016.

Definitions. – (1) In these rules, unless the context otherwise requires, -

- (i) "Annexure" means Annexure appended to these rules;
- (ii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;
- (iii) "infant" means a child not more than two years of age;
- (iv) "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 1967) and normally residing in India;
- (v) "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (vi) "personal effects" means things required for satisfying daily necessities but does not include jewellery.

(2) Words and expression used and not defined in these rules but defined in the Customs Act, 1962 (52 of 1962) shall have the same meaning respectively assigned to them in the said Act.

Passenger arriving from countries other than Nepal, Bhutan or Myanmar.-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of Indian origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.

Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger."

Passenger arriving from Nepal, Bhutan or Myanmar.-An Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that where the passenger is an infant, only used personal effects shall be allowed duty free:

Provided further that where the passenger is arriving by land, only used personal effects shall be allowed duty free.

Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger."

Jewellery.- A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

Transfer of residence.- (1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.

(2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

APPENDIX

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From three months upto six months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of sixty thousand rupees.	Indian passenger	-
From six months upto one year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of one lakh rupees.	Indian passenger	-
Minimum stay of one year during the preceding	Personal and household articles, other than those mentioned in Annexure I or Annexure II but	The Indian passenger should not have availed this concession in	-

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
two years.	including articles mentioned in Annexure III upto an aggregate value of two lakh rupees.	the preceding three years.	
Minimum stay of two years or more.	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of five lakh rupees.	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence; (ii) Total stay in India on short visit during the two preceding years should not exceed six months; and (iii) Passenger has not availed this concession in the preceding three years.	(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of :- (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing. (b) For condition (ii), the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing. No relaxation.”.

Currency. - The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

Provisions regarding unaccompanied baggage. - (1) These rules shall apply to unaccompanied baggage except where they have been specifically excluded:

Provided that the said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within one month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow:

Provided further that the said unaccompanied baggage may land in India upto two months before the arrival of the passenger or within such period, not exceeding one year, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

Application of these rules to members of the crew. - (1) These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) Notwithstanding anything contained in sub-rule (1), a member of crew of a vessel or an aircraft other than those referred to in sub-rule(1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of one thousand and five hundred rupees.

ANNEXURE-I
(See rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

ANNEXURE II
(See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
 - (a) television receiver;
 - (b) sound recording or reproducing apparatus;
 - (c) video reproducing apparatus.
7. Cinematographic films of 35mm and above.

8. Gold or Silver, in any form, other than ornaments.

ANNEXURE III

(See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

ILLUSTRATION: Mr. Ravindra an Indian, went to China on 05-04-2017. The following details of baggage are submitted by him to the Customs authorities on return to India on 20-07-2017.

- (a) 2 Music systems each worth Rs 20,000.
- (b) Jewellery brought by Mr. Ravindra worth Rs 35,000. (15 Grams)
- (c) Anew laptop worth 50,000
- (d) liquor 2 litres worth Rs. 5,000

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

SOLUTION: Mr. Ravindra is not eligible for exemption from jewellery as he did not stay abroad over one year. Music systems are dutiable but covered under General free allowance of Rs. 50,000.

Music systems:	40,000	
Jewellery	35,000	
Liquor	5,000	(liquor is dutiable baggage upto two litres)
Total	80,000	
Less GFA	50,000	
Dutiable baggage:	30,000	
Duty @ 36.05%=	Rs. 10,815	

Notes: Under Baggage Rules, 2016, GFA has been increased to 50,000 even for a visit to China. Lap top is non dutiable for persons of 18 years and above.

IV. GOODS IMPORTED OR EXPORTED BY POST [SECTION 83 TO 84]

As already stated, Sections 83 to 84 deal with goods imported or exported by post. These provisions are discussed herein below:

(b) Rate of Duty and Tariff Valuation in respect of Goods Imported or Exported by Post [Section 83]

Section 83(1) lays down that the rate of duty and tariff value, if any, applicable to any goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon, provided that if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.

Section 83(2) lays down that the rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

(c) Regulations Regarding Goods Imported or to be Exported by Post [Section 84]

Regulations regarding goods imported or to be exported by post. - The Board may make regulations providing for:

- a. the form and manner in which an entry may be made in respect of goods imported or to be exported by post;
- b. the examination, assessment to duty, and clearance of goods imported or to be exported by post;
- c. the transit or transshipment of goods imported by post, from one customs station to another or to a place outside India.

V. STORES [SECTION 85 TO 90]

Sections 85 to 90 deal with Stores i.e. goods which are supplied as Stores to the vessels or aircrafts. These provisions are as follows:

(a) Stores may be allowed to be warehoused without assessment to duty [Section 85]

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircraft without payment of import duty under this Chapter (i.e. Chapter XI) the proper officer may permit the goods to be warehoused without the goods being assessed to duty (Section 85).

(b) Transit and Transshipment of stores

Any stores imported in a vessel or aircraft may without payment of duty, remain on board such vessel or aircraft while it is in India. [Section 86(1)].

Any stores imported in a vessel or aircraft may with the permission of proper officer be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87 or Section 90 [Section 86(2)].

In exercise of the powers conferred under Section 86, the Central Board of Revenue has made the Imported Stores (Retention on Board) Regulations, 1963 According to these regulations, any imported stores on board a vessel arriving from a foreign port or an aircraft arriving from a foreign airport may remain on board such vessel or aircraft without payment of import duty leviable thereon during the period such vessel or aircraft is not a foreign-going vessel or

aircraft, subject to the condition that where such stores are consumable stores:

- (a) in the case of alcoholic liquor, cigarettes, cigars and pipe tobacco, such stores are kept under Customs seal:
- (b) in the case of consumable stores other than those specified in clause (a) such of other stores are likewise kept under Customs seal.

Provided that if the proper officer is satisfied that it is not practicable so to do, he may, after taking inventory of such stores, allow them to remain on board without being put under Customs seal. Where any stores have been kept under Customs Seal, such seal shall not be broken until the vessel or aircraft becomes a foreign-going vessel or aircraft.

(c) Imported Stores may be Consumed on Board a Foreign going Vessel or Aircraft [Section 87]

Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may without payment of duty be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft. (Section 87).

The Central Board of Excise and Customs has made the Bonded Aircraft Stores (Procedure) Regulations, 1965 which provide for the following:

● ***Warehousing of goods for use as stores***

- (1) Where any imported goods for use in a foreign-going aircraft are to be entered for warehousing under Section 85 of the Act, an application in Form I shall be made to the Assistant Commissioner of Customs.
- (2) Every such application shall be deemed to be the Bill of Entry in relation to the goods supplied specified in that application for the purpose of Section 46 of the Act.
- (3) On receipt of an application under Sub-regulation (1), the Assistant Commissioner of Customs may permit the goods specified in that application to be warehoused without the goods being assessed to duty.

● ***Clearance of Warehoused Goods for Supply as Stores in a Foreign going Aircraft***

- (1) Where goods permitted to be warehoused under sub-regulation (3) of regulation 3 (above) are to be cleared for use as stores in a foreign-going aircraft, an application shall be, made to the Assistant Commissioner of Customs in Form II.
- (2) Every such application shall be deemed to be the shipping bill in relation to the goods specified in that application for the purpose of Section 50 of the Act.
- (3) On receipt of an application under Sub-regulation (1) the Assistant Commissioner of Customs may permit the clearance of the warehoused goods specified in that application for being taken on board the foreign-going aircraft as stores in accordance with the provisions of Section 69 of the Act as applied to stores by Section 88 of the said Act.

(d) Application of Section 69 of Chapter X to Stores [Section 88]

Section 88 provides that provisions of Section 69 and Chapter X shall apply to stores (other than those to which Section 90 applies) as they apply to other goods, subject to the modifications that:

- (a) for the words, "exported to any place outside India" or the word "exported" wherever they occur, the words "taken on board any foreign-going vessel or aircraft as stores" shall be substituted.
- (b) in the case of drawback on fuel and lubricating oil taken on board any foreign-going

aircraft as stores. Sub-section (1) of Section 74 shall have effect as if for the words "ninety-eight per cent" the words "the whole" were substituted.

(e) Stores to be Free of Export Duty [Section 89]

Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart (Section 89).

(f) Concession in respect of imported stores for the Navy [Section 90]

Section 90(1) provides that, imported stores specified in Sub-section (3) may without payment of duty be consumed on board a ship of the Indian Navy.

Section 90(2) lays down that the provisions of Section 69 and Chapter X shall apply to stores specified in Sub-section (3) as they apply to other goods, subject to modification that:

- (a) for the words "exported to any place outside India" or the word "exported" wherever they occur, the words "taken on board a ship of the Navy" shall be substituted.
- (b) for the words, "ninety-eight per cent" in Sub-section (1) of Section 74, the words "the whole" shall be substituted.

The stores referred to in Sub-sections (1) and (2) are the following:

- (a) Stores for the use of a ship of the Indian Navy;
- (b) Stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service [Section 90(3)].

VI. PROVISIONS RELATING TO COASTAL GOODS AND VESSELS CARRYING COASTAL GOODS [SECTION 91 TO 99]

Chapter XII deals with provisions relating to coastal goods and vessels carrying coastal goods. These provisions do not apply to baggage and stores (Section 91).

The important provisions relating to coastal goods and vessels carrying coastal goods are given below:

(a) Entry of Coastal Goods [Section 92]

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a Bill of Coastal Goods in the prescribed form. [Section 92(1)]. The Bill of Coastal Goods (Form) Regulations, 1976 have prescribed the Form for purposes of this Section.

Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

(b) Coastal Goods not to be Loaded until Bill relating thereto is passed [Section 93]

Section 93 lays down that the master of a vessel shall not permit the loading of any Coastal goods on the vessel until a bill relating to such goods presented under Section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

(c) Clearance of Coastal Goods at Destination [Section 94]

Section 94 lays down that the master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under Section 93 and shall immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of the port all bills relating to the goods which are to be unloaded at the port. Section 94(1) provides that where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to

him under Sub-section (1).

(d) Master of a coastal vessel to carry an advice book [Section 95]

Section 95 lays down that the master of every vessel carrying coastal goods shall be supplied with a book to be called the advice book. The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port. The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call, deliver it to the proper officer at that port for his inspection.

(e) Loading and Unloading of Coastal Goods at Customs Port or Coastal Port Only [Section 96]

As per Section 96, no coastal goods shall be loaded on, or unloaded from any vessel at any port other than a customs port or a coastal port appointed under Section 7 for the loading of such goods.

(f) No Coastal Vessel to Leave Without Written Order [Section 97]

Section 97 provides that, the master of a vessel which has brought or loaded any coastal goods at a customs port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

No such order shall be given until:

- (a) the master of the vessel has answered the question put to him under Section 38;
- (b) all charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by such guarantee or deposit such amount as the proper officer may direct.
- (c) the master of the vessel has satisfied the proper officer that no penalty is leviable on him under Section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct.
- (d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with. [Section 97(2)].

(g) Application of certain provisions of this Act to coastal goods, etc. [Section 98]

Section 98 provides that Sections 33, 34, 36 shall, so far as may be apply to coastal goods as they apply to imported goods. Sections 37 and 38 shall, so far as may be, apply to vessels carrying coastal goods as they apply to vessels carrying imported goods or export goods.

The Central Government may by notification in the Official Gazette, direct that all or any of the other provisions of Chapter V and provisions of Section 45 shall apply to coastal goods subject to such exceptions and modifications as may be specified in the notification.

(h) Power to make rules in respect of coastal goods and coastal vessels [Section 99]

Section 99 empowers the Central Government to make rules for:

- (a) Preventing the taking out of India of any coastal goods the export of which is dutiable or prohibited under this Act or any other law for the time being in force.
- (b) Preventing in the case of a vessel carrying coastal goods as well as imported or export goods, the substitution of imported or export goods by coastal goods.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).

1. Explain the advantages of keeping goods in a warehouse?
2. What is warehousing period? Whether any interest is payable on warehoused goods? Discuss.
3. What do you understand by the term 'Duty Drawback'?
4. What is minimum and maximum drawback under Section 75 of the Customs Act?
5. What are the essential elements required for entitlement of 'drawback' on re-export of imported goods?
6. What are the rates of Drawback under Section 75 of the Act ?
7. Distinguish between duty drawback under sections 74 and 75?
8. What is temporary detention of Baggage under Section 80 of the Customs Act?
9. What do you mean by stores? When 100% of duty is refunded as a duty drawback on stores?
10. What are 'Public' (Bonded) Warehouses and 'Private' (Bonded) Warehouses?
11. What are the provisions regarding appointment of Public (Bonded) Warehouses and Licensing of Private (Bonded) Warehouses under the Customs Act, 1962?
12. What is the relevant date for rate of duty in case of goods imported or exported by post?

SUGGESTED READINGS

- (1) Customs Law Manual — *R. K. Jain*
- (2) Indirect Taxes—Law and Practice — *V. S. Datey*

Lesson 7

Customs Law - Search, Seizure, Confiscation of Goods, Offences and Penalties

LESSON OUTLINE

This lesson is divided into the following parts:

- I. Search, Seizure, Confiscation of Goods, Offences and Penalties

LEARNING OBJECTIVES

The Custom duty derived its value from the word "custom" under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king. Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period. After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Indian Customs Act, 1934 was repealed by the [Customs Tariff Act, 1975\(CTA\)](#).

At the end of this lesson, the students will

- Be familiar with the adjudication provisions.

As per the Customs Act, 1962 the Central Board of Excise and Customs (the Board) has been given the powers to appoint Customs Ports, Airports and Inland Container Depots (ICD), where the imported goods can be brought in for unloading or loading of export goods. Similarly, powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods imported or exported by land or by inland water.

CUSTOMS LAW

PART V: SEARCH, SEIZURE, CONFISCATION OF GOODS, OFFENCES AND PENALTIES

This part is divided into

- I. Searches, Seizure and Arrest (Section 100 to 110A)
- II. Confiscation of goods and conveyances and imposition of penalties (Section 111 to 127)
- III. Offences and Prosecutions (Section 132 to 140A)

I. SEARCHES, SEIZURE AND ARREST

The Customs Law seeks to regulate imports and exports. It is, therefore, necessary for the customs Department to be fully equipped to meet situations where there is any illegal export or import of goods. In any fiscal enactment, it is common to find provisions relating to searches, seizure and arrest. These provisions only advance the primary objective of the law namely

"Prevention of illegal imports and exports. At the same time, it should be remembered that the Customs Act does not aim at detection of a crime. The Customs Officers are also not primarily concerned with the detection and punishment of a crime but they are entrusted in ensuring that there is no smuggling of contraband articles. They have to safeguard the recovery of customs duty properly applicable to the goods. Chapter XIII of the Act consisting of Sections 100 to 110A contains detailed provisions in regard to searches, seizure and arrest. These are discussed below:

(A) POWER TO SEARCH SUSPECTED PERSONS ENTERING OR LEAVING INDIA(SECTION 100)

Under Section 100 of the Act where the proper officer of the Customs has reason to believe that the following categories of persons have secreted any goods, liable to confiscation or any documents thereto, he may search such persons.

The categories of persons referred to in the above paragraph are: -

- (a) any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;
- (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;
- (c) any person who has got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;
- (d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
- (e) any person in a customs area.

(B) POWER TO SEARCH SUSPECTED PERSONS IN CERTAIN OTHER CASES (SECTION 101)

Under Section 101 of the Act, an officer of the Customs empowered generally or specially by an order of Principal Commissioner of Customs can search any person if he has reason to believe that any person has secreted about his person, the following goods which are liable to confiscation, or documents relating thereto:

- (a) gold;
- (b) diamonds;
- (c) manufactures of gold or diamond;
- (d) watches;
- (e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

The power under Section 101 is without prejudice to the power conferred under Section 100 of the Act. Again under Section 101 any person can be searched.

(C) PERSONS TO BE SEARCHED MAY REQUIRE TO BE TAKEN BEFORE GAZETTED OFFICER OF CUSTOMS OR MAGISTRATE (SECTION 102)

Section 102 of the Act provides that when any officer of Customs is about to search any person in terms of Sections 100 and 101, he shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of customs or magistrate. If such requisition is made, the officer of customs may detain the person making it until, he can bring him before the gazetted officer of customs or the magistrate. The Gazetted Officer of customs or the magistrate before whom any "such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person. In other cases, he shall direct that a search be made.

Before making a search, the officer of Customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do. The search would be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses. Where the person to be searched is a female, the search shall be done only by a female.

(D) POWER TO SCREEN OR X-RAY BODIES OF SUSPECTED PERSONS FOR DETECTING SECRETED GOODS (SECTION 103)

Section 103 of the Act contains powers, to screen or X-Ray bodies of persons suspected of secreting certain goods liable to confiscation. Under this section, detention of a person and production without unnecessary delay before the nearest Magistrate by the proper officer is envisaged. The Magistrate before whom any person is brought shall, if he sees how reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person. On the other hand, where the Magistrate has reasonable ground for believing that any such person has any such goods liable for confiscation secreted in his body and the Magistrate is satisfied that an X-Ray is necessary for this purpose, he may make an order to a radiologist possessing qualifications recognised by the Central Government for the purpose of screening or X-raying the body of any person, such person would be taken to a radiologist for the purpose of screening or X-raying the body. The radiologist shall, after the screening or X-Ray, forward his report together with the X-Ray picture taken by him to the Magistrate without unnecessary delay. On receipt of the report of radiologist, if the Magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct; that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction. In the case of a female, the advice and supervision of a female registered medical practitioner is required. For the purposes of complying with the provisions of this section any person brought before the Magistrate may be detained by him for such period as the Magistrate may direct.

The above provisions will not apply to any such person who admits that goods liable to confiscation are secreted in his body and who voluntarily submits himself for suitable action being taken for bringing out such goods.

(E) POWER TO ARREST (SECTION 104)

If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest [Section 104(1)].

Every person arrested shall, without unnecessary delay, be taken to a magistrate (Sub-section 2 of Section 104)

Where an officer of customs has arrested any person he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898.

As per sub-section (4), notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to--

- (a) prohibited goods; or
- (b) evasion or attempted evasion of duty exceeding Rs. 50 Lakh, shall be cognizable.

All other offences under the Act shall be non-cognizable except the two above.

As per sub-section (6), notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 135 relating to -

- (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

Except as provided in sub section (6), all other offences under this Act shall be bailable.

POWER TO SEARCH PREMISES (SECTION 105)

Section 105 of the Act deals with it. The Assistant/Deputy Commissioner of Customs or any other officer of customs in case of any area adjoining the land frontier or the coast of India specially empowered by name in this behalf by the Board, if he has reason to believe that any goods liable to confiscation or any documents or things which in his opinion will be useful to any proceedings under the Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents, or things. For the purposes of conducting such a search, the provisions of the Code of Criminal Procedure, 1973 relating to searches would apply.

POWER TO STOP AND SEARCH CONVEYANCES (SECTION 106)

Section 106 of the Act deals with it. Accordingly, where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and

- (a) rummage and search any part of the aircraft, vehicle or vessel;
- (b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

(2) Where for the above purpose—

- (a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognised means, and thereupon such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;
- (b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

POWER TO INSPECT (SECTION 106A)

Section 106A of the Act empowers an Officer of Customs to enter any place intimated under Chapter IVA or IVB of the Act and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for this inspection the accounts maintained under the said Chapter IVA or Chapter IVB and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or likely to be illegally exported.

POWER TO EXAMINE PERSONS (SECTION 107)

Under Section 107 of the Act, any Officer of Customs empowered specially or generally by an order of the Principal Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods —

- (a) require any person to produce or deliver any document or thing relevant to the enquiry;
- (b) examine any person acquainted with the facts and circumstances of the case.

POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS (SECTION 108)

Section 108 of the Act deals with it. Accordingly, any Gazetted Officer of customs duty (the words “empowered by the Central Government”, has been omitted by Finance Act, 2008 w.e.f. 13th July 2006) shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

Provided that the exemption under Section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

Section 108A. (1) Any person, being—

- (a) a local authority or other public body or association; or
- (b) any authority of the State Government responsible for the collection of value added tax or sales tax or any other tax relating to the goods or services; or
- (c) an income tax authority appointed under the provisions of the Income tax Act, 1961;
- (d) a Banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or

- (e) a co-operative bank within the meaning of clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961; or
- (f) a financial institution within the meaning of clause (c), or a non-banking financial company within the meaning of clause (f), of section 45-I of the Reserve Bank of India Act, 1934; or
- (g) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or
- (h) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- (i) a Registrar within the meaning of the Companies Act, 2013; or
- (j) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or
- (k) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (l) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- (m) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- (n) the Post Master General within the meaning of clause (j) of section 2 of the Indian Post Office Act, 1898; or
- (o) the Director General of Foreign Trade within the meaning of clause (d) of section 2 of the Foreign Trade (Development and Regulation) Act, 1992; or
- (p) the General Manager of a Zonal Railway within the meaning of clause (18) of section 2 of the Railways Act, 1989; or
- (q) an officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934, who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

(2) Where the proper officer considers that the information furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such information

and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information has not furnished the same within the time specified in sub-section (1) or sub-section (2), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

(3) Where a person who is required to furnish information has not furnished the same within the time specified in sub-section (1) or sub-section (2), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

Section 108B. Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues."

POWER TO REQUIRE PRODUCTION OF ORDER PERMITTING CLEARANCE OF GOODS IMPORTED BY LAND (SECTION 109)

Under Section 109 of the Act, any Officer of Customs appointed for any area adjoining the land frontier of India and "empowered generally or specially by an order by the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under Section 47 permitting clearance of the goods. The provisions of this section shall not apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of Section 7.

SEIZURE OF GOODS, DOCUMENTS AND THINGS (SECTION 110)

Under Section 110 of the Act, if the proper officer of Customs has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. Where it is not practicable to seize such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be, after its seizure under Sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

In exercise of the powers conferred by Sub-section (1A) of Section 110 of the Customs Act,

1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature of the goods, has specified the following goods, namely:

1. Liquors;
2. Primary cells and primary batteries including re-chargeable batteries;
3. Wrist watches including electronic wrist watches; watch movements or components thereof;
4. All electronic goods including television sets, video cassette recorders, tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits etc; and
5. Dangerous drugs and psychotropic substances."

Where any goods, being goods specified above have been seized by a proper officer under Sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of —

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of the Magistrate, photographs of such goods and certifying such photographs as true; or
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

Where any application is made as above, the Magistrate, shall allow the application.

Where any goods are seized and no notice in respect thereof is given under clause (a) of Section 124 within 6 months of seizure of the goods, the goods shall be returned to the person from whose possession they were seized. This period of 6 months however, can be extended by the Commissioner of Customs for a period not exceeding six months.

The proper officer may seize any documents or things which in his opinion, will be useful for, or relevant to, any proceeding under this Act. The person from whose custody any documents are seized is entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

Provisional Release of goods, document and things seized pending Adjudication (Section 110A)

Any goods, documents or things seized under Section 110 may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

PART II: CONFISCATION OF GOODS AND CONVEYANCES AND IMPOSITION OF PENALTIES (SECTION 111 TO 127)

Goods become liable to confiscation if the Importer or Exporter contravenes any of the provisions of the Customs Act, 1962 or any other Act for the time being in force in relation to the importation and exportation of goods. Some of the more important allied statutes that get attracted in this manner are, to mention just a few, the Arms Act, the Copyright Act, the Dangerous Drugs Act, the Foreign Exchange Management Act, the Imports and Exports (Control) Act, the Trade Marks Act and the Ancient Monuments Preservation Act. The responsibility of the Officers of Customs to ensure that none of the provisions of these and

such enactments is contravened, is thus onerous. It is also to meet that there are several instances of contraventions of these provisions and this has paved the way to procedures being laid down for, not only bringing the contraventions to the notice of those concerned, but also to take those responsible to task for non-compliance with statutory obligations. Of course, there are contraventions of the Customs Act, 1962 also and all these are taken care of by the set procedures for adjudication.

We have already seen that Section 28 of the Customs Act provides for a notice to be issued to the Importer or Exporter of any goods if duties of Customs have not been levied or have been short levied or erroneously refunded. Similarly, if any contravention of any provision of any Act for the time being in force is noticed, it is a statutory obligation placed on the Department that a notice of show cause be issued to the person concerned, so that he is given an opportunity to explain his side of the matter. Section 124 of the Customs Act lays down as follows:

(A) CONFISCATION OF IMPROPERLY IMPORTED GOODS ETC. (SECTION 111)

Under Section 111, the following goods brought from a place outside India shall be liable to confiscation: -

- (a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of Section 7 for the unloading of such goods;
- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of Section 7 for the import of such goods;
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of Section 32, other than goods inadvertently unloaded but included in the record kept under Sub-section (2) of Section 45;
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of Section 33 or Section 34;
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under Section 109 is not produced or which do not correspond in any material particular with the specification contained therein;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77;

- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to Sub-section (1) of Section 54.
- (n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed, unless the non-observance of the condition was sanctioned by the proper officer;
- (p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

PENALTY FOR IMPROPER IMPORTATION OF GOODS, ETC. (SECTION 112)

Under Section 112, any person:

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111;

shall be liable:

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher. Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;
- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
- (iv) in the case of goods falling both under clauses (i) and (ii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Case: GOPAL SAHA v UOI, 2016 (H.C):

Gold bars imported without declaration and clearance were confiscated by the department and a penalty of Rs.10,07,00,000/- was imposed on the ground that the goods are prohibited goods. But the petitioner contended that the gold bars are not prohibited goods for penalty under Section 112 (b) (i) of Customs Act, 1962. The case falls under Section 112 (b) (ii) which imposes penalty not exceeding 10% of duty or Rs. 5000 whichever is greater. Hence the penalty equal to value of smuggled goods is untenable under the law.

The CALCUTTA HIGH COURT held that when a provision provides for punishment it has to be strictly construed - expression "goods in respect of which any prohibition is in force" in the context of Section 112 of the Act would imply goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof –

The Court remanded the matter for the imposition of such other quantum of penalty that may be permissible

CONFISCATION OF GOODS ATTEMPTED TO BE IMPROPERLY EXPORTED, ETC. (SECTION 113)

The following export goods shall be liable to confiscation, under Section 113 of the Act:

- (a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;
- (b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of Section 7 for the export of such goods;
- (c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;
- (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;
- (f) any goods which are loaded or attempted to be loaded in contravention of the provisions of Section 33 or Section 34;
- (g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;
- (h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77;
 - (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77;
 - (ii) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under Section 75.

- (i) any goods on which import duty has not been paid and which are entered for exportation under Section 74;
- (j) any goods cleared for exportation under a claim for drawback which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;
- (k) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

PENALTY FOR ATTEMPT TO EXPORT GOODS IMPROPERLY ETC. (SECTION 114)

According to Section 114 any person who, in relation to any goods, does or omits to do, any act, which act or omission would render such goods liable to confiscation under Section 113, or abet the doing or omission of such an act, shall be liable:

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher. Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;
- (iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is greater.

PENALTY FOR SHORT-LEVY OR NON-LEVY OF DUTY IN CERTAIN CASES (SECTION 114A)

Section 114A inserted by the Finance (No. 2) Act, 1996 w.e.f. 28.9.96, prescribes a mandatory penalty equal to the duty or interest not levied, short levied, not paid or part paid or erroneously refunded by reason of collusion or willful mis-statement or suppression of facts by the person liable to pay the duty. The section reads as under—

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has not been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under Sub-section (2) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under Sub-section (2) of Section 28, and the interest payable thereon under Section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available

subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account.

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeal), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under Section 28AB, and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114.

Explanation — For the removal of doubts, it is hereby declared that:

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under Sub-section (2) of Section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

PENALTY FOR USE OF FALSE AND INCORRECT MATERIAL (SECTION 114AA)

Section 114AA provides that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

CONFISCATION OF CONVEYANCES (SECTION 115)

(1) The following conveyances shall be liable to confiscation, under Section 115:

- (a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;
- (c) any conveyance which having been required to stop or land under Section 106 fails to do so, except for good and sufficient cause;
- (d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;
- (e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal.

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

“Market price” in this section, means market price at the date when the goods are seized. (Explanation added to the section).

PENALTY FOR NOT ACCOUNTING FOR GOODS (SECTION 116)

Under Section 116, if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant or Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable:

- (a) in the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act, to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;
- (b) in the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

PENALTIES FOR CONTRAVENTION, ETC., NOT EXPRESSLY MENTIONED (SECTION 117)

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provisions of this Act, with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees (Section 117).

CONFISCATION OF PACKAGES AND THEIR CONTENTS (SECTION 118)

- (a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.
- (b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation (Section 118).

CONFISCATION OF GOODS USED FOR CONCEALING SMUGGLED GOODS (SECTION 119)

Any goods used for concealing smuggled goods shall also be liable to confiscation, in terms of Section 119.

“Goods” does not include a conveyance used as a means of transport.

CONFISCATION OF SMUGGLED GOODS NOTWITHSTANDING ANY CHANGE IN FORM, ETC. (SECTION 120)

- (1) Smuggled goods may be confiscated notwithstanding any change in their form.
- (2) Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

Provided that where the owner of such goods proves that he had no knowledge or reason to believe that they included any smuggled goods, only such part of the goods the value of which is equal to the value of the smuggled goods shall be liable to confiscation (Section 120).

CONFISCATION OF SALE-PROCEEDS OF SMUGGLED GOODS (SECTION 121)

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation (Section 121).

ADJUDICATION OF CONFISCATIONS AND PENALTIES (SECTION 122)

Section 122 provides that in every case in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged:

- (a) without limit, by a Principal Commissioner of Customs or a Joint Commissioner of Customs;
- (b) where the value of the goods liable to confiscation does not exceed two lakh rupees, by an Assistant or Deputy Commissioner of Customs;
- (c) where the value of the goods liable to confiscation does not exceed ten thousand rupees, by a Gazetted Officer of customs lower in rank than an Assistant or Deputy Commissioner of Customs.

ADJUDICATION PROCEDURE SECTION 122A

The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

The adjudicating authority may, if sufficient cause is shown at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

However, no such adjournment shall be granted more than three times to a party during the proceeding.

BURDEN OF PROOF IN CERTAIN CASES (SECTION 123)

Section 123(1), provides that where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be:

- (a) in a case where such seizure is made from the possession of any person:
 - (i) on the person from whose possession the goods were seized; and
 - (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

Section 123 shall apply to gold and manufactures of watches and any other class of goods which the Central Government may by notification in the Official Gazette specify.

The Central Government has notified the following other classes of goods, for the purposes of Section 123(2), namely:

1. Cosmetics.
2. Cigarettes.
3. Transistors and Diodes.
4. Synthetic yarn and Metallised yarn.
5. Fabrics made wholly or mainly of synthetic yarn.
6. Cassette Tape Recorders.
7. Electronic Calculators.
8. Whisky.
9. Watches, watch movements (including partly assembled movements), dials and cases for watches.
10. Zip fasteners.
11. Video Cassette Recorders and Video Cassette Players.
12. T.V. Sets.

ISSUE OF SHOW CAUSE NOTICE BEFORE CONFISCATION OF GOODS ETC. (SECTION 124)

Section 124, provides that, no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person:

- (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter;

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

This provision has been made to make it obligatory on the part of adjudicating officers to follow the principles of natural justice. Any order of confiscation or any order imposing a penalty on any person without giving him an opportunity as laid down in Section 124 becomes void and is set aside in a court of law, as can be seen from the following decrees:

"The Commissioner of Central Excise should see that every show cause notice issued under the provisions of the Act strictly complies with, not only the letter of the law, but also the spirit of it (AIR 1962 MAD. 366 at p. 368). The Department is not absolved of the obligation under Section 124 for issuing a show cause notice before passing an order confiscating any goods or imposing any penalty on any person under Chapter XIV of the Customs Act (AIR 1972 GUJ. 115). The object of the show cause notice is not to merely mention the statutory provisions under which the person to whom the notice is issued is liable to be punished by the imposition of penalty; the real object of such a notice is to indicate, besides the nature of the contravention which is sought to be punished under any provision of the Act, the penalty also that is sought to be imposed on the petitioner (AIR 1962 MAD. 366 at p. 368).

OPTION TO PAY FINE IN LIEU OF CONFISCATION (SECTION 125)

Under Section 125 whenever confiscation of goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to Sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods, the duty chargeable thereon.

Where any fine in lieu of confiscation of goods is imposed the owner of such goods or the other person shall, in addition, be liable to any duty and charges payable in respect of such goods.

ON CONFISCATION PROPERTY TO VEST IN CENTRAL GOVERNMENT (SECTION 126)

- (1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.
- (2) The officer adjudicating the confiscation shall take and hold possession of the confiscated goods (Section 126).

AWARD OF CONFISCATION OR PENALTY BY CUSTOMS OFFICERS NOT TO INTERFERE WITH OTHER PUNISHMENTS (SECTION 127)

The award of any confiscation or penalty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI or under any other law (Section 127).

Some important case laws relating to adjudication are given herein below to highlight the parameters within which the adjudicating officer has to function:-

- (a) In revision application of M/s. Bijjee Products (India) Pvt. Ltd., the Government of India observed: "The lower authorities have not gone into the merits of the refund claim nor have they examined whether the claim was within the time limit specified under the Rules. Government of India, accordingly, set aside the order of the Appellate Collector since it is not a speaking order and direct the Appellate Collector to consider the appeal de-novo now and pass an order on merits"- (1982 ELT 591).
- (b) "If a personal hearing was not given to the petitioner at the adjudication/appellate stage in spite of a specific request made by him in reply to the show cause notice, the adjudication order is not sustainable in law.The revision application disposed of without giving a speaking order is also invalid.If the basic order is invalid, the remaining appellate/ revisionary orders will also be ineffective". - [1982 ELT 350 (P&H)].
- (c) "If the Collector has disposed of the case in a summary fashion without giving due consideration to the points urged by the Appellants and passing a speaking order dealing with them, the case is fit for remand for de-novo trial." - (1982 ELT 436 CBEC).
- (d) "The Assistant Collector (Adjudicating Officer) has no power under law to modify his earlier order or to issue a corrigendum, for Section 154 of the Customs Act only provides for the correction of clerical or arithmetical mistakes or any error or errors arising from accidental slip or omission. As such, the corrigendum issued by the Assistant Collector was without authority." - [1986 (9) ECR 231 - CEGAT].
- (e) "The Assistant Collector, who has given his decision on the 1st February, 1962 has not taken any of these factors into consideration nor has he taken into consideration any of the other evidence offered by the petitioners for deciding this point. Under the

circumstances, we find that the decision given by the Assistant Collector, is a result of total non-application of his mind. The same can be said with greater force with regard to the order which the Collector has passed in appeal against the above order. Whatever be the reasons for the Collector to delay his order for months after the appeal was heard, we find that after this long deliberation over the merits of the appeal, the only order which is recorded is: 'I have examined the facts and merits of the case. I have carefully considered the pleas advanced by the appellants in the appeal petition as also the arguments at the time of personal hearing on 26.12.64. I, however, see no reason to interfere with the decision taken by the Assistant Collector ... in his order ... dated 2.2.63. I uphold the said order and consequently, the appeal is rejected.' It is too obvious to mention that this order cannot be considered as a speaking order. It does not reveal what the facts are that the Collector took into consideration before coming to his conclusion. Under the circumstances, the order suffers from the same infirmity as the order passed by the Assistant Collector does". - (1983 ELT 744 GUJ).

- (f) "It is well established that it is not a good return to a rule nisi for the issue of a writ certiorari to state that the order is justified on facts not contained in the order. This court cannot take cognizance of any fact which does not appear upon the face of the order. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order, bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. This ground is not mentioned in the impugned order". - 1984 (15) ELT 379 (MAD).
- (g) "... In this connection, I may state that the Assistant Collector is a quasi-judicial authority and has to discharge his duties and functions in a quasi-judicial manner. I would like to impress upon the Assistant Collector that he is not bound by any administrative instructions. The questions of fact and law which may be raised before him by the parties are required to be determined by him after full application of mind in an objective manner without feeling in any way controlled by any administrative instructions and he will deal with clearly and expressly the reasonings which may be advanced on behalf of the petitioners. It is only when the petitioners' reasoning is dealt with that it would show that there has been application of mind by him. The above observations have been made in view of the fact that administrative instructions have been brought to my notice by the counsel for the petitioners. For these reasons, the order of the Assistant Collector and the consequent demands are liable to be quashed". - [1985 (22) ELT 726 (RAJ)].

III. OFFENCES AND PROSECUTION PROVISIONS (SECTION 132 TO 140A)

The Customs Act, 1962 contains the following provisions in regard to offences and prosecutions:-

(A) FALSE DECLARATION, FALSE DOCUMENTS, ETC. [SECTION 132]

Whosoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both (Section 132).

(B) OBSTRUCTION OF OFFICER OF CUSTOMS [SECTION 133]

If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under Act, such person shall be punishable with imprisonment for a term which may

extend to 2 years or with fine, or with both (Section 133).

(C) REFUSAL TO BE X-RAYED [SECTION 134]

If any person

- (a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a magistrate under Section 103; or
- (b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, as provided in Section 103;

he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both (Section 134).

(D) EVASION OF DUTY OR PROHIBITIONS [SECTION 135]

- (1) without prejudice to any action that may be taken under the Customs Act, if any person –
 - (a) is in relation to any goods in any way knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt at evasion of any - duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or
 - (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be, or
 - (c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113.
 - (d) fraudulently availing or attempts to avail of drawback or any exemption from duty provided under this Act in connection with Export of goods

he shall be punishable, -

- (A) Any goods the market price of which exceeds one crore rupees or
- (B) The evasion or attempted evasion of duty exceeding ` 50 lakh rupees
- (C) Such categories of prohibited goods as the Central Government may specify.
- (D) With ` 50 lakh in case of clause (d) referred above.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than three years;

- (E) in any other case, with imprisonment for a term which may extend to three years or with fine, or with both.

- (2) If any person convicted of an offence under this section or under Sub-section (1) of Section 136 is again convicted of an offence under this section, then he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

In the absence of special and adequate reasons to the contrary to be recorded in the judgement of the court such imprisonment shall not be for less than one year.

- (3) For the purposes of the above provisions the following shall not be considered as

special and adequate reasons for awarding a sentence of imprisonment for a term of less than (one year) namely:-

- (i) the fact that the accused has been convicted for the first time for an offence under this Act;
- (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;
- (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;
- (iv) the age of the accused.

(E) PREPARATION [SECTION 135A]

If a person makes preparation to export any goods in contravention of the provisions of the Act, and from the circumstances of the case it may be reasonably inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both (Section 135A).

(F) POWER OF COURT TO PUBLISH NAME, PLACE OF BUSINESS, ETC., OF PERSONS CONVICTED UNDER THE ACT [SECTION 135B]

(1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting, the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.

(2) No publication under Sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal having been preferred, has been disposed of.

(3) The expenses of any publication under Sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the court (Section 135B).

(G) OFFENCES BY OFFICERS OF CUSTOMS [SECTION 136]

(1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any fraudulent export is effected or any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

(2) If any officer of customs

- (a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or documents secreted about this person; or
- (b) arrests any person without having reason to believe that he has been guilty of an offence punishable under Section 135; or

- (c) searches or authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in Section 105 are secreted in that place,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both (Section 136).

(H) COGNIZANCE OF OFFENCES [SECTION 137]

(1) No court shall take cognizance of any offence under Section 132, Section 133, Section 134 or Section 135, except with the previous sanction of the Commissioner of Customs.

(2) No court shall take cognizance of any offence under Section 136

- (a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs, except with the previous sanction of the Central Government;
- (b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant or Deputy Commissioner of Customs, except with the previous sanction of the Commissioner of Customs (Section 137).

(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of offence to the Central Government, of such compounding amount and in such manner of compounding as may be specified by rules.

Provided that nothing contained in this sub-section shall apply to –

- (a) a person who has been allowed to compound once in respect of any offence under Section 135 and 135A;
- (b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely –
 - (i) the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - (ii) the Chemical Weapons Convention Act, 2000;
 - (iii) the Arms Act, 1959;
 - (iv) the Wild Life(Protection) Act, 1972
- (c) a person involved in smuggling of goods certain specified goods
- (d) a person who has been allowed to compound once in respect of any offence under this chapter for goods of value exceeding rupees one crore;
- (e) a person who has been convicted under this Act on or after the 30th day of December, 2005.

(I) OFFENCES TO BE TRIED SUMMARILY [SECTION 138]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Chapter (other than the offence punishable for a term of imprisonment of three years or more under section 135) may be tried summarily by a Magistrate (Section 138).

(J) PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 138A]

(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation — In this section, “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability (Section 138A).

(K) RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [SECTION 138B]

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, statement should be admitted in evidence in the interests of justice.

(2) The provisions of Sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court (Section 138B).

(L) ADMISSIBILITY OF MICRO FILMS, FASCIMILE COPIES OF DOCUMENTS AND COMPUTERS PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 138C]

Section 138C authorises the admissibility of (a) microfilms of documents for the reproduction of image(s) embodied in such microfilms; (b) a facsimile copy of a document; and (c) a computer print-out as admissible evidence in any proceedings under the Customs Law without further requirement of production of the original document itself.

Such acceptance is subject to a series of conditions to safeguard revenue interests, whereby the proper officer is allowed to satisfy himself that such print-outs, facimiles or micro films do indeed reflect correctly the position as obtained in the original document itself.

(M) PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 139]

Where any document —

- (i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
- (ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act,

and such document is tendered by the prosecution in evidence against him and any other person who is tried jointly with him, the court shall —

- (a) presume, unless the contrary is proved, that the signature and every other part of such

document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

- (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
- (c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

Explanation - For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under Sub-section(1C) of Section 110 (Section 139).

(N) OFFENCES BY COMPANIES [SECTION 140]

(1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer should be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section, —

- (a) "company" means a body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm (Section 140).

(O) APPLICATION OF SECTION 562 OF THE CODE OF CRIMINAL PROCEDURE, 1898, AND OF THE PROBATION OF OFFENDERS ACT, 1958 [SECTION 140A]

(1) Nothing contained in Section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under the Customs Act unless that person is under eighteen years of age.

(2) The provisions of Sub-section (1) shall have effect notwithstanding anything contained in Sub-section (3) of Section 135 (Section 140A).

SECTION 157. General power to make regulations. - (1) Without prejudice to any power to make regulations contained elsewhere in this Act, the Board may make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :-

- (a) the form of a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, declaration for transshipment boat note and bill of coastal goods;

- (ai) the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper officer under clause (d) of sub-section (1) of section 26A;
- (a ii) the form and manner of making application for refund of duty under sub-section (2) of section 26A;
- [(aa) the form and manner] in which an application for refund shall be made under section 27;
- (ab) the form, the particulars, the manner and the time of delivering the passenger and crew manifest for arrival and departure and passenger name record information and the penalty for delay in delivering such information under sections 30A and 41A;
- (b) the conditions subject to which the transshipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to another under section 67, may be allowed without payment of duty;
- (c) the conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.
- (d) The manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter , as the case may be.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).

1. What are the provisions under Customs Act, regarding the search of suspected persons?
2. What are the powers of Customs Officer with regard to search of premises and stoppage and search of conveyance?
3. What are the provisions with regard to confiscation of improperly imported goods and penalty thereon ?
4. When does an exporter is liable for confiscation of goods and penalty thereon as per the provisions of Customs Act, 1962?
5. When does a conveyance used for import or export of goods is liable for confiscation?
6. What is the liability of the owner of the confiscated conveyance and how he can get relieved of the same ?
7. What are the provisions with regard to confiscation of smuggled goods in case such goods are mixed with other goods or are repacked or are changed in form etc.?
8. What provisions are made under the Customs Act, 1962 to deal with various kinds of offences of Customs?
9. Can a mere preparation towards an act of offence of Customs laws be punished under the Act? State the circumstances.
10. What are the provisions under Customs Act, regarding the power of Court to publish name, place of business, etc. of persons convicted under the Act?
11. When can a Court take cognizance of an offence committed under the Customs Act, 1962?
12. What are the provisions under the Customs Act, with regard to use of Statements, and documents as evidence during prosecution for an offence of Customs?

SUGGESTED READINGS

- (1) Customs Law Manual — *R. K. Jain*
- (2) Indirect Taxes—Law and Practice — *V.S. Datey*

Lesson 8

Advance Ruling, Settlement Commission and Appellate Procedure

LESSON OUTLINE

This Part is divided into three parts:

- Advance Ruling
- Settlement Commission

Appellate Procedure

LEARNING OBJECTIVES

After completion of this lesson the student will have the understanding of

- Provisions of Advance Ruling
- Who can seek advance ruling and on whom it is binding
- What is the procedure to obtain advance ruling
- Procedure to file appeal before the Settlement Commission
- Cases where the application can be made before the Settlement Commission
- Appellate procedures

ADVANCE RULING

Appreciating the need for foreign investors to be assured in advance of their likely indirect tax liability, the Central Government has set up an Authority for Advance Rulings, Customs to provide binding ruling on important issues so that intending investors will have a clear-cut indication of their duty liability in advance. The legal provisions relating to advance rulings were introduced in the Finance Act of 1999. The advance rulings scheme has the following advantages:

- (a) It ensures clarity and certainty of the tax liability under the Customs Act in advance in relation to an activity (means import or export under the Customs Act, proposed to be undertaken by the applicant).
- (b) Finality and thereby avoidance of protracted litigation.
- (c) Speedy decisions.
- (d) Inexpensive process.
- (e) Transparency.

The following are the provisions of Customs Law pertaining to advance ruling.

Provisions	<i>Custom Law</i>
Chapter	Chapter 5B
Definitions	Section 28E
Authority for advance rulings	Section 28F
Vacancies, etc., not to invalidate proceedings	Section 28G
Application for advance ruling	Section 28H
Procedure on receipt of application	Section 28I
Applicability of advance ruling	Section 28J
Advance ruling to be void in certain circumstances	Section 28K
Powers of Authority	Section 28L
Procedure of Authority	Section 28M

Definitions [Section 28E]

As per section 28E(a) of Customs Act, "activity" means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be.

(b) "**advance ruling**" means the determination, by the authority of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity proposed to be undertaken, by the applicant;

(c) "**applicant**" means--

- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
 - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
 - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India:
- (ii) a joint venture in India; or
- (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and

which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 23C or sub-section (1) of 28H;

The Central Government has specified the following categories of persons as being eligible to seek advance rulings:-

- (a) Any Public Sector Company;
- (b) Residents proposing to import goods under the project import facility (heading 9801 of the Customs Tariff) for seeking rulings under the Customs Act 1962;
- (c) Residents proposing to import goods from Singapore under the Comprehensive Economic Co-operation Agreement for seeking rulings on origin of goods under the Customs Act, 1962;
- (d) Resident Public Limited Company.
- (e) Resident Private Limited Company.
- (f) Resident firm

As per explanation "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;

(d) **"application"** means an application made to the Authority under sub-section (1) of section 28H of the Customs Act

(e) **"Authority"** means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961

(f) **"non-resident"**, "Indian company" and "foreign company" shall have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961(43 of 1961).

AUTHORITY FOR ADVANCE RULINGS (SECTION 28F)

Authority for advance rulings: Subject to the provisions of this Act, the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be the Authority for giving advance rulings for the purposes of this Act and the said Authority shall exercise the jurisdiction, powers and authority conferred on it by or under this Act:

Provided that the Member from the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the revenue Member of the Authority for the purposes of this Act.

On and from the date on which the Finance Bill, 2017 receives the assent of the President, every application and proceeding pending before the erstwhile Authority for Advance Rulings (Central Excise, Customs and Service Tax) shall stand transferred to the Authority from the stage at which such application or proceeding stood as on the date of such assent.

APPLICATION FOR ADVANCE RULING [SECTION 28H]

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

Questions on which Advance Ruling can be sought

Particulars	Customs
Classification	(a) classification of goods under the CTA, 1975
Applicability of Exemption Notification	(b) applicability of a notification issued section 25(1), having a bearing on the rate of duty;
Valuation of excisable goods/imported or export goods	(c) the principles to be adopted for the purposes of determination of value of the goods
Applicability of notification	(d) Applicability of notifications issued in respect of duties under this Act, the CTA, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable.
CENVAT Credit	Not applicable
Payment of duty	Not applicable
Origin of goods	(e) determination of origin of the goods in terms of the rules notified under the CTA, 1975

Fees: The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees

Withdrawal of application: An applicant may withdraw an application within thirty days from the date of the application.

PROCEDURE ON RECEIPT OF APPLICATION [SECTION 28I]

On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records.

However, where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

Allow or reject the application:

The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

However, the Authority shall not allow the application where the question raised in the application is,--

- (a) already pending in the applicant's case before any Custom officer, the Appellate Tribunal or any Court;
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court :

However, no application shall be rejected unless an opportunity has been given to the applicant of being heard.

Where the application is rejected, reasons for such rejection shall be given in the order.

A copy of every order shall be sent to the applicant and to the Commissioner of Customs.

Where an application is allowed, the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance

ruling on the question specified in the application.

On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

"authorised representative" shall have the meaning assigned to it in sub-section (2) of section 35Q.

The Authority shall pronounce its advance ruling in writing within 6 months of the receipt of application.

A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement.

The detailed procedure on receipt of application is contained in Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005.

APPLICABILITY OF ADVANCE RULING (SECTION 28J)

The advance ruling pronounced by the Authority shall be binding only—

- (a) on the applicant who had sought it;
- (b) in respect of any matter referred to in 28H(2);
- (c) on the Principal Commissioner of Customs, or the customs authorities subordinate to him, in respect of the applicant.

The advance ruling shall be binding unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 28K]

Where the Authority finds, on a representation made to it by the Principal Commissioner of Customs or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be *void Ab initio* and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

A copy of the order made shall be sent to the applicant and the Principal Commissioner of Customs.

POWERS OF AUTHORITY [SECTION 28L]

The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

PROCEDURE OF AUTHORITY [SECTION 28M]

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

SETTLEMENT COMMISSION IN CUSTOMS LAW

The disputes under, customs are sought to be settled by the Commission expeditiously without much strain. The provisions were introduced in the Finance Act, 1998. Under this, cases are settled by the Commission at the instance of the assessee who wants to accept liability without contesting the case.

The following are the provisions of Settlement Commission under Custom law:

Provisions	<i>Custom Law</i>
Chapter	Chapter 14A
Definition	Section 127A
Customs, Central Excise and Service Tax Settlement Commission	—
Jurisdiction and powers of Settlement Commission	—
Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances	—
Power of Chairman to transfer cases from one Bench to another	—
Decision to be by majority	—
Application for settlement of cases	Section 127B
Procedure on receipt of application under section 127B	Section 127C
Power of Settlement Commission to order provisional attachment to protect revenue	Section 127D
Power of Settlement Commission to reopen completed proceedings	Section 127E
Power and procedure of Settlement Commission	Section 127F
Inspection etc., of reports	Section 127G
Power of Settlement Commission to grant immunity from prosecution and penalty	Section 127H
Power of Settlement Commission to send a case back to the proper officer	Section 127I
Order of settlement to be conclusive	Section 127J
Recovery of sums due under order of settlement	Section 127K
Bar on subsequent application for settlement in certain cases	Section 127L
Proceedings before Settlement Commission to be judicial proceedings	Section 127M
Certain persons who have filed appeals to the Appellate Tribunal entitled to make applications to the Settlement	Section 127MA

DEFINITIONS (SECTION 127A)

As per section 127A(b) of Customs Act, 1962, "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a proper officer or the Central Government on the date on which an application under sub-section (1) of section 127B is made :

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;

"Settlement Commission" means the Customs, Section 127A(f)]

CONSTITUTION AND COMPOSITION OF SETTLEMENT COMMISSION

The Central Government has constituted the Customs, Settlement Commission. The commission has principal Bench at Delhi and additional Benches at other three major metros. The principal Bench is headed by the chairman and the others by the vice-chairman. Two other members will be assisting them at each bench.

The commission provides quick and easy settlement of tax disputes involving high revenue stake. The purpose is to save time and energy of both the tax payer and the Department. The procedure followed by the commission is much less costly and is beneficial to the assessee.

POWERS OF THE COMMISSION

The commission will exercise its powers for settling the cases as a bench consisting of three members, and all decisions will be by majority. The Chairman has the power to constitute a large bench or special bench, wherever necessary. The commission has power to regulate its own procedures and procedures of its benches.

The commission has power to have exclusive jurisdiction to exercise the powers and perform the functions of any officer of customs/excise/service tax.

The commission can grant immunity from prosecution for any offence under Customs Act/. It can also withdraw the immunity granted if the conditions specified under its order are not complied with.

The commission has power to grant waiver either wholly or in part from imposition of any penalty, fine, but NOT interest under excise/customs/service tax in respect of the case covered under the settlement.

It can order provisional attachment of property belonging to the applicant if found necessary to protect the interests of the revenue.

Note: The order of the Commission is conclusive and cannot be re-opened in any proceedings under the Acts.

APPLICATION TO THE COMMISSION [SECTION 127B]

The following categories of people fulfilling the requirements can make an application for settlement commission:

- An importer/exporter or a manufacturer can approach the settlement commission by filing an application in the prescribed form. It may be noted that the department cannot approach the commission for settlement.
- The application can only be made to admit the liability, not to contest it. The admitted liability shall be more than ₹ 3,00,000.

- The applicant can file an application in the following cases:
 - Admission of short levy on account of misclassification.
 - Under valuation.
 - Inapplicability of exemption notification/input tax credit.

Note:

Application cannot be made in case where no return has been filed.

Application cannot be made if the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer.

The applicant has to deposit the additional duty with interest along with the application.

An application has only one opportunity to avail the settlement in his lifetime.

The exporter under DEEC, EOU/EPZ can approach the commission if he failed to fulfill his export obligation for reasons beyond his control.

The cases involving the valuation dispute can be taken up with the commission.

Cases relating to interpretation of law and notifications can be taken up.

Section 127B has been amended so as to insert a new sub-section (5) therein to enable any person, other than applicant, referred to in sub-section (1) to make an application to the Settlement Commission.

Any person, other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules.

Persons involved in the following cases cannot approach the commission for settlement:

- *Cases involving narcotic drugs and psychotropic substances under Narcotic Drugs and Psychotropic Substances Act, 1985.*
- *Cases where the revenue has invoked the provisions of Section 123 of the Customs Act (seizure of smuggled goods and burden of proof).*
- *Cases involving interpretation of classification of goods under the Customs Tariff Act or CETA.*
- *Cases pending before the Tribunal/Court.*
- *Cases remanded by the tribunal for fresh adjudication.*

PROCEDURE ON RECEIPT OF AN APPLICATION UNDER SECTION 127B [SECTION 127C]

Section 127C of the Customs Act contains the provisions regarding procedure on receipt of an application for settlement of cases.

Sub-section (3) of Section 127C has been amended so as to substitute certain words therein. It further seeks to insert a new sub-section (5A) therein to enable the Settlement Commission to

amend the order passed by it under sub-section (5), to rectify any error apparent on the face of record.

Procedure on receipt of an application under Section 127B: On receipt of an application under section 127B, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with or reject the application, as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection.

Provided that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

A copy of every order under sub-section (1) shall be sent to the applicant and to the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction.

Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission:

Provided that where the Principal Commissioner or Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.

Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case :

Provided that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

After examination of the records and the report of the Principal Commissioner of Customs or Commissioner of Customs received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the 15[Principal Commissioner of Customs or Commissioner of Customs] having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner of Customs or Commissioner of Customs and Commissioner (Investigation) under sub-section (3) or sub-section (4).

The Settlement Commission may, at any time within three months from the date of passing of the order under sub-section (5), amend such order to rectify any error apparent on the face of

record, either *suo motu* or when such error is brought to its notice by the jurisdictional Principal Commissioner of Customs or Commissioner of Customs or the applicant:

Provided that no amendment which has the effect of enhancing the liability of the applicant shall be made under this sub-section, unless the Settlement Commission has given notice of such intention to the applicant and the jurisdictional Principal Commissioner of Customs or Commissioner of Customs as the case may be, and has given them a reasonable opportunity of being heard.

[(6) * * * *]

Subject to the provisions of section 32A of the Central Excise Act, 1944 (1 of 1944), the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D of the Central Excise Act, 1944 (1 of 1944) shall apply.

The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefore and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts:

Provided that the amount of settlement ordered by the Settlement Commission, shall not be less than the duty liability admitted by the applicant under section 127B.

Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the applicant within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of section 142.

Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the proper officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

APPELLATE PROCEDURES

Decisions made or orders passed by Officers of Central Excise at different levels can give rise to grievances which broadly are of two kinds. First, if the decision denies to the assessee the benefit due, or confers a hardship undue, it can create a grievance to him. Secondly, the decisions can confer on the assessee a benefit undue or deny revenues due to the Government, in which case the Government itself becomes the aggrieved party. There are two parties to every dispute, and it happens at times that satisfaction to one could mean dissatisfaction to the other. There should be mechanism to go into grievances of either kind and the appellate mechanism is meant precisely for that.

APPEALS	Chapter XV of Customs Act
- Appeals to Commissioner Appeals	Section 128
- Procedure in appeal	Section 128A
- Appellate Tribunal	Section 129
- Appeals to the Appellate Tribunal	Section 129A
- Orders of Appellate Tribunal	Section 129B
- Procedure of Appellate Tribunal	Section 129C
- Power of Board Commissioner of Customs to pass certain orders	Section 129D
- Powers of revision of Board or Commissioner of Customs in certain cases	Section 129DA
- Revision by Central Government	Section 129DD
- Deposit, pending appeal, of duty and interest demanded or penalty levied	Section 129E
- Interest on delayed refund of amount deposit under the Proviso to Section 129E or section 35F	Section 129 EE
- Statement of case to High Court	Section 130
- Statement of case to Supreme Court in certain cases	---
- Application to High Court	Section 130A
- Power of High Court or Supreme Court to require statement to be amended	Section 130B
- Case before High Court to be heard by not less than two judges	Section 130C
- Decision of High Court or Supreme Court on the case stated	Section 130D
- Appeal to Supreme Court	Section 130E
- Hearing before Supreme Court	Section 130F
- Sums due to be paid notwithstanding reference, etc	Section 131
- Exclusion of time taken for copy	Section 131A
- Transfer of certain pending proceedings and transitional provisions	Section 131B
- Appearance by authorised representative	---
- Appeal not to be filed in certain cases	Section 131BA
- Definitions	Section 131C [Omitted]

<i>Orders passed by</i>	<i>Relief at first stage</i>	<i>Relief at second stage</i>
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(a)	Superintendent/Assistant Deputy/Additional/Joint Commissioner	Appeal before Commissioner (Appeals)	Appeal before CESTAT
(b)	Commissioner	Appeal before CESTAT	Appeal before CESTAT

APPELLATE TRIBUNAL [CUSTOMS LAW]

To ensure safeguards to citizens' interests in any area of administration, including fiscal administration, it is essential that appellate authorities are totally independent of the administrative authorities. Till a few years back, the appellate mechanism in Central Excise was liable to critical comment in this regard, since the appellate remedies then provided in the statute culminated in the Central Board of Excise and Customs itself acting as an appellate agency. The Board, in this manner, combined the functions of the administrative as well as the appellate authority in the department. Though the Board, manned by very senior officers in the department, maintained the highest standards of objectivity in considering appeals, was still prone to give rise to widespread misgivings in the minds of trade and industry regarding the possibility of a 'revenue bias' in its approach as an appellate body. A number of Committees and Commissions set up by the Government from time to time, such as the Central Excise Reorganization Committee, the Tariff Revision Committee, etc. took stock of the position and suggested the setting up of an independent Tribunal on the lines already available in regard to Income Tax, so that such misgivings may be dispelled, and confidence created in the minds of the assesseees as a whole.

The department eventually decided to set up the Tribunal and the necessary legislation was made in 1980 [Section 50 of the Finance (No. 2) Act, 1980]. The legislation was implemented from 11.10.1982, the date of implementation being announced through Notification No. 214/82-CE dated 10.9.1982. However, it is not vested with the powers of review.

(1) COMPOSITION OF THE TRIBUNAL

As with the Income Tax Appellate Tribunal, CESTAT comprises technical members and judicial members, the underlying idea being that the former would provide the forum, the benefit of their knowledge and experience in the Department, and the latter will contribute benefits arising from unalloyed judicial approach. At present, the CESTAT functions in Delhi, Kolkata, Chennai, Mumbai and Bangalore.

The CESTAT is presided over by a President, with one or more Vice Presidents. As for members, the technical members are very senior officers of the rank of Commissioners of Central Excise and Customs, whereas the judicial members are senior members of the bench or the bar, selected for appointment.

As indicated in the statement at the very beginning, appellate orders decided by Commissioners (Appeals) can be contested before the CESTAT and in such situations, it functions as a second appellate forum. Original orders passed by Commissioner (including Additional Commissioner) can be contested straightaway before the CESTAT. In such situations, it will function as the first and the only appellate forum within the department. Appeals are normally decided on the basis of majority decision. In case a major decision does not arise, the President can nominate an extra member to the bench, to enable a majority decision arising.

To ensure that the valuable time of a body of this nature is not wasted in examining disputes involving insignificant stakes, it has been provided that the CESTAT may, in its discretion, refuse to admit the appeal in respect of any order if the amount of fine or penalty under contest does not exceed ` 50,000/- (Rupees Fifty Thousand only) [Section 35B(1)]. However, if the issue involved pertains to determination of the rate of duty or valuation, the CESTAT cannot refuse to admit the appeal, whatever be the amount involved. Again, to ensure optimum utilisation of the Tribunal's valuable time, Section 35D(3) provides that if the case

involves amounts upto ` 50,00,000/-(Rupees Fifty Lakh only) in duty/fine/penalty, a single Member (instead of a bench) can himself decide the case.

But where the amount involved is more than ` 10 crore on day to day basis, three member Benches shall be constituted for hearing such cases. All cases involving an amount of ` 25 crores or more would be listed before the Benches on priority basis and would be heard on day to day basis.

(2) FILING APPEAL BEFORE CESTAT

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order

- (a) A decision or order passed by the [Commissioner] as an adjudicating authority;
- (b) An order passed by the [Commissioner] (Appeals)
- (c) An order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate [Commissioner]
- (d) An order passed by the Board or the [Commissioner], either before or after the appointed day,

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where, the amount of fine or penalty determined by such order does not exceed two lakh rupees.

(3) APPEARANCE BY AUTHORISED REPRESENTATIVE

Both the parties to the dispute will be heard together by the bench. The Department will be represented normally by departmental officers functioning as Departmental Representatives. The assessee can appear in person or through counsel. In this regard, Section 35Q prescribes that any party to a dispute may otherwise than when required by the Tribunal to attend personally for examination on oath, can appear through an authorised representative who may be:

- (a) his relative or regular employee; or
- (b) Custom House Agent; or
- (c) any legal practitioner who is entitled to practice in any civil court; or
- (d) any person who has acquired such qualifications as the Central Government may prescribe by rules made in this behalf. The Central Government has since prescribed the qualifications under Rule 12 of the Central Excise (Appeals) Rules, 2001.

For the purposes of clause (c) of Sub-section (2) of Section 35Q, an authorised representative shall include a person who has acquired any of the following qualifications being the qualifications specified under clause (c) to Rule 12 of the Central Excise (Appeals) Rules, 2001, namely:

- (a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
- (b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or
- (c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980) who has obtained a certificate of practice under Section 6 of that Act; or
- (d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any recognised university; or
- (e) a person formerly employed in the Department of Customs and Central Excise or

Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said departments for not less than ten years in the aggregate, can act as an authorised representative.

ADJUDICATION AND APPELLATE PROVISIONS UNDER CUSTOM LAWS

Orders passed by adjudicating authorities give rise to disputes between the assessee and Customs Department. These generally arise in connection with the classification and valuation of goods or in regard to infraction of legal provisions and/or procedures. In any tax system, disputes are bound to arise howsoever simple a tariff is made to appear. Burket's famous dictum that it is difficult to tax and please, is known to all.

An incorrect assessment to a duty might take place on account of various factors. It may arise due to inadvertence, error, collusion, or misconstruction on the part of an officer of revenue, or through mis-statement as to the quantity, description or value in respect of dutiable goods on the part of an assessee. An incorrect assessment is as detrimental to the exchequer as it is to the assessee. There are various factors leading to a mistake which result in an incorrect assessment. The Public Accounts Committee [(5th Lok Sabha) (1972-73) 89th Report at P. 14] identified them as mainly resulting from.

The procedure prescribed for filing appeals and revision applications against orders passed by Customs officers are described in Sections 128, 130 and 131 of the Customs Act.

The relevant provisions regarding Appeal and Revision are discussed below, Section-wise.

(A) APPEALS TO COMMISSIONER (APPEALS) (SECTION 128)

- (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within 60 days from the date of communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow it to be presented within a further period of thirty days.

- (2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

PROCEDURE IN APPEAL (SECTION 128A)

- (1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires.
- (2) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeal), is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.
- (3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order;

Provided further that where the Commissioner (Appeals) is of opinion that any duty has

not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied and erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in Section 28 to show cause against the proposed order.

- (4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- (4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.
- (5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Customs.

(B) APPELLATE TRIBUNAL (SECTION 129)

- (1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.
- (2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

Explanation: For the purposes of this sub-section—

- (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;
 - (ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.
- (2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.
 - (3) The Central Government shall appoint—
 - (a) a person who is or has been a Judge of a High Court; or
 - (b) one of the members of the Appellate Tribunal, to be the President thereof.
 - (4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.
 - (4A) Omitted by Finance Act, 2003.
 - (5) Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

APPEALS TO THE APPELLATE TRIBUNAL (SECTION 129A)

- (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:
- (a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;
 - (b) an order passed by the Commissioner (Appeals) under Section 128A;
 - (c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;
 - (d) an order passed by the Board or the Principal Commissioner of Customs, either before or after the appointed day, under Section 130, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b), if such order relates to:

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder;

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or (d) where:

- (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
 - (ii) in any disputed case other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
 - (iii) the amount of fine or penalty determined by such order, does not exceed two lakh rupees.
- (1A) Every appeal against any order of the nature referred to in the first proviso to Sub-section (1), which is pending immediately before the commencement of Section 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government under Section 129DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.
- (1B) The Board may, by notification in the Official Gazette constitute such committees as may be necessary for the purpose of this Act, consisting of two Chief Commissioners or Commissioners of Customs.
- (2) The Committee of Commissioners of Customs may, if it is of opinion that an order passed by the Appellate Commissioner of Customs under Section 128 as it stood immediately before the appointed day, or by the Commissioner (Appeals) under Section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief

Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

Explanation: For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.

- (3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case may be, the other party preferring the appeal.
- (4) On receipt of notice that an appeal has been preferred under the section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in Sub-section (3).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in Sub-section (3) or Sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of:
 - (a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
 - (b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees, but not exceeding fifty lakh rupees, five thousand rupees;
 - (c) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:Provided that no such fee shall be payable in the case of an appeal referred to in Sub-section (2) or a memorandum of cross-objections referred to in Sub-section (4).
- (7) Every application made before that Appellate Tribunal,-
 - (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
 - (b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.

ORDERS OF APPELLATE TRIBUNAL (SECTION 129B)

- (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

- (2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under Sub-section (1) shall make such amendments if the mistake is brought to its notice by the Commissioner of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

- (2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

If the appeal is not disposed of within the period specified in the above, the Appellate Tribunal may on an application made in this behalf by a party and on being satisfied that delay in disposing of the appeal is not attributable to such party, extend the period of stay to such further period, as it thinks fit, not exceeding 185 days and in case the appeal is not disposed of within 365 days, the stay order shall stand vacated.

- (3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Customs and the other party to the appeal.
- (4) Save as otherwise provided in Section 130 or Section 130E, order passed by the Appellate Tribunal on appeal shall be final.

PROCEDURE OF APPELLATE TRIBUNAL (SECTION 129C)

- (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.
- (2) Subject to the provisions contained in Sub-section (4), a Bench shall consist of one judicial member and one technical member.
- (3) Omitted by Finance Act, 1995.
- (4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where —
- (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
- (b) in any disputed case other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (c) the amount of fine or penalty involved;
does not exceed 50 Lakh rupees.
- (5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or point by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.
- (6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to

regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

- (7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) compelling the production of books of account and other documents; and
 - (d) issuing commissions.
- (8) Any proceedings before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purpose of Section 195 and Chapter XXVII of the Code of Criminal Procedure, 1973 (2 of 1974).

POWERS OF COMMITTEE OF CHIEF COMMISSIONERS OF CUSTOMS OR COMMISSIONERS OF CUSTOMS TO PASS CERTAIN ORDERS (SECTION 129D)

- (1) The Committee of Chief Commissioners may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners in its order.

Provided that where the Committee of Chief Commissioners of Customs differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board. After considering the facts of the decision or order passed by the Commissioner of Customs, if the board is of the opinion that the decision or order passed by the Commissioner of Customs is not legal or proper, it may direct such Commissioner or any other Commissioner to make an appeal to the Appellate Tribunal for the determination of such points arising out of the decision or order.

- (2) The Commissioner of Customs may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.
- (3) Every order under Sub-section (1) or Sub-section (2), shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

Provided that the Board may, on sufficient cause being shown, extend the said period by another thirty days.

- (4) Where in pursuance of an order under Sub-section (1) or Sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the

Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of three months from the date of communication of the order under Sub-section (1) or Sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of Sub-section (4) of Section 129A shall, so far as may be, apply to such application.

REVISION BY CENTRAL GOVERNMENT (SECTION 129DD)

- (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 128A, where the order is of the nature referred to in the first proviso to Sub-section (1) of Section 129A, annul or modify such order.

Provided that the Central Government may in its discretion refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation: For the purposes of this sub-section. "Order passed under Section 128A" includes an order passed under that section before the commencement of Section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

- (1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under Section 128A is not legal or proper direct the proper officer to make an application on his behalf to the Central Government for revision of such order.
- (2) An application under Sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

- (3) An application under Sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of:
- (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;
 - (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees;

Provided that no such fee shall be payable in the case of an application referred to in Sub-section (1A).

- (4) The Central Government may, of its own motion, annul or modify any order referred to in Sub-section (1).
- (5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this 'section—

- (a) in any case in which an order passed under Section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and
 - (b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.
- (6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in Section 28.

APPEAL TO SUPREME COURT (SECTION 130E)

An appeal shall lie to the Supreme Court from—

- (a) any judgment of the High Court delivered in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or
- (b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.

HEARING BEFORE SUPREME COURT (SECTION 130F)

- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under Section 130E as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this Sub-section shall be deemed to affect the provisions of Section 131.

- (2) The costs of the appeal shall be in discretion of the Supreme Court.
- (3) Where the judgment of the High Court is varied or reversed in the appeal effect shall be given to the order of the Supreme Court in the case of a judgment of the High Court.

DEPOSIT OF CERTAIN PERCENTAGE OF DUTY DEMANDED OR PENALTY IMPOSED BEFORE FILING APPEAL (SECTION 129E)

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) Under section 128(1), unless the appellant has deposited seven and a half per cent of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs;
- (ii) against the decision or order referred to in section 129A(1)(a), unless the appellant has deposited seven and a half per cent. of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;
- (iii) against the decision or order referred to in section 129A(1)(b), unless the appellant has deposited ten per cent of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees

ten crores. Further the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.

INTEREST ON DELAY PAYMENT OF REFUND (SECTION 129EE)

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the appellate authority, under the first proviso to section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

[Section 130, 130A, 130B, 130C and 130D are omitted by National Tax Tribunal Act, 2005 with effect from a date yet to be notified].

SUMS DUE TO BE PAID NOTWITHSTANDING REFERENCE, ETC. (SECTION 131)

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005, sums due to the Government as a result of an order passed under Sub-section (1) of Section 129B shall be payable in accordance with the order so passed.

EXCLUSION OF TIME TAKEN FOR COPY (SECTION 131A)

In computing the period of limitation, specified for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

TRANSFER OF CERTAIN PENDING PROCEEDINGS AND TRANSITIONAL PROVISIONS (SECTION 131B)

- (1) Every appeal which is pending immediately before the appointed day before the Board under Section 128, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

- (2) Every proceeding which is pending immediately before the appointed day before the Central Government under Section 131, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it:

Provided that, if any such proceeding or matter relates to an order where—

- (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
- (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in

- duty involved or the duty involved; or
- (c) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said Section 131 had not been substituted:
- Provided, further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.
- (3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Customs under Section 130, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Customs, as the case may be, as if the said section had not been substituted.
- (4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under Sub-section (1) or Sub-section (2) shall, notwithstanding anything contained in Section 146A, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 131BA)

Section 131BA provides that notwithstanding the fact that no appeal, application, revision or reference has been filed by the Commissioner of customs against any decision or order passed under the provisions of the act pursuant to the order or instruction or direction issued by the board. Then—

- (a) no person, being a party in appeal, application, revision or reference shall contend that the commissioner of customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference; and
- (b) The Commissioner (Appeals) or the Appellate Tribunal or the Court hearing an appeal, application, revision or reference shall have regard to the circumstances under which the appeal, application, revision or reference was not filed by the commissioner of customs in pursuance of order or instruction or direction by the board.

LESSON ROUND UP

- Under this lesson we have discussed the remedies available for the disputes arises under the Customs Law.
- To give binding rulings in advance on, Customs matters pertaining to an investment venture in India. Authority for Advance Ruling was set up.
- The procedure for obtaining advance ruling is simple, inexpensive and transparent.
- Settlement commission also provides quick and easy settlement of tax disputes involving high revenue stake. The specified person can make application before the settlement commission.
- Appeal against the orders of Customs officers can be made to the (Customs (Appeals) then against these orders appeal can be made before the Appellate Tribunals and then before the High Court and Supreme Court.

SELF TEST QUESTIONS

1. What is the procedure for filing Appeal before Commissioner (Appeals)?
2. Discuss the circumstances under which Department may order for re-opening of its original orders/decisions and the procedure it has to follow in this regard.

3. What is the mechanism provided in the Customs Act for adjudication of disputes between the assessee and the department?
4. When can an appeal be filed before the Commissioner (Appeals)?
5. What is Customs, Excise and Service Tax Appellate Tribunal (CESTAT)?
6. What are the matters in respect of which an appeal can be made before CESTAT?
7. What is the procedure of filing and disposal of stay petitions under CESTAT Rules?
8. What are the revisionary powers of the Central Government on adjudicated matters under Customs Act?
9. When does an appeal lie before Supreme Court under appellate provisions of Customs Act, 1962?
10. What is the procedure of filing a revision application to the Central Government under appellate provisions of Customs Act?
11. Who can act as an 'authorised representative' in adjudication of disputes and appeals under the Customs Act and Rules?
12. Explain briefly the concept of Settlement Commission.
13. What provisions are made under the Customs Act, 1962 to deal with various kinds of offences of Customs?
14. Can a mere preparation towards an act of offence of Customs laws be punished under the Act? State the circumstances.
15. What are the provisions under Customs Act, regarding the power of Court to publish name, place of business, etc. of persons convicted under the Act?
16. When can a Court take cognizance of an offence committed under the Customs Act, 1962?
17. What are the provisions under the Customs Act, with regard to use of Statements, and documents as evidence during prosecution for an offence of Customs?
18. What powers the officers of Customs have in respect of recovery of sums due to the Government on account of duties of Customs?
19. When can an import of material be cleared without payment of duty leviable thereon?
20. State the requirements laid down under the Customs Act with regard to the 'eligibility to function' as an import or export agent.
21. Who is an 'authorised representative' for the purpose of appearance before an officer of Customs or Customs Tribunal.

SUGGESTED READINGS

- (1) Customs Law Manual — *R. K. Jain*
- (2) Indirect Taxes—Law and Practice — *V.S. Datey*

Lesson 9

Promissory Estoppel in Fiscal Laws, Tax Planning and Tax Management

LESSON OUTLINE

- Meaning of Doctrine of Promissory Estoppel
- Requirements of Promissory Estoppel
- Promissory Estoppel in Fiscal Laws
- Limitation of the Doctrine
- Tax Planning
- Tax Planning under Excise law
- Tax planning under Customs Act
- Lesson Round Up
- Self Test Questions

LEARNING OBJECTIVES

This lesson is divided into two parts i.e. promissory estoppel in fiscal laws and tax planning and management with respect to indirect taxes. 'Promissory Estoppel', as an equitable principle, has been in vogue in judicial systems for long. Intended to counter the evading tendencies and insist upon parties to perform the promises made, the principle of promissory estoppel relieves the parties aggrieved from such breach of promises. Here, we will discuss the applicability of Doctrine of promissory estoppel.

Tax planning in indirect taxes is thrust area in the business world. Indirect taxes constitute major portion of cost and therefore it is necessary that tax is managed properly. Indirect taxes are ruled by complex regulations and are often changing. By successfully managing indirect tax requirements of a business, the business's profitability can be protected and also cash flow needs could be met in a better manner. Professionals like Company Secretaries can provide their services in managing the tax compliances and thereby assist in reducing the administration cost.

After completion of this lesson, the students will understand:

- What is promissory estoppels
- Applicability of doctrine of promissory estoppel under Indirect taxes
- Tax planning under indirect taxes

Indirect taxes include customs duties, excise laws and taxes on consumption, such as Value Added Tax (VAT) and Goods and Services Tax (GST). These taxes apply to every stage of the supply chain. Managing these taxes to reduce costs and avoid errors that lead to penalties and business disruption is crucial to maintain profits.

MEANING OF DOCTRINE OF PROMISSORY ESTOPPEL

Promissory estoppel is a common law doctrine used by courts to enforce promises that have been made and subsequently relied upon. Promissory estoppel usually comes into play when there is no formal contract, but the parties involved have nevertheless acted as if there was one. Courts use the doctrine in these circumstances to impose a contract or the agreement, usually in the interest of fairness.

In common language, "promissory" means "related to a promise," and "estoppel" is a legal term that essentially means an enforced bar or ban. Judges use this doctrine to ban a person from going back on a promise. Seen from a different angle, the doctrine is a tool to enforce promises, effectively requiring both parties to do the things they said they would be doing.

The doctrine of Promissory Estoppel has its genesis in the law of equity and is being closely related to various schemes for allowing tax concessions to certain new industrial units set up within specified time or in specified places, it has become very relevant in fiscal legislations particularly in Sales-tax, Excise and Custom duty disputes. The doctrine is not limited in its application only to defence but also in a cause of action. This concept and its applicability have often been agitated before the court in the context of sales tax exemption. The gist of equity lies in the fact that one party has by his conduct or representation led the other to alter his position. If injustice can be avoided only by enforcement of the promise, it is a case of estoppel.

The doctrine of estoppel has its origin in principles of Equity. It was defined under Section 115 of the Evidence Act, 1872 as follows;

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."

In ***Delhi Cloth and General Mills Ltd. v. Union of India***, it was held that:

"All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered his position by relying on the assurance or representation by the other party. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel.

The estoppel operates as a legal protection to the person who acts in good faith on the basis of express or implied conduct of others and suffers damage.

The Doctrine of Promissory Estoppel is an equitable doctrine evolved to avoid injustice and it neither falls in the sphere of contract nor estoppel. This principle is commonly invoked in common law in case of breach of contract or against a Government. The doctrine is popularly called as Promissory Estoppel, Equitable Estoppel, Quasi Estoppel or New Estoppel. It can be said that if the Government of India makes a promise to any person and the promise is not inconsistent with the law of the land and is not against public interest, then afterwards it cannot refuse to abide by its promise.

An example of promissory estoppel is where 'A' promises 'B' that he would not enforce his legal rights and B acted and relied on it without giving any consideration, equity would not allow A to renege on his promise to B.

REQUIREMENTS OF PROMISSORY ESTOPPEL

- (1) There is a pre-existing contractual relationship.
- (2) One party to that contract makes a clear promise that they will not fully enforce their legal rights (under that contract).
- (3) The promisor intends that promise be relied upon and promisee does in fact rely upon it.
- (4) It would be inequitable for promisor to go back on (resile from) their promise.

Promissory estoppel is not limited only to cases where there is some contractual relationship or other pre-existing legal relationship between the parties. The principle can be applied even when the promise is intended to create legal relations or affect a legal relationship which will arise in future.

Promise need not be expressed; it can be implied from circumstances.

DOCTRINE OF PROMISSORY ESTOPPEL AND FISCAL LAWS

The doctrine of promissory estoppel has great significance in taxing statutes. It marches with the hypotheses that a promise given by the state is binding on the government in the following circumstances:

1. Where there is a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee; and
2. By acting upon the promise by the promisee, it would be inequitable to allow the promisor to go back on the promise.

This is raised in tax matters, especially in Sales tax where the Government provides exemption from tax by means of tax holiday for a certain period say 5 years and withdraws the exemption before the expiry of 5 years.

The plea of promissory estoppel is on the ground that certain units have been established expecting the tax benefits and the withdrawal before the expiry has caused damage to them. Here, the units might be hit hard. They can go to the court of law against the Govt. under Doctrine of Estoppel. The doctrine was first introduced in *Hughes v. Metropolitan Rly. Co.*, 1877, Appeal case 439. Lord Cairns stated the doctrine in the following words :

“It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties”.

The doctrine of promissory estoppel is also known as equitable estoppel or quasi estoppel.

Courts on Promissory Estoppel

The courts while recognizing the principle of promissory estoppel as an instrument of equity remedy have consistently held that the 'promissory estoppel plea' fails where 'public interest' intervenes. That means, though a concession is extended for a fixed period by a notification or otherwise the same can be withdrawn in public interest in *Sales Tax Officer & Another v. M/s. Shree Durga Oil Mills* (1997) 7 SCALE, 726, the honourable Supreme Court held that a notification granting exemption of taxes can be withdrawn at any point of time. There can not be estoppel against any statute. Where it is in public interest, the court will not interfere

because public interest must override any consideration of private loss or gain.

A leading authority on this subject is of the Supreme Court in *Motilal Padampat Sugar Mills Co Ltd. v State of Uttar Pradesh* (118 I.T.R. 326).

It was held that the government is susceptible to the operation of the doctrine in whatever area or field the promise is made: Contractual, administrative or statutory.

"The law may, therefore, now be taken to be settled as a result of this decision, that where the government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution."

In *Sree Sales Corporation & Another v. U.O.I.* (1997) 3 SCC 398, it was held that where there was supervening public interest, the Govt. is free to change its stand and withdraw the exemption already granted. Recently, in *Sharma Transport v. Govt. of A.P. & Others* (2002) S.C., the Supreme Court observed "one such reason for changing its policy decision can be resource crunch and the loss of public revenue. There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bold expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered his position relying on the assurance of the Govt. would not be sufficient to press into aid the doctrine. 'Doctrine of promissory estoppel' has been evolved by Courts on the principles of equity, to avoid injustice.

In the above case, the appellants were operators of tourist buses originating from the State of Karnataka and running their buses in adjacent states including the state of A.P.

The vehicles of the appellants were covered by tourist vehicle permits by virtue of which, their vehicles were authorised to ply in certain contiguous states also.

The Central Government formulated policies in the matter of concessions to be extended to tourist vehicles. Based on the directive of the Central Govt. an order was issued on 1st July, 1995 conferring the benefits of a concessional rate of tax to tourist operators. But on 5th June 2000, the State Govt. issued a notification under A.P. Motor Vehicles Taxation Act, 1963 cancelling the earlier order of 1995. The operators after losing the High Court of A.P. filed an appeal before the Supreme Court. The Contentions before the apex Court were — that the directives of the Central Govt. were binding on the State Govt. and that the withdrawal of tax concession is illegal. They also contended that under doctrine of promissory estoppel, a concession extended by the Govt. could not be withdrawn.

But the Supreme Court rejects the pleas and dismissed the appeal stating that the state of A.P. is justified in withdrawing the benefits in public interest. Also held that the doctrine of promissory estoppel is not applicable in the case.

Thus we can conclude that the doctrine of promissory estoppel is a valid proposition but it will be disallowed by courts when the withdrawal of tax benefit by the Govt. is to save the larger interests of the public.

As can be seen from the analysis of the cases above, the concept of Promissory Estoppel has assumed considerable significance in sales tax law. Many a time the State Governments with a view to giving a spur to industrial development in the State give sales tax exemptions. Subsequently, State Governments may either withdraw the exemption notification or introduce

certain restrictive covenants. This becomes necessary in view of the loss of the revenue to the State Government, as a result of the sales tax exemption granted earlier. In such a situation, whether the State has to be held bound to the representation made earlier to the trade or not depends upon whether the exemption was for a particular period or whether the industry has altered its position in the light of the notification etc. It is once again reiterated that if a State Government issues a general exemption notification with no reference to any period of time such exemption may be amended or varied at any time. There would be no question of any promissory estoppel in such cases. But where the State Government hold out that exemption from sales tax would accrue for a given period of time of three years or five years than promissory estoppel would be applied.

CASE STUDIES

In the recent past various area-based Notifications had been issued by the Ministry of Finance whereby exemption from the payment of excise duty was granted to the assesseees upon fulfillment of the conditions specified therein. Development of identified backward areas and promotion of industrial activity therein being the underlying premise, these Notifications provided exemption for specified periods to the assesseees complying with the prescribed conditions. North-East, Uttranchal, Himachal Pradesh, Sikkim, Jammu & Kashmir were some of these areas wherefore the Notifications were issued granting the exemption of excise duty.

Lured by these promises on the part of the Central Government waiving the collection of excise duty, many industrial and production houses established/relocated their manufacturing units in these areas. The establishment or relocation, however, was not without cost. Non-availability of skilled man-power, lack of natural or industrial resources required for manufacturing processes, absence of logistics network, etc. posed considerable obstacles to the establishment of manufacturing facilities from these units, leading to increase in operational costs and delay of break-even points.

However, comforted by the Government's promise to exempt the excise duties for the specified period, the business houses continued to build their units in these areas expecting returns in the long-term vision of affairs. The losses in the initial years on account of these incorporation costs were reluctantly absorbed expecting to recover them in form of exempted excise duties.

In this scenario, can the Government rightfully have recalled its decision to exempt the areas during the continuation of the holiday period? Can the Government backtrack on its promise as evidenced in the Notifications? Can the Government, before the expiry of the exemption period, amend the Notification to levy excise duties? These are critical questions facing the Central Excise paradigm today for the Central Government has in fact, on more than one occasion, amended these exemption Notifications to levy duties of excise on some or all goods. Notification No. 18/2008-CE has amended the parent Notification No. 33/1999-CE exempting payment of excise duties in various areas of Assam. Similarly Notification No. 21/2007-CE and Notification No. 19/2008-CE have amended parent Notification No. 56/2003-CE and Notification No. 56/2002-CE which provided for exemption for areas in Sikkim and Jammu & Kashmir respectively. These amending Notifications have restricted the availability of the exemptions extended under the parent Notifications and thus varied the originally specified conditions.

The affected manufacturing units would, naturally, find these amendments prejudicial to their operations and grossly offending the original promise. The emotional yet precarious arguments against such withdrawal of exemptions nonetheless, the thrust of the matter is whether the affected units can get their grievances redressed. Only two solutions seem probably in such a scenario; either the industrial units make representations to the Ministry and secure a withdrawal of these amending Notifications or to get their claims enforced in courts of law.

Neither of the scenario inspire confidence for in the former case the attitude of the Ministry to limit the exemptions is evident in light of the amending Notifications and in the case of latter, Section 21 of the General Clauses Act, 1893 unequivocally declares that the 'power to make' includes the 'power to add to, amend, vary or rescind orders, rules or byelaws' and thus the power to amend the parent Notifications vests unshakably in the Central Government.

Does this imply that the assesseees who have established their units in these notified areas in pursuance of the promise of the Government are left to suffer to its whims and surmises? Is there any forum where these assesseees can get their grievance addressed or is it a shut case against their face? Would the entire infrastructural developmental expenditure incurred by these units to promote the backward areas come to haunt against their profitability with no respite from the government? Considering the categorical intent of the Central Government, as evident from the amending Notifications, and given the magnitude of powers vested therein to issue and rescind Notifications, the issue does seem to favour the revenue and against the assesseees. A solemn resolve of a legal practitioner to get these genuine grievances redressed, therefore, would require nothing short of a fire-fight and it is in this backdrop that like a silver lining in a gray cloud, the doctrine of promissory estoppel seems to show the light of the day.

The Hon'ble Supreme Court of India dealt with this "question of considerable importance in the field of public law" in the case of *Motilal Padampat Sugar Mills Ltd.* (decision dated 12.12.1978). The precise issue before the Court then was "How far and to what extent is the State bound by the doctrine of promissory estoppel". The Court was required to assess the legality of the withdrawal of exemption by the State of Uttar Pradesh in a factual milieu wherein the Sugar Mill was assured of sales tax exemption for three years upon establishment of a 'vanaspati plant' by the Government and thereupon the Sugar Mill had borrowed money from various financial establishments and acted upon the establishment of the said plant. The Hon'ble Apex Court declared categorically that the State Government was bound by the doctrine of Promissory Estoppel and therefore the exemption promised was duly restored back to the aggrieved Sugar Mill.

The decision in *Motilal Padampat* serves a world of good in these critical times to the units suffering from the withdrawal of exemptions under the amending Notifications, however, not without a disclaimer. Since the decision in *Motilal Padampat* a lot of water has flown and the courts have not always been too impressed by the argument of the Government not being able to change the ground realities in the light of the changed economic scenarios and the demands for unbridled continuation of tax exemptions. In a number of instances the Hon'ble Supreme Court itself has declared the inapplicability of the doctrine in tax matters. While the Court approved the application of the doctrine in the case of *MRF Ltd.* (Civil Appeal No. 1610/2006), the decision in the similar circumstances in *R. C. Tobacco* (Civil Appeal No. 881- 896/2004) reflects its apathetic attitude in similar situation therein.

LIMITATION OF THE DOCTRINE

1. Since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the court is satisfied, on proper and adequate material placed by the government, that overriding public interest requires that the government should not be held bound by the promise but should be free to act unfettered by it, that the court would refuse to enforce the promise against the government.
2. No representation can be enforced which is prohibited by law in the sense that the person or the authority making the representation or promise must have the power to carry out the promise.

If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised.

Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of any tax.

TAX PLANNING

Tax planning exercise needs to be undertaken with great amount of care and discretion. It should neither border on evasion nor should it merely be a device to circumvent the letter of law. In this context the Supreme Court's Judgements in *Mc Dowel and Company Ltd. v. Commercial Tax Officer* 1985, 5, ECC 259 was also studied in full text. This judgment signaled a departure from the West Minster Principle upon which most of the tax planning used to be founded and which for long had the judicial blessing. But the winds have changed since and in England the West Minster Principle has been given a go by. The Mc Dowel's judgement is a vindication of judicial attitude currently prevailing in England on the use of certain devices to avoid proper incidence of tax.

A trader or a Business entity need not be complacent in regard to payment of indirect taxes, for the simple reason that these are passed on to the consumers. It would only be a reiteration to say that tax planning is as much relevant and important in indirect taxes as it is in direct taxes.

The approach of tax planning has been to give a very rudimentary idea of tax planning vis-à-vis indirect taxes. No attempt has been made to repeat and elaborate discussions on various case laws concerning Excise, Customs and Sales Tax. The presentation is only skeletal and indicative of the broad contours of tax planning.

CUSTOMS ACT AND TAX PLANNING

Customs Act concerns Import and Export of Goods and restrictions and regulations relating thereto. Every importer or exporter and every buyer from such importer for instance, are interested in customs duty planning. For an importer, the tax planning centers round the classification of import goods and valuation of those goods. Improper classification of goods may lead to higher incidence of Customs Duty. On the other hand, even a proper and appropriate classification may not be a ground for feeling relaxed. Because even after correct classification, the valuation of Import of goods may be high pitched with the result the absolute incidence of customs duty would be much more than what it ought to have been. Importers therefore have to pay special attention to problems of classification and valuation of imported goods.

As regards valuation under the Customs law, besides the statutory provisions there are Customs Valuation Rules also. Apart from these, a good amount of case law has developed on what items are to be added to the value of the goods and what items going to reduce the value of goods. A proper tax planning exercise would have to take into consideration these aspects.

(a) Customs Act and Classification of goods

Classification of imported goods is very significant because a wrong classification may lead to a very high incidence of Customs Duty. The importer has therefore to be fully convergent with principles of classification of goods.

Since the subject of taxation is "goods", the concept underlying the levy is required to be understood. It is not the personal opinion of an individual Officer or for that matter of the assessee with regard to the classification of the "goods", that governs the issue. There are

certain well defined criteria laid down by judicial decisions, which are required to be kept in mind. We saw what happened in the fountain pens case. In the case of *V.V. Iyer v. Jasjit Singh* (AIR 1973 SC 194), the appellant, who carried on business of importing plantation and agricultural machinery and implements had imported certain parts of agricultural machinery known as express Battery Sprayers which were classified under SL. No: 74 (x) of Part V of the Import Tariff Schedule which related to "sprayers (other than power driven) and parts". The appellant's contention was that he held an import licence for import of goods falling under serial No. 74(vi) of the said part of the said Schedule which related to "Parts of power driven agricultural machinery", the goods imported (liquid containers) were parts of sprayers and the said serial no. 74(vi), permitted all kinds of spare parts of power driven agricultural machinery. The sprayers imported, according to the appellant, function normally with the help of power driven pumps and functionally, therefore, what the appellant imported were, correctly falling within serial No. 74(vi). As discussed earlier, the Supreme Court, however, did not interfere with the conclusions arrived at by the customs authorities.

In doing so, the Supreme Court was reiterating its earlier decisions in *Collector of Customs, Madras v. K. Ganga Shetty* [AIR (1963) SC 1319], and *A.V. Venkateswaran v. A.S. Wadhvani*, (AIR (1961) SC 1506), In *Ganga Shetty's* case, the respondent had imported from Australia a quantity of oats which was described in the indent, contract and shipping documents as "standard feed -oats". The commodity imported consisted of oats in whole grain. The question related to the proper classification of goods. The controversy centered round the point whether the "feed - oats" fell within S.No. 42 or S.No. 32 of the relevant Import Trade Control Schedule. During the relevant period S.No. 42 read:

"Fodder, bran and pollards, for the import of which a Special import licence was necessary" while item 32 read:

"Grain, not elsewhere specified, including broken grain but excluding flour -

- (a) oats;
- (b) others;

for which a licence was required.

The customs department held that the goods fell under S. No. 32 and established a case of importation without a valid licence. The contention of the importer was that the "feed oats" fell under the item relating to "fodder" because he had imported the goods solely for feeding race horse, at Bangalore and in South India, oats was not used as human food but only as a feed for horses and in any case, he was misled regarding the correct classification by an affirmative answer he had received from the Deputy Chief Controller of Imports, Madras to whom he had made a reference as to whether the goods could be imported under O.G.L. In the High Court, the decision was in favour of the respondent on the ground that in the Court's view, that "oats" fell under item 42 relating to "fodder" and that the decision of lower authorities was always open for judicial review.

In appeal the Supreme Court however, held that the High Court was not right in interfering with the decision of the Customs authorities since their decision to treat it as falling under item 32 "could not be said to be a view on which no reasonable interpretation could be entertained". In other words, the Supreme Court felt that the 'conclusion or decision of the customs authorities was rationally supportable".

In *Ramavtar Budriprasad v. Assistant Sales Tax Officer* [AIR (1961) SC 1325], the question before the Supreme Court was whether "betal leaves" could fall within the category of "vegetables" for purposes of assessment to sales tax and the court held that the latter could not include within its scope the former, since both were two distinct and separate commodities.

The Court held that since the said expressions were not defined by the statute (C.P. and Berar Sales Tax Act 1947 as amended by the C.P. and Berar Act of 1948), and being a word of "every day" use, it must be construed in its proper sense, meaning "that sense in which people conversant with the subject matter with which the statute is dealing would attribute to it.

In *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh*, the Supreme Court further explained the basis for classification of goods. The question before the Court was whether "charcoal" was included in "coal" for assessment of sales tax. It was held that the Sales Tax Act being one levying a tax on goods must, in the absence of a technical term or a term of science or art, be presumed "to have used an ordinary term as coal according to the meaning ascribed to it in "common parlance". Viewed from this point, the Court held that both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as "ordinarily understood" and would therefore include charcoal in the term "coal".

In *Annapurna Carbon Industries v. State of Andhra Pradesh* [AIR (1975) SC 1418] the Supreme Court laid down the test of "predominant" or "ordinary purpose" as deciding factors for determination of classification of goods. It was not the exceptional use or extraordinary use to which the goods could be put to but how predominantly it was used. The Supreme Court further laid down that the fact that the article could be put to any other use also would not detract from the position explained and that the test of general or predominant user was the true test in such matters.

From the above discussion it is clear that while classifying goods for duty purposes due regard should be had to the above principles and it is open for the importer to help the correct classification by establishing how the commodity was popularly known in the particular trade or business in connection with which the goods imported would be used.

In *Commissioner of Sales Tax Madhya Pradesh v. Bhaket Rai* (19 Sales Tax Cases, 285) the Madhya Pradesh High Court, considered the question whether coconuts, groundnut kernel and jira were oil seeds attracting duty under the relevant tariff item (Item 3 of Part II of Schedule I) of the Madhya Pradesh General Sales Tax Act, 1958. The Sales Tax Tribunal had taken the view that these articles were oil seeds in as much as they were seeds and oil could be extracted from them. On reference the High Court took the view that the term oil "seeds" not having been defined by the statute, should be construed in that sense which "people conversant with the subject matter with which the statute was dealing would attribute to it." Those articles, in the opinion of the Court, were not known as "oil seeds" in common parlance used principally for the extraction of oil and therefore, could not attract the tax.

The Punjab High Court in *Kanpur Textile Finishing Mills* case [AIR (1956) Punjab 130] laid down that:

When dealing with a particular business or transaction words are presumed to have been used with the particular meaning with which they are used and understood in the particular business."

In *National Hurricane Works v. Union of India* [AIR (1967) Delhi 156], the Delhi High Court dealing with the Import Tariff laid down that if a particular term or word has not been defined in the tariff, then one has to go by the ordinary meaning of the term and that if an item falls specifically under one entry, it cannot by the "process of stretching be brought to fall under another entry".

It is a settled legal position that if words or expressions used in the tariff are not defined in the body of the statute or the tariff then, regard shall be had to technical opinions, dictionaries and treatises on the subject, including ISI standards.

The basic principle underlying adjudication is to act judicially and not arbitrarily.

The Supreme Court has categorically laid down in *G. Nageshwara v. A.P.S.R.T. Corporation* (AIR) (1959) SC 308, that rules of natural justice require that quasi judicial authorities empowered to decide any dispute must decide the cases without any bias on the principle that "justice should not only be done, but also should manifestly and undoubtedly be seen to be done."

In *Shri Baidyanath Ayurved Bhawan Ltd. v. Asstt. Collector of Central Excise, Allahabad*, the Allahabad High Court was perturbed that even though the collector (appeals) had directed de-novo adjudication of the case, a personal hearing was not granted by the Adjudicating authority (even though a specific request in this behalf had been made by the petitioner) on the ground that the Petitioner had filed some papers on the date of hearing which could not take place on account of pre-occupation of the authorities. The Court held that filing of papers cannot be equated with personal hearing, and on this count alone, the order of the adjudicating authority passed on de-novo consideration of the matter was liable to be quashed.[1986(25) ELT-II(ALL)].

In *Banwarilal Roy's case* [AIR (1948) Calcutta 776] the Calcutta High Court laid down that: "a judicial or quasi-judicial act on the other hand implies more than mere application of the mind or the formation of the opinion. It is a reference to the mode or manner in which that opinion is formed. It implies a 'proposal', an 'opposition' and the 'decision' on the issue."

In *Soorajmal v. Assistant Collector of Customs* [AIR (1952) Calcutta 103] the Calcutta High Court laid down that:

"It is the duty of the customs authorities to 'adjudge' (i.e. decree judicially) the penalty. In other words, to act judicially or quasi-judicially. The fundamental rules of judicial procedure or the principles of natural justice require that a proper hearing and opportunity be given to the person before the rights of such a person are affected by any decision or adjudication. Where the customs authorities impose extra duty, acting in a high handed and an arbitrary manner, arrive at their decisions on extraneous and irrelevant considerations without giving proper opportunity to the petitioner to put his case before the customs authorities and later on demand the extra duty, there has been a denial of natural justice and violation of the fundamental principles of judicial procedure and a writ of certiorari does lie even though there may be an alternative remedy open to the petitioner by way of an appeal".

The Calcutta High Court while observing as above relied on the Supreme Court decision in *Province of Bombay v. Khushaldas Advani* [AIR (1950) S.C. 222] and came to the aforesaid conclusion.

Classification of goods is an intricate but well defined exercise. Reading and interpreting a tariff entry cannot be done in any casual or non-challant manner. Words and expressions found in a tariff have to be properly understood and harmonized. They cannot be taken out and read in vacuum, so to say, nor can entries be read, out of context.

In *Ex-QUIZ TI v. State of Tamil Nadu* [1986 (25) ELT 6 (MAD)] the Madras High Court observed: "...the Supreme Court held that in determining connotation of words and expressions describing an article or commodity... which is taxed..... if there is one principle fairly well settled, it is that the words or expressions must be construed in the sense in which they are understood in that trade by the dealer and the consumer and that it is they who are concerned with it, and it is the sense in which they understand it that constitutes the definite index of the legislative intention when the statute was enacted".

In *Madanvathi's case* [AIR (1960) Mysore 299, 301] the Mysore High Court (as it then was)

pointed out that:

“the first and foremost rule of interpretation is the rule of grammatical interpretation,, the legislature must be deemed to have intended what it has said. It is no part of the duty of the court to presume that the legislature meant something other than what it said. If the words of the section are plain and unambiguous then there is no question of interpretation or construction. The duty of the Court is to implement these provisions”.

In *Indye Chemicals v. Collector of Central Excise Ahmedabad* -1986 (25) ELT 318 (Tribunal), it has been reiterated that Exemption notifications are to be construed strictly and in accordance with the plain meaning of the words used therein and if there is any doubt, the benefit of that doubt should go to the assessee so that the tax burden is reduced.

In *Goolabchand's case* [AIR (1951) MB 11 (FB)] I it has been laid down that:

“If a plain word carried a plain sense in the English language, however strict the law may interpret it, it will not ignore the ordinary meaning which it carries”.

Crawford an authority on statutory construction has stated that:

“Where a word used by the legislature has fixed technical meaning; it is to be taken in that sense. The technical words and phrases of the law are presumed to have been used in their proper technical signification when used in statutes.....”

Maxwel in his interpretation of statutes has stated that:

“the first and foremost elementary principle is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one otherwise in their ordinary meaning”.

In *United States v. Brown* [333 US (8)], it has been laid down : “no rule of construction necessitates acceptance of an interpretation of a statute resulting in absurd consequences”.

In *Robertson v. Day* (5AC 62, 69) the privy Council has said:

“It is a legitimate rule of construction to construe words.....with reference to the words found in immediate connection with them”.

In *Commissioner of Income Tax, Bombay v. Reid* (AIR (1931) Bombay 333 it has been laid down that:

“In construing a taxing Act, the Court is not justified in straining the language in order to hold a subject liable to tax”.

The Supreme Court in *Sales Tax Commissioner v. Modi Sugar Mills* [AIR (1901) SC 4047] laid down that:

“In interpreting a taxing statute equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed, it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiencies.”

The CEGAT, in *Venus Engineering Pvt. Ltd. v. Collector of Central Excise, Baroda* [1986 (25) ELT 553 (TRIBUNAL)] observed that it is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument, more so when these are not dealing with any cognate subject. The subject of the Factories Act is far from being cognate with the subject of the Central Excise Act - one deals with taxes and the other with places where goods are

manufactured. In the circumstances, the word “worker” in the Central Excise Act must be given the same meaning which it receives in ordinary parlance or is understood in the sense in which people conversant with the subject matter understand it and not that attributable to it under the Factory Act.

In the matter of availment of exemptions, it has been laid down by the Kerala High Court in the case of *Rice and Oil Mills* [1981 ELT (KER) 59] that denial of an exemption notification would tantamount to violation of fundamental right. It is also a settled legal position that in the matter of exemption notifications, the authorities cannot abridge, alter, amend or nullify the scope of a valid notification. Benefits flowing out of a valid notification cannot also be denied. An importer who does not have sufficient finances to clear the goods or if he does not require all the goods imported for consumption at one time, may file a Bill of Entry for warehousing under the warehousing provisions, so that appropriate duty may be paid at the time of actual clearance of the goods from the warehouse.

When a set of articles are imported as a project or a single unit and the amount is charged for the same as a whole, the articles in the set attracting highest rate will be applied to the whole lot. This is irrespective of the rates the individual articles attract.

For this, if possible, the exporter shall specify the articles severally in the set and specify the price individually in the invoice. As a result a lot of duty can be saved.

If accessories and spares are brought with the main articles which are compulsory and charges separately, the rate applicable to the main article is applied to the accessories also. Example: a car is imported with accessories. BCD on car, say 90% and on accessories it is 10%. If accessories price can be shown separately in the invoice, there would be a saving in terms of duty.

(b) Customs Act and Exemption Notifications

It has already been seen that under the Customs Act (Section 25 of the Act) power has been conferred on the Central Government to exempt certain goods from the levy of customs duty. An importer has to necessarily keep a proper track of exemption notifications. The exemptions notifications may either be without any reference to any given time period or may be with reference to a particular period. In the former case, the exemption notification can be withdrawn at any time by Central Government. It is therefore necessary to envisage this eventually while negotiating contracts for sale of goods after their import into India, because Customs Duty liability will increase the cost of import which should normally be reflected in selling price. Even if the imported goods are not to be sold but are to be captively consumed, the levy of import duty by withdrawing the exemption granted earlier would have the effect of increasing the cost of production. If the imported goods are Plant and Machinery even then its effect would be to increase the cost of project. Even in a case where exemption has been given for a given period of time, the Central Government may withdraw the exemption notification before the expiry of the given period of time. To take an example, an exemption notification issued on 1.10.96 effective up to 1.10.99, may be withdrawn by the Government before 1.10.99, with the result an importer who placed an order for import of goods in the hope that they are exempted from duty may be faced with the shocking problem to pay the duty because the exemption notification has been withdrawn before 1.10.99. Now the question is, whether such a withdrawal of exemption before the expiry of normal period up to which it must have run can be challenged on the ground of promissory estoppel. The Judicial view seems to be that promissory estoppel cannot be pleaded against the Government, because withdrawal of the exemption notification under Section 25 is in public interest and such a withdrawal is a legislative function. These aspects must be borne in mind whenever any goods are imported on the basis of an exemption notification.

(c) Customs Act and Input Tax Credit:

Yet another aspect of interest in customs law is that the countervailing duties payable on the import of certain goods have to be properly accounted for in the documents. Suitable endorsement of the intention to avail CENVAT credit must be made on the Bill of entry. This is because the same Bill of entry may not be used for claiming any duty drawback on exports. This is because CENVAT credit can be availed in respect of countervailing duties also. If the importer is a canalising Agency and the goods are supplied by the canalising Agency to the Manufacturer, such a manufacturer must impress upon the canalising agency for issue of a certificate in respect of countervailing duties paid on the goods. Only on the basis of such a certificate the manufacturer would be able to get CENVAT credit.

Under the GST regime most of the goods are under GST. Where tax on goods and services is integrated and IGST is payable on imports, every supplier of imported goods is entitled to take input tax credit on whole of IGST which he can use for payment of IGST, CGST & SGST

(d) Customs Act and Duty drawback

As regards exports are concerned a matter of subtle importance is the claims for duty drawback on the export of goods. The interesting question that has been agitated more than once before various judicial forums is, when does export takes place, whether on the export goods passing into the control of Customs Department or when the export goods reach the buyer located beyond the territorial waters of India. Judicial decision on this point are quite encouraging. The view is that once the export goods pass into the control of the Customs Department so as to be out of the control of the exporter any longer, the export is supposed to be complete. This issue is very important because there may be two eventualities.

After the export goods passes into the control of Customs Department and the goods have been boarded on the ship or have been kept for boarding on the ship, there may be a loss or destruction due to fire or action of the sea or due to any other cause. Secondly, though the goods are safely boarded on the ship, but before they cross the territorial waters of India, there may be loss or damage to the goods on board or the whole ship may be lost. In such situations, it is proper to cite judicial rulings wherein some of the High Courts declared that export is complete when the export goods pass to the customs control notwithstanding the fact that thereafter they get lost or destroyed before crossing the territorial waters of India.

(e) Customs Act and Record Keeping

Last but not the least is the proper documentation and record keeping. The maintenance of correct and proper records would avoid any penal action being taken by the excise department for non-compliance with any particular rule or notification. In this context, it is necessary to be conversant with various regulations rules and the forms prescribed under the customs laws. These have been adequately explained in the preceding study lessons. A tax planner would therefore labour to keep track of various amendments brought about to various rules forms etc. so that the records and registers are at all times in consonance with the statutory requirements.

(f) Deposit of goods in a warehouse

As per section 61 of the Act, the imported goods can be deposited in a warehouse for warehouse for a maximum period of one year subject to extension in some cases. Thus, removal of goods should be planned properly and the goods shall be moved within the prescribed period, else there will be necessary penalties resulting in sheer loss of money.

Every effort must be made to see that the goods are cleared from the warehouse in time before the goods get destroyed or damaged beyond repair. No remission is granted on such goods deposited in a warehouse where the importer failed to clear within the stipulated time. For example, In DECORATIVE LAMINATES (I) PVT. LTD. 2010 (H.C)]

The goods were deposited in a warehouse and due to lack of demand, extension was sought and granted. Even the extended period was over by 31st Dec 2001. Still the goods were not removed. In the meantime the goods were destroyed in the warehouse. Then the importer applied for remission under Section 23 of the Act. Department rejected on the ground that remission cannot be granted on goods stored in the warehouse beyond the permissible period.

The High Court held that no remission under Section 23 of the Customs Act can be allowed for warehoused goods if they are lost or destroyed in the warehouse after the expiry of warehousing period. Further held that the benefit of remission under Section 23 is available only to proper removals.

GST LAWS AND TAX PLANNING

A proper tax planning exercise has to be done so as to ensure due compliance with the statutory provisions and also to reduce the incidence of duty to the minimum. In fact a proper tax planning GST Law demands:

- (i) An in-depth knowledge of substantial provisions;
- (ii) A thorough knowledge of procedural formalities;
- (iii) A continuous follow-up of various Exemptions Notifications;
- (iv) Procedural compliances and filing of returns in time
- (v) Ability to reason out and argue one's point of view.

At the outset it is a wiser part of discretion to avoid basing tax planning on very tenuous reasoning and controversial interpretations. At the same time when the rulings of the Courts carry considerable conviction it would not be advisable to ignore them. Wherever the planning is done on premises which may not find a favour with the Courts or the legislature ultimately, it is desirable to make suitable provisions in the accounts to meet the duty liability that may arise in future for past transactions. Alternatively, while entering into contract of sale of goods, a manufacturer may do well to provide in the contract note that, should additional demand of duty be made by the Government on him, the same would be recovered from the purchaser (this is however subject to the advisability of including such term from a purely commercially strategic point of view).

Some broad areas of tax planning with reference to GST Laws are discussed herein below:

(a) Classification of goods and services

Indirect taxes are levied on goods *and services* either at ad valorem rate mostly. Irrespective of the type of tax, the rate and the amount of tax would in almost all cases inter alia depend on classification of the goods/ services. As wrong classification would lead to many complications, it is better to get the classification decided by the department.

(b) Valuation

Valuation is a very important aspect of a Tax Law. A supplier should be quite conversant with the relevant provisions in this regard under the Acts and the Rules. As on 1.7.2017, the new laws have been enacted and effected, the new provisions seek to tax the goods and services based on "transaction value" as the base for taxation has been supply and the scope of supply shall be studied meticulously for taxability and value of goods and services.

Procedural Aspects: The new set of laws are more of IT based than manual. Maintenance of electronic records filing of returns monthly, annually within the stipulated time has assumed a

lot of importance under the new system of taxation. Even claiming of input tax credit is linked to filing of returns which should be taken care of properly.

Nature of supply, Place of supply and time of supply of goods and services are equally important under new generation laws of GST because if GST is paid by mistake for interstate supply where it happened to be intrastate supply, or vice versa, will not be adjusted for the other. You have to pay GST separately with interest if any and claim refund of GST paid by mistake. Such mistake proves expensive, affecting the cash flow and working capital position of the company.

LESSON ROUND UP

- In common language, "Promissory" means "related to a promise", and "estoppel" is a legal term that essentially means an enforced bar or ban. Judges use the doctrine to ban one person from going back on promise.
- The Doctrine of Promissory Estoppel marches with hypothesis that a promise given by the State is binding on the Government in the prescribed circumstances.
- The Doctrine of Estoppel can be revoked by the government if it is in the public interest and it cannot be enforced when it is prohibited by law.
- Tax can be planned in the Excise and Custom in the certain provisions such as: classification of goods, Exemption Notification by proper utilization of Cenvat Credit, duty-drawback, valuation of goods, export concessions, etc.

SELF-TEST QUESTIONS

1. What is the relevance of 'Doctrine of Promissory Estoppel' in the fiscal laws?
2. What are the relevant areas in which tax planning could be done with regard to levy of duties of Customs?
3. What is the scope of tax planning with regard to levies of the GST?

SUGGESTED READINGS

- (1) Customs Law Manual — *Taxmann*
- (2) Excise Law Times — Centax Publications, New Delhi

BACKGROUND OF GST

INTRODUCTION

The introduction of Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India. In the pre GST regime, there was multiplicity of indirect taxes. The central excise duty and service tax was levied by the Central Government, while VAT and Entry Tax was levied by the State Government. Moreover, there was cascading effect of taxes, i.e. tax on tax, at various stages as credit of taxes levied by one government was not available against payment of taxes levied by the other.

GST is a huge reform for indirect taxation in India, the likes of which the country has not seen post Independence. GST will simplify indirect taxation, reduce complexities, and remove the cascading effect. It will have a huge impact on businesses both big and small, and change the way the economy functions.

GST is a comprehensive indirect tax levy subsuming all central and state levies with a single unified value added tax transforming the nation into one single market. Major Central and State taxes are subsumed into GST which will reduce the multiplicity of taxes, and thus bring down the compliance cost. With GST, the burden of CST will be phased out.

As per Statement of Objects and Reasons appended to the Constitutional Amendment bill the object of GST is :

- a) to have common national market, and
- b) avoid cascading effect of taxes.

From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated to be around 25%-30%. Introduction of GST will make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Last but not the least, this tax, because of its transparent and self-policing character, would be easier to administer.

Unfolding the pages of history, the idea of national GST in India was first mooted by Kelkar Committee in the year 2004. The Committee recommended national GST. The first announcement for the introduction of GST was made in Budget Speech on 28th April, 2006 by the then Finance Minister, P. Chidambaram. The proposed target date to introduce nationwide GST was 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

The Constitution of India was amended from 16th of September, 2016 to make provision for the introduction of GST. By this amendments in the Constitution both the Centre and the States shall have concurrent power to levy and collect the GST on both goods and services.

RELEVANT ACTS PASSED BY THE PARLIAMENT AND STATES

Roll out date for GST is fixed at 1st July, 2017. Following are Acts under GST which were passed and received the President's assent on 12th April, 2017-

- (1) The Central Goods and Service Tax Act, 2017(CGST),
- (2) The Integrated Goods and Service Tax Act, 2017(IGST),
- (3) The Union Territory Goods and Service Tax Act, 2017(UTGST),
- (4) The Goods and Service Tax(Compensation to States) Act, 2017(Compensation Cess).

Twenty eight states excluding Jammu & Kashmir, Union Territories with legislature- Delhi and Puducherry and the remaining five Union Territories have passed their respective State Goods and Service Tax Act (SGST) and UTGST Act by 30th June, 2017. The State of Jammu & Kashmir passed their SGST Act on 5th of July, 2017. All the acts are effective from 1st day of July, 2017

The CGST and IGST Acts extends to the whole of India except the State of Jammu & Kashmir.

WHAT IS GOODS AND SERVICE TAX?

New Article 366(2A) of the Indian Constitution, defines Goods and Service Tax(GST) to mean a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption.

Note that the word 'supply' is used and not 'sale'. Thus in many cases, free supplies will be subject to GST.

For example, GST will be payable on free supplies made to related persons. No GST will be payable on free gifts and free samples to unrelated person, but input tax credit in respect of such goods will have to be reversed.

Inter-state stock transfers and branch transfers will also be subject to GST-that is, IGST will be payable thereon.

For stock transfers and branch transfers within the State, CGST and SGST will be payable only where the taxable person has more than one GST registration within the State. In case of single registration within the State, Delivery challan will be sufficient and no payment of GST is required.

Further no GST will be payable if goods are sent for job work outside the factory.

New Article 366(26A) defines service to mean anything other than goods.

GST IS A CONSUMPTION BASED TAX BASED ON VAT PRINCIPLE

GST is a consumption based tax, i.e. tax will be payable in the State in which goods and services or both are finally consumed. Exports are not taxable, because the place of consumption is outside India. Imports are taxable, because the place of consumption is in India.

GST is based on VAT system of allowing input tax credit of tax paid on inputs, input services and capital goods, for payment of tax on output supply.

Thus, the States from which goods are supplied will not get any tax as goods are consumed in another State.

DUAL GST

India has adopted "Concurrent dual GST" model. The need for Dual GST model is based on the following premise:

- At existing framework, both levels of Government, that is, Centre and State, as per Constitution holds concurrent powers to levy tax on domestic goods and services.
- The Concurrent Dual GST model would be a dual levy imposed concurrently by the Centre and the States, but independently;
- Both Centre and State will operate over a common base, that is, the base for levy and imposition of duty/tax liability would be identical.

Under the Concurrent Dual GST Model taxes shall be levied as per place of supply of goods and services. In case of supplies within the State or Union Territory –

- Central GST (CGST) will be payable to the Central Government
- State GST (SGST) or Union Territory GST(UTGST) will be payable to the State Government or Administrator of Union Territory(as applicable)

CGST and SGST will also apply in Union Territories having legislature, i.e. Delhi and Puducherry.

Area upto 12 nautical miles inside the sea is part of State or Union Territory which is nearest, so SGST or UTGST will be payable.

IGST FOR INTER STATE TRANSACTIONS

In case of Inter-State supply of goods and services, there will be integrated GST (IGST) imposed by the Government of India.

Equivalent IGST will be imposed on imports

The IGST rate will be equal to CGST plus SGST rate.

IGST rates will be same all over India and will not vary State to State

Revenue from IGST will be apportioned among Union and States by the Parliament on the basis of recommendation of Goods and Service Tax council.

In area inside the sea between 12 nautical miles to 200 nautical miles, IGST will be payable.

ITEMS NOT COVERED UNDER GST

Sl. No.	Items	Remarks
1.	Alcoholic Liquor for human consumption	Article 366(12A) of the Constitution of India provides that taxes on the supply of alcoholic liquor for human consumption are outside the purview of the Goods and Service Tax Act

2	Petroleum Products viz, petroleum crude, high spirit diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel	GST to be levied from such date as may be notified by the Government on the recommendations of the GST Council (Section 9(2) of the CGST Act). Till then Central excise duty will continue on petroleum products.
3	Electricity	As per Entry 53 in List II (State list) of the Seventh Schedule to the Constitution of India, taxes on consumption and sale of electricity are under the ambit of the States.

Note:- Tobacco and Tobacco Products will be subject to Central excise duty plus GST

TAXES SUBSUMED UNDER GST

The GST would replace the following taxes currently levied and collected by the Centre:

- a) Central Excise duty
- b) Duties of Excise (Medicinal and Toilet Preparations)
- c) Additional Duties of Excise (Goods of Special Importance)
- d) Additional Duties of Excise (Textiles and Textile Products)
- e) Additional Duties of Customs (commonly known as CVD)
- f) Special Additional Duty of Customs (SAD)
- g) Service Tax
- h) Central Surcharges and Cesses so far as they relate to supply of goods and services

State taxes that would be subsumed under the GST are:

- a) State VAT
- b) Central Sales Tax
- c) Luxury Tax
- d) Entry Tax (all forms)
- e) Entertainment and Amusement Tax (except when levied by the local bodies)
- f) Taxes on advertisements
- g) Purchase Tax
- h) Taxes on lotteries, betting and gambling
- i) State Surcharges and Cesses so far as they relate to supply of goods and services'

The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.

COMMON PROVISIONS OF CGST, SGST, IGST AND UTGST

A. PROVISIONS OF CGST and SGST

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except with the authority of law. Charging Section is a must in any taxing statute for the purpose of levy and collection of tax.

In the pre-GST regime, there was clear demarcation of fiscal powers between the Centre and the State. While Centre was empowered to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.), the States have the powers to levy tax on sale of goods. In case of inter-State sales, the Centre has the power to levy a tax

(the Central Sales Tax) but, the tax is collected and retained entirely by the originating States. As for services, it is the Centre alone that is empowered to levy service tax.

Keeping in mind the federal structure of the Indian Constitution, Dual GST which is a political necessity, is introduced in India. Under GST, tax is levied concurrently by both the Centre and the States.

The Centre will levy and collect the Central GST and State will levy and collect the State GST on supply of goods and services within the State. (Section 9 of the CGST/SGST Act).

The Central GST will be governed by CGST(Central Goods and Service) Act which is applicable to the whole of India except the State of Jammu & Kashmir. However vide an ordinance dated 8th July, 2017, the provisions governing Goods and Service tax have been extended to the State of Jammu & Kashmir. Consequently Goods and Service tax is now applicable to the whole of India.

The State GST will be governed by SGST(State Goods and Service Tax) Act which is applicable to whole of a specified State(Section 1(2) of CGST/SGST Act). Therefore, there is one CGST Act and 31 SGST Act for each of the 29 states, Delhi and Puducherry.

Some of the highlights of the Dual GST,i.e., CGST+SGST are as follows:-

- Both CGST and SGST will be levied on same price or value in case of Intra state sale. In case of Inter-state sale, only Integrated Goods and Services Tax (IGST) will be levied which shall be administered and collected by the Central Government. IGST is not a tax but a mechanism by which part of the tax shall travel to the state where goods/services shall be consumed ultimately. In case a supplier utilizes the credit of IGST for the payment of SGST, the amount will be reimbursed to the importing state by the Centre. In case supplier in the exporting State utilizes credit of SGST for payment of IGST, centre will debit that amount to the exporting State.
- Every supplier has to take registration in a State from where he undertakes to supply goods or services. Registration in a State will automatically register the supplier under CGST Act and IGST Act. No separate registration is required.
- Full input tax credits will be available with regard to CGST and SGST. However no cross utilization between CGST and SGST will be allowed. The dealer of importing state will be entitled to avail ITC of entire IGST. Further IGST of one State cannot be set off against the IGST of another state.
- HSN will form the basis for product classification for both the Central GST and State GST.
- The obligation to pay both the taxes will be discharged based on a single tax document.
- The pre-requisite to determine the taxable event which gives rise to CSGT and SGST is common.
- The SGST will operate within the specified boundaries of the respective state. Accordingly, in relation to inter-state supplies of goods and services, it will be important to determine which particular state will charge and collect the applicable IGST.

- There will be uniform procedures for collection of the CGST and SGST.
- There will be one common tax return for both the taxes.

It is worth highlighting here that the provisions of the CGST Act 2017 have been replicated in the various SGST Acts. Resultantly almost all the provisions of the CGST Act, 2017 shall apply to SGST Acts, also with necessary changes.

Accordingly, the officers appointed under CGST Act are authorized to be the proper officers for the purposes of this Act. Whereas officers appointed under SGST Act are authorized to be the proper officers for the purposes of SGST Act(Section 3 of CGST/SGST).

Section 4 of the IGST Act provides that without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Section 174 of the CGST Act repeals all the Central levies under the previous law viz, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985

Section 174 of the SGST Act repeals all the State levies under the previous laws viz, the State VAT Act, the State Entry tax Act, the State Amusement and Betting Tax Act, State Luxury Tax, State Health Infrastructure & Services Development fund Act and any other State levies as may be provided under the section.

Section 173 of the CGST Act omits Chapter V of the Finance Act 1994, while Section 173 of the SGST Act omits / amends various state levies w.r.t octroi, entry tax, amusement and entertainment tax and other State levies that are subsumed under GST.

The Transitional Provisions under Chapter XX shows certain additional requirement under SGST Act compared to CGST Act.

Section 140(1) of CGST Act entitles to take in the electronic credit ledger, credit of the amount of CENVAT credit as carried forward in the return furnished under earlier law, relating to the period ending with the day immediately preceding the appointed day. The CENVAT credit shall be admissible as CGST tax.

Section 140(1) of the SGST Act entitles to take in the electronic credit ledger, credit of the amount of VAT, as carried forward in the return furnished under earlier law, relating to the period ending with the day immediately preceding the appointed day. The VAT credit shall be admissible as SGST tax.

The second proviso to Section 140(1) of the SGST Act so much of the said credit as is attributable to any claim related to section 3, 5(3), 6, 6A and 8(8) of the CST Act, 1956 which is not substantiated in the manner, and within the period prescribed in rule 12 of the CST(Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger.

Thus in case of inter-state sale, if CST Forms like, Form C,F,H,E1,E2 are not received by the seller within the prescribed time of 3 months as stipulated in Rule 12 of the CST rules, credit equal to difference between state VAT on that item and CST paid will not be available for carry forward.

The third proviso to Section 140(1) of the SGST Act provides that an amount equivalent to the credit specified in the second proviso shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the CST (Registration and Turnover) Rules, 1957. Thus when the claim is substantiated, the amount will be refunded to the taxable person.

Sub-section 14 is specifically inserted to Section 142 of the SGST Act, which provides that where any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit, subject to the following conditions:

- (i) The agent is a registered taxable person
- (ii) Both the principal and the agent declare the details of stock
- (iii) The invoices are not older than twelve months
- (iv) The principal has either reversed or not been availed on the input tax credit

Besides the above, all the provisions of CGST Act and SGST Act are similar.

B. COMMON PROVISIONS OF CGST AND IGST

The following provisions of the Central Goods and Services Tax Act, shall, mutatis mutandis, apply to Integrated tax as they apply in relation to Central tax as if they are enacted under IGST Act.

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;
- (xiii) refunds;

- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

C. COMMON PROVISIONS OF CGST AND UTGST

The following provisions of the Central Goods and Services Tax Act, shall, mutatis mutandis, apply to Union Territory as they apply in relation to Central tax as if they are enacted under UTGST Act.

- (i) scope of supply;
- (ii) composition levy;
- (iii) composite supply and mixed supply;
- (iv) time and value of supply;
- (v) input tax credit;
- (vi) registration;
- (vii) tax invoice, credit and debit notes;
- (viii) accounts and records;
- (ix) returns;
- (x) payment of tax;

- (xi) tax deduction at source;
- (xii) collection of tax at source;
- (xiii) assessment;
- (xiv) refunds;
- (xv) audit;
- (xvi) inspection, search, seizure and arrest;
- (xvii) demands and recovery;
- (xviii) liability to pay in certain cases;
- (xix) advance ruling;
- (xx) appeals and revision;
- (xxi) presumption as to documents;
- (xxii) offences and penalties;
- (xxiii) job work;
- (xxiv) electronic commerce;
- (xxv) settlement of funds;
- (xxvi) transitional provisions; and
- (xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

RATES OF GST

The rates of GST (CGST+SGST/UTGST)- Nil,5%,12%,18% and 28%. These rates will apply to IGST also. CGST and SGST rate is expected to be same. IGST is expected to be equal to double the CGST rate. Thus if CGST and SGST is same, the IGST rate will be equal to the rate of SGST plus CGST.

For Example:- Rajesh, a dealer in Maharashtra sold goods to Anand in Maharashtra worth ₹. 10,000. The GST rate is 18% comprising of CGST rate of 9% and SGST rate of 9%, in such case the dealer collects ₹ 1800 and ₹ 900 will go to the central government and ₹ 900 will go to the Maharashtra government.

Again if Rajesh sells goods to dealer in Delhi worth ₹. 10,000. This being inter- state, the dealer will charge IGST at the rate of 18% and the amount collected ₹ 1800 will go the central government and will later be apportioned between the union and the states on the recommendation of the GST council.

There is a special rate of 0.25% for rough diamonds and 3% for Gold, silver and jewellery, platinum, imitation jewellery, pearl, diamond, synthetic stone.

In addition, there will be GST Compensation cess on Aerated waters, cigarettes, tobacco and tobacco products, coal, peat, lignite and motor vehicles.

ADVANTAGES OF GST:

(A) MAKE IN INDIA:

- (i) Will help to create a unified common national market for India, giving a boost to Foreign investment and "Make in India" campaign;
- (ii) Will prevent cascading of taxes as Input Tax Credit will be available across goods and services at every stage of supply;
- (iii) Harmonization of laws, procedures and rates of tax;
- (iv) It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;
- (v) Ultimately it will help in poverty eradication by generating more employment and more financial resources;
- (v) More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports;
- (vii) Improve the overall investment climate in the country which will naturally benefit the development in the states;
- (viii) Uniform SGST and IGST rates will reduce the incentive for evasion by eliminating rate arbitrage between neighboring States and that between intra and inter-State sales;
- (ix) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption, which in turn means more production thereby helping in the growth of the industries . This will create India as a "Manufacturing hub".

(B) EASE OF DOING BUSINESS:

- (i) Simpler tax regime with fewer exemptions;
- (ii) Reductions in the multiplicity of taxes that are at present governing our indirect tax system leading to simplification and uniformity;
- (iii) Reduction in compliance costs - No multiple record keeping for a variety of taxes- so lesser investment of resources and manpower in maintaining records;

- (iv) Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc;
- (v) All interaction to be through the common GSTN portal- so less public interface between the taxpayer and the tax administration;
- (vi) Will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions;
- (vii) Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system;
- (viii) Timelines to be provided for important activities like obtaining registration, refunds, etc;
- (ix) Electronic matching of input tax credits all-across India thus making the process more transparent and accountable.

(C) TO THE GOVERNMENT:

- (i) Broadening Tax base
- (ii) Improved compliance and revenue collections
- (iii) Efficient use of Resources
- (iv) Investments out of savings by consumers:-mitigation in the cascading effects of taxes will contribute to increase in availability of funds out of savings of consumer which may be used for financing development activities.

(D) TO TRADE

- (i) Reduction in multiplicity of taxes
- (ii) Mitigation of cascading/ double taxation
- (iii) More efficient neutralization of taxes especially for exports
- (iv) Development of Common National Market or Common Economic market
- (v) Simpler tax regime with fewer rates and exemptions
- (vi) Increase in cost competitiveness' for domestic industries with reduction in tax cost and also reduced cost of compliance.

(E) TO CONSUMER

- (i) Reduction in cost of goods and services due to elimination of cascading effect of taxes
- (ii) Increase in purchasing power and real income
- (iii) Increase in savings due to decrease in cost
- (iv) Increase in investments due to increase in savings

DISADVANTAGES OF GST:

- GST is not good news for all sectors, though. In the current system, many products are exempted from taxation. The GST proposes to have minimal exemption list. Currently, higher taxes are levied on fewer items, but with GST, lower taxes will be levied on almost all items.
- GST is not applicable on liquor for human consumption. So alcohol rates will not get any advantage of GST.

- Stamp duty will not fall under the GST regime and will continue to be imposed by states.

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

NO. 12 OF 2017

[12th April, 2017.]

An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Central Goods and Services Tax Act, 2017.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. DEFINITIONS.

In this Act, unless the context otherwise requires,—

- (1) “actionable claim” shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;
- (2) “address of delivery” means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;
- (3) “address on record” means the address of the recipient as available in the records of the supplier;
- (4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;
- (5) “agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf

of another;

- (6) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;
- (7) "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land—
 - (a) by own labour, or
 - (b) by the labour of family, or
 - (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;
- (8) "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107;
- (9) "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109;
- (10) "appointed day" means the date on which the provisions of this Act shall come into force;
- (11) "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;
- (12) "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;
- (13) "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;
- (14) "authorised bank" shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;
- (15) "authorised representative" means the representative as referred to in section 116;
- (16) "Board" means the Central Board of Excise and Customs constituted under 54 of 1963. the Central Boards of Revenue Act, 1963;
- (17) "business" includes—
 - (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
 - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
 - (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
 - (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
 - (f) admission, for a consideration, of persons to any premises;
 - (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
 - (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
 - (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;
- (18) "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

Explanation.—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—

- (a) the nature of the goods or services;
 - (b) the nature of the production processes;
 - (c) the type or class of customers for the goods or services;
 - (d) the methods used to distribute the goods or supply of services; and
 - (e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;
- (19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;
- (20) "casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;
- (21) "central tax" means the central goods and services tax levied under section 9;
- (22) "cess" shall have the same meaning as assigned to it in the Goods and Services Tax

(Compensation to States) Act;

- (23) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;
- (24) "Commissioner" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;
- (25) "Commissioner in the Board" means the Commissioner referred to in section 168;
- (26) "common portal" means the common goods and services tax electronic portal referred to in section 146;
- (27) "common working days" in respect of a State or Union territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union territory Government;
- (28) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980;
- (29) "competent authority" means such authority as may be notified by the Government;
- (30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

- (31) "consideration" in relation to the supply of goods or services or both includes—
 - (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
 - (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

- (32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

- (33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;
- (34) "conveyance" includes a vessel, an aircraft and a vehicle;
- (35) "cost accountant" means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;
- (36) "Council" means the Goods and Services Tax Council established under article 279A of the Constitution;
- (37) "credit note" means a document issued by a registered person under sub-section (1) of section 34;
- (38) "debit note" means a document issued by a registered person under sub-section (3) of section 34;
- (39) "deemed exports" means such supplies of goods as may be notified under section 147;
- (40) "designated authority" means such authority as may be notified by the Board;
- (41) "document" includes written or printed record of any sort and electronic record as defined in clause (f) of section 2 of the Information Technology Act, 2000;
- (42) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;
- (43) "electronic cash ledger" means the electronic cash ledger referred to in sub-section (1) of section 49;
- (44) "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;
- (45) "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- (46) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (2) of section 49;
- (47) "exempt supply" means supply of any goods or services or both which attracts *nil* rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;
- (48) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

- (49) "family" means,—
- (i) the spouse and children of the person, and
 - (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;
- (50) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;
- (51) "Fund" means the Consumer Welfare Fund established under section 57;
- (52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- (53) "Government" means the Central Government;
- (54) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017;
- (55) "goods and services tax practitioner" means any person who has been approved under section 48 to act as such practitioner;
- (56) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;
- (57) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;
- (58) "integrated tax" means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;
- (59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
- (60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;
- (61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;
- (62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

- (63) "input tax credit" means the credit of input tax;
- (64) "intra-State supply of goods" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;
- (65) "intra-State supply of services" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;
- (66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;
- (67) "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;
- (68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;
- (69) "local authority" means—
 - (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
 - (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
 - (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
 - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
 - (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
 - (f) a Development Board constituted under article 371 of the Constitution; or
 - (g) a Regional Council constituted under article 371A of the Constitution;
- (70) "location of the recipient of services" means,—

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - (d) in absence of such places, the location of the usual place of residence of the recipient;
- (71) "location of the supplier of services" means,—
- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
 - (d) in absence of such places, the location of the usual place of residence of the supplier;
- (72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;
- (73) "market value" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;
- (74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
- Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;
- (75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

- (76) "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;
- (77) "non-resident taxable person" means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;
- (78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;
- (79) "non-taxable territory" means the territory which is outside the taxable territory;
- (80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;
- (81) "other territory" includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114) ;
- (82) "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;
- (83) "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;
- (84) "person" includes—
- (a) an individual;
 - (b) a Hindu Undivided Family;
 - (c) a company;
 - (d) a firm;
 - (e) a Limited Liability Partnership;
 - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
 - (h) any body corporate incorporated by or under the laws of a country outside India;
 - (i) a co-operative society registered under any law relating to co-operative societies;
 - (j) a local authority;
 - (k) Central Government or a State Government;
 - (l) society as defined under the Societies Registration Act, 1860;
 - (m) trust; and
 - (n) every artificial juridical person, not falling within any of the above;
- (85) "place of business" includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
 - (b) a place where a taxable person maintains his books of account; or
 - (c) a place where a taxable person is engaged in business through an agent, by whatever name called;
- (86) "place of supply" means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;
- (87) "prescribed" means prescribed by rules made under this Act on the recommendations of the Council;
- (88) "principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;
- (89) "principal place of business" means the place of business specified as the principal place of business in the certificate of registration;
- (90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;
- (91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;
- (92) "quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;
- (93) "recipient" of supply of goods or services or both, means—
- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,
- and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;
- (94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
- (95) "regulations" means the regulations made by the Board under this Act on the recommendations of the Council;

- (96) "removal" in relation to goods, means—
- (a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or
 - (b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;
- (97) "return" means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;
- (98) "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;
- (99) "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108;
- (100) "Schedule" means a Schedule appended to this Act;
- (101) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- (103) "State" includes a Union territory with Legislature;
- (104) "State tax" means the tax levied under any State Goods and Services Tax Act;
- (105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;
- (106) "tax period" means the period for which the return is required to be furnished;
- (107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;
- (108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;
- (109) "taxable territory" means the territory to which the provisions of this Act apply;
- (110) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;
- (111) "the State Goods and Services Tax Act" means the respective State Goods and Services Tax Act, 2017;

- (112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;
- (113) "usual place of residence" means—
- (a) in case of an individual, the place where he ordinarily resides;
 - (b) in other cases, the place where the person is incorporated or otherwise legally constituted;
- (114) "Union territory" means the territory of—
- (a) the Andaman and Nicobar Islands;
 - (b) Lakshadweep;
 - (c) Dadra and Nagar Haveli;
 - (d) Daman and Diu;
 - (e) Chandigarh; and
 - (f) other territory.

Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

- (115) "Union territory tax" means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;
- (116) "Union Territory Goods and Services Tax Act" means the Union Territory Goods and Services Tax Act, 2017;
- (117) "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;
- (118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;
- (119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;
- (120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;
- (121) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

CHAPTER II

ADMINISTRATION

Commentary :

The success of an Act depends upon its proper administration. Thus, every Act needs to be properly administered so as to ensure that its underlying objectives are achieved effectively and efficiently. Further every fiscal statute must specify the administrative set up under the Act and the various classes of officers, their jurisdiction, powers etc. Accordingly this chapter deals with the administrative set up in sections 3 to 6

3. OFFICERS UNDER THIS ACT

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

4. APPOINTMENT OF OFFICERS

- (1) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.
- (2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

5. POWERS OF OFFICERS

- (1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

6. AUTHORISATION OF OFFICERS OF STATE TAX OR UNION TERRITORY TAX AS PROPER OFFICER IN CERTAIN CIRCUMSTANCES

- (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) Subject to the conditions specified in the notification issued under sub-section (1),—
 - (a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;
 - (b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.
- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

CHAPTER III

LEVY AND COLLECTION OF TAX

Commentary :

Under the old regime, taxable events for various taxes were different. For example for excise, the taxable event was manufacture or production of goods in India, for service, the taxable event was provision of service and under VAT/CST it was sale of goods. To replace such multiplicity, GST has brought a single and unified taxable event which is supply, i.e., tax would be payable on the supply of goods or services.

7. SCOPE OF SUPPLY

- (1) For the purposes of this Act, the expression “supply” includes—
- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - (b) import of services for a consideration whether or not in the course or furtherance of business;
 - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Commentary :

The term, “supply” has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST
2. Supply should be made for a consideration
3. Supply should be made in the course or furtherance of business
4. Supply should be made by a taxable person
5. Supply should be a taxable supply

The term “goods” and “services” have been defined in section 2(52) and 2(102) of the CGST Act. The term “consideration” is defined in section 2(31) of the CGST Act.

The phrase ‘agreed to be made’ signifies that tax is not only payable on supply, that has already been made, but would also be payable in respect to a supply that has been agreed to be made. Hence, even advances received prior to supply is taxable even if the same is in connection to a supply agreed to be made.

- (2) Notwithstanding anything contained in sub-section (1),—

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

- (3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
 - (a) a supply of goods and not as a supply of services; or
 - (b) a supply of services and not as a supply of goods.

8. TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Commentary :

The term "composite supply" and "mixed supply" have been defined in section 2(30) and 2(74) of the CGST Act.

Example of composite supply:-

You are booking an airline ticket which includes meal. It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. You cannot buy just the airline meal and not the airline ticket. The transportation of passenger is, therefore, the principal supply.

Rate of tax applicable to the principal supply will be charged to the whole composite bundle. Therefore, rate of GST applicable to transportation of passengers by air will be charged on the airline ticket.

Example of mixed supply

Many FMCG Companies offer buckets with detergent purchased. This is a mixed supply as it does not satisfy the 2nd condition, i.e., it can be sold separately. You can buy either just a bucket or just detergent. The highest rate of GST will then apply. Assuming that plastic buckets have the higher rate, this rate will apply on the whole mixed bundle.

9. LEVY AND COLLECTION

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

Commentary :

CGST along with SGST / UTGST is leviable on intra-State supplies. The maximum rate at which Government can levy CGST is 20%. However currently, the highest rate at which it has been levied is 14% (as decided in the 14th GST council meeting).

Alcoholic liquor for human consumption is outside the ambit of GST. Further petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under it's regime from such date as may be notified.

- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Commentary :

GST is normally payable by the supplier of goods or services. However when the same is

payable by the recipient of goods/services, it is called reverse charge. The term "reverse charge" is defined under section 2 (98) of CGST Act.

The supplies in respect of which tax is payable on reverse charge basis are specified in sub-section (4) and (5) of section 9 of CGST Act. Further the government can also notify such categories under sub-section (3) of section 9 of CGST Act.

10. COMPOSITION LEVY

Commentary :

The composition levy is an alternative method of levy of tax designed for small taxpayers. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Moreover, it is optional and the eligible person opting to pay tax under this scheme can pay tax at a prescribed percentage of his turnover every quarter, instead of paying tax at normal rate.

However to qualify for this scheme, he has to fulfill the mandatory conditions prescribed under the law, one of which is the limit of annual turnover.

- (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—
- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
 - (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
 - (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

- (2) The registered person shall be eligible to opt under sub-section (1), if:—
- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
 - (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
 - (c) he is not engaged in making any inter-State outward supplies of goods;
 - (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and

- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

- (3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).
- (4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Commentary :

The Composition scheme is not available to supplier of services except restaurant service.

Taxable person whose all supplies of goods and services are within the state only are eligible.

Taxable person who opts for this scheme will not be allowed to charge GST in their invoice. They will issue a bill of supply instead of Tax invoice. They are also not entitled to take input tax credit.

The scheme lapses on the day his aggregate turnover exceeds the specified aggregate turnover limit.

A registered taxable person having same PAN and multiple registrations in different states have to opt for the composition scheme for all states.

11. POWER TO GRANT EXEMPTION FROM TAX

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Commentary :

An exemption may be conditional or absolute. When exemption has been granted absolutely, i.e. it is not subjected to any condition or the happening of any event, it is mandatory.

SCHEDULE I
[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE II
[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. **Transfer**
 - (a) any transfer of the title in goods is a supply of goods;

- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;
- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - (i) the business is transferred as a going concern to another person; or
 - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:—

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation: For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III [See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

- 1. Services by an employee to the employer in the course of or in relation to his employment.
- 2. Services by any court or Tribunal established under any law for the time being in force.

3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
 - (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
 - (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
 6. Actionable claims, other than lottery, betting and gambling.

Explanation.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

CHAPTER IV

TIME AND VALUE OF SUPPLY

Commentary :

TIME OF SUPPLY: Point of taxation means the point in time when the goods or services are deemed to be supplied. The liability to pay GST arises upon the time of supply.

12. TIME OF SUPPLY OF GOODS.

- (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of goods shall be the earlier of the following dates, namely:—
 - (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or
 - (b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

Commentary :

For example, A supplies goods to B on 5th July and issues the invoice on the same date. B pays by cheque on 20th July and the cheque is credited to A’s account on 22nd July. A records the receipt of payment on 23rd July after receiving confirmation that the cheque has been cleared. The point of supply of the goods shall be 5th July.

However in the same case, if B pays half of the consideration in advance on 2nd July, then in respect to such amount the point of taxation shall be the date of receipt of such payment as recorded in his books of accounts or the date on which it is credited to his bank account, whichever is earlier, in this case to be July 22.

- (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—
 - (a) the date of the receipt of goods; or
 - (b) the date of payment as entered in the books of account of the recipient or the

date on which the payment is debited in his bank account, whichever is earlier;
or

- (c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Commentary :

GST is normally payable by the supplier of goods or services. But when the same is payable by the recipient of goods/services, instead of the supplier, it is called reverse charge. The term "reverse charge" is defined under section 2 (98) of CGST Act.

The supplies in respect of which tax is payable on reverse charge basis are specified in sub-section (4) and (5) of section 9 of CGST Act. The government can further notify such categories under sub-section (3) of section 9 of CGST Act.

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
 - (a) the date of issue of voucher, if the supply is identifiable at that point; or
 - (b) the date of redemption of voucher, in all other cases.

Commentary :

The term "voucher" is defined under section 2 (118) of CGST Act.

- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
 - (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

13. TIME OF SUPPLY OF SERVICES.

- (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of services shall be the earliest of the following dates, namely:—
 - (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- (ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Commentary :

The provision in respect to services is more or less similar to that in respect to goods. However in case of goods, where the supplier does not issue the invoice, the last date on which he is required to issue the same under the law is to be considered, whereas in case of services, the date of provision of services is to be considered.

Further, the provision in respect to service provides for an additional provision which states that in case it is still not possible to determine the time of supply on the basis of the date of issue of invoice or the date of provision of the service or the date of receipt of the payment, the date of receipt of services as reflected in the book of accounts of the recipient of service shall be considered.

- (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—
 - (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
 - (a) the date of issue of voucher, if the supply is identifiable at that point; or
 - (b) the date of redemption of voucher, in all other cases.
- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
 - (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

14. CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES.

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—

- (a) in case the goods or services or both have been supplied before the change in rate of tax,—
 - (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
 - (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
 - (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax,—
 - (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
 - (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
 - (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice;

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.—For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Commentary :

Where taxable service has been provided BEFORE the change of rate of tax, the point of taxation shall be date of payment or date of invoice, whichever is EARLIER, in case payment is received and invoice issued, both are before change of rate.

Where taxable service has been provided AFTER the change of rate of tax, and

(a) the date of invoice as well as the date of payment, BOTH are PRIOR to the change,

the point of taxation shall be date of payment or date of invoice, whichever is EARLIER.

(b) the date of invoice OR the date of payment, EITHER of the TWO is AFTER the change,

the point of taxation shall be date of payment or date of invoice, whichever is LATER.

15. VALUE OF TAXABLE SUPPLY.

Commentary :

The amount of GST payable is calculated by applying the rate of GST to the value of the supply, which is determined by these provisions.

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) The value of supply shall include -
 - (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
 - (b) any amount that the supplier is liable to pay in relation to such supply but which

has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Commentary :

Section 15(2) provides the following list of adjustments that could be added to Transaction value:-

- a) Any amounts paid by the recipient that are obligation of supplier to pay
- b) Money value of goods or services provided free or at concession by recipient
- c) Royalties and license fees payable by the recipient as a condition of supply
- d) Taxes levied under any other laws (other than SGST/CGST or IGST)
- e) Expenses incurred by the supplier before supply and charged separately
- f) Subsidy realized by supplier on the supply
- g) Reimbursements claimed separately by the supplier
- h) Discounts allowed after supply has been effected except when known before supply (Discounts allowed as a normal trade practice and reflected on the face of the invoice shall not be included)

- (3) The value of the supply shall not include any discount which is given—
 - (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
 - (b) after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Commentary :

A purchases an Air conditioner from B for ` 20,000. B gives cash discount of ` 2,000 to A on the sale invoice itself.

Transaction value will be ` 18,000, being price of the goods after reducing the discount offered at the time of sale.

A purchases an Air conditioner from B for ` 20,000 on July 1, 2017. On August 1, 2017, A

gives discount of ₹ 5,000 to B and B makes a payment of ₹ 15,000 to A.

If discount is not known before or at time of supply, transaction value will be ₹ 20,000 being net price of the goods plus discount allowed after the supply has been effected.

If discount is known before or at the time of supply, transaction value will be ₹ 15,000 being net price of the goods.

- (4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

Commentary :

Where the supplier and the recipient of the supply are RELATED or the price is NOT the sole consideration for the supply, then value would not be determined in terms of sub-section (1) of section 15 of CGST Act. In those cases, the value shall be determined in terms of the rules notified under sub-section (4) of section 15 of CGST Act.

- (5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Commentary :

Where the Government notifies the value in respect to any supply, such value shall be the applicable value and shall override the value calculated in terms of sub-section (1) or sub-section (4) of section 15 of CGST Act.

Explanation.—For the purposes of this Act,—

- (a) persons shall be deemed to be “related persons” if—
- (i) such persons are officers or directors of one another’s businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term “person” also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

CHAPTER V

INPUT TAX CREDIT

Commentary :

Goods and service tax aims at providing seamless flow of credit throughout supply chain. Thus Input tax credit is the backbone of Goods and Service Tax. According to section 2 (63) of CGST Act 2017, "input tax credit" means credit of input tax. Further section 2 (62) of CGST Act 2017 defines "input tax".

16. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT.

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Commentary :

Input tax credit can be availed only in respect to tax paid on any supply which are or would be used in the course or furtherance of the business of the registered person. The term "business" has been defined in section 2(17) of the CGST Act 2017.

Input tax credit is given at each stage of the tax paid at earlier stage. For example A supplies goods to B and B further supplies goods to C. B will get the input tax credit of tax paid by A, C will get the credit of tax paid by B and so on.

- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—
- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - (b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Commentary :

Section 16(2) of CGST Act 2017 specifies the basic conditions for availing of input tax credit. It specifically requires that besides the other conditions, the recipient can take credit only if tax has actually been paid to the Government by the supplier.

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Commentary :

Where the recipient fails to make payment to the supplier of goods or services or both (other than the supplies on which tax is payable on reverse charge basis) the amount of value of supply alongwith tax payable thereon within 180 days from the date of issue of invoice, amount equal to the Input Tax credit availed by the recipient will be added to his output liability alongwith interest thereon.

If the recipient later makes the payment to the supplier, he can take the credit of the input tax.

- (3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Commentary :

Thus, if the net value of capital goods is Rs. 100 lakhs and GST paid is Rs. 18 lakhs, the taxable person should not claim Input Tax Credit on the tax component.

- (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Commentary :

The purpose of the restriction under sub-section (4) is to define a time limit for availing of input tax credit. Thus in view of Section 16(4), in case of invoices received after October, taxable person gets less than one year to take input tax credit.

17. APPORTIONMENT OF CREDIT AND BLOCKED CREDITS

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Commentary :

Where any goods and services which are not or would not be used in the course or furtherance of the business, input tax credit thereon would not be available as per section 16(1) of the Act. However, where any such goods or services are partly used in the course or furtherance of the business and partly used for other purpose, only proportionate credit to the extent used for the purpose of business shall be available.

- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Commentary :

Input credit is allowed on goods and services used or to be used for effecting zero-rated supplies.

According to section 16(1) of the Integrated Goods and Services Tax Act 2017, "zero-rated supply" means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

- (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- (4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

- (5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—
- (a) motor vehicles and other conveyances except when they are used—
 - (i) for making the following taxable supplies, namely:—
 - (A) further supply of such vehicles or conveyances ; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
 - (ii) for transportation of goods;
 - (b) the following supply of goods or services or both—
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) membership of a club, health and fitness centre;
 - (iii) rent-a-cab, life insurance and health insurance except where—
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession;
 - (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
 - (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or

furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

- (e) goods or services or both on which tax has been paid under section 10;
 - (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
 - (g) goods or services or both used for personal consumption;
 - (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
 - (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.
- (6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.

18. AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

- (1) Subject to such conditions and restrictions as may be prescribed-
- (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
 - (b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;
 - (c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay

tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

- (d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

- (2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.
- (3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.
- (4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

- (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.
- (6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

19. TAKING INPUT TAX CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT FOR JOB WORK.

Commentary :

Section 2 (68) of the Act defines "job work" as any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

- (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.
- (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.
- (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

- (4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.
- (5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.
- (6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

- (7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, "principal" means the person referred to in section 143.

20. MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR.

Commentary :

Section 2 (61) of the Act defines "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

- (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.
- (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—
 - (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
 - (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
 - (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
 - (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
 - (e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

- (a) the "relevant period" shall be—
 - (i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
 - (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

- (b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;
- (c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

21. MANNER OF RECOVERY OF CREDIT DISTRIBUTED IN EXCESS

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

CHAPTER VI

REGISTRATION

Commentary :

Registration is the most fundamental requirement for identification of tax payers ensuring tax compliance in the economy. Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input Tax Credit for the taxes on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input Tax Credit of tax paid by him.

22. PERSONS LIABLE FOR REGISTRATION.

- (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

- (2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.
- (3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.
- (4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.—For the purposes of this section,—

- (i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- (ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;
- (iii) the expression “special category States” shall mean the States as specified in sub-clause

(g) of clause (4) of article 279A of the Constitution.

Commentary :

A Supplier has to register in each of such State or Union territory from where he effects supply, that means, a business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States.

Special category states as specified in Article 279A(4)(g) of the Constitution of India includes the State of Assam, Arunachal Pradesh, J&K, Himachal Pradesh, Uttarakhand, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland and Tripura.

In case of special category states, every supplier needs to be registered if their aggregate turnover exceeds Rs. 10 lakhs. In case of other states and Union territories, suppliers needs to be registered if their aggregate turnover exceeds Rs, 20 lakh.

23. PERSONS NOT LIABLE FOR REGISTRATION.

- (1) The following persons shall not be liable to registration, namely:—
- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
 - (b) an agriculturist, to the extent of supply of produce out of cultivation of land.
- (2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

24. COMPULSORY REGISTRATION IN CERTAIN CASES.

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) persons who are required to pay tax under reverse charge;
- (iv) person who are required to pay tax under sub-section (5) of section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
- (x) every electronic commerce operator;
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Commentary :

It may be noted that persons engaged exclusively in supplies which fall under reverse charge mechanism, that is, supplies for which tax is to be paid by the recipient, such suppliers are not liable to registration.

25. PROCEDURE FOR REGISTRATION.

- (1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation.—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Commentary :

The term “casual taxable person” is defined under section 2 (20) of CGST Act. The term “non-resident taxable person” is defined under section 2 (77) of CGST Act.

- (2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.
- (3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

- (4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- (5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.
- (6) Every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

Commentary :

Under Section 51 of CGST Act, Central or State Government department or establishment, local authority, governmental agencies or such persons or category of persons as may be notified by the government are required to deduct TDS at the rate of 1% from the payment made or credited to supplier where the total value of supply under the contract exceeds two lakh and fifty thousand rupees.

- (7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (7) on the basis of such other documents as may be prescribed.
- (8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.
- (9) Notwithstanding anything contained in sub-section (7),—
- (a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and
- (b) any other person or class of persons, as may be notified by the Commissioner,
- shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.
- (10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.
- (11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

- (12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

Commentary :

There are basically four types of Registration, viz. turnover basis, compulsory registration, voluntary registration and suo moto registration, when the proper officer shall proceed to register a person.

For obtaining registration, PAN is mandatory. PAN based GST identification number is issued to every registrant. However in case a person is required to deduct tax under section 51, registration can be obtained on the basis of TAN, in that case TAN based GST identification number is issued to the registrant.

Any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries shall be granted Unique Identity Number(UIN)

26. DEEMED REGISTRATION.

- (1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.
- (2) Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

27. SPECIAL PROVISIONS RELATING TO CASUAL TAXABLE PERSON AND NON-RESIDENT TAXABLE PERSON.

- (1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:
- Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.
- (2) A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such

person for the period for which the registration is sought:

Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

- (3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under section 49.

Commentary :

The validity of the Registration certificate granted to the casual taxable person and non-resident taxable person shall be for a period specified in application or ninety days from the effective date of registration which may be extended, at the request of the said taxable person to the proper officer, for further period not exceeding ninety days at a time.

However in case of other registered persons, Registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

28. AMENDMENT OF REGISTRATION.

- (1) Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.
- (2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

- (3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

Commentary :

It may be noted that permission of the proper officer for making amendments will be required for only certain core fields of information, whereas for the other fields, the registrant can himself carry out the amendments.

Where the change in constitution of business results in change of PAN, fresh registration is to be obtained.

29. CANCELLATION OF REGISTRATION.

- (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—
- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
 - (b) there is any change in the constitution of the business; or
 - (c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.
- (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—
- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
 - (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
 - (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
 - (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
 - (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:
- Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.
- (3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
- (4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.
- (5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:
Provided that in case of capital goods or plant and machinery, the taxable person shall

pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

- (6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

30. REVOCATION OF CANCELLATION OF REGISTRATION.

- (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

- (2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

- (3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

CHAPTER VII

TAX INVOICE, CREDIT AND DEBIT NOTES

Commentary :

An invoice is issued by the registered supplier on every supply. It provides a detailed account of the products or services along with the details of the supplier, purchaser, tax charged and other particulars such as discounts, terms of sale etc.

31. TAX INVOICE

- (1) A registered person supplying taxable goods shall, before or at the time of,—
- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
 - (b) delivery of goods or making available thereof to the recipient, in any other case,
- issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

- (2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - (b) tax invoice may not be issued.
- (3) Notwithstanding anything contained in sub-sections (1) and (2)—
- (a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;
 - (b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

- (c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

- (d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;
 - (e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;
 - (f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;
 - (g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.
- (4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.
- (5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,--
- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
 - (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
 - (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.
- (6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.
- (7) Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of

removal, whichever is earlier.

Explanation.—For the purposes of this section, the expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Commentary :

Tax invoice can be raised only by registered person a) in case of taxable supply of goods or services or both and b) in case he receives taxable goods or services or both from unregistered person where he pays tax under reverse charge basis. However no tax invoice may be raised if the value of taxable goods or supply or both is less than two hundred rupees.

Bill of supply is issued in case of supply of exempted goods or non taxable supply or supply by a person paying tax under composition levy. It is issued when the supplier is not required to charge any tax.

Revised invoice can be issued by a registered person against supplies made during the period from the date of application of registration till the grant of registration.

Receipt voucher is issued in case of receipt of advance payment for the supply of goods or services or both.

Refund voucher is issued in case of return of advance payment.

Payment voucher is issued by the person making payment under reverse charge at the time of making payment to the supplier.

32. PROHIBITION OF UNAUTHORISED COLLECTION OF TAX.

- (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
- (2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

33. AMOUNT OF TAX TO BE INDICATED IN TAX INVOICE AND OTHER DOCUMENTS

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

34. CREDIT AND DEBIT NOTES

- (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or

tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

- (2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

- (3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

- (4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation.—For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

CHAPTER VIII

ACCOUNTS AND RECORDS

Commentary :

This Chapter provides that every registered person has to maintain accounts and records not only at the principal place of business but also specified records at every additional place of business specified in the certificate of registration in electronic format. In normal situation the period of retention of accounts is 72 months from the last date of filing of annual return and in case of appeal or revision or any other proceeding one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later. The Chapter also provides for audit of accounts of registered persons whose turnover during a financial year exceeds the prescribed limit.

35. ACCOUNTS AND OTHER RECORDS

- (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—
 - (a) production or manufacture of goods;
 - (b) inward and outward supply of goods or services or both;
 - (c) stock of goods;
 - (d) input tax credit availed;
 - (e) output tax payable and paid; and
 - (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

- (2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
- (3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.
- (4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to

maintain accounts in such manner as may be prescribed.

- (5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.
- (6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

36. PERIOD OF RETENTION OF ACCOUNTS.

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

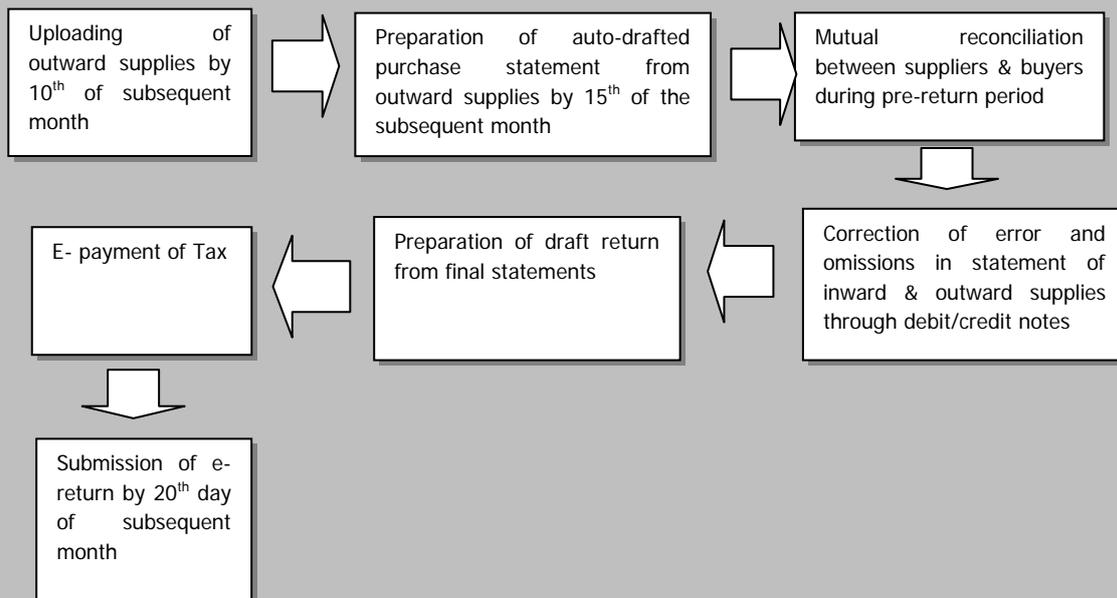
CHAPTER IX

RETURNS

Commentary :

Return is very important aspect of GST as all control over tax paid and input tax credit availed is on the basis of return filed by taxable person. The returns are to be filed electronically through the common portal. Three monthly returns and one annual return is required to be filed by a normal tax payer. There are separate returns for a tax payer registered under the composition scheme, tax payer registered as an Input service distributor, a person liable to deduct or collect tax.

Process Flow of Return filing



37. FURNISHING DETAILS OF OUTWARD SUPPLIES.

- (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- (2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.
- (3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation.—For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

Commentary :

Every Registered taxable person (other than an Input Service Distributor, a non-resident taxable person and a person paying tax under section 10 (composition scheme) or section 51 (TDS) or section 52 (TCS by e-commerce operator) shall furnish electronically details of outward supplies of goods or services or both effected during the tax period by 10th of the month succeeding the tax period.

Details of outward supplies will include invoices relating to zero rated supplies, inter-state supplies, intra state supplies, Goods/Services return, Exports, supplementary invoices, debit notes and credit notes.

Once return is filed/uploaded it cannot be revised. The mechanism of filing revised returns for any correction of errors/ omissions has been done away with. The rectification of errors/ omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, whichever is earlier.

38. FURNISHING DETAILS OF INWARD SUPPLIES.

- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to

outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

- (2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- (3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.
- (4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.
- (5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Commentary :

Under the previous laws output tax liability and input credit/set off details were required to be furnished in a single return. In GST separate returns are prescribed for input credit and output liability, meaning more checks, control and corrections required before filing of respective return.

Every Registered taxable person (other than an Input Service Distributor, a non-resident taxable person and a person paying tax under section 10 (composition scheme) or section 51 (TDS) or section 52 (TCS by e-commerce operator) shall furnish electronically details of

- (a) inward supplies of goods or services or both,
- (b) inward supplies of goods or services or both on which tax is payable under reverse charge basis,
- (c) inward supplies of goods or services or both taxable under IGST,
- (d) inward supplies on which IGST is payable under section 3 of Customs Tariff Act, 1975 and
- (e) credit or debit notes received in respect of such supplies

during the tax period by 15th of the month succeeding the tax period.

Inward supply details would get auto populated in a prescribed return at respective buyers' end which would bring in a kind of auto check with respect to input tax credit.

In case of mismatch or upon discovery of error or omission to rectify such errors as may be prescribed and pay tax and interest if any and furnish in subsequent electronic return However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, whichever is earlier.

39. FURNISHING OF RETURNS.

- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.
- (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.
- (3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.
- (4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.
- (5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically,

within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

- (6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

- (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.
- (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.
- (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

- (10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

Commentary :

Monthly return will reflect inward and outward supplies of goods or services or both, Input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed.

Every Registered taxable person (other than an Input Service Distributor, a non-resident taxable person and a person paying tax under section 10 (composition scheme) or section 51 (TDS) or section 52 (TCS by e-commerce operator) shall furnish electronically a monthly return by 20th of the month succeeding the tax period.

Monthly return needs to furnished even if there is no transaction during the month.

Taxable persons paying tax under composition scheme shall furnish quarterly return by 18th of the month succeeding the quarter. Monthly return needs to furnished even if there is no transaction during the quarter.

Registered person deducting TDS shall furnish monthly return within 10 days after the end of

such month. Monthly return not mandatory if there is no transaction.

Input service distributor shall furnish monthly return within 13 days after the end of such month. Monthly return not mandatory if there is no transaction.

Non resident taxable person shall furnish monthly return within 20 days after the end of such month or within 7 days after the last day of the registration period. Monthly return not mandatory if there is no transaction.

Due date for payment of tax is at par with date prescribed for filing of return by respective registered persons.

If Registered person has not furnished return for earlier period, he will not be allowed to file return till earlier returns are filed.

If tax due is not fully paid it will be considered as invalid return and no ITC will be allowed to the recipient of such goods or services.

40. FIRST RETURN

Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

41. CLAIM OF INPUT TAX CREDIT AND PROVISIONAL ACCEPTANCE THEREOF

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

42. MATCHING, REVERSAL AND RECLAIM OF INPUT TAX CREDIT.

- (1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched--
 - (a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;
 - (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

- (c) for duplication of claims of input tax credit.
- (2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.
 - (3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.
 - (4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.
 - (5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.
 - (6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.
 - (7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.
 - (8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.
 - (9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.
 - (10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Commentary :

There is a specific mechanism for matching input tax credit claimed by the recipient and tax paid by the supplier. The said requirement was never prevalent under Central tax laws,

though certain State VAT legislations incorporated such requirements. But practically, even in such states, this requirement resulted in denial of huge eligible input tax credit for want of proof of tax payment at the supplier's end in the hands of the assessee or owing to errors in the departmental database.

Under GST regime, the details of every inward supply furnished by the taxable person (i.e. the "recipient" of goods and/or services) shall be matched

1. with the corresponding details of outward supply furnished by the corresponding taxable person (i.e. the "supplier" of goods and/or services) in his valid return.
2. with IGST paid in respect of imported goods
3. for duplication of claims on input tax credit.

A return may be considered to be a valid return only when the appropriate GST has been paid in full by the taxable person, as shown in such return for a given tax period.

In case the details match, then the ITC claimed by the recipient in his valid returns shall be considered as finally accepted and such acceptance shall be communicated to the recipient. Failure to file valid return by the supplier may lead to denial of ITC in the hands of the recipient.

In case the ITC claimed by the recipient is in excess of the tax declared by the supplier or where the details of outward supply are not declared by the supplier in his valid returns, the discrepancy shall be communicated to both the supplier and the recipient. Similarly, in case, there is duplication of claim of ITC, the same shall be communicated to the recipient.

The recipient will be asked to rectify the discrepancy of excess claim of ITC and in case the supplier has not rectified the discrepancy communicated in his valid returns for the month in which, the discrepancy is communicated, then such excess ITC as claimed by the recipient shall be added to the output tax liability of the recipient in the succeeding month.

Similarly, duplication of ITC claimed by the recipient shall be added to the output tax liability of the recipient in the month in which, such duplication is communicated.

The recipient shall be liable to pay interest on the excess or duplicate ITC added back to the output tax liability of the recipient from the date of availing of ITC till the corresponding additions are made in their returns.

Re-claim of ITC refers to taking back the ITC reversed in the Electronic Credit Ledger of the recipient by way of reducing the output tax liability. Such re-claim can be made by the recipient only in case the supplier declares the details of the Invoice and/or Debit Notes in his valid return within the prescribed timeframe. In such case, the interest paid by the recipient shall be refunded to him by way of crediting the amount to his Electronic Cash Ledger.

43. MATCHING, REVERSAL AND RECLAIM OF REDUCTION IN OUTPUT TAX LIABILITY.

- (1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the "supplier") for a tax period shall, in such manner and within such time as may be prescribed, be matched—
 - (a) with the corresponding reduction in the claim for input tax credit by the

corresponding registered person (hereafter in this section referred to as the "recipient") in his valid return for the same tax period or any subsequent tax period; and

- (b) for duplication of claims for reduction in output tax liability.
- (2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in such manner as may be prescribed, to the supplier.
- (3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.
- (4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.
- (5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.
- (6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.
- (7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.
- (8) A supplier in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.
- (9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:
- Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.
- (10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Commentary :

The claim for reduction in output tax liability by the supplier shall be matched with the corresponding reduction in claim for input tax credit by the recipient.

In case of reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, discrepancy shall be communicated to both the supplier and recipient.

The duplication of claims for reduction in output tax liability shall be communicated to the supplier and it shall be added to the output tax liability of the supplier in his monthly return in which the duplication is communicated.

If the discrepancies are not rectified by the recipient in the valid return for the month in which discrepancy is communicated, the same along with interest shall be added to the output tax liability of the supplier.

The supplier shall be eligible to reduce such amount from his output tax liability, if the supplier declares the details of the invoice and/or credit note in his valid return on or before September subsequent to financial year. The Interest paid earlier shall be credited to the electronic cash ledger.

Both the supplier and recipient will have to report credit note, otherwise tax liability will not be reduced.

44. ANNUAL RETURN.

- (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.
- (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Commentary :

Annual return for every financial year to be filed electronically in prescribed format and in such manner as may be prescribed on or before the 31st December of the next financial year.

Specified category of Registered taxable person are required to get their accounts audited by Chartered accountants/Cost Accountants before filing annual return.

Statement reconciling value of supplies declared in the return furnished for the financial year and the audited annual financial statement needs to be submitted.

Annual return is not required to be filed by the following registered person:-

1. an Input Service Distributor,
2. a person paying tax under section 51 or section 52 ,
3. a casual taxable person and
4. a non-resident taxable person

45. FINAL RETURN.

Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

Commentary :

Final Return has to be filed only by those registered taxable person who have applied for cancellation of registration. This has to be filed within three months from the date of cancellation or the date of cancellation order, whichever is later.

46. NOTICE TO RETURN DEFAULTERS

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

47. LEVY OF LATE FEE.

- (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.
- (2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

48. GOODS AND SERVICES TAX PRACTITIONERS

- (1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.
- (2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.
- (3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

Commentary :

GST Practitioners will be approved in the prescribed manner by the Government for providing assistance to tax payers in filing details of inward and outward supplies and filing their returns and do tax as may be prescribed.

However the responsibility of the correctness of the details so furnished will be on the tax payer only.

CHAPTER X

PAYMENT OF TAX

Commentary :

The output tax liability of a Registered person or TDS/TCS collected by a registered person has to be deposited to the Government. All GST payments are to be deposited electronically in the Electronic cash ledger and input tax credit will be credited to Electronic credit ledger. All liabilities of a Registered person is maintained in the Electronic liability register. A registered person shall first make payment of the tax of the previous tax period, if any, then pay tax for the current period.

49. PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS

- (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- (5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of--
 - (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
 - (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
 - (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
 - (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of

integrated tax;

- (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
 - (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.
- (6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.
- (7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
- (8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—
- (a) self-assessed tax, and other dues related to returns of previous tax periods;
 - (b) self-assessed tax, and other dues related to the return of the current tax period;
 - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.
- (9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.—For the purposes of this section,—

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
- (b) the expression,—
 - (i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and
 - (ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

Commentary :

Registered person shall make the payment of tax, interest, penalty and other amounts by internet banking or by using credit or debit cards or National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS). Such payment shall be credited to his electronic cash ledger. Thus the Electronic cash ledger reflects all deposits made in cash, and TDS/TCS made on account of the tax payer. The information will be reflected on real time basis. This ledger shall be used for making any payment on account of GST towards output tax, interest, penalty, fee or any other amount.

The Input tax credit (ITC) as self assessed in the monthly return shall be reflected in the

registered person's electronic credit ledger. The electronic credit ledger shall be used for making payment of output tax only and not other amounts such as interest, penalty, fees, etc..

ITC can be utilized for payment of tax in the following manner:

Nature of ITC	First to be utilized against	Then to be utilized against
IGST	IGST	CGST SGST/UTGST (in the above order)
CGST	CGST	IGST
SGST/UTGST	SGST/UTGST	IGST

The credit of CGST cannot be used for the payment of SGST or UTGST and vice versa.

The Tax liability Ledger reflects the total tax liability of a taxpayer (after netting) for the particular month.

50. INTEREST ON DELAYED PAYMENT OF TAX.

- (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.
- (2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.
- (3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Commentary :

Interest on delayed payment of tax-

At the rate as may be notified by the Government on the recommendation of the GST Council but not exceeding 18% from the day succeeding the day on which such tax was due to be paid till the date of payment.

Interest on excess claim of credit or excess reduction in output tax liability-

Section 38 of the CGST Act requires the recipient of supply to declare the details of inward supply and the recipient may declare the credit which is not available to him. The details of credit will be matched with the return filed by the supplier under Section 39. In case there is excess claim of credit or excess reduction in output tax liability, the said amount will be added to the output tax liability of recipient and he shall be liable to pay interest at the rate as may be notified by the government on the recommendation of the council but not exceeding 24%.

51. TAX DEDUCTION AT SOURCE.

- (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—
- (a) a department or establishment of the Central Government or State Government; or
 - (b) local authority; or
 - (c) Governmental agencies; or
 - (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

- (2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.
- (3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.
- (4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.
- (5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.
- (6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.
- (7) The determination of the amount in default under this section shall be made in the

manner specified in section 73 or section 74.

- (8) The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Commentary :

As per section 51, TDS provision is meant for Government and Government undertakings and other notified entities making contractual payments where total value of such supply under a contract exceeds Rs. 2.5 Lakhs to suppliers. While making any payments under such contracts, the concerned Government/authority shall deduct 1% of the total payment made and remit it into the appropriate GST account.

Any amount shown as TDS will be reflected in the electronic cash ledger of the concerned supplier. He can utilize this amount towards discharging his liability towards tax, interest fees and any other amount.

TDS Deductor will account for such TDS in the following ways:

1. Such deductors needs to get compulsorily registered under section 24 of the CGST/SGST Act.
2. They need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected and reported in the prescribed return. Delay or failure to remit such TDS will attract interest at the rate as the government may notify but not exceeding 18%.
3. The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.
4. They need to issue certificate of such TDS to the deductee within 5 days of deducting TDS failing which fees of Rs. 100 per day subject to maximum of Rs. 5000/- will be payable by such deductor.

52. COLLECTION OF TAX AT SOURCE.

- (1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.
- Explanation.—For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
- (3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.
- (4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.
- (5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.
- (6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

- (7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.
- (8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.
- (9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.
- (10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is

communicated in such manner as may be prescribed.

- (11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.
- (12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—
 - (a) supplies of goods or services or both effected through such operator during any period; or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.
- (13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.
- (14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.—For the purposes of this section, the expression “concerned supplier” shall mean the supplier of goods or services or both making supplies through the operator.

Commentary :

This provision is applicable only for E-Commerce Operator under section 52 of CGST/SGST Act. Electronic Commerce Operator has been defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Every E-Commerce Operator, not being an agent, needs to withhold an amount calculated at the rate not exceeding 1% of the “net value of taxable supplies” made through it where the consideration with respect to such supplies is to be collected by the operator. The e-commerce operator should collect tax during the month in which supply was made.

The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by all registered persons through such operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Such withheld amount is to be deposited by such E-Commerce Operator to the appropriate GST account by the 10th of the next month. The amount deposited as TCS will be reflected in the electronic cash ledger of the registered supplier on whose account such collection was made. The same can be used at the time of discharge of tax liability in respect of the supplies by the registered supplier. Thus the supplier can reduce his tax liability only after the E-commerce operator has filed the return.

Every operator is required to furnish a statement, electronically, containing the details of

outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month by 10th of next month. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected.

The details of supplies and the amount collected during a calendar month, and furnished by every operator in his statement will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same calendar month or any preceding calendar month.

Where the details of outward supply, on which the tax has been collected, as declared by the operator in his statement do not match with the corresponding details declared by the supplier the discrepancy shall be communicated to both persons.

The value of a supply relating to any payment in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output liability of the said supplier, for the calendar month succeeding the calendar month in which the discrepancy is communicated.

The concerned supplier shall, in whose output tax liability any amount has been added shall be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment.

53. TRANSFER OF INPUT TAX CREDIT.

On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

CHAPTER XI

REFUNDS

Commentary :

Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernisation of existing business. The provisions pertaining to refund aim to streamline and standardise the refund procedures under GST regime. There is a standardized form for making any claim for refunds. The claim and sanctioning procedure is completely online and time bound.

54. REFUND OF TAX.

- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

- (2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

- (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

- (4) The application shall be accompanied by—

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

- (5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.
- (6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.
- (7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.
- (8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—
 - (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
 - (b) refund of unutilised input tax credit under sub-section (3);
 - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
 - (d) refund of tax in pursuance of section 77;
 - (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
 - (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

- (9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).
- (10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—
- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
 - (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression “specified date” shall mean the last date for filing an appeal under this Act.

- (11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.
- (12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.
- (13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.
- (14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

- (1) “refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).
- (2) “relevant date” means—
- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or

input services used in such goods,—

- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
- (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
- (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- (e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;
- (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- (h) in any other case, the date of payment of tax.

55. REFUND IN CERTAIN CASES.

The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of 46 of 1947. persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

56. INTEREST ON DELAYED REFUNDS

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

57. CONSUMER WELFARE FUND

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it,

in such manner as may be prescribed.

58. UTILISATION OF FUND.

- (1) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.
- (2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Commentary :

“Refund” includes

- (a) any balance amount in the electronic cash ledger so claimed in the returns,
- (b) any unutilized input tax credit in respect of
 - (i) zero rated supplies made without payment of tax or,

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies),

(c) tax paid by specialized agency of United Nations or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries on any inward supply

- Application for refund to be filed before the expiry of two years from the relevant date.
- Refund of any balance in the electronic ledger can be made in the return furnished under section 39.
- A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified may make an application for such refund, before the expiry of six months from the last day of the quarter in which such supply was received.

Unutilized input tax credit can be allowed as refund in accordance with the provisions of sub-section (3) of section 54 in the following situations: -

- (i) Zero rated supplies made without payment of tax;
- (ii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of taxes on output supplies (other than nil rated or fully exempt supplies)

However, no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty, and also in the case where the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

The taxable person cannot adjust CGST/SGST or IGST with the wrongly paid IGST or CGST/SGST but he is entitled to refund of the tax so paid wrongly - Sec.77 of the CGST/SGST Act.

Documents to be submitted along with refund application:-

Documents relating to assessment, tax invoice etc. evidencing payment of amount of tax and interest or any other amount in relation to which refund is claimed and that the incidence of such tax and interest has not been passed on by him to any person.

Where the claim of refund is less than Rs.2 Lakh, a self-declaration by the applicant based on the documentary or other evidences available with him, certifying that the incidence of tax has not been passed on to any other person would make him eligible to get refund. However, if the claim of refund is more than Rs.2 Lakh, the applicant is required to submit a certificate from a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax has not been passed on to any other person.

Concept of "unjust enrichment" would be examined for each refund application. If it does not qualify, then the refund would be transferred to Consumer Welfare fund.

However, the principle of unjust enrichment would not be applicable in following cases and the refund will be paid to the applicant and not credited to Consumer Welfare fund: -

- i) Refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies
- ii) Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies
- iii) Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued;
- iv) Refund of tax in pursuance of Section 77 of CGST Act i.e. tax wrongfully collected and paid to Central Government or State Government
- v) if the incidence of tax or interest paid has not been passed on to any other person;
- vi) such other class of persons who has borne the incidence of tax as the Government may notify.

Refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest at the rate of 6% will have to be paid in accordance with section 56 of the CGST Act.

Where the claim of refund arises from an order passed by the adjudicating authority or Appellate authority or Appellate tribunal or Court which has attained finality and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order, then interest at the rate of 9% will have to be paid from the date of expiry of 60 days from the date of receipt of application till the date of refund.

In case of any claim of refund to a registered person on account of zero rated supplies of goods or services or both (other than registered persons as may be notified), 90% refund may be granted on provisional basis before verification subject to such conditions and restrictions as may be prescribed in accordance with sub-section 6 of section 54 of the CGST Act. The provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund. The balance 10% may be refunded after due verification of documents furnished by the applicant.

Refund can be **withheld** in the following circumstances:

- i) If the person has failed to furnish any return till he files such return;
- ii) If the registered taxable person is required to pay any tax, interest or penalty which has not been stayed by the appellate authority/Tribunal/ court, till he pays such tax interest or penalty. The proper officer can also deduct unpaid taxes, interest, penalty, late fee, if any, from the refundable amount – Section 54(10) (d) of the CGST Act
- iii) The Commissioner can withhold any refund, if, the order of refund is under appeal and he is of the opinion that grant of such refund will adversely affect revenue in the said appeal.
- iv) other proceedings on account of malfeasance or fraud committed - Sec.54 (11) of the CGST Act.

If as a result of appeal or further proceeding the taxable person becomes entitled to refund, then he shall also be entitled to interest at the rate of 6%.

No refund shall be granted if the amount is less than Rs.1000/-.



CHAPTER XII

ASSESSMENT

Commentary :

As per Section 2(11) of CGST Act, 2017 'Assessment' means determining the tax liability under this Act and includes self-assessment, reassessment, provisional assessment, summary assessment and best judgment assessment.

59. SELF-ASSESSMENT

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

60. PROVISIONAL ASSESSMENT

- (1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.
- (2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
- (3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

- (4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

- (5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Commentary :

Provisional Assessment is carried out in cases where a Registered taxable person is unable to determine the value of goods and/or services or determine the rate of tax applicable thereto. Tax liability is discharged on provisional basis subject to finalization of assessment by the department. The bond needs to be executed in prescribed format along with surety or security as prescribed by the specified officer. The proper officer within a period of 6 months or within the extended period of 6 months, will pass the final assessment order.

Once assessment is finalized the taxable person becomes liable to pay the difference along with interest and for excess payment of tax, application for refund to be made. Concept of provisional assessment was also present in the earlier indirect tax regime.

61. SCRUTINY OF RETURNS

- (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
- (2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.
- (3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Commentary :

The returns will be scrutinized by the proper officer. Proper officer will inform the discrepancies and seek clarification from the taxable person. If explanation found satisfactory/acceptable, no further action shall be take. In case no satisfactory explanation is furnished within a period of 30 days or extended period or taxable person fails to take corrective action, the Proper Officer may take recourse to any of the following provisions:

- (a) Proceed to conduct audit under Section 65 of the Act;
- (b) Direct the conduct of a special audit under Section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or
- (c) Undertake procedures of inspection, search and seizure under Section 67 of the Act; or
- (d) Initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

62. ASSESSMENT OF NON-FILERS OF RETURNS.

- (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.
- (2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Commentary :

This section empowers the Proper officer to make Best Judgment Assessment if the registered person fails to furnish the return under section 39 or Final Return under section 45 after cancellation of his registration certificate even after service of notice under section 46.

If the taxable person fails to file return within the given time, the proper officer shall proceed to assess the tax liability of the return defaulter to the best of his judgment taking into account all the relevant material available with him.

The best judgment order passed by the Proper Officer under section 62 shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order. The time limit for passing an assessment order under section 62 is five years from the due date for furnishing the annual return.

63. ASSESSMENT OF UNREGISTERED PERSONS.

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Commentary :

Section 63 of CGST Act provides that in case a person who is liable to pay tax but has failed to obtain registration, or whose registration has been cancelled under Section 29(2) of the Act but who was liable to pay tax, the proper officer exercising jurisdiction over such person can assess his tax liability and pass an order to his best judgment for the relevant tax

periods. However, such an order must be passed within a period of five years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

64. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES.

- (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

- (2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Commentary :

Summary Assessments can be initiated to protect the interest of revenue when:

- a) the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- b) the proper officer believes that delay in passing an assessment order will adversely affect the interest of revenue.

Such order can be passed after seeking permission from the Additional Commissioner / Joint Commissioner.

In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

CHAPTER XIII

AUDIT

Commentary :

The term Audit as defined in Section 2(13) of the CGST Act, 2017 means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made thereunder. Audit under GST can be of three types:- Audit by Chartered Accountant or Cost Accountants under Section 35(5) whose turnover exceeds the prescribed limit, Audit by tax authorities and Special Audit. This chapter deals with the last two types of audits.

65. AUDIT BY TAX AUTHORITIES.

- (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
- (2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
- (3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.
- (4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

- (5) During the course of audit, the authorised officer may require the registered person,—
 - (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
 - (ii) to furnish such information as he may require and render assistance for timely completion of the audit.
- (6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

- (7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Commentary :

The Commissioner or any other officer authorized by him, at the place of business of the taxable person, may undertake the audit of business transactions after giving proper advance intimation of 15 days.

The audit shall be completed within a period of 3 months or extended period for a maximum of 6 months by the Commissioner. The taxable person is required to:

- a) facilitate the verification of accounts/records available or requisitioned by the authorities,
- b) provide such information as the authorities may require for the conduct of the audit, and
- c) render assistance for timely completion of the audit.

On conclusion of audit, the proper officer shall, within 30 days inform the taxable person about his findings, reasons for findings and the taxable person's rights and obligations in respect of such findings.

Where the audit results in detection of tax not paid or tax short paid or tax erroneously refunded or input tax credit erroneously availed, the proper officer may initiate suitable action for recovery under Section 73 or section 74.

66. SPECIAL AUDIT

- (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- (2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:
- Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.
- (4) The registered person shall be given an opportunity of being heard in respect of any

material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

- (5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
- (6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Commentary :

Section 66 of the Act, provides that a special audit can be instituted in limited circumstances where during scrutiny, investigation, etc. it comes to the notice that a case is complex or the revenue stake is high.

The Assistant Commissioner is to serve the communication for special audit only after prior approval of the Commissioner.

A Chartered Accountant or a Cost Accountant so nominated by the Commissioner may undertake the audit. The auditor will have to submit the report within 90 days or within the further extended period of 90 days. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner. Based on the findings / observations of the special audit, action can be initiated under Section 73 or Section 74 of the Act.

CHAPTER XIV

INSPECTION, SEARCH, SEIZURE AND ARREST

Commentary :

'Inspection' means careful examination or scrutiny. The provisions for inspection, search, seizure and arrest act as deterrents for tax evasion and by checking evasion provide a level playing field to the genuine tax payers. These provisions also safeguard Government's legitimate dues.

67. POWER OF INSPECTION, SEARCH AND SEIZURE.

- (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made there under to evade tax under this Act; or
 - (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

- (2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

- (3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder,

shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

- (4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.
- (5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
- (6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
- (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
- (8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.
- (9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.
- (10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.
- (11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.
- (12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any

taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

68. INSPECTION OF GOODS IN MOVEMENT.

- (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.
- (2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.
- (3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

69. POWER TO ARREST.

- (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- (2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.
- (3) Subject to the provisions of the Code of Criminal Procedure, 1973,—
 - (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
 - (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS.

- (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil

court under the provisions of the Code of Civil Procedure, 1908.

- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

71. ACCESS TO BUSINESS PREMISES.

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—
 - (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - (ii) trial balance or its equivalent;
 - (iii) statements of annual financial accounts, duly audited, wherever required;
 - (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
 - (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
 - (vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

72. OFFICERS TO ASSIST PROPER OFFICERS.

- (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.
- (2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

CHAPTER XV

DEMANDS AND RECOVERY

Commentary :

Occasionally tax administrations comes across situations where the tax dues are not paid correctly by the tax payers, most of the times inadvertently and sometimes deliberately.

The concept of 'Matching' details of 'Outward supplies' of supplier with the details of 'Inward supplies' of recipient has been introduced in the CGST Act to minimise the inadvertent short payment of taxes.

Moreover, the self-assessed tax has to be paid by the due date prescribed under the CGST Act and in case of any failure to pay the same by the due date, the Input Tax Credit will not be available to the recipient of goods or services or both and also the tax payer will not be able to file any return for further period. Effectually these provisions work as a self-policing system and take care of any mis-match in the payment of taxes.

However, despite these provisions, there may arise some instances where the tax was not paid correctly. To deal with such situations, the provisions for recovery are incorporated in any tax law.

73. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILISED FOR ANY REASON OTHER THAN FRAUD OR ANY WILFUL-MISSTATEMENT OR SUPPRESSION OF FACTS.

- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.
- (2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
- (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are

mentioned in the earlier notice.

- (5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
- (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.
- (11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Commentary :

Section 73 deals with the cases where there is no invocation of fraud/suppression/mis-statement etc. The Section stipulates that where it appears to the proper officer that due to any reason other than fraud/mis-statement/ suppression of facts to evade tax, tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for, the proper officer shall issue a show cause notice(SCN) as to why the amount of tax should not be paid alongwith interest and penalty leviable thereon under the provisions of this Act and rules made thereunder.

The SCN has to be adjudicated within a period of three years from the due date of filing of annual return. The SCN is required to be issued at least three months prior to the time limit set for adjudication.

If the person pays the tax along with interest within 30 days of issue of SCN, no penalty

shall be payable and all proceedings in respect of such notice shall be deemed to be concluded.

If a person pays the amount of demand along-with interest before issue of notice, as ascertained either on his own or ascertained by the proper officer, and on such payment, informs the proper officer in writing regarding the same, no notice shall be issued with respect to the amount of tax so paid.

The proper officer after considering the representations made by the person to whom SCN was issued, shall issue an order, determining the amount of tax, interest and penalty leviable on such person. Further the amount of penalty leviable in such order shall be equivalent to 10% of such tax or Rs. 10,000 whichever is higher.

74. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILISED BY REASON OF FRAUD OR ANY WILFUL-MISSTATEMENT OR SUPPRESSION OF FACTS.

- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.
- (2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
- (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
- (4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
- (5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
- (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
- (10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.
- (11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section,—

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Commentary :

Section 74 deals with cases where the provisions related to fraud/suppression/mis-statement etc. are invoked. The Section stipulates that where it appears to the proper officer that by reason of fraud/mis-statement/ suppression of facts to evade tax, tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for, the proper officer shall issue a show cause notice(SCN) as to why the amount of tax should not be paid alongwith interest and penalty leviable thereon under the provisions of this Act and rules made thereunder.

The SCN has to be adjudicated within at period of five years from the due date of filing of annual return. The SCN is required to be issued at least six months prior to the time limit set for adjudication.

A person chargeable with tax in cases of fraud/suppression of facts/ willful misstatement, pays the amount of demand along-with interest before issue of notice, then he shall have an option to pay the amount of tax along with interest and penalty equal to 15% percent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid.

If notice is issued under Section 74 and thereafter the noticee makes payment of tax along with interest and with penalty equal to 25% of such tax within 30 days of issue of notice, all proceedings in respect of such notice shall be deemed to be concluded.

In case a notice is adjudicated under Section 74 and order is issued confirming tax demand and penalty, and if the person pays the tax determined by the order along with interest and a penalty equivalent to 50% of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.

75. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX.

- (1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.
- (2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.
- (3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.
- (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.
- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

- (8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
- (9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
- (10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.
- (11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.
- (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
- (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

76. TAX COLLECTED BUT NOT PAID TO GOVERNMENT.

- (1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.
- (2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.
- (3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

- (4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.
- (5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.
- (6) The proper officer shall issue an order within one year from the date of issue of the notice.
- (7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).
- (10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.
- (11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Commentary :

This sub-section reiterates that the concept of unjust enrichment is applicable to the provisions of GST also. Once a supplier has collected any amount as tax from any person, that amount needs to be deposited with the government failing which he shall be subject to interest and penalty.

Notice can be issued on detection of such cases without any time limit.

77. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT.

- (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Commentary :

If a registered person has inadvertently paid Central tax or State tax/Union Territory tax considering the transaction as intra-state supply but which is subsequently held as inter-state supply, the amount of CGST/SGST/UTGST tax so paid shall be refunded in such manner and subject to such conditions as may be prescribed. Further section 19(2) of IGST Act provides that no interest shall be payable on the amount of IGST payable by him on such inter-state supply wrongly considered as intra-state supply.

Similarly Section 19(1) of IGST Act provides that IGST paid on an inter-state transaction subsequently considered as intra-state supply will be refunded in such manner and subject to such conditions as may be prescribed. Further section 77(2) of CGST Act provides that no interest shall be payable on the amount of CGST and SGST/UTGST payable by him on such intra-state supply wrongly considered as inter-state supply.

78. INITIATION OF RECOVERY PROCEEDINGS.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

79. RECOVERY OF TAX.

- (1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—
- (a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;
 - (b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;
 - (c)
 - (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
 - (ii) every person to whom the notice is issued under sub-clause (i) shall be

bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
 - (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
 - (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;
 - (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;
 - (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;
- (d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer,

on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

- (f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.
- (2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.
- (3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.
- (4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

80. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS.

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Commentary :

On receipt of any such request, Commissioner/Chief Commissioner may extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twenty four, subject to payment of interest under section 50 with such limitations and conditions as may be prescribed. However, where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become payable and recovered without any further notice.

81. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES.

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person

with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

82. TAX TO BE FIRST CHARGE ON PROPERTY.

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

83. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES.

- (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

84. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

- (a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;
- (b) where such Government dues are reduced in such appeal, revision or in other proceedings—
 - (i) it shall not be necessary for the Commissioner to serve upon the taxable person

a fresh notice of demand;

- (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
- (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

CHAPTER XVI

LIABILITY TO PAY IN CERTAIN CASES

Commentary :

This chapter lays down provision for fixing responsibility of payment of tax on certain persons in case of transfer of business, mergers and amalgamation, liquidation of companies, dissolution of firms, retirement of partners etc. In such situations, it was often found that determination of the person responsible for payment of tax was always a cause of litigation. Hence specific provisions have now been laid down in GST, so that a dishonest taxpayer cannot find an escape by way a legal twist.

85. LIABILITY IN CASE OF TRANSFER OF BUSINESS.

- (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.
- (2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

86. LIABILITY OF AGENT AND PRINCIPAL.

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

87. LIABILITY IN CASE OF AMALGAMATION OR MERGER OF COMPANIES.

- (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
- (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be

cancelled with effect from the date of the said order.

88. LIABILITY IN CASE OF COMPANY IN LIQUIDATION.

- (1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.
- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- (3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

89. LIABILITY OF DIRECTORS OF PRIVATE COMPANY

- (1) Notwithstanding anything contained in the Companies Act, 2013, where any interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the Company.
- (2) Where a private company is converted into public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

90. LIABILITY OF PARTNERS OF FIRM TO PAY TAX

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and

such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

91. LIABILITY OF GUARDIANS, TRUSTEES, ETC

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92. LIABILITY OF COURT OF WARDS, ETC

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

93. SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES

- (1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then—
 - (a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and
 - (b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.
- (2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided

Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

- (3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.
- (4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,—
 - (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or
 - (b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

94. LIABILITY IN OTHER CASES.

- (1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—
 - (a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and
 - (b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.
- (2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.
- (3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business

carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.—For the purposes of this Chapter,—

- (i) a “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
- (ii) “court” means the District Court, High Court or Supreme Court.

CHAPTER XVII

ADVANCE RULING

Commentary :

The object of advance ruling is to enable a person to have clarity of tax dimensions in respect to a new business and venture, thereby eliminating unwanted differences and litigations in future. Unlike other statutes, the provisions not only provide for advance ruling authority, but also for an appellate authority for advance ruling.

95. DEFINITIONS

In this Chapter, unless the context otherwise requires,—

- (a) “advance ruling” means a decision provided by the Authority or the Appellate authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;
- (c) “applicant” means any person registered or desirous of obtaining registration under this Act;
- (d) “application” means an application made to the Authority under sub-section (1) of section 97;
- (e) “Authority” means the Authority for Advance Ruling referred to in section 96.

96. AUTHORITY FOR ADVANCE RULING

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Commentary :

The corresponding section 96 of the SGST Act provides that the respective State Government

shall by notification constitute the State Authority for Advance Ruling. Alternatively it also provides that the State Government may, on the recommendation of the Council, notify an authority of a different State to act as the authority for the State. Sub-section (2) thereof provides that the authority shall consist of one member from the officers from central tax and one member from the officers from state tax, to be appointed by such Central Government and State Government respectively.

Further section 15 of the UTGST Act provides that the Central Government shall by notification constitute the Authority for Advance Ruling in respect to each Union Territory. Alternatively it also provides that the Central Government may, on the recommendation of the Council, notify an authority of a State or different Union Territory to act as the authority for the Union Territory. Sub-section (2) thereof provides that the authority shall consist of one member from the officers from central tax and one member from the officers from Union Territory tax, to be appointed by the Central Government.

The Authorities for Advance Ruling so appointed under the SGST / UTGST Act are deemed to be the Authority for Advance Ruling under the CGST Act.

97. APPLICATION FOR ADVANCE RULING

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—
 - (a) classification of any goods or services or both;
 - (b) applicability of a notification issued under the provisions of this Act;
 - (c) determination of time and value of supply of goods or services or both;
 - (d) admissibility of input tax credit of tax paid or deemed to have been paid;
 - (e) determination of the liability to pay tax on any goods or services or both;
 - (f) whether applicant is required to be registered;
 - (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Commentary :

Advance ruling can be obtained only in respect to questions set forth in section 97 (2) above.

98. PROCEDURE ON RECEIPT OF APPLICATION

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

- (2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.
- (4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.
- (5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.
- (6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.
- (7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

99. APPELLATE AUTHORITY FOR ADVANCE RULING.

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Commentary :

The corresponding section 99 of the SGST Act provides that the respective State Government shall by notification constitute the State Appellate Authority for Advance Ruling. Such

Appellate Authority shall consist of the Chief Commissioner of Central Tax as designated by the Board and the Commissioner of State Tax. Alternatively it also provides that the State Government may, on the recommendation of the Council, notify any Appellate Authority of a different State or Union Territory to act as the Appellate Authority for the State.

Further section 16 of the UTGST Act provides that the Central Government shall by notification constitute the Appellate Authority for Advance Ruling in respect to each Union Territory. Alternatively it also provides that the Central Government may, on the recommendation of the Council, notify any Appellate Authority of a State or different Union Territory to act as the Appellate Authority for the Union Territory. Sub-section (2) thereof provides that such Appellate Authority shall consist of the Chief Commissioner of Central Tax as designated by the Board and the Commissioner of Union Territory Tax having jurisdiction over the applicant.

The Authorities for Advance Ruling so appointed under the SGST / UTGST Act are deemed to be the Appellate Authority for Advance Ruling under the CGST Act.

100. APPEAL TO APPELLATE AUTHORITY.

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

- (3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

101. ORDERS OF APPELLATE AUTHORITY

- (1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
- (2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.
- (3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
- (4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to

the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

102. RECTIFICATION OF ADVANCE RULING.

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

103. APPLICABILITY OF ADVANCE RULING

- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Commentary :

The advance ruling pronounced by the authority or appellate authority shall be binding on the applicant and on the jurisdictional officer of the applicant, unless the law, facts and circumstances have changed.

104. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the

period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

105. POWERS OF AUTHORITY AND APPELLATE AUTHORITY

- (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) issuing commissions and compelling production of books of account and other records,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

- (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

106. PROCEDURE OF AUTHORITY AND APPELLATE AUTHORITY

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

CHAPTER XVIII

APPEALS AND REVISION

107. APPEALS TO APPELLATE AUTHORITY

Commentary :

Any person aggrieved by the order passed by the adjudicating authority under CSGT/SGST/UTGST may appeal against the order to the prescribed Appellate Authority within 3 months. The department may file such appeal within 6 months. However the appellant filing such appeal should mandatorily pay the pre-deposit, which is 100% of the admitted liability, if any, plus 10% of the disputed liability. On payment of such pre-deposit, recovery of the balance undisputed liability automatically gets stayed.

The appellate authority may after hearing the parties, pass an order confirming, modifying or annulling the decision or order appealed against. However, where it has the effect of increasing the liability, reasonable opportunity must be given to the affected party.

- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
- (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.
- (3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.
- (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.
- (5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
- (6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.
- (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
- (8) The Appellate Authority shall give an opportunity to the appellant of being heard.
- (9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

- (10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
- (11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

- (12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.
- (13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

- (14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

- (15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
- (16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

108. POWERS OF REVISIONAL AUTHORITY

Commentary :

The Revisional Authority may call for and examine the record of any proceedings, where any decision or order passed by any subordinate officer is erroneous, illegal or improper and is prejudicial to the interest of revenue. However such revision should be taken up within a period of 3 years from the date of such order or decision, but not before the appeal period has expired.

The Revisional Authority may, after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass an order for enhancing or modifying or annulling the said decision or order.

- (1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.
- (2) The Revisional Authority shall not exercise any power under sub-section (1), if—
- (a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
 - (b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
 - (c) the order has already been taken for revision under this section at an earlier stage; or
 - (d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

- (3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.
- (4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.
- (5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).
- (6) For the purposes of this section, the term,—
 - (i) "record" shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
 - (ii) "decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

109. CONSTITUTION OF APPELLATE TRIBUNAL AND BENCHES THEREOF.

Commentary :

The Goods and Services Tax Appellate Tribunal shall hear appeals against order passed by the appellate authority and revisional authority.

National Bench or it's branches (also called Regional Benches)of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed in cases involving the place of supply, whereas State Bench and Benches thereof (also called Area Benches) shall hear appeals pertaining to other issues.

- (1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- (2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as "Regional Benches"), State Bench and Benches thereof (hereinafter in this Chapter referred to as "Area Benches").

- (3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).
- (4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).
- (5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.
- (6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

- (7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).
- (8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.
- (9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.
- (10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

- (11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.
- (12) The Government, in consultation with the President may, for the administrative convenience, transfer—
- (a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or
 - (b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.
- (13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.
- (14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

110. PRESIDENT AND MEMBERS OF THE APPELLATE TRIBUNAL, THEIR QUALIFICATION, APPOINTMENT, CONDITIONS OF SERVICE, ETC.

- (1) A person shall not be qualified for appointment as—
- (a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
 - (b) a Judicial Member, unless he—
 - (i) has been a Judge of the High Court; or
 - (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or
 - (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;
 - (c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
 - (d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the

administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

- (2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.

- (3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
- (4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.
- (5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.
- (6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.
- (7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.
- (8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.

- (9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.

- (10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.
- (11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.
- (12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:

Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—
- (a) has been adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as such President, State President or Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

- (14) Without prejudice to the provisions of sub-section (13),—
- (a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central

Government and of which the President or the said Member had been given an opportunity of being heard;

- (b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.
- (15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).
- (16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).
- (17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

111. PROCEDURE BEFORE APPELLATE AUTHORITY

- (1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.
- (2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;

- (f) dismissing a representation for default or deciding it ex parte;
 - (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - (h) any other matter which may be prescribed.
- (3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—
- (a) in the case of an order against a company, the registered office of the company is situated; or
 - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- (4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

112. APPEALS TO APPELLATE TRIBUNAL

Commentary :

Any person aggrieved by the order passed by the appellate authority or revision authority may appeal before the Appellate Tribunal within 3 months. The department may file such appeal within 6 months. The opposite party may file a memorandum of cross objection within 45 days of the receipt of the notice of appeal. However such appeal or memorandum of cross objection may be admitted by the Appellate Tribunal within another 3 months or 45 days after such initial 3 months or 45 days period.

The appellant filing such appeal should mandatorily pay the pre-deposit, which is 100% of the admitted liability, if any, plus 20% of the disputed liability in addition to the 10% paid during the first appeal. On payment of such pre-deposit, recovery of the balance undisputed liability automatically gets stayed.

- (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.
- (2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

- (3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.
- (4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).
- (5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).
- (6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.
- (8) No appeal shall be filed under sub-section (1), unless the appellant has paid—
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
 - (b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, in relation to which the appeal has been filed.
- (9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.
- (10) Every application made before the Appellate Tribunal,—
 - (a) in an appeal for rectification of error or for any other purpose; or
 - (b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

113. ORDERS OF APPELLATE TRIBUNAL

Commentary :

The Appellate Tribunal may after hearing the parties, pass an order confirming, modifying or annulling the decision or order appealed against. However where it has the effect of increasing the liability, reasonable opportunity must be given to the affected party.

The Appellate Tribunal may also refer the case back to the appellate authority or the revisional authority or to the adjudicating authority for fresh adjudication or decision, with such directions as it may think fit.

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

114. FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

115. INTEREST ON REFUND OF AMOUNT PAID FOR ADMISSION OF APPEAL

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

116. APPEARANCE BY AUTHORIZED REPRESENTATIVE

- (1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.
- (2) For the purposes of this Act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—
 - (a) his relative or regular employee; or
 - (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
 - (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
 - (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
- (3) No person,—
 - (d) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

- (a) who has been dismissed or removed from Government service; or
- (b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
- (c) who is found guilty of misconduct by the prescribed authority;
- (d) who has been adjudged as an insolvent,

shall be qualified to represent any person under sub-section (1)—

- (i) for all times in case of persons referred to in clauses (a), (b) and (c); and
 - (ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).
- (4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

117. APPEAL TO HIGH COURT

Commentary :

Appeals against order passed by the State Bench of the Appellate Tribunal or its branches may be filed before the jurisdictional High Court. However High Court may admit such appeal only if it is satisfied that the case involves a substantial question of law and thereupon such question of law should be formulated.

- (1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.
- (2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed:

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.
- (3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other

substantial question of law not formulated by it, if it is satisfied that the case involves such question.

- (4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- (5) The High Court may determine any issue which—
 - (a) has not been determined by the State Bench or Area Benches; or
 - (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).
- (6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
- (7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.
- (8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.
- (9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

118. APPEAL TO SUPREME COURT

- (1) An appeal shall lie to the Supreme Court—
 - (a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or
 - (b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.
- (2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.
- (3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

119. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL, ETC

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

120. APPEAL NOT TO BE FILED IN CERTAIN CASES

- (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.
- (2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.
- (3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.
- (4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

121. NON-APPEALABLE DECISIONS AND ORDERS

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under this Act; or
- (d) an order passed under section 80.

CHAPTER XIX

OFFENCES AND PENALTIES

Commentary :

Any failure to comply with or contravention of the provisions of the Act shall subject the taxable person to various penalties as discussed in section 122 to section 138 of the CGST Act. Delay in filing of the return will also be subject to penalty.

122. PENALTY FOR CERTAIN OFFENCES

- (1) Where a taxable person who—
- (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
 - (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
 - (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
 - (vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
 - (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
 - (viii) fraudulently obtains refund of tax under this Act;
 - (ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
 - (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- (xix) issues any invoice or document by using the registration number of another registered person;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

- (2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—
 - (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
 - (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.
- (3) Any person who—
 - (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty-five thousand rupees.

123. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN.

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

124. FINE FOR FAILURE TO FURNISH STATISTICS.

If any person required to furnish any information or return under section 151,—

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

125. GENERAL PENALTY

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

126. GENERAL DISCIPLINES RELATED TO PENALTY.

- (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation.—For the purpose of this sub-section,—

- (a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees;
- (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- (2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
- (3) No penalty shall be imposed on any person without giving him an opportunity of being heard.
- (4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.
- (5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.
- (6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

127. POWER TO IMPOSE PENALTY IN CERTAIN CASES

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

128. POWER TO WAIVE PENALTY OR FEE OR BOTH

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

129. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

- (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—
- (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
 - (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;
 - (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

- (2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.
- (3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).
- (4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
- (5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.
- (6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

130. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY

- (1) Notwithstanding anything contained in this Act, if any person—
- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (ii) does not account for any goods on which he is liable to pay tax under this Act; or
 - (iii) supplies any goods liable to tax under this Act without having applied for registration; or
 - (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

- (2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

- (3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.
- (4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.
- (5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

- (6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.
- (7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

131. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS

Without prejudice to the provisions contained in the Code of Criminal Procedure, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

132. PUNISHMENT FOR CERTAIN OFFENCES.

- (1) Whoever commits any of the following offences, namely:—
 - (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
 - (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) avails input tax credit using such invoice or bill referred to in clause (b);
 - (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
 - (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
 - (g) obstructs or prevents any officer in the discharge of his duties under this Act;
 - (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable—

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
 - (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
 - (iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
 - (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- (2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.
 - (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.
 - (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.
 - (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

- (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

133. LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS

- (1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.
- (2) Any person—
- (a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
 - (b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

134. COGNIZANCE OF OFFENCES

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

135. PRESUMPTION OF CULPABLE MENTAL STATE

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—For the purposes of this section,—

- (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

136. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

137. OFFENCES BY COMPANIES

- (1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.
- (4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation.—For the purposes of this section,—

- (i) “company” means a body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

138. COMPOUNDING OF OFFENCES

- (1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.
- (3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

CHAPTER XX

TRANSITIONAL PROVISIONS

Commentary :

The transitional provisions enable the existing tax payers to migrate to GST in transparent and smooth manner. The transitional provisions under the CGST Act basically deals with transfer of tax credits under the existing central indirect tax laws to the GST regime, whereas those under UTGST / SGST Act deals with the transfer of tax credits under the existing state / union territory indirect tax laws.

139. MIGRATION OF EXISTING TAXPAYERS.

- (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.
- (2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.
- (3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

Commentary :

As per section 2(10) of this Act, 'appointed day' is the date on which the provisions of this Act shall come into force. GST is rolled out from 1st day of July, 2017.

140. TRANSITIONAL ARRANGEMENTS FOR INPUT TAX CREDIT.

- (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or

- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
 - (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.
- (2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

Commentary :

Under the erstwhile CENVAT Credit Rules, 2004, cenvat credit in respect to capital goods was available upto 50% at the time of it's receipt and the balance was available in the subsequent financial year. Sub-section (2) deals with a situation where such balance cenvat credit on capital goods can be availed on the day immediately preceding the appointed day.

- (3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—
- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
 - (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
 - (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
 - (v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Commentary :

Sl no.	Category of Taxpayer	Details to be provided	Amount of ITC available
1.	Manufacturers and Service providers already registered under existing laws	Closing balance of Cenvat credit	Closing balance of Cenvat credit as per last return
2.	Manufacturers and Service providers already registered under existing laws	Balance of un-availed Cenvat credit of capital goods	Amount of Cenvat credit on capital goods not availed earlier
3.	Manufacturers and Service providers supplying exempted goods/services not required to be registered under existing laws, works contract service provider availing exemption notification, first stage/second stage dealer, registered importer, or depot of a manufacturer	Stock held as inputs/semi-finished/finished goods to be used for making taxable supplies where duty paid invoices available.	Amount of duty paid as per available duty paid invoice
4.	Trader (not liable to be registered under existing Central laws)	Stock held as inputs/semi-finished/finished goods to be used for making taxable supplies <u>where duty paid invoices available.</u>	Amount of duty paid as per available duty paid invoice
		Stock held as inputs/semi-finished/finished goods to be used for making taxable supplies <u>where duty paid invoices not available.</u>	ITC will be reduced by such percentage as may be prescribed.

- (4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—
- (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
 - (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock

and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

Commentary :

Where a registered person was engaged in the manufacture or provision of taxable as well as exempted goods/services, he shall besides the credit available under the erstwhile laws be also entitled to credit in respect to those inputs, which are held in stock or are contained in semi-finished or finished goods held in stock on the appointed day, relating to the exempted goods or services provided such inputs or goods are used or intended to be used for making taxable supplies under this Act and he is in possession of duty paid invoices which are not older than twelve months from the appointed day. In case duty paid invoices are not available credit can be taken subject to such conditions as may be prescribed.

- (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

Commentary :

This sub-section applies where goods / services were billed under the erstwhile laws, but is received and booked in the accounts after the appointed day when the said laws were no more applicable.

- (6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—
- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said registered person is not paying tax under section 10;
 - (iii) the said registered person is eligible for input tax credit on such inputs under this Act;
 - (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Commentary :

This sub-section applies where to registered persons who were either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law and hence, credit was not available. But under the GST regime, credit will be available, subject to certain conditions.

- (7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.
- (8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

- (9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.
- (10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression “eligible duties” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation 2.—For the purposes of sub-section (5), the expression “eligible duties and taxes” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
- (viii) the service tax leviable under section 66B of the Finance Act, 1994, in respect of inputs and input services received on or after the appointed day.

141. TRANSITIONAL PROVISIONS RELATING TO JOB WORK.

- (1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job

work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

- (2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

- (3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

- (4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

Commentary :

The Roll out date of GST was fixed at 1st July, 2017. A registered person (Principal) sends inputs, semi-finished goods and finished goods for job-work or testing before 1st July, 2017. Both the registered person and the job worker declare the details of stock held in the prescribed form and within the prescribed time. The Principal can take the credit of the inputs sent to the job worker. If the goods are returned back by the job worker within 31st December, 2017, then no GST will be payable.

But if goods are not returned back to the registered person by 31st December, 2017, input tax credit taken on such inputs will have to be reversed and GST is payable by the registered person. Further the goods can be directly supplied from the job workers premises on payment of tax.

142. MISCELLANEOUS TRANSITIONAL PROVISIONS.

- (1) Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

Commentary :

Where goods are returned by a registered person, tax would be payable on such return as the same would be deemed to be a supply. Thus, credit of such tax paid would be available to the recipient. However in case of return by a non registered person, no such tax would be payable and hence question of credit does not arise. Therefore the sub-section provides for refund of duty paid under the erstwhile laws provided duty paid goods are returned within six months.

- (2) (a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;
- (b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for

the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

- (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (5) Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

- (6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;

- (b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (7)
 - (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
 - (b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.
- (8)
 - (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;
 - (b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.
- (9)
 - (a) where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;
 - (b) where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law,

notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

- (10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.
- (11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;
- (b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;
- (c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.
- (12) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

- (13) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any law of a State or Union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation.—For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) credit”, “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.

CHAPTER XXI

MISCELLANEOUS

143. JOB WORK PROCEDURE

- (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—
- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;
- (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:
- Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—
- (i) where the job worker is registered under section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.
- (2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.
- (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.
- (4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.
- (5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his

place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Commentary :

Job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called 'principal'.

This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986. In the said notification, job work has been defined in such a manner so as to ensure that the activity of job work must amount to manufacture. Thus the definition of job work itself reflects the change in basic scheme of taxation relating to job work in the proposed GST regime.

The registered taxable person (the principal), may under intimation and subject to such conditions as may be prescribed, send any inputs and/or capital goods, without payment of tax, to a job worker for job work and from there subsequently to another job worker(s) and

- a. bring back such inputs/capital goods after completion of job work or otherwise within 1 year/3years of their being sent out; or
- b. supply such inputs/capital goods after completion of job work or otherwise within 1 year / 3 years of their being sent out, from the place of business of a job worker on payment of tax within India or with or without payment of tax for export

Thus goods sent by a taxable person to a job worker will be treated as supply and will be liable to GST. This is because supply includes all forms of supply such as sale, transfer, etc.

The term inputs, for the purpose of job work, includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or job worker.

The condition of bringing back capital goods within three years is not applicable to moulds, dies, jigs and fixtures or tools.

The goods of principal supplied directly from the job worker's premises will be included in the aggregate turnover of the principal. However, the value of goods or services used by the job worker for carrying out the job work will be included in the value of services supplied by the job worker.

Further, the principal can send inputs and capital goods directly to the premises of job worker without bringing it to his premises. The input tax credit of tax paid on inputs or capital goods can also be availed by the principal in such a scenario. The inputs or capital goods must be received back within one year or three years respectively failing which the original transaction would be treated as supply and the principal would be liable to pay tax accordingly.

Again, the principal may supply the goods directly from the premises of the job worker without bringing it back to his own premises. But the principal should have declared the premises of an unregistered job worker as his additional place of business. If the job worker is a registered person then goods can be supplied directly from the premises of the job

worker. The Commissioner may also notify goods in which case goods sent for job work can be directly supplied from the premises of the job worker.

Where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner, the principal can directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business.

As job work is a service, the job worker would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold.

Taking of ITC in respect of inputs/capital goods sent to a job worker:-The Principal shall be entitled to take credit of taxes paid on inputs or capital goods sent to a job worker whether sent after receiving them at his place of business or even when such the inputs or capital goods are directly sent to a job worker without their being first brought to his place of business. However, the inputs or capital goods, after completion of job work, are required to be received back or supplied from job worker's premises, as the case may be, within a period of one year or three years of their being sent out.

If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker) and the principal would be liable to pay tax accordingly.

The waste and scrap generated during the job work can be supplied by the job worker directly from his place of business, on payment of tax, if he is registered. If he is not registered, the same would be supplied by the principal on payment of tax.

It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

The provisions under Section 143 relating to job work are applicable only when registered taxable person intends to send taxable goods. In other words, these provisions are not applicable to exempted or non-taxable goods or when the sender is a person other than registered taxable person.

However the principal can send the inputs or capital goods after payment of GST without following the special procedure. In such a case, the job-worker would take the input tax credit and supply back the processed goods (after completion of job-work) on payment of GST.

A job-worker and principal can be located either in same State or in same Union Territory or in different States or Union Territories.

144. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES

Where any document--

- (i) is produced by any person under this Act or any other law for the time being in force; or

- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or
- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force,

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

- (a) unless the contrary is proved by such person, presume—
 - (i) the truth of the contents of such document;
 - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

145. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE.

- (1) Notwithstanding anything contained in any other law for the time being in force,—
 - (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
 - (b) a facsimile copy of a document; or
 - (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
 - (d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

- (2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—
 - (a) identifying the document containing the statement and describing the manner in which it was produced;

- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

146. COMMON PORTAL

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

Commentary :

Common Portal-The website 'www.gst.gov.in', managed by GSTN, as the Common GST Portal/ e-GST Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and electronic way bill under CGST/ IGST vide Notification No. 4/2017 CGST dt 19th June, 2017. Goods and Service Tax Network(GSTN) is a company incorporated under the provisions of Section 8 of the Companies Act, 2013

Electronic way bill

Every registered person who causes movement of goods of consignment value exceeding Rs. 50,000 in relation to a supply; for reasons other than supply; or due to inward supply from an unregistered person, shall, before commencement of movement, furnish information relating to the said goods electronically, on the common portal GSTN.

Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

147. DEEMED EXPORTS.

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

148. SPECIAL PROCEDURE FOR CERTAIN PROCESSES

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

149. GOODS AND SERVICE TAX COMPLIANCE RATING

- (1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

- (2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.
- (3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

Commentary :

Trade and industry will, irrespective of their nature, size or turnover of the business, be assigned a 'compliance rating' based on their credibility with regard to timely deposit of taxes to the exchequer and filing of returns under the goods and services tax structure.

The GST compliance rating will provide the name of the taxpayer as well as the GST Identification Number (GSTIN) and will be displayed on the GST common portal. The rating scores shall be updated at periodic intervals.

It is expected by the Government that the scheme would urge businesses to become more compliant and help prevent tax evasion. A registered person with higher compliance rating may enjoy faster refunds, immediate input tax credit, reduced chances of audit by tax authorities, enhanced reputation, which in turn may help in the growth of his business. Buyers will look for sellers with higher rating which will ensure they can avail input tax credit faster.

150. OBLIGATION TO FURNISH INFORMATION RETURN

- (1) Any person, being—
 - (a) a taxable person; or
 - (b) a local authority or other public body or association; or
 - (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
 - (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
 - (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
 - (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
 - (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
 - (h) a Registrar within the meaning of the Companies Act, 2013; or

- (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
- (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
- (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
- (p) any other person as may be specified, on the recommendations of the Council, by the Government,

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

- (2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.
- (3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

151. POWER TO COLLECT STATISTICS.

- (1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.

- (2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.

152. BAR ON DISCLOSURE OF INFORMATION

- (1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.
- (2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.
- (3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

153. TAKING ASSISTANCE FROM AN EXPERT.

Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

154. POWER TO TAKE SAMPLES.

The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

155. BURDEN OF PROOF.

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

156. PERSONS DEEMED TO BE PUBLIC SERVANTS.

All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

157. PROTECTION OF ACTION TAKEN UNDER THIS ACT.

- (1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

- (2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

158. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT.

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.
- (2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).
- (3) Nothing contained in this section shall apply to the disclosure of,—
- (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
 - (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
 - (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or
 - (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
 - (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
 - (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
 - (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or

- (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or
- (j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or
- (l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

159. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES.

- (1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

160. ASSESSMENT PROCEEDINGS, ETC., NOT TO BE INVALID ON CERTAIN GROUNDS

- (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment,

adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

- (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

161. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD.

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

162. BAR ON JURISDICTION OF CIVIL COURTS.

Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

163. LEVY OF FEE.

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.

164. POWER OF GOVERNMENT TO MAKE RULES.

- (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

165. POWER TO MAKE REGULATIONS.

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

166. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS.

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

167. DELEGATION OF POWERS.

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

168. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS.

- (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.
- (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

169. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES.

- (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—
 - (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
 - (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
 - (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
 - (d) by making it available on the common portal; or
 - (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
 - (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.
- (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).
- (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

170. ROUNDING OFF OF TAX,ETC

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

171. ANTI-PROFITEERING MEASURE.

- (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
- (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
- (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

Commentary :

Keeping in view the interest of the recipients of goods or services or both, the CGST Act has specifically provided that any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of corresponding reduction in prices. An authority may be constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the prices of goods or services or both supplied by him.

172. REMOVAL OF DIFFICULTIES.

- (1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

173. AMENDMENT OF ACT 32 OF 1994.

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

174. REPEAL AND SAVING.

- (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

- (a) revive anything not in force or existing at the time of such amendment or repeal; or
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or
- (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
- (f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Commentary :

In the Pre-GST regime, inter-state trade or commerce was regulated by Central Sales Tax (CST). CST was collected @ 2% and retained by the origin state. Input tax credit of CST was not allowed to the buyer which resulted in cascading of tax in the supply chain. Further various accounting forms viz C Form, E1,E2,F,J,I forms etc were required to be filed in CST which added to the compliance cost of the business and impeded the free flow of trade. Another negative feature of CST was huge difference between tax rates under VAT (intra-state sale) and CST (inter-state sale).

Under GST regime, inter-state supply of goods or services or both will be subject to Integrated goods and service tax (IGST). Article 269A(1) of the Constitution states that Goods and Services Tax on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and states in the manner provided by the Parliament on recommendation of the GST Council.

IGST rate will be equal to CGST rate plus SGST rate. The IGST mechanism is designed to ensure seamless flow of input tax credit from one State to another and also ensures that the SGST component on the final product ordinarily accrues to the consuming State.

THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

NO. 13 OF 2017

[12th April, 2017.]

An Act to make a provision for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2017.
- (2) It shall extend to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any

reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. DEFINITIONS.

In this Act, unless the context otherwise requires,—

- (1) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;
- (2) “central tax” means the tax levied and collected under the Central Goods and Services Tax Act;
- (3) “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation.—For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

- (4) “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962;

Commentary :

The Customs frontiers of India shall include the following:

1. Customs port
2. Customs Airport
3. International Courier Terminal
4. Foreign Post office
5. Land Customs Station
6. Area in which imported goods or goods meant for export are ordinarily kept before clearance by customs Authorities.

- (5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Commentary :

According to section 2(56) of CGST Act, “India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.

Export of Goods will be treated as inter-State supply and covered under the IGST Act. Further, exports will be treated as zero rated supplies. No tax will be payable on export of goods, however credit of input tax credit will be available and same will be available as refund to the exporters. The Exporter will have an option to either pay tax on the output and claim refund of IGST or export under Bond without payment of IGST and claim refund of Input Tax Credit

(ITC). The Input tax credit can be utilized for payment of output tax liability.

Under Export of goods movement of goods out of India alone is relevant and not the location of the importer/exporter.

An exporter has to compulsorily get registered, export being inter-state supply, irrespective of his turnover.

- (6) "export of services" means the supply of any service when,—
- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
 - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Commentary :

Under Export of services location of the supplier, place of supply of service and location of recipient of service has great relevance. The supplier of service should be located in India and the place of supply of service and location of recipient of service should be outside India. Further more important is that consideration of the supply should be received in convertible foreign exchange. Further the supplier of service and the recipient of service should not merely be establishments of distinct persons in accordance with Explanation 1 to Section 8.

Explanation 1 in Section 8.— For the purposes of this Act, where a person has,—

- an establishment in India and any other establishment outside India;
- an establishment in a State or Union territory and any other establishment outside that State; or
- an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory

then such establishments shall be treated as establishments of distinct persons.

Explanation 2 in Section 8 — A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

For example a Company A has its head office In India and a branch in London and the goods are supplied through the branch to the customer. The branch will be considered as an establishment in London and both the Head office in India and the branch office in London will be treated as an establishment of a distinct person.

But for export of services as per the above Sec 2(6)(v) of the IGST Act, "Provision of Services" to overseas branch cannot be treated as " Export of services". Hence such services will not be "Zero rated". But they will be treated as inter-state supply considering the fact that location of

supplier is in India and place of supply is would be location outside India. Hence IGST will be charged with no refund.

An exporter has to compulsorily get registered, export being inter-state supply, irrespective of his turnover.

SUPPLIES OUTSIDE INDIA WHICH DO NOT CONSTITUTE EXPORT

Supply of service to a person located outside India where place of supply of service is in India. For example – a property rented out in Mumbai to a person residing in Dubai; agent located in India providing service to a New York based exporter for selling goods to China.

- Supply of services where consideration is received in Indian currency or a currency other than convertible currency. For example supply of consultancy service by an Indian consulting firm to an overseas entity, payment for which is made in Indian rupees by Indian branch of overseas entity.
- Services provided to overseas branch would not be eligible as export of services due to specific exclusion for such transactions in the definition of “export of service”.

- (7) “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

Commentary :

Fixed establishment refers to a place-

- (1) Having a sufficient degree of permanence
- (2) Having a structure of human and technical resources
- (3) Other than the registered place of business.

- (8) “Goods and Services Tax (Compensation to States) Act” means the Goods and Services Tax (Compensation to States) Act, 2017;

- (9) “Government” means the Central Government;

- (10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Commentary :

Import means physical movement of goods into India from a place outside India by the active efforts on the part of any person(who may be situated in India or outside India).The goods are said to be brought into India, when the goods crosses the customs frontiers of India, i.e., the limits of the customs are as defined in Section 2 of the Customs Act. For example goods imported from France by a company incorporated in Delhi and sold to Germany before being brought into India, this transaction doesnot amount to inter-state supply. But if the goods are cleared at the Mumbai port, then such transaction will amount to Inter-state supply and IGST

will be payable at Mumbai.

Imports of Goods will be treated as inter-state supplies and IGST will be levied on import of goods into the country. The place of supply will be the location of the importer. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods are consumed.

Full and complete set-off will be available on the IGST paid on import on goods.

As per GST Law, GST will subsume Countervailing Duty (CVD) and Special Additional Duty (SAD), however, Basic Customs Duty will continue to do its round in the import bills. The Integrated tax would be levied on the value of the goods as determined under Customs law plus custom duties levied on such imports. This in effect makes levy of IGST at par with previous levy of CVD which is on basic value plus customs duty. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

The time of levy of custom duties and integrated tax is the same.

The importer will be liable to pay integrated tax under Reverse charge basis and the same will have to be discharged by cash only and input tax credit cannot be utilised for discharging such a liability.

An importer has to compulsorily get registered irrespective of his turnover.

(11) "import of services" means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Commentary :

In order to consider any service as import of service, following conditions are required to be cumulatively satisfied:

- (a) The supplier of service is located outside India
- (b) The recipient of service is located in India
- (c) The place of supply of service is in India.

As per the IGST Act, supply of services in the course of import into the territory of India, shall be deemed as supply of services in the course of inter- State trade or commerce. Accordingly, Integrated Tax would be levied on import of services.

Where the supplier and recipient are mere establishments of a person, then such supplies would qualify as import of service.

Import of services for a consideration whether or not in the course or furtherance of business is deemed to be supply. Thus, in general, imports of services without consideration shall not be considered as supply. For example import of free services from Google and Facebook by all of us, without any consideration, are not considered as supply. Import (Downloading) of a

song for consideration for personal use would be a service, even though the same are not in the course or furtherance of business.

Import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration. Thus Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration, will be a supply and chargeable to GST.

- (12) "integrated tax" means the integrated goods and services tax levied under this Act;
- (13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Commentary :

An intermediary arranges or facilitates supply of goods or services or both, or securities between two or more persons. Eg: Tea Broker, Travel Agent. The test of agency must be satisfied between the principal and the agent. The consideration for intermediary is in the nature of a fee or commission charged by him.

The place of supply in relation to intermediary services is the location of the service provider.

- (14) "location of the recipient of services" means,—
- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
 - (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
 - (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - (d) in absence of such places, the location of the usual place of residence of the recipient;

Commentary :

Location of the recipient of service is essential to determine the place of supply of service, that is, whether the supply is a inter-state supply or a Intra- state supply.

Where the services received at a place of business for which registration is obtained - location of such registered place of business.

Where the services received at a place other than the registered place of business, being a fixed establishment having sufficient degree of permanence involving human and technical resources - location of such fixed establishment.

Where services are received at more than one establishment – location of the establishment most directly concerned with the receipt of the supply

Services received at a place other than above, i.e., received at a place which is neither the registered place of business nor a fixed establishment – Location of the usual place of residence of the recipient. Usual place of residence means-

- (a) In case of individuals, the place where he ordinarily resides.
- (b) In other cases, the place where the person is incorporated or otherwise legally constituted.

(15) "location of the supplier of services" means,—

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

Commentary :

Location of the supplier of service is essential to determine the place of supply of service, that is, whether the supply is a inter-state supply or a Intra- state supply.

Where the services are made from a place of business for which registration is obtained - location of such registered place of business.

Where the services are made from a place other than the registered place of business, being a fixed establishment having sufficient degree of permanence involving human and technical resources - location of such fixed establishment.

Where services are made from more than one establishment – location of the establishment most directly concerned with the provision of the supply

Services made from a place other than above, i.e., made from a place which is neither the registered place of business nor a fixed establishment – Location of the usual place of residence of the recipient. Usual place of residence means-

- (a) In case of individuals, the place where he ordinarily resides.
- (b) In other cases, the place where the person is incorporated or otherwise legally constituted.

- (16) “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.—For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

- (17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

Commentary :

This definition is in line with the provisions of the Service tax laws. An indicative list of services that would not be covered under OIDAR services are:-

- (1) Supplies of goods, where the order and processing is done electronically
- (2) Supplies of physical books, newsletters, newspapers or journals
- (3) Services of lawyers and financial consultants who advise clients through email
- (4) Booking services or tickets to entertainment events, hotel accommodation or car hire
- (5) Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link)
- (6) Offline physical repair services of computer equipment
- (7) Advertising services in newspapers, on posters and on television

In case the supplier of online Information and Database Access or Retrieval (OIDAR) services located in a non-taxable territory provides services to a non-taxable online recipient, the

supplier of service would be liable to obtain registration and pay IGST. This is a case of B2C (Business to Customer) transaction. In case of B2B transaction, OIDAR will be taxable in the hands of the recipient of service under reverse charge mechanism.

- (18) "output tax", in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

Commentary :

The amount covered under output tax is the amount of tax 'chargeable' and not the amount that has been charged by the supplier. In case a person wrongly charges/excess tax, as compared to the applicable tax rate, such excess amount would not qualify for output tax.

Further exclusion of tax payable under reverse charge basis from 'output tax' implies that no input tax credit can be utilized for making payment of tax payable under reverse charge mechanism and such liability can be discharged by way of cash payment through the electronic cash ledger.

Tax payable on supplies made by an agent on behalf of the supplier will be treated as output tax in the hands of the supplier.

- (19) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

Commentary :

"Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes a Special Economic Zone existing as on 10.02.2006, when the SEZ Act and rules were made effective.

- (20) "Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

Commentary :

Supplies to SEZ developer/unit is regarded as Zero-rated supplies.

- (21) "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;
- (22) "taxable territory" means the territory to which the provisions of this Act apply;

Commentary :

Taxable territory is the whole of India including the State of Jammu & Kashmir.

- (23) "zero-rated supply" shall have the meaning assigned to it in section 16;

Commentary :

Zero rated supply means any of the following supplies of goods or services or both namely-
(a) Export of goods or services or both or
(b) Supply of goods or services or both to a Special Economic Zone (SEZ) developer or an SEZ unit.

Under zero rated supply, the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

- (24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;
- (25) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

CHAPTER II

ADMINISTRATION

3. APPOINTMENT OF OFFICERS.

The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

Commentary :

Both CGST and IGST is administered by the Central Government, hence officers of central tax (CGST) are appointed as officers of IGST.

4. AUTHORISATION OF OFFICERS OF STATE TAX OR UNION TERRITORY TAX AS PROPER OFFICER IN CERTAIN CIRCUMSTANCES.

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Commentary :

In order to maintain uniformity in administration of notified supplies or notified category of taxable persons which are exclusively left under the CGST Act to be administered by the officers of State/UT tax.

CHAPTER III

LEVY AND COLLECTION OF TAX

5. LEVY AND COLLECTION.

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Commentary :

This is the charging section of IGST Act which mandates the levy and collection of the Integrated tax by the authority of law. It provides that all inter-state supplies would be liable to IGST at the rate notified by the Government on the recommendation of the GST Council. The maximum rate at which Government can levy IGST is 40%. However currently, the highest rate at which it has been levied is 28%(as decided at the 14th GST council meeting)

The levy is on all goods or services or both except alcoholic liquor for human consumption.

Value of imported goods on which IGST shall be levied as under

- (a) Value of imported article determined under Section 14(1) of the Customs Act or tariff value of such article under Section 14(2) of the Customs Act;
- (b) Duty of customs leviable on that article under section 12 of the Customs Act and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include any tax referred to in section 3(7) or the cess referred to in section 3(9) of the Customs Tariff Act.

Thus, IGST on imports will be levied at value of imported article as determined under the Customs Act plus duty of customs and any other sum chargeable in addition to customs duty (excluding GST and GST Cess).

There is no threshold limit in case of inter-state supplies and hence supplier making inter-state outward supplies needs to compulsorily register himself. Thus no unregistered person can undertake outward inter-state supply. However an unregistered person can undertake inward inter-state supply of goods and/services.

Section 9 of the CGST Act and Section 7 of the UTGST Act are the respective charging sections comparable to Section 5 of the IGST Act.

- (2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

Commentary :

Petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under its regime from such date as may be notified by the Government.

- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (4) The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Commentary :

Normally GST is payable by the supplier of goods or services. However when the same is payable by the recipient of goods/services, it is called reverse charge. The term "reverse charge" is defined under section 2 (98) of CGST Act.

The government on the recommendation of the GST Council may specify the categories of goods and services on which tax shall be payable by the recipient of supply under reverse charge mechanism. Again the registered person shall be liable to discharge tax in respect of supply of taxable goods and /services from an unregistered person. In case of import of services the importer is required to pay tax under reverse charge mechanism and will be governed by the provisions of Section 5(4) of the IGST Act.

- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Commentary :

Besides, the recipient of service, tax under reverse charge shall also be payable by a person who is neither a supplier of goods or services nor a recipient of goods or services or both. For example in respect of Radio Taxi or Passenger Transport services provided through Electronic Commerce operator, 100 % GST shall be payable by the Electronic Commerce operator who is neither a supplier of service nor a service recipient.

In case the electronic commerce operator does not have any physical presence in India, but has a representative in India, then the representative shall be liable to pay tax and in the absence of the representative in India, he shall mandatorily be required to appoint a person who shall be liable to pay tax.

6. POWER TO GRANT EXEMPTION FROM TAX

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Commentary :

An exemption may be conditional or absolute. When exemption has been granted absolutely, i.e. it is not subjected to any condition or the happening of any event, it is mandatory. The Government may subject to the following conditions, grant exemptions from the payment of IGST on inter-state supplies:-

- (1) Exemptions should be in public interest
- (2) On recommendation of GST council
- (3) By way of a notification
- (4) Absolute/ conditional exemption
- (5) Exemption by way of special order citing circumstances which are of special nature.

Government can issue the circular or insert explanation which will be retrospective. However this has to be issued within one year of issue of original notification.

CHAPTER IV

DETERMINATION OF NATURE OF SUPPLY

7. INTER-STATE SUPPLY.

(1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both,—

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Commentary :

To summarize:-

Inter-state Supply

- Supply of goods from one State or Union Territory to another State or Union Territory

- Supply of services from one State or Union Territory to another State or Union Territory
- Import of goods till they the cross customs frontier
- Import of services
- Export of goods or services
- Supply of goods/services to/by SEZ
- Supplies to international tourists
- Any other supply in the taxable territory which is not intra-State supply

Under Inter- state supply two terms hold specific attention:

- (1) Location of the supplier and
- (2) The place of supply

Location of supplier: The Act specifically defines location of supplier of service but not location of supplier of goods. The same shall be determined on the facts of each case. Also inference can be drawn from the definition of location of supplier of service.

Place of supply: Place of supply is a targeted area where the goods are deemed to be supplied by the supplier to recipient to complete delivery of such goods. Delivery is when recipient acknowledges satisfactory performance by the supplier. It is the act that discharges the supplier from further responsibility towards the recipient in respect of the goods supplied. Understanding this concept is extremely important as it determines the nature of supply which in turn decides what taxes are to be levied on that supply. Section 10 to 13 guides us to understand the place of supply of goods or services under GST law.

Supply of goods and/services where the location of the supplier and place of supply are in two different states or two different Union territories or a State or Union Territory, such supply of goods and/services shall be treated as inter-state supply. While inter-state supply of goods is subject to Section 10 of the IGST Act, inter-state supply of services is subject to Section 12 of the IGST Act.

Import of goods: The supply of goods brought into India in the course of import till they cross the customs frontiers of India, will be considered as Inter-state supply of goods. Accordingly, as per Section 5 of the IGST Act, IGST will be payable. Thus imports in India will attract IGST alongwith basic custom duty and other surcharges.

Import of services: As per the provisions contained in Section 7(1)(b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business is deemed to be supply and as per the IGST law, supply of services in the course of import into the territory of India, shall be deemed as supply of services in the course of inter- State trade or commerce. Accordingly, Integrated Tax would be levied on import of services.

Export of goods and/services: Supply of goods and/services where the location of the supplier in India and the place of supply is outside India, shall be treated as supply of goods and/services in the course of inter-state supply. For example a trader of Mumbai supplies/exports goods from Mumbai to USA, the place of supply being outside India, supply of goods shall be treated as in the course of inter-state trade or commerce.

Supply to and by SEZ developer/SEZ unit: For example a Registered person(non SEZ) located in Assam supplying goods to SEZ unit in Assam is an inter-state supply; SEZ unit in Kolkata supplying goods to another SEZ unit is also supply in the course of inter-state

supply; Disposal of scrap by a SEZ unit in Kolkata to a trader in Kolkata is also inter- state supply; export of goods by a SEZ unit in Chennai to a customer in Germany is also inter- state supply.

Further any supply that falls outside the scope of intra-state supply will not escape GST and would be treated as an inter-state supply.

8. INTRA-STATE SUPPLY.

- (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:—

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

- (2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1.—For the purposes of this Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

Explanation 2.—A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Commentary :

To summarize:-

Intra-state supply

- Supply of goods within the State or Union Territory.
- Supply of services within the State or Union Territory

Under Intra- state supply two factors location of the supplier and place of supply are to be considered. Supply of goods and/services where the location of the supplier and place of supply are in the same state or same Union territory, such supply of goods and/services shall be treated as intra-state supply. While intra-state supply of goods is subject to Section 10 of the IGST Act, intra-state supply of services is subject to Section 12 of the IGST Act.

Location of supplier of goods is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. Location of supplier of service has been defined in Section 2(15) of the IGST Act.

There are three exceptions carved out in this provision, namely

- (i) supply to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to outbound tourist as referred to in section 15.

Thus the above three exceptions have to be treated as inter-state supply.

9. SUPPLIES IN TERRITORIAL WATERS.

Notwithstanding anything contained in this Act,—

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
- (b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Commentary :

Definition of 'India' as per Section 2(56) of the CGST Act is wide and covers all landmass of India plus 200 nautical miles inside sea, sea bed and air space above land and territorial waters. Section 3 of the Territorial waters, Continental Shelf, Exclusive Economic and other Maritime Zone Act, 1976 specifies territorial water extends upto 12 nautical miles from the baseline on the coast of India and include any bay, gulf, harbour, creek or tidal river.

Area upto 12 nautical miles belongs to States/Union Territory as per Section 9 of the IGST Act. Section 9 links location of the supplier and place of supply on the territorial waters to the landmass of India to determine the actual location of the supplier and place of supply. For example, if repair services are provided by a company in Mumbai on a ship moored off the coast of Mumbai for a shipping company from America, the place of supply of the repair services is not waters but Mumbai and the location of supplier and place of supply both being in the same state, it would be a intra-state supply. But if the location of the company providing repair services is in Delhi, then location of supplier and place of supply would be in two different states, and it would be inter-state supply.

If supply is beyond 12 nautical miles but upto 200 nautical miles, it is treated as inter-state

supply and IGST is payable. Beyond 200 nautical miles, the area is 'High sea sale' where all countries have equal rights and no Indian jurisdiction can be exercised on High sea.

Transactions taking place before filing of bill of entry are termed as High Sea Sale where the original importer sells the goods to a third person before the goods enter for customs clearance. Thus High sea sale means sale in the course of imports. High sea sale transactions or imports will attract IGST only once at the hands of the last importer on the final price of the item. It shall be levied and collected at the time when the import declarations are filed before the customs authorities for the custom clearance purposes for the first time.

CHAPTER V

PLACE OF SUPPLY OF GOODS OR SERVICES OR BOTH

Commentary :

The provisions governing the place of supply are very important as whether a supply is an inter-state supply or an intra-state supply or in import or an export, are all decided based upon these provisions.

10. PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA.

- (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—
- (a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

Commentary :

- A situated in Kolkata supplies goods to B situated in Delhi. Place of supply: -Delhi, being place where movement of goods terminates.
- Dolon situated in Delhi sells goods to Karan situated in Kolkata on ex-works basis where point of delivery is Dolon's factory premises. Place of supply: Delhi, being place where movement of goods for delivery terminates, even though goods subsequently move to Kolkata.
- Dolon situated in Delhi sells goods to Karan situated in Kolkata on FOR basis where point of delivery is factory premises of Karan. Place of supply: Kolkata, being place where movement of goods for delivery terminates.

- (b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of

title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

Commentary :

This is a case of 'Bill to Ship' transaction.

- A of Assam places an order to B of Haryana to supply spare parts and instructs him to deliver the spare parts to C of U.P. directly to save transportation cost. Goods are delivered to C of U.P., the recipient of goods, on the direction of the third person, A of Assam by the supplier of goods, B of Haryana. Place of supply: Assam being principal place of business of A who had placed the order. IGST will be payable at Haryana.
- A in Maharashtra receives an order from B in London to deliver 100 cell phones at C in Maharashtra. On application of section 10(1)(b) place of supply will be London. The question arises will this transaction be taxed even if the place of supply is London?

Transaction between A in Maharashtra and B in London is Export of goods but as per the definition of Export of goods, goods must move out of India. But here, goods does not move out of India. Section 7(5)(a) states that supply of goods or services or both when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce. In the present case Supplier A is in India and place of supply is outside India, London, so the transaction is inter-state supply and IGST will be payable.

Transaction between B of London and C of Maharashtra is a case of import, but again as per definition of import of goods are not coming into India from outside India. This transaction will be covered under Section 7(5)(c) which states that supply of goods or services or both in the taxable territory, not being an intra-state supply and not covered elsewhere in section 7 shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

In the present case supply is within the taxable territory, Maharashtra but the supplier is located outside India, so the transaction cannot be intra state supply and hence not covered under Section 7, so shall be treated as supply in the course of inter- state trade or commerce. Hence transaction between B and C is inter-state supply and IGST will be payable.

- (c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

Commentary :

- Dolon situated in Delhi supplies goods to Karan of Kolkata where goods will be retained in Dolon's factory for future job works. Place of supply: Delhi, being location of goods as supply does not involve any movement of goods.

- Bharat Limited registered in Maharashtra sold its pre-installed transmission tower (electric tower) located at Madhya Pradesh to Hindustan Limited registered in Delhi. Place of supply: Madhya Pradesh, being location of goods as supply does not involve any movement of goods.

- (d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

Commentary :

- Dolon situated in Delhi enters in a contract with Karan of Kolkata for supply and installation of machine in Karan's factory. Place of supply: Kolkata, being place of installation or assembly of goods.

- The principal laid down in this section can be summarized as under:

Location of the supplier (Regd office of the supplier)	Location of the recipient (Regd office of the recipient)	Place of Assembly or installation at site	Place of supply
Delhi	Haryana	Delhi	Delhi
Delhi	Haryana	Haryana	Haryana
Delhi	Haryana	Uttar Pradesh	Uttar Pradesh

- (e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Commentary :

- Anil of Delhi enters into contract with an airline situated in Maharashtra for sale of gift items in the flight from Delhi to Mumbai. Place of supply: Delhi, being location where goods are taken on board.

- (2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

Commentary :

This sub-section provides for situations which are not specifically covered by Section 10(1), the place of supply of goods shall be determined in accordance with the rules made by the Central Government.

11. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA.

The place of supply of goods,—

- (a) imported into India shall be the location of the importer;

- (b) exported from India shall be the location outside India.

Commentary :

The place of supply of goods,—

- (a) imported into India shall be the location of the importer;
(b) exported from India shall be the location outside India

Location of the importer is not specifically defined in the Act but inference can be drawn from location of recipient of service.

For example: If A from Mumbai imports goods from Germany. Place of supply : Mumbai, being the location of the importer. IGST payable

A from Mumbai exports goods to Germany. Place of supply : Germany, being location outside India. No GST shall be payable.

12. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA.

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

Commentary :

The provisions of this section deals with Domestic transactions where the location of both the parties i.e the supplier as well as recipient of service are in India. Domestic transactions can be further categorized as below:

Inter-State (i.e between two different states)
Intra-State (i.e within the same state)

- (2) The place of supply of services, except the services specified in sub-sections (3) to (14),—
- (a) made to a registered person shall be the location of such person;
- (b) made to any person other than a registered person shall be,—
- (i) the location of the recipient where the address on record exists; and
- (ii) the location of the supplier of services in other cases.

Commentary :

General Rule

In general, the place of supply for services will be the location of the service recipient (the

recipient needs to be a registered person). In cases, where service is provided to an unregistered person, the place of supply will be the:

- (1) Location of the service recipient (if the address is available on record);
- (2) Otherwise, location of service provider

There are specific provisions regarding place of supply that will apply in priority over the general provisions mentioned below.

(3) The place of supply of services,—

- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

Commentary :

Nature of Service	Place of Supply
Directly relating to immovable property	
(a) If property is located in India	Place where immovable property is located.
(b)if property is located outside India	Location of recipient.

Example: If Mr. A of Kolkata has property in Delhi and avails architect services from B of Bengaluru, then place of supply would be Delhi as the supplier, recipient and property are located in India. So IGST will be payable. However, if such property is located in Japan, then place of supply will be Kolkata, i.e., location of service recipient.

- (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
- (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
- (d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services

separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Commentary :

- Example: Rajesh of Assam provides its hotels located in Chandigarh and Delhi to Anil situated in Rajasthan for organizing offsite for Anil's employees. Place of supply: Chandigarh and Delhi (in proportionate to the value of service in each state) being location of immovable property. IGST is payable.

- (4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

Commentary :

Nature of Service	Place of Supply
Performance based services namely restaurant & catering, personal grooming, fitness, beauty treatment, health services including cosmetic & plastic surgery	Where services are actually performed

Example – Mr. P of Kerala visits Jaisalmer for a vacation and avails services of gym and parlour. The place of supply would be Jaisalmer as the actual services are supplied there. CGST + Rajasthan GST would be payable at Jaisalmer.

- (5) The place of supply of services in relation to training and performance appraisal to,—
- (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location where the services are actually performed.

Commentary :

Nature of Service	Place of Supply
Training and performance appraisal	
(a) If the recipient is registered	Location of the recipient
(b) If the recipient is not registered	Where services are actually performed

Example – Rajesh situated in Rajasthan engages Anil of Assam to provide training to its employees in Thailand. Place of supply: If Rajesh is a registered person(B2B)- Place of supply is Rajasthan being location of service recipient. IGST will be payable at Assam. If Rajesh is an unregistered person (B2C)- Place of supply is Thailand being location where service is performed.

- (6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other

place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

Commentary :

Nature of Service	Place of Supply
Admission to an event, park etc	Where event is held

Example –

Mr. M of Manipur goes to Mumbai and purchases ticket for watching a movie at a Mumbai Cinema Hall. The place of supply would be Mumbai. CGST +Maharashtra GST will be payable.

- (7) The place of supply of services provided by way of,—
- (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
 - (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—
 - (i) to a registered person, shall be the location of such person;
 - (ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Commentary :

Nature of Service	Place of Supply
Organizing an event including ancillary services	
(a) If the recipient is registered	Location of the recipient
(b) If the recipient is not registered	Location of the Venue of the event

Example – A situated in Delhi organizes an event in Haryana and Gujarat for B situated in Gujarat. Place of supply: If B is a registered person(B2B)- Gujarat being location of service recipient. IGST will be payable. If B is an unregistered person (B2C)- Haryana and Gujarat being location of the venue of the event.

- (8) The place of supply of services by way of transportation of goods, including by mail or courier to,—
- (a) a registered person, shall be the location of such person;

- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Commentary :

Nature of Service	Place of Supply
Transportation of goods including Mail or Courier	
(a) If the recipient is registered	Location of the recipient
(b) If the recipient is not registered	Location at which such goods are handed over for transportation

Example – A situated in Delhi avails courier services of B situated in Haryana and hands over the goods to B in Maharashtra. Place of supply: If A is a registered person (B2B)- Delhi being location of service recipient. IGST will be payable at Delhi.

- (9) The place of supply of passenger transportation service to,—
- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

Commentary :

Nature of Service	Place of Supply
Passenger Transportation Services	
(a) If the recipient is registered(B2B)	Location of the recipient
(b) If the recipient is not registered(B2C)	Place where the passenger embarks on the conveyance for a continuous journey .

Example –

Person travelling by bus from Mumbai to Goa and back to Mumbai.	If the person is not registered, the place of supply for the forward journey from Mumbai to Goa shall be Mumbai - the place where he embarks. However, for the return journey, the place of supply shall be Goa as the return journey has to be treated as separate journey.
A ticket/ pass for travel anywhere in India issued by Air India to a person	The place of embarkation will not be available at the time of issue of

	invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such cases, the default rule shall apply i.e. the location of recipient if he is registered or his address on record. Otherwise location of service provider.	
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- (10) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

Commentary :

Nature of Service	Place of Supply
Service on board a conveyance	First scheduled point of departure

Example – A caterer is providing catering services on-board in train during Mumbai-Goa-Mangalore which is not included in fare charges. The place of supply of service shall be the location of the first scheduled point of departure of that conveyance for the journey i.e. Mumbai.

- (11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—
- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
 - (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
 - (c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—
 - (i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
 - (ii) by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;
 - (d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Commentary :

S. No.	Description	Location		Others
		Service recipient	Service provider	
1	For fixed line, leased circuits, internet leased circuits , cable connection or dish antenna	X	X	Where installed for receipt of service
2	Post-paid mobile and internet service	Billing address	X	-
3	Prepaid mobile, internet service and direct to home television service through voucher or any other means:			
	(a) Through selling agent or a reseller or a distributor	X	X	Address of such agent, reseller or distributor
	(b) By any person to the final subscriber	X	X	Where such pre-payment is received or voucher sold
	(c) For other cases			
	(i) Where address of the recipient is available as per records of the supplier	√	X	X
	(ii) Where address of the recipient is not available as per records of the supplier	X	√	X
	(iii) If prepaid service is availed or recharge is made through Internet banking or other electronic mode	√	X	X

- (12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

Commentary :

Nature of Service	Place of Supply
Banking & Financial service(including Stock broking)	
(a) if location of recipient is available on record of the supplier	Location of service recipient
(b) if location of the recipient of service is not available on record of the supplier	Location of service provider

Example – N of Delhi who has a saving bank account with Axis Bank of Delhi gets a DD issued from Axis Bank at Mumbai, the place of supply will be Delhi, being N's address as in the records with Axis Bank. However, if N gets a DD issued from HDFC Bank of Mumbai, without having a bank account there, the place of supply will be HDFC Mumbai

- (13) The place of supply of insurance services shall,—
- to a registered person, be the location of such person;
 - to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

Commentary :

Nature of Service	Place of Supply
Insurance service (whether provided to registered or non-registered person)	Location of service recipient (Location of service recipient on record in case of unregistered person)

Example – B, residing in Chandigarh travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in New Delhi. The place of supply is Chandigarh, being the location of the recipient on the records of the insurance company.

- (14) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Commentary :

In case of advertisement services involving dissemination of material supplied to the Government or statutory, place of supply will be the location of such dissemination identifiable to a specific state and where it is disseminated over number of states, then the rule of proportion or any other basis as may be prescribed.

13. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA.

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or

interior decorators, shall be the place where the immovable property is located or intended to be located.

- (5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.
- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.
- (8) The place of supply of the following services shall be the location of the supplier of services, namely:—
 - (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
 - (b) intermediary services;
 - (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.—For the purposes of this sub-section, the expression,—

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;
- (c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;
- (d) “non-banking financial company” means,—
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

- (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
- (9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.
- (10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.
- (11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.
- (12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:—

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
 - (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
 - (c) the billing address of the recipient of services is in the taxable territory;
 - (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
 - (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
 - (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
 - (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.
- (13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Commentary :

Section 13 of the IGST Act, 2017 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. Place of supply of a service shall be determined as to whether a service can be termed as import or export of service. The specific provisions relating to the place of supply for international supply of services are as below:

S.No	Situation	Place of supply
1	Default Rule other than specific situations mentioned below	Location of the recipient of services; If not available, location of the supplier of services.
2	Services supplied in respect of goods which are required to be made physically available	Location where the services are actually performed
	Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services	
2.1	Services are provided on goods but from a remote location by way of electronic means	Location where goods are situated at the time of supply of services
2.2	Above provisions is not applicable in respect of goods which are temporarily imported into India for repairs and are exported after repairs. In this case IGST is exempted if exported within 6 months of their import.	
3.	Services supplied directly in relation to an immovable property	Place where the immovable property is located or intended to be located
4.	Admission to, or organisation of an event	Place where the event is actually held
4.1	Above Services provided in more than one country including India	India
4.2	Above Services provided in more than one State/Union Territory	Proportionate basis
5	Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders	Location of the supplier of services
5.1	Intermediary services	
5.2	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
6	Transportation of goods, other than by way of mail or courier	Place of destination of such goods
7	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
8	Services provided on board a conveyance	First scheduled point of departure of that conveyance for the journey
9	Online information and database access or retrieval services (OIDAR)	Location of the recipient of services

14. SPECIAL PROVISION FOR PAYMENT OF TAX BY A SUPPLIER OF ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES.

- (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
 - (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
 - (c) the intermediary involved in the supply does not authorise delivery; and
 - (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.
- (2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Commentary :

Online information and database access or retrieval services is defined under section 2(17) of the IGST Act. Place of supply for online information and database access or retrieval services is location of recipient of services. If the online information and database access or retrieval service provider is located outside India and the services are provided to registered tax payer in India, the tax would be payable as import of service under reverse charge mechanism. In case of services provided to a non-taxable online recipient then the onus has been placed on the service provider to pay Integrated tax on such supply of services and such service provider is obliged under law to take registration in India. The registration can be taken by such service provider or by a person representing such service provider or a person appointed by such service provider.

CHAPTER VI

REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST

15. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA.

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Commentary :

All outbound tourist carrying goods on which IGST has been paid are entitled to claim refund at the port-of-exit. Only Integrated tax is eligible for refund. Person seeking such refund must be a tourist who have entered India for genuine non-migrant purposes.

CHAPTER VII

ZERO RATED SUPPLY

16. Zero rated supply.

- (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—
 - (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—
 - (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

Commentary :

'zero rated supply' means the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage. Section 17(2) of the CGST Act provides that input tax credit will not be available in respect of supplies that have 0% rate of tax but this disqualification doesnot apply to 'Zero rated supply'.

Sub section 16(1) of the IGST Act defines 'Zero rated supply' as follows:

Zero rated supply means any of the following supplies of goods or services or both namely-

- (b) Export of goods or services or both or
(c) Supply of goods or services or both to a Special Economic Zone(SEZ) developer or an SEZ unit.

Thus export of goods or services and supplies to a SEZ unit of its developer shall be treated as zero rated supply thereby entitles the said unit or developer for all benefits i.e. availment of input tax credit or refund of unutilized ITC.

The procedures relating to export have been simplified so as to do away with the paper work and intervention of the department at various stages of export. The salient features of the scheme of export under GST regime are as follows:

- The goods and services can be exported either on payment of IGST which can be claimed as refund after the goods have been exported, or under bond or Letter of Undertaking (LUT) without payment of IGST.
- In case of goods and services exported under bond or LUT, the exporter can claim refund of accumulated ITC on account of export. The exporter needs to file an application for refund on the common portal either directly or through a facilitation centre. An export manifest or report has to be filed under the Customs Act prior to filing an application for refund.
- In case of goods the shipping bill is the only document required to be filed with the Customs for making exports. Requirement of filing the ARE 1/ARE 2 has been done away with.
- The supplies made for export are to be made under self-sealing and self-certification without any intervention of the departmental officer.
- The shipping bill filed with the Customs is treated as an application for refund of IGST and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return by the applicant.

The procedure in respect of supplies made for export is same for both, merchant exporter and manufacturer exporter.

Under the GST Law, supplies to SEZ units or SEZ developer have been accorded inter-state supplies and any supplier making inter-State supplies has to compulsorily get registered under GST. Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration.

Sub section 16(2) of IGST Act provides that a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. Once goods are exported under a bond or letter of undertaking, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made thereunder.

Exempt supply means supply of any goods or services or both which attracts nil rate of duty or which may be wholly exempt from tax under section 11 or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Refund is allowed of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies

Further refund of unutilized input tax credit shall be allowed only in case of zero rated supplies made without payment of tax or in cases where the credit has accumulated on account of rate tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies – first proviso to section 54(3) of CGST Act.

No refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty – second proviso to section 54(3) of CGST Act.

No refund of input tax credit shall be allowed if the supplier of goods or services avails duty drawback of CGST / SGST / UTGST or claims refund of IGST paid on such supplies – third proviso to section 54 (3) of CGST Act.

Drawback – “Drawback” in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods – section 2(42) of CGST Act.

In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

In the case of refund of IGST paid on exports: Upon receipt of information regarding furnishing of valid return by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

An exporter will be required to pay GST in case of goods procured from unregistered persons (including unregistered job workers under reverse charge mechanism. However the exporter can avail ITC of such GST paid and either utilise the ITC or claim refund of the same.

CHAPTER VIII

APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

17. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

- (1) Out of the integrated tax paid to the Central Government,—
- (a) in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
 - (b) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;
 - (c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;
 - (d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
 - (e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;
 - (f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,

the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

- (2) The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the,—
- (a) State where such supply takes place; and
 - (b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to,—

- (a) each of the States; and
- (b) Central Government in relation to Union territories,

in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

- (3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, mutatis mutandis, apply to the apportionment of interest, penalty and compounding amount realised in connection with the tax so apportioned.
- (4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.
- (5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

Commentary :

Of the IGST paid on inter-state supplies to unregistered recipient, composition taxable person, registered taxable person not eligible to input tax credit or registered person eligible to input tax credit but does not avail it within the specified period and IGST paid on import of goods or services shall be apportioned to the Central government equivalent to the amount of central tax applicable on such supplies in intra-state supply. The balance amount remaining shall be apportioned to the respective State or Union territory to the extent of their respective share or in proportion to the total supplies made by taxable persons in each such state/UT compared to total inter-state supplies during the financial year.

18. TRANSFER OF INPUT TAX CREDIT.

On utilisation of credit of integrated tax availed under this Act for payment of,--

- (a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;
- (b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and the Central Government shall transfer

an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;

- (c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilised and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

Explanation.—For the purposes of this Chapter, “appropriate State” in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

Commentary :

ITC of IGST can be utilized for payment of tax and allocated in the following manner:

ITC	To be utilized in the prescribed order	Allocation to
Credit of IGST paid availed	IGST	Union – Integrated tax account
	CGST	Union – Central tax account Government
	SGST/UTGST	State/Union-respective State tax account/ respective UT tax account

Example - A of Maharashtra sells goods to B of Maharashtra, GST rate 18%, So tax charged is CGST - 9% and SGST - 9%. B further sells to R of Rajasthan, GST rate 18%, IGST will be 18%. B can utilize the credit of CGST and SGST for the payment of IGST. The credit of SGST used in the payment of IGST will transferred to the centre by the exporting state.

R of Rajasthan sells goods to S of Rajasthan, GST rate 18%, tax charged is CGST - 9% and SGST - 9%. If R utilizes the credit of IGST for the payment of SGST, then centre will transfer to the importing state the credit of IGST used in the payment of SGST.

19. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT

- (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

Commentary :

A Taxable person who had paid tax in error is entitled to refund only after the discharge of the correct tax due so that the incorrect tax paid due to wrong classification of tax, reflects on the common portal as 'paid in excess'. No interest is payable on such IGST paid due to payment of CGST,SGST/UTGST on transactions which later was held as inter-state.

CHAPTER IX

MISCELLANEOUS

20. APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT.

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;
- (xiii) refunds;
- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;

- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

21. IMPORT OF SERVICES MADE ON OR AFTER THE APPOINTED DAY.

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

Commentary :

Section 21 of the IGST Act, 2017, provides that all imports of services made on or after the appointed day will be liable to integrated tax regardless of whether the transactions for such import of services had been initiated before the appointed day. The explanation attached to this section provides that a transaction is deemed to have been initiated before the appointed date where either the invoice of such supply or the payment relating to such supply has been made either in full or part before the appointed date.

However, if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under the IGST Act. In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act. For instance, suppose a supply of service for rupees one crore was initiated prior to the introduction of GST, a payment of Rs. 40 lacs has already been made to the supplier and service tax has also been paid on the same, the integrated tax shall have to be paid on the balance Rs. 60 lacs.

22. POWER TO MAKE RULES.

- (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

23. POWER TO MAKE REGULATIONS.

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

24. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS.

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so,

however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

Commentary :

Any notification, rules issued will have to be tabled before each house of the parliament either in the same session or one or two or more successive sessions immediately following the sessions when such rules / notifications were issued and the same has to be agreed by both houses and if the same is modified by both houses, then such rules and regulations may be annulled but it will be prospective. Procedure for laying down / modifications of rules, regulations, notifications is specified.

24. REMOVAL OF DIFFICULTIES.

- (1) If any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

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THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

Commentary :

A separate Act is implemented for Union Territory states to impose and administer Goods and Service Tax (GST) in India in the name of The Union Territory Goods and Service Tax Act, 2017 (UTGST).

The Constitution (One Hundred and first Amendment) Act, 2016 inserted a new clause, Clause 26B in Article 366 of the Constitution. As per this clause, "State" with reference to Articles 246A, 268, 269, 269A, and 279A includes a Union territory with Legislature.

Even 'State' for the purposes of GST, includes a Union territory with Legislature. Delhi and Puducherry are Union Territories with legislature and are considered as "States".

Technically SGST cannot be levied in a Union Territory without legislature. This applies to following Union Territories of India: Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh.

To plug this loophole, GST Council has decided to have Union Territory GST Law (UTGST) – which would be at par with State Goods and Service Tax (SGST). As per Article 246(4) of Constitution, the Parliament has powers to make laws with respect to any matter for any part of the territory of India, which is not included in the State, including the matters enumerated in State List. Therefore, with the approval from the GST Council, the Central Government passed the UTGST Law in the Parliament.

Thus following combination of taxes will be applicable for any transaction:-

1. For Supply of goods and/or services within a state (Intra-State): CGST + SGST;
2. For Supply of goods and/or services within Union Territories (Intra-UT): CGST + UTGST;
3. For Supply of goods and/or services across States and/or Union Territories (Inter-State/ Inter-UT): IGST

Order of utilization of Input Tax Credit of UTGST would be the same like SGST. This means, Input Tax Credit of SGST or UTGST would first set-off against SGST or UTGST respectively output tax liabilities and balance, if any, can be set-off against IGST output tax liabilities.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

NO. 14 OF 2017 [12th April, 2017]

An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Union territories and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) This Act may be called the Union Territory Goods and Services Tax Act, 2017.
- (2) It extends to the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

DEFINITIONS

In this Act, unless the context otherwise requires,—

- (1) "appointed day" means the date on which the provisions of this Act shall come into force;
- (2) "Commissioner" means the Commissioner of Union territory tax appointed under section 3;
- (3) "designated authority" means such authority as may be notified by the Commissioner;
- (4) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;
- (5) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
- (6) "Government" means the Administrator or any Authority or officer authorised to act as Administrator by the Central Government;
- (7) "output tax" in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;
- (8) "Union territory" means the territory of,—
 - (i) the Andaman and Nicobar Islands;
 - (ii) Lakshadweep;

- (iii) Dadra and Nagar Haveli;
- (iv) Daman and Diu;
- (v) Chandigarh; or
- (vi) other territory.

Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (i) to (vi) shall be considered to be a separate Union territory;

- (9) “Union territory tax” means the tax levied under this Act;
- (10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER II

ADMINISTRATION

OFFICERS UNDER THIS ACT

The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:

Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.

AUTHORISATION OF OFFICERS

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.

POWERS OF OFFICERS

- (1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

AUTHORISATION OF OFFICERS OF CENTRAL TAX AS PROPER OFFICER IN CERTAIN CIRCUMSTANCES

- (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) Subject to the conditions specified in the notification issued under sub-section (1),
 - (a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

- (b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.
- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER III

LEVY AND COLLECTION OF TAX

LEVY AND COLLECTION

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding 20%, as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- (2) The Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

Commentary :

Section 7 is the charging section. For all Intra-Union territory transactions- CGST + UTGST will be levied. The maximum rate at which Government can levy UTGST is 20%. However currently, the highest rate at which it has been levied is 14% (as decided in the 14th GST council meeting).

Alcoholic liquor for human consumption is outside the ambit of GST. Further petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under its regime from such date as may be notified by the Government.

- (3) The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (4) The Union territory tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Commentary :

Section 7(3) and Section 7(4) are similar to the provisions of Section 9(3) and 9(4) of the CGST Act. In respect of certain services and goods, as may be notified by the government, tax has to be paid under reverse charge basis. That is, tax needs to be paid by the recipient of goods/services.

Again the registered person is required to pay tax under reverse charge in respect of inward supply of taxable goods or services or both from an unregistered person.

- (5) The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Commentary :

Any supplies made through E-Commerce operator, E-Commerce operator will be liable to pay UTGST on services as may be specified under the notification. E-Commerce will have to obtain compulsorily registration in India even though his physical presence may not be in taxable territory.

POWER TO GRANT EXEMPTION FROM TAX

- (1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

Commentary :

The centre may exempt certain goods and services from the purview of UTGST through a notification. This will be based on the recommendations of the GST Council.

- (3) The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every

such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

- (4) Any notification issued by the Central Government under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or, as the case may be, an order issued under this Act.

Explanation: For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Commentary :

An exemption may be conditional or absolute. When exemption has been granted absolutely, i.e. it is not subjected to any condition or the happening of any event, it is mandatory.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER IV

PAYMENT OF TAX

PAYMENT OF TAX

The amount of input tax credit available in the electronic credit ledger of the registered person on account of,

- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
- (b) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
- (c) the Union territory tax shall not be utilised towards payment of central tax.

Commentary :

ITC can be utilized for payment of tax in the following manner:

Nature of ITC	First to be utilized against	Then to be utilized against
IGST	IGST	- CGST - UTGST (in the above order)
CGST	CGST	IGST
UTGST	UTGST	IGST

UTGST balance to be utilised first for UTGST liability and then IGST liability.

The credit of CGST cannot be used for the payment of UTGST and vice versa. Thus UTGST will be at par with SGST, order of utilization of Input Tax Credit of UTGST would be the same like SGST.

The Tax liability Ledger reflects the total tax liability of a taxpayer (after netting) for the particular month.

TRANSFER OF INPUT TAX CREDIT

On utilisation of input tax credit of Union territory tax for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, as reflected in the valid return furnished under sub-section (1) of section 39 of the Central Goods and Services Tax Act, the amount collected as Union territory tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the Union territory tax account to the integrated tax account in such manner and within such time as may be prescribed.

Commentary :

If, for the payment of UTGST output tax liability, input tax credit of IGST is taken, the Central Government shall transfer amount equal to the IGST credit availed to the Union territory in such manner and within such time as may be prescribed.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER V

INSPECTION, SEARCH, SEIZURE AND ARREST

OFFICERS REQUIRED TO ASSIST PROPER OFFICERS.

- (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, and officers of central tax and officers of the State tax shall assist the proper officers in the implementation of this Act.
- (2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

Commentary :

All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, and officers of central tax will assist the tax administrative officers in the implementation of this Act.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER VI

DEMANDS AND RECOVERY

TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR UNION TERRITORY GOVERNMENT

- (1) A registered person who has paid the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of the central tax and the Union territory tax payable.

Commentary :

If UTGST has paid instead of IGST then refund application to be made for obtaining such wrong payment. If IGST has been paid instead of UTGST then UTGST will be required to be paid without any interest.

RECOVERY OF TAX

- (1) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of central tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of central tax and credit the amount so recovered to the account of the Government under the appropriate head of Union territory tax.
- (2) Where the amount recovered under sub-section (1) is less than the amount due to the Government under this Act and the Central Goods and Services Tax Act, the amount to be credited to the account of the Government shall be in proportion to the amount due as Union territory tax and central tax.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER VII

ADVANCE RULING

DEFINITIONS

In this Chapter, unless the context otherwise requires,

- (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the Central Goods and Services Tax Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) "Appellate Authority" means the Appellate Authority for Advance Ruling constituted under section 16;
- (c) "applicant" means any person registered or desirous of obtaining registration under this Act;
- (d) "application" means an application made to the Authority under sub-section (1) of section 97 of the Central Goods and Services Tax Act;
- (e) "Authority" means the Authority for Advance Ruling, constituted under section 15.

CONSTITUTION OF AUTHORITY FOR ADVANCE RULING

- (1) The Central Government shall, by notification, constitute an Authority to be known as the (name of the Union territory) Authority for Advance Ruling:

Provided that the Central Government may, on the recommendations of the Council, notify any Authority located in any State or any other Union territory to act as the Authority for the purposes of this Act.

- (2) The Authority shall consist of
 - (i) one member from amongst the officers of central tax; and
 - (ii) one member from amongst the officers of Union territory tax,to be appointed by the Central Government.
- (3) The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

CONSTITUTION OF APPELLATE AUTHORITY FOR ADVANCE RULING

- (1) The Central Government shall, by notification, constitute an Appellate Authority to be known as the (name of the Union territory) Appellate Authority for Advance Ruling for

Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority:

Provided that the Central Government may, on the recommendations of the Council, notify any Appellate Authority located in any State or any other Union territory to act as the Appellate Authority for the purposes of this Act.

- (2) The Appellate Authority shall consist of:
- (i) the Chief Commissioner of central tax as designated by the Board; and
 - (ii) the Commissioner of Union territory tax having jurisdiction over the applicant.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER VIII

TRANSITIONAL PROVISIONS

Commentary :

The transitional provisions enable the existing tax payers to migrate to GST in transparent and smooth manner. The transitional provisions under the UTGST Act basically deals with transfer of tax credits under the existing VAT or Entry tax under the Union territory value Added Tax Act/ applicable indirect tax laws.

MIGRATION OF EXISTING TAX PAYERS

- (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.
- (2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.
- (3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24 of the Central Goods and Services Tax Act.

Commentary :

This is in line with CGST/SGST Act i.e. existing registered person will be issued a Certificate of Registration on Provisional basis and on fulfilling the conditions final certificate of registration will be issued or else provisional certificate will be cancelled. If a person not liable to registration under the CGST Act due to his aggregate turnover in the financial year is less than 20 lakhs on his application the registration will be cancelled.

TRANSITIONAL ARRANGEMENTS FOR INPUT TAX CREDIT

- (1) A registered person, other than a person opting to pay tax under section 10 of the Central Goods and Services Tax Act, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax and Entry Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law, not later than ninety days after the said day, in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed day; or
- (iii) where the said amount of credit relates to goods sold under such exemption notifications as are notified by the Government:

Provided further that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6 or section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

Provided also that an amount equivalent to the credit specified in the second proviso shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

Commentary :

The credit of the amount of VAT & Entry Tax shown as a carried forward in the last return will be carried forward in the UTGST electronic credit ledger. No carry forward of the credit will be allowed under following circumstances:-

1. Amount of Credit not admissible as input tax credit under UTGST Act.
2. Where last six months returns under previous law (VAT & CST) has not been filed.
3. Credit relates to goods sold under exemption notifications.

However, if forms (C Forms, H Forms, I Forms, F Forms) are not collected in prescribed period as specified in CST Act then such carry forward of VAT / Entry Tax, as the case may be will be reduced to the extent of such liabilities on this count. When the claim is substantiated, i.e., the requisite forms are collected after the prescribed period, the amount of VAT/Entry tax already reversed, will be refunded to the taxable person.

- (2) A registered person, other than a person opting to pay tax under section 10 of the Central Goods and Services Tax Act, shall be entitled to take, in his electronic credit ledger, credit of the unavailed input tax credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as input tax credit under the existing law and is also admissible as input tax credit under this Act.

Explanation: For the purposes of this section, the expression "unavailed input tax credit" means the amount that remains after subtracting the amount of input tax credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of input tax credit to which the said person was entitled in respect of the said capital goods under the existing law.

Commentary :

Under the erstwhile CENVAT Credit Rules, 2004, cenvat credit in respect to capital goods was available upto 50% at the time of it's receipt and the balance was available in the subsequent financial year. Sub-section (2) deals with a situation where such balance cenvat credit on capital goods can be availed on the day immediately preceding the appointed day.

However, a taxable person cannot claim the credit of VAT suffered in the purchase of capital goods as the same credit was not allowable under the pre-GST regime.

- (3) A registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods or goods which have suffered tax at first point of their sale in the Union territory and the subsequent sales of which are not subject to tax in the Union territory under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, shall be entitled to take, in his electronic credit ledger, credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:
- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
 - (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
 - (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of tax in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Commentary :

When exempted goods in existing law now taxable in GST regime, in such case credit of VAT/Entry tax, as the case may be, can be availed in electronic credit ledger on the stock of Inputs & Input contains in semi finished & finished goods subject to this goods are to be utilized in the course of business or furtherance of business and having the duty payment documents evidencing duty payment and such invoices are not earlier than 12 months from the appointed day and such inputs are eligible for input tax credit in GST regime. However, if such duty paying documents are not available then such credit is allowed at reduced rate as may be prescribed only when such benefits is pass on to the consumer.

- (4) A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger:
- (a) the amount of credit of the value added tax and entry tax, if any, carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
 - (b) the amount of credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods in accordance with the provisions of sub-section (3).

Commentary :

Where a registered person was engaged in the manufacture or provision of taxable as well as exempted goods/services, he shall besides the credit available under the erstwhile laws be also entitled to credit in respect to those inputs, which are held in stock or are contained in semi-finished or finished goods held in stock on the appointed day, relating to the exempted goods or services **provided** such inputs or goods are used or intended to be used for making taxable supplies under this Act and he is in possession of duty paid invoices which are not older than twelve months from the appointed day. In case duty paid invoices are not available then such credit is allowed at reduced rate as may be prescribed only when such benefits is pass on to the consumer.

- (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of value added tax and entry tax, if any, in respect of inputs received on or after the appointed day but the tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that the said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

Commentary :

This sub-section applies to Goods/Services – in – Transit, that is, where goods / services were billed under the erstwhile laws, but is received and booked in the accounts after the appointed day when the said laws were no more applicable. In such case VAT / Entry Tax paid under the earlier law will be allowed to be taken credit in electronic credit ledger provided such goods receipts are recorded within 30 days of the appointed day and subject to having duty paying document evidencing duty paid thereon and suitable statement will be submitted in the manner prescribed to the Commissioner.

- (6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—
- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said registered person is not paying tax under section 10 of the Central Goods and Services Tax Act;
 - (iii) the said registered person is eligible for input tax credit on such inputs under this Act;
 - (iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and
 - (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Commentary :

Any person, who was paying fixed amount / fixed tax irrespective of value of goods, such person will be entitled to take the electronic credit on inputs, input contained in semi-finished goods and finished goods subject to this goods are to be utilized in the course of business or furtherance of business and they are in possession of the duty payment documents evidencing duty payment and such invoices are not earlier than 12 months from the appointed day and such inputs are eligible for input tax credit in GST regime. However, such credits will be allowed only when such benefits is pass on to the consumer.

- (7) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

TRANSITIONAL PROVISIONS RELATING TO JOB WORK

- (1) Where any inputs received at a place of business had been dispatched as such or dispatched after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within a period of six months or the extended period from the appointed day, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act.

Commentary :

Any material sent on job work / testing, repair, reconditioning or any other purpose to the job worker, such material can be obtained without payment of duty within the period of 6 months from the appointed day or the period which is extended maximum upto 2 months. If such goods are not returned within the above time limit then input credit will have to be recovered in terms of provisions of the law, i.e. tax has to be paid in cash but no credit can be taken of that amount.

- (2) Where any semi-finished goods had been dispatched from any place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereinafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within a period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act:

Provided also that the person dispatching the goods may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying there from on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

Commentary :

Any semi-finished materials sent on job work / testing, repair, reconditioning or any other purpose to the job worker, such material can be obtained without payment of duty within period of 6 months from the appointed day or the period which is extended maximum upto 2 months. If such goods are not returned within the above time limit then input credit will have to be recovered in terms of provisions of the law, i.e. tax has to be paid in cash but no credit can be taken of that amount.

- (3) Where any goods had been dispatched from the place of business without payment of tax for carrying out tests or any other process to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods are returned to the said place of business on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to such place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142 of the Central Goods and Services Tax Act:

Provided also that the person despatching the goods may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

- (4) The tax under sub-sections (1), (2) and (3) shall not be payable only if the person despatching the goods and the job worker declare the details of the inputs or goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

Commentary :

Job Worker can return the goods without payment of tax within or after specified date provided job worker and the person who sent the goods on job work declares the stock in the prescribed manner.

Example:

The Roll out date of GST is fixed at 1st July, 2017. A registered person (Principal) sends inputs, semi-finished goods and finished goods for job-work or testing before 1st July, 2017. Both the registered person and the job worker declares the details of stock held in the prescribed form and within the prescribed time. The Principal can take the credit of the inputs sent to the job worker. The goods are returned back by the job worker within 31st December, 2017, then no GST payable.

But if goods are not returned back to the registered person by 31st December, 2017, input tax credit taken on such inputs will have to be reversed and GST is payable by the registered person. Further the goods can be directly supplied from the job workers premises on payment of tax.

20. MISCELLANEOUS TRANSITIONAL PROVISIONS.

- (1) Where any goods on which tax, if any, had been paid under the existing law at the time of sale thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the tax paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer:

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

Commentary :

If goods have been supplied to unregistered person and tax has been paid thereon under the previous law can be returned within the period of 6 months from the appointed day without payment of GST. However, if it is returned by the registered person it will be treated as fresh supply and GST will be payable.

- (2) (a) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised upwards on or after the appointed day, the registered person who had sold such goods shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act, such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.
- (b) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised downwards on or after the appointed day, the registered person who had sold such goods may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

Commentary :

In case of upward revision of the prices under the previous contract, debit note / supplementary invoice can be raised within period of 30 days of such revision and payment of GST will be applicable thereon.

However, in case of downward revision, such taxable person will raise the credit note in the prescribed manner within 30 days of the revision and reduce the tax liability of GST subject to reducing the input tax credit to that extent.

- (3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of input tax credit, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be refunded to him in cash in accordance with the provisions of the said law:

Provided that where any claim for refund of the amount of input tax credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Commentary :

Any refund of claim filed under the previous law will be dealt with provisions of previous law and refund will be granted in cash. However, if partial refund is granted the balance refund will be lapsed. However, no such refund will be allowed if input tax credit has been carried forward of the amount of such refund claim.

- (4) Every claim for refund filed after the appointed day for refund of any tax paid under the existing law in respect of the goods exported before or after the appointed day shall be disposed of in accordance with the provisions of the existing law:

Provided that where any for refund of input tax credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Commentary :

Any claim of refund filed after appointed day against exports under the previous law will be dealt with provisions of previous law and refund will be granted in cash. However, if partial refund is granted the balance refund will be lapsed. However, no such refund will be allowed if input tax credit has been carried forward of the amount of such refund claim.

- (5) (a) Every proceeding of appeal, revision, review or reference relating to a claim for input tax credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of the existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash in accordance with the provisions of the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

- (b) Every proceeding of appeal, revision, review or reference relating to recovery of input tax credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of the existing law, and if any amount of credit becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

Commentary :

Any favourable order in appeal, revision, review or reference w.r.t. input tax credit will be disposed of under the previous law and it will be given in cash and if it is rejected, no such input tax credit will be allowed. Moreover, refund will not be granted in cash, if such amount is carried forward in electronic credit ledger.

Any duty paid under the previous law as decided in the appeal proceedings, such amount will be recovered as arrears of tax and no credit is admissible under the GST regime, even if the amount is recovered.

- (6) (a) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.
- (b) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash in accordance with the provisions of the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

Commentary :

Any favourable order in appeal, revision, review or reference w.r.t. output tax will be disposed of under the previous law and it will be given in cash and if it is rejected, no such output tax will be allowed. Moreover, refund will not be granted in cash, if such amount is carried forward in electronic credit ledger. Any duty paid under earlier law as decided in the appeal proceedings, such amount will be recovered as arrears of tax and no credit is admissible under the GST regime, even if amount is recovered.

- (7) (a) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (b) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

Commentary :

Any favourable order in appeal, revision, review or reference w.r.t. output tax, interest, fine or penalty if not disposed of under the earlier law, the same will be refunded in cash, if refundable and if it is rejected, output tax will be recovered as arrears of tax under GST Act and the amount so recovered will not be allowed as input tax credit.

Moreover, refund will not be granted in cash, if such amount is carried forward in electronic credit ledger.

- (8) (a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of input tax credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or input tax credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

Commentary :

Any amount found recoverable or Input tax credit inadmissible, as a consequence of revision of any return under the existing law after the appointed day will be recovered as an arrear of tax under the GST Act and no input tax credit of the same shall be allowed.

Any amount found to be refundable as a consequence of revision of any return under the existing law after the appointed day will be refunded in cash in accordance with the provisions of the existing law.

- (9) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

Commentary :

In case of old contracts, goods or services / both supplied after the appointed date, it will be in accordance with the GST law and GST shall be payable thereupon.

- (10) (a) Notwithstanding anything contained in section 12 of the Central Goods and Services Tax Act, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the existing law.
- (b) Notwithstanding anything contained in section 13 of the Central Goods and Services Tax Act, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994.
- (c) Where tax was paid on any supply, both under any existing law relating to sale of goods and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Commentary :

As per point of taxation, if tax is already paid under earlier law on goods or services or both, no GST will be applicable, even if such supplies have been made thereafter on such amount.

- (11) Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act and are returned after the period specified in this sub-section:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within the period specified in this sub-section.

Commentary :

Any material sent on approval basis, such material can be received back without payment of duty within period of 6 months from the appointed day or the period which may be extended maximum upto 2 months. If such goods are not returned within the above time then input credit will have to be recovered in terms of provisions of the law, i.e. tax is to be paid in cash but no credit can be taken of that amount

- (12) Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under any existing law relating to sale of goods and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 of the Central Goods and Services Tax Act, as made applicable to this Act, shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Explanation: For the purposes of this Chapter, the expression "capital goods" shall have the same meaning as assigned to it in any existing law relating to sale of goods.

Commentary :

In respect of sale of goods which required TDS to be deducted on payment under the previous law and whose invoice is already issued under the existing law, no TDS will be applicable on payments to the supplier after the appointed date.

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

CHAPTER IX

MISCELLANEOUS

APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT

Commentary :

The following provisions of the Central Goods and Services Tax Act, shall, mutatis mutandis, apply to Union Territory as they apply in relation to Central tax as if they are enacted under UTGST Act.

Subject to the provisions of this Act and the rules made thereunder, the provisions of the Central Goods and Services Tax Act, relating to:

- (i) scope of supply;
- (ii) composition levy;
- (iii) composite supply and mixed supply;
- (iv) time and value of supply;
- (v) input tax credit;
- (vi) registration;
- (vii) tax invoice, credit and debit notes;
- (viii) accounts and records;
- (ix) returns;
- (x) payment of tax;
- (xi) tax deduction at source;
- (xii) collection of tax at source;
- (xiii) assessment;
- (xiv) refunds;
- (xv) audit;
- (xvi) inspection, search, seizure and arrest;
- (xvii) demands and recovery;

- (xviii) liability to pay in certain cases;
- (xix) advance ruling;
- (xx) appeals and revision;
- (xxi) presumption as to documents;
- (xxii) offences and penalties;
- (xxiii) job work;
- (xxiv) electronic commerce;
- (xxv) settlement of funds;
- (xxvi) transitional provisions; and
- (xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply,

- (a) so far as may be, in relation to Union territory tax as they apply in relation to central tax as if they were enacted under this Act;
- (b) subject to the following modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances, namely:
 - (i) references to "this Act" shall be deemed to be references to "the Union Territory Goods and Services Tax Act, 2017";
 - (ii) references to "Commissioner" shall be deemed to be references to "Commissioner" of Union territory tax as defined in clause (2) of section 2 of this Act;
 - (iii) references to "officers of central tax" shall be deemed to be references to "officers of Union territory tax";
 - (iv) references to "central tax" shall be deemed to be references to "Union territory tax" and vice versa;
 - (v) references to "Commissioner of State tax or Commissioner of Union territory tax" shall be deemed to be references to "Commissioner of central tax";
 - (vi) references to "State Goods and Services Tax Act or Union Territory Goods and Services Tax Act" shall be deemed to be references to "Central Goods and Services Tax Act";
 - (vii) references to "State tax or Union territory tax" shall be deemed to be references to "central tax".

POWER TO MAKE RULES

- (1) The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

GENERAL POWER TO MAKE REGULATIONS

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

LAYING OF RULES, REGULATIONS AND NOTIFICATIONS

Every rule made by the Central Government, every regulation made by the Board and every notification issued by the Central Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS

The Commissioner may, if he considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the Union territory tax officers as he may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

REMOVAL OF DIFFICULTIES

- (1) If any difficulty arises in giving effect to any provision of this Act, the Central Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

* * *

THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

Commentary :

In the pre-GST regime, inter- state transactions were subject to CST @ 2%. This revenue goes to the State from where the goods were dispatched. GST is a destination based tax and so the State Governments have apprehension that they will lose revenue in the GST- regime.

To capture this concern, the Constitution (One hundred and first) Amendment Act, 2016, under Section 18, provided that the Parliament shall, on the recommendation of the Goods and service tax Council, provide compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

NO. 15 OF 2017

[12th April, 2017.]

An Act to provide for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:

1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) This Act may be called the Goods and Services Tax (Compensation to States) Act, 2017.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. DEFINITIONS

- (1) In this Act, unless the context otherwise requires,—
 - (a) "central tax" means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;
 - (b) "Central Goods and Services Tax Act" means the Central Goods and Services Tax Act, 2017;
 - (c) "cess" means the goods and services tax compensation cess levied under section 8;
 - (d) "compensation" means an amount, in the form of goods and services tax compensation, as determined under section 7;

- (e) "Council" means the Goods and Services Tax Council constituted under the provisions of article 279A of the Constitution;
- (f) "Fund" means the Goods and Services Tax Compensation Fund referred to in section 10;
- (g) "input tax" in relation to a taxable person, means,—
 - (i) cess charged on any supply of goods or services or both made to him;
 - (ii) cess charged on import of goods and includes the cess payable on reverse charge basis;
- (h) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;
- (i) "integrated tax" means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;
- (j) "prescribed" means prescribed by rules made, on the recommendations of the Council, under this Act;
- (k) "projected growth rate" means the rate of growth projected for the transition period as per section 3;
- (l) "Schedule" means the Schedule appended to this Act;
- (m) "State" means,—
 - (i) for the purposes of sections 3, 4, 5, 6 and 7 the States as defined under the Central Goods and Services Tax Act; and
 - (ii) for the purposes of sections 8, 9, 10, 11, 12, 13 and 14 the States as defined under the Central Goods and Services Tax Act and the Union territories as defined under the Union Territories Goods and Services Tax Act;
- (n) "State tax" means the State goods and services tax levied and collected under the respective State Goods and Services Tax Act;
- (o) "State Goods and Services Tax Act" means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;
- (p) "taxable supply" means a supply of goods or services or both which is chargeable to the cess under this Act;
- (q) "transition date" shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;
- (r) "transition period" means a period of five years from the transition date; and
- (s) "Union Territories Goods and Services Tax Act" means the Union Territories Goods and Services Tax Act, 2017.

- (2) The words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act shall have the meanings respectively assigned to them in those Acts.

3. PROJECTED GROWTH RATE

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen percent (14%) per annum.

4. BASE YEAR

For the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year.

5. BASE YEAR REVENUE

Commentary :

This Section provides the procedure for computation of basic revenue for a State which shall be the sum of the revenue collected, by the State and the local bodies during the base year, by way of taxes which have been subsumed into GST and levied by respective State or Union and net of refunds.

- (1) Subject to the provision of sub-sections (2), (3), (4), (5) and (6), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into goods and services tax, namely:
- (a) the value added tax, sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (b) the central sales tax levied under the Central Sales Tax Act, 1956;
 - (c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile entry 52 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (d) the taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the constitution;
 - (e) the taxes on advertisement or any other tax levied by the concerned State under the erstwhile entry 55 of List-II (State List) of the Seventh Schedule to the Constitution;
 - (f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution;

- (g) any cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution by the State Government under any Act notified under sub-section(4),

prior to the commencement of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016:

Provided that the revenue collected during the base year in a State, net of refunds, under the following taxes shall not be included in the calculation of the base year revenue for that State, namely:

- (a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution, prior to the coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
- (b) tax levied under the Central Sales Tax Act, 1956, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
- (c) any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and
- (d) the entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

Commentary :

The base year tax revenue consists of the states' tax revenues from: (i) state Value Added Tax (VAT), (ii) central sales tax, (iii) entry tax, octroi, local body tax, (iv) taxes on luxuries, (v) taxes on advertisements, (vi) excise duties on medicinal and toilet preparations retained by the State Government (vii) any cess or surcharge levied by the state government etc. However, any revenue among these taxes arising related to supply of (i) alcohol for human consumption, (ii) certain petroleum products, (iii) entertainment tax levied by the State but collected by the local bodies will not be accounted as part of the base year revenue.

- (2) In respect of the State of Jammu and Kashmir, the base year revenue shall include the amount of tax collected on sale of services by the said State Government during the base year.
- (3) In respect of the States mentioned in sub-clause (g) of clause (4) of article 279A of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with

respect to such specific taxes referred to in sub-section (1), shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

- (4) The Acts of the Central Government and State Governments under which the specific taxes are being subsumed into the goods and services tax shall be such as may be notified.
- (5) The base year revenue shall be calculated as per sub-sections (1), (2), (3) and (4) on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor-General of India.
- (6) In respect of any State, if any part of revenues mentioned in sub-sections (1), (2), (3) and (4) are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

6. PROJECTED REVENUE FOR ANY YEAR

The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration: If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows:

Projected Revenue for 2018-19 = $100 (1 + 14/100)^3$

7. CALCULATION AND RELEASE OF COMPENSATION

- (1) The compensation under this Act shall be payable to any State during the transition period.
- (2) The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor-General of India:

Provided that in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

Commentary :

The compensation payable to a state has to be provisionally calculated and released at the end of every two months. The compensation shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India. In case any excess amount has been released the excess amount shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

- (3) The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner, namely:—

- (a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated as per section 6;
- (b) the actual revenue collected by a State in any financial year during the transition period shall be:
 - (i) the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act;
 - (ii) the integrated goods and services tax apportioned to that State; and
 - (iii) any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes,

as certified by the Comptroller and Auditor-General of India;
- (c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b).

Commentary :

The total compensation payable shall be calculated in the following manner-

- (1) the projected revenue for any financial year during the transition period;
- (2) the actual revenue collected by a State in any financial year during the transition period shall be-
 - (a) the actual revenue from State tax collected by the State, net of refunds given by the State;
 - (b) the IGST apportioned to that State;
 - (c) any collection of taxes on account of the taxes levied by the respective State under the Act, net of refunds of such taxes

as certified by the C&AG;

The total compensation payable shall be the difference between the projected revenue and the actual revenue collected by a State.

- (4) The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner, namely:
 - (a) the projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6.

Illustration: If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could

be earned till the end of the period of ten months for the purpose of this sub-section shall be $100 \times (5/6) = \text{Rs.}83.33$;

- (b) the actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be:
 - (i) the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act;
 - (ii) the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Excise and Customs; and
 - (iii) any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes;
- (c) the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance with clause (a) and the actual revenue collected by a State in the said period as referred to in clause (b), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period.

Commentary :

In case of loss of revenue at the end of every two months period, the method of calculation is detailed below:-

- (1) the projected revenue that could have been earned by the State in absence of GST till the end of the relevant two months shall be calculated on a pro-rata basis as a percentage of total projected revenue for any financial year during the transition period;
- (2) the actual revenue collected by a State till the end of relevant two months period shall be-
 - (a) the actual revenue from State tax collected by the State, net of refunds given by the State;
 - (b) the IGST apportioned to that State as certified by the Principal Chief Controller of Accounts of CBEC; and;
 - (c) any collection of taxes levied by the respective State under the Act, net of refunds of such taxes

The provisional compensation shall be the difference between the projected revenue till the end of the relevant period and the actual revenue collected by the State, reduced by the provisional compensation paid the the State till the end of previous two months period in the said financial year.

- (5) In case of any difference between the final compensation amount payable to a State calculated in accordance with the provisions of sub-section (3) upon receipt of the audited revenue figures from the Comptroller and Auditor-General of India, and the total provisional compensation amount released to a State in the said financial year in

accordance with the provisions of sub-section (4), the same shall be adjusted against release of compensation to the State in the subsequent financial year.

- (6) Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed.

8. LEVY AND COLLECTION OF CESS

- (1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council:

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

- (2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify:

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both:

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Commentary :

Section 8 is the charging section for levy of GST Compensation Cess. For the purpose of providing compensation to the States for loss of revenue arising on account of implementation of the GST for a period of 5 years, GST Compensation Cess will be levied and collected by Central Government.

Compensation cess will be levied on such intra-State supplies of goods or services or both as provided in Section 9 of CGST Act and such inter-State supplies of goods or services or both as provided in Section 5 of IGST Act. Such levy is not there in case of composition levy under Section 10 of CGST.

Column (2) of the Schedule prescribes the supplies of goods and services, on which GST Compensation Cess will be levied. If a particular supply of goods or services has been notified, the aforementioned cess will be levied on all supplies including import of goods and services, and those supplies on which tax is payable on reverse charge.

Value for the purpose of levying the GST Compensation cess will be same as determined under Section 15 of CGST Act, 2016.

As per Section 15 of the CGST Act, the value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Where the value cannot be determined under aforesaid manner, the same shall be determined in the manner prescribed by government.

Example 1:

Suppose Assessable value of Motor cycles with engine capacity exceeding 3500cc is INR 1,00,000/- which is sold from the state of Maharashtra to Kolkata. Say GST rate is 28% and compensation cess is 15%

Calculation of Compensation cess:

IGST- 28% of Assessable Value= INR 28,000

Compensation cess- 15% of INR 1,00,000= INR15,000

Total Value of the Motor cycle= 1,00,000+28,000+15,000=INR 1,43,000

The cess on goods imported into India shall be levied and collected in accordance to Section 3 of the Customs Tariff Act, 1975 at the point when duties of customs are levied on a value determined under Customs Tariff Act, 1975.

Example 2:

Suppose Assessable value of imported Motor cycles with engine capacity exceeding 3500cc is INR 1,00,000/-. Say customs duty are applicable as basic custom duty is 125% and compensation cess is 15%

Basic Custom Duty is 125% of 1,00,000=INR 1,25,000

Value for the purpose of levying Compensation cess= 1,00,000+1,25,000=INR 2,25,000

Compensation cess= 15% of 2,25,000= INR 33,750

9. RETURNS, PAYMENTS AND REFUNDS

- (1) Every taxable person, making a taxable supply of goods or services or both, shall:
 - (a) pay the amount of cess as payable under this Act in such manner;
 - (b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and
 - (c) apply for refunds of such cess paid in such form,
as may be prescribed.

- (2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

10. CREDITING PROCEEDS OF CESS TO FUND

- (1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.
- (2) All amounts payable to the States under section 7 shall be paid out of the Fund.
- (3) 50% of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance 50% shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.
- (4) The accounts relating to Fund shall be audited by the Comptroller and Auditor-General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.
- (5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.

Commentary :

The proceeds of the cess shall be credited to a non lapsable fund known as the GST Compensation Fund, which shall form part of the public account of India. It shall be utilized for purposes specified in Section 8. All amounts payable to the States shall be paid out of the fund.

50% of the amount remaining unutilized in the Fund at the end of the transition period shall be transferred to Consolidated Fund of India as the share of Centre and balance 50% shall be distributed amongst the State in the ratio of their total revenue from the State tax or the UGST, as the case may be, in the last year of the transition period.

The accounts relating to the Fund shall be audited by C&AG of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the C&AG. The accounts of the Fund together with the audit report shall be laid before each House of Parliament.

11. OTHER PROVISIONS RELATING TO CESS

- (1) The provisions of the Central Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made thereunder.
- (2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder:

Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

Commentary :

Section 11 states that with respect to levy and collection of cess on Intra-state supply the provisions of CGST Act and the rules made there under, including those relating to assessment, input tax credit, non levy, short levy, interest, appeals, offences and penalties, and with respect to levy and collection of cess on inter-state supply, provisions of IGST Act and the rules made there under, including those relating to assessment, input tax credit, non levy, short levy, interest, appeals, offences and penalties, shall mutatis mutandis apply.

The proviso to Section 11 provides that the input tax credit in respect of Compensation cess on supply of goods and services shall be utilized only towards payment of the said cess leviable on the supply of goods and services.

12. POWER TO MAKE RULES

- (1) The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - (a) the conditions which were included in the total base year revenue of the States, referred to in sub-clause (g) of clause (4) of article 279A of the Constitution, under sub-section (3) of section 5;
 - (b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State, under sub-section (6) of section 5;
 - (c) the manner of refund of compensation by the States to the Central Government under sub-section (6) of section 7;

- (d) the manner of levy and collection of cess and the period of its imposition under sub-section (1) of section 8;
- (e) the manner and forms for payment of cess, furnishing of returns and refund of cess under sub-section (1) of section 9; and
- (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

13. LAYING OF RULES BEFORE PARLIAMENT

Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. POWER TO REMOVE DIFFICULTIES

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, on the recommendations of the Council, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of three years from the commencement of this Act.

- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

SCHEDULE
[See section 8 (2)]

1. In this Schedule, reference to a "tariff item", "heading", "sub-heading" and "Chapter", wherever they occur, shall mean respectively a tariff item, heading, sub-heading and Chapter in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
2. The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this Schedule.

S No.	Description of supply of goods or services	Tariff item, heading, sub-heading, chapter, or supply of goods or services, as the case may be	The maximum rate at which goods and services compensation cess may be collected
1.	Pan Masala	21069020	135% ad valorem
2.	Tobacco and manufactured tobacco substitutes including tobacco products	24	4170 per thousand sticks or 290% ad valorem or a combination thereof, but not exceeding Rs. 4170 per thousand sticks plus 290% ad valorem
3.	Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated	2701,2702, or 2703	Rs. 400 per tonne
4	Aerated waters	22021010	15% ad valorem
5	Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for the transport of ten or more persons, including the driver), including station wagons and racing cars	8703	15% ad valorem
6.	Any other supplies		15% ad valorem