Indirect taxes

Class room work teaching charts

at Chennai

Nov 2012/Dec 2012 exams

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Every attempt is made to avoid errors and omissions; if any error crept it is unintentional.

Excise Charging section. Sec. 3 of CEA

Indirect tax Classes in Chennai Call 9444019860/9841661045

I. Levy (fixing liability) → on → Manufacture/ Production of Excisable goods in India

II. Collection Of duty by Govt. → As per CE rules → Administrative Convenience (At the time of removal) as per- → Dept. cannot demand duty on goods stored in factory/godown/ warehouse

III. Excise duty → Pay as per → rates Specified in I st & II nd Schedule of CETA

IV. Excisable Goods manufactured in SEZ → are → Excluded excisable goods (No Excise duty)

V. EOU, EPZ, STP, EHTP → Pay 50% of BCD + Excise duty → For the goods removed to DTA (use in India) → Pay duty as per → Customs valuation

VI. Goods manufactured by Govt → also → Excise duty payable

Karya Palak Engineer vs. Rajasthan Taxation Board 2004 AIR (SC).

Manufacture under central excise sec 2(f)

Manufacture

- *First part:* Process- Incidental/Ancillary for completion of product → Emergence of New Product is mandatory Voluminous- Judicial rulings → Name test/use test to apply to find out change

  Through process, new product should emerge, new name, different use, different character

  Delhi cloth mills (SC)
  Ujagar Prints (SC)
  Parle products (SC)

- *Second part:* Deemed Manufacture

  - Process mentioned in section/Chapter notes of Central excise tariff → Around 78 listed. Emergence of New Product is Not relevant

    Body building of vehicles, Audio video recording in tapes, Galvanizing of iron steel, conversion of powder in to tablets, Refining of edible oils Drawing wire from rod,. Branding and labeling (Apparels & Clothing Accessories)

  - Packing from **bulk to Smalle**r containers, labeling or relabeling, alteration of retail price or doing any process goods making marketable for Sch III of CEA (MRP Valuation goods)-

Deemed manufacture concept upheld in Empire Industries (SC)
SD Fine Chemicals (SC)

Purpose – raising additional revenue by taxing activities which lead to substantial value addition

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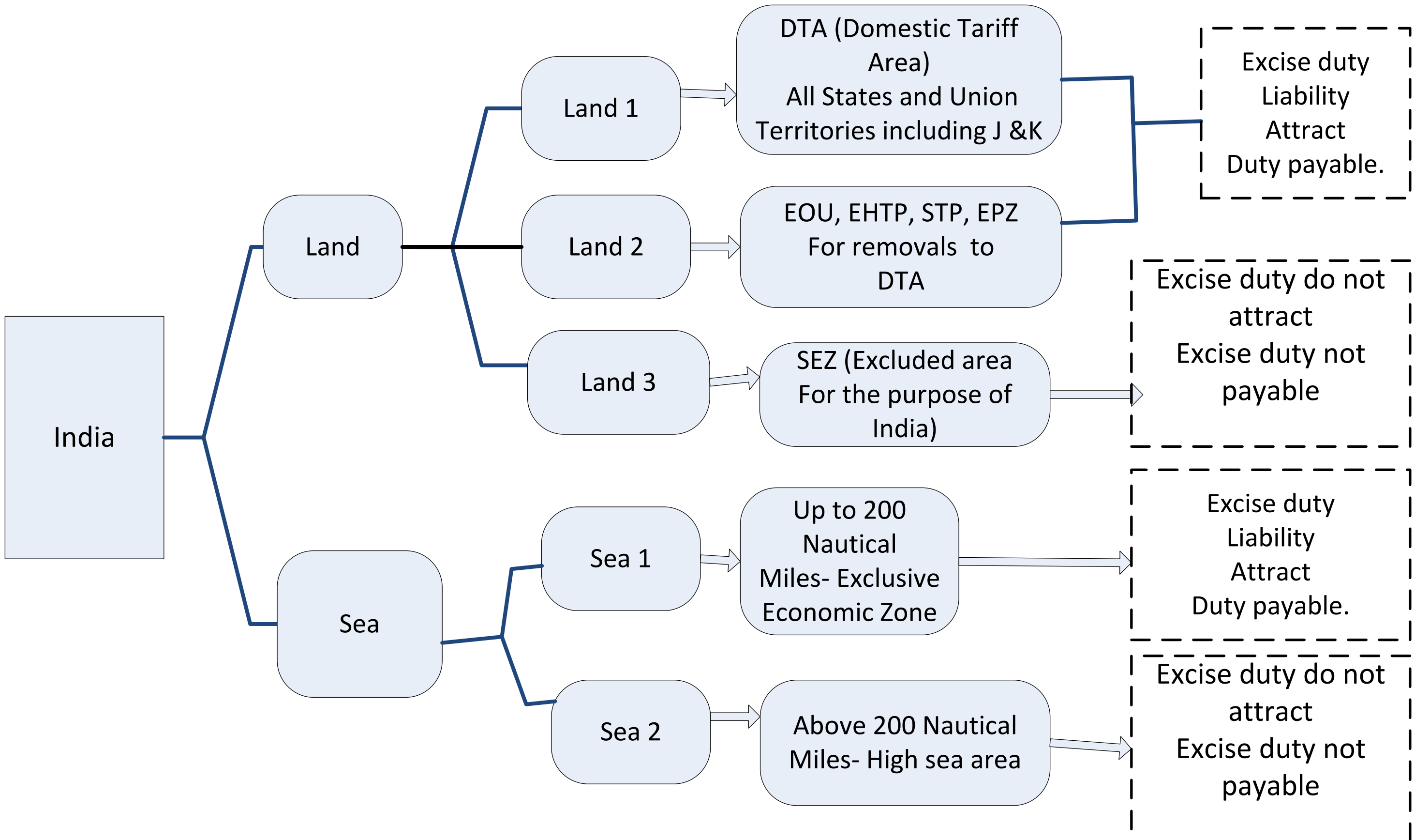
1.Value addition in the packing process is mandatory.
2.If good are already marketable, mere packing and repacking them is not a manufacture.
3. Labeling/relabeling should include declaration or alteration of retail sale price. mere labeling or relabeling will not be 'deemed manufacture *Mumbai vs. BOC (I) Ltd.* 2008 (226) ELT 323 (SC

India for the purpose of Excise duty



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For full and detailed analysis and explanation, Read Author CA N Rajasekhar book
“ Simplified approach to Indirect tax” second edition, published by CCH publishers, Gurgaon.
Line by line simple, bullet point wise explanation

Goods and Excisable goods

Goods

1. Any article, material, substance — Which it indicates → **Goods are Movable**

Movability by any mode of transport from one place to another

Movability/transferrability in the same condition. (Without dismantling and changing shape) **MUNICIPAL CORP OF GREATER MUMBAI- SC**

Ropeway erected for carrying passenger in trolley system is not movable

Lift comes to existence only after it is installed with the building. immovable. Not goods – Otis Elevators (SC)

2. Capable of being sold for consideration — Which it indicates → **Goods are Marketable**

Marketability will be Ordinarily as such

Indian Cable Co. Ltd. vs. CCE 1994 (SC).

Refined oil' got produced at intermediate stage ,that process of deodorization was not carried not marketable and not goods. DCM SC

Turbo-alternator – saleable after dismantling – not 'as such' – so, non-marketable **TRIVENI ENGG & WORKS LTD. (SC)**

Explanation to Sec 2(d)
Any article, material, substance **Capable of being sold** for consideration Such goods deemed to be marketable

Actual sale is not relevant
Free samples – ED payable
Free replacement /warranty claims– ED payable **[BHEL-SC]**
Food Specialties Ltd. 1985 (SC).

Even captive consumption can also attract ED liability .

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Excisable Goods

1. Specified in the (Ist & IInd) Schedules to CETA → Name /Description of goods should be mentioned in any chapter of CETA

Bhor industries SC

Specification in Schedule is not determinative or conclusive as to marketability

Item specified in Schedule – but not proved to be marketable --- not excisable – *(as marketability is the decisive test)*

2. Being subject to a duty of excise → Wallace flour mills(SC)

1. goods charged to duty
2. goods charged to Nil/0% duty
3. goods Charged to duty, but exempted by notification

Nil rated/0% goods are also excisable goods
100% exempt goods also excisable goods

Sec 2(d)
Specified in the (Ist & IInd) Schedules to CETA,
Being subject to a duty of excise and Includes salt

Conclusion:
In order to attract excise duty liability, goods should be movable, marketable and excisable
Bhor industries ltd (Sc)
Ion exchange Ltd (SC)

Issues in Manufacture

Whether Assembling is a – Manufacture or not

Assembly of

- Bought out Parts/Imported parts → Resulting New Product
  - Yes → It is a manufacture Excise duty payable
    - Ex: electronic goods/Computers
    - Narne Tulaman Manufacturers Pvt. Ltd. (S.C.).
  - Assembly of imported components in to VTR/monitor is Mfg. BPL (SC)
  - No → Not a Manufacture Excise duty Not payable
- Duty paid goods removed in Semi knocked down(SKD)/Completely knocked down(CKD) condition-for transport convenience - Assembly by a dealer/buyer → Not a Manufacture Excise duty Not payable T I Cycles (mad)HC
  - Ex: Cycles, Furniture etc.,

Assembly of components of air conditioner in car does not amount to manufacture - CBE&C Circular dt. 17-8-1999.

Whether Curing is a Manufacture or not

Sec 2 © curing → Wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture; → It is a Manufacture & Excise duty payable

Ex: Coffee curing

Manufacturer sec 2 (f)

Manufacturer

- Person who manufactures goods
- Person who employed Hired labour

  → Mfg., facility(owned or hired) + labour+ Control, supervision- Ownership of material/goods not relevant Ex; Job worker is a mfgr -Ujagar Prints (SC)
- Person who manufactures on his own account → Person manufactures for himself/or for his own consumption, not for use of any others

RM Supplier, brand name owner, loan licensee are not manufacturer
Cibatul Ltd. vs. UOI 1978 (SC)/Philips India Ltd. vs. UOI (All HC)Food Specialties Ltd. 1985 (SC)

Production

- Wider concept than Manufacture
- Used for Ground products such as tea, coffee ,dairy products, ores, minerals
- Scrap, byproducts, molasses, pulp etc produced during the course of manufacture

Every manufacture is a production. But every production need not be a manufacture.

Duty liability not only on manufacture but also on production. Goods produced during the course of manufacture are liable for duty

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Dutiability of site related activities/ Structures, erections, assembly at site

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1

Turnkey Projects (Steel plants/Power Plants/Cement Plants) → Immovable Not goods No duty → However Parts/ Accessories/ Spares/Components of turnkey projects If movable- duty

2

Assembly /erection at site → Resulting Final Product / End Product

- Immovable- Not goods- No duty — Lifts, Escalators (Otis Elevators) (SC) Water treatment plant(L&T) -- No duty
- movable- goods- duty — Movable furniture assembled at site goods- Mehta &co (SC)- duty

3

Installation/erection Of Machinery/ Equipment

- Permanently fixed/attached to earth/Wall & if it can be Moved only by dismantling Not goods- No duty — Mittal Eng/ Hyderabad race club , Mahinda (SC)
- fixed/attached to earth/Wall with nuts, bolts, Screws for administration convenience goods- duty — Solid Engineering (SC) 2010

Dutiability of Waste/Scrap

Waste/Scrap → Generated/ Produced From Manufacture/ Production

- Yes → Waste is Movable Marketable Excisable → Duty
  Khandelvalmetal Metal Engineering (SC)
  Indian Aluminum Co (SC)
- No → No Duty

Gajaphthi Co-operative Sugars (AP)

Banswara Syntex Ltd (Raj)

Prism Cement Ltd. 2008 232 ELT 564 (Delhi Tribunal)

Waste generated through building demolition/pipe cutting/works contract/ machinery demolition/ repairing activity
No duty, even if it movable, marketable and excisable

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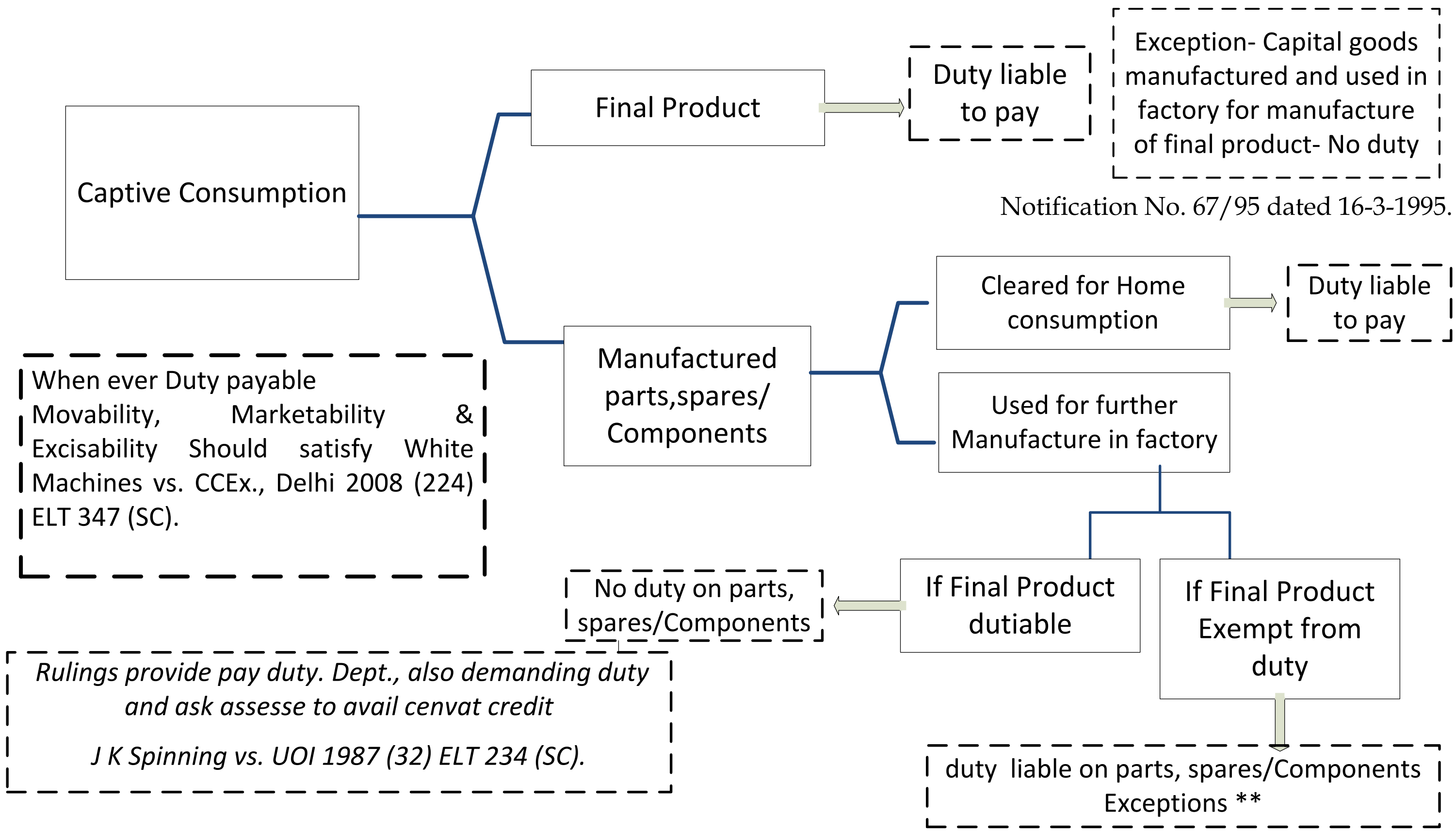
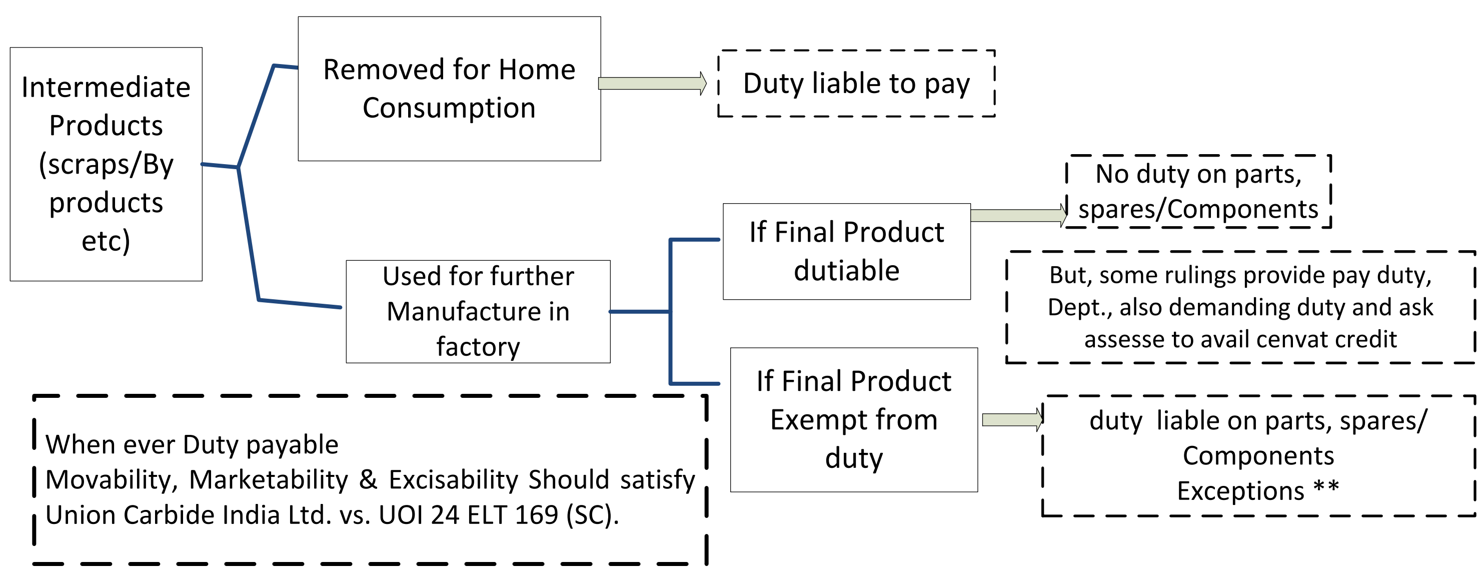


Duty liability on Intermediate products



Exceptions ** No duty on Ip/Spares components etc., even F P is exempt

Final product cleared for deemed export i.e., cleared to EOU, STP/EHTP

Final products cleared to ILO, WHO, UNDP, UNIDO, defense ,railways, navy etc. are exempt under Notification

Final product cleared by SSI under availing turnover exemption. However, if final product is fully exempt under any other notification, duty will be payable on intermediate product, or its value will be considered for calculating limits

Final product is cleared for export under bond/payment of amount of 5% as per cenvat credit rule

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Change in rate of duty & Applicable rate of duty for payment

Change in rates of exciseduty

- Budget day — It could be — Increase or decrease
- Other cases — It may — Increase as- sec 3 of CETA
  - Emergency powers to increase.
  - CG satisfy imm. action need to increase.
  - Notification to issue.
  - Approval of parliament in session in 15 d.
  - Parliament power to modify notification.
  - Nil/exempted goods- max increase- 15%.
  - Other goods-discretion of CG.
- or — Decrease as- sec 5 A of CEA
  - CG, Public interest, exempt partly or fully.
  - Exemption may be absolutely or conditionally.
  - Conditions fulfilled may be before removal or after removal.
  - Notification in official gazette to publish.
  - When exemption is absolute availment by manufacturer is mandatory.
  - Applicable to EOU etc., only if mentioned.

When a Certain goods cover both general and specific exemption. The former may give more relief to manufacturer. In such a case he can choose the better one- **Hindustan Computer Ltd(SC)**

Rate of duty applicable for payment/ Taxable event

Rate of duty applicable for payment

Goods Removed for Home cosumption	Rate on the date of removal from factory
Ware house goods	Rate on the date of removal from warehouse
Goods Used for Captive consumption	Rate on the date of issue for production/ consumption
Molasses	Rate on the date of receipt of molasses in factory
Other cases	Rate on the date of removal from factory

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Rate of duty in case pre budget stock- Taxable event

Pre-budget stock

- Excisable goods →
  1. Nil/Exempt- become dutiable
  2. Dutiable- become exempt/Nil
  3. Existing rate may increase/decrease

  → Wallace flour mills (Sc) — All cases Rate on the date of removal
- Non excisable goods → Bringing in to Tariff first time
  - Stock of FG on 28th Feb. → No duty
  - Vazir Sulthan Tobbacco (SC) — Mfg. goods from 1st March → duty

Duty liability & duty Remission(waiver)

Duty Liability

In case of

- Manufactured goods- Rule 4 → Is on → Manufacturer
- Ware house goods Rule 20 → Is on → Warehouse keeper
- Molasses- Rule 4 → Is on → Buyer/Procurer

Ownership of goods is not relevant for payment of duty -Moriroku UT India P Ltd (SC)./Hindustan General Industries (CEGAT) and Mahindra & Mahindra (CEGAT).

Duty payable even if is not charged or collected- in such case it is cumduty price (price inclusive of duty)- Maruti Udyog (SC)

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Duty Remission (waiver)

- Natural Loss-Sec 5 of CEA → Handling, storage, leakage, breakage, Process, curing transit, evaporation, found deficient in qty. etc., → Remission Based on Industry norms, Different Rates, %s.
- Natural Loss or unfit for consumption- Rule 21 of CER
  - Natural Loss-Same as above → Same as above
  - Unavoidable Accident → Remission Based on Proof from assessee, At the discretion of CEO, subject to conditions
  - Unfit for consumption (Damage,spoilage,poor quality, bad workmanship)
    1. Application to CEO AC/DC
    2. CEO inspection to factory
    3. Destroy of unfit goods in front of CEO
    4. Remission order grant by CEO

Remission of duty only before goods removed from factory, depot,warehosue

No Remission of duty under any circumstances after goods removed from factory, depot,warehouse

Powers of Waiver
Up to Rs.10000/- -Supdt
Up to Rs.1 Lakh -AC/DC
Up to Rs. 5 lakhs -JC/addl. C

Theft of goods is loss due to unavoidable accident -. GTC Industries Ltd. and Sialkot Industrial Corporation vs. UOI Delhi High Court However contrary decision in CCE vs. International Woollen Mills 1987 (28) ELT 310 (T)

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Valuation Methods

- Annual Capacity production → Applicable to Pan Masala Value on Production capacity
- Specific duty Valuation → Value based on Unit measurement Cigarette- length Marble- Sq.m Sugar- Quintal Crude oil- ton
- MRP Valuation → MRP of Packet Less % abatement Is value
- Transaction Value → Sale Price Excluding local taxes is value
- Valuation rules → Value under Various Circumstances

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MRP Valuation

Meaning of MRP:

Maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer

MRP includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding

Example A detergent bar 50 grams is manufactured in Pondicherry And supplied to Andhra Pradesh

Total Cost Rs. 6.00 + Profit Rs. 1.00 + Excise &CST Rs. 0.75 + Dealer Commission Rs.0.50 + Advt etc. Other Exp Rs.1.00 + A. P Vat Rs. 0.75

Total= 6.00+1.00+0.75+0.50+1.00+0.75= Rs. 10.00 == MRP Printed on Soap

MPP Provision salient features

- Product should cover both under Excise &L M Act
- As per L M ACT certain goods, RP Printing is mandatory
- MRP Less Abatement is value (Abetment % notified by CBEC)
- More than one MRP in packet Highest MRP is value
- MRP Scored out to show saving, it is not relevant
- Goods removed with out MRP resulting Confiscation +CG determine value
- MRP increased after Goods removed, Increased MRP is value

MRP Valuation not applicable in case of
Goods supplied to Industry(except cement), sold in bulk which are not for resale, +1, +2 free items ,sale to defense, pack less than 10 g & 10 ml , packed food items

Carton boxes containing 500 Sachets of Shampoo cannot be considered as Multi-piece Package for retail sale. MRP Valuation not applicable - *Kraftech Products* 2008 (224) ELT 504 (SC).

MRP Valuation applicable only When declaration of MRP is required under law *Makson Confectionary Ltd* (SC) 2010

MRP Valuation not applicable: When ice cream sold in bulk/
, selling Kit Kat chocolates to Pepsi, these were distributed as a free gift along with a Pepsi bottle . *Jayanti Food Processing*(SC),

When goods covered in MRP, CVD is payable on Imports on MRP Basic.
When goods covered in MRP,imported used for process, CVD payable on T V basis

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When goods covered in MRP,imported used for process, CVD payable on T V basis

Meaning of transaction value

Sec 4(3)(d)

Price paid /payable by buyer (before or after sale)

And includes (additions)

Other payments in Connection with sale

Excluding Local taxes

Advertising
Marketing
Storage
Servicing Warranty
Commission

These items includable only When they are paid by buyer To seller by reason of or in connection with sale

Excise
Customs
Sales tax
Vat

Transaction Value valuation Sec 4(1) (a)

1.Value(Price) of Goods Sold

Sale is at Time & Place of Removal

Place of Removal

Factory, depot ,ware house, agent place

Sec 4(3) © (CC)

Time of removal

In case of depot -Time of Factory

2.Buyer and Seller Not related to each other

Sec 4(3)(b)

Relative =
1.ICU which is holding and subsidiary
2.Mutual Interest
3.Relative as per Sch I of Companies Act

3.Price is sole consideration

1.Price is for goods
2.Additional flow of consideration to add.
(V.Rule 6)

Each removal Price is Value

1 Sale to Govt.
2.Sale to Industrial consumers
3. Sale in whole sale
4. Sale in retail

Each price is value separately

Factory-Place of removal

Goods sold on 30.09.2011 at 4 Pm unit @ Rs.140 + taxes+ transport +Insurance

Sale compete at factory FOB Price at factory Rs.140 is value

Exp. after removal not relevant for value

Price increase after removal to 150. but before delivery to buyer. No Escalation clause in order. buyer not paid the same

Original order cancelled and deliver the same to other buyer at Rs. 130. without getting back to factory.

Rs.140 is value
Rs. 130/150 not relavant

Interconnected undertakings will be treated as relatives only when they are holding and subsidiary
Kirloskar Ferrous Industries Ltd./Asia Tyres

Excise Valuation Rules over view

Rule 4
Value, when goods not sold- Ex Samples. free warranty claims

- Value - Identical similar goods sold at the same time and place
- Adjustment for price in time /place of removal
- NTV (price of Highest Qty sold). Can be Applied

Rule 5
Value when goods sold at a place other than place of removal- FOR Contract (Door delivery contracts)

- Value - FOR Contract price minus freight one way, from place of removal to buyer place
- Freight deduction - Per load basis or Average basis

Rule 6
Value when the price is not Sole consideration

- Value - Add back Additional consideration flow
- Add: cost of material, design drawing, tools etc., supplied by buyer
- Add notional interst on Interest free deposit, if price influenced

Rule 7
Value in case of goods sold from depot

- Value - Depot price on the date if removal from factory
- Freight from factory to depot No deduction -
- Freight from Depot to Buyer Not includible/deductible
- Depot price to consumer at latter date not relavant for valuation

Rule 8
Value, In case of Captive Consumption

- Value is- Cost +10%
- Material, Excluding taxes + Labour+works Cost+ R&D+ Admn. overheads relating to production less scrap realization
- Selling overheads ignore

Rule 9 & 10
Value in case of goods sold to relative person Out of all ICU only Holding and subsidiary are relatives

- Applicable when all goods /Substantial qty. sold to RP
- Not applicable when the price of RP &URP is same
- Value will be 2nd sale price (Sale price of RP to URP)
- If RP Does not sell - Cost +10% is value

Rule 10 A
Value in case of Job work when goods removed from jobworker place

- Value -Price at which principle manufacturer sell the goods is the value Exception MRP Value, tariff value
- When the goods returned by job worker, normal methods apply

Rule 11
Best judgement Method

- Applicable when the Value cannot be determined under Rule 4 to 10 A
- Mixture of all rules
- Value will be done based on the available information
- Estimations, price quotes market rates is the basis

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Inclusions and Exclusions in Valuation

Inclusions in Value

1.Exp. Incurred with in place of removal-loading coolie et
2. Packing(Primary),
2. Secondary, special Packing, if goods are removed from factory in that packing for whole sale trade. National leather (SC)
3.Salesman commission
4. Warranty, after sales service.(Optional extended warranty Not incudable- Maruthi udyog (SC)
5.Inspection charges- if mandatory before sale
5.Instllation & Erection in case of movable goods not removed from factory and installation bring in to existence of goods
6. consultancy charges for Manufacturing
7.Design, drawing and Engineering of goods

Include all above only if they are not included in price

Exclusions in Value

1.Installation& erection
2. All discounts if pass to buyer.
3 Prorate cost of durable packing if inbuilt in price
4.Notional Int. on deposits. if not affect price
5. Int., on receivables, bank charges
6. All Local taxes
7. Freight, insurance from place of removal to buyer place.
8. Advt, Sales promotion by buyer on his own
9.Subsidy received from Government(from buyer is includible)
10.Hire charges for D & R packing
11.Other charges if no diversion of genuine price.

Exclude all above only if they are included in price

Excise Valuation Rules

Value under Rules applicable only When any 3 conditions of T V is not fulfilled (1.Goods not sold at the time and place of removal 2. Price is not sole consideration 3. Buyer and seller is relative)

Valuation when goods are not sold (Samples/Free warranty claims)- Rule 4

Value of samples

- Sale of Samples (Rule 4 not apply)
  - Covered under MRP → MRP Valuation
  - Not Covered under MRP → Other methods
- Samples issued free (Rule 4 apply)
  - New Product Samples → Provisional Assessment/ Cost +10%
  - Old Product Samples → Price of identical/ similar Goods sold at same time Is value

Physician sample issued free which are covered under MRP -Rule 4 apply)

Value can be made at Whole sale price/, price of highest qty sold

If not available Price at the nearest time/ date subject to adjustment for time and delivery is value

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Rule 5- Value when goods sold at place other than the place of removal (Free on Road Contract)

Value will be calculated by deducting freight from place of removal to the place of delivery

Example 1

Factory at Chennai (Place of removal → Goods delivered to → Buyer place At Bangalore (Place of delivery

In this example, No sale at Factory. Sale will complete at buyer place, when buyer receives and acknowledges goods

If, FO R price from Chennai to Bangalore is Rs. 120 per unit and freight from Chennai to Bangalore per unit Rs. 10, Value per unit will be Rs. 110

Freight deduction on actual basis or average basis (Explanation 1)

Example 2

Factory at Chennai (Not a Place of removal) → Depot at Bhuvaneswar (Place of removal → Goods delivered to → Buyer place At Kolkata (Place of delivery

No sale at Factory. No Sale at Depot. Sale complete at buyer place in Kolkotta.

If, FO R price from Chennai to Kolkata is Rs. 200 per unit and freight from Chennai to Bhuvaneswar is per unit Rs. 20, and freight from Bhuvaneswar to Kolkotta is Rs. 10 Per unit Value per unit will be Rs. 190 (200-10)

No deduction for freight from Chennai to bhuvaneswar as Chennai is not a place of place of removal (Explanation 2)

Rule- 6 Value, When the Price is not Sole consideration

Value = Amount paid by buyer + Additional Consideration flown to seller

Normal Sale Price Rs. 100 Per unit

- Material ,Drawing & Design Rs.60 → Supplied by buyer → Buyer paid the balance Rs.40
- Labour, Overheads, Profit Rs.40

Explanation 1

Value for excise = 40+60= 100

Example 2

Normal Sale Price Rs. 100 Per unit → Buyer paidf Interest free deposit/ Advance payment → Due to deposit/ Advance discount Rs.20, which is not normal as per practice → Buyer paid Rs. 80

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Value for excise = 80+20= 100

Explanation 2

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Valuation Rule No 7- Valuation in case of depot sale(goods transported from factory to depot/Other place & sold to buyer from that place of removal goods

Value: Normal transaction value (price of Highest qty., sold) of depot on the date of removal from factory

Factory at Chennai

Goods dispatched to depot on 04.01.2012

Goods reached to depot on 07.01.2012

Depot at Kolkotta (place of removal)

Factory Price Per unit
04.01.12 Rs. 100
07.01.12 Rs.110
12.01.12.Rs. 120

Goods at depot ultimately sold to consumer
On 12.01.2012 at Rs. 150

Depot Price Per unit
04.01.12 Rs. 130
07.01.12 Rs.140
12.01.12.Rs. 150

Assessable value will be Price of depot on 04.01.2012 Rs.to depot on 04.01.2012

Note:
1.No deduction for freight from factory to depot
2.Freight and insurance from depot onwards is not includible in value.
3. Price at which such goods are subsequently sold to buyer from the depot is not relevant for purpose of excise valuation

Valuation Rule No 8- Valuation in case of Captive Consumption

Captive consumption means excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles

Value = Cost of production + 10% or 110% of cost of production:
Cost of production is to be calculated as per CAS 4

Cost of production as per CAS 4

1.Material consumed (net of tax)
2.Direct wages/ salaries
3Direct Expenses
4.Works OH
5.Quality control Cost
6.R & D cost
7.Admn.overheads relating to Production
Less: Recoveries from Waste/Scrap
8. Packing cost

Ignore Selling and distribution costs

Valuation Rule No 9 & 10- Value when the goods are sold to Relative

Applicable only

1. When all goods are sold to Relative person or through relative person
2. When Substantial qty., sold to relative person

Not Applicable

1. When the price at which goods sold relative person and un-relative person is same
2. When part of goods sold to relative and part of good sold to un-relative (Applicable rule Rule 11 BOJ)

Value: Price at which the related person sells to unrelated person.

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1. Mfgr $\xrightarrow{\text{Sale 1}}$ R P $\xrightarrow{\text{Sale 2}}$ U R P — Value = Price of Sale 2

2. Mfgr $\xrightarrow{\text{Sale 1}}$ R P $\xrightarrow{\text{Sale 2}}$ R P $\xrightarrow{\text{Sale 3}}$ U R P — Value = Price of Sale 3

Where R P does not sell(Captively consumes) , Value is as per rule 8 -110% CPO of Mfgr.,

Valuation Rule No 10A. Valuation in case of job work

Value in case of Job work

- Goods Removed From J W Place → Sold by PM + delivery taken by buyer+ PM, Buyer unrelated + Price is sole consideration → Price at which the Principal Manufacturer (R M Supplier) sell the goods is the value
- Goods received back to Factory and remove From Factory → Goods Removed From Factory PM, Buyer unrelated + Price is sole consideration → Transaction value is Value
- Other Cases → Value as per Valuation Rules

If goods manufactured by Job worker covered under MRP, Valuation will be on MRP basis not under Job work basis

Valuation Rule No 11. best of judgment method

Applicable

1. When all other rules not applicable
2. When part of goods sold to relative and part of goods sold to un-relative

Value: Combination of TV and all other rules with the available information.

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Valuation Miscellaneous Topics

Valuation in case of computer
Acer India (SC)

- Value of preloaded operational software not includible in valuation in case of computer
- Not includible even computer cannot function without software.
- Software is not a part of Computer
- Computer is complete without software. CCE Vs Acer India Ltd (2004) (SC) 172ELT289

Valuation in case of Purchased parts and components

Purchased Components/Spare parts

- Fitting and delivered along with product → Cost includible in Valuation (profit not includible in valuation)
- Supplied Additionally/ separately → Not includible in Valuation

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Valuation in case of Consumables

Purchased Consumables

- Not includible in Valuation (Even product cannot function)
- Examples: ribbon/cartridge Gramophone pin, casset

Accessories Which are optional not includible in Valuation

Cumduty Price (Price inclusive of duty)

When CDP is considered

- When the price is not sole consideration and if any Additional Consideration is added. CBEC DO letter 334/1/2003 dated 28.02.2003
- If Assessee removes goods without payment of duty (treating dutiable goods as exempted goods/not charged duty), the price should be treated as cum duty price Maruthi Udyog Ltd (2002) (SC)

Av in case of CDP = CDP x 100/ 100+ rate of duty incl. ec

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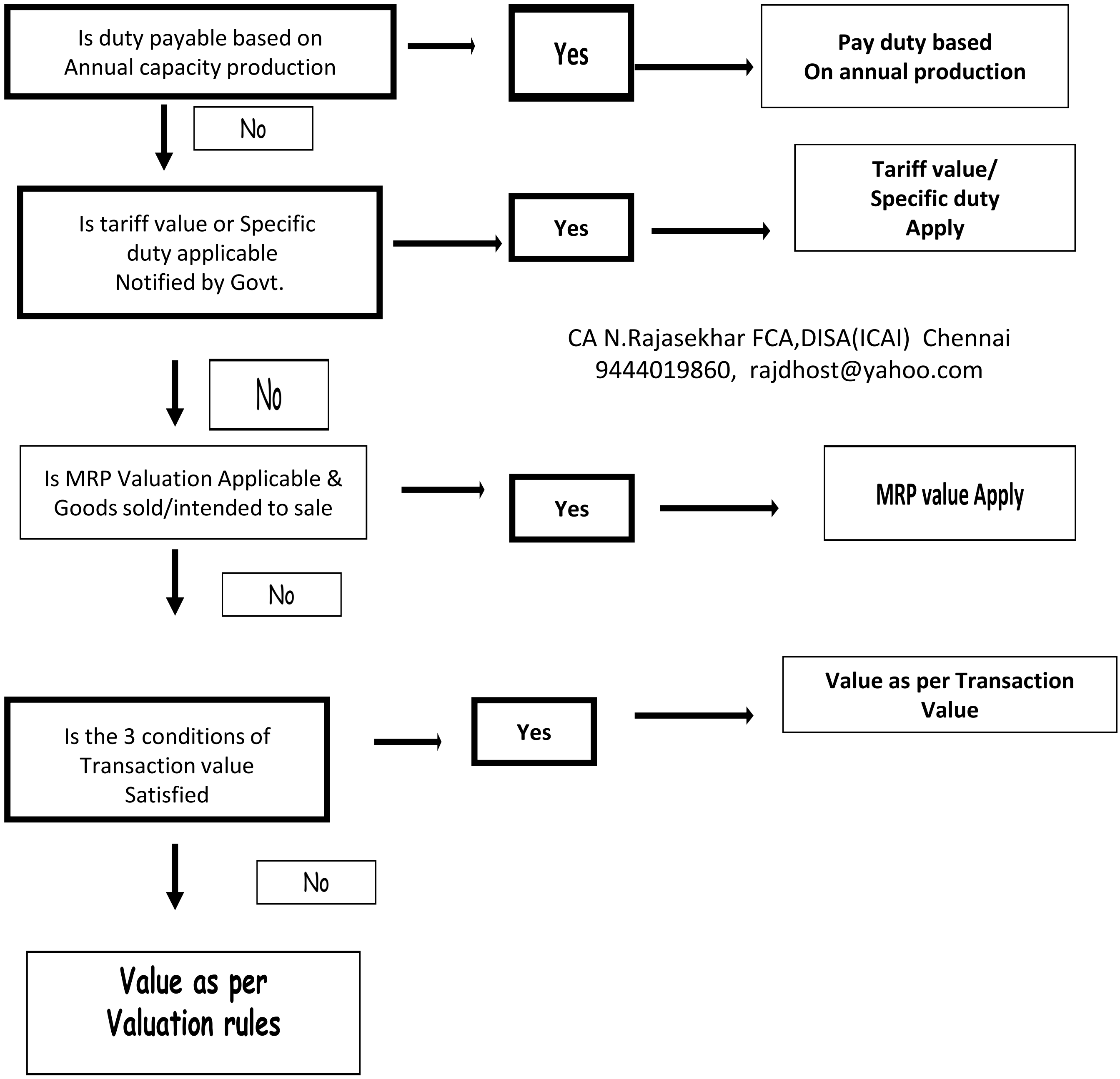
Valuation Application/Order to follow



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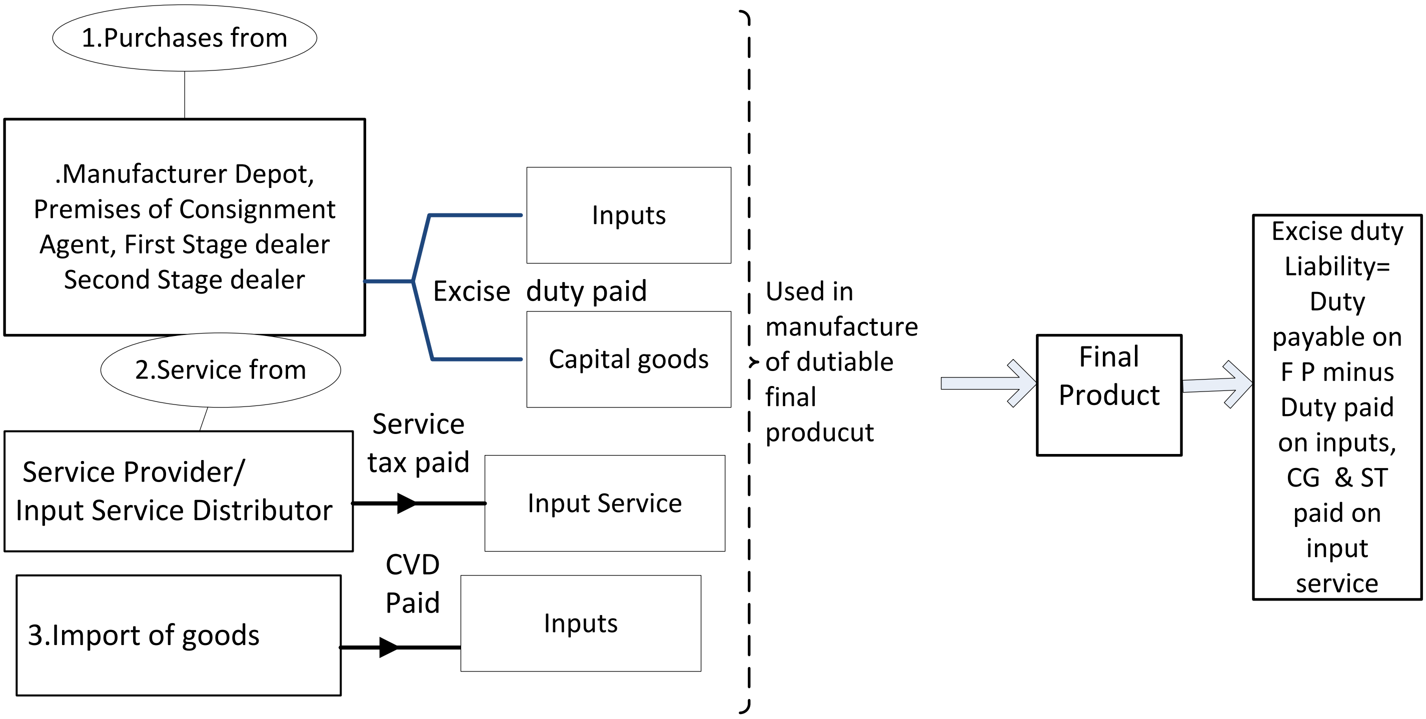
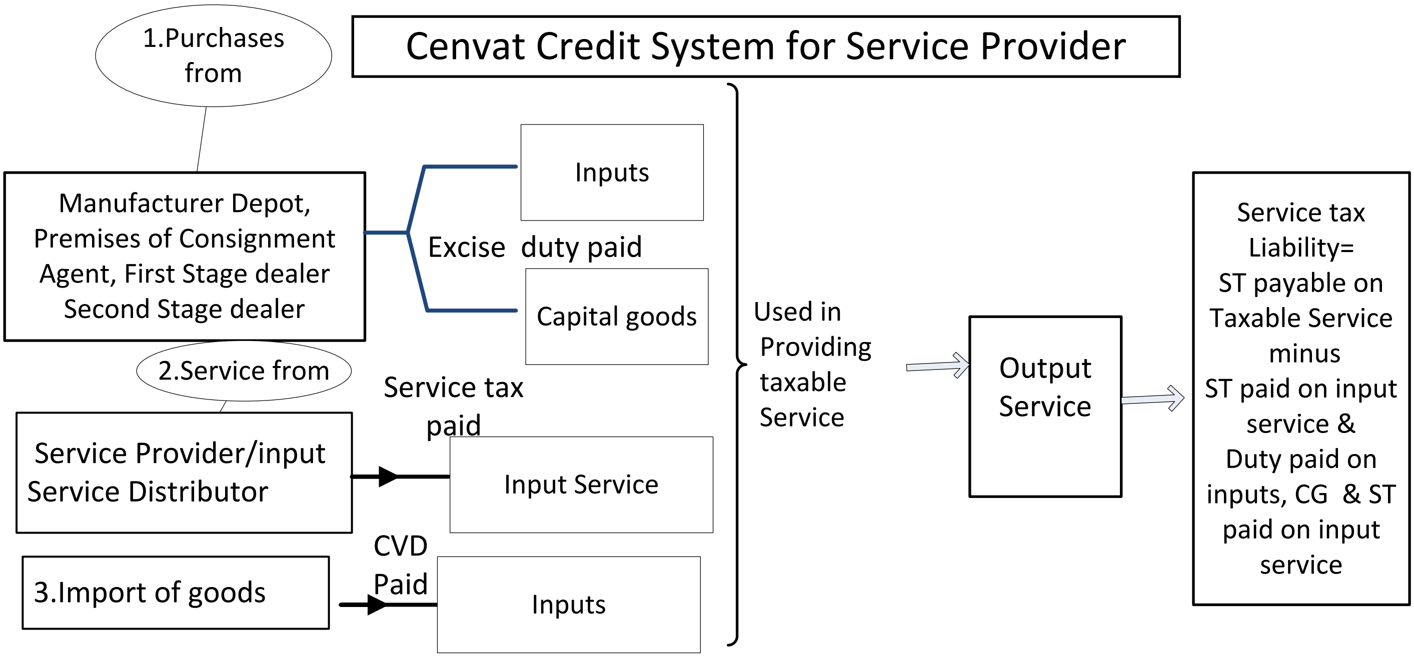
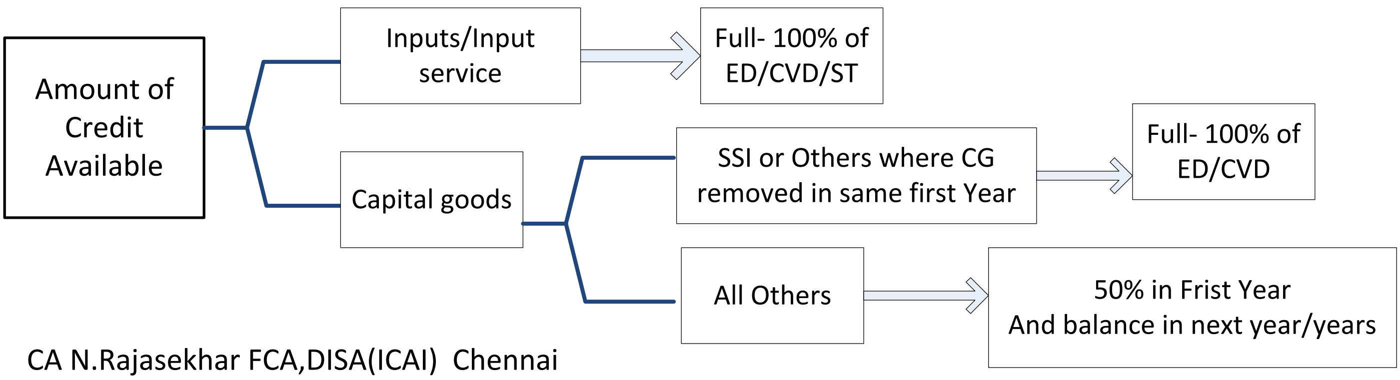
Cenvat Credit System for Manufacturer



Cenvat Credit System for Service Provider



Quantum of Credit (Amount of Credit) Available



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Inputs & Capital goods under Cenvat Credit

Input means
- For Manufacturer
  - All goods used ***In factory***
  - Inclusions *(Also inputs) (refer *)*
  - Exclusions ***(Not inputs)*** *(refer **)*
- For Service Provider
  - All goods used *For providing output service*

Input Inclusions *

1.All goods including accessories cleared along with FP where Value includible in valuation.

2.goods used for providing free warranty claims for final products (condition: warranty value is included in price)

3.All goods used for generation of electricity or steam for captive use

4. CG used as part/ component in mfg., of FP

Input Exclusions for Mfgr & SP **

1. Diesel, Petrol
2.Motor vehicles
3 Any .goods used in construction, civil structure or .Any goods used for laying of foundation or making of structures for support of capital goods(Except for port, airport, all constructed related services)
4.Any.goods are used primarily for personal use or consumption **of any employee(**used in guest house, club, quarters etc.,)

Capital goods means
- For Manufacturer & Service Provider
  - All Goods Of Chapter 82,84, ,85,90,6804,6805 & their Components,Spares/ Accessories
  - Certain Motor vehicles such as tractors, cranes
  - Pollution Control Equipment & their Components/Spares Accessories
  - Moulds,Dies, Jigs, fixtures, Refractories,refractory material
  - Tubes, Pipes, fittings thereof
  - Storage tank

  1.Used in mfg. of final product **in factory,** 2. used in **outside factory** for generation of Electricity for captive **use in factory**. 3.used for Providing Output service

- For Service Provider only
  - Equipment, Appliance use in office — Used for providing output service
  - Motor vehicles &their Components ,Spares/Accessories — For services of Courier, tour oopperator Rent CAB, Cargo handling GTA, Outdoor cateror, Pandal shamiana Contractor
  - Dumpers, Tippers &their Components Spares/Accessories — For services of Site formation, clearance, Mining of mineral, oil, Gas

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Input service Under Cenvat Credit

- **Input Service means**
  - For Manufacturer
    - Any Service used in or in relation to mfg., of F.P.
    - Any Service used in clearance of F.P. ***Up to place of removal***
    - Inclusions *(Also input service) (refer *)*
    - Exclusions *(Not an input service) (refer **)*
  - For Service Provider
    - Any Service used in providing for Output Service.
    - Inclusions *(Also input service) (refer *)*

Inclusions in Input Service for Mfgr., & S P *

1.Used in setup, Repair, renovation Modernisation of Factory/premises of SP
2. Computer Networking, Share Registry & Security
3.Inward Transport Of inputs and CG/Outward transport Up to place of removal
4.Storage up to the place of removal, procurement of inputs
5.Advertisement or sales promotion, market research
6.Accounting, Auditing, Financing, Quality Control, Ccoaching & Training, Rrecruitment
7.Share registry, security, business exhibition, legal services

- Exclusions in input service **
  - Outdoor catering, health, fitness ,beauty services All insurance services ,travel Etc., used / consumed primary for personal purpose of employee
  - Architect/ Port/ airport/ other port/Construction related services used for construction of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods
  - General insurance/·Rent-a-cab/ Service Stations' services, Supply of tangible goods services for Motor vehicle → This services will be input service only for SP where Motor Vehicles are Capital goods.

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Eligibility of Parts components, Accessories of Capital goods

- **Parts, Components Accessories of CG mentioned in definition in rule 2**
  - Used as input for mfg. of FP → Credit available as input
  - Used in factory → Credit available as C G

Parts, Components Accessories of CG not mentioned in definition in rule 2 if they are *Used as input for mfg. of FP Credit available as input if it not in exclusion list.,*

Cenvat Credit Rule No 3

Rule 3 (1) to 3(4)

Rule 3 (1) to (4) of CCR 2004

- **3(1)** → Duties on which Credit can be taken → All types of Excise Duties (refer types of duties) & corresponding CVD on imports, EC and ST. No credit on 1% BED & Clean energy cess No credit on spl cvd 3(5) - 4% to S P
- **3(2)** → Credit when exempted goods become dutiable → Credit available for Mfgr, SP, **on duty paid on** 1.Inputs on stock, 2. WIP 3. Finished goods on the date
- **3(3)** → Credit when exempted Service become Taxable → Credit available for Mfgr, SP, **on duty paid on** 1.Inputs on stock, 2. WIP 3. Finished goods on the date
- **3(4)** → Utilization of Cenvat Creit → **Towards payment of**
  1.Any duty of excise, ST on services
  2.Amount payable when Inputs, CG removed as such. & as per rule 6.
  3.Any reversal made under rules.
  Proviso: Credit utilization only up to duty/tax paid up to month end/qtr. End.

Exceptions/Restrictions on Utilization :
1.ED of Textiles, GSI, NCCD, & corresponding CVDS & EC paid on all to be utilized only for the payment of same type respectively.
2.Any duty/tax shall not utilized for payment of 1% BED & Clean energy cess

Rule 3 (5) to 3(5C) & 3(6)

Rule 3(5) to (5C) & 3(6) of CCR 2004

3(5) → Removal of Inputs & CG

Removal with invoice

- Removed as such (without use) from Factory/premises → amount equal to Credit availed to be paid
  - Proviso: Exception (No payment required)
    1. for SP, CG removed for providing Output service
    2. for Mfgr, Inputs removed for providing free warranty on FP
- C G Removed after use (as second hand goods) from Factory/premises → Computers/ Peripheral's (Refer*) / Other Capital Goods (Refer **) / Excise duty payable on Selling price (T V) — Which Ever Is Higher

Applicable to both Mfgr & SP

C G Removed after use as a scrap (after Useful life) → Computers/ Peripheral's (Refer*) / Other Capital Goods (Refer **) / Excise duty payable on Selling price (T V) — Which Ever Is Higher

Payment when CG removed after use 3(5)

Computers, Peripheral's
* Amount payable= Cenvat credit availed minus
1.Each QTR 1st year 10%
2..Each QTR 2nd year 8%
3..Each QTR 3rd year 5%
4.Each QTR 4th year 1%
From the date of credit taken

Other Capital goods
**
Amount payable= Cenvat credit availed minus .Each QTR 2.5%
From the date of credit taken

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3(5B) → Cenvat availed Inputs/CG -before use - Partly or fully- Written off or Provision made in books → Amount equal to Credit availed to be paid/ reversed → when Provision written back , credit can be availed

Applicable to Mfgr.

3(5C) → when Waiver (remission) granted on FP under Rule 21 of CER → Amount equal to Credit availed on inputs to be paid/reversed

Applicable to Mfgr.

3(6) → Cenvat credit to buyer on the Amount paid to SP/Mfgr under Rule 3 (5) → Buyer of these goods can avail cenvat credit on the amount paid

Applicable to both Mfgr & SP

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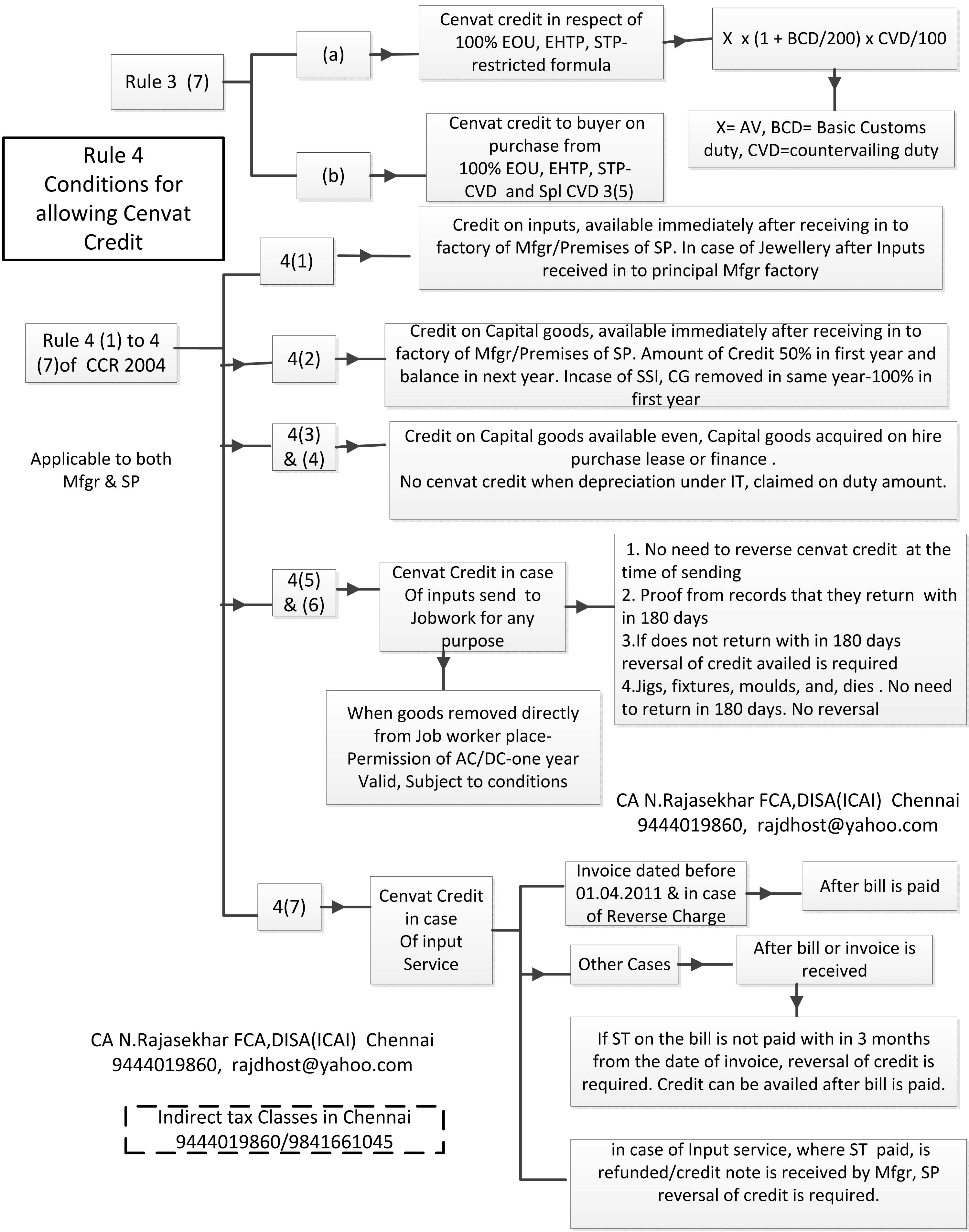
Cenvat credit Rule 3(7) & 4



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Indirect tax Classes in Chennai
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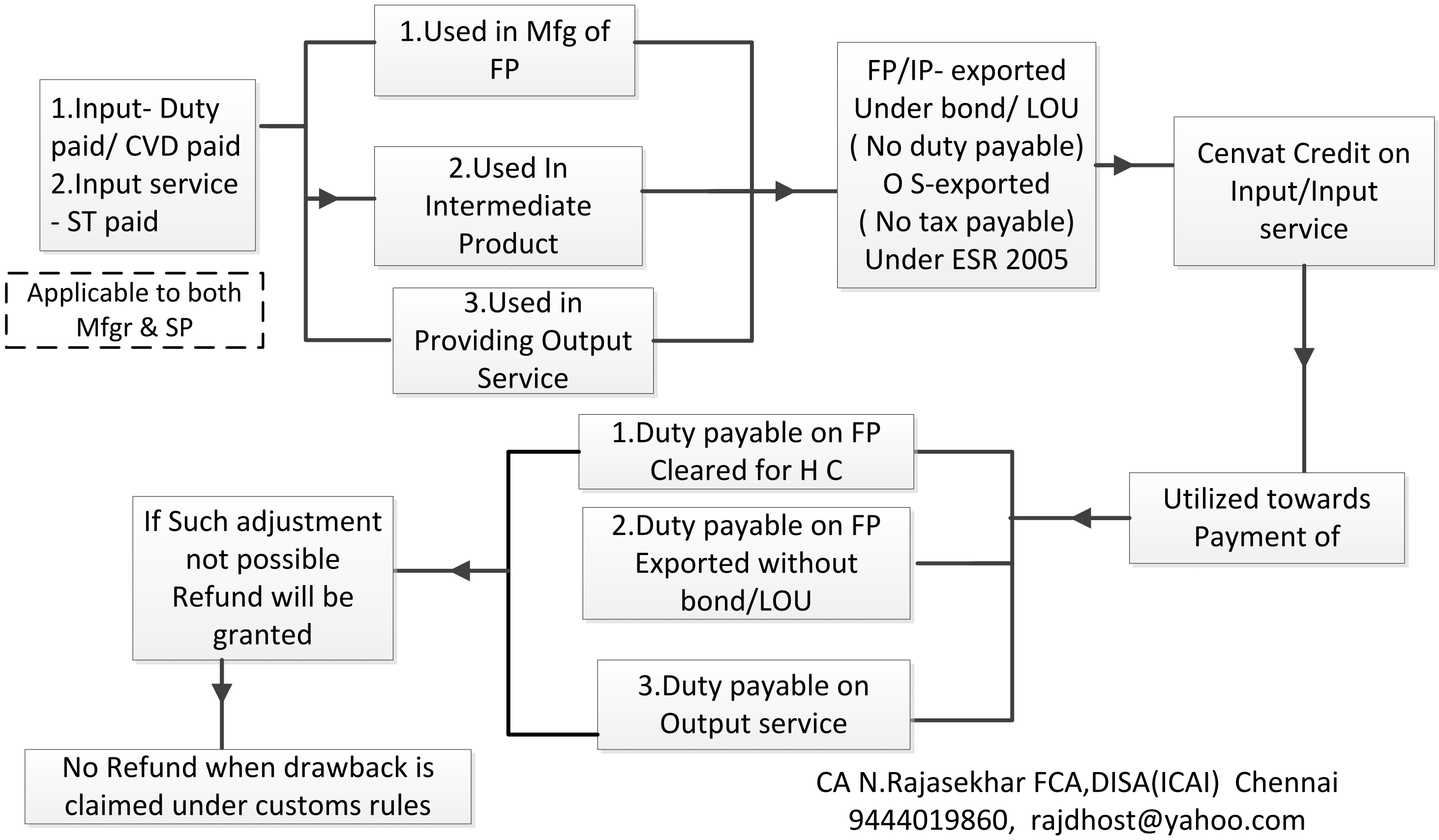
Rule 5 of Cenvat Credit Rules 2004-Refund of Cenvat Credit

Applicable up to 30.06.2012 – Relevant only for Nov 2012 exam



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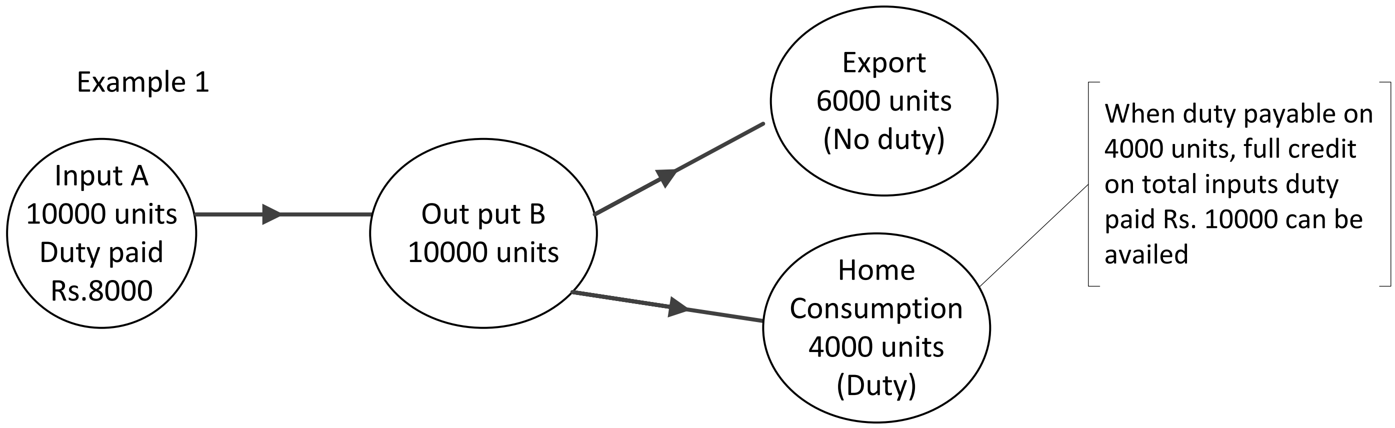
Example 1



Example 2

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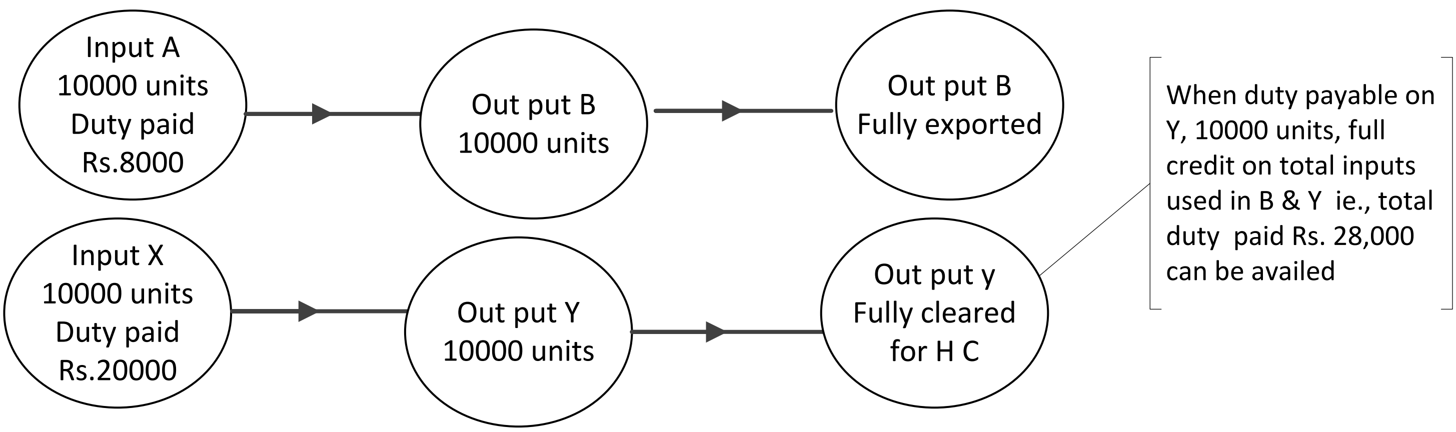

Rule 6 CCR 2004-Obligation of a manufacturer or producer of final products and a provider of taxable service(Common inputs/input services for dutiable and exempted goods& taxable and exempted services)

Rule 6(1) & (4)

1.Input- Duty paid/ CVD paid

2 C G- Duty paid/ CVD paid

Used Exclusively in
1. or in relation to Mfg. of exempted FP or
2. Providing exempted Service

3.Input service - ST paid

Used Exclusively in
1. or in relation to Mfg. of exempted FP or
2. clearance up to the place of removal of exempted FP or
3. Providing exempted Service

No Cenvat Credit

Exception: (Credit available)
1.jobworker of Jewellery
2. Preferential removals
3. In case of CG used by SSI for first 150 lakhs turnover

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Common Inputs/input service for
1.dutiable and exempted goods or
2. taxable and exempted services)
Rule 6(2) to 6(6)

Option 1.
Separate records for input/input service used for dutiable and exempted goods , taxable and exempted services

Exception: Preferential removals

Option 2.
Pay 6% on value of exempted goods/services Less duty if any paid on exempted goods

Exception: Preferential removals

Option 3
Pay an ‘amount’ equal to proportionate Cenvat credit attributable to exempted final product/ exempted output services, based on mathematical formula

Exception: Preferential removals

Option 4
Separate records only for inputs &Pay an ‘amount’ equal to proportionate Cenvat credit attributable to exempted output services, based on mathematical formula

Exception: Preferential removals

Option 3 & 4 should be informed in writing to CEO for all exempted goods/all exempted service. Once option is exercised, it cannot be withdrawn during financial year

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Preferential Removals :
Final product is dispatched to SEZ unit or developer of SEZ unit, EOU, EHTP or STP/UNO, International Organization.
When final product is exported under bond without payment of duty
Gold or silver arising in course of manufacture of copper or zinc by smelting.
Goods supplied against International Competitive Bidding
all goods which are exempt from customs BCD/CVD u/s 3(1) , Notification No 6/2010 dated 27.02.2010 WEF 01.04.2010
(a) against International Competitive Bidding; or
(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006
supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents (WEF 01.07.2010)
In case of taxable services provided , without payment of Service tax to SEZ or developer of SEZ for their authorized operation Rule 6(6A)-

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Rule 6(4)

Capital goods

Used Partly in
1. or in relation to Mfg. of exempted FP or
2. Providing exempted Service

Used Partly in
1.or in relation to Mfg. of dutiable FP or
2. Providing taxable Service

Cenvat Credit Available

Rule 7 Distribution of Credit by Input Service Distributor (ST on Bill distribution amount HO, braches, units)

Managing Office by Manufacturer/Service Provider → Receives invoice under ST Rules → ST distributes by Ho through invoice/ Challan HO, braches, units

ST distribution should not exceed amount of ST Paid
ST on service exclusively used for exempted service cannot be distributed.

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Head office receives Ad. Agency bill for services rendered to Ho and three braches. S T paid Rs. 5 lakhs

Head office Known as Input service Distributor

Ho -30%
1.5 lakhs

Branch 1-
20%- 1 Lakh

Branch 2-
25%- 1.25 Lakh

Branch 3-
25%- 1.25 Lakh

H O & Branches has separate registration for each premises

Credit can be availed on ST distributed through challan.

Rule 7 A Distribution of Credit of inputs/Capital goods by Input Service Distributor (Excise on Bill distribution amount HO, braches, units)

Same as Rule 7 instead of ST, it is ED paid on inputs/Capital goods
Through invoice under rule 11 of CER

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Rule8 of CCR 2004 Storage of inputs outside factory

AC/-DC Permission
By order in
Exceptional circumstances

Considerations → Nature of goods
Shortage of space in factory

Impose → Restrictions/Conditions
limitations

Failure → Pay amount/
Reversal of
Cenvat credit
availed

Rule 9 of CCR 2004- Documents and Accounts under Cenvat Credit

Documents for availing cenvat credit Rule 9(1)

For Excise/CVD

- An invoice of the manufacturer factory/deport/consignment agent place
- An invoice of the importer
- An invoice of the First / Second Stage Dealer
- A supplementary Invoice
- A bill of entry
- A certificate issued by an appraiser of customs in case of goods imported through post office

For Service tax

Invoice / bill / challan of the service provider
Invoice / bill / challan of the input service distributor
Supplementary invoice by Service provider except tax payable under extended period limitation cases
Challan evidencing payment of service tax in case of reverse charge of ST

Credit can also be availed on:
1.Any duplicate copy of invoice
2. Photo copy of invoice/Any other document evidencing for duty or tax which is certified by CEO

Priviso:
No credit on CVD 3(5)-4% if invoice/ supplementary invoice indicate no Credit available (When importer sell the goods paid Vat and want to claim refund ofCVD)

Particulars of documents 9(2)

1.All as per Rule 11 of CER
2.Minimum Mandatory Particulars :
If AC/DC satisfied goods/service received and accounted
a) Name and address of issuer of invoice
b) RC No.
C) Description of goods/service
D) value, Duty, tax

Cenvat Credit on FSD/SSD invoice Rule 9(4)

The invoice should indicate duty suffered or prorate duty suffered in case proportionate stock is sold

Records for cenvat credit Rule 9(5&6)

Records for Inputs/ Capital goods Input service
- QTY. Records → Receipt, Disposal,Consumption and balance
- Value Records → Duty/tax paid, credit taken, Utilized and balance

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Returns for cenvat credit Rule 9(7 to11) & 9A

Returns
- Mfgr/SSI → ER 1,ER2, ER3(SSI), ER 4 to ER6 → Mandatory E filing When gross duty >= 10 L
- FSD/SSD → Annexure form → Mandatory E filing
- SP/ISD → ST3 → Mandatory E filing

Revised return To rectify mistake with in 90 days of O R filed

Rule 10- Transfer of Cenvat Credit

Mfgr/SP

1.Shifts factory/Premises

Or

2. Change of ownership
(sale, lease, Merger, Amalgamation, J V)

Transfers unutilised Cenvat Credit

Cenvat credit can be availed by transferee

Condtions

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1 Transferor transfers Inputs, WIP,CG with specific provision of transfer of liabilities .

2.Transferee Accounts Inputs, WIP & ,CG to the satisfaction of AC/DC

Rule 11- Transitional provisions of Cenvat Credit

Rule 11

11(1) Closing Balance of Cenvat Credit unutilised under old rules 2002 on 09.09.2004 can be carry forwards under new rules 2004 we 10.09.2004 by Mfgr/SP

11(2) To 11(4)

1. SSI earlier not availing Exemption, decides to avail exemption
2. When dutiable products becomes exempted(Sec. 5 A notification) and Mfgr availing exemption
3. When Taxable Service becomes exempted (93A notification) availing and SP availing exemption

Payment /Reversal of Cenvat Credit availed on inputs,WIP,FG, Credit Balance if any lies it will lapse and cannot be utilized for any purpose

Rule 12- Full CC, if goods(inputs, CG) purchased from NE, J & K, Kutch in Gujarat, even duty partly exempted under notification

Rule 13 Deemed Credit in case of input/Input service → CG will notify rate/Amount on CC is available.. Actual rate/amount paid not relevant+

Rule 14-Recovery of Cenvat Credit → CC Wrongly availed or utilized/erroneously refunded Interest under excise and service tax applicable

Interest is payable even wrongly availed but not utilised or reversal is made..(Confirmed in circular and in) . Ind-Swift Laboratories Ltd (SC)

Rule 15-confiscation/Penalty Wrong availment/utilisation

Rules of natural justice to follow by CEO (SCN)

- Bonafide mistake
  - Inputs/CG- Confiscation & duty or Rs.2000 WEH
  - Input Service- tax or Rs.2000 WEH
- Fraud cases
  - Inputs/CG- Penalty Sec 11 AC (equal to duty, etc.,)
  - Input service-Penalty Sec 78 FA 94(equal to tax)

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Excise Registration- Sec 6/Rule 9/ Notification 35 & 36/2001

- **1.Persons require registration**
  - Manufacturer of excisable goods
  - Private ware house keeper
  - FSD/SSD
  - EOU having local sales/ purchases
  - Refund assessee
  - SSI turnover > 150 lakhs
- **2. Persons exempt from registration**
  - Manufacturer of non excisable goods
  - manufacturer of NIL duty goods/exempted goods
  - Persons manufacturing in customs warehouse
  - SSI turnover < 150 lakhs
  - Job worker claiming exemption-214/86
  - Wholesalers/Traders other than FSD/SSD
  - EOU is who is licensing under customs
- **3. Procedure for Registration**
  - Application Form A1 with self attested pan
  - to Jurisdictional CEO
  - Other enclosures-
  - Every factory/place of removal to be registered
  - RC with in 7 working days by AC/DC
  - Verification of factory after issue of RC
  - RC Not transferable
  - Cancellation of RC
    - Violation of law Conviction under 161 of IPC
  - Change in constitution
    - Inform within 30 days in same form A1
  - Closure of business
  - Apply de registration,
    - pay duty up to date/ surrender original RC/ declaration- no liability
- **4.Consequences of Non registration**
  - Penalty Rs.2000/ duty WEH
  - Confiscation of goods
  - criminal penalty
    - fine
      - imprisonment min 3 m , max 7 y

Procedure for Export of goods -Rule No18 & Rule No 19

Methods Of Export
- Pay duty and Claim refund/ rebate after export-Rule 18
- Execute LOUT/Bond with out payment of duty-Rule 19

Procedure
1. Under Seal of CEO or
2. Self sealing by exporter

Persons who can export goods
- 1.Manufacturer cum Exporter → To submit LOUT to AC/DC of Central Excise → Purose → Export goods with out payment of duty
- 2.Merchant exporter → To submit B1 Bond to get CT 1 form from Supt. of Central Excise → Purose → to get goods from MFGR with out payment of duty
- 3.EOU/EHTP ETC → To submit B1 Bond to get CT 3form from Supt. of Central Excise → Purose → to get goods from MFGR with out payment of duty

Procedure Under Seal of CEO

Exporter Prepare Form ARE I- 5 copies- colour band submit to CEO before 24 hrs. → Invoice under Rule 11, Shipping bill and other documents to be prepared by exporter → CEO inspection Verfication of documents of goods → Certification of ARE I, and sealing of goods by CEO → Distribution of ARE I -CEO retain last 2 copies → Customs certification of AREI /shipping bill → Time to export maximum 6 months → Exporter submit proof of export → Refund of duty/ release of bond

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Procedure Under self Seal By Exporter

Same as above except
1.ARE I to be submitted to CEO after 24 hours of export
2. Self sealing my exporter instead of CEO verification and certification in ARE I

Procedure for ware house goods -Rule No 20

Not all excise goods can be stored, Ware house registered under excise. Maximum period of storage 90 days.

Consignor prepare ARE III 4 copies and invoice 3 copies → Despatch of goods To warehouse with the documents → Warehouse keeper(consignee) Verify goods and notify discrepancy if any in ARE III(re-warehousing Certificate) → Consignee send ARE I To his jurisdictional CEO & Consignor → Range supt., of consignee will countersign ARE-3 send to the jurisdictional CEO of consignor. → Re-warehousing Certificate not received with in 90 days ,consignor has to pay → Consignee has to maintain accounts. Duty liability on consignee if does not paid by consignor

Demand (Recovery) of Excise Duty- Sec 11 A of CEA

Indirect tax Classes in Chennai Call 9444019860/9841661045

Excise Duty

- Not levied (N.L)
- Short levied (S L)
- Not Paid (N.P)
- Short paid (S.P)
- Erroneously refunded (E R)

N L – Dutiable- treat exempt/Nil
S L-- Lower rate applied
N P/SP- Valuation differences

Show cause notice (SCN)

- Contents, Manner of Issue

  Date, Name and address of Assessee., Amount payable along with calculation, CEO sign, Serving through post, notice board of Assessee/ Dept.

- Time limit

  - 11A 1(a)- Normal Period -1 year from relevant date
  - 11 A (4)-- Extended Period- 5 years from relevant date

For computation of 1 y or 5 y , period of stay by court, tribunal to be excluded- 11 A (8)

Extended period applicable
1.Fraud, collusion, willful misstatement, suppression of facts, ,Violation of excise law with intention to evade duty,
2.Audit, investigation, verification reveals fraud collusion etc.,11 A(5)

No SCN

Assessee voluntarily Pays before issue of SCN

Normal cases 11 A 1(a), 2

Paid duty+int. before receiving SCN
payment on own ascertainment or ascertainment by CEO
No penalty
Intimation to CEO in writing
To extent paid, proceeding conclude
Shortfall amount if any CEO issue SCN

Extended Cases 11 A (6) (7)

Audit, investigation, verification, reveals, fraud etc.
Paid duty+int. Penalty 1% p.m., subject to max 25% of duty, before receiving SCN.
Payment on the basis of own ascertainment or ascertainment by CEO.
Intimation to CEO in writing.
To extent paid, proceeding conclude.
Shortfall amount if any CEO issue SCN

Relevant date

1 Assessee file return- Date of filling
2 Assessee does not file return- Due date of return
3 Provisional assessment- Date of adjustment to final duty
4 Erroneous refund- Date of refund
5 Other case- Date of payment of duty

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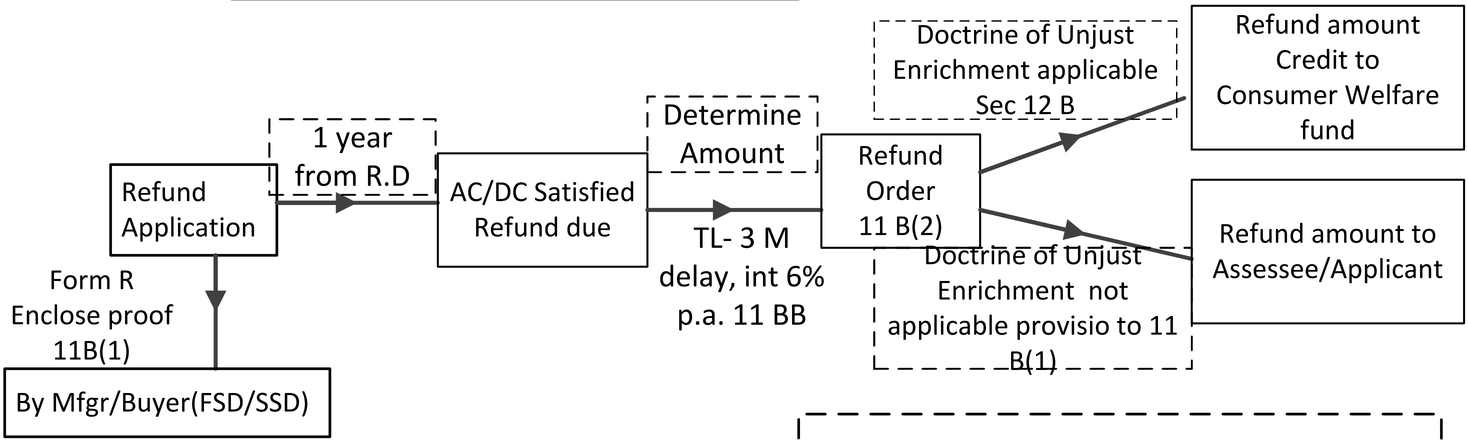
SCN issued after lapse of time limit, it is invalid.
In case of extended period, it is on the part of department to prove fraud, collusion etc., on the part of assessee.

Excise Refund-Sec 11 B



Relevant Date:
1**In case of Export Rebate**
Export through aircraft/vessel-Date of leaving aircraft/Vessel Export through vehicle-Date of leaving custom frontier Export through post-Date of dispatch of article
2 In case of Compound levy scheme-Date of reduction of duty
3 In Case of Exemption u/s 5 A-Date of exemption order
4In Case of Provisional Assessment-Date of final adjustment of duty
5-In case of FSD/SSDDate of Purchase of goods
6 In case of Order of court/Appellate authority-Date of order7In any other caseDate of payment of duty

Indirect tax Classes in Chennai Call 9444019860/ 9841661045

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

- It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer sec 12 B
- In such cases, refund of excess duty paid to the manufacturer will amount to excess and un-deserved profit to him.
- He will get double benefit – One from consumer and again from the Government.
- At the same time, the duty is illegally collected and hence cannot be retained by Government, it will be credited to Consumer welfare fund
- The fund may be used for activities of protection and benefit of consumers.

Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)

Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- When duty is paid under protest and only lower amount of duty is charged to customer
- Pre-deposit of duty pending appeal
- When contract is for price inclusive of all duties
- When debit note is raised by buyer and amount deducted from bill
- When credit note issued to buyer and buyer account is credited,
- Refund of export rebate/incentive.
- Deposit taken from buyer against possible liability of excise duty. And deposit refunded

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Adjudication orders of CEO- Sec 11 A(10) of CEA

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SCN Received by Assessee with in time limit

- Assessee accept, do not differ
  - Normal period → Pay Duty + Mandatory Interest (sec 11AA)+ Penalty --duty or Rs.2000/- WEH (waiver of penalty -reasonable cause of failure)
  - Extended Period → Pay Duty + Mandatory Interest (sec 11AA)+ Mandatory Penalty sec 11 AC Equal to duty (waiver 75%- if duty + interest is paid with in 30 days of scn)
- Assessee do not accept, differ → Representation through AR(CA)
  - Assessee view fully accepted by CEO → SCN Will be dropped by CEO
  - Assessee view fully rejected by CEO → Amount to be determined - not more than SCN amount. Assesse option- appeal
  - Assessee view Partly accepted & partly rejected by CEO → Accepted portion SCN Will be dropped. Rejected portion Amount to be determined

Time limit for adjudication orders of CEO-Sec 11A(11):
Normal cases- 6 months from the date of notice
Extended period cases- one year from the date of notice
The words shall was used and hence, it can be mandatory time limit for CEO

Where appellate authority modifies duty , the interest and penalty shall stand modified accordingly- 11A (12)

Mandatory Interest in case of Recovery of Duty- Sec 11 AA

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Interest on Duty in case of SCN

- Rate → 18% p.a.
- Period → from -1st day of succeeding month of due date to date of payment
  Ex: April 2010 SCN, duty due date May 5th. Interest starts from June 1st

1. If SCN amount was increased in appeal, Interest on increased amount is payable from date of order- Sec 11 A (13)
2. Interest is payable whether the adjudication order shown interest separately or not- Sec 11 A (14)

For full and detailed analysis and explanation, Author CA N Rajasekhar book
" Simplified approach to Indirect tax" second edition, published by CCH publishers, Gurgaon.
Line by line simple, bullet point wise explanation

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Excise Administration

For full and detailed analysis and explanation – For "Powers of CEO" refer Author CA N Rajasekhar book " Simplified approach to Indirect tax" second edition, published by CCH publishers, Gurgaon.
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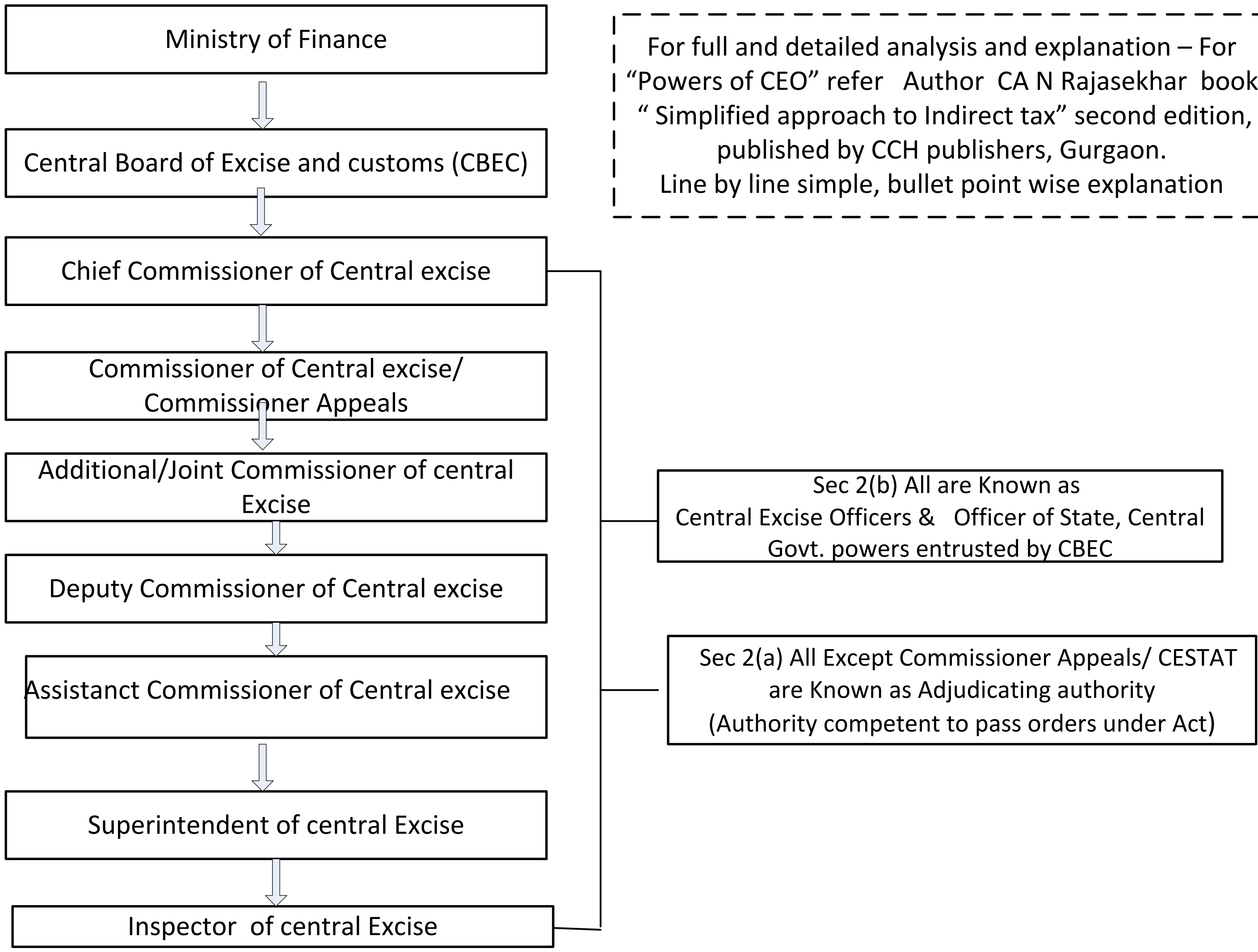
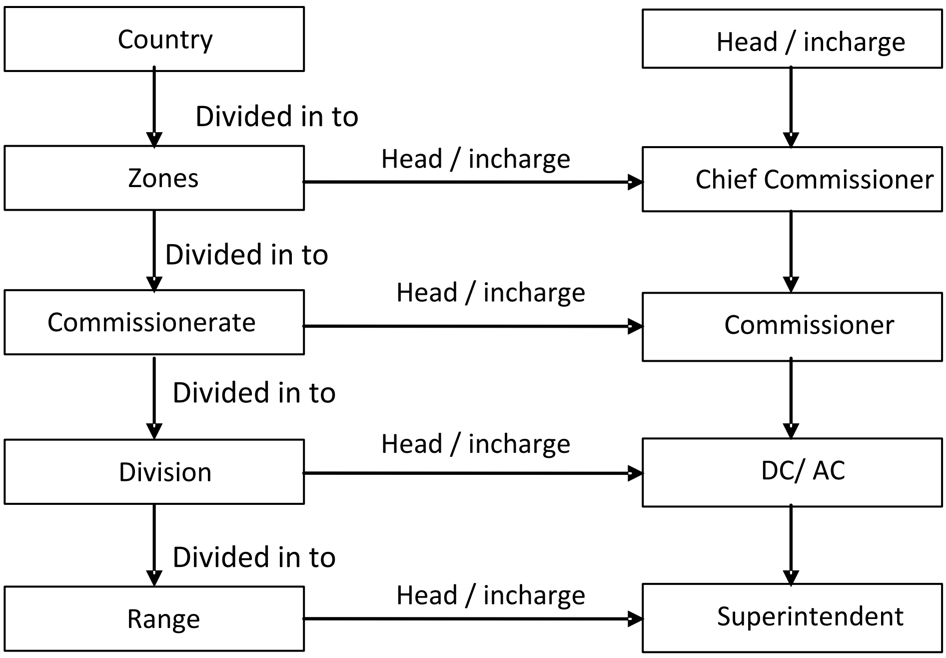
Hierarchy



Segregation of functions/Divsion of work



Excise Assessments

CE Rule 2(b), 'Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under Rule 7

It normally implies determination of duty liability

Types of Assessments

- 1Self Assessment Rule 6
- 2. Provisional Assessment Rule 7
- 3.Best Judgment Assessment

Self Assessment- Rule 6

Assessee determines classification & Valuation → Assessee Pays Appropriate duty → Files Monthly returns ER1/2/3 → Assessee declares In Self Assessment memorandum → CEO Scrutinize the return, Inspection, Verification-- SCN if require → In case of cigarettes, duty will be assessed by the superintendent of excise before removal of the goods

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Provisional Assessment- Rule 7

Assessee Unable to determines classification /Rate of duty & Valuation → Request to Ac/DC for Provisional Assessment with reasons → B 2 bond → AC/Dc allow P A and he determine rate of duty payable → Time limit to complete FA → 6 months Extention By C- 6 months BY CC beyond- one year → Final Assessment (FA) → FA duty > PA duty = Assesse pay duty+18% int. FA duty < PA duty = Refund to Assesse +6% in

Best Judgmental Assessment- Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual

Best judgment assessment is made:

- Where assessee fails to provide record /information for the purpose of assessment and Where the department is unable to issue demand.
- Assessment done will be based on available information.
- Demand will be issued if necessary.
- Burden to provide information for re-determination of duty is on assessee.

Small scale Industries (SSI)- Notification No 8/2003 dt01.03.2003

Indirect tax Classes in Chennai Call 9444019860/9841661045

Eligible Criteria (to get SSI Benefit)

Relevant factors to consider

1.Manufacture Specified goods Listed in notification.
(Covers All most all goods. Except few goods such as watches, matches, heavy Iron and steel, tobacco products)

2.Previous financial year turnover(Eligible clearance for home consumption) for of assessee is less than Rs 4 crores (400 lakhs)
Ex. Turnover FY 2011-12 < 400 L, SSI Benefit available in FY 2012-13

Irrelevant factors in criteria →

1.Investment in Plant and Machinery
2. No of labour employed
3. Registration as SSI under IDRI and other Acts.

SSI Benefit Provides

1.FY Turnover Up to First Rs. 150 Lakhs Duty exempt. No duty payable. Exemption available only for BED and SED. Other duties payable

Cenvat Credit → Inputs/Inputs Service, not available. Capital goods 100% available in first year.. But utilisation, over 150 lakhs

2. Turnover over Rs.150 lakhs, normal duty payable.

Cenvat Credit → Available.

Example →

April 2012 to July 2012 turnover Rs.150 Lakhs. Duty exempt.
On turnover from August 2012, normal duty payable..

Procedural Concessions for SSI units

●No registration is required until they cross `150 Lakhs of turnover.
●Payment of duty is to be done quarterly instead of monthly●100% CENVAT credit is available on capital goods in the first year.
●One Consolidated entry in PLA for all removals during the day.
●Audit should be done once every 2 to 5 years.
●Exemption for payment of duty if goods manufactured under brand name of others in rural area.

Obligation of SSI

●File a declaration with Superintendent when the turnover crosses 90 lakhs.
●Keep a registration and maintenance of records when turnover crosses 150 lakhs.

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Small scale Industries (SSI)- Notification No 8/2003 dt01.03.2003

Clubbing provisions of SSI

When calculating the limits of 150 lakhs and 400 lakhs, the following factors will be clubbed:

●Turnover of the all products manufactured / all the factories or units of the assessee
●Turnover of factory used by more than one manufacturer in a financial year
●Turnover of clearance in the name of bogus /dummy/sham units●Turnover of two units where there is substantial funding between two units
●Turnover of two units when change of ownership takes place during the previous year

However, the following will not be clubbed:

●Turnover of units of relatives/Turnover of same management units
●Turnover of the units having separate registration/ separate assessment/
Turnover of units having common partners/common directors

Calculation of turnover for limits (Value of clearances)

The calculation mode for `150 and 400 lakhs is same except few items.

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Exclusions from total turnover (Value of clearances)

The following shall be excluded / not be considered from the turnover calculation:

●Export turnover other than from exports to Nepal and Bhutan
●Clearance to SEZ/STP/EHTP/EOU/FTZ/EPZ/United Nations organisation
●Export under bond through merchant exporter
●Turnover of goods which are exempt from duty/ Nil duty/ Non excisable goods
●Turnover of goods manufactured with other’s brand name in urban area (to be excluded for 400 lakhs calculation and included for payment of duty in 150 lakhs)
●Turnover of goods of packing material manufactured with other’s brand name
●Turnover of inputs/capital goods bought by assessee and cleared as such
●Job work turnover exempt under notification 214/86,83/94 and 84/94
●Goods may be exempt under some other notification, i.e. other than SSI exemption notification - Final product of such goods
●Value of intermediate products manufactured while producing final products which are eligible for SSI exemption
●Job work of test, repairs, reconditioning, processing, etc. which is not a manufacture.
●Packing material manufactured under brand name of others such as plastic bottles, and Plastic containers - Notification No. 4/2010 dated 27.02.2010.

Inclusions

The following shall be taken in to account while calculating the turnover (value of clerances):

●Exports to Nepal and Bhutan
●Goods manufactured with other’s brand name in rural area (to be included in for 400 lakhs limits and excluded for 150 lakhs. SSI need not pay duty on these goods)
●Goods may be exempt under some other notification, i.e. other than SSI exemption notification - Intermediate product of such goods

Excise- Civil Penalties

Violation of Excise law → Offence Under rule 25/26/27 → SCN to Mfgr/WHK/dealer/Any person → Opportunity being heard → Imposition of Penality → Monetary / Non-Monetary (confiscation)

Excise- Monetary penalty

Offences Under Rule 25

Removing excisable goods in contravention of excise rules or notifications issued under the rules;

- Not accounting for excisable goods manufactured, produced or stored;
- Engaging in manufacture, production or storage of excisable goods without applying for registration certificate under section 6 of the CE Act;
- Contravening any provision of Central Excise Rules or notifications issued under these rules with intention to evade payment of duty.

Penality canbe levied on → Mfgr/WHK/dealer Max Rs.2000/ or duty on goods which ever is higher & Confiscation

Offences Under Rule 26(1)

Any person who knows or has reason to believe that excisable goods are liable to confiscation

- Acquires possession of such excisable goods or
- Transports removes, deposits, keeps, conceals, sells or purchases such excisable goods or
- In any other manner, deals with any such excisable goods

Penality canbe levied on → Any person Max Rs.2000/ or duty on goods which ever is higher

Offences Under Rule 26(2):

Does not issue invoice/issues excise invoice without delivery of goods specified therein/Issues any documents whereon receiver takes any ineligible benefit of CENVAT or refund

Penalty can be levied on → Any person Max Rs.5000/ or Value of benefit which ever is higher

Offences Under Rule 27: General penalty: For breach of excise rules, if no penalty has been prescribed under Act or rules

Penalty can be levied on → Any person Max Rs.5000/ And Confiscation Also posssible

Excise- Non Monetary penalty- Confiscation

Offence Under rule 25/27 → SCN → Opportunity being heard → Confiscation Order by CEO → Option to pay [Redemption Fine / Fine in lieu of Confiscation] *can* be granted**[Sec 34 of CEA)** → Option

Option → Exercised by defaulter →

- Release of goods
- Storage charges till release of goods payable **[Rule 30]**

Option → Not Exercised by defaulter →

- Such goods shall be sold off in such manner as CCE may direct
- If goods are of hazardous nature, then CCE may direct destruction of goods.**[Rule 29]**

Excise Criminal Offences- Section9

Prosecution Launched → Case referred to Criminal court → Accused & prosecution order

- 1 st time Prosecution → ED > 1 lakh, up to 7 Years, Fine. Other cases- up to 3 years, fine at the discretion of court
- Subsequent Prosecution → Up to 7 Years, Fine

Criminal Offences- (imprisonment)

1)Possession of "Tobacco" in excess of prescribed quantity;

2)Evading payment of excise duty;

3)Removal any excisable goods in contravention of any provisions of CEA / Rules *or in anyway concern himself with such removal*;

4)-- Acquiring possession of, *or*

-- In anyway concerning himself in Transporting/ Depositing/ Keeping/Concealing, selling or purchasing, or

-- In any other manner dealing with

goods *which he knows or has reason to believe are liable to confiscation;*

5)Contravention of any provisions of Cenvat Credit Rules, 2004;

6)Failure to supply the information which he is required to supply under the act *or* supplying false information;

7)Attempting to commit or abetting the commission of, first two categories of offences.

Term of 7 years imprisonment can be reduced to a minimum of 6 Months if the Court, shall be satisfied that there exists "SPECIAL & ADEQUATE REASONS".

Reasons not admissible as "Special & Adequate Reasons:

i) Conviction for the first time ii) Penalty has already been imposed/ Goods have been confiscated/ Other action has been taken iii) Age of the accused iv) Accused merely secondary party, not the principal offender

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Sec 9A

Offence to be non-cognizable: No arrest in respect of these Offences shall be made without obtaining arrest warrant.

Offence can be Compounded: For that request to be made to Chief CCE (such request can be made before launch of prosecution proceeding and even after launch of prosecution proceeding) --- Any of the offence is compoundable on payment of prescribed fee.

Appeals under Central Excise

Appeals to Commissioner appeals sec 35 & 35 A

Adjudication Order passed by any CEO below the rank of CCE → Assessee aggrieved → Form EA1, 60 + 30 days (condone) → Appeal to Commissioner(CCE) → Notice to parties &Hearing

Demand Order u/s 11A(2) Confiscation, Penalty Order u/s 33 by JC, AC/DC, SCE)

Condition

Pre-deposit of duty or Waiver order for pre-deposit(if it undue hardship to assessee)

Powers of Commissioner(CCE)

- Grant of Adjournments during hearing (Max. 3) -35 (1A)
- Additional Grounds may be heard (refer *) -35A (2)
- Order (recommendatory time limit 6 months)-35 A

No power to remand back case to CEO

- Confirming
- Annuling
- Modifying
  - Increasing the liability of assessee
    - SCN with in time limit is mandatory
  - decreasing the liability of assessee

Admissibility of Additional Evidences*[Rule 5 of Central Excise (Appeal) Rules]*

Admission by CCE on his own: Rule 5(4) -- He can admit additional evidences whenever he deems necessary

When can assessee appeal for admission of additional evidences Rule 5(1): Assessee is entitled under following situations:

(a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal

Rule 5(2)-CCE admit additional evidence by records in writing for reasons

Rule 5(3)- if Additional Evidences are admitted by CCE (Appeal), then the other party connected in appeal shall be given an opportunity to examine that evidence and to rebut/challenge that evidence]

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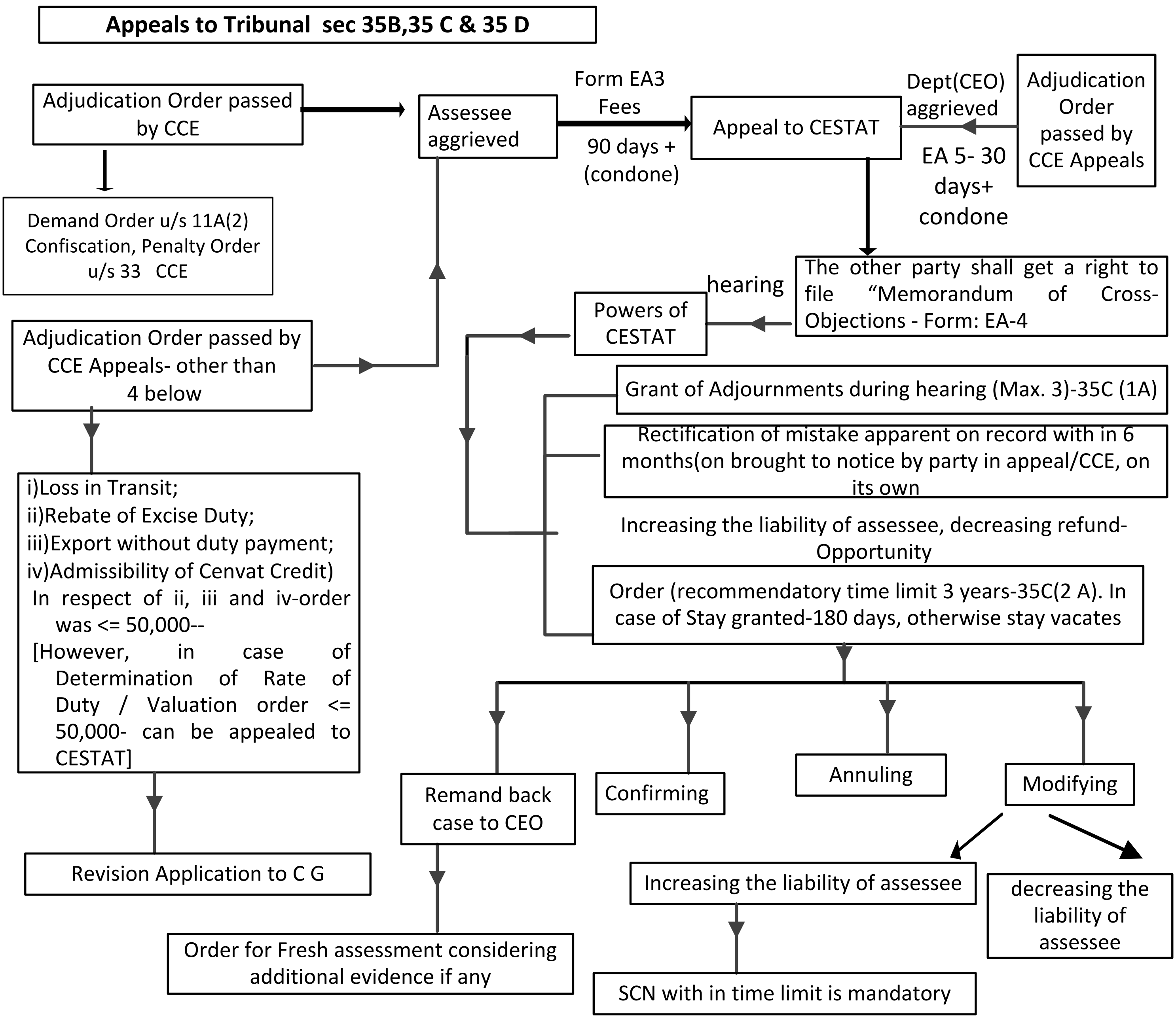
Appeals under Central Excise- 2



Other inherent Powers of CESTAT:

1.Recall dismissed order, if deposit of duty as ordered paid late

2. Quash its own order, if found obtained by fraud, disregard of statutory provision, by mistake

3.Correct an error so that justice is done

The above powers are subject to some limitations.

Tribunal has no powers to review its orders on its own.

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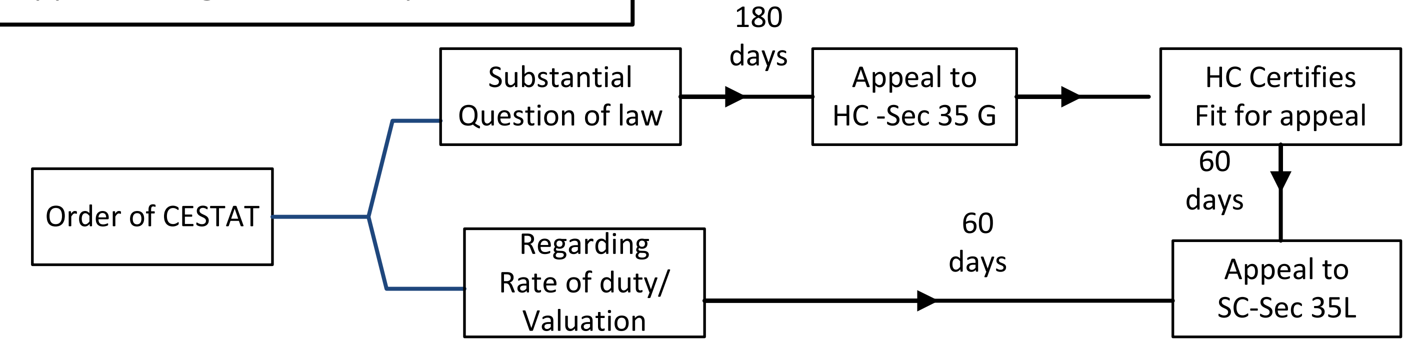
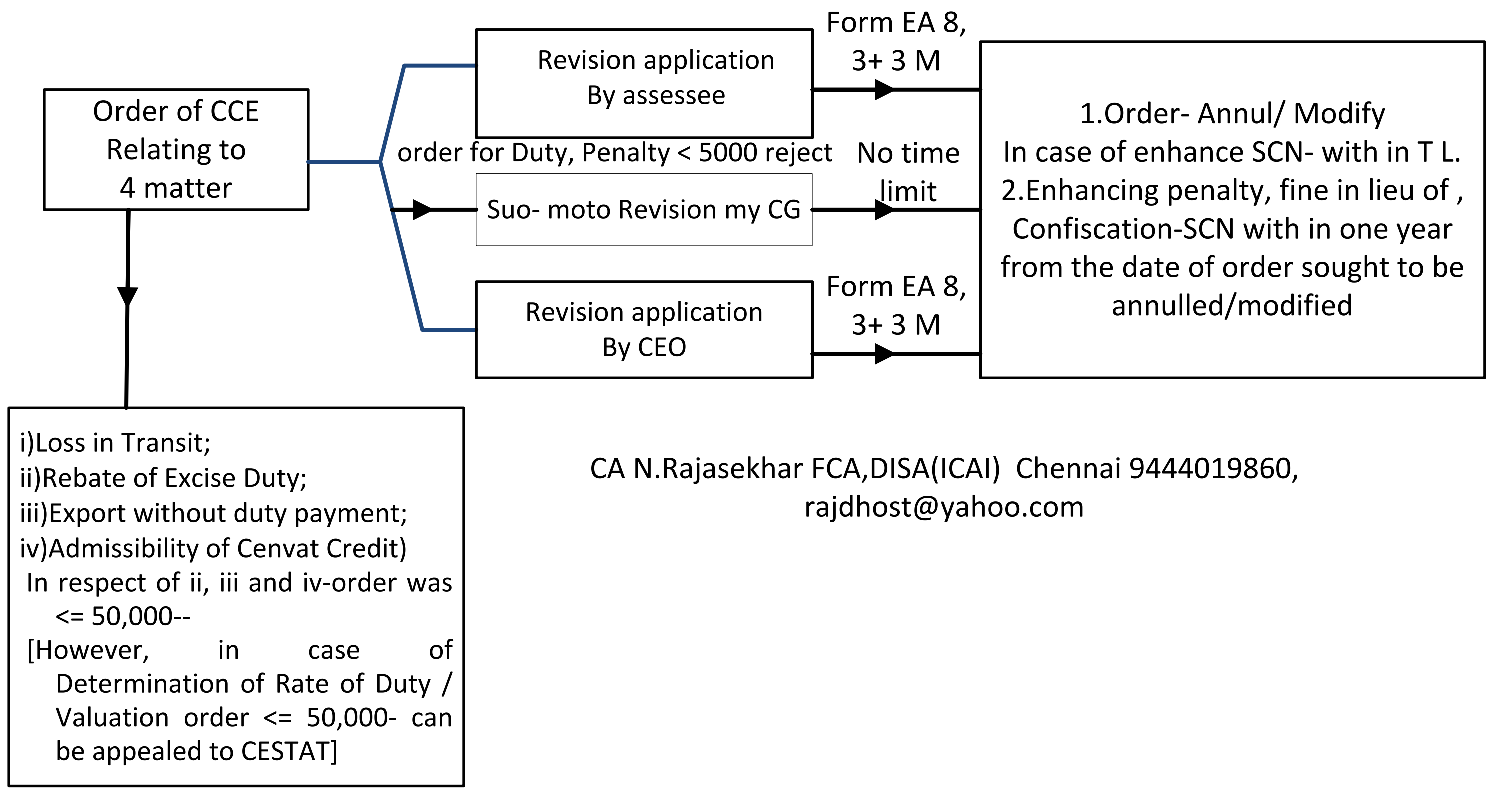
Appeal to High court & Supreme court



Revision Application to Central Government- Sec 35 EE



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Excise- Authority for Advance Ruling- Sec 23 A to 23 H

Applicant Sec 23 A → (4 copies, Fees) → Application To AAR- Sec 23 C → AAR → Commissioner of Excise

Records called From CCE, Return records as soon as possible

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Applicant:

1.NR Jv with R/NR
2.R- JV with NR
3100% subsidiary of FC
4.Existing JV in India
5. Public sector

Eligible Question

1.Determination of liability to excise duty, under CEA, 1944 (ie,whether the goods are Ex Goods or whether the process amounts to manufacture.
2.Principles of Valuation of Goods
3.Classification of goods
4.Applicability of E/N issued u/s 5A(1) Or CEA / CETA / Other Act
6.Admissibility of Cenvat Credit

Application can be withdrawn within 30 days of making such application

Advance Ruling: Sec 23 A means Determination of a QUESTION OF LAW / FACT (as specified in Application) by A.A.R. in relation to. an activity proposed to be undertaken by the applicant

Order of AAR -sec 23 D

Acceptance order → Condition:
Appl: Shall not be allowed:
1. Applicant Question is pending before CEO, Tribunal, Court
2.Question already Decided by CEO, Tribunal, Court

Rejection Order → Condition:
Speaking order. Opportunity to assessee before rejection

90 Days → AR Order:
Examine matter, Opportunity to applicant being heard.
Copy to CEO, Applicant

Order -Binding on-(Sec 23 E)
1. Applicant
2.Jurisdictional CEO
Binding Till :
Law changes

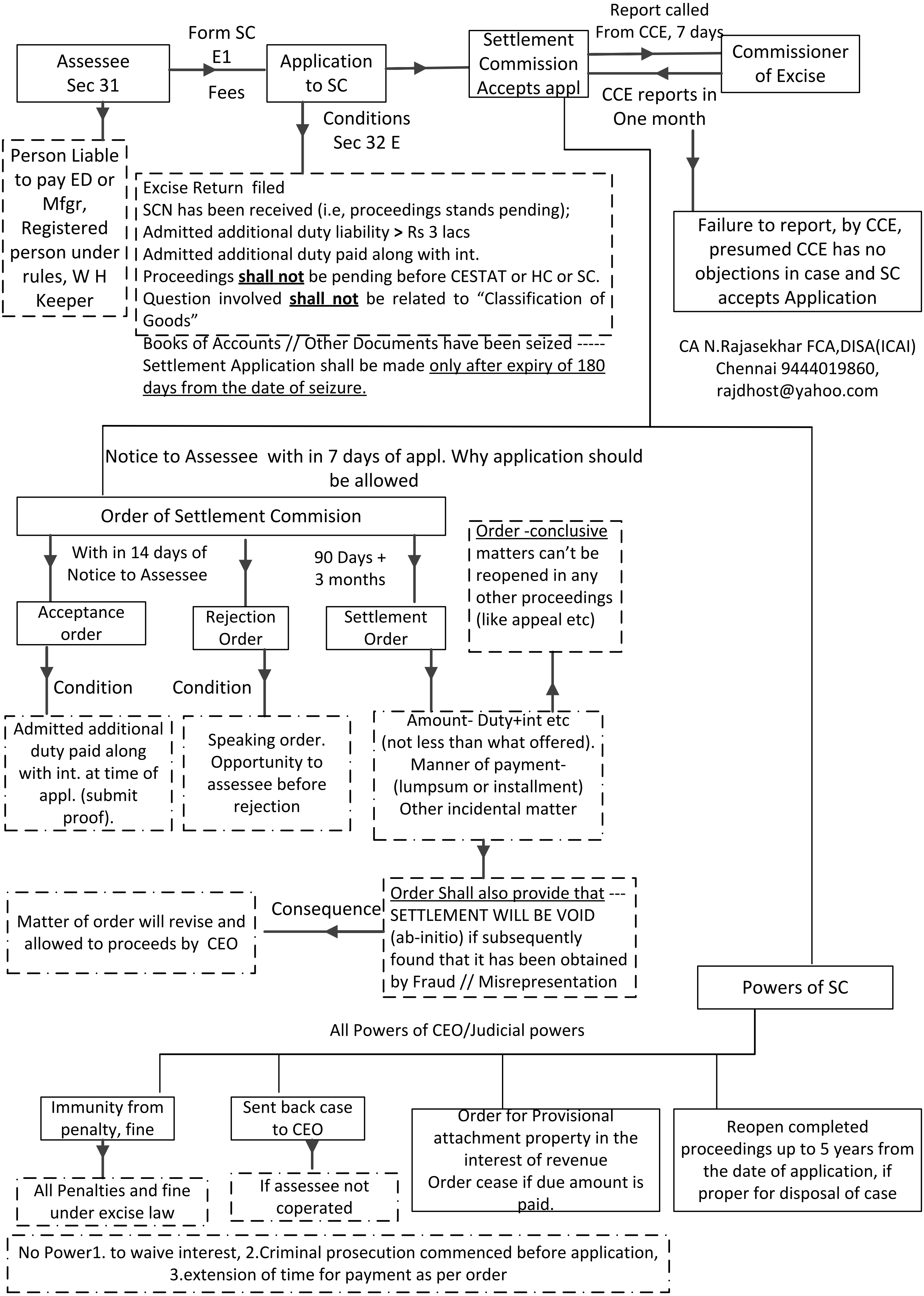
Order is VOID (ab-initio) if subsequently found that it has been obtained by Fraud // Misrepresentation

Consequence → Never made application to AAR

Benefit of seeking advance ruling from Authority would be applicable only in relation to activity which is proposed to be undertaken (& not in respect of that which has already been undertaken) --- MCDONALD'S INDIA PVT. LTD.-

Merely because another subsidiary is carrying out the same activity and its case is pending with the CEO, another subsidiary will not become ineligible to obtain AR in relation to same question".
A.TEX (INDIA) PVT. LTD. – SC-

Excise- Settlement Commission



Customs Duty liability Sec 12

Sec 12 of customs provides customs duty shall be levied at such rates specified in Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into and exported from India. Duty payable on goods imported by government also.

India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. It was impossible to determine when exactly the vessel crossed the territorial waters limit Hence taxable event was settled as below

Taxable event for Import goods

Example- Goods imported from USA Port to Chennai port

USA Port
Origination port

12 nautical miles
Territorial waters

Chennai port
Destination port

Vessel lies
Outside
Territorial waters
No import takes
place

Vessel reaches and crosses Territorial waters

Import of goods commences

Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)

- Vessel reaches Chennai port and customs barriers.
- Import complete
- Goods become part of country.
- Importer files bill of entry for home consumption
- Import duty liability will attract.

Duty liability in case of warehouse goods

Kiran Spinning Mills v. Collector of Customs 1999 (113) E.L.T. 753 (S.C.)]

In case of warehoused goods, the goods continue to be in customs bond
Import takes place when the goods are cleared from the warehouse.
Duty payable at the time of removal from warehouse for home comsuption.

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Taxable event for Export goods

Example- Goods Exported from Chenai Port to USA port

Chennai port
Origination port

12 nautical miles
Territorial waters

USA Port
Destination
port

Vessel lies
At Chennai Port
Customs barriers
No export

Vessel is at territorial waters
export Commence

Vessel Crosses territorial waters
export Complete
Duty liability attract.
Eligible for export benefits.

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Customs Valuation 1-

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Customs Valuation

- **Tariff Value Valuation Sec 14(2)**
  - **Exported goods**
  - **Imported goods**
- **Transaction Value Valuation sec 14(1)**
  - **Exported goods**
  - **Imported goods**

Tariff value is over riding of transaction value. If tariff values fixed, value should be as per tariff value

"Transaction value" Valuation Imported goods

Transaction value of imported goods read with Valuation rules

Rule 10: Transaction value =Price of goods sold at the time and place of importation + costs and services, assists (Ie CIF Value All costs up to destination port)

Rule 3:TV will be accepted only
1.No restrictions on use of goods (except law, geographical use restrictions) Restrictions which do not affect value of goods.
2. Price is not subject to condition where price cannot determine.
3. Buyer and seller not related to each ohter

T V in case of relative is accepted if (i) relation ship does not influence price (ii) Importer demonstrates Price is close approximation to identical/similar goods /deductive value/computed value

Rule 12:When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

Cost and services to add Rule 10(1)

(a)(i) Commission & Brokerage Paid in India
(ii) Cost of Containers;
(iii) Cost of Packing *(Labour or Material).*
(b)Value of Assists [4 Types] Place of origin India or Outside India
i)Materials / Components / Parts contained in FP
ii)Tools/ Moulds / Dies / Similar Items *:*
iii)Materials consumed in production of imported goods*:*
iv)Eng. / Development/Art Work/ Design Work / Plans & Sketches *(Place of Origin: Must be Outside India):*
(c)Royalties & License Fees in connection with sale except *"Charges for Right of Reproduction of Imported Goods in India"*
(d)Subsequent Sale Proceeds – accruing to the seller *[But "Dividend Payments" – Not Includible (since payment of dividend can't e equated with accrual of sale proceeds subsequently)]*
(e)All Other Payments made by buyer
--- Payment is made as a condition for sale of imported goods; &
--- Payment is made by buyer to the seller directly or to a third party to satisfy an obligation of seller

Cost and services to add Rule 10(2)

(a)<u>Cost of Transport;</u>
Actual amount. If not ascertainable 20% of FOB
In case of Air, Actual restricted to 20% of FOB
(b)<u>Transit Insurance;</u>
Actual amount, if Not ascertainable 1.125% of FOB
(c)<u>Landing Charges- flat</u> 1% of CIF
(d) demurrage charges

Cost and services to exclude not to add(post importation costs)

(a).Charges for Construction, Erection, Assembly, Maintenance or Technical assistance,
Undertaken after importation
(b)The cost of transport after importation
(c)Duties and taxes in India
(d)Interest on Delayed Payments

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Customs Valuation 2

If transaction vlaue is not determinable under rule 3, the value shall be determined as per following rules in order

Transaction value of Identical goods-Rule 4

<u>identical goods</u> :Goods should be the same in all respects, including physical characteristics, quality and reputation, except for minor differences in appearance which do not affect value . Import from same country/same manufacturer or Brand name. reputation is comparable

AV=transaction value of Identical goods+ Cost and Services as per Rule 10

Transaction value of similar goods Rule 5

<u>Similar goods</u> :Identical goods may have all characteristics but not like the same in all respects, they Perform same function and commercially interchangeable

AV=transaction value of Similar goods+ Cost and Services as per Rule 10

Deductive Value method Rule 7

Deductive Value means Sale Price of Identical/Similar goods less Deductions for general exp., post import costs and local taxes

AV=Deductive value

Computed Value method Rule 8

Cost of production of imported goods+ Profit + Cost and services as per rule 10

Residual Value method Rule 9

AV is calculated with the data available in India for imported goods with reasonable means

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Meaning of relative Rule 2 (2)

<u>1.They are</u>

- Officer/Director in each other's business
- Legally Recognized partner
- Employer & Employee;
- Members of same family;

<u>2.Both of them</u>

- Are controlled by a third person;
- Control a third person;

<u>ONE OF THEM</u>

- Control the other

<u>3.Any person</u>

- Owns/controls 5% or more of voting power/ shares in both of them;
-

<u>Explanation</u>:

1. Person include legal person

*2.*Sole Distributor/ Sole Selling Agent – shall not be treated as RP unless they fall under any of the above criteria

Customs Valuation 3

"Transaction value" Valuation Export goods

Transaction value of Export goods

- : Transaction value =Price of goods sold at the time and place of Exportation (Ie FOB Value) All costs up to origination port
- T V in case of relative is accepted if (i) relation ship does not influence price
- Rule 8:When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

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If transaction vlaue is not determinable under rule 3, the value shall be determined as per following rules in order

Transaction value of goods of kind and Quality -(Determination of Export Value by Comparison-Rule 4

- Goods of kind and Quality -similar to that Identical goods/ similar goods
- AV=transaction value of goods of kind and Quality-

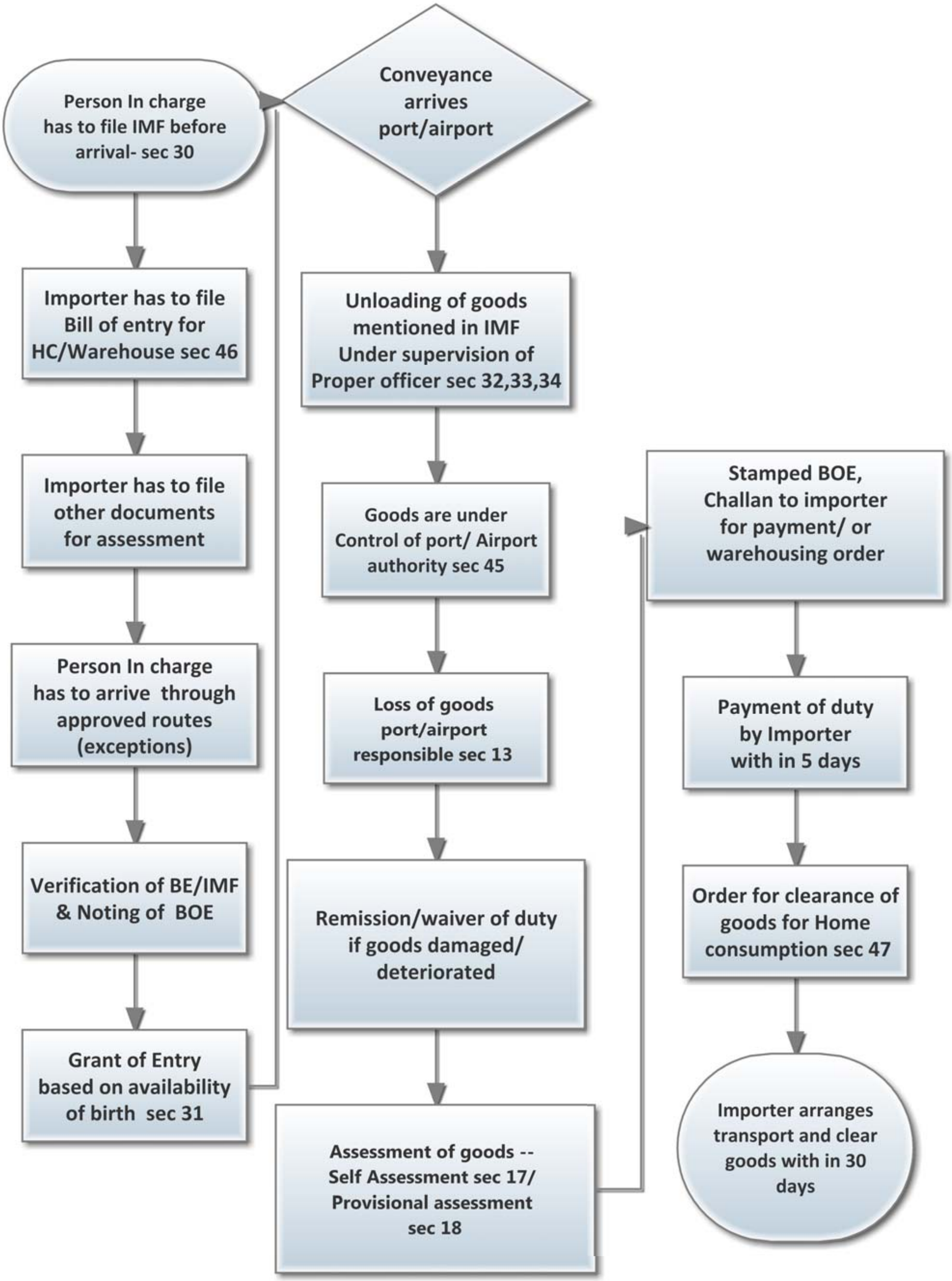
Computed Value method Rule 5

- AV= Cost of production of export goods+ Design charges+ Profit

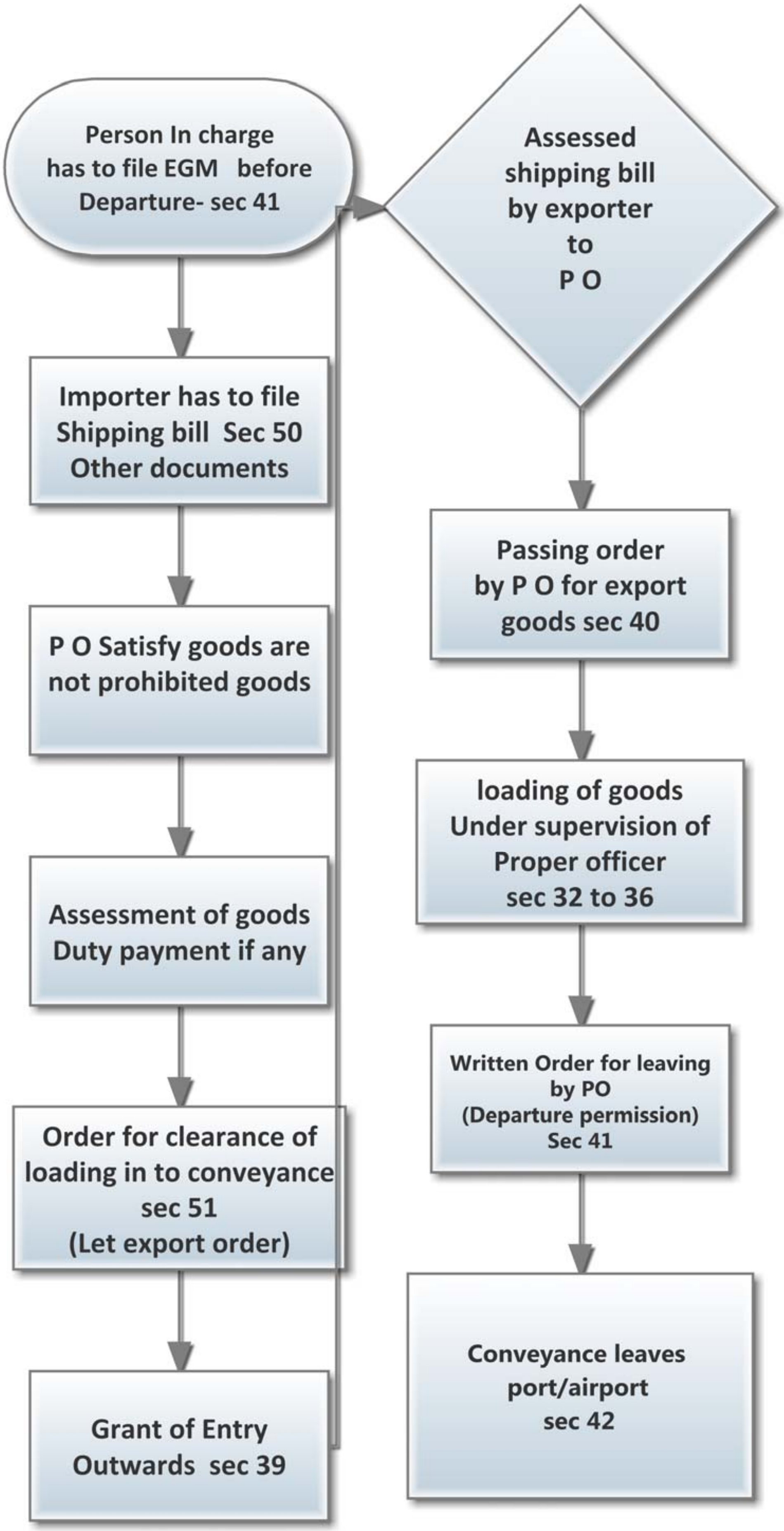
Residual Value method Rule 9

- AV is calculated with the data available in India for export goods with reasonable means

Import procedure through Air and water an overview



Export procedure through Air and water an overview



WAREHOUSING OF IMPORTED GOODS

<u>Sec 2(44):</u> -- Warehouse means:
A Public Warehouse as appointed u/s 57; or
A private warehouse as licensed u/s 58

Public Warehouse sec 57 → *Appointed by AC/DC*

Private Warehouse sec 58 → Licensed by AC/D sec 58(1)

Sec 58 (2)
License may be cancelled:-
i) By Giving One month Notice
ii) In case of contravention of Act/Rules (Opportunity of Being Heard shall, however, be granted)
Sec 58 (3)
Pending Cancellation: License may be suspended

Also Known as "Customs Warehouse" or "Bonded Warehouse Or warehousing station

Only DUTIABLE GOODS can be stored in Customs Warehouse
DUTIABLE GOODS [Sec 2(14)] : *Any goods which are chargeable to duty & on which duty has not been paid.*

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WAREHOUSING Procedure

Bill of entry For Warehousing sec 46 → Ware Housing Bond Sec 59 → Assessment & Warehousing Order sec 60 → Warehouse goods → Warehousing period Sec 61 → Warehouse Goods Under control of Proper Officer sec Sec. 62 → Payment of rent and other charges Sec 63 → Owners right in case of warehouse goods sec 64 → Manufacturing operations in case of warehouse goods sec 65

WAREHOUSING WITHOUT WAREHOUSING

If the goods reached the warehouse, without following ALL or ANY of the following conditions, *then it is called* **WAREHOUSING WITHOUT WAREHOUSING**

(I)**Proviso to Sec 46(1): I**nability of importer to file any B/E *(whether for H/C or for W/Hing)* – due to non-availability of full information --- Goods may be allowed to deposited in PUBLIC Warehouse

ii) **Sec 49:** B/E for H/C filed by importer –inability to clear the goods within a reasonable time – Goods may be allowed to be deposited in Warehouse (Public W/H or Private W/H) *(Such goods may be dutiable or non-dutiable)*

iii) **Sec 85:** B/E filed for Warehousing – Importer submitting a declaration that these are to be supplied as Stores – without payment of duty *(i.e., to Foreign Going Vessel/Aircraft or Ship of Indian Navy)* --- such stores may be warehoused without assessment of duty thereon *(i.e., No Bond Execution).*

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WAREHOUSING OF IMPORTED GOODS-2

Removal of goods From Warehouse

Goods not to be removed from WH Except as follows Sec 71

- **Transfer to Another W H sec 67** → Permission of proper officer
  Conditions (transit bond with guarantee, goods duly arrive to another Ware house
- **Clearance For H C sec 68** → **i)**B/E for H C (Green Color) has been filed
  ii)Import Duty + Rent + Other Charges + Interest + penalties have been paid
  iii)Clearance order has been issued by PO
  Proviso; relinquishment of title- refer *

  Sec 15 (1) (b) :Relevant date for determination of Rate = Date of filing of B/E for H C u/s 68-
- **Clearance For Export Sec 69** → **i)**Shipping Bill / Bill of Export has been filed
  ii)Export Duty (if any) + Rent + Other Charges + Interest + penalties have been paid
  iii)Clearance order has been issued by PO
  Goods likely to smuggled back- refer **
- **Clearance For Samples** → With payment of duty.
  Without payment of duty with permission of proper officer

*** Relinquishment of title by owner of warehouse goods Proviso: to sec 68**

Importer may relinquish his title to goods ***Before passing of <u>Clearance</u> <u>Order</u>*** **for Home consumption-**

Then, <u>he shall not be liable to pay DUTY..</u> Title may be relinquished only upon payment of ware housing dues such as Rent, interest, penalty and other charges,)
In respect of any goods where ***offence has been committed*** under customs Act or any other law, ***relinquishment cannot be made.***

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** **Goods likely to be smuggled back into India sec 68(2)**

In case of Goods likely to be smuggled back into India – CG may *by Notification in official gazette* direct that:
--- Clearance without duty payment not permissible
---Clearance is permissible only subject to fulfillment of specified conditions or restrictions

Allowance in case of volatile goods [Section 70]

- If any warehoused goods at the time of delivery from a warehouse are found to be deficient in quantity on account of natural loss, the AC/DC may remit the duty on such deficiency.
- This section applies to such warehoused goods as notified by the Central Government, having regard to the volatility of the goods and the manner of their storage.

Duty draw back

Duty draw back means refund of customs duty, and excise duty paid on inputs/material to exporter on export

Types of duty drawback

- Drawback u/s 74 → Duty paid imported goods exported again
- Drawback u/s 75 → Duty paid imported inputs/ Local inputs/ service tax paid input service Used in manufacture of Final product/providing service

Duty draw back u/s sec. 74

Import of raw material/ Packing material → BCD &CVD Paid → Same goods is Exported as such With in 2 years → AC/DC is Satisified → Refund of duty Up to 98% of Actual paid → Proportionate Reduction of % of refund in case of delay in export → Two types of rates

1. Rates for business goods
2. Rates for personal goods

Duty draw back u/s sec. 75

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- Import of raw material/ Packing material → BCD &CVD Paid
- Local purchase of raw material/Packing material → Excise duty paid
- Use of input service → Service tax paid

Used in manufacture final product/ taxable service → Product/ Service Exported → Refund of BCD/CVD/ Excise duty/ Service tax At All Industry rate at % on F O B value

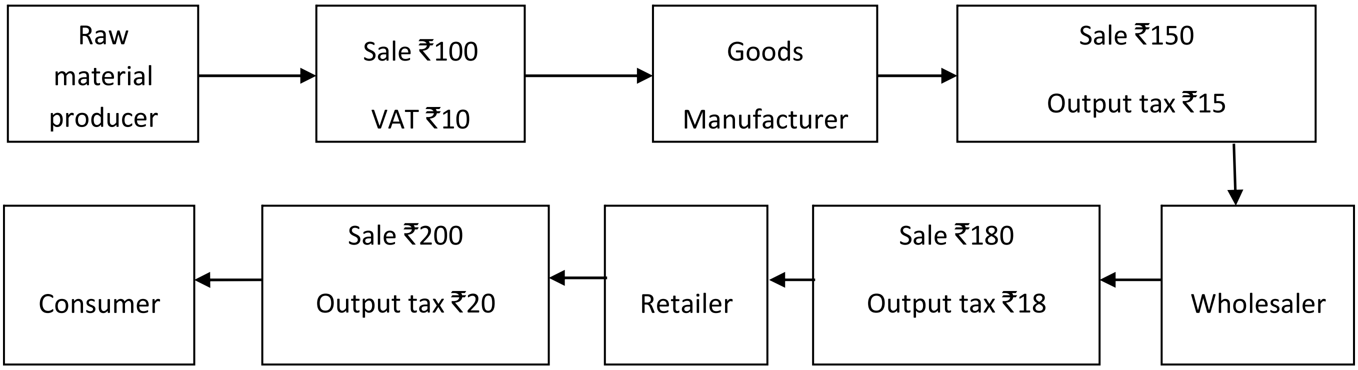
Rates of draw back

All Industry rate =% on F O B Value Notified by CBEC → If A I R not fixed for any product → Brand rate fixed by Commissioner. Exporter has to submit information and request → If A I R is too low Compared to Actual duty paid / A I R < 80% duty paid → Special Brand rate fixed by Commissioner. Exporter has to submit information and request

VAT (Value added Tax)-- Basic Concepts

Taxonomy of VAT (How VAT will work) / Stages of VAT

Example



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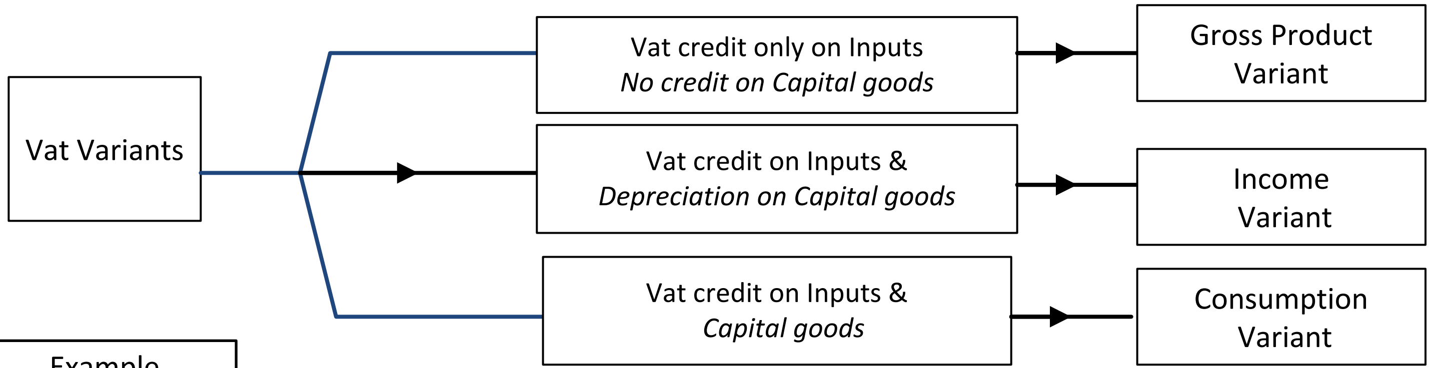
S. No.	**Dealer**	**Sale price**	**Value addition (VA)**	**Output tax @ 10% on sales**	**VAT Credit (input tax paid on purchases)**	**VAT payable to Govt. 10% on value addition**	**Multi-point taxation**
1	Raw material manufacturer	100	-	10	-	-	Yes, on sales
2	Goods Manufacturer	150	50	15	10	5	Yes, on VA
3	Wholesaler	180	30	18	15	3	Yes, on VA
4	Retailer	200	20	20	18	2	Yes, on VA

Vat - Variants



Example

VAT payable under the three methods is as given below:

Particulars	Gross Product Variant (₹)	Income Variant (₹)	Consumption Variant (₹)
VAT on Sales(Output tax)			
14.5% on 200 lakhs	29,00,000	29,00,000	29,00,000
Less: VAT On Purchases (INPUT tax)			
5% on 100 lakhs on raw material	5,00,000	5,00,000	5,00,000
Less: VAT on Capital goods	No credit		
5% x ₹300 lakhs x10%		1,50,000	
5% x *₹300 lakhs*			15,00,000
NET VAT PAYABLE	24,00,000	22,50,000	9,00,000

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Vat calculation - Methods

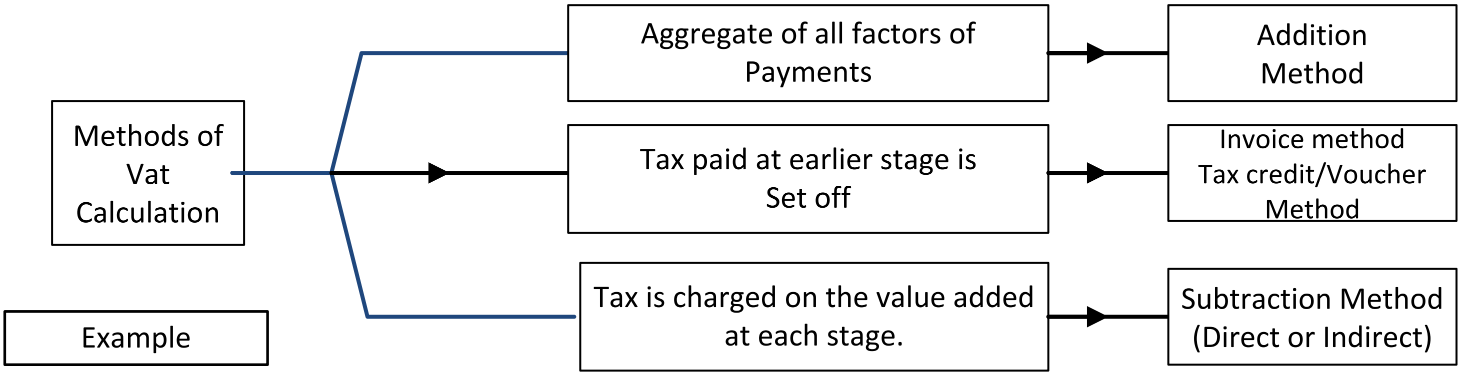

Illustration of Addition method:

(Assumption VAT rate is 10%)

Particulars	**Mr. X (`)**	**Mr. Y (`)**
Purchase price including VAT 10%	110	319
Add: Value addition.		
(Labour + Overheads + Depreciation + Profit)	190	131
Add: Net VAT payable to Department on Value addition 10%	19	13
Selling Price (Purchase price + value addition + Net VAT payable)= 110 + 190 + 19)	319	463

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Illustration of Invoice method:

Particulars	**Mr. X (₹)**	**Mr. Y (₹)**
Purchase price excluding VAT 10%	100	290
Add: Value addition		
(Labour + Overheads + Depreciation + Profit)	190	131
	290	421
Add: VAT 10%	29	42
Selling Price (Purchase price excluding VAT + value addition + VAT)= 110 + 190 + 19)	319	463
Net VAT payable to Department		
Output tax	29	42
Less: Input tax	10	29
	19	13

Illustrations of Subtraction method:

Intermediate Subtraction method

Particulars	**Mr. X (`)**	**Mr. Y (`)**
Selling Price inclusive of VAT 10%	319	463
Less: Purchase Price inclusive of VAT 10%	110	319
Value addition	209	144
VAT Computation For x – 209 x10/110, for Y – 114 x10/110	19	13

Direct Subtraction method

Particulars	**Mr. X (`)**	**Mr. Y (`)**
Selling Price Exclusive of VAT 10%	290	421
Less: Purchase Price Exclusive of VAT 10%	100	290
Value addition Exclusive of VAT	190	131
VAT Computation @10% of value addition	19	13

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Vat- Input tax, Output tax and input tax credit

Input tax means: VAT paid by a registered business dealer on taxable purchases for business. Purchases may include raw material, trading goods, capital goods and consumables

Output tax : This is the VAT charged by a registered business dealer on sales made by the business to its customers. It is a tax on sales within the state as well as outside the state (Central Sales Tax).

Input Tax Credit (ITC) : ●Input tax credit means the availability of credit on the input tax paid on purchases made by the dealer ●It is the setting-off of the amount of input tax paid by a registered dealer against the amount of his output tax payable on sales.

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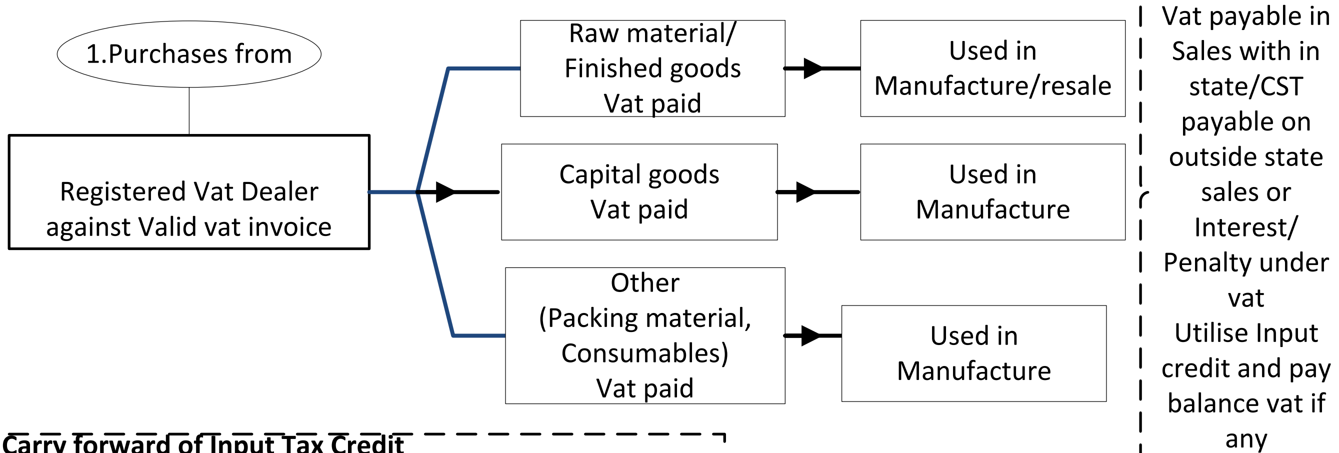

Carry forward of Input Tax Credit
●Input tax credit is first to be utilised for the payment of VAT
●The excess credit can be then adjusted against the central sales tax (CST)
●After the adjustment of VAT and CST, excess credit, if any, will be carried over to the end of the next financial year

Input tax credit on stock transfers
Vat paid goods transferred to branch etc Vat credit available in excess of 4%

Refund of input tax to exporter within three months
●Vat paid on purchases which are exported, the credit can be utilised/adjusted towards payment of VAT on goods sold within the state/outside the state
●If such an adjustment is not possible, refund is to be with in three month from the date of export e.

Purchases not eligible for input tax (No input tax credit)
●Purchases are made from unregistered dealers;/from a registered dealer who opts for the composition scheme ;
●Negative list goods, For example petrol, diesel, CNG, LPG, , etc.;
●Purchase of goods, where the invoice does not show the amount of tax separately;
●Purchase of goods, which are being utilized in the manufacture of exempted goods other than exports;
●Purchase of goods used for personal use/ consumption, or goods provided free of charge as gifts;
●Goods imported from outside the territory of India (commonly known as high seas purchases);
●Goods purchased from other States (inter-State purchases).

Vat in case of Special Transactions

- VAT IN CASE OF SPECIAL TRANSACTIONS
  - VAT INCENTIVES TO PROMOTE INDUSTRY
    - Exemption from Vat to Industry
      - Up to Certain period/ up to certain limit
    - Deferred tax liability
      - Industry collect tax retain amount certain time, later on paid in Installments
    - Refund /remission of tax by Government
      - Input tax refund
      - Industry collect tax on sales & retain amount
  - VAT IN CASE OF LEASE
    - Deemed sale
      - Lease rental is consideration
      - Tax rate is applicable on lease goods
      - Input tax credit available
    - Taxable event transfer of right to use
      - Sub lease is also taxable
  - VAT IN CASE OF HIRE PURCHASE/INSTALMENT
    - Deemed sale
      - Hire Charges is consideration
        - Tax rate applicable on Hired goods
    - Taxable event Delivery of goods
      - Input tax credit available
        - Some states-Pro rata Input tax credit
        - Some states - deduction for finance charge
  - VAT IN CASE OF WORKS CONTRACT
    - Deemed sale
    - Taxable event Transfer of property in goods in works contract
      - Value of goods is turnover
      - Labour/services deductible from Works contract Price
      - Consumables does not involve transfer not includible in turnover
  - RATES OF VAT ON WORKS CONTRACT
    - Option 1
      - Normal rate on transferred goods
        - Input tax credit available (except on CG)
    - Option 2
      - Compound rate about 4% on total works contract price
        - Input tax credit Not available

Service tax Basic Provisions (Applicable only for Nov/Dec 2012)	
Sec 64 Extent :	ST Provisions will not apply J&K * Service r provided in J& K will not attract ST
India	For the Purpose of ST, Up to 200 Nautical miles for Installation and erections services of oil exploration. Remaining cases up to 12 Nautical miles
Sec 65 Taxable services	Service tax is imposed on taxable services provided or to be provided in services list given sec 65(105)
Sec 65-A Classification of Service	**1.**As per list read with definitions coverage 2.One service – classifiable into more than 1 category i) Choose specific over general ii) If Composite service – determine which service provides the essential character and classify composite service into that iii) Choose first in numerical order
Sec 66 Charging Section	❖ All taxable Services – taxable at @ 12.36%(wef 01.04.2012) ❖ **<u>Taxable Event</u>: Rendering of Service** ➢ <u>Date of rendering service if service Non-taxable</u> -→ <u>No ST payable</u> ➢ <u>Date of rendering service if service taxable</u> -→ <u>ST payable</u> (Applicable Rate As per Point of taxation Rules Rule No.5) ❖ Collection and Payment of Service tax as per P O T Rules 2011

Service tax Valuation

Section 67(1)

Situation	Value
(i) Where total consideration is monetary consideration	Taxable Value = Gross amount charged exclusive of ST
(ii) Where consideration is wholly in kind [non-monetary consideration]	*Service Tax (Determination of Value) Rules, 2006, Rule 3(a):* Taxable Value = Gross amount charged by service provider for similar service provided to third party If value cannot be determined as above then Taxable Value = Monetary equivalent of "non-monetary consideration"
Where consideration is partly in kind [non-monetary consideration]	*Service Tax (Determination of Value) Rules, 2006, Rule 3(b):* Taxable Value = [Monetary Consideration + Market Value of Non-monetary Consideration] (but it shall not be less than the cost of provisioning of service)
Where consideration is "not-quantifiable"	Taxable Value = Value determined in prescribed manner No manner has been prescribed so far but it is practically best judgment assessment

Sec 67(2)	ST not collected/not charged –Value to calculate backwards
Sec 67(3)	Gross amount includes part payment/advance payment received
Rule 4	Rejection of Value by CEO : If assessee does not determine value as per sec 67 and SVR he can reject value, issue SCN, give opportunity and determine value
Rule 5	Inclusions of certain expenses/ Reimbursement of expenses not includible in value if act as a pure agent.

Rule 2A - Valuation in case of works contract

- This valuation rule is the subject the provisions of section 67 with regard to valuation.
- The value in case of works contract is:

Gross amount charged excluding Vat on transfer of property on goods	Xxxx
Less: Value of transfer of property in goods involved in execution of contract	Xxxx
Value of works contract service	Xxxx

If value of transfer of goods not available

	Gross amounts does not includes land	**Gross amounts includes land**
Original works	ST payable on 40% on gross amount	ST payable on 25% on gross amount

Finishing and completing works: ST payable on 60% on gross amount

Rule 2B - Determination of value with regard to money changing

In case	**Value of taxable service**
(i) Currency is exchanged from, or to, Indian Rupees (INR)	Difference in Buying rate/selling rate and RBI reference rate for that currency at that time* × Total units of currency * Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money
(ii) Neither of the currencies exchanged is Indian Rupee	1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI

Rule 2C Determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering.-

Sl. No.	Description	Value -Percentage of total amount
1.	Service involved in the supply of food or any other article of human consumption or any drink **at a restaurant**	40
2.	Service involved in the supply of food or any other article of human consumption or any drink as **outdoor catering service**	60

Point of taxation rules

Rule 3 Point of taxation in normal cases

Rule	Event	Point of taxation
3(a)	If Invoice is issued within 30 days of completion of service	Date/Time of invoice
3(a) proviso	If Invoice not issued within 30 days of completion of service	Date of completion of service
3(b)	If any payment is received (including advance)before the date of completion of service or date of invoice.	Date of receipt of payment. (POT will be up to the extent of payment received)

Examples

Case	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation	Remarks
1	April 1st 2012	April 30th 2012	May2nd 2012	April 30th 2012	Invoice issued with 30 days
2	April 1st 2012	May 1std 2012	August 20, 2011 May2nd 2012	April 1st 2012	Invoice not issued with 30 days
3	April 1st 2012	April 20th 2012	April 16th 2012	April 16th 2012	Payment received after the date of completion of service and before date of invoice.
4	April 20tht 2012	April 30th 2012	Part payment received on April 10th 2012	April 10th 2012to the extent of Part payment.	Payment received before the date of Completion of service

Determination of point of taxation in case of continuous supply of service

- Same as above except, invoice is to be raised from the date of completion of an event

Rule 4 - Determination of point of taxation in case of change in effective rate of tax (CERT)

Rule	Event	Point of taxation
Taxable service provided before change in effective rate of service tax		
4(a)(i)	Invoice issued and payment received after the change in effective rate	Date of receipt of payment or date of issuance of invoice, whichever is earlier
4(a)(ii)	Invoice issued prior to change in effective rate (i.e. payment received after CERT	Date of issuing invoice

Rule	Event	Point of taxation
4(a)(iii)	Payment received before change in effective rate i.e. invoice issued after CERT	Date of receipt of payment
Taxable service provided after change in effective rate of service tax		
4(b)(i)	Invoice issued prior to change in effective rate of tax, i.e. Payment received after CERT	Date of receipt of payment
4(b)(ii)	Invoice issued and payment also received prior to change in effective rate of tax	Date of receipt of payment or date of issuance of invoice, whichever is earlier
4(b)(iii)	Payment received before change in effective rate i.e. invoice issued after CERT	Date of issuing of invoice

Rule 5 - Payment of tax in cases of new services (New service brought under tax net)

Rule	Event	Point of taxation
5(a)	Invoice issued *and* payment received before service became taxable	No service tax
(b)	Payment received before service became taxable and invoice issued after service became taxable within **14 days)**	No service tax

Rule 7 - Determination of point of taxation in case of specified services or persons

Rule	Event	Point of taxation
7	Receipt of service & Payment made in advance or within 6 months from the date of invoice of service provider	Date of payment
proviso	Receipt of service, Payment not made within 6 months from the date of invoice of service provider	As per Rule 3, 4, 5, or 8, as the case may be

Service received from associated enterprise when service provider is located outside India

Rule 7	Event	Point of taxation
Second proviso	Providing of service	Date of credit in books of account of person receiving service or Date of making payment whichever is earlier

Rule 8 - Intellectual Property Service (copyright, trade mark, design or patent), where consideration not ascertainable at the time of service

Rule 8	Event	Point of taxation
8	Providing of service	Receipt of payment by service provider or Invoice issued by service provider whichever is earlier

Note: If the consideration is ascertainable at the time of service Rule 3 is applicable

Rule 8A Determination of point of taxation in other cases

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment]

Rule 9 - Transitional Provisions

Rule	Event	Point of taxation
9	Invoice issued/service completed before 01.04.2011	POT rules are not applicable Service Tax on receipt basis
Proviso	Invoice issued/service completed before 30.06.2011	At the option of assesse either under POT rules or Service Tax on receipt basis

Service tax procedures -1

Service tax Registration

Indirect tax Classes in Chennai
9444019860/9841661045

Rule 4 of ST rules 1994

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4(1)

Persons Require Registration:
SP, ISD and SR with in 30 days of service becomes taxable/ commencement of business
SSP- with in 30 days of service crossing 30 lakhs

4(!A)

Documents required for registration:
Self attested PAN, CBEC will notify documents required for registration

4(2),4 (3) &3(A) 4(4)

Premises to be registered:
One Premises: one service/multiple service: One registration
More than one premises: one service/multiple service: Multiple registration for each premises

4(5)

Grant of RC: Scrutiny of application, Rc with in 7 days.
If not granted with in 7 days RC is deemed to have been granted

4(5A)

Intimation of change to CEO Any change in RC, additional information if any, shall be intimated i1 to the AC/DC, within 30 days

4(6)

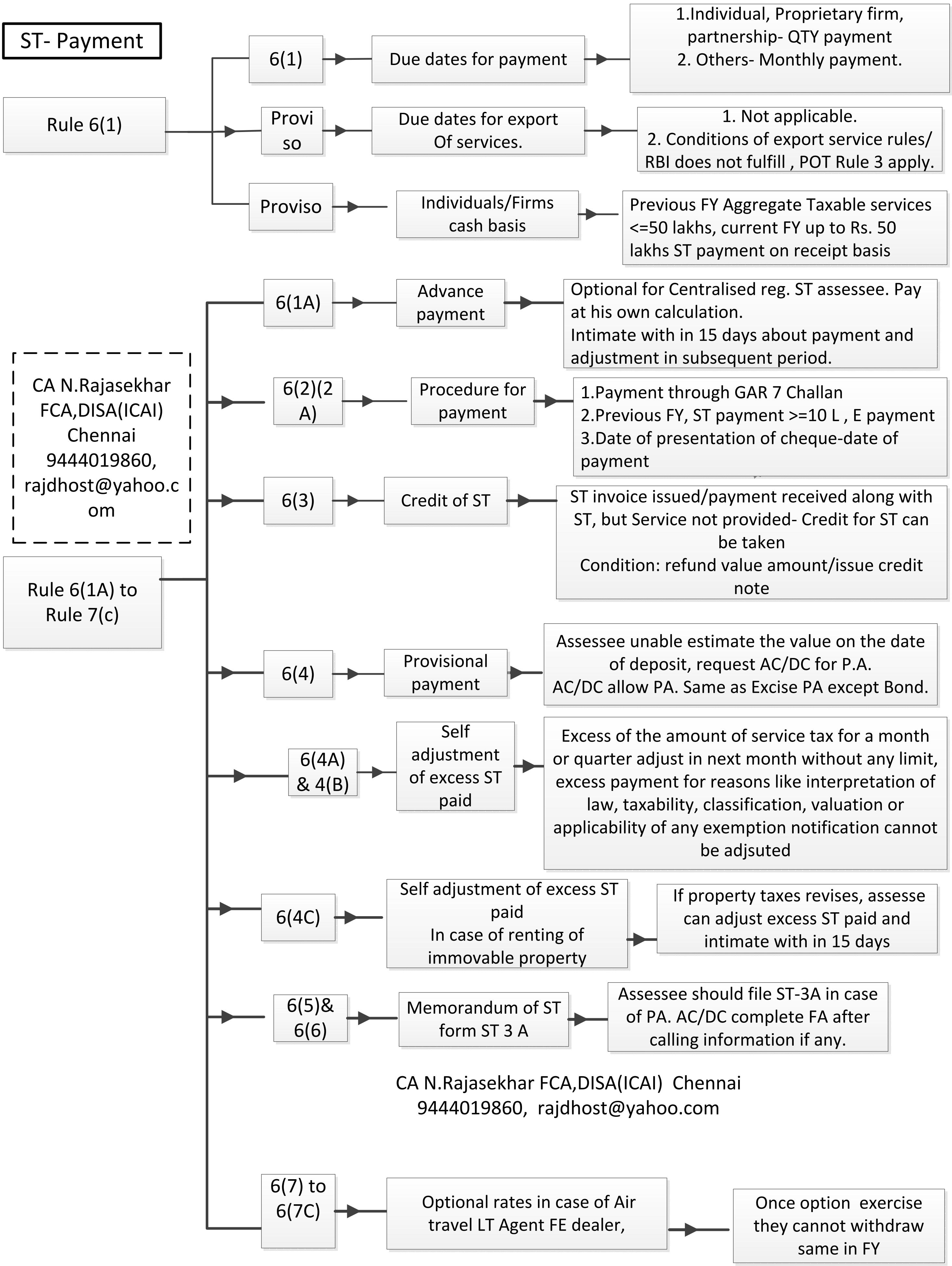
Transfer of business :the transferee shall obtain a fresh certificate of registration

4(7)

Surrender/ Cancellation of Rf

- Ceases to provide taxable service → Intimate
- Pay tax dues, files returns and apply for cancellation, surrender original RC.

Service tax procedures -2



Service tax procedures -3

Rule 4 A & 4 B

Records under S T (Invoice)

- 4 A → Timing of invoice → With in 30 days of receipt of payment or completion of service Which ever is earlier. Invoice with prescribed particulars
- Proviso → Exception to NBFC → invoice/challan with in 45 days & need not be serially numbered and name and address of person receiving taxable service need not be contained
- Proviso & 4 B → Additional particulars GTA → Issue Consignment note with prescribed particulars, gross weight of the consignment.
- Proviso → Timing of invoice for Continuous service → With in 30 days of receipt of payment or completion of event of service Which ever is earlier.
- Proviso → Excess amount up to Rs.1000/- realised → Invoice for such excess up to Rs.1000/ invoice need not rise. Payment as per POT rules.

Rule 5

Records under S T(Other)

- Records under Laws → Maintainaned by assessee will be accepted
- Financial records → Cash/bank book, Ledger, bank statement etc., will be accepted
- List of records in duplicate to superintendent → **First time when filing return.**
  1. Service providing records
  2. receipt, payment and procurement of input service
  3. Receipt, storage, manufacture, delivery of inputs/ capital goods 4.Records purchase/sale,
  5. Financial records
- Preservation / inspection → Records should preserve for 5 years Records available for inspection to CEO

Rule 7

Returns under S T → Half yearly Mandatory E filing

- ST3/ST3A → Due dates : October 25, April 25th, for ISD October 31, April 30 → Mandatory late fee for delay in filing (Exception Gross ST payable NIL → Delay Up to 15 days Rs.500/- From 16 days to 30 days Rs.1000 Beyond 30 days Rs.1000+ Rs.100 per day. Maximum Rs.20,000
- Revised ST3 → Revised return To rectify mistake with in 90 days of O R filed → SCN- Time limit from the date of revised return.

Penalties under Service tax

S. No.	Section	Nature of Violation	Penalty
1.	76	Failure to pay Service tax	Not less than Rs.100 per day of default or 1% per month of tax whichever is higher. In no case penalty can exceed the 50% of tax.
2.	77(1)(a)	Failure to get registration	Rs.10,000 or Rs.200 per day from the first day after due date, whichever is higher.date till the day of actual compliance.
3.	77(1)(b)	Failure to maintain books of accounts.	Maximum Rs.10,000
4.	77 (1)(c)	Failure to furnish information called by Central Excise Officer	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
5.	77(1)(c)	Failure to appear before the Central Excise Officer when issued with a summon for appearance to give evidence or to produce document.	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
6.	77 (1)(d)	Fails to pay tax through e-payment	Maximum Rs.10,000
7.	77(1)(e)	Issue invoice with incorrect details, fails to account invoice in books	Maximum Rs.10,000
8.	77(2)	Contravention of law Where no penalty is mentioned	Maximum Rs.10,000
9.	78(1)	Suppression of Value (fraud cases)	Equal to the amount of tax. Penalty is reduced to 25% of service tax if tax and interest are paid within 30 days.

Section 80 - Waiver of Penalty

No penalty will be levied under sections 76, 77 and 78(1), if the assessee proves that there is a reasonable and sufficient cause for failure to comply.

Prosecution provisions (Criminal Penalties) - Section 89

1	Providing/receiving taxable service without issue invoice
2	Avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially
3	Maintains false books of account or fails to supply any information/supply false information

Term of imprisonment

<table>
<tr><td colspan="3">If any person is convicted of an offence under this section for the:</td></tr>
<tr><td rowspan="3">First time</td><td>In the case of an offence where the amount is</td><td>Term of imprisonment</td></tr>
<tr><td>(i) up to `50 lakh</td><td>Up to 1 year</td></tr>
<tr><td>(ii) more than `50 lakh</td><td>6 months to 3 years</td></tr>
<tr><td>Second and every subsequent time</td><td colspan="2">Irrespective of the amount of tax, The term of imprisonment shall be 6 months to 3 years</td></tr>
<tr><td colspan="3">Such imprisonment shall be for a term of less than six months if there are special and adequate reasons to be recorded in the judgment of the Court.</td></tr>
</table>

A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.