5th Edition

THAT'S IT on INDIRECT TAXATION

[Summary Provisions, Charts & Amendments]

CA – IPCC
[May & Nov 2017]

Tharun Raj

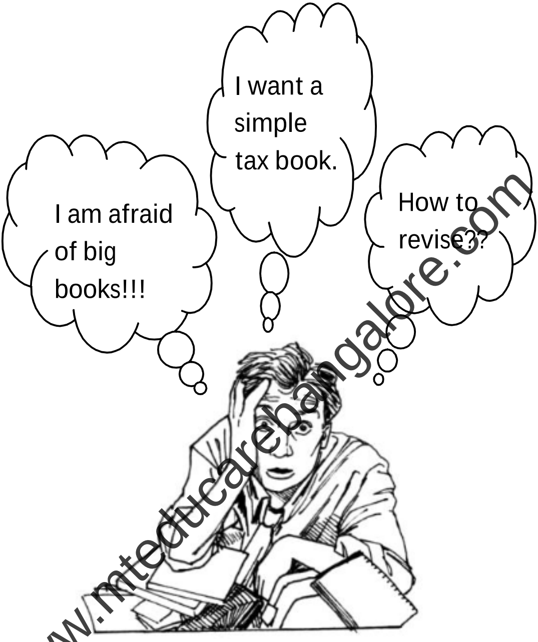
DEDICATED TO

My Wife ABHINAYA RAJ

My Son ADVAITH RAJ

My daughter ADITI RAJ

PREFACE TO 1ST EDITION



T H A T ' S I T is designed to cater the above needs of every student.

At the outset, I want to thank the teaching & non-teaching staff of MT Educare for bringing my "Brain Child" into reality.

The CA profession is a dizzy road with thorns for an ultimate bliss in life. The student has to undergo intensive coaching and learn many new concepts which are of divergent nature; say it be accounts, audit, tax, costing, law etc., and particularly students at IPCC level finds it difficult to absorb as they have little time for exams compared to the latter stage of their curriculum.

On my interaction with many students at IPCC level, I came to know that they are very much in need of a simple tax book covering all topics which helps them to revise and re"Wise" the subject from time to time.

As a faculty, it is a herculean task for me to make things simple - to the point and at the same time ensuring that the essence of law in indirect tax is not missed.

It took me a considerable amount of time and I sincerely thank the almighty and my family for enabling me to put enough efforts required to bring this novel concept into your hands.

"That's it", is dedicated to every faculty, who makes a difficult concept simple to the students, with their enormous efforts and there by speaks with the student with confidence the two powerful words after explaining each concept – "That's it".

By the Author

Tharun Raj
tharunraj2307@gmail.com

PREFACE TO 2ND EDITION

First Edition of this book got released at the end of November 2014 and took the blessings of "The Trio" of CA Education – SSR sir, RSN sir and MFJ sir and went into the hands of my students, with the administrative support of MT Educare.

This book has got an unbelievable response and students just showered praises on me (the actual credit should go to almighty). Students rejoiced reading this pocket book and gave good insights to make it more wonderful.

Its Exam time in May 2015 and many students asked me "Sir what to read in indirect tax?" and I gave only one reply "Revise That's it…!!!" and post completion of exams, my Gmail and Facebook flooded with appreciation of that's it as it was very handy for them before exam and they are able to perform well in exams.

The point is so simple; in subjects like indirect tax you should be very strong on provisions and intricate points and should have conceptual clarity. Finally, when you revise and revise, you will have command over the subject and will be waiting for the question paper to arrive.

Now, you are holding the second edition of this book and hope you too make best use out of this book for your exams.

In this edition amendments carried out upto April 30, 2014 has been covered, which are applicable for November 2015 exams

Signing off….

THARUN RAJ

PREFACE TO 3RD EDITION

The journey of "That's it" continues for 2016 and I wish every reader of this book a Happy New Year with loads of success….

After appearing for Nov 2015 exams, I remember my students telling me "Sir, we read only this book one day before exam and we are confident of clearing tax paper, no matter the level of valuation"

But I don't want to take any credit as it is the student who trusted in my work and has got a branding for this book.

Wishing you all the very best for your May 2016 exams.

Yours

THARUN RAJ

PREFACE TO 4TH EDITION

It's really hectic time and the preparation for GST is ongoing and I do not know whether I can come out with the 4th edition for Nov 2016.

But my students repeatedly asking me and forced me to come out with this edition and this edition I want to dedicate completely to my students and of-course also to my family for giving me time to sit on editing this book to incorporate the amendments.

An appeal is hereby made to students to extend their warm support in editing this pocket book and making it more students friendly and also incorporating simple illustrations. Interested can mail to tharunraj2307@gmail.com

Yours

PREFACE TO 5TH EDITION

Really happy to express that this masterpiece has achieved a lot and made me continue for the 5th edition.

From this edition onwards, I am going to make "That's it" book on a yearly basis (i.e. For May & Nov exams) considering my other engagements as BUSINESS DEVELOPMENT HEAD (Southern India – Commerce) of MT EDUCARE LTD.

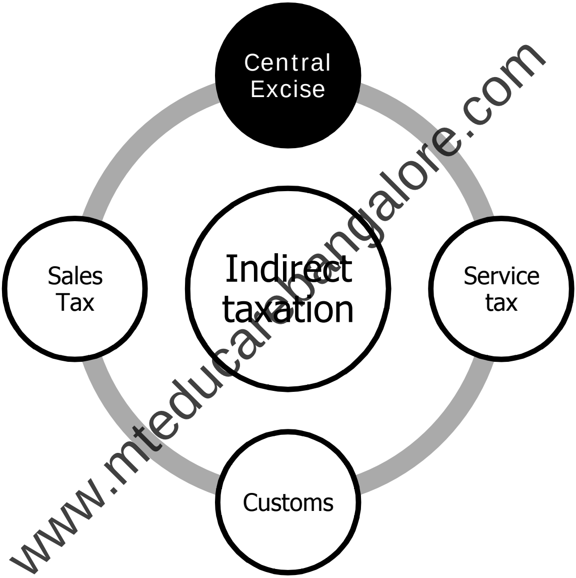
When I started this book in 2014, I was just married and now along with this my family is growing and I am blessed with a baby girl recently bringing more joy into my life.

Praying almighty to give me strength to play many roles in my life

Yours

WHATS INSIDE

'#' denotes latest amendments


Central Excise
Sales Tax
Indirect taxation
Service tax
Customs

THAT'S IT - 1
TAXABLE EVENT FOR EXCISE

TAXABLE EVENT AND CONDITIONS FOR LEVY:

The EVENT on happening of which the duty liability is attracted is known as Taxable event. Under excise the taxable event is →Manufacture (or) production of excisable goods in India

4 basic conditions must be satisfied to attract excise duty liability

(i) There must be goods
(ii) The goods must be excisable goods
(iii) Such excisable goods must be manufactured (or) produced
(iv) Such manufacture (or) production must take place in India

1. MEANING OF "GOODS" UNDER EXCISE

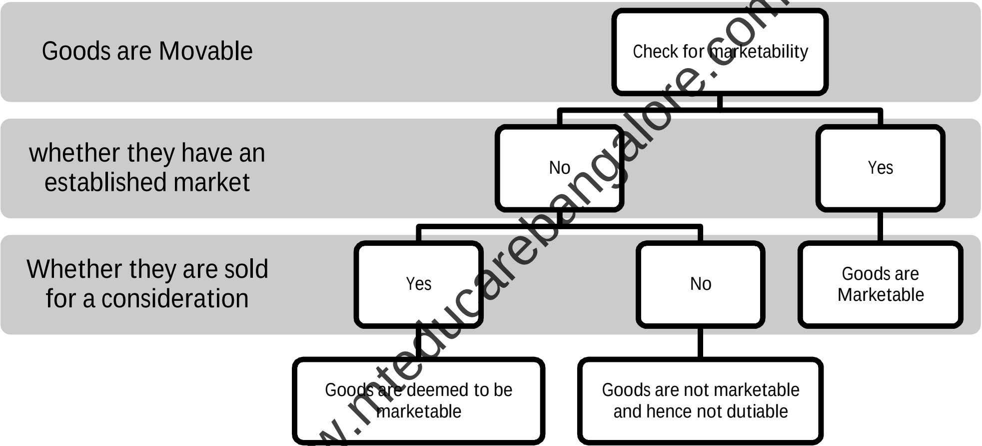
- Based on Sale of Goods Act → Goods must be "Movable"

- Based on UOI V. Delhi Cloth Mills→ Goods must be "Marketable"
- MOVABILITY: The articles must be something, which ordinarily come or can be brought to the market to be bought and sold. Thus, in case of immovable properties that are attached to earth, no excise duty can be levied as they lack movability.
- MARKETABILITY: Marketability is the capability of a product being bought and sold in the market.
- DEEMED MARKETABILITY [Explanation to Sec. 2(d)] → Goods includes any article, material or substance which is <u>capable of being bought or sold for a consideration</u>

➲ Actual sale is not necessary to prove marketability

➲ Either marketability (or) deemed marketability must be satisfied.

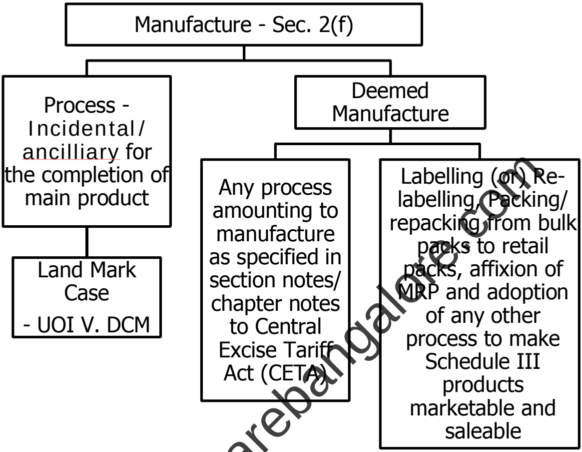
➲ Goods having short shelf life are marketable, if they are capable of being sold during that short shelf life.


Goods are Movable
Check for marketability
whether they have an established market
No
Yes
Whether they are sold for a consideration
Yes
No
Goods are Marketable
Goods are deemed to be marketable
Goods are not marketable and hence not dutiable

Levy	Point of payment	Collection
Sec. 3 – Manufacture (or) production of excisable goods in India	Rule 4 of Central Excise Rules, 2002 – Date of actual removal of goods from factory (or) warehouse	Rule 8 of Central Excise Rules, 2002 <u>In case of SSI</u> E Payment - 6th of the month following every quarter <u>In case of others</u> E Payment - 6th of the month following every month # Failure to pay amount of duty on or before due date attracts interest @ 15% p.a on the duty payable

Note: For the month ending march and quarter ending march, the due date of payment is March 31st. <u>E- Payment of excise duty is mandatory, but AC/DC may allow an assessee to pay duty by any mode other than internet banking.</u>

2. MEANING OF "MANUFACTURE" UNDER EXCISE

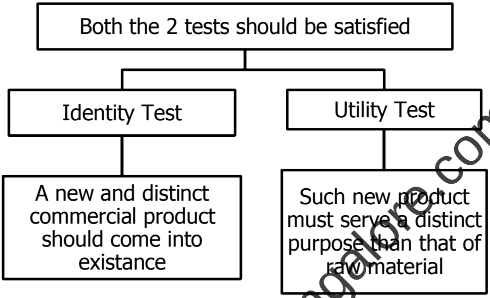


<u>SC decision in Union of India Vs. Delhi Cloth and General Mills co. Ltd.</u>

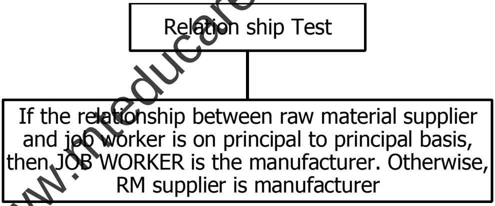
- Manufacture is a process, but every process is not a manufacture
- Manufacture implies a change & every change does not amount to manufacture.
- By virtue of a process, a new & different article must emerge having a distinctive name, character and use.
- The new product must be commercially different, identifiable product, and then only manufacture has taken place.

2.1 When is it said that manufacture has taken place (not deemed manufacture)?

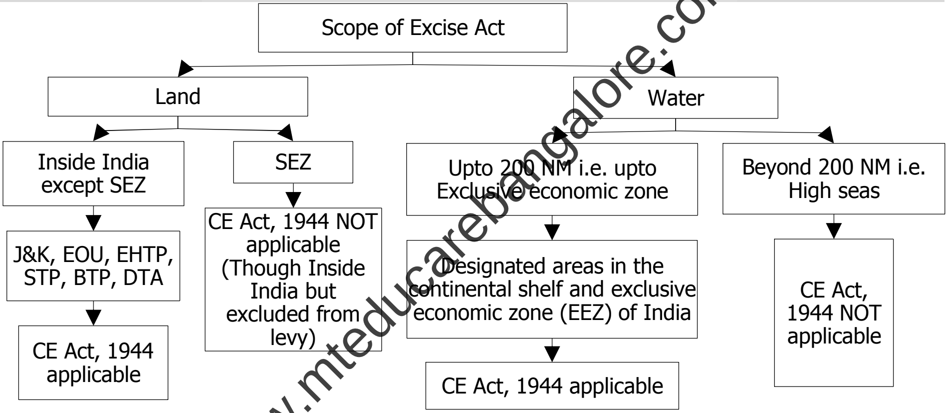
SC has laid down following tests in J.G. Glass Industries Case

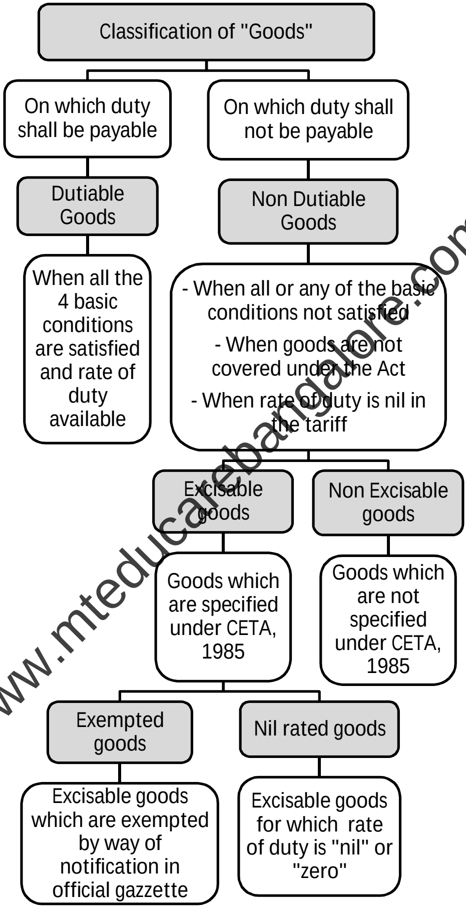


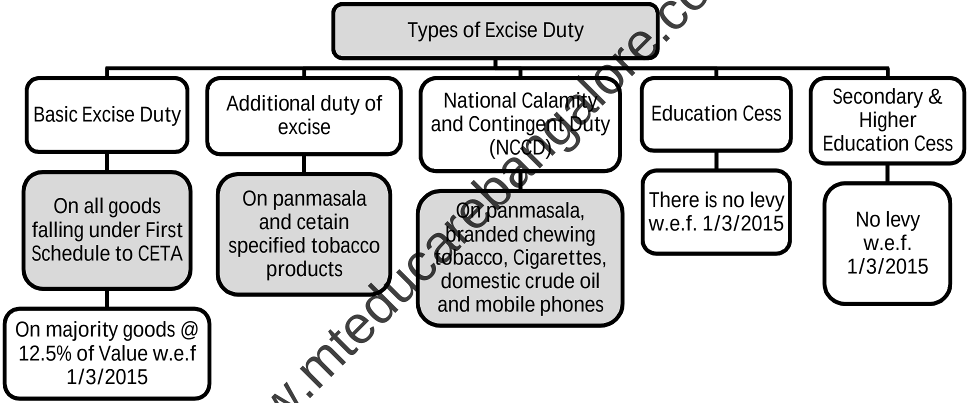
2.2 What is the acid test to determine, who is manufacturer?



3. MEANING OF "IN INDIA" UNDER EXCISE




Classification of "Goods"
On which duty shall be payable
On which duty shall not be payable
Dutiable Goods
Non Dutiable Goods
When all the 4 basic conditions are satisfied and rate of duty available
- When all or any of the basic conditions not satisfied
- When goods are not covered under the Act
- When rate of duty is nil in the tariff
Excisable goods
Non Excisable goods
Goods which are specified under CETA, 1985
Goods which are not specified under CETA, 1985
Exempted goods
Nil rated goods
Excisable goods which are exempted by way of notification in official gazzette
Excisable goods for which rate of duty is "nil" or "zero"


Types of Excise Duty
Basic Excise Duty
Additional duty of excise
National Calamity and Contingent Duty (NCCD)
Education Cess
Secondary & Higher Education Cess
On all goods falling under First Schedule to CETA
On panmasala and cetain specified tobacco products
On panmasala, branded chewing tobacco, Cigarettes, domestic crude oil and mobile phones
There is no levy w.e.f. 1/3/2015
No levy w.e.f. 1/3/2015
On majority goods @ 12.5% of Value w.e.f 1/3/2015

NOTES

THAT'S IT - 2 VALUATION UNDER EXCISE

1. SPECIFIC DUTY

- It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc.
- However, the disadvantage is that even if selling price of the product increases, revenue earned by Government does not increase correspondingly.
- Presently, specific rates have been announced for –

a) Cigarettes (length basis),
b) Matches (per 100 boxes/ packs),
c) Sugar (per quintal basis),
d) Marble slabs and tiles (Square meter basis),
e) Colour TV when MRP is not marked on the package or when MRP is not the sole consideration (based on screen size in cm),

2. TARIFF VALUE (SEC. 3(2))

- Value fixed by government from time to time
- It is a notional value
- Fixed based on wholesale price in the market
- Once 'tariff value' for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4.

3.DUTY BASED ON PRODUCTION CAPACITY (SEC. 3A)

Section 3A provides for payment of duty on the basis of production capacity, without any reference to actual production. Production capacity will be determined as per Rules. Pan masala and gutkha are covered under these provisions.

4.COMPOUNDED LEVY SCHEME

Compounded levy scheme under rule 15 of Central Excise rules, provides for payment of duty at a concessional rate. It is an optional scheme. The scheme is presently applicable to stainless steel pattas/patties and Aluminium circles. These articles are not eligible for SSI exemption.

5.MRP BASED VALUATION (4A)

Assessable Value = MRP – Abatement

5.1 When a product is covered under MRP based Valuation?

a) The product must be covered under third schedule to CETA, 1985

b) The product must be covered under the provisions of Legal Metrology Act, 2009

c) The product must be notified by CG under sec. 4A with a rate of abatement.

5.2 When MRP based valuation is not applicable?

- 4A not applicable to institutional and industrial sales.
- When different MRP's are marked on the same pack, highest MRP shall be considered.

- When different MRP's are marked on different packages, every MRP w.r.to such sales are considered.
- Free samples not packed along with main product are also liable for MRP based valuation.
- MRP based valuation equally applicable for quantity discounts.
- Crossed out MRP does not have any relevance in valuation.

6. TRANSACTION VALUE[4(3)(D)]:

6.1 What is the definition of transaction value (TV)?

MEANS

- Price paid or payable by the buyer to the assessee or any other person on assessee's behalf
- The above payment should be by reason of sale (or) in connection with sale.
- The above payment can be made before sale, at the time of sale, after sale.
- Includes all other payments made indirectly, which is charged by the assessee in the form of expenses.

- But the above value does not include duties, taxes& cess.

EXCLUSIONS:

1. All taxes, duties, cess by whatever name called.
2. Trade discount and regional discount, if these are in the normal course of business.
3. All transportation costs after place of removal and post removal expenses incurred by assessee and later collected from buyer (i.e. Carriage outwards)
4. Interest on advance, if assessee is not charging lower price to those buyers giving advance.
5. Interest collected from buyer on account of delayed payment.

6.2 Whether all items are included in the transaction value other than those excluded?

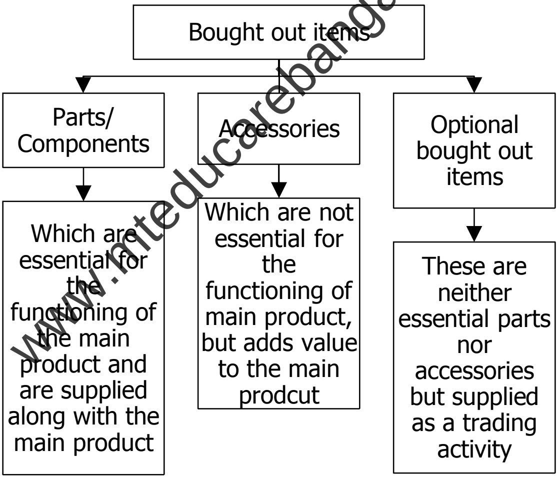
Special points on inclusions:

1. All packing costs will be included, except durable and returnable packing as such. [But its amortized cost is included]
2. Optional warranty charges is not included, when buyer does not opt for warranty.

3. Dharmada charges incurred as per statutory provisions is not included.
4. Loading and unloading charges incurred by buyer on his own account is not includible.

Note: While deciding inclusions, check whether buyer has made any payment and it is by reason of sale i.e. that payment will not arise, if there is no sale.

6.3 Whether all bought out items are included in transaction value?



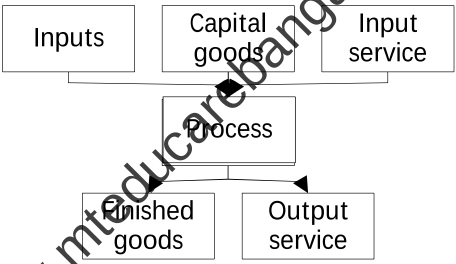
Product– Two Wheeler 		
Parts/components- Tyres	Accessories–Seat Cover/Side stand	Optional bought out items–Grease/ Engine oil
		
These are essential and hence INCLUDED in the Assessable value	These are not essential and hence NOT INCLUDED in the Assessable value	These are trading activity and NOT COVERED under excise duty but covered under sales tax

NOTES

THAT'S IT - 3
CENVAT CREDIT

INTRODUCTION:

For manufacturing any goods (or) for providing any service, it requires inputs (Raw materials), capital goods (machineries), input services (consultancy, etc.,)



The excise duty paid on Inputs and capital goods and service tax paid on input services is availed (i.e. taken) as credit, which can be utilised (i.e. Setoff) for payment of Excise duty on finished goods and Service tax on output services.

1. DEFINITIONS IN CENVAT CREDIT RULES (CCR), 2004:

INPUT MEANS [Rule 2(k)]	- All goods used in the factory by the manufacturer (for the purpose of manufacture) of final product - Goods including accessories, the value of which is included in the value of final product - Goods used for generation of electricity for captive use - Goods used for providing any output service - # All goods used for pumping of water for captive use. - # All capital goods which have a value upto `10,000 per piece.
INPUT DOES NOT INCLUDE	- Light diesel oil (LDO) - High speed diesel oil (HSD) - Motor spirit (commonly known as petrol) - Goods used for construction of building or part thereof - Goods used for construction of

INPUT DOES NOT INCLUDE	civil structure or part thereof - Goods used for laying of foundation for support of capital goods - But goods used by construction service provider or works contract service provider, even though used for construction, is eligible for inputs. - Input does not include capital goods and motor vehicle - When capital goods are used as parts or components, it is treated as inputs - Goods used for personal consumption of employees.
INPUT SERVICE MEANS [Rule 2(l)] INPUT SERVICE MEANS	- Any service used by service provider for providing output service - Any service used by manufacture in relation to manufacture of final products upto the place of removal - Professional services viz. accounting, auditing,

	financing, recruitment and quality control, coaching and training, computer networking, credit rating, legal services, security, share registry - Intermediary services viz. advertisement, sales promotion, market research, inward transportation, storage upto place of removal and outward transportation upto place of removal. - # Services by way of sale of dutiable goods on commission basis is sale promotion and thus an eligible input service.
INPUT SERVICE DOES NOT INCLUDE	- Construction services used for construction - Works contract services used for construction - But construction services used for works contract is input service and vice versa - Input services used for personal consumption of

INPUT SERVICE DOES NOT INCLUDE	employee - Renting services, insurance services, servicing, repair and maintenance services, in relation to motor vehicle, is not an input service, if the motor vehicle is not capital goods. [But, the said services will become input service, if motor vehicle is capital goods]
CAPITAL GOODS MEANS [Rule 2(a)]	- All machineries, electrical equipment, tools, implements - Pollution control equipment - Components, spares and accessories of above - Moulds and dies - Jigs and fixtures - Refractories and refractory materials - Tubes, pipes and fittings thereof - Storage tank - Dumpers and tippers - # Wagons - Components spares and accessories of dumpers and tippers - Motor vehicles other than

	specified motor vehicles - Chasis of above motor vehicles - Components, spares and accessories of above motor vehicles - # Equipment or appliance used in office - Capital goods even though used outside the factory, for generation of electricity for captive use within the factory. - # Capital goods even though used outside the factory for pumping of water, for captive use within the factory.
CG DOES NOT INCLUDE	- ~~Equipment or appliance used in office~~ - Specified motor vehicles
SPECIFI-ED MOTOR VEHICLE MEANS	- Motor vehicles for transport of 10 or more persons including driver (8702) - Motor cars and other motor vehicles principally designed for transport of persons

	including station wagons and racing cars (8703) - Motor vehicles for transport of goods (8704) - Motor cycles, including mopeds and cycles, fitted with auxiliary motor, with or without side cars (8711)
CASES WHEN SPECIFI-ED MOTOR VEHICLE IS CAPITAL GOODS	If the specified motor vehicles are registered in the name of the following service providers and used in their business - Renting of motor vehicles - Transportation of goods - Courier agency - Transportation of passenger - Imparting motor driving
OUTPUT SERVICE MEANS	Any service provided by a provider of service located in the taxable territory but shall not include an exempted service [i.e. only a taxable service]
EXEMPT-ED GOODS MEANS	- Nil Rated goods - Non excisable goods # - Exempted goods - Goods on which ED payable @

	1%/2% under Noti. 1/2011
EXEMPT-ED SERVICE MEANS	- # Any activity which is not a service - Services in Sec. 66D of Finance Act [i.e. Negative list] - Services in notification no. 25/2012 – ST (i.e. Mega Exemption Notification) - Abatement Services (i.e. on which credit is not available) under Notification No. 26/2012 - ST - Composition scheme services under Rule 6 of ST Rules - Services covered under full reverse charge mechanism, where service tax is payable by the service recipient

2. AVAILMENT & UTILISATION OF CREDIT

2.1 How to compute net excise duty payable?

Gross excise duty payable on finished goods

(+) Gross service tax payable on output services
(-) Excise duty paid on Inputs
(-) Service tax paid on Input services
(-) Excise duty paid on capital goods

2.2 # When credit is available and what is the % of credit?

Inputs	Immediately (i.e. within 1 year from the date of invoice)on receipt of inputs into factory of manufacturer or any premises by service provider	100% of duties paid available as credit on the basis of invoice
Input Services [Normal	Immediately (i.e. within 1 year from the date of	100% of service tax mentioned

Service]	invoice) on receipt of invoice[1]	in the invoice
Input Service – Full reverse charge	On payment of service tax by the SR to government[2]	100% of the service tax paid
Input Service - Partial reverse charge	Portion of service tax payable by SR: On payment of service tax to government Portion of service tax payable be SP: On the date of receipt of invoice[3]	100% of the service tax paid

[1]If payment is not made by the SR within 3 months from the date of invoice, credit availed shall be reversed

[2]Even if the payment is not made to SP by SR within 3 months, the position will not change

[3]Condition to make payment to SP within 3 months will be applicable in this case, failure of which attracts reversal of credit availed.

Capital Goods	Immediately on receipt of inputs into factory of manufacturer or any premises by service provider [Credit can be availed even after 1 year from the date of invoice]	Upto 50% in the first financial year of purchase and balance in the subsequent years

2.3 What are the duties available as Credit?

- Basic Excise duty, Addl. Excise duty, NCCD
- Service tax
- # Credit of SBC cannot be availed but credit of KKC can be availed only by a service provider
- Even Additional customs duty paid u/s. 3(1) (known as CVD) of customs and additional duty paid u/s. 3(5) (known as SAD) of CTA, 1975 is available as CENVAT credit.

2.4 What are the restrictions on utilization of credit?

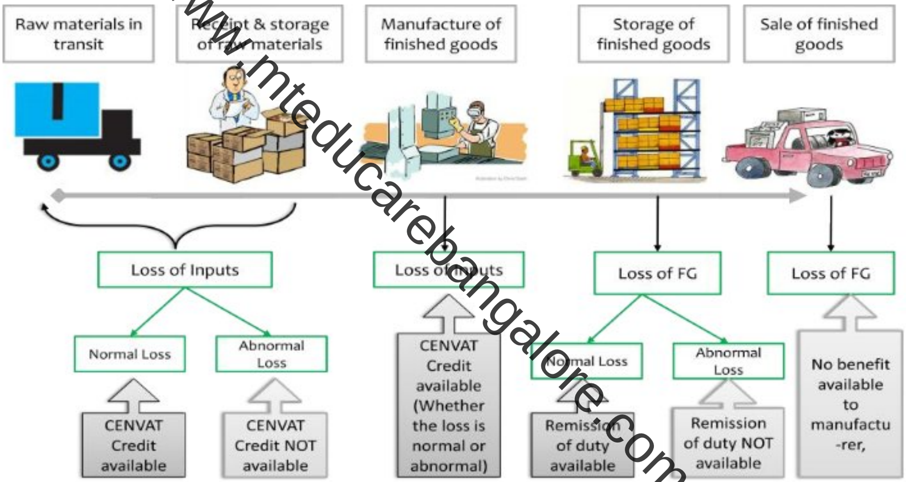
- One to one correlation is not required. Entire CENVAT credit is a common pool which can be utilised for payment of any eligible duty or tax.
- SAD cannot be utilized for payment of service tax.
- # CENVAT Credit cannot be utilised for payment of SBC.
- # KKC should be utilised only for payment of KKC
- CENVAT Credit cannot be utilised for payment of ST under reverse charge mechanism (RCM)
- NCCD should be utilized only for NCCD
- No restrictions on utilization of CVD.
- # In case of SSI units (Whether manufacturing jewellery or other goods), 100% credit on capital goods available in the same financial year.

Inputs & Capital Goods Can Be Received Directly Into The Premises Of Jobworker, But Credit Is Available To Manufacturer

3. NON AVAILMENT & REVERSAL OF CREDIT

- If inputs are destroyed/damaged after issuing it to production, CC on inputs available.
- If inputs are destroyed /damaged before issuing it to production and if it is normal loss, CC on inputs available
- If inputs are destroyed /damaged before issuing it to production and if it is abnormal loss, CC on inputs not available.
- If capital goods are destroyed, CC on capital goods available.

Inputs must be used in or in relation to manufacture of finished goods. Therefore, if inputs are destroyed before being put to use, CENVAT Credit is not available on such inputs


Raw materials in transit
Receipt & storage of raw materials
Manufacture of finished goods
Storage of finished goods
Sale of finished goods
Loss of Inputs
Normal Loss
Abnormal Loss
CENVAT Credit available
CENVAT Credit NOT available
Loss of Inputs
CENVAT Credit available (Whether the loss is normal or abnormal)
Loss of FG
Normal Loss
Abnormal Loss
Remission of duty available
Remission of duty NOT available
Loss of FG
No benefit available to manufactu -rer,

4. REVERSAL OF CENVAT CREDIT IN THE FOLLOWING CASES:

1. When final product becomes exempted, the CENVAT Credit w.r.to inputs lying in stock, in process and in finished goods lying in stock, needs to be reversed. Balance credit, if any should also be reversed
2. Manufacturer can take credit of goods in stock on day when the final product ceases to be exempted goods or become excisable [Rule 3(2)]
3. If inputs or capital goods before being put to use, are written off fully or partly in books (or) provision has been made to write off fully or partially, CENVAT credit previously availed on such inputs and capital goods needs to be reversed [Rule 3(5B)]

Example:

For availing credit on Capital goods
Asset A/c – Dr. CENVAT Credit (Receivable) – Dr. CENVAT Credit (Deferred) – Dr. To Payable A/c
For Writing off of capital goods
Profit & Loss A/c – Dr. To Asset A/c.
For Reversal of Credit as per Rule 3(5B)
Profit & Loss A/c – Dr. To CENVAT Credit (Receivable) To CENVAT Credit (Deferred)

4. If duty on final products is remitted under rule 21 of excise rules, CENVAT credit of excise duty paid on inputs and service tax paid on input services, used in manufacture of such goods shall be reversed. [Rule 3(5C)]

5. Remission of duty under rule 21 means excise duty payable on finished goods are waived, if the goods are destroyed on account of natural causes or normal reasons, or manufacturer has claimed the goods to be unfit for human consumption or for marketing.

5. INPUT SERVICE DISTRIBUTOR [ISD]:

- Service tax paid at head office, regional/ branch office can be utilized through mechanism of 'Input service distributor'. They should be registered and pass credit through invoice [Rule 2(m)]
- The ISD can distribute CENVAT credit of service tax availed by it by issuing an invoice to its manufacturing units or units providing output service or to # job-worker. The invoice should have details as required in Rule 4A(2) of Service tax Rules, 1994

- # Manner of distribution of Credit [Rule 7]:

1. The credit distributed does not exceed the amount of service tax paid.
2. Service wholly consumed by a unit shall be distributed to that unit.
3. Service used by more than one unit shall be distributed to those units on the basis of turnover of such units.
4. Credit shall be distributed, even if the units are engaged in manufacture of Exempted goods or provision of exempted services. However such units shall avail credit in terms of Rule 6 of CCR, 2004.

- ISD has to file half yearly return within one month from end of half year.
- # As per Rule 7B, manufacturers with multiple manufacturing units enabled to maintain common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.

6. REVERSAL OF CREDIT WHEN INPUTS AND CAPITAL GOODS ARE REMOVED AS SUCH OR AFTER USE:

SITUATION	CREDIT TO BE REVERSED/PAID ACCORDINGLY
1. If inputs are removed as such	a) So much of the credit availed b) Duty calculated on transaction value, at the time of removal; [Whichever is HIGHER]
2. If Capital goods are removed as such	Same as above
3. If Capital goods [Computers & Computer Peripherals] are removed after use [i.e. as	a) Credit availed (-) % points computed b) Duty Calculated on transaction value, at the time of removal; [Whichever is HIGHER] % points depending on the period of use:

second hand machinery]	For every quarter (or part thereof) in <u>1^{st} year = 10%</u> For every quarter (or part thereof) in <u>2^{nd} year = 8%</u> For every quarter (or part thereof) in <u>3^{rd} year = 5%</u> For every quarter (or part thereof) in <u>4^{th}& 5^{th} year = 1%</u>
3. If Capital goods [Others] are removed after use [i.e. as second hand machinery]	a) Credit availed (-) % points computed b) Duty Calculated on transaction value, at the time of removal; [Whichever is HIGHER] % points depending on the period of use: 2.5% for every quarter (or part thereof)
4. If capital goods are removed as waste and scrap.	Duty on transaction value of waste and scrap removed.

5. If Inputs are removed after use [i.e. as Finished goods]	<u>Normal provisions shall apply:</u> Excise duty payable on Finished goods (-) CENVAT Credit availed
6. If Input are removed after use [i.e. as Work-in-Progress]	If work-in progress has essential feature of finished goods, then above normal provisions shall apply. Otherwise, provision related to inputs removed as such shall be applicable.

7. REFUND OF CENVAT CREDIT IN CASE OF EXPORTS [RULE 5]:

CENVAT Credit availed on inputs and input services are available for refund, if finished goods and output services, in which the above inputs and input services used, are exported.

Refund shall be computed as follows:

<u>Step – 1:</u> Balance in CENVAT Credit (before refund) = Total Credit availaed (-) Total credit utilised.

<u>Step -2:</u> Refund formula = Total Credit availed X $\frac{???????????????}{??????????????}$

<u>Step – 3:</u> Maximum refund under Rule 5 = Step – 1 (or) Step -2, whichever is lower.

<u>Step – 4:</u> Balance still available as credit (if any) = Step – 1 (-) Step – 3

Note: Step – 4 should be > 0

Refund application in case of export of goods is to be filed within 1 year from the date of export.

Refund application in case of export of services is to be filed within 1 year from the date of (a) receipt of payment, if service is completed prior to such receipt of payment or (b) issue of invoice, if payment has been received in advance prior to the date of issue of the invoice.

REFUND OF CENVAT CREDIT IN CASE OF PARTIAL REVERSE CHARGE MECHANISM [RULE 5B]

REFUND = Step – 1 (or) Step – 2 (or) Step – 3, WHICHEVER is LOWER.

Step – 1: Service tax paid by the SERVICE RECIPIENT w.r.to partial reverse charge

Step – 2: Balance in CENVAT Credit available with the service provider [Total CENVAT Credit (-) Service tax paid by the Service provider w.r.to normal services and services covered under partial reverse charge]

Step – 3: Unutilized CENVAT Credit as per Rule 5B = D X A/C (-) E

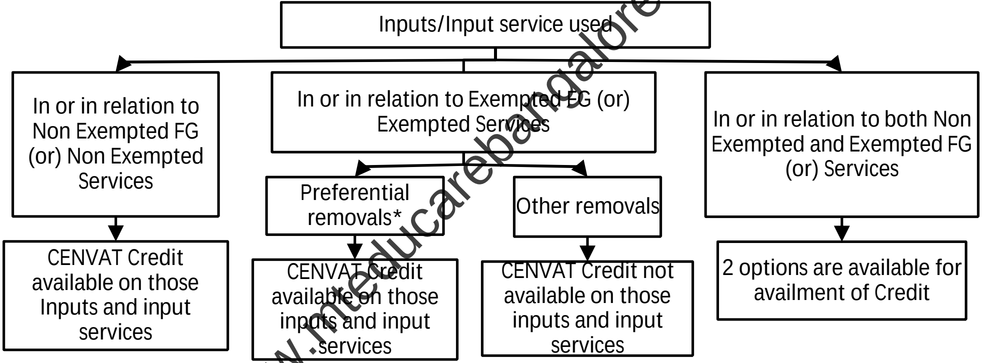
A = Value of services under partial reverse charge

C = Total turnover of goods and services

D = CENVAT Credit taken on inputs and input services

E = Service tax paid by the service provider for partial reverse charge services

8. # COMMON INPUTS/INPUT SERVICES USED FOR BOTH DUTAIBALE AND EXEMPTED GOODS/SERVICES [RULE 6]:



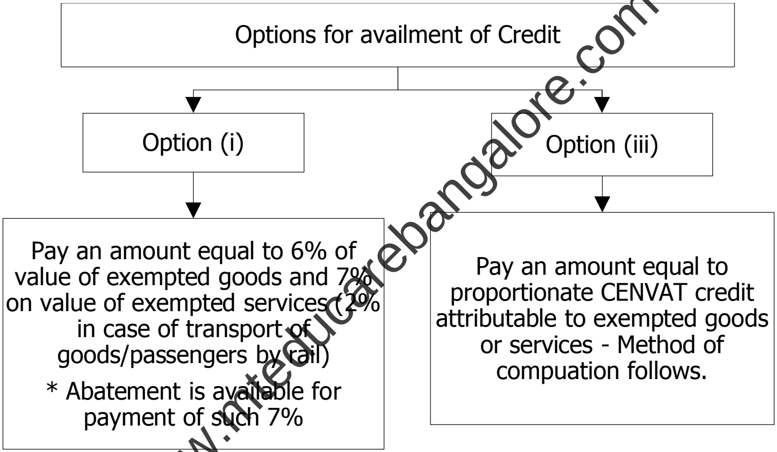
* Preferential removals are:

In Case of Excise:

1. If goods are removed to SEZ, EOU, EHTP, STP, UN agencies (or)
2. For exports without payment of duty(or)
3. Removal of gold (or) silver arising in manufacture of copper or Zinc by smelting
4. Goods supplied under international competitive bidding
5. Goods supplied to a power project
6. Goods supplied to Solar power generation projects
7. Goods supplied for use of foreign diplomatic missions or consular missions or career counselling officers or diplomatic agents

In case of Service tax:

1. Provision of services to developer or unit in SEZ in relation to their authorized operations.
2. Export of services
3. # Transportation of goods by vessel from India to a place outside India.


Options for availment of Credit
Option (i)
Option (iii)
Pay an amount equal to 6% of value of exempted goods and 7% on value of exempted services (2% in case of transport of goods/passengers by rail)
* Abatement is available for payment of such 7%
Pay an amount equal to proportionate CENVAT credit attributable to exempted goods or services - Method of compuation follows.

OPTION (III):

- Assese should first take Common CENVAT credit of inputs and input services used in exempted as well as Non exempted FG (or) Services
- At the end of the month, assessee should calculate CENVAT credit attributable to EXEMPTED GOODS and EXEMPTED SERVICES on PROVISIONAL basis (For this purpose previous year ratios of Inputs/Input services used in Dutiable and Exempted Goods/Services can be taken)
- At the end of the year, assessee should calculate the ratios on actual basis and make fresh calculations and pay difference if any before 30th June. If it is found that he had paid excess amount based on provisional ratio, he can adjust the difference himself by taking credit.

Step 1: Computation of provisional amount on monthly basis – It shall be reversed

Step 2: Computation of actual amount on annual basis – only for computation

Step 3: Payment of differential amount, if any within 3 months from the end of the financial year (i.e. June 30^{th}). If not interest @ 15% p.a is payable.

Note: In case of banks and other financial institutions, an additional option is available to reverse flat 50% of the credit availed each month.

9. GOODS SENT ON JOBWORK [RULE 4(5)(a)]:

- Inputs sent for job-work, for further processing must be returned (as such or after process) within 180 days from the date of despatch.
- Capital goods sent for job-work must be returned within 2 years from the date of despatch.

- If inputs/capital goods, not received within in the above specified time, credit availed shall be reversed.
- As and when such inputs and capital goods are received after reversal, credit shall be availed. (Even if such inputs are received after 1 year from the date of invoice, as the restriction of 1 year is applicable only in case of first time availement)
- The above restriction in case of capital goods (i.e. to return within 2 years from the date of despatch) is not applicable in case of moulds, dies, tools etc.,
- AC/DC can permit the manufacturer to clear the processed goods directly from the premises of job-worker without returning them to principal manufacturer. Such permission granted once, shall be valid for 3 financial years.

10. CENVAT CREDIT IN CASE OF ASSIGNMENT OF RIGHT TO USE NATURAL RESOURCES [RULE 4(7)]:

- Credit w.r.to ST paid on one time charges for allotment of natural resources to be availed evenly over a period of 3 years, irrespective of the period for which such right is granted.
- Credit w.r.to ST paid on annual payments for usage of such natural resources to be availed in the year in which it is paid (Credit can be availed even after a period of 1 year from the date of invoice)

NOTES

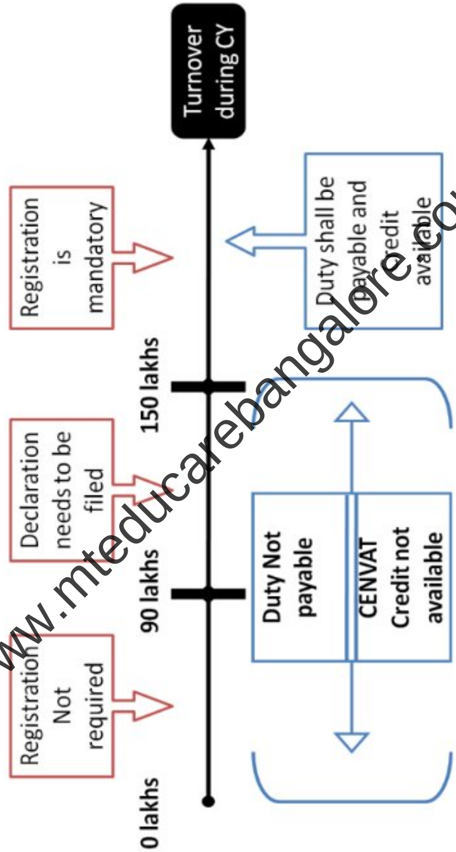
THAT'S IT - 4
SSI EXEMPTION

<u>SSI Exemption to units other than jewellery manufacturers:</u>

- The exemption is available vide Notification No. 8/2003
- Condition for availing exemption: The SSI exemption during the CY is available when the turnover of the assessee during the PY is ≤ ₹400 lakhs.
- Amount of Exemption: The exemption is upto ₹150 lakhs of turnover during the CY. For turnover >₹150 lakhs excise duty payable.
- Impact on opening balance of credit: The credit as standing on the first day of the financial year in which the exemption is availed shall be lapsed.
- Availability of credit on inputs & input services: CENVAT credit on inputs purchased, Input services received not available upto the date when turnover is ≤ ₹150 lakhs. Thereafter, credit available.

- Availability of credit on capital goods: CENVAT credit on capital goods is available but can be utilized only when turnover crosses `150 lakhs.
- Exemption is optional: The assessee can opt to pay normal duty and can avail CENVAT credit. The option once availed will be applicable for entire turnover of a financial year.
- Non eligible goods: Manufacturer of excisable goods (other than Tea, pan masala, some tobacco products, sandal wood oil, weapons, travel sets for toiletries etc.) are eligible for SSI exemption.
- Brand name restrictions: SSI Exemption is not available, if the goods are being manufactured and cleared with the brand name of others, in urban area. [But, exemption is available if the unit is located in rural area]. In case of packing material, account books and writing pads, SSI exemption is available, even though such goods are manufactured with the brand name of others

Registration Restrictions:



SSI Exemption in case of jewellery manufacturers:

- These provisions are applicable with effect from 1.03.2016
- If the aggregate domestic clearances during PY ≤ `1500 lakhs, then during CY upto `1000 lakhs is exempt from payment of ED
- Only articles of jewellery other than silver jewellery is chargeable to ED.
- However, articles of silver jewellery studded with stones are also chargeable to ED.
- The rate of ED is 1% (Without CENVAT Credit) and 12.5% (With CENVAT Credit)

THAT'S IT - 5 PROCEDURES UNDER EXCISE

1. REGISTRATION [RULE 9 OF CE RULES, 2002]:

- Registration is w.r.to premises – i.e factory or warehouse (but not the name of manufacturer)
- Every manufacturer of excisable goods, who is required to pay excise duty,is required to get registered, unless otherwise specifically exempted.
- Registration once obtained is final, it is not required to be renewed
- After applying for registration in Form A-1 along with appropriate documents, registration certificate shall be provided with a registration number.
- Registration number is a 15 digit PAN based number.

- # Importer issuing CENVATable invoices now required to obtain registration.
    - # Registration is now permitted in electronic mode only

2. INVOICE [RULE 11 OF CE RULES, 2002]:

- An invoice is the document, under the cover of which excisable goods are cleared by the manufacturer.
- It should be signed by the owner of the factory or his authorized agent.
- It should be serially numbered and such serial number should be intimated to jurisdictional superintendent.
- Invoice should be in Triplicate
- ORIGINAL for Buyer
- DUPLICATE for Transporter
- TRIPLICATE for Assessee
- # Invoice can be maintained in electronic form, but in case of duplicate copy, the hard copy of invoice ~~with signature of~~

~~manufacturer~~ is made available to transporter.

3. RETURNS UNDER EXCISE:

Return	Who is required to file	Time limit
ER - 1: Monthly returns	All units other than SSI	10th of the following month
ER - 2: Monthly return	EOU	10th of the following month
ER - 3: Quarterly Return	SSI Units	10th of the following quarter
ER - 4: ~~Annual financial information statement~~ # Annual Return	Assessee paying duty of Rs one crore or more per annum either through PLA or Cenvat or both	Annually by 30th November of succeeding year

ER - 5: Information relating to principal inputs	Assessee filing ER - 4 return	Annually, by 30th April for the current year
ER - 6: receipt and consumption of each of Principal Inputs	Assessee filing ER - 5 return	10th of following month
ER - 7: Annual Installed capacity Statement	All assesses except manufacturers of *biris* and matches without aid of power and , reinforced cement concrete pipes	Annually, by 30th April for the previous year
ER - 8: Quarterly return	Assessee paying 1%/2% excise duty and not manufacturing any other goods	Quarterly within 10 days after close of quarter

THAT'S IT - 6
SECTION REFRESHER

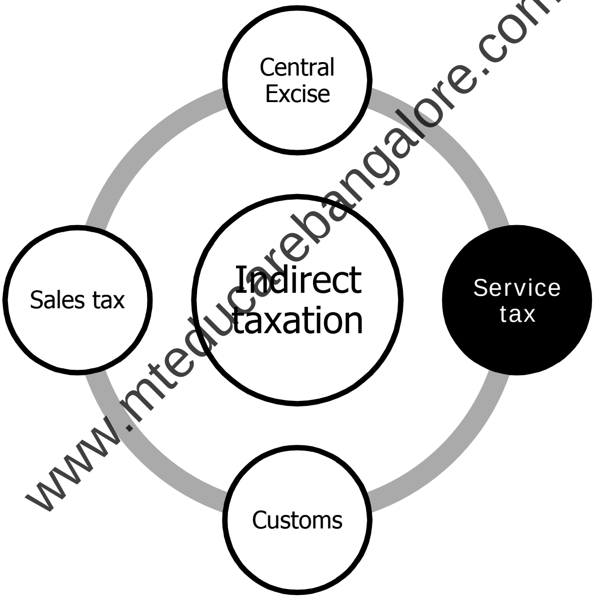
Constitutional Validity → Seventh Schedule → List 1 → Entry 84	
CENTRAL EXCISE ACT, 1944 [Provisions relating to central excise]	
Sec. 3	Taxable Event under Excise
Sec. 3(1)	Levy of Basic Excise Duty
Sec. 2(d)	Deemed Marketability
Sec. 2(f)	Definition of Manufacture
Sec. 3(2)	Duty based on "Tariff Value"
Sec. 3A	Duty based on "Production capacity"
Sec. 4A	MRP based valuation
Sec. 4	Assessable Value as Transaction Value
Sec. 4(3)(d)	Definition of transaction value
CENTRAL EXCISE TARIFF ACT, 1985	

[List of excisable goods with rate of duty]	
CENVAT CREDIT RULES, 2004 [Provisions relating to CENVAT Credit]	
Rule 2(a)	Meaning of "Capital goods"
Rule 2(d)	Exempted goods
Rule 2(e)	Exempted Service
Rule 2(k)	Meaning of "Inputs"
Rule 2(l)	Meaning of "Input Service"
Rule 2(m)	Meaning of "Input Service distributor"
Rule 3(1)	Duties/tax eligible for CENVAT credit
Rule 3(4)	Utilization of CENVAT Credit
Rule 3(5) & 3(6)	Credit on inputs/capital goods removed as such or after use
Rule 3(5B)	Credit on inputs/capital goods written off before use
Rule 3(5C)	Credit in case of remission of duty on final product
Rule 4	Conditions for allowing

	CENVAT Credit
Rule 4(5) & 4(6)	Job work provisions
Rule 5	Refund of credit in case of exports
Rule 5A	Refund of credit to units in specified areas
Rule 5B	Refund of credit to service providers providing services on reverse charge basis
Rule 6	CENVAT credit in case of common inputs/input services used for both dutiable and exempted goods or services
Rule 7	Manner of distribution of credit by input service distributor
Rule 8	Storage of inputs outside the factory of the manufacturer
Rule 9	Documents and accounts
CENTAL EXCISE RULES, 2002 [Procedures relating to central	

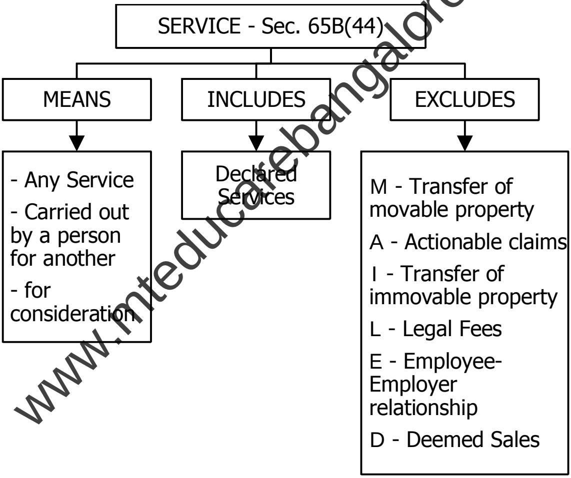
excise]	
Rule 4	Duty shall be payable at the time of removal of goods from factory/warehouse
Rule 5	Rate of duty or tariff value is the rate or value in force on the date when such goods are removed from a factory or warehouse
Rule 8	Payment of excise duty
Rule 9	Registration
Rule 11	Invoice
IMPORTANT CASE LAWS	
UOI V. Delhi Cloth Mills	Goods must be marketable
IMPORTANT NOTIFICATIONS	
214/86	If raw material supplier undertakes payment of duty, job worker is exempted from payment of Excise duty
67/95	If final product is dutiable, intermediate product

	captively consumed is exempted.
89/95	Waste & Scrap arising out of manufacture of exclusively exempted goods, are also exempted.
8/2003	Small Scale Industry (SSI) Exemption.


Central Excise
Sales tax
Indirect taxation
Service tax
Customs

THAT'S IT - 7
BASICS OF SERVICE TAX
[FINANCE ACT, 1994]

1.1 What is the meaning of "Service"?



- Activity is not defined but in general parlance, activity would include an act done, or work done, a deed done, an operation carried out.

- Activity in relation to transfer/ sale of goods is not service
- Goods include securities viz. shares, debentures, derivatives, mutual fund units.
- Therefore, buying or selling of mutual funds or debentures would not be a service as the same would be transaction in securities.
- Activity in relation to transfer/ sale of immovable property is not service
- Transfer also includes gift or transfer in any other manner (i.e. assignment, relinquishment of title, extinguishment of title, will, inheritance, partition etc.,)
- Legal fees is fee payable to court or tribunal but not fees payable to advocate.
- Principle of mutuality applies in case of service i.e service must be provided by one person to another.
- Service provided by a person to self is outside the ambit of taxable service. Eg: Service provided by one

branch of a company to its another branch is not a service.

- Transaction merely in money without consideration is excluded from the definition of service.
- Services provided in the course of employment by an employee to employer is outside the ambit of service
- If an employee provides services on contract basis, then it would be treated as provision of service
- Service does not cover functions or duties performed by MLA, MP, and any person who holds any post in pursuance of the provisions of the constitution.
- Services which are specified in sec. 66D i.e. negative list are termed as "Non taxable services".
- Services which are specified in mega exemption notification no. 25/2012 are termed as "Exempted services"
- Declared services are activities that have been specified in Sec. 66E of the Act. When such activities are carried out be one person to another in the taxable territory for a

consideration then such activities are taxable services.

Levy	Point of payment	Collection
Sec. 66B – Date of provision of taxable service	Point of taxation Rules, 2011: Generally, the date of invoice or date of payment received, whichever is earlier	Rule 6 of Service tax Rules, 1994: In case of Individual or Firm E Payment - 6th of the month following every quarter In case of others E Payment - 6th of the month following every month
Note: For the month ending march and quarter ending march, the due date of payment is March 31st. # w.e.f 1st Oct 2014, every assessee shall pay duty through internet banking. But, AC/DC for reasons to be recorded in writing, allow an assessee to pay duty by any mode other than internet banking.		

1.2 What are declared Services?

1. Renting of immovable property
2. Construction Services
3. Intellectual Property Right Services
4. IT Software Services
5. Doing an act, Not doing an act & Tolerating an act
6. Hiring & Leasing of goods
7. Hire-purchase or installment transactions
8. Works Contract
9. Restaurant or Catering Services
10. Transfer of right to use telecommunication spectrum

1.3 What are deemed sales?

The following transactions are deemed to be sales as per Article 366(29A) of the Constitution.

1. Transfer otherwise than in pursuance of contract
2. Works contract
3. Hire purchase or installment transactions
4. Transfer of right to use goods (i.e. Leasing)
5. Supply of goods by an unincorporated association or body to its members
6. Supply of goods as a part of service, being food, drink or any other article for human consumption

1.4 What is the meaning of ACTIVITY for CONSIDERATION?

- Consideration means "quid pro quo" - i.e. something in return.
- Consideration can be monetary or non monetary
- Money value of non monetary consideration shall be included in value. Such monetary value will be determined in terms of sec. 67 of Finance Act, 1994
- There must be a direct link between activity and consideration
- Such link must be immediate but not remote
- Activity without consideration is not service [Donations, gifts are not consideration]
- Consideration without activity does not constitute service [Free charities are outside the ambit of service. But <u>charity for consideration</u> is taxable, unless otherwise exempted]
- Consideration may be paid by a person <u>other than</u> the person receiving the benefit of service
- <u>Fines and penalties</u> are legal consequences of a person's actions and are not in the nature of consideration for an activity

1.5 What is the meaning of "Service provider" and "Service recipient"?

- Service provider:Any person who provides taxable service is "Service provider"
- Service Recipient: Anyperson who is receiving taxable service provided by a service provider is "Service recipient".

1.6 What is the Meaning of person?

[Sec. 65B(37)]: Individual, HUF, Firm, LLP, AOP or BOI whether incorporated or not, Company, co-op society, Government (Central/State), a local authority, or every artificial juridical person not falling within any of the preceding sub clauses.

1.7 Who is actual service recipient?

Normally, the person who is legally entitled to receive a service and, therefore, obliged tomake payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

1.8 What is principle of mutuality?

As per this principle, there must be two parties for levy of service tax i.e. service must be provided by one person to another person.

1.9 What are exceptions to the principle of mutuality?

Exceptions [Explanation 3 to Sec. 65B (44)]:

1. An establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons.
2. An unincorporated association or body of persons and members thereof are also treated as distinct persons.

Implications of above:

- Services provided by Infosys (Chennai) to Infosys (Bangalore) are not a service and hence tax shall not be payable.
- Services provided by Infosys (India) and Infosys (U.S) are covered under the ambit of service and hence tax shall be payable.
- Services provided Renault Nissan JV

to its members Renault or Nissan and vice versa is a service and tax shall be payable.

1.10 What are exceptions to the principle of mutuality?

Exemptions [Notification no. 25/2012]:

Service by an registered, unincorporated body or a non- profit entity, to its own members by way of reimbursement of charges or share of contribution–

1. As a trade union;
2. For the provision of carrying out any activity which is exempt from the levy of service tax; or
3. Up to an amount of `5,000 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex [i.e. Resident Welfare Association (RWA)]

Circular No. 175/1/2014 (dated: 10/1/14)

- If per month, per member contribution exceeds `5,000, the entire contribution would be ineligible for contribution and service tax would be leviable.

- Small Service Provider exemption under Notification no. 33/2012 is applicable to RWA. (i.e. the taxable value of services is exempt upto ₹10 lakhs)
- RWA incurring expenses viz. electricity bill, telephone bill on behalf of members is excluded as per rule 5(1) of valuation Rules, 2006 for determining the value of taxable services of RWA
- RWA can avail CENVAT credit in terms of CENVAT credit rules, 2004

POINT OF TAXATION RULES, 2011

Different situations and the point of taxation in each situation.	Date of Completion of service (DOC)	Date of Invoice (DOI)	Date of payment (DOP)
Rule 3→ THE RATE OF DUTY IS SAME ON ALL THE DATES – Normal Service			
(i) If payment is received before completion of service. (i.e. Advance)			POT
(ii) If Invoice is issued within 30 or 45 days from the date of completion of service		POT shall be earlier of these two dates	
(iii) If Invoice is not issued within 30 or 45 days from the date of completion of service	POT		

Different situations and the point of taxation in each situation.	DOC	DOI	DOP
Rule 3→CONTINUOUS SUPPLY OF SERVICE – Which takes more than 3 months to complete.	Same as situation (i) except that deeming fiction regarding the COMPLETION OF SERVICE		
Rule 4(a) →SERVICE PROVIDED BEFORE CHANGE IN RATE		POT shall be EARLIER of these 2 dates	
Rule 4(b) →SERVICE PROVIDED AFTER CHANGE IN RATE			
(i) If both invoice and payment are received before change in rate (or) after change in rate		POT shall be EARLIER of these 2 dates	
(ii) In a case other than (i) above		POT shall be LATER of these 2 dates	

Different situations and the point of taxation in each situation.	DOC	DOI	DOP
Rule 5→ WHEN A SERVICE BECOMES TAXABLE FOR THE FIRST TIME			
(i) If invoice is issued and payment is received before the new service becomes taxable	NO TAX PAYABLE to that extent		
(ii) If <u>invoice is issued</u> within 14 days after the new service becomes taxable but payment is received before	NO TAX PAYABLE [Provided, invoice is issued to the extent of payment received]		
(iii) Scenario (i) - If invoice is issued before, but payment is received after. (Or) Scenario (ii) - If <u>invoice not issued</u> within 14 days after the new service becomes taxable but payment is received before.	POT shall be determined as per Rule 3 (or) as per Rule 8A, officer shall determine POT		

(iv) If both invoice and payment date falls after the new service becomes taxable.		POT shall be EARLIER of these 2 dates	
Different situations and the point of taxation in each situation.	DOC	DOI	DOP
Rule 7→ REVERSE CHARGE# [If payment is not made within 3 months from DOI, the POT shall be the date immediately <u>following the said period of 3 months</u> [Notification No. 13/2014 w.e.f 1/10/2014]. For example, if invoice is issued on 23/7/2014 and the payment is not made by the service recipient on or before 23/10/2014, then point of taxation shall be 24/10/2014.]			POT (If payment is made to SP within 3 m from DOI)

Different situations and the point of taxation in each situation.	DOC	DOI	DOP
Proviso to Rule 7 → GOVERNMENT SERVICES – Date when payment is due (or) date of actual payment whichever is earlier		POT shall be earlier of these two dates	
Proviso to Rule 7→ TRANSACTIONS WITH ASSOCIATED ENTERPRISES (Where person providing service is outside India)[Remember: The liability to pay duty is on the service recipient]		Date of debit in the books of service recipient or date of making payment, whichever is earlier	
Rule 8→ Payments pertaining to copyrights and trademarks		POT shall be EARLIER of these 2 dates	

THAT'S IT - 9
NEGATIVE LIST

S.No.	Service under Negative List
1.	Services provided by government or local authority other than the following 1. Services by department of posts – Speed post, express parcel post, life insurance and agency services provided to a person other than government. 2. Transportation of goods (or) Services 3. Services in relation to aircraft or vessel inside or outside the precincts of port or airport. 4. # All services other than above provided by government to business entity (See Exemptions below) Exemptions with respect to 4^{th} point: a) Services to a business entity with a turnover ≤ ₹10 lakhs

during PY

b) Inter-governmental services (or) inter-local authority services
c) Fee for specific certificates – Visa, driving licence, birth or death certificates
d) Services upto a value of `5,000 per invoice.
e) Service in relation to registration required under any law
f) Service in relation to testing, calibration, safety check or certification relating to safety of workers, consumers or public.
g) Services in relation to allocation of natural resources to an individual farmer in relation to agriculture.
h) Services provided by municipality, municipal corporation and gram panchayat
i) Merchant Overtime Charges (MOT) collected by certain officers.
j) Consideration for tolerating an act

	k) Right to use natural resources assigned before 1.4.2016
2.	Services provided by RBI (But, Services provided to RBI are taxable)
3.	Services by foreign diplomatic mission located in India
4.	All services relating to agriculture or agricultural produce (Agriculture includes rearing of all life forms excluding horses) Jobwork in relation to agriculture is EXEMPTED.
5.	Trading of goods
6.	# SERVICES BY WAY OF CARRYING OUT ANY PROCESS AMOUNTING TO MANUFACTURE OR PRODUCTION OF GOODS EXCLUDING ALCOHOLIC LIQUOR FOR HUMAN CONSUMPTION
7.	Selling of space for advertisements in print media[4]
8.	Access to a road or a bridge on payment of toll charges
9.	# Betting, gambling or lottery (OTHER THAN SERVICES OF LOTTERY DISTRIBUTOR OR SELLING AGENT OR ANY INTERMEDIARY)

[4]Print media to include books & news paper

10.	# ~~Entry to entertainment events and access to amusement facilities~~ OMITTED
11.	Transmission or distribution of electricity
12. (a)	~~Services by way of Pre-school education and education up to higher secondary school or equivalent;~~
(b)	~~Services by way of Education as a part of a curriculum for obtaining a qualification recognized by law;~~
(c)	~~Services by way of Education as a part of an approved vocational education course.~~[5]
13.	Services by way of renting of residential dwelling for use as residence -> Renting for residential purpose is non taxable -> Renting for commercial purpose is taxable
14. (a)	Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount
(b)	Services by way of interse sale or

[5] Omitted and moved to exemption

	purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers
15.	service of transportation of passengers, with or without accompanied belongings, by- (i) ~~Stage Carriage~~ (ii) railways in a class other than- (A) first class; or (B) an airconditioned coach; (iii) metro, monorail or tramway; (iv) inland waterways; (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (vi) metered cabs or auto rickshaws;
16.	Certain services by way of transportation of goods: -> Transportation of goods by road is non taxable -> But GTA Services, Courier agency services even though by road is taxable. → Transportation of goods by inland waterways is non taxable.
17.	Funeral, burial, crematorium or mortuary services including transportation of the deceased

NOTES

THAT'S IT - 10
VALUATION UNDER SERVICE TAX

VALUATION UNDER SERVICE TAX (SEC. 67)

- If Service is Provided for a consideration in money —> Value = Gross amount charged by service provider.
- If service is provided for a consideration not wholly or partly in Money —> Value = Money received + Money value of additional consideration. [This value is always inclusive of service tax].
- If the money value of consideration is not ascertainable —> Value as determined by valuation Rules.
- Consideration includes any amount that is payable for the taxable services provided or to be provided
- Gross amount charges shall include

any amount received before, during or after provision of service

- Donations not considered as Value.

POINTS TO REMEMBER:

- The applicable rate of ST is 14%
- # Swatch Barath Cess (SB Cess) is @ 0.5% of the value of taxable service and Krishi Kalyan Cess @ 0.5% of value of taxable service
- Unless otherwise specified, consider value as exclusive of tax.

MEANING OF CONSIDERATION:

1.	Any amount payable for the services - Advance payment - Arrears in payment - Direct or indirect payment
2.	Reimbursable expenditure (or) Cost incurred by SP AND charged to SR in the course of providing service, but does not include expenditure incurred as a pure agent
3.	The following shall be value in case of lottery distributor or selling

	agent - Fee/Commission - Any amount retained - Sale price (-) purchase price

ST VALUATION RULES, 2006

Gross amount charged by service provider for providing SIMILAR service	Rule 3(a)
If above is not possible, EQUIVALENT money value, which should not be less then cost of provision of service.	Rule 3(b)
AO has power to determine Value by issuing SCN	Rule 4

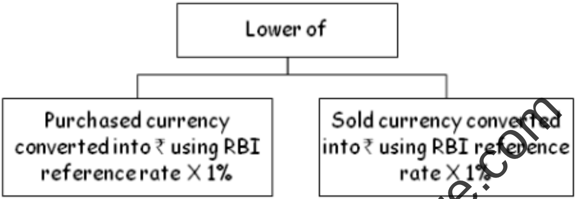
VALUE OF FOREX TRANSACTIONS (INCL. MONEY CHANGING) - RULE 2B

The "VALUE" as per Rule 2B is as follows:

1. When there is purchase or sale of INR and the RBI reference rate is available, Value = (Buying/Selling rate - RBI ref. rate) X Units of currency [Ignore +ve/-ve]
2. When there is purchase or sale of INR and the RBI reference rate is not available, Value = Gross amount

of INR provided or received X 1%

3. When the currencies involved in the exchange transaction are foreign currencies, Value =



Note: On the value ascertained above, ST @ 14% + SBC @ 0.5% + KKC @ 0.5% is payable.

[Also refer for composition scheme in page 105]

VALUE OF TELECOMMUNICATION SERVICE:

The value of telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.

<u>Exemption vide Notification No. 25/2012:</u>
Services by a selling agent or a distributor of SIM cards or recharge coupon vouchers are exempted from service tax.

<u>Example:</u>

MRP of SIM card = `200

Payment by Dealer to telecom company = `150

Value in the hands of telecom company = `200 (but not `150)

COMPOSITION SCHEME:

Air Travel agent - Rule 6(7):

ST @ 0.7% of the basic fare in the case of domestic bookings, and
ST @ 1.4% of the basic fare in the case of international bookings.

Life Insurance - Rule 6(7A):

- ST @ 14% of entire premium received, in case of risk cover policies
- ST @ 14% on [Gross premium charged (-) Amount allocated for investment],ff the amount allocated for investment to savings, is intimated to policy holder, at the time of providing service
- # In case of single premium annuity policies, ST @ 1.4% of single premium charged from policy holder
- Other cases (i.e. normal policies)→ For the first year of the policy →Service tax @ 3.5% of the gross

amount of premium charged.

For the subsequent year of the policy → Service tax @ 1.75% of the gross amount of premium charged.

Distributor/Agent of lotteries - Rule 6(7C):

Where the guaranteed lottery prize payout is ≥ 80% → ` 8,200/- on every `10 Lakhs (or part of `10 Lakhs) of aggregate face value of lottery tickets printed

Where the guaranteed lottery prize payout is < 80% → `12,800/- on every `10 Lakhs (or part of `10 Lakhs) of aggregate face value of lottery tickets printed

Sale/Purchase of foreign currency including money changing - Rule 6(7B):

Upto `100,000:

0.14 % of the gross amount of currency exchanged (or) `30 whichever is higher

Exceeding `1,00,000 and upto ` 10,00,000:

`140 + 0.07 % of the gross amount of currency exchanged (Exceeding

`1,00,000)

Exceeding `10,00,000:

`770 + 0.014 % of the gross amount of currency exchanged (Exceeding ` 10,00,000) (or) `7,000 whichever is lower.

COMPOSITION SCHEME - SPECIAL POINTS

- All the above are service tax payable but not "value".
- It is an optional scheme. If SP want to pay ST as per normal provisions, he can do so.
- The option should be availed in the beginning of every financial year in writing to AC/DC.
- The option once availed will be applicable for entire financial year in respect of all transactions. In case of lotteries, it can be availed within one month.
- If this option is availed, the SP comes under the category of "Exempted services" for CENVAT credit purpose and accordingly,

credit not available.

- Small service provider exemption is not available, if composition scheme is opted for.
- # SBC Shall be computed as service tax determined above X 0.5/14.

"In Normal scheme, there involves computation of Value & ST but in Composition scheme, only computation of ST"

NOTES

NOTES

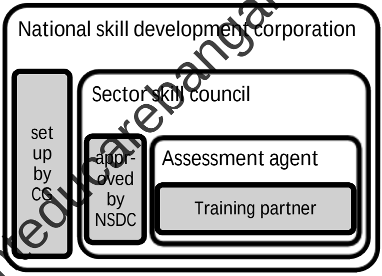
THAT'S IT - 11 EXEMPTED SERVICES

S.No	Exempted Services
1	Services to the UN/ a specified international organization;
2 #	i)Health care services by a clinical establishment, an authorized medical practitioner or paramedics; ii)transportation of patients in an ambulance even otherwise as a part of health care service is also exempt
2A #	Services Provided by Cord Blood Banks by way of preservation of stem cells or any other service in

<table>
<tr><td></td><td>relation to such preservation</td></tr>
<tr><td>2B
#</td><td>Services Provided By Common Biomedical Waste Treatment Facility Operators</td></tr>
<tr><td>3</td><td>Services by a veterinary clinic in relation to health care of animals or birds;</td></tr>
<tr><td>4</td><td>Services by an entity registered for providing charitable activities;
Charitable activities includes Yoga</td></tr>
<tr><td>5</td><td>(a) renting of precincts of a religious place meant for general public; or
(b) conduct of any religious ceremony (religious ceremony does not include marriage);</td></tr>
<tr><td>5A</td><td>Services By A Specified Organization In Respect Of A Religious Pilgrimage</td></tr>
<tr><td>6</td><td><table>
<tr><th>SP</th><th>SR</th></tr>
<tr><td rowspan="2">An arbitral tribunal</td><td>Any person other than business entity</td></tr>
<tr><td>A business entity with a turnover upto 10 lakhs in the preceding FY</td></tr>
<tr><td>Individual advocate</td><td>An individual advocate/ firm of</td></tr>
</table></td></tr>
</table>

	(other than Senior Advocate) / firm of advocates	advocates
		Any person other than business entity
		A business entity with a turnover upto 10 lakhs in the preceding FY
	Senior Advocate	Individual in his personal capacity
8	Services by way of training or coaching in recreational activities relating to arts, culture or sports;	
9 \#	Services provided a) by an educational institution to its students, faculty & staff b) to an educational institution[6] in respect of education exempted from service tax, by way of, Transportation of students, faculty and staff Catering service including any mid-day meals scheme sponsored by the	

[6]Those institutions that provide services specified in negative list – Refer point 12 in negative list

	government Security or cleaning or housekeeping services Services relating to admission to such institution or conduct of examination. Services in relation to renting of immovable property to educational institutions would become taxable;
9A	Any service provided by,  In relation to- Any notified programme, course or scheme by the above.
# 9B	Following programmes offered by IIM other than executive development programme. • 2 year full time residential

	PGDM where selection is based on CAT exam • Fellow programme • Five year integrated programme
# 9C	Services of assessing bodies empaneled by Directorate General of Training
# 9D	Services by way of skill/vocational training by Deen Dayal Upadyaya Grammena Kaushalya Yojana
10	Services provided to a recognized sports body by (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body; (b) another recognized sports body;
11	Services by way of sponsorship of sporting events organized, (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state, zone or ANY COUNTRY;

	(b) by Inter school, inter university associations, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (c) by Central Civil Services Cultural and Sports Board; (d) as part of national games, by Indian Olympic Association; or (e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;
15	Temporary transfer or permitting the use or enjoyment of a copyright, (a) relating to original literary, dramatic, musical or artistic works; (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;
16 #	Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than Rs. 1,50,000 Provided that the exemption shall not apply to service provided by such artist as a brand ambassador

17	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
18 #	Services by a hotel, inn, guest house, club, campsite BY WHATEVER NAME CALLED[7], for residential or lodging purposes, having declared tariff of a unit of accommodation < `1,000 per day or equivalent
19	Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year; 19A services in air- conditioned canteen of factory
20	Services by way of transportation by rail or a vessel from one place in India to another of the following

[7] Commercial or non commercial

	goods (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (c) defence or military equipments; (f) Registered newspaper or magazines; (g) railway equipments or materials; (h) agricultural produce; (i) milk, salt and food grain including flours, pulses and rice; (j) chemical fertilizer, Organic Manure and oilcakes; (k) Cotton - ginned or baled.
21	Services provided by a goods transport agency (GTA), by way of transport in a goods carriage of,- (a) All goods specified under "20" above (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500; (c) goods, where gross amount charged for transportation of all

	such goods for a single consignee does not exceed Rs. 750;
22	Services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods;
23 #	Transport of passengers, with or without accompanied belongings, by (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) a contract carriage (other than air-conditioned contract carriage and radio taxis) for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) Stage carriage, other than air conditioned stage carriage.
25	Services provided to Government, a local authority or a governmental

	authority by way of (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or (b) repair or maintenance of a vessel;
26	Services of general insurance business provided under certain schemes for Agriculture & Farmers Below poverty line people Women
26A	IRDA approved life micro-insurance schemes with sum assured not exceeding ₹50,000
26B	Services by way of collection of contribution under Atal Pension Yojana
# 26C	Services of life insurance business by way of annuity under National Pension Scheme
27	Services provided by an incubatee up to a total turnover of 50 lakhs in a FY subject to the following

	conditions, namely: (a) the total turnover had not exceeded 50 lakhs during the preceding FY; and (b) a period of 3 years has not been elapsed from the date of entering into an agreement.
29	Services by the following persons in respective capacities (a) sub-broker or an authorized person to a stock broker; (b) authorized person to a member of a commodity exchange; (g) business facilitator or a business correspondent to a banking company w.r.to basic savings account covered by PM Jan Dhan Yojana or an insurance company, in a rural area; or (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;
30	Carrying out an intermediate production process as job work in relation to

	(a) agriculture (paddy milled to rice is also exempt), printing or textile processing; (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, (c) any goods on which appropriate duty is payable by the principal manufacturer; or (d) Certain process, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of 150 lakhs in a FY subject to the condition that such aggregate value had not exceeded 150 lakhs during the preceding FY;
31	(a) Services by an organizer to any person in respect of a business exhibition held outside India; (b) GTA service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport.
33	Services by way of slaughtering of

	animals;
35	Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;
36	Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948. ESI SERVICES EVEN FOR A PERIOD PRIOR TO 1/7/2012 ARE EXEMPTED
37	Services by way of transfer of a going concern, as a whole or an independent part thereof;
38	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
39	Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.
40	Services by way of loading, unloading, packing, storage or warehousing of rice, cotton –

	ginned/baled.
41	SPECIALIZED FINANCIAL SERVICES RECEIVED BY RBI FROM OUTSIDE INDIA, IN THE COURSE OF MANAGEMENT OF FOREIGN EXCHANGE RESERVES, e.g. external asset management, custodial services, securities lending services, are being exempted.
42	Services provided by the Indian tour operators to foreign tourists in relation to tours wholly conducted outside India
43	Services provided by a common effluent treatment plant operator for treatment of effluent
44	services by way of preconditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables
45	services provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve
46	services provided by way of exhibition of movie by the exhibitor

	(theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of its members.
47	<u># Services by way of right to admission to –</u> (i) Exhibition of Cinematograph film, circus, dance, or theatrical performance including drama or ballet (ii) Recognized sporting event (iii) award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than `500 per person.
# 49 to 52	<u>Services by specified bodies:</u> • Employees provident fund organization (EPFO) • Insurance Regulatory and Development Authority (IRDA) • Securities and Exchange Board of India (SEBI) • National Centre for Cold Chan Development (NCCCD)

NOTES

THAT'S IT - 12
ABATEMENT

- Value on which service tax payable = Value of taxable service (-) Abatement (in %)
- The % of abatement should be calculated on the value before abatement.
- Abatement is also optional, like composition scheme.
- Weighing the balance of CENVAT Credit, abatement can be claimed as in case of certain services, credit

is not available when abatement is claimed.

- As per Rule 2(e) of CENVAT Credit Rules, 2004 exempted service includes "taxable service whose part of the value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken"
- Abatement services are divided into 3 categories
- CATEGORY – I: Abatement services on which CENVAT credit on inputs, input services and capital goods are available.
- CATEGORY – II: Abatement services on which CENVAT credit on inputs, input services and capital goods are not available.
- CATEGORY – III: Abatement services on which CENVAT credit on inputs and capital goods are not available [But CENVAT Credit on input services are available]

- Therefore, only those services falling under CATEGORY II are termed as “exempted services” for the purpose of CENVAT Credit.
- In case the service provider is eligible for Small service provider exemption, Value on which ST payable = Value of taxable service (–) SSP Exemption (–) Abatement.

Abatement Services

Full Credit available

1. HP & Financial leasing = 90%
2. Bundled service of supply of food along with renting of premises = 30%

Full Credit not available

1. Provider of GTA Services = 70% (other than house hold goods); 60% (Household goods)
2. Renting of any motor cab = 60%
3. Transport of passengers by contract carriage, radio taxi and stage carriage = 60%
4. Foreman of Chit Fund = 30%
5. Tour w.r.to booking of accomodation = 90%; other tour = 70%

Credit available on input services only

1. Transport of passengers by air = 60% (Economy Class), 40% (Other than economy class)
2. Transport of goods in vessel = 70%
3. Transport of passengers by rail = 70%
4. Transport of goods by rail = 60% (in containers); 70% (other cases)
5. Renting of hotels, inns, guest houses meant for residential purpose = 40%

NOTES

THAT'S IT - 13
SMALL SERVICE PROVIDER EXEMPTION

- Exemption is available during the current year, if aggregate value of taxable services provided during the PY≤ `10 lakhs
- During the CY service tax is exempt to the extent of aggregate value not exceeding `10 lakhs (i.e. Upto `10 lakhs)
- "Aggregate value not exceeding ` 10 lakhs" means the sum total of value of taxable services charged in the first consecutive invoices during the financial year (i.e. Upto `10 lakhs of services provided and invoice issued (or) to be issued) – But does not include exempted services.
- CENVAT Credit on inputs, input services and capital goods not available upto the date when

aggregate value does not exceed `10 lakhs during the current year.

NOTES

THAT'S IT - 14
EXEMPTION TO SEZ UNITS OR DEVELOPER

Services received by SEZ (unit or developer) - SEZ is Service recipient

- Exclusively used for DTA
  - Not eligible for exemption
- Exclusively used for authorized operation
  - Exemption ab-initio (prior authorization required)
- Not exclusively used for authorized operations (i.e. common services distributed between SEZ and DTA)
  - Exemption available by way of refund

    [Refund calulated in the manner prescribed as per Rule 7 of CCR, 2004]

REVERSE CHARGE MECHANSIM

	Services provided or agreed to be provided	Service Provider (SP)	Service Recipient (SR)	Conditions	ST liability	
					% of liability of SP	% of liability of SR
1.	Services of Insurance agent	Insurance Agent	Insurance company	SR should be located in taxable territory (TT)	nil	100%
2.	GTA Services	Goods Transport Agency (GTA).	Consignor or Consignee	SR should be liable to pay freight, and located in TT	nil	100%

3.	Sponsorship Services	Any person	Body corporate or firm	SR should be located in TT	nil	100%
4.	Arbitral Services	Arbitral Tribunal	Business entity	- do -	nil	100%
5.	Legal Consultancy Services	Individual (other than senior advocate) or Firm of advocate	Business entity	- do -	nil	100%
6. #	Any Service of Govt.	Govt. or Local Authority	Business entity	- do -	nil	100%
7.	Renting of Motor Vehicle	Individual or HUF or Firm	Business entity	Recipient should be	nil	100%

	Services (on abated value)	or AOP	registered as body corporate	person; (i) not be in similar line of business, and (ii) located in taxable territory		
8.	Renting of Motor Vehicle Services (on non-abated value)	Individual or HUF or Partnership Firm or AOP	Business entity registered as body corporate		50%	50%
9. #	Supply of Manpower Services	Individual or HUF or Partnership Firm or AOP	Business entity registered as body corporate	SR should be located in TT	nil	100%
10.	Service Portion in execution of Works	Individual or HUF or Partnership	Business entity registered as	SR should be located in TT& has option to	50%	50%

	Contract	Firm or AOP	body corporate	choose valuation method		
11.	Import of Service	Located in non-taxable territory	Any person	Service received from non-TT	nil	100%
12.	Any Service	Director of a company/ body corporate	Company/ body corporate	SR should be company/body corporate of which SP is director	nil	100%
13. #	Security Services	Individual or HUF or Partnership Firm or AOP	Business entity registered as body corporate	Recipient should be located in TT	nil	100%

14.	Recovery agent services	Recovery Agent	Bank, FI & NBFC		nil	100%
15. #	Lottery Selling or marketing agent services	Selling or marketing agent	Lottery distributor or selling agent		nil	100%
16. #	Services involving an aggregator	Any person	Aggregator of Service	SR should be located in taxable territory	nil	100%

Note: Only in two cases partial reverse charge mechanism is applicable (renting of motor vehicle and works contract) with 50:50 liability on SP and SR

KEY WORD TO BE REMEMBERED:

DIRECTOR having LEGAL STIGMA involves an AGGREGATOR

- DIRECTOR – Director services
- LEGAL – Legal consultancy services (incl. Arbitral services)
- S – Sponsorship Services
- T – Transportation i.e. GTA services
- I – Import of services
- G – Government services
- M – Motor vehicle services (i.e. abated value)
- A – Agent Services (Insurance agent; MF agent; Recovery agent of bank; selling or marketing agent of lottery)
- AGGREGATOR – Services involving an aggregator

NOTES

THAT'S IT - 16 PROCEDURES UNDER SERVICE TAX

REGISTRATION [RULE 4]

- Application for registration within 30 days or on crossing turnover of ₹ 9 lakhs
- File application in form ST-1 electronically and obtain registration number online
- Submit documents e.g. PAN, address proof, constitution of applicant, list of directors/partners, Power of Attorney (if required)
- Registration deemed to be granted within 2 days but payment of tax cannot be made and return cannot be filed till actually registration certificate in ST-2 form given. However, assessee can start issuing invoice based on that registration number.

- Centralised Registration by Commissioner if centralised accounts or centralised invoicing
- Submission of list of records maintained in first return.

INVOICE [RULE 4A]

- Invoice within 30 days (45 days in case of Bank) on completion of service
- It should contain Serial No and date name and address of SP and SR, registration number of SP, description and value of taxable service provided or agreed to be provided and service tax payable
- Rounding up off each invoice not required. Rounding up required only at the time of monthly/quarterly payment of service tax.
- Invoice is required to be issued when advance is received from service receiver.

- Point of Taxation Rules which were made mainly provide that service tax will be payable on accrual basis
- Option to pay service tax on receipt basis - Third proviso to Rule 6(1) → Where value of taxable services in previous year were less than ₹50 lakhs, service tax can be paid on receipt basis (i.e. cash basis) instead of accrual basis. This facility is available only to individual, firm (incl. LLP) & One Person Company, and that too upto a value of ₹50 lakhs during the CY, thereafter POT shall be applicable.

EXPORT OF SERVICE [RULE 6A]

Service shall be treated as export of service provided all the following conditions are satisfied:

1. Service provider is located in taxable territory
2. Service recipient is located outside India

3. It should not be a negative list service
4. POPS = Outside India
5. Consideration must be received in convertible foreign exchange, and
6. The provider and recipient of service are not merely establishments of a distinct person

Note: In order to be treated as export of service, the transaction should be between two persons but not between two establishments of the same person. Eg: Service by Infosys (India) to Infosys (US) is not export of service.

RETURNS [RULE 7]

Half yearly Returns:

- ST-3 returns on half yearly basis by 25th of end of half year [25 Oct and 25 April]
- E-filing of return mandatory
- Only one return even if multiple services.
- Advisable to file return in time even if all details not available, to avoid penalty

- Even if there is no taxable turnover, filing Nil return is mandatory.
- Revised return can be filed within 90 days from original return.
- After 90 days, revised return cannot be filed, but if tax paid was less, pay with interest and inform department
- if paid more, file refund claim or adjust in future return if otherwise allowable
- The late fee payable is as follows – (a) Delay Upto 15 days – `500 (b) Beyond 15 days and upto 30 days – `1,000 (c) Delay beyond 30 days – ` 1,000 plus ` 100 per day of delay beyond 30 days, from 31st day onwards – rule 7C. This `100 per day continues till limit of `20,000 is reached.
- There is no specific provision in law to reduce the late fee, except in cases where Nil Return was not filed in time.

Annual Returns:

- Annual return to be filed by 30th November of the succeeding financial year.
- Annual return filed on or before due date, can be revised within 1 month from the date of filing such return (Belated annual return cannot be revised)
- Delayed filing of annual return attracts a late fee of `100 per day during the period of delay subject to a maximum of `20,000.

INTEREST ON DELAYED PAYMENT OF SERVICE TAX [SEC. 75]

1. @15% p.a. FROM the first day after due date TILL the date of payment, if it is service tax collected but not paid.
2. @ 24% p.a. FROM the first day after due date TILL the date of payment, if it is amount collected as service tax but not paid.

3. @15% p.a under sec. 73B FROM the first day of the month succeeding the month in which tax ought to have been paid TILL the date of payment, if amount collected in excess of service tax is not paid

Note: In all the above 3 cases, if the value of taxable services provided during previous year does not exceed ` 60 lakhs, then 3% discount is available from the above rates i.e. the rates shall be 12%, 21%, 12% respectively.

NOTES

THAT'S IT - 17
SECTION REFRESHER

Constitutional Validity → Seventh Schedule → List 1 → Entry 97	
FINANCE ACT, 1994 [Provisions relating to service tax]	
Sec. 64	Applicability of Service tax
Sec. 66B	Charge of service tax
Sec. 65B(44)	Definition of "Service"
Article 366 (29A) of Constitution	Meaning of "Deemed Sales"
Sec. 66D	Negative list of services
Sec. 66E	Declared Services
Sec. 66F	Principles of Interpretation
Sec. 67	Valuation of taxable Service
Sec. 67A	Date of determination of rate of tax, value of taxable service and rate of exchange
Sec. 68(1)	Person liable to pay service tax
Sec. 68(2)	Reverse Charge mechanism
Sec. 71	Scheme of submission of returns through service tax return preparer

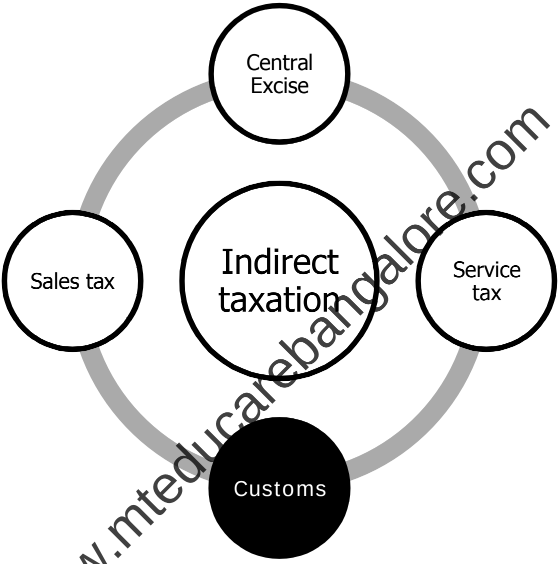
Sec. 73A	Service tax collected from recipient of service must be paid to the central government
Sec. 73B	Interest on amount collected in excess
Sec. 75	Interest on delayed payment of service tax
SERVICE TAX RULES, 1994 [Procedures relating to service tax]	
Rule 2A	Definition of date of payment
Rule 4	Registration
Rule 4A	Invoice, Bill or Challan
Rule 4B	Consignment Note
Rule 6	Payment of Service tax
proviso to Rule 6(1)	Option to pay service tax on receipt basis
Rule 6(3)	Self adjustment of service tax where services are wholly or partly not rendered
Rule 6(7)	Composition scheme in case of air travel agent
Rule 6(7A)	Composition scheme in case of insurer carrying on life insurance business
Rule 6(7B)	Composition scheme in case of Sale/Purchase of foreign currency including money changing

Rule 6(7C)	Composition scheme in case of organizing lottery
Rule 7	Returns under service tax
Rule 7B	Revised return [within a period of 90 days from the date of submission of original return]
Rule 7C	Late fee for delayed return
POINT OF TAXATION RULES, 2011 [For determining the point of payment of service tax]	
Rule 3	General Rule
Rule 4	POT in case of change in effective rate of tax
Rule 5	POT in case of new services
Rule 7	POT in case of reverse charge & transactions between associated enterprises
Rule 8	POT in case of Copyrights etc.,
Rule 8A	POT in other cases
SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 [To determine value in special cases]	
Rule 2B	Value of service in relation to money changing
Rule 3(a)	Value of similar Service shall be the value of taxable service

Rule 3(b)	Declaration of value in case where value is not ascertainable
Rule 4	Rejection of value by excise officer
Rule 5(1)	Expenditure incurred in the course of providing service shall be included in the value.
Rule 5(2)	Expenditure incurred as a pure agent is excluded in the value.

Notification	Provision
14/2012	Exemption from service tax equal to R&D cess payable on import of technology.
25/2012	All Exemptions under Service tax
26/2012	Abatement under Service tax
27/2012	Exemption to services for use of foreign diplomatic mission/consular post in India or family members of diplomatic agents or career consular officers posted therein

30/2012	Services under reverse charge
32/2012	Exemption to services provided by Technology Business Incubators (TBI)
33/2012	Exemption to small service providers
39/2012	Rebate of excise duty/service tax paid on inputs/input services
40/2012	Exemption with respect to services received by units in SEZ or SEZ developer
41/2012	Rebate of Service tax paid on input services, which does not fall into the definition of input service, which are used for export of services
31/2012 & 42/2012	Refund of service tax where service tax is paid by exporter himself under reverse charge mechanism
29/2012	Value of renting of immovable property = Gross amount charged for renting (-) Property tax payable to local authorities on such property
6/2013 to 8/2013	Exemption to specified export promotion schemes


Central
Excise
Indirect
taxation
Sales tax
Service
tax
Customs

THAT'S IT - 18 TAXABLE EVENT FOR CUSTOMS

CONSTITUTIONAL VALIDITY:

Entry 83 to List – I (Union List) of seventh schedule to constitution reads 'Duties of customs including export duties'

TAXABLE EVENT IN CASE OF IMPORTS:

- As per sec. 12 of Customs Act, 1962, import into India is the taxable event.
- Kiran Spinning Mills V. CC (1999), it was held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing customs barrier. But not on the date when goods landed in India or had entered territorial waters.

- Rate of Duty & Tariff Valuation:
  If the goods are cleared for Home consumption → Date of presentation of Bill of entry or grant of entry inwards whichever is later.
  If the goods are deposited into warehouse →The rate of duty and tariff valuation prevailing on the date on which ex bond bill of entry for clearance from warehouse to home consumption is presented will be applicable.
- Exchange rate:
  If the goods are cleared for home consumption → Date of filing bill of entry for home consumption
  If the goods are deposited into warehouse → Date of filing bill of entry for warehousing (but not ex bond bill of entry for clearance from warehouse)

TAXABLE EVENT IN CASE OF EXPORTS:

- As per sec. 12 of Customs Act, 1962, export from India is the taxable event.
- <u>UOI V. Rajendra Dyeing and Printing Mills</u>, it was held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete.
- <u>CC V. Sun Exports</u>, it was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to engine trouble, it is treated as export
- <u>Rate of Duty & Tariff Valuation: In case the goods are entered for export (irrespective of the mode of transport) →</u> The relevant date is the date of the 'let export order' of the proper officer

permitting export and loading of cargo on board under sec. 51

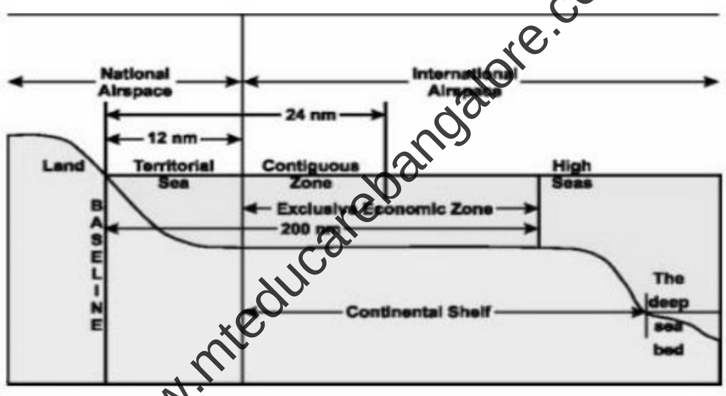
In case of any other goods →The relevant date is the date of payment of duty.

- Exchange Rate:

  The exchange rate notified by CBEC prevalent on the date of filing shipping bill (Vessel or Aircraft) or Bill of Export (Vehicle) under sec. 50

Levy	Point of payment	Collection
Sec. 12 – Import into or export from India	Sec. 15 – In case of Imports: Date of presentation of bill of entry (or) date of entry inwards, whichever is later. Sec. 16 – In case of Exports: Date on which clearance for export is permitted by customs officer.	Sec. 47 – In case of Imports: Immediately on filing bill of entry Sec. 51 – In case of Exports: Immediately on filing shipping bill or bill of export
Note: In order to reduce the transaction cost of the importers and expedite the time taken for customs clearance the Board has decided to make e-payment of duty mandatory for the importers paying an amount of Rupees one lakh or more per transaction – Circular No. 33/2011		

Significance of Indian territorial waters and Indian customs waters:

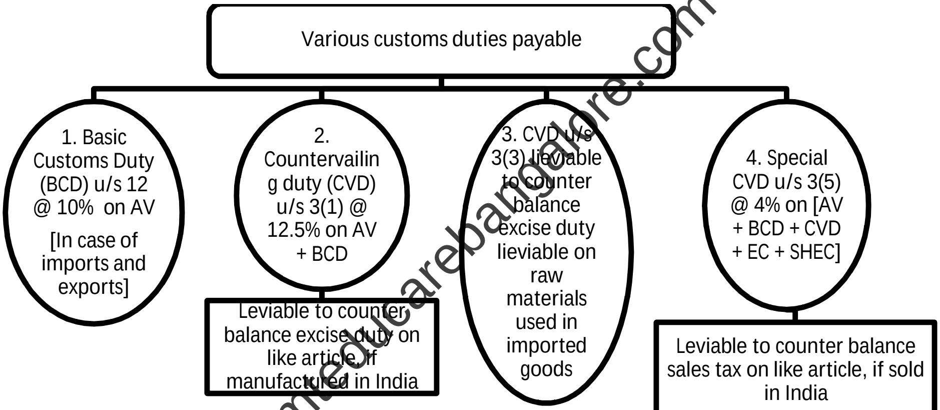


TERRITORIAL WATERS – Extends upto 12 Nautical Miles (1 NM = 1.8532 Kms) from the base line on the coast of India and include any bay, gulf, harbor, creek or tidal river.

EXCLUSIVE ECONOMIC ZONE – Extends upto 200 Nautical Miles from the base line.

HIGH SEAS – Beyond 200 Nautical Miles where all countries have equal rights.

Since India includes Indian territorial waters, all the provisions of the Customs Act and rules and regulations there under are applicable in Indian territorial waters. In addition to this, the Customs Act, 1962 has extended certain powers of the customs officers in the Indian customs waters as well (for example, power to stop and search any vessel, power to arrest a person in Indian customs waters etc.).


Various customs duties payable
1. Basic Customs Duty (BCD) u/s 12 @ 10% on AV
[In case of imports and exports]
2. Countervailing duty (CVD) u/s 3(1) @ 12.5% on AV + BCD
Leviable to counter balance excise duty on like article, if manufactured in India
3. CVD u/s 3(3) lieviable to counter balance excise duty lieviable on raw materials used in imported goods
4. Special CVD u/s 3(5) @ 4% on [AV + BCD + CVD + EC + SHEC]
Leviable to counter balance sales tax on like article, if sold in India

CUSTOMS DUTY COMPUTATION:

- CVD (3(1)) is levied to counter-balance excise duty and calculated on Assessable value + basic customs duty and
- SAD (3(5)) is levied to counterbalance sales tax and calculated on Assessable value + All customs duties excluding SAD.
- Antidumping duty and safeguard duty is added to the customs duty thus arrived and no EC and SHEC payable on it.
- The duty under customs shall be computed as follows:

Step 1 - Ascertain the Assessable value

Step 2 - Calculate the Customs duties [BCD @ 7.5% of AV + NCCD, if any + CVD @ 12.5% of (AV + BCD + NCCD)]

Step 3 - Calculate EC and SHEC on step 2

Step 4 - Total Customs Duty (Excluding SAD) = Step 2 + Step 3

Step 5 - Special Additional Duty (SAD) = 4% of (AV + Step 4)

Step 6 - Total customs duty (Including SAD) = AV + Step 4 + Step 5

Note: No EC and SHEC on CVD w.e.f 1/4/2012

SPECIAL PROVISIONS IN CASE OF SPECIAL ADDITIONAL DUTY U/S 3(5):

- The purpose of this additional duty is to counter balance sales tax, VAT, local tax and other charges leviable on articles on its sale, purchase or transaction in India
- Even if imported article is not sold in India, tax will be leviable on the basis of sales tax, VAT or other tax that would have been payable if the goods were sold, purchased or transported in India
- Exemption from Special Additional Duty:
  - Goods on which excise duty is payable on the basis of MRP price under sec. 4A of Excise Act, 1944

- Patent and propriety medicines
- Readymade garments
- Passenger Baggage
- Goods which are completely exempt from customs duty or nil rated goods
- Goods which are exempt from CVD
- Project imports
- Articles of jewellery attracts a lower rate of special CVD at 1%

➲ Refund of Special Additional Duty:

Traders selling imported goods in India after charging sales tax/VAT can claim refund of Special CVD from customs department. Refund is subject to the conditions that CENVAT Credit is not availed on the same and refund is subject to unjust enrichment (i.e. one should not get benefit at the cost of others). Refund claim is to be filed within 1 year from payment of customs duty.

SAFEGUARD DUTY:

- It is imposed when foreign goods are being imported in large Quantities and under such conditions which causes serious injury to domestic industry.
- Large Quantities means
  Situation (i) → Imports form a developing country exceeds 3% of the total imports of that article into India
  Situation (ii) → Importing from more than one developing country AND Imports from each developing country less than 3% AND Total Imports from all such countries exceeds 9%
- The % calculated on total imports of that article in India.
- No EC and SAHEC on safeguard duty.

- The duty can be imposed for a maximum period of 4 years. In order to safeguard the interests of domestic industry it can be extended but should not exceed 10 years.
- Safeguard duty shall not apply to articles imported by 100% EOU or a unit in FTZ or a unit in SEZ, unless specifically made applicable.
- But, safeguard duty shall be levied on articles imported by 100% EOU/SEZ, that are cleared as such into DTA (or) are used in manufacture of goods that are cleared into DTA

NOTES

THAT'S IT - 19 VALUATION UNDER CUSTOMS

TRANSACTION VALUE OF IMPORTS (SEC. 14) & RULE 3 READ WITH RULE 10.

Rule 3(1): value of imported goods shall be transaction value adjusted in accordance with provisions of rule 10

Transaction Value —> In case of Imports: Price actually paid/payable for the goods when SOLD FOR EXPORT TO India for delivery at the TIME AND PLACE OF IMPORTATION (i.e. the price upto a port in India when goods are imported). Hence, CIF value should be considered.

Transaction Value —> In case of Exports: Price actually paid/payable for the goods when SOLD FOR EXPORT FROM India for delivery at the TIME AND PLACE OF EXPORTATION (i.e. the price upto a port in India when goods are exported). Hence, FOB value should be considered

IMPORTANT POINTS FOR COMPUTATION OF TRANSACTION VALUE IN CASE OF IMPORTS:

- CIF = FOB + Cost of Transport + Insurance
- If CIF price is given in the question, TV = CIF price + 1% of CIF as landing charges (if actual landing charges is available, consider the same)
- If FOB price is given in the question and if the information regarding cost of trans-port and Insurance is available, TV = FOB price + Cost of transport upto a port in India + Insurance + 1% of CIF as landing charges (if actual landing charges is available, consider the same)
- If FOB price is given in the question and if the information regarding cost of transport and Insurance is not

available, Consider cost of transport as 20% of FOB and Insurance as 1.125% of FOB and arrive at the TV.

- If Air freight is given in the question, For calculating TV consider cost of transportation as ACTUAL air freight or 20% of FOB, whichever is LOWER.

POINTS TO REMEMBER:

- If different tax rates are given in question, then consider those rates.
- Exchange rate determined by CBE&C should be considered.
- If goods are covered under MRP provisions, CVD (3(1)) shall be computed accordingly.

"CONSIDER CIF FOR IMPORTS AND FOB FOR EXPORTS, CIF = FOB + INSURANCE + FREIGHT. ADD LANDING CHARGES TO CIF"

INCLUSIONS/ EXCLUSIONS FROM INVOICE PRICE IN CASE OF IMPORTS [RULE 10]:

INCLUSIONS:

1. Commission and Brokerage (Except buying commission)
2. Cost of container
3. Cost of packing (Materials and labour)
4. Materials, Components, tools, dies, moulds and consumables
5. Royalties and license fees relating to imported goods
6. Cost of transport upto place of Import
7. Any other payments made in relation to sale
8. Loading, unloading and handling charges
9. Cost of Insurance

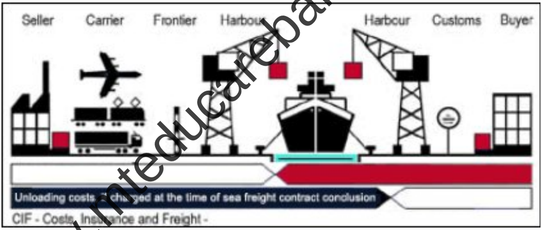
EXCLUSIONS:

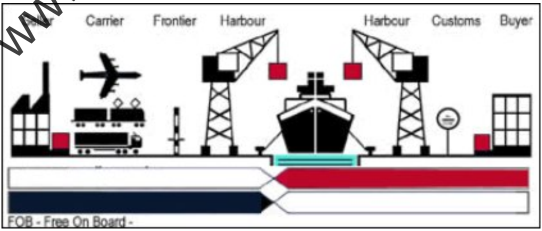
1. Payment made for activities undertaken by the buyer on his own account
2. Charges for construction, erection, assembly after importation
3. Duties and taxes in India

4. Cost of transport after importation
5. Dividends or other payments from buyer to seller that is not related to imported goods.

CIF VS. FOB

Charges upto exporter's port (port of origin) is FOB and charges upto importers port (port of destination) is CIF. Landing charges is neither included in FOB nor in CIF but should be considered for value.





BUYING VS. SELLING COMMISSION

"Buying Commission" is the fee paid by importer to his agent for representing importer, in abroad for purchase of goods.

"Selling commission" is the fee paid in Indian rupees to local agents in India appointed by exporters to promote their sales in India.

Hence, Selling commission being a payment made indirectly to exporter is INCLUDED.

VALUATION IN CASE OF IMPORTS:

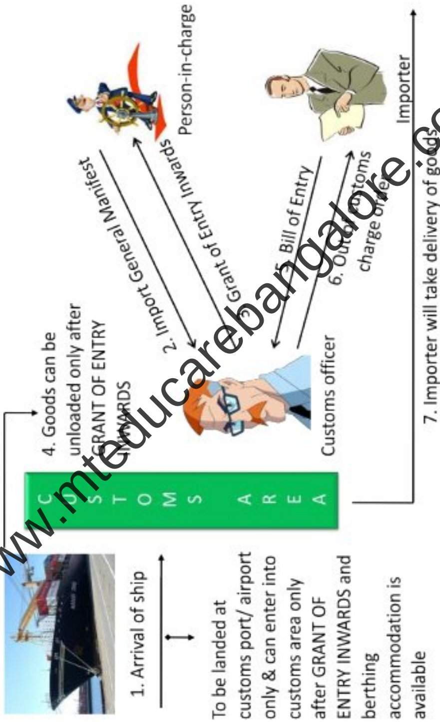
- Value of exported goods shall be TV specified u/s 14, provided price in the sole consideration for sale and buyer and seller are not related, if not value determined by valuation rules.
- FOB value is normally considered.
- However, the above can be rejected if there is over valuation (often done to get excess export benefits)

- If valuation is not possible on basis of TV, valuation will be done as per Valuation Rules.(Covered under final syllabus)

NOTES

CUSTOMS - PROCEDURES

Import Procedures



Documents involved:

	Person - in-charge	Importer
Vessel	Import general manifest (IGM)	Bill of entry
Aircraft	Import general manifest (IGM)	Bill of entry
Vehicle	Import report	Bill of entry

Procedures to be followed by person in charge:

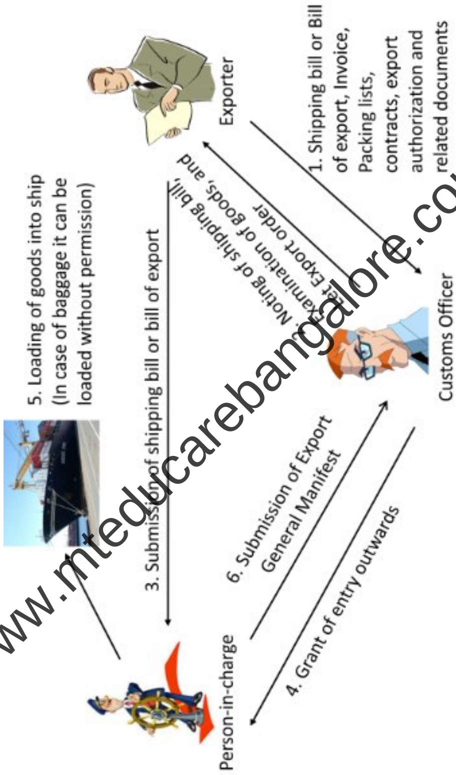
Sec. 29	The vessel/aircraft should arrive in India only at customs port or airport (except for reasons of health, safety etc.,)
Sec. 30	Delivery of Import general Manifest (IGM) /Import report (IR). Penalty for belated filing - upto 50,000 VESSEL – IGM – Before arrival (any time) AIRCRAFT – IGM – Before arrival (any time) VEHICLE – IR – After arrival (within 12 hours)
Sec. 31	Imported goods should not be unloaded until the "grant of entry inwards"
Sec. 32	Only goods mentioned in IGM/IR should be unloaded.
Sec.	The import cargo taken from the

35	ship to the shore and export cargo taken from the shore to the ship, in boats should accompany BOAT NOTE in duplicate. It is not required in case the export cargo accompanies a shipping bill

Procedures to be followed by importer:

Sec. 46 #	Bill of entry may be presented before the delivery of IGM/IR, if the vessel/ aircraft/ vehicle by which the goods are imported, is expected to arrive within 30 days from the date of such presentation. Types of bill of entry: 1. Bill of entry for home consumption – For clearance on payment of duty (White colour) 2. Bill of entry for warehousing – For keeping goods in warehouse without payment of duty (Yellow Colour) 3. Ex bond bill of entry – For clearance from warehouse on payment of duty (Green colour)

Export Procedures



Documents involved:

	Person - in - charge	Exporter
Vessel	Export general manifest (EGM)	Shipping bill
Aircraft	Export general manifest (EGM)	Shipping bill
Vehicle	Export report	Bill of Export

Procedures to be followed by person in charge:

Sec. 39	Export Goods not to be loaded on Vessel unless "Entry Outward" granted
Sec. 40	Export goods not to be loaded unless duly passed by the Customs Officer
Sec. 41	Submission of Export General Manifest (EGM)/Export Report (ER) before departure

Procedures to be followed by Exporter:

Sec. 50	File shipping bill/bill of export and it should contain details like name of exporter, consignee, Invoice number, Details of packing, Description of goods, Quantity, FOB value etc.,

Sec. 51	Customs officer shall verify the contents and after being satisfied that goods are not prohibited for exports will permit clearance by giving LET EXPORT order.

SEC. 21 - DERELICT, JETSAM, FLOTSAM AND WRECK

Derelict – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

Jetsam – This refers to goods jettisoned from the vessel to save her from sinking.

Flotsam – Jettisoned goods which continue floating in the sea are called flotsam.

Wreck – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

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

THAT'S IT - 21 EXEMPTIONS FROM CUSTOMS

SEC. 13 – REMISSION OF DUTY IN CASE OF PILFERAGE

- Pilferage is small theft.
- Importer is not liable to pay customs duty if goods are pilfered
- Such pilferage should have arouse before order for clearance has been made with respect to such goods (i.e before order for home consumption or for warehousing)
- Duty shall be payable if pilfered goods are restored.
- When goods are with custodian and pilferage has taken place, duty on such pilferage is payable by such custodian approved.

SEC. 23(2) – RELINQUISHMENT OF TITLE

- Relinquish means giving up the title to the goods and hence not liable to pay any duty, if title is relinquished by owner of imported goods
- Such relinquishment should be before order for clearance has been made (Same as in case of pilferage)
- However, title in offending goods cannot be relinquished.
- Owner will relinquish the title, if he does not want to take delivery or if value of goods falls below duty payable thereon or for any other reason.

SEC. 23(1) – REMISSION OF DUTY IN CASE OF LOSS OR DESTRUCTION

- Loss or destruction implies complete loss without any chance of recovery

- This section does not apply in case of pilferage
- Remission implies refund of duty on such goods lost or destroyed. Therefore, unless remitted, duty shall be paid.
- Such loss or destruction should be at any time before clearance of imported goods (i.e. before clearance for home consumption or before clearance from warehouse for home consumption)

SEC. 22 – ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS

Damage → Denotes physical damage to goods. This implies that the goods are not fit to be used for the purpose for which they are meant.

Deterioration → Reduction in quality of goods due to natural causes.

Amount of duty chargeable after abatement =

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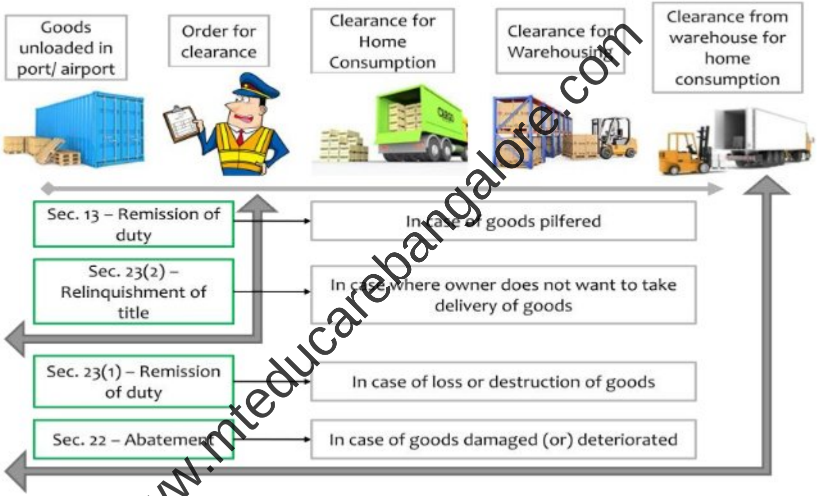
Note: The value as ascertained by the proper officer or the proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

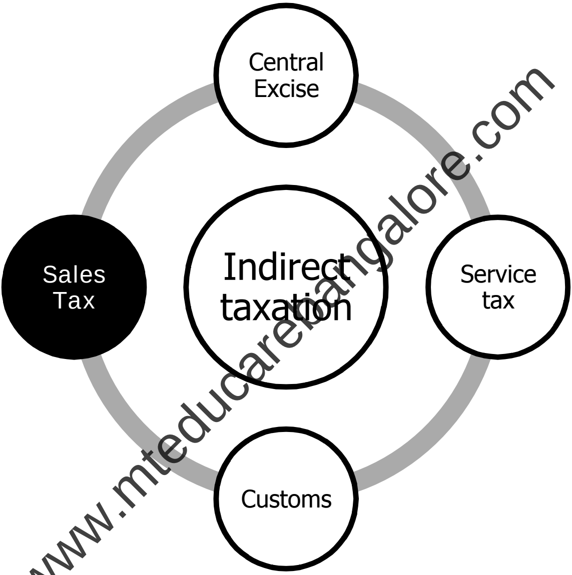

Goods unloaded in port/ airport
Order for clearance
Clearance for Home Consumption
Clearance for Warehousing
Clearance from warehouse for home consumption
Sec. 13 – Remission of duty
In case of goods pilfered
Sec. 23(2) – Relinquishment of title
In case where owner does not want to take delivery of goods
Sec. 23(1) – Remission of duty
In case of loss or destruction of goods
Sec. 22 – Abatement
In case of goods damaged (or) deteriorated

NOTES

THAT'S IT - 22
SECTION REFRESHER

Constitutional Validity → Seventh Schedule → List 1 → Entry 83	
CUSTOMS ACT, 1962 [Provisions relating to customs duty]	
Sec. 2(22)	Meaning of "Goods"
Sec. 2(18)	Meaning of "Export"
Sec. 2(23)	Meaning of "Import"
Sec. 12	Taxable Event under Customs
Sec. 13	No duty on pilfered goods
Sec. 14	Valuation of imported and export goods
Sec. 14(1)	Valuation on the basis of transaction value
Sec. 14(2)	Valuation on the basis of tariff value
Sec. 15	Relevant date for determining rate of duty and tariff value in case of any imported goods
Sec. 16	Relevant date for determining rate of duty and tariff value in case of export goods

Sec. 19	Determination of duty where goods consist of articles liable to different rates of duty.
Sec. 21	Duty to be paid on goods derelict, wreck etc., coming into India
Sec. 22	Abatement on damaged goods
Sec. 23	Remission of duty on destroyed goods (or) no duty in case of relinquishment of title to the goods
CUSTOMS TARIFF ACT, 1975 [List of goods on which customs duty payable on imports and exports]	
Sec. 3(1)	Countervailing duty (CVD) to counter balance excise duty on imported goods
Sec. 3(5)	Special CVD (known as Special Additional duty) to counter balance sales tax on imported goods
Sec. 6 & 7	Protective duties
Sec. 8B	Safeguard duty
Sec. 9A	Antidumping duty


Central
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THAT'S IT - 23
CENTRAL SALES TAX (CST) ACT, 1956

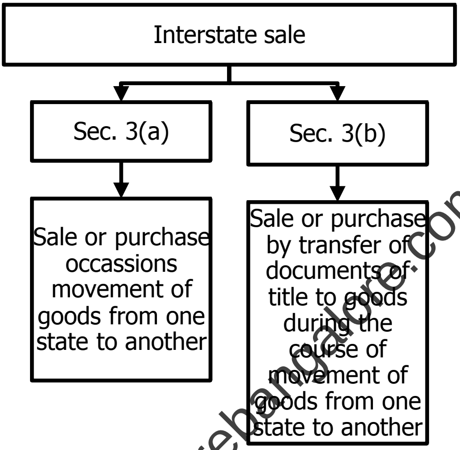
BASIC ASPECTS & DEFINITIONS:

- A sale can be inter-state sale (or) intra-state sale.
- CST is levied on inter-state sale
- VAT is levied on intra-state sale
- [Sec. 2(g)]: Sale means transfer of property in goods by one person to another for cash, for deferred payment or for any other valuable consideration.
- Sale does not include mortgage or, hypothecation or charge or pledge on goods. [Because in such case, there is no transfer of goods]
- Sale includes deemed sales
- [Article 366(29A) of Constitution]: The following transactions are deemed to be sales.

1. Transfer otherwise than in relation to contract. [i.e. compulsory acquisition]
2. Works Contract
3. Transfer of right to use goods (i.e. lease transactions)
4. Hire-purchase or installment transactions
5. Supply by unincorporated association or body to its members thereof
6. Supply of goods being food or any other article for human consumption, by way of or as a part of service.

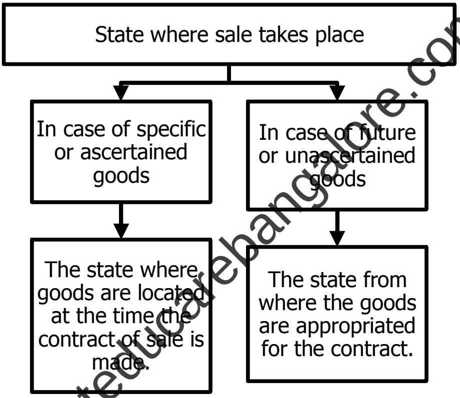
- [Sec. 2(d)]: Goods includes all materials, articles, commodities and all other kinds of movable property but does not include newspapers, actionable claims, stocks, shares and securities.
- Electricity is goods but is not chargeable to CST.
- Sale without consideration, is not chargeable to CST

- [Sec. 3]: Interstate Sale



- There must be physical movement of goods from one state to another
- The mode of transport is immaterial
- Buyer & Seller may be in the same state, but if there is movement of goods from one state to another, it is an interstate sale.
- Sale must conclude in different state than the state where it commences

- Documents of title means Lorry receipt (Road transport), Airway bill (Air transport), bill of lading (Ship), railway receipt (Railways).
- [Sec. 4]: Sale/purchase inside a state



- Illustration: Mr. Madan of Mumbai places an order on Mr. Dinesh of Delhi for supply of 3 trucks. One is lying in Delhi and the other two at Chennai. For 1st truck sale is from Delhi to Mumbai and for balance two, sale is from Chennai to Mumbai.

RATE OF CST:

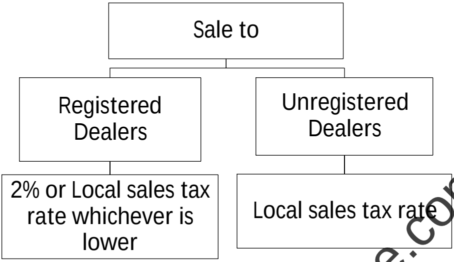


Illustration:

Applicable local sales tax rate	0%	1%	2%	3% & there after
CST rate in case of sale to registered dealer	0%	1%	2%	2%
CST rate in case of sale to unregistered dealer	0%	1%	2%	3% & there after

SALE PRICE [SEC. 2(h)]:

Sale price is computed as follows

Amount payable to dealer as consideration for the sale of any goods	XXX
Less: Any sum allowed as cash discount according to the normal trade practice	(XXX)
Add: Any amount charged by dealer in respect of goods at any time before delivery of goods	XXX
Less: Cost of Freight, Delivery or Installation [Provided, they are shown separately in Invoice]	(XXX)
Sale Price	XXX

INCLUSIONS IN SALE PRICE:

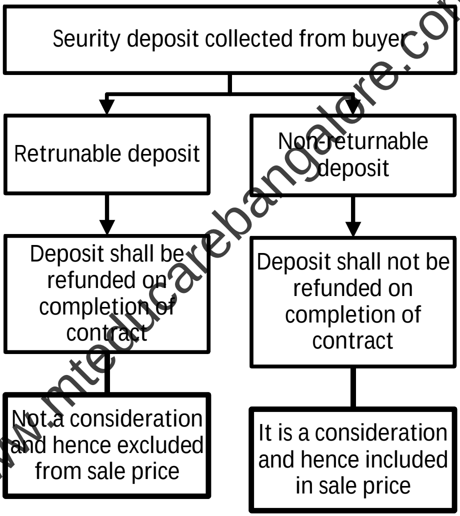
1. Dharmada Charges
2. Weightment Charges
3. Insurance charges incurred before delivery

4. Packing Charges [Primary, Secondary or special]
5. Excise duty
6. Incentive paid to seller by manufacturer
7. Cost of delivery or freight (if not shown separately)
8. Cost of installation (if not shown separately)
9. Design Charges
10. Warranty charges

EXCLUSIONS IN SALE PRICE:

1. Indemnity/ guarantee Charges
2. Government subsidies
3. Security Deposits for returnable containers
4. Free of cost material supplied by buyer
5. Cash discounts/ trade discounts
6. Durable and returnable packing
7. Freight, if shown separately in invoice
8. Installation charges, if shown separately in invoice

9. Goods returned (i.e when goods are sold on sale on approval or on return basis) within 6 months from the date of sale.
10. Goods rejected (without any time limit)

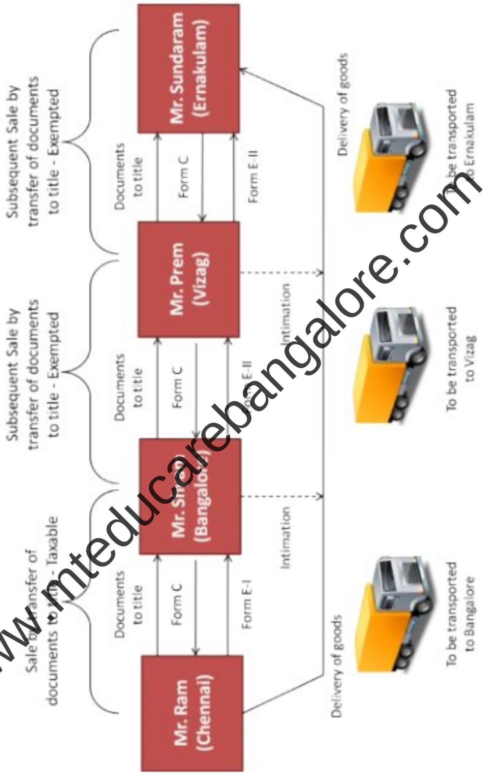


EXEMPTIONS FROM CST:

1. SUBSEQUENT SALE BY TRANSFER OF DOCUMENTS TO TITLE [SEC. 6(2)]:

- CST is not payable in case of subsequent sale by transfer of documents during movement of goods from one State to other, provided the following conditions are satisfied
- All purchasers have to issue C form to earlier seller.
- E-I form is to be given by first seller to first buyer and E-II form by all subsequent sellers to their buyers.
- The subsequent seller availing exemption, should not have taken delivery of goods from goods transportation agency.
- The first interstate sale is taxable, but the subsequent sale is exempted under this section.

Illustration on sec. 6(2):



2. SALE IN THE COURSE OF IMPORT [SEC. 5(2)]:

- When sale or purchase occasions import of goods into India, such sale is in the course of import and not chargeable to CST [But chargeable to customs duty]
- Sale by Agent in India can be 'in course of import' only if two sales (i.e. sale by foreign supplier to Indian Agent and by Indian Agent to buyer in India) are integrated or inter-linked so as to form one transaction.
- Sale in the course of import by transfer of documents is also exempt, if it is before goods cross customs frontiers of India. The ultimate buyer in India should clear goods from customs. This is termed as 'high seas sale'.

3. SALE IN THE COURSE OF EXPORT [SEC. 5(1)]:

- When sale or purchase occasions export of goods out of India, such sale is in the course of import and not chargeable to CST [But chargeable to customs duty]
- Even when exports are arranged with the help of an agent, sale will be sale in course of export, if the goods are not sold to agent any time.
- Export sale can be direct or by transfer of documents after goods cross customs frontier of India.
- If any designated Indian carrier purchases aviation turbine fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of export of goods out of the territory of India. [Remember! This provision is applicable only in case of designated carrier]

4. PENULTIMATE SALE [SEC. 5(3)]:

Penultimate sale means a sale preceding the export sale and is deemed to be in the course of export u/s 5(3). The conditions to be fulfilled:

(a) The sale is for purpose of complying with agreement or order in relation to export.

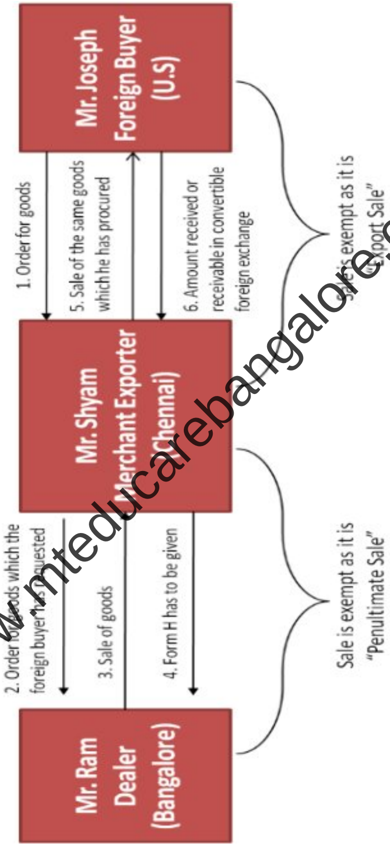
(b) It is made after the agreement or order in relation to export.

(c) Same goods which are sold in penultimate sale should be exported.

(d) The exporter has to submit Form H to the dealer who is supplying the goods by way of penultimate sale for export.

(e) The dealer selling the goods furnishes the declaration obtained to prescribed authority in prescribed manner.

Illustration on sec. 5(3):



5. STOCK TRANSFER/ BRANCH TRANSFER [SEC. 6A]:

- CST is leviable only on interstate sale and if there is no sale, no CST can be levied.
- Hence, branch transfer or consignment transfer by one person to his own office does not amount to sale and is not liable to CST.
- However, the burden to prove that it is not an interstate sale lies on the dealer who is transferring goods.
- In order to prove, the dealer transferring goods should obtain a declaration in Form F from the branch or agent, to whom the goods are stock transferred.
- On furnishing the said declaration with the officer, inquiry shall be conducted by the officer if he deems necessary, and shall grant exemption.
- If declaration is not furnished, the said transfer shall be interstate sale.

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THAT'S IT - 24
VALUE ADDED TAX (VAT)

CONCEPT OF VAT AND INPUT TAX CREDIT:

- Transparency in VAT: Tax paid by consumer and revenue to the government is one and the same.
- Certainty in VAT: Every dealer will be paying tax on the basis of value addition made by him to the final product [This will not hold good, if there is difference in tax on purchases and tax on sales].
- Avoids cascading effect: The cost to the ultimate consumer gets reduced under VAT system and to that extent there will be revenue loss. [This can be judged by comparison between with VAT and without VAT scenarios].

INPUT TAX CREDIT (ITC):

For a dealer, the tax paid on his purchases is available as credit which is known as ITC and utilized for payment of his tax liability on sales. [ITC = VAT PAID].

VAT = Output tax - Input tax

- The "Net VAT payable" shall be "Gross VAT payable on Sales - Input tax credit (i.e. VAT paid on purchases)". The purchases can be raw materials, consumables and capital goods.
- The ITC on raw materials and consumables available immediately and fully, but the ITC on capital goods is spread over a period of 36 months. (Unless otherwise specified in the question).
- When ITC is available, the VAT paid on purchases should be deducted

from the cost of purchases for the purpose of "Cost of sales"

INPUT TAX CREDIT IN VARIOUS SITUATIONS:

Sale Related:

1. Dealer making exempted sales - No ITC
2. Dealer making zero rated sales - ITC available.
3. Export Sales - ITC available
4. Interstate sales - ITC available.
5. Sale to SEZ - ITC available.
6. Common Inputs used for dutiable and exempted sales - If separate inventory records are maintained, ITC available accordingly. Else, "Proportionate credit" available.

Purchase Related:

1. Inter-state purchases (i.e. CST paid) - No ITC

2. Purchases from Unregistered dealers - No ITC
3. Purchases from registered dealers without a valid Invoice. - No ITC
4. Import of goods (i.e. High seas purchases) - No ITC
5. Purchase of goods specified in negative list - No ITC
6. Purchases from composition scheme dealers - No ITC
7. A unit in SEZ purchasing goods - ITC available by way of Refund. [Even SEZ has an option of purchasing without paying tax]
8. Purchase of packing materials - ITC available.

Others:

1. When goods are purchased from a dealer who does not show VAT separately in invoice - No ITC
2. Purchased goods for personal consumption, Free distribution, Gifts. - NO ITC

3. Purchased goods for use as fuel in generation of power. - NO ITC

Note: The ITC on purchases made within a month can only be utilized to pay output tax on sale made during that month.

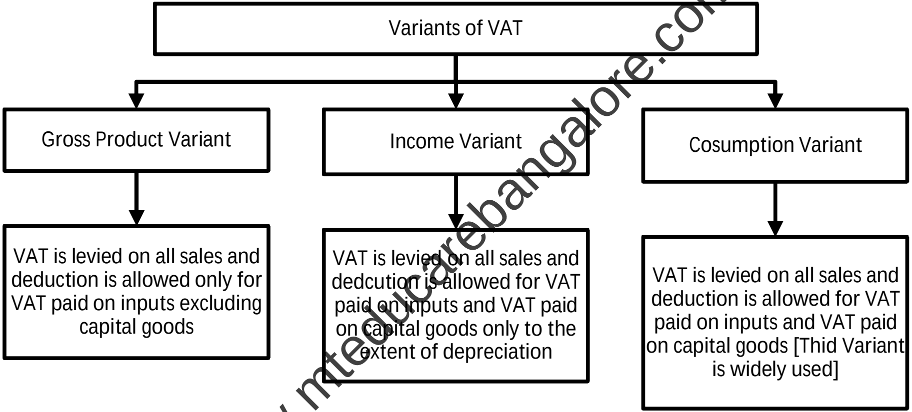
COMPOSITION SCHEME UNDER VAT:

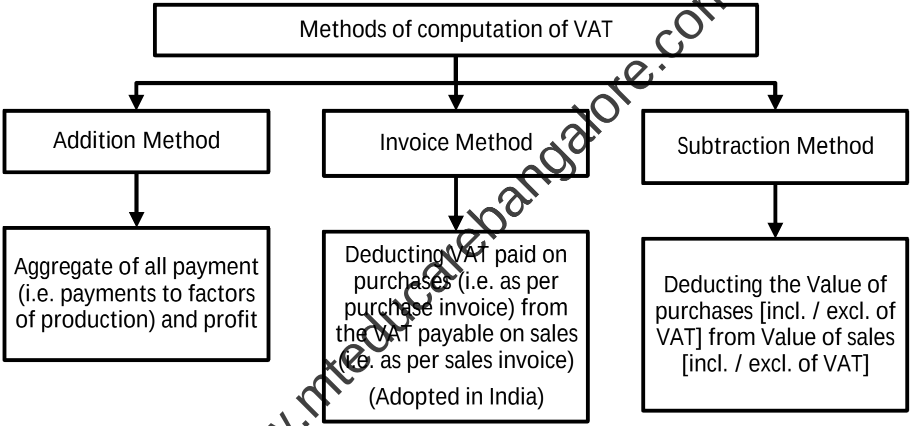
- Dealers having turnover of 5/10 to 50 lakhs in the PY can avail this option.
- Dealers having Interstate purchases, Interstate sales, Export sales are not eligible.
- A composite tax (Not VAT) at a very low rate (not less than 0.25%) shall be payable on "Gross turnover"
- The Input tax credit is not available and balance, if any on the date of availing option will get lapsed.
- The ITC on raw materials in stock should be reversed on the date of availing this option.

- The composite tax cannot be charged to buyer and a VAT invoice cannot be issued.

REGISTRATION RESTRICTIONS:

Turnover	Nature of turnover	Nature of registration
0 to `5lakhs in some states 0 to `10 lakhs in some other states	Exempted Turnover	Voluntary registration
`5/`10 lakhs to ` 50 lakhs	Turnover eligible for compositi on scheme	Compulsory registration
>`50 lakhs	Taxable turnover [Only Normal scheme]	Compulsory registration


Variants of VAT
Gross Product Variant
Income Variant
Cosumption Variant
VAT is levied on all sales and deduction is allowed only for VAT paid on inputs excluding capital goods
VAT is levied on all sales and dedcution is allowed for VAT paid on inputs and VAT paid on capital goods only to the extent of depreciation
VAT is levied on all sales and deduction is allowed for VAT paid on inputs and VAT paid on capital goods [Thid Variant is widely used]


Methods of computation of VAT
Addition Method
Invoice Method
Subtraction Method
Aggregate of all payment (i.e. payments to factors of production) and profit
Deducting VAT paid on purchases (i.e. as per purchase invoice) from the VAT payable on sales (i.e. as per sales invoice)
(Adopted in India)
Deducting the Value of purchases [incl. / excl. of VAT] from Value of sales [incl. / excl. of VAT]

TAX TREATMENT UNDER VAT FOR STOCK TRANSFER:

Purchases	Branch transfer/ stock transfer	Treatment of VAT paid on purchases
Inter-state	Intra-state	N.A
Inter-state	Inter-state	N. A
Intra-state	Intra-state	ITC transferred using challans to branch from head office.
Intra-state	Inter-state	ITC available to transfer after reversing credit to the extent of 2%

Illustration:

VAT paid on intra state purchases used in stock transfer [VAT @ 12%]	`1,00,000
Less: Reversal @ 2% on account of stock transfer	` 1,00,000 X 2/12 = `16,667
ITC available to transferor	`83,333

VAT IN CASE OF WORKS CONTRACT:

Works contract is a contract involving transfer of property in goods and provision of services where the consideration is received in lumpsum.

- Sale element = Transfer of property in goods = Chargeable to CST/VAT
- Service element = Provision of services = Chargeable to Service tax.
- Pure labour contracts are not works contract and is entirely chargeable to service tax.
- It is not imperative that goods should be transferred in the same form in which it has been purchased.

Normal Scheme:

- Only those goods involved in the contract, which are transferred in the execution of contract is chargeable.

- Total tax = Aggregate of output tax computed on each item separately.
- ITC available on such goods purchased.
- ITC on capital goods is allowed in some states and disallowed in some states. [Look for info in the question, else make a clear assumption]

Composition Scheme:

- Output tax = Entire contract price X Composite rate.
- ITC not available. However, some states have allowed partial ITC.
- Composition scheme is applicable for each works contract separately.
- Composite tax rate is specified by respective state VAT laws.

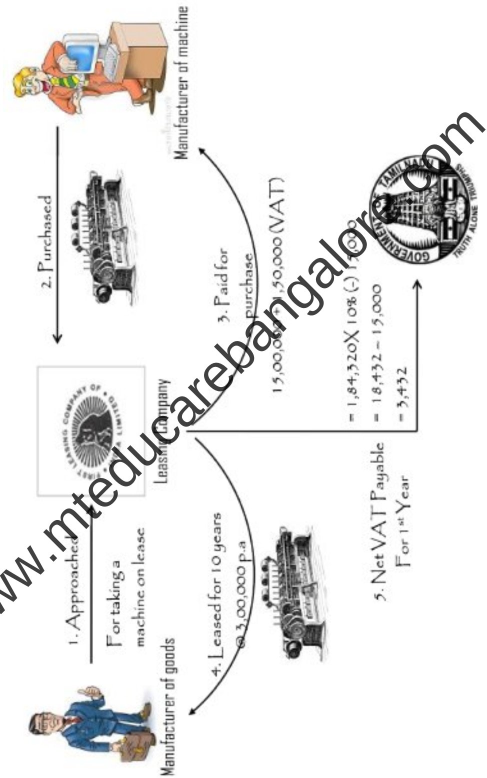
VAT IN CASE OF LEASING TRANSACTIONS:

A lease means a transaction where under the owner of the asset (i.e. lessor) grants such asset (i.e. leased asset) for an agreed time period (i.e. lease term) to another person (i.e. lessee) for use during the lease term against a consideration (i.e. lease rentals) without transferring the legal ownership of such asset.

- The taxable event is the transfer of right to use any goods and hence immovable property is not covered.
- The taxable turnover means the valuable consideration paid or payable for any sale in a given period. Certain States have provided for deduction of interest or finance charges for the purpose of determination of taxable turnover.
- Lease of an asset in the course of inter-State trade cannot be subject to VAT. But, chargeable to CST

- Transfer of right to use does not presuppose ownership of the goods. A sub-lease of an asset also is taxable unless specifically exempt under the State VAT Law.
- Sale of leased asset after the end of the lease period is taxable as a normal sale.
- The maintenance of leased asset involving supply of materials for maintenance/ repair by the lessor will not amount to a works contract as there would be no transfer of property in such materials to the lessee. Hence, there should would be no VAT on the value of materials supplied during maintenance/repair of the leased asset.
- ITC to lessor – ITC is either allowed at once or allowed in instalments over the lease term, just as VAT payable on lease rentals over lease period
- ITC is available w.r.to VAT Paid.

Illustration on VAT in case of lease transactions:



VAT IN CASE OF HIRE-PURCHASE TRANSACTIONS:

Hire purchase is "An agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which:

(i) The owner delivers possession of goods thereof to a person on condition that such person pays the agreed amount in periodic installments.

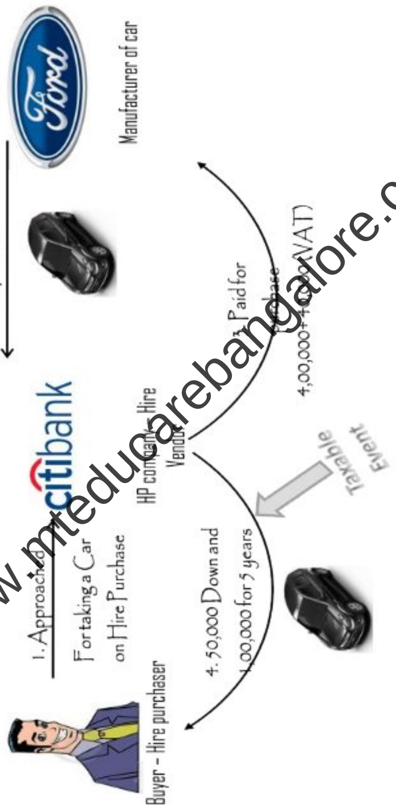
(ii) The property in the goods is to pass to such person on the payment of the last of such installments, and

(iii) Such person has a right to terminate the agreement at any time before the property so passes".

- A hire-purchase transaction involves two elements – Sale element and service element.

- Sale element is delivery of asset involved in hire-purchase and is chargeable to CST/VAT
- Service element is activities involved in hire-purchase transaction and is chargeable to service tax.
- The taxable event under hire-purchase is physical delivery of goods and mere agreement to deliver is not taxable.
- If such delivery is interstate, CST is chargeable and if it is intrastate, VAT is chargeable.
- Transactions involving mere financing of hire-purchase are not covered (i.e. Hire-purchase financing). Always service tax, if any is payable in such case.
- The actual transfer of property in such goods on payment of last instalment is also sale within the normal meaning of sale and chargeable to sales tax. Some states are charging VAT on such last instalment.

Illustration on VAT in case of hire-purchase:



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