

Indirect taxes

Flow charts

Nov 2015 exams

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Indirect is complicated law. It is every day budget.

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

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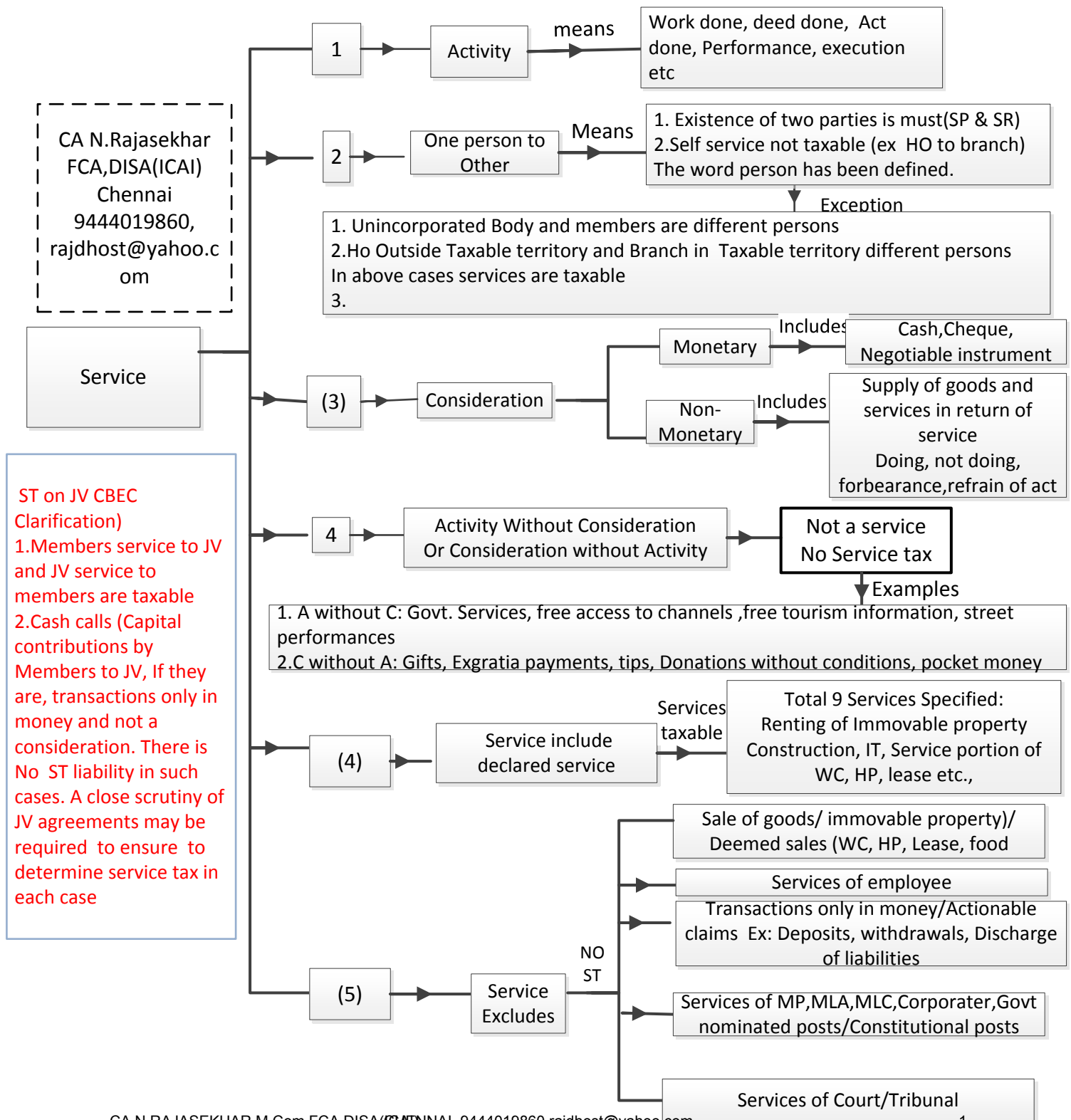
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Service Tax - Basics 1

Service Definition

Sec 65B (44)

- Activity for consideration From one person to other
- Service include Declared Service
- Service exclude
 - Sale transaction (both movable and immovable)
 - Deemed sale transaction (lease, Hp, Material portion of works contract etc)
 - Services of employee
 - Transactions only in money
 - Services of MP, MLA, MLC, Govt. Nominated persons /Constitution posts,
 - Services of tribunal court (appeal fee is not a consideration)

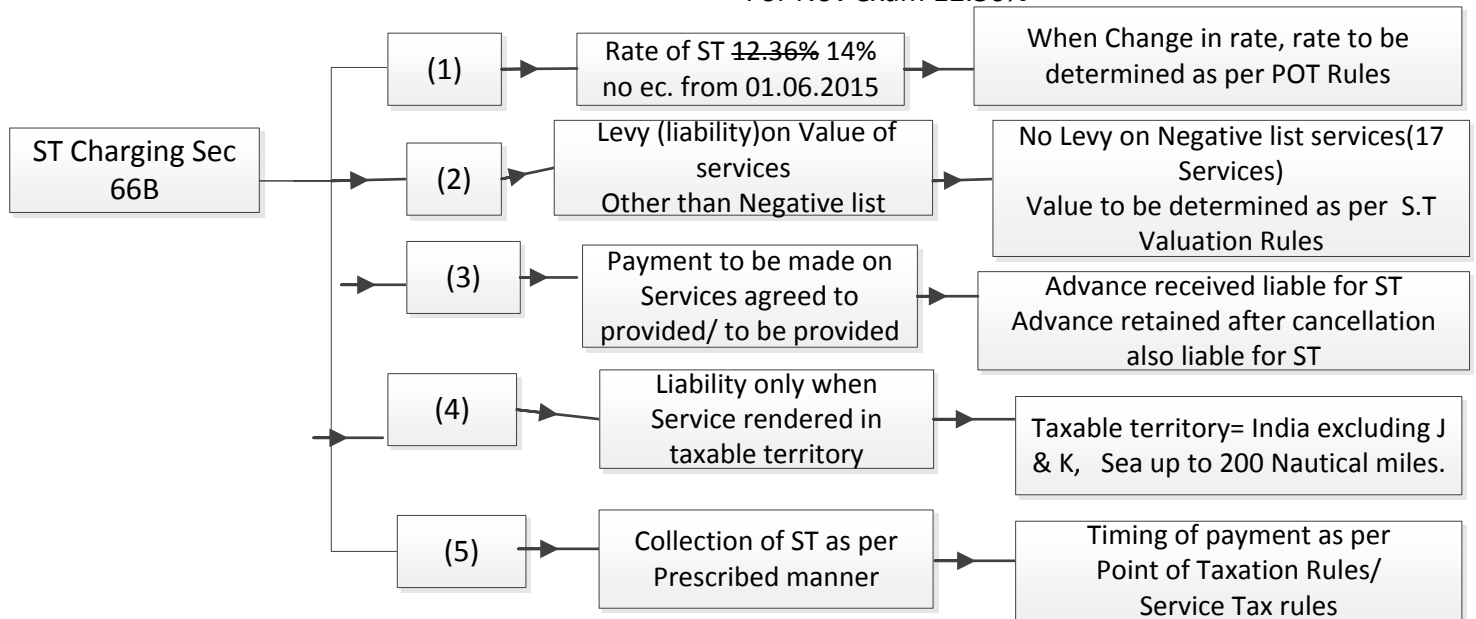


Examples whether it is consideration or not for providing Service

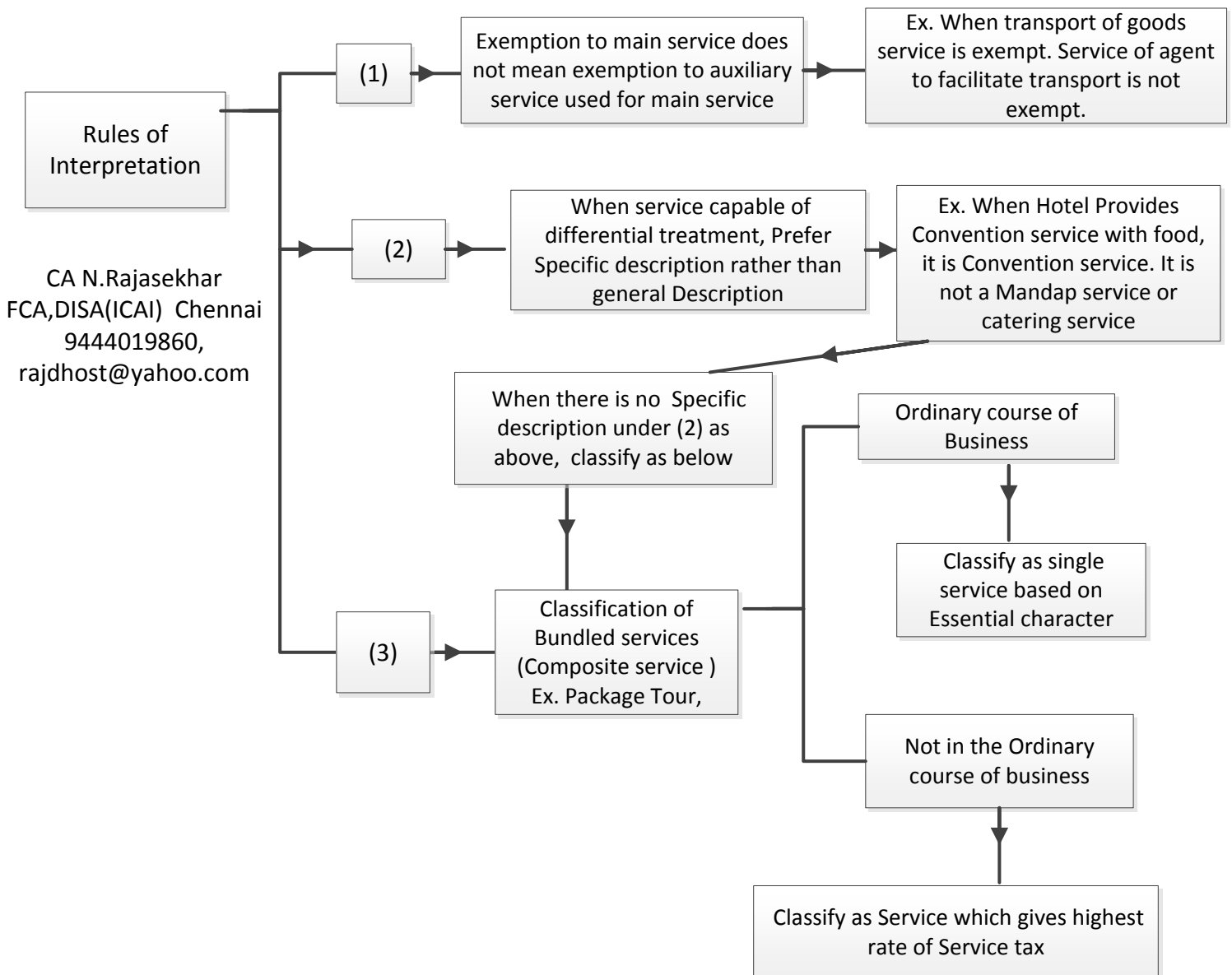
S no	Transaction	Clarification whether consideration or not
1	Amount received in settlement of dispute	Would depend on the nature of dispute. Per se, such amounts are not consideration unless it represents a portion of the consideration for an activity that has been carried out. If the dispute itself pertains to consideration relating to a service then it would be a part of consideration.
2	Amount received as advances for performance of service.	Such advances are consideration for the agreement to perform a service.
3	Deposits returned on cancellation of an agreement to provide a service	Returned deposits are in the nature of a returned consideration. If tax has already been paid the tax payer would be entitled to refund to the extent specified and subject to provisions of law in this regard
4	Advances forfeited for cancellation of an agreement to provide a service.	Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.
5	Security deposit that is returnable on completion of provision of service	Returnable deposit is in the nature of security and hence do not represent consideration for service. However, if the deposit is in the nature of a colorable device wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also, security deposit should not be in lieu of advance payment for the service
6	Security deposits forfeited for damages by service receiver in the course of receiving a service.	If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to a provision of service then such forfeited deposits
7	Excess payment made as a result of a mistake.	If returned, it is not consideration If not returned and retained by the service provider it becomes a part of the taxable value.
8	Demurrages payable for use of services beyond the period initially agreed upon e.g. retention of containers beyond the normal period	This will be consideration and is covered by clause (x) of sub -rule (1) to Rule 6 of the Valuation Rules.

Service Tax Charging Section

For Nov exam 12.36%



ST- Interpretation /Classification- Sec 66 F



Declared Services

Renting of immovable Property

Renting means allowing, permitting or granting access, entry, occupation, use or any such Facility, wholly or partly, in an immovable property, with or without the transfer of possession or Control of the said immovable property and includes letting, leasing, licensing or other similar Arrangements in respect of immovable property [Section 65B(41)].

S No	Coverage of declared service _taxable	SNO	Not covered _Exemption/Negative list le not taxable
1	Permitting usage of a property for a temporary purpose like conduct of a marriage or any other social function	1	Renting of precincts of a religious place meant for general public is exempt.
2	Letting by Hotels/restaurants/convention centres their halls, rooms	2	Renting for purely residence
3	Permitting use of immoveable property for placing vending/ dispensing machines	3	Renting hotel in etc Declared tariff <=1000 per day
4	Allowing erection of a communication tower on a building for consideration	4	Renting of vacant land, with or without a structure incidental to its use, relating to agriculture.
5	Renting of land or building for entertainment or sports		
6	Renting of theatres by owners to film distributors (including under a profit sharing arrangement)		

Construction services

Construction of building, complex, civil Structure or part thereof

S No	Coverage of declared service _taxable	SNO	Not covered _Exemption/Negative list le not taxable
1	Construction service provided by the builder /developer is taxable when any consideration is received <u>from Buyer/society/members of society</u> before issue of Completion Certificate.	1	Some specified construction services to Govt./ Local Authority like pipe line, irrigation etc., (refer exempted service)
2	Any consideration as develop rights from land owner before issue of Completion Certificate. (The value for service is the value of land)	2	Some specified construction services to all persons like roads etc, (refer exempted service)
3	Construction" includes additions, alterations, replacements or remodelling of any existing civil structure. Service tax is payable		

Waiver of Completion certificate clause (b) of section 66E

In certain States, completion certificates have been waived or are considered as not required for certain specified types of buildings, in such cases the completion certificate issued by an architect or a chartered engineer or a licensed surveyor of the respective local body or development or planning authority would be treated as completion certificate for the purposes of determining chargeability of service tax.

Temporary transfer/ permitting the use or enjoyment of any intellectual property right

S No	Coverage of declared service _taxable	SNO	Not covered _Exemption/Negative list le not taxable
1	Temporary transfer/ permitting the use or enjoyment of any intellectual property right namely Copyrights, Patents, and Trademarks, Designs or any other similar right to an intangible property.		Permanent transfer of IPR. It amounts to sale and hence no service tax
2	Intellectual right may registered in India. Or Outside India would also be covered in this entry. It is taxable		Certain temporary transfer of <u>copy rights</u> is covered in exemption list. Please refer exemption list.
3	Permitting use of any intellectual property right which does not require registration is also covered and it is taxable (CBEC clarification)		

Development, design, programming, customization, adaptation, up gradation, Enhancement, implementation of the information technology software

Information technology software means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [Section 65B(28)]

S No	Coverage of declared service _taxable	SNO	Not covered _Exemption/Negative list le not taxable
1	On site development of software	1	Sale of pre-packaged or canned software put in a media like CD is a goods and not a service
2	Providing advice, consultancy and assistance on matters relating to information technology software, It is not a declared service, But it is service as per definition and it is taxable		
3	Delivery of content online for consideration without put in to media like CD etc.,		
4	pre-packaged or canned software is not sold but is transferred under a license to use such software,		

Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

The following activities if carried out by a person for another for consideration would be treated as provision of service:-

- ❖ Agreeing to the obligation to refrain from an act.
- ❖ Agreeing to the obligation to tolerate an act or a situation.
- ❖ Agreeing to the obligation to do an act.
- ❖ Non-compete agreements

In a non-compete agreement one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner. Such action on the part of one person is also an activity for consideration and will be covered by the declared services.

Transfer of goods by way of hiring, leasing, licensing or in any such manner
Without transfer of right to use such goods

Coverage/Examples

- ❖ Car given on hire with driver. Right to use is not transferred as the car owner retains the permissions and licenses relating to the cab. Therefore possession and effective control remains with the owner. The service is, therefore covered in the declared list
- ❖ Supply of equipment on terms and conditions to use. The receiver is not free to use such equipment in any manner as he likes and conditions have been imposed on use and control of such equipment. The service is, therefore covered in the declared list
- ❖ Hiring of bank lockers. The transaction does not involve the right to use goods as possession of the lockers is not transferred to the hirer even though the contents of the locker would be in the possession of the hirer. It is declared service
- ❖ Hiring out of vehicles where it is the responsibility of the owner to abide by all the laws relating to motor vehicles. No transfer of right to use goods as effective control and possession is not transferred. It is declared service
- ❖ Hiring of audio visual equipment where risk is to the owner. No transfer of right to use goods as effective control and possession is not transferred. It is declared service.
- ❖ Erection of Pandal Shamiana service. is a declared service under section 66E(f) [Circular No. 168/3/2013- ST dated 15.04.2013]

Activities in relation to delivery of goods on hire purchase or any system of payment by installments

Service is levied on the delivery of goods in hire purchase and not on hire purchase of goods

Coverage

Service tax is payable on the on the hire purchase leasing transactions on the

- ❖ the amount forming or representing interest in the installments and
- ❖ Other charges such as lease management fees, processing fees, documentation charges and administrative fees.
- ❖ No service tax on the principal amount in the lease rent/Hire charges

Service portion in execution of a works contract

Works contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any **movable or immovable property** or for carrying out any other similar activity or a part thereof in relation to such property [Section 65(54)].

The following activities are treated as works contract, where only service portion is liable for service tax :

- contracts for repair or maintenance of motor vehicles
- contracts for construction of a pipe line or conduit
- contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise
- contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring

Labour contracts in relation to a building or structure: labour Contracts do not fall in the definition of works contract. It is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value

Service portion in an activity wherein goods, being food or any other article of Human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity

Coverage of entry

- ❖ Supply of food or drinks in a restaurant;
- ❖ Supply of foods and drinks by an outdoor caterer

Negative list of Services

Services by Government or a local authority

Negative list not taxable		Positive list taxable (not covered elsewhere)	
1	Services of Government to non-business entity	1	Postal Department Services like Speed post, m Express parcel post, Insurance services, Agency Services like collection of utility bills, mutual funds, to non-government entities.
2	Postal Department Services like post card, inland letter, book post, registered post, Order Money	2	Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.
3	Services of savings accounts, Postal Orders, Pension payments	3	transport of goods or passengers
		4	Support services of Government other than 1,2, and 3 as above

Support services"

Means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

Services by the Reserve Bank of India

Negative list not taxable	Positive list taxable
All services provided by the Reserve Bank of India	Services provided to the Reserve Bank of India if not covered elsewhere

Services by a Foreign Diplomatic Mission located in India

Negative list not taxable	Positive list- taxable
All services provided by Foreign Diplomatic Mission located in India like Representing home country, Promoting relationships, Issues passports, travel documents, visas etc.	Services, if any, provided by any office or establishment Of an international organization. Services to a Foreign Diplomatic Mission located in India

Services relating to agriculture

Services relating to agriculture by way of:

- a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
- b) supply of farm labour;
- c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
- d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- e) loading, unloading, packing, storage or warehousing of agricultural produce;
- f) agricultural extension services;
- g) services by any Agricultural Produce Marketing Committee or Board or
- h) Services provided by a commission agent for sale or purchase of agricultural produce.

All the above services from (a) to (h) in relating to agriculture are covered in the negative list and they are not liable for service tax.

Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products [Section 65B(3)].

Agricultural produce means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market [Section 65B(5)].

Circular No. 177/03/2014 ST dated 17.02.2014 has clarified that the above definition of agricultural produce covers 'paddy'; but excludes 'rice'. It implies that benefits available to agricultural produce in the negative list are not available to rice.

With this benefit of agricultural produce does not available to Rice

However to give some tax benefit to rice, Certain exemptions available to rice in exemption list for loading, unloading, transportation, packing, warehousing, and job work of paddy in to rice.

Examples of Coverage under negative list

	Agricultural Activity	Examples cover under Negative list
1	Agricultural operations	Breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry Plantation crops like rubber, tea or coffee Process of cereals, pulses, copra and jiggery done by Cultivator
2	Processes which do not alter the essential characteristics of agricultural produce	tending, pruning, cutting, harvesting; drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging
3	Agricultural extension services	application of scientific research and knowledge to agricultural practices through farmer education or training
4	Renting or leasing of agro machinery or vacant land	Leasing of vacant land with a green house or a storage shed which is incidental to its use for agriculture
5	Commission agent	Commission received on purchase/sale of paddy
	Services by any Agricultural Produce Marketing Committee	provision of facilities and amenities like, sheds, water, light, electricity, grading facilities, collect market fees, license fees, rents etc

Examples: Coverage under Positive list

	Agricultural Activity	Examples cover under positive list- taxable
1	Processes which do not alter the essential characteristics of agricultural produce	Process of fast food snack items like Potato chips or tomato ketchup The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products for sale in retail market
2	Services by any Agricultural Produce Marketing Committee	service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property
3	Renting or leasing of agro machinery or vacant land	Renting and leasing of agro machinery for rice
4	Commission agent	Commission received on purchase/sale of rice

Trading of goods

Negative list not taxable		Positive list-- taxable	
1	Buying and selling of goods	1	Activities of a commission agent/CHA selling goods on behalf of another for a commission:
2	Commodity futures	2	Auxiliary services relating to future contracts or commodity futures
3	Forward contracts in commodities		

Goods means every kind of movable property other than actionable claim and money; and Includes securities, growing crops, grass, and things attached to or forming part of the land Which are agreed to be severed before sale or under the contract of sale

Access to a road or a bridge on payment of toll charges

Negative list not taxable	Positive list taxable
services of providing access to road and charging toll charges on highways and bridges etc	Collection charges or service charges paid to any toll collecting agency authorized to levy toll

Processes amounting to manufacture or production of goods

Negative list not taxable		Positive list taxable	
1	Manufacturing/production activity carried out on contract or job work basis, which does not involve transfer of title in goods, excise duty payable under excise, medical toilet preparations act or any state Act	1	central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit
2	Manufacturing process where Central Excise duty is leviable on a particular process, but excise duty is exempt	CA N.Rajasekhar FCA,DISA(ICAI) Chennai,9444019860, rajdhos@yahoo.com	
3	any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act		

Selling of space for advertisements in print media

Negative list not taxable		Positive list taxable	
1	Selling of space for advertisements in print media ie advertisement in newspapers, books other than commercial books like yellow pages, just dail , business directories, trade catalogues which are primarily meant for commercial purposes	1	advertisement in commercial books like yellow pages, just dail , business directories, trade, catalogues, hoardings,
CA N.Rajasekhar FCA,DISA(ICAI) Chennai,9444019860, rajdhos@yahoo.com		2	Advertising in online and mobile advertising, advertisements on internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, automated teller machines, commercial publications, aerial advertising,
		3	Services of advertising agencies/ Canvassing advertisement for publishing on a commission basis

Note: Composite service of providing space for advertisement coupled with designing and preparation of the advertisement is taxable as per bundle services

Entry to entertainment events and access to amusement facilities

Negative list not taxable		Positive list-- taxable	
1	Entry to entertainment events and access to amusement facilities	1	Membership of a club DOES NOT qualify as access to an amusement facility
2	Cultural programme, drama or a ballet held in an open garden and not in a theatre	2	Auxiliary services for organizing an entertainment event or for providing the entertainment to an entertainment event organizer
3	Standalone ride set up in a mall		
4	Entry to video parlours exhibiting movies played on a DVD player and displayed through a TV screen		

Betting, gambling or lottery

Negative list not taxable	Positive list taxable
Services of betting, gambling or lottery	Auxiliary services used for organizing/promoting betting/gambling events

Betting, gambling or lottery

Negative list not taxable	Positive list- taxable
Services of betting, gambling or lottery	Auxiliary services used for organizing/promoting betting/gambling events

Services by way of education

Negative list -not taxable		Positive list- taxable	
1	Service of <u>Education</u> of preschool/ Service of higher secondary school (may or may not be recognized)	1	Private tutorship
2	Services of <u>Education</u> Post school education as a part of curriculum for obtaining a qualification recognized by law. Services of colleges/universities of academic, Technical, medical, management where the certificates issued were recognised by Indian law will be covered under this entry. Fees for admission test. Coaching classes conducted by ICAI, ICWAI and ICSI also covered under this entry.	2	Services of private coaching institutes. as such training does not lead to grant of a recognized qualification CA N.Rajasekhar FCA,DISA(ICAI) Chennai,9444019860, rajdhost@yahoo.com
3	Services of <u>Education</u> approved vocational/skill training course	3	Services of Post school education as a part of curriculum for obtaining a qualification recognized by foreign country
4	Services of Boarding School which officer education,. Accommodation, food etc., which is classified as educational services as per bundle of service concept. Hence it covers under negative list.	4	Fees Collected by educational institution from prospective employers in campus Interviews
5	Services provided by international schools giving certifications like IB (International Baccalaureate)	5	Dual qualification one is recognised and other is not recognised, Classification as per bundle services is to be made.

Services by way of renting of residential dwelling for use as residence

	Negative list- not taxable		Positive list taxable- (not covered elsewhere)
1	Services by way of renting of residential dwelling for use as residence	1	Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay where declared tariff > Rs.1000/-
2	Houses allotted by Government department to its employees and a license fee is charged for the same	2	Residential house taken on rent used only or predominantly for commercial or nonresidential use
3	Furnished flats given on rent for temporary stay (a few days for a family)	3	House given on rent and the same being used as a hotel or a lodge
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		5	Furnished flats given on rent for is given for a short stay for different persons over a period of time

Specified financial services

	Negative list -not taxable		Positive list- taxable
1	Interest, discount received on advancing loans, bills and deposits made	1	Service charges or administrative charges or entry charges, documentation charges, process fee recovered in addition to interest on a loan, advance or a deposit.
2	Service by way of purchase/sale of foreign currency among <u>banks and authorized dealers</u>	2	Investments by way of equity or any other manner where the investor is entitled to a share of profit.
3	transactions are entered into by banks in instruments like repos and reverse repos (trading of goods)	3	Service by way of purchase/sale of foreign currency among banks/ authorized dealers and <u>general public</u>
4	Subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD)		

Transportation of goods by road

	Negative list -not taxable		Positive list- taxable
1	Transports of goods by government or any person <u>other than</u> <u>GTA/Courier Agency</u>	1	Services of GTA (There is an exemption for transportation of <u>some specified goods in Exemption list and some specified amount for all goods other than, these remaining goods transportation services are taxable</u>) Please refer exemption for GTA
CA N.Rajasekhar FCA,DISA(ICAI) Chennai,9444019860, rajdhost@yahoo.com		2	All services of Courier Agency
		3	Courier services of express cargo, Angadia service of delivering documents/
		4	Transportation of goods by rail. station (There is an exemption for transportation of <u>some specified goods in Exemption list other than, these remaining goods transportation services are taxable</u>) Please refer exemption list.

Transportation of goods by air/Vessel

Negative list not taxable	Positive list-- taxable
Transportation of goods either by air or by sea for outside India <u>up to custom station of clearance in India</u> is not taxable.	Transport of goods by air/vessel In India and from Customs station <u>(There is an exemption for transportation of some specified goods in Exemption list other than, these remaining goods transportation services are taxable)</u> Please refer exemption list.

Transportation of goods by Inland water ways

Negative list not taxable	Positive list --taxable
Transportation of goods by Inland water ways (National water ways)	Transportation of goods in coastal water

Inland water ways comprise of rivers, canals, back waters, creeks etc., . There is around 14500 Km inland water ways in India

Examples of inland water/National water ways- for understanding

1. Ganga-Bhagirathi-Hooghly river Between Allahabad and Haldia connecting UP, Bihar, Jharkhand and West Bengal (1620 KM)
2. Sadiya- Dhubri stretch of river Brahmaputra (891 KM)
3. Bhadrachalam- Rajahmundry stretch of river Godavari Connecting Telangana and Andhra Pradesh

Transportation of passengers

Negative list -not taxable	Positive list -taxable
1 Transport in stage carrier (carrying more than 6 excluding driver) ie public transport.	1 Transport of passenger for tourism
2 Transport in Rail in 2 nd class, sleeper class	2 Transport in Rail in 1st class, AC class
3 Transport of passengers by metro, monorail or tramway	3 Transport in air other than North east and Bagdodra in West Bengal (Exempted list)
4 Transportation in Inland water ways	4 Transportation in vessel from place in India to a Place Outside India
5 Transport of passengers by public transport, other than predominantly for tourism purpose, <u>in a vessel between places located in India:</u>	5 Transport in other mode like through animals like camel, horse etc.,
6 Transport in Metered cabs or auto rickshaws fare as per Govt Rules. <u>Other than radio taxi</u>	6 Travel in Radio taxi AC or Non AC (Ex Ola, Fast track,

Transmission or distribution of electricity

Negative list- not taxable	Positive list --taxable
Services provided by The Central Electricity Authority/ A State Electricity Board/ A State Transmission Utility/ A Transmission licensee or distribution licensee under the Electricity Act	Charges collected by a developer or a housing society for distribution of electricity within a residential complex Installation of gensets etc.,

Other Negative list of services (Miscellaneous)

- ❖ Funeral, burial, crematorium or mortuary services including transportation of the deceased

Exempted Services

Services provided to the United Nations or a specified international organisation

All the services provided to United Nations organization and specified international organisation. There are about 23 international organizations eligible for exemption such as WHO, IMF, **SAARC etc**

Health Care services

Coverage (Exempted and not taxable)

- Health care Services rendered by doctors, hospitals, clinics, sanatoriums, paramedics, labs for diagnosis, treatment for illness, injury, deformity, abnormality and pregnancy.
- Plastic/Cosmetic Surgery when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma
- Ambulance services provided by **all service providers** (whether or not by clinical establishment or an authorised medical practitioner or paramedics) exempted **wef 01.04.2015**

Not covered (taxable)

Health care services of hair transplant or cosmetic or plastic surgery of beautification

Common bio-medical waste treatment from 11.07.2014

Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto are exempt from service tax.

Charitable activities

Condition to claim exemption:

It should register u/s 12AA and carry one or more specified charitable activities

Notified charitable activities

- ❖ Public health , Public awareness of preventive health, family planning
- ❖ Advancement of religion or spirituality
- ❖ Advancement of educational programs or skill development relating to,-- Orphans, old age, prisoners, mentally retarded persons
- ❖ Preservation of environment including watershed, forests and wildlife

Renting of immovable property of precincts of religious place

Services by a person by way of-

- a) renting of precincts of a religious place *meant for general public*; or
- b) conduct of any religious ceremony;

Legal Services

I. Service provider is arbitral tribunal

S No	Service receiver who is	Taxability
1	any person other than a business entity	Exempt
2	business entity with a turnover up to rupees ten lakh in the preceding financial year;	Exempt
3	business entity with a turnover exceeding rupees ten lakh in the preceding financial year;	No exemption. Taxable

II. Service Provider who is of Individual advocate/Firm of advocates

S No	Service receiver who is	Taxability
1	Individual advocate/Firm of advocates	Exempt
2	any person other than a business entity	Exempt
3	business entity with a turnover up to rupees ten lakh in the preceding financial year;	Exempt
4	business entity with a turnover exceeding rupees ten lakh in the preceding financial year;	No exemption. Taxable

Business entity: Any person including individual ordinarily carrying any activity relating to industry, commerce, business, or profession

III. Service provider is of person representing arbitral tribunal

S No	Service receiver who is	Taxability
1	arbitral tribunal	Exempt

Recreational Coaching or training

- ❖ Services by way of training or coaching in **recreational activities relating to arts, culture or sports** are exempt from service tax.
- ❖ Training or coaching relating to all forms of arts, culture or sports is covered under this head. In other words, the said exemption is available to coaching or training relating to all forms of dance, music, painting, sculpture making, theatre, sports etc.

Educational services of Institution referred in Negative list

Services provided BY an educational institution covered in the negative list Sec 66D(I) ie Educational Institute of

- ❖ pre-school education and education up to higher secondary school or equivalent;
- ❖ education as a part of a curriculum for obtaining a qualification recognized by law;
- ❖ Education as a part of an approved vocational education course.

S No	Service provider	Service receiver	Transaction	Taxability
1	<u>Educational institution</u>	<u>Students, faculty and staff</u>	(a) Consideration from Services to students, faculty and staff auxiliary education services from (a) to (e) above (b) Consideration from renting of immovable property	Exempt
2	<u>Any person</u>	<u>Educational institution</u>	Consideration from service of (i) <u>transportation of students, faculty and staff;</u> (ii) <u>catering, including any mid-day meals scheme sponsored by the Government;</u> (iii) <u>security or cleaning or house-keeping services performed in such educational institution;</u> (iv) <u>services relating to admission to, or conduct of examination by, such institution</u> <u>The word auxiliary services is omitted and list of exemption is given as above</u>	Exempt

Renting of immovable property service received educational institutions is now taxable from 11.07.2014

Skill Development Services

Services provided by:-

- (i) the National Skill Development Corporation (NSDC) set up by the Government of India;
 - (ii) a Sector Skill Council (SSC) approved by the NSDC;
 - (iii) an assessment agency approved by the SSC or the NSDC; (iv) a training partner approved by the NSDC or the SSC
- in relation to:-
- (a) the National Skill Development Programme implemented by the NSDC; or
 - (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - (c) any other Scheme implemented by the NSDC
- have been exempted from service tax.

Sports Services

Services provided to a recognized sports body

S no	Service provider	Service receiver	Transaction	Taxability
1	individual as a player, referee, umpire, coach or team manager	recognized sports body	Participation in a sporting event organized by a recognized sports body	Exempt
2	recognized sports body	recognized sports body	Any service	Exempt

3	individuals such as selectors, commentators, curators, technical experts	recognized sports body	participation in a sporting event organized by a recognized sports body	Taxable
4	individual as a player, referee, umpire, coach or team manager	IPL	participation in a sporting event	Taxable

Recognized Sports body means

- ❖ The Indian /international Olympic Association
- ❖ Sports Authority of India
- ❖ A national sports federation or National sports promotion organizations recognized by the Ministry of Sports and Youth
- ❖ A federation or a body which regulates a sport at international levels and its affiliated federations or bodies regulating a sport in India

Sponsorship of tournaments or championships

Scope of Exempt Service –

Services by way of sponsorship of sporting events organised:

- a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone/ any **COUNTRY**
- b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- c) by Central Civil Services Cultural and Sports Board;
- d) as part of national games, by Indian Olympic Association; or
- e) Under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

Construction Services - Services provided **to the** Government or local authority/Governmental Authority

Service Provider	Any person
Service receiver	Government, Local authority, Governmental Authority
Nature of service	construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of the description of (b),(d) and (e) below
Taxability	Service is exempt.

- ❖ Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-
 - a) ~~a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;~~
 - b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
 - c) ~~a structure meant predominantly for use as~~

- (i) ~~an educational,~~
- (ii) ~~a clinical, or~~
- (iii) ~~an art or cultural establishment;~~
- d) canal, dam or other irrigation works;
- e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- f) ~~a residential complex predominantly meant for self use or the use of their employees or MPs., MLAs., Members of local authority~~

(a,) (c,) and (f) exemption withdrawn and it is taxable from 01.04.2015

“Government means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder

Governmental authority” means an authority or a board or any other body; set up by an Act of Parliament or a State Legislature; or established by Government, With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Specified Construction services

- ❖ Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
 - a) a road, bridge, tunnel, or terminal for road transportation for use by **general public;**
 - b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
 - c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961 (43 of 1961) and **meant predominantly for religious use by general public;**
 - d) a pollution control or effluent treatment plant, except located as a part of a factory; or
 - e) a structure meant for funeral, burial or cremation of deceased;

Coverage

Service Provider	Any person
Service receiver	Any person
Nature of service	construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of the description of (a) to (e) above
Taxability	Service is exempt.

Construction Services - Original works

Scope of Exempt Service –

- ❖ Services by way of construction, erection, commissioning, or installation of **original works** pertaining to,-
 - a) ~~an airport, port or railways, including monorail or metro;~~ (Exemption withdrawn. It is taxable from 01.04.2015.)
 - b) a single residential unit otherwise than as a part of a residential complex;
 - c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

- e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

Service Provider	Any person
Service receiver	Any person
Nature of service	construction, erection, commissioning, or installation of original works of the description of (b) to (e) above
Taxability	Service is exempt.

Copyright Services

Coverage:

Service Provider	Any person
Service receiver	Any person
Nature of service	Temporary transfer or permitting the use or enjoyment of a copyright u/s sec 13(1) (a) of Copy Right act namely (a)original literary, dramatic, musical, artistic works or cinematograph films or (b)cinematograph films for exhibiting in cinema hall
Taxability	Service is exempt

Lyricist of songs, author of book, person having copy right on film need not pay service tax on royalty.

Note: Clause (c) copy right act covers sound recording it is taxable

Example:

1	A composer of a song having the copyright for his own song. He allows the recording of the song on payment of some royalty by a music company for further distribution	Falls under Sec 13(1) (c) of Copy right, it is taxable. Declared service
2	Mr. Raj an author, having copy right of an Indirect tax book. He received royalty from the M/s AN publishers for publishing the book written by him	Exempted .list falls under Sec 13(1) (a) of Copy right
3	music company having the copyright of music sound recording transfers its right temporarily of distributing music	Exempted. list falls under Sec 13(1) (a) of Copy right
4	M/S RR Moviemakers having a copy right of a cinematographic film	Exemption list falls under Sec 13(1) (a) of Copy right

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Services by a performing artist in folk or classical art forms

S No	Service provider	Service receiver	Service	Taxability
1	Artist of folk music, folk dance and folk theatre	Any person	Performance in folk music, folk dance/Folk theatre	Exempt up to Consideration for a Performance was up to Rs. 1 lakh from 01.04.2015
2	Artist of Classical music, Classical dance and Classical theatre	Any person	Performance in Classical music, Classical dance/ Classical theatre	Exempt up to Consideration for a Performance was up to Rs. 1 lakh from 01.04.2015
3	Above (1) and (2) as a brand ambassador	Any person	Performance in above(1) and (2)	Taxable
4	Artist of Western music, mimicry, modern theatre, magic shows	Any person	Performance	Taxable
5	Artists of cinema, television	Any person	Performance	Taxable
6	Artists of Painting, sculpture	Any person	Performance	Taxable

Services by way of collecting or providing news:

- ❖ Services by way of collecting or providing news by an independent journalist,
- ❖ Press Trust of India or United News of India are exempt from service tax.

Renting of a hotel, inn, guest house, club, campsite or other commercial places

Service	Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes
Exemption	When declared tariff ≤ Rs.1000/-

Declared tariff = Room rent Published or printed (without excluding discount) + Charges for all Amenities

Example 1: if the declared tariff is Rs. 1100/-, but actual room rent charged is `Rs 800/-, by giving discount of Rs.300, Service tax will be required to be paid on Rs 800/-

Example 2. In the above example, when the declared tariff is revised as per tourist season for all customers as Rs. 800/- there is no service tax liability

Serving of food or beverages by a restaurant, eating joint or a mess

Service provider	Restaurant, eating joint or a mess,
Service	Serving of food or beverages
Taxability	service is exempt
Exemption not available(Taxable)	(i) Restaurant, eating joint or a mess has the facility of <u>air-conditioning or central air-heating in any part of the establishment, at any time during the year and</u> (ii) <u>Restaurant, eating joint or a mess has a licence to serve alcoholic beverages. Both AC and Non AC Taxable.</u>

Exemption for Factory canteen having AC wef 22.10.2013

Services provided, in relation to serving of food or beverages, by a canteen have been exempted from service tax provided such canteen:-

is maintained in a factory covered under the Factories Act, 1948, and

(ii) has the facility of air-conditioning or central air-heating at any time during the year.

Clarification on issues pertaining to restaurant service CBEC, vide Circular No.173/8/2013 – ST dated 07.10.2013

A: Services provided (in relation to serving of food or beverages) by air-conditioned as well as non-air-conditioned restaurants, eating joints or mess, operating in a complex

- ❖ In a complex, air conditioned as well as non-air conditioned restaurants are operational. These restaurants are clearly demarcated and separately named, but food is sourced from a common kitchen.
- ❖ In such a case, services provided in relation to serving of food/beverages restaurant having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year is liable to service tax. However, such services provided in a non air-conditioned or non centrally air- heated restaurant will be treated as exempted service and thus, will not be liable to service tax.

B. Services are provided by a 'specified restaurant' in other areas e.g. swimming pool or an open area attached to the restaurant

- ❖ Services provided by restaurant having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year, in other areas of the hotel are liable to service tax.

C. Service tax on goods sold on MRP basis across the counter as part of the Bill/invoice

If goods are sold on MRP basis (fixed under the Legal Metrology Act), they have to be excluded from total amount for the determination of value of service portion.

Transportation of Goods by Road, Rail, Vessel

Goods transport agency BY Road

Coverage 1

Service provider	Goods transport agency by road
Service	<u>Transportation of any goods</u>
Value based exemption	gross amount charged single goods carriage <=Rs.1500/-
	gross amount charged for all goods of single consignee <=Rs.750/-

Coverage 2

Service provider	Goods transport by road/ rail/Vessel
Service	Transportation of goods as below
Taxability	Service is exempt.

List of transportation of goods covered in exemption by road, rail and vessel

- ❖ Agricultural Produce
- ❖ Food stuff—~~grains including flours, pulses and rice and milk, salt, tea, coffee, jaggery, sugar, milk products, edible oils excluding alcoholic beverages;~~ **from 01.04.2015**
- ❖ chemical fertilizer and oilcakes;
- ❖ newspaper or magazines registered with the Registrar of Newspapers;

- ❖ relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- ❖ defense or military equipment
- ❖ cotton ginned or baled

Clarification as to whether “agricultural produce” includes rice and benefits available in respect of rice under mega exemption notification

CBEC vide Circular No.177/03/2014 – ST dated 17.02.2014, has clarified that the definition paddy include rice, whenever ever exemption available to paddy also available to rice.

Coverage 3

Service provider	Goods transport by rail/Vessel
Service	Transportation of goods of Railway equipment or materials
Taxability	Service is exempt.

Transport of passengers

Coverage 1

Service Provider	Airways like Air India, spice jet /Indigo
Service	Transportation of passengers with or without belongings
Places	Embarking from or Terminating in Airports located in North East like Assam, Meghalaya, Manipur, Mizoram, Nagaland Arunachala Pradesh, Tripura and Bagdogra of West Bengal
Taxability	Service exempt

Coverage 2

Service Provider	Passenger transport service
Service	Transportation of passengers by road with or without belongings
Transport through	<u>NON A/C</u> Contract carriage Other than radio taxi
Taxability	Service exempt

Note: transportation of passenger for tourism, conducted tour, charter or hire, there is no exemption and service is taxable

Similary transportation of passenger through radio taxi is taxable,

Contract carriage Means: Motor vehicle transporting passengers on a contract, runs on a fixed or agreed rate on any route or point to point

and includes- (i) a maxicab; and (ii) a motorcar

Radio taxi means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

Coverage 3

Service Provider	Passenger transport service through rope way
Service	Transportation of passengers with or without belongings
Transport through	ropeway, cable car or aerial tramway
Taxability	Service exempt

Services provided in relation to public services

Service provider	Any person
Service Receiver	Government, Local Authority, or a governmental authority
Service	(a)any activity in relation to a water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation; or b)repair or maintenance of a vessel
Taxability	Service is exempt.

Services provided by an incubate

Service Provider	Incubatee located within premises of incubator
Service	Service Up to Total turnover of Rs.50 lakhs is exempt from service tax
Condition for exemption	total turnover during the preceding financial year <= 50 lakhs
Period of exemption	Three years from the date of entering into an agreement as an incubate with incubator.

“Incubatee” means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products.

Renting of Motor Vehicle for transportation of passengers and goods**Scope of Exempt Service –**

- ❖ Services by way of giving on hire-
 - a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
 - b) to a goods transport agency, a means of transportation of goods

Motor vehicle parking to general public Exemption withdrawn now taxable from 01.04.2013

Service	vehicle parking to general public
Taxability	Service is taxable

Coverage 2

Service	Leasing of land for providing parking facility
Taxability	Service is taxable.

Service by a club/association/society to own members**Coverage 1:**

Service Provider	Registered trade union
Service	To its own members by way of reimbursement of charges or share of contribution
Taxability	Exempt

Coverage 2:

Service Provider	Registered unincorporated body or a non- profit entity
Service	To its own members by way of reimbursement of charges or share of contribution, for the provision of carrying out any activity which is exempt from the levy of service tax
Taxability	Exempt

Coverage 3:

Service Provider	Registered unincorporated body or a non- profit entity
Service	To its own members by way of reimbursement of charges or share of contribution provided by Resident welfare Association.
Taxability	Exempt up to an amount of Rs.5000/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex

Classification on Clarification regarding exemption available to services provided by a Resident Welfare Association (RWA) to its own members CBEC vide Circular No.175/01/2014 – ST dated 10.01.2014, has clarified these doubts as follows:

S No	Issue	Clarification
1	In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods ex. Maintainance lift, sump etc	Exemption in mega exemption notification is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members
2	If the contribution of a member(s) of a RWA exceeds `Rs.5,000 per month, how should the service tax liability be calculated	If per month per member contribution of any or some members of a RWA exceeds `Rs. 5,000, entire contribution of such Members liable for service tax
3	Is Small Service Provider's (SSP) exemption available to RWA? (ii) Does 'aggregate value' for the purpose of threshold exemption, include the value of exempt service?	Yes. . As per the definition of 'aggregate value' provided in explanation of the notification, aggregate value does not include the value of services which are exempt from service tax
4	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of SSP exemption or exemption provided under mega exemption notification?	Expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service. If RWA do not charge any any Commission . If Bills were in the name of RWA there is no agent involved and hence includable in value.
5	Is CENVAT credit available to RWA for payment of service tax?	RWA may avail CENVAT credit and use the same for payment of service tax,

Services by the intermediaries

Services by the following persons in respective capacities -

- Sub-broker or an authorised person to a stock broker;
- Authorised person to a member of a commodity exchange;
- ~~Mutual fund agent to a mutual fund or asset management company;~~
- ~~Distributor to a mutual fund or asset management company;~~

- e) ~~Selling or marketing agent of lottery tickets to a distributor or a selling agent;~~
- f) Selling agent or a distributor of SIM cards or recharge coupon vouchers;
- g) Business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- h) Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt

For items (c), (d) and (e), exemption withdrawn from 01.04.2015

Job Work

Scope of Exempt Service –

- Carrying out an intermediate production process as job work in relation to -
 - a) Agriculture, printing or textile processing;
 - b) cut and polished diamonds and gemstones; or plain and studded Jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985(5 of 1986);
 - c) Any goods **other than alcoholic liquor for human consumption (from 01.04.2015)** on which appropriate duty is payable by the principal manufacturer; or
 - d) Some process like painting heating treatment of relating to parts of cycle, sewing machine up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year
- ❖ Appropriate duty means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt.
- ❖ Paddy milled into rice, on job work basis is exempt from service tax since such milling of paddy is an intermediate production process in relation to agriculture [Circular No.177/03/2014 ST dated 17.02.2014].

Public telephone services

Scope of Exempt Service — **Exemption with drawn from 01.04.2015**

- ~~Services by way of making telephone calls from—~~
 - a) ~~departmentally run public telephone;~~
 - b) ~~guaranteed public telephone operating only for local calls(Coin box telephone), or~~
 - c) ~~free telephone at airport and hospital where no bills are being issued.~~

Services provided by person located in a non- taxable territory

Service provider	Service receiver	Taxability
Person located in Nontaxable territory	Government, a local authority, a governmental authority	Exempt
Person located in Nontaxable territory	Individual receiving service for personal purpose	Exempt
Person located in Nontaxable territory	Person located in Nontaxable territory	Exempt

ST on The remittances of money from overseas through the Money Transfer Service Operator Money transfer MTSOs: (Intermediary Services) Circular No.180/06/2014 ST dated 14.10.2014

- ❖ Service tax is Not payable on the amount of foreign currency remitted to India from overseas..
- ❖ Service tax is payable on fee or Commission received by Indian banks/Agents /sub agents for the services rendered to foreign MTSO .
- ❖ Service provided by Indian bank/entity/agent/sub-agent to a person located in taxable territory, the place of provision is in the taxable territory. Therefore, service tax is payable on amount charged separately

Other services which are exempt (Miscellaneous)

- ❖ Certain notified services of general and life insurance
- ❖ Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from service tax.
- ❖ Loading/unloading/packing/storage/warehousing of rice exempted
- ❖ Services by way of loading, unloading, packing, storage or warehousing of rice have been exempted from service tax.[Notification No. 04/2014-ST dated 17.02.2014]
- ❖ Services received by RBI, from outside India in relation to management of foreign exchange reserves are exempt from service tax. Therefore, specialized financial services received by Reserve Bank of India from global financial institutions in the course of management of foreign exchange reserves, e.g., external asset management, custodial services, securities lending services, etc. will be exempt from service tax.
- ❖ Services by way of slaughtering of animals are exempt from service tax
- ❖ Services by an organizer to any person in respect of a business exhibition held outside India are exempt from service tax.
- ❖ Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material are exempt from service tax.
- ❖ Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 are exempt from service tax.
- ❖ Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt from service tax.
- ❖ Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets are exempt from service tax.
- ❖ Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt from service tax
- ❖ Services provided by a tour operator to a foreign tourist in relation to a tour wholly conducted outside India are exempt from service tax. For example, service provided by an Indian tour operator to a Chinese National for a tour conducted in Sri Lanka will be exempt from service tax under this entry.
- ❖ (IRDA approved life micro-insurance schemes with sum assured not exceeding Rs. 50,000 exempted from 11.07.2014.
- ❖ Loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton - ginned or baled – exempted from 11.07.2014.
- ❖ Services received by RBI from outside India in relation to management of foreign exchange reserves from 11.07.2014.
- ❖ Services provided by Indian tour operators to foreign tourists in relation to a tour wholly conducted outside India exempted
- ❖ Service provided with respect to Kailash Mansarovar and Haj pilgrimage., Haj Committee and Kumaon Mandal Vikas Nigam Ltd wef 28.08.2014
- ❖ **Services of general insurance business provided under Pradhan Mantri Suraksha Bima Yojna. Is exempt from Service tax /Effective from 30.04. 2015]**

- ❖ Life insurance provided under Varishtha Pension Bima Yojna,(WEF 01.04.2015),. Pradhan Mantri Jeevan Jyoti Bima Yojna and Pradhan Mantri Jan Dhan Yojna, Collection of contribution under Atal Pension Yojna (WEF 30.04.2015)exempted
- ❖ Treatment of effluent by Common Effluent Treatment Plant operator exempted A new entry 43 Effective from 01.04.2015]
- ❖ Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables exempted A new entry 44 Effective from 01.04.2015]
- ❖ Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo Exempted A new entry 45 Effective from 01.04.2015]
- ❖ Exhibition of movie by exhibitor to distributor/ association of persons consisting of such exhibitor as one of its members exempted. A new entry 46 Effective from 01.04.2015]

Services by way of right to admission to certain events/programs exempted wef 01.06.2015

services by way of right to admission to-

- ❖ (i)exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;
- ❖ (ii)recognized sporting event;
- ❖ (iii)award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than 1500 per person.
- ❖ recognised sporting event to mean any sporting event-
- ❖ (i)organised by a recognised sports body where the participating team or individual represent any district, state, zone or country,
- (ii) covered under entry 11.

Entry 11 of the notification covers services by way of sponsorship of sporting events organised-

- ❖ (a)by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state, zone or country;
- ❖ (b)by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- ❖ (c)by Central Civil Services Cultural and Sports Board;
- ❖ (d)as part of national games, by Indian Olympic Association; or
- ❖ (e)under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

Services by way of right to admission to certain events/programmes moved from negative list to exemption list

With effect from 01.06.2015, clause (j) of the negative list under section 66D pertaining to “admission to entertainment events or access to amusement facilities. Is covered under exemption list and not under negative list.

Place of provision rules at glance

Service is taxable only when it is rendered in taxable territory. Whether the service is rendered in taxable territory or not is to be determined as per Place of provision rules as below.

Rule	Applicability	Place of provision of service shall be
3	General rule/ Hiring of means of transport like Aircrafts and Vessels yachts more than one month (From 01.10.2014)	location of the recipient of service
4	In case where services are provided in respect of goods that are required to be made physically available to the service provider Example: Repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, dry cleaning In case of services which require the physical presence of the receiver or the person acting on behalf of the receiver, with service provider Example: Cosmetic surgery beautician services, class room teaching, fitness services	location where the services are actually performed Exception: if goods are temporarily <u>imported to India for service, for repairs and are exported after the repairs without being put to any use in the taxable territory</u> ie Rule 4 not applicable. Rule 3 applicable ie location of service receiver.
5	In case of services provided directly in relation to an immovable property Ex: Construction, real estate agent, renting, survey, land property management,	Place where the immovable property is located or intended to be located.
6	In case of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission. Ex: Musical programmers, exhibitions, road show, fashion show , coaching	The place where the event is actually held.
7	Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory	location in the taxable territory where the greatest proportion of the service is provided
8	Where the location of the service provider well as that of service receiver is in the taxable territory Ex: Service performed outside India on deputation where both service receiver and service provider is india.	location of the recipient of service

Rule	Applicability	Place of provision of service shall be
9	(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders	Location of the service provider
	(b) Online information and database access or retrieval services;	location of the service provider
	(c) Intermediary services Definition of Intermediary services read below"	location of the service provider
	(d) Service consisting of hiring of <u>means of transport of other than aircrafts, vessels except yachts up to a period of one month.</u> (From 01.10.2014) Ex: hiring of yacht, truck up to 20 days NOTE: Hiring of Vessels and aircraft up to One month Rule 3 is applicable Ex: hiring of vessel, aircraft up to 20 days –pop Location of service receiver.(rule 3) Definition of means of transport read below"	location of the service provider
10	The place of provision of services of transportation of goods, other than by way of mail or courier the place of provision of services of goods transportation agency	place of destination of the goods The location of the person liable to pay tax.
11	In respect of a passenger transportation service	place where the passenger embarks on the conveyance for a continuous journey
12	In case of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	the first scheduled point of departure of that conveyance for the journey
13	In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.	
14	Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.	

Determination of location of service Provider/Service Receiver. Rule 2(h)(i)

The location of service receiver will be determined as below:

A.	Where the service provider/service receiver has obtained a single registration, whether centralized or otherwise,	The premises for which such registration has been obtained
B	(i) Where the service provider/service receiver is not covered under point A. above	The location of his business establishment
	(ii) <i>Where the services are provided from/used at a place other than the business establishment, that is to say, a fixed establishment elsewhere,</i>	The location of such establishment
	(iii) <i>Where services are provided from/used at more than one establishment, whether business or fixed</i>	The establishment most directly concerned with the provision/use of the service;
	(iv) In the absence of such places (i, ii & iii)	The usual place of residence of the service provider/service receiver.

Definition of Intermediary

Intermediary: As per rule 2(f), intermediary means a broker, an agent or any other person, by whatever

name called, who arranges or facilitates a provision of a service (hereinafter called the main 'service') or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account. **Accordingly, intermediary of goods, such as a commission agent or consignment agent are also included and a person who provides the main service or supplies the goods on his own account is excluded.**

(i) Guiding principles to determine whether a person is an intermediary or not In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

1. An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price.

2. The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging 3. The service provided by the intermediary on behalf of the principal is clearly identifiable.

(ii) Services qualifying as 'intermediary services' Services provided by the following persons will qualify as 'intermediary services':-

(i) Travel Agent (any mode of travel)

(ii) Tour Operator

(iii) Commission agent (for service or goods)

(iv) Recovery Agent

Means of transport for rule 9 (d) means

- ❖ Land vehicles such as motorcars, buses, trucks;
- ❖ Vehicles designed specifically for the transport of sick or injured persons;
- ❖ Mechanically or electronically propelled invalid carriages;
- ❖ Trailers, semi-trailers and railway wagons

The following are not 'means of transport' for the purpose rule 9 (d):-

- ❖ Aircrafts
- ❖ Vessels
- ❖ Racing cars;
- ❖ Containers used to store or carry goods while being transported;
- ❖ Dredgers, or the like.

Export of Service - Rule 6A of STR 1994

Export of services [Rule 6A of the Service Tax Rules, 1994]

Rule 6A (1)

Conditions to be fulfilled for service to be treated as export of service

- The provision of any service provided or agreed to be provided shall be treated as export of service when:
 - a) The service provider is located in the taxable territory,
 - b) The service receiver is located outside India and the place of provision of the service is outside India. The service is not a service specified in the negative list (section 66D) of the Act,
 - c) The payment for such service has been received by the service provider in convertible foreign exchange, and
 - d) The service provider and service receiver are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.
- As per item (b) of Explanation 3 of clause (44) of section 65B an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Rule 6A (2)

Powers of Central Government to grant rebate on inputs/input services used in providing service exported (Advantage on export of services)

- Where any service is exported as per sub-rule (1) above], the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.
- Safeguards, conditions and limitations for claiming rebate on inputs and input services has notified by issue of notification No. 39/2012- ST dated 20.06.2012. The Notification also prescribes the procedure for claiming the rebate on inputs and input services. The conditions and limitations is as below:
 1. Service has been exported in terms of rule 6A.
 2. Duty on the inputs/service tax on input services, rebate of which has been claimed, has been paid to the supplier/service provider respectively. If the exporter himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.
 3. No CENVAT credit has been availed of on inputs and input services on which rebate has been claimed.
 4. In case any of the aforesaid conditions is not fulfilled, rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994.
 5. Amount of rebate claimed is not less than Rs. 1,000.

Reverse Charge under service tax

The following table provides a combination of service provider and service receiver where the reverse charge of service tax is applicable. Any other combination of service provider or service receiver, if the service is not exempted or not covered in service list, the service tax is payable by service provider. For example, in the case of a goods transport agency, if the service receiver is an individual, the service tax is payable by the service provider goods transport agency.

1. Services of insurance agent

S. No	Particulars	Particulars
1	Service provider	Insurance Agent
2	Service Receiver	Insurance Company/Any other person
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

2. Services of Goods Transport Agency (GTA)

S. No	Particulars	Particulars
1	Service provider	GTA
2	Service Receiver	Consignor or consignee who is (a) factory, society, registered dealer of excisable goods, body corporate, partnership firm, AOP and (b) who pays or is liable to pay freight either himself or through his agent for transportation of such goods in goods carriage.

S. No	Particulars	Particulars
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%
5	Explanation	The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification. i.e., If such a person is located in a non-taxable territory, the provider of service shall be liable to pay service tax.

3. Sponsorship service

S. No	Particulars	Particulars
1	Service provider	Any person
2	Service Receiver	Anybody corporate or partnership firm located in the taxable territory
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

4. Services of Arbitral tribunal

S. No	Particulars	Particulars
1	Service provider	Arbitral tribunal
2	Service Receiver	Business entity
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

5. Services of Legal Services of Advocate or Advocate Firms

S. No	Particulars	Particulars
1	Service provider	Individual Advocate/Advocate firm
2	Service Receiver	Business entity turnover more than Rs.10 lakh during previous financial year
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

6. Services of director to company/Body Corporate

S. No	Particulars	Particulars
1	Service provider	Director
2	Service Receiver	Company/Body Corporate

3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

7. ~~Support Services~~ All Taxable Services (date not notified so far by Government or Local Authority excluding renting of immovable property and Postal, port, airport and railway services)

S. No	Particulars	Particulars
1	Service Provider	Government or Local Authority
2	Service Receiver	Business entity located in taxable territory
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

8. Service of Renting or hiring of motor vehicle designed to carry passengers to any person who is not in the similar line of business

S. No	Particulars	Particulars
1	Service provider	Individual, HUF, Proprietor, partnership firm, AOP located in taxable territory.
2	Service Receiver	Business entity registered as body corporate located in the taxable territory
3	Service tax liability of service provider	NIL in case of abated value, 50% in case of Non abated value
4	Service tax liability of service receiver	100 % in case of abated value, 50% in case of Non abated value

8 A Service of Recovery Agent from 11.07.2014

S. No	Particulars	Particulars
1	Service provider	Recovery
2	Service Receiver	Banking Company/Financial Institution
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100 %

9 Services received from non-taxable territory (Import of Service)

S. No	Particulars	Particulars
1	Service provider	Person located in Nontaxable territory
2	Service Receiver	Person located in Taxable territory
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

10. Services of Supply of Manpower or security service for any purpose

S. No	Particulars	Particulars
1	Service provider	Individual, HUF, Proprietor, partnership firm, AOP located in taxable territory.
2	Service Receiver	Business entity of a registered body corporate located in taxable territory
3	Service tax liability of service provider	25% — NIL
4	Service tax liability of service receiver	75% 100% from 01.04.2015

11. Services of mutual fund agent or distributor from 01.04.2015

S. No	Particulars	Particulars
1	Service provider	mutual fund agent or distributor
2	Service Receiver	a mutual fund or asset management company
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

12. Services of selling or marketing agent of lottery tickets from 01.04.2015

S. No	Particulars	Particulars
1	Service provider	selling or marketing agent of lottery tickets
2	Service Receiver	lottery distributor or selling agent
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

Partial Reverse Charge**13. Service portion in execution of Works Contract**

S. No	Particulars	Particulars
1	Service provider	Individual, HUF, Proprietor, partnership firm, AOP located in taxable territory.
2	Service Receiver	Business entity of a registered body corporate located in taxable territory
3	Service tax liability of service provider	50%
4	Service tax liability of service receiver	50%
5	Explanation	In works contract services, where both service provider and service recipient is the person liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

Service tax Liability in case of Aggregator from 01.03.2015

Meaning of Aggregator:

Aggregator means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator” [Rule 2(1)(aa)]

Many online websites that follow ‘aggregator’ model.

- ❖ Under this model, an entity collects or aggregates information on a particular service from several sources on a single platform and
- ❖ It draws customers to its platform to connect them with the service provider.
- ❖ It may also facilitate the customers in comparing the prices and specifications of a particular service offered by multiple service providers.
- ❖ Companies which act as aggregator for service providers like travel portals, food portals or cab services will now be liable to pay service tax.

Aggregator has to pay ST on reverse charge as follows:

S No	Situation	Service tax liability
1	Aggregator is located in India	Aggregator is the person liable to pay service tax
2	aggregator does not have a physical presence in the taxable territory,	Any person representing the aggregator for any purpose in the taxable territory will be liable for paying service tax.
3	if the aggregator neither has a physical presence nor does it have a representative for any purpose in the taxable territory	Person appoint a person in the taxable territory for the purpose of paying service tax and such person will be the person liable for paying service tax.

Service tax Abatements				
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for Ailment of cenvat credit NIL means CC can be availed
1	Services in relation to financial leasing including hire purchase The gross amount charged for this service will be sum total of the following- ♦ 10% the amount forming or representing interest; and ♦ Other charges such as lease management fees, processing fees, documentation charges and administrative fees.	90% Of interest	10% Of interest + Other charges	NIL
2	Transport of goods by rail	70%	30%	NIL
3	Transport of passengers, with or without accompanied belongings by rail	70%	30%	NIL
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	30%	70%	Goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act Cannot be availed
5	Transport of passengers by air, with or without accompanied belongings in Economy Class from 01.04.2015	60%	40%	Cenvat credit on Inputs, capital goods Cannot be availed
	Transport of passengers by air, with or without accompanied belongings in Other than Economy Class from 01.04.2015	40%	60%	
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	40%	60%	Cenvat credit on Inputs, capital goods Cannot be availed
7	Services of goods transport agency in relation to transportation of goods	75% 70%	25% 30%	Inputs, capital goods, input service not taken by Service Provider

Service tax Abatements				
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for Ailment of cenvat credit NIL means CC can be availed
8	Services provided in relation to chit from 01.04.2015	0%	100%	NIL
9	Renting of any motor cab designed to carry passengers a) Full CENVAT credit of such input service received from a person who is paying service tax on 40% of the value; or (b) Up to 40% CENVAT credit of such input service received from a person who is paying service tax on full value;	60%	40%	No CC on Inputs, capital goods,/But CC on input service for <u>renting motor alone</u> can be availed as below in the nature of service
9A	Transport of passengers, with or without accompanied belongings, by <u>(a) contract carriage other than motor cab</u> <u>(b) radio taxi</u>	60%	40%	No Cenvat credit
10	Transport of goods in a vessel from 01.04.2015	70%	30%	No Cenvat credit
11	Services by a tour operator in relation to: (i) a package tour <u>Condition:</u> The bill issued for this purpose indicates that it is inclusive of charges for such a tour.	75%	25%	No Cenvat credit But CC input service for the service paid to other tour operated can be taken
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person <u>Conditions:</u> (i) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (ii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.	90%	10%	No CC Inputs, capital goods, But CC input service for the service paid to other tour operated can be taken 01.10.2014
	(iii) services other than those specified in (i) and (ii) above	60%	40%	No CC Inputs, capital goods,

Service tax Abatements				
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for Ailment of cenvat credit NIL means CC can be availed
				But CC input service for the service paid to other tour operated can be taken
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority. <u>Condition:</u> The value of land is included in the amount charged from the service recipient. (a) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore; (b) for others	75% 70%	25% 30%	No cenvat Credit on Inputs CC on input service can be taken

1.Explanation to the above Notification of abatements

Determination of gross amount:

In respect of Service of (Supply of food, pandal, convention together with renting of premises mentioned at serial No 4), the value should be as below

Particulars	Amount
Total of the gross amount charged	xxxxxxx
Add: the fair market value of all goods and services supplied whether or not under Same contract	xxxxxxx
	xxxxxxx
Less: the amount charged for such goods or services supplied to the service provider, if any	xxxxxxx
Less: the value added tax or sales tax, if any, levied thereon	xxxxxxx
Gross amount charged	xxxxxxx

Determination of gross amount:

In respect of Service of construction of complex at serial No 12, the value should be as below

Particulars	Amount
Total of the gross amount charged	xxxxxxx
Add: the fair market value of all goods and services supplied to the recipient(s) in relation to the service, whether or not under Same contract	xxxxxxx
Less: the amount charged for such goods or services supplied to the service provider, if any	xxxxxxx
Less: the value added tax or sales tax, if any, levied thereon	xxxxxxx
Gross amount charged	xxxxxxx

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]	<i>Service Tax (Determination of Value) Rules, 2006, Rule 3(a):</i> 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]	<i>Service Tax (Determination of Value) Rules, 2006, Rule 3(b):</i> 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/ suspense account
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

Exclusions in the gross amount charged

VAT/sales tax paid on transfer of property in goods involved in execution of contract

Inclusions in the gross amount charged

- Labour charges for execution of the works;
- Amount paid to a sub-contractor for labour and services;
- Charges for planning, designing and architect's fees;
- Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- Cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- Cost of establishment of the contractor relatable to supply of labour and services;
- Other similar expenses relatable to supply of labour and services; and
- Profit earned by the service provider relatable to supply of labour and services.

Value of transfer of property in goods involved in execution of contract

- ❖ Turnover adopted for local state vat laws can be considered as Value of transfer of property in goods

When the value of goods involved in the works contract is not ascertainable or not available, the value can be determined on the slab rate system as below:

Where works contract is for...	Value of the service portion shall be...
(A) execution of original works	40% of the total amount charged for the works contract
(B) maintenance or repair or reconditioning or restoration or servicing of any goods & (C) in case of other works contracts, not included in serial nos. above, including contracts for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings.	70% of the total amount charged for the works contract With effect from 01.10.2014

Total amount means

S. No.	Particulars	AMOUNT (in Rs.)
1	Gross amount received excluding taxes	xxxxxxxxx
2	Fair market value of goods supplied by the service receiver excluding taxes	xxxxxxxxx
3	Amount charged by service receiver for 2	xxxxxxxxx
4	Total amount charged (1 +2-3)	xxxxxxxxx
5	Value of service portion(40% of 4 in case of original works)	xxxxxxxxx

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

Total amount means

Particulars	Amount
Total of the gross amount charged	xxxxxxx
Add: the fair market value of all goods and services supplied whether or not under Same contract	xxxxxxx
	xxxxxxx
Less: the amount charged for such goods or services supplied to the service provider, if any	xxxxxxx
Less: the value added tax or sales tax, if any, levied thereon	xxxxxxx
Gross amount charged	xxxxxxx

Point of taxation rules

Note: Individuals, partnership firms this POT rules not applicable when previous FY aggregate taxable services is ≤ 50 L (details refer ST rule 6)

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 of invoice or Date of receipt of Payment whichever is earlier
3(a) proviso 3(b)	If Invoice not issued within 30 days of completion of service	Date of completion of service or Date of receipt of Payment whichever is earlier

Examples

Cas e	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation	Remarks
1	April 1 st 2014	April 30 th 2014	May 2 nd 2014	April 30 th 2014	Invoice is issued within 30 days. Date of invoice is earlier.
2	April 1 st 2014	May 4 th 2014	May 2 nd 2014	April 1 st 2014	Invoice not issued within 30 days. Date of Completion of service is earlier.
3	April 1 st 2014	April 20 th 2014	April 16 th 2014	April 16 th 2014	Invoice is issued within 30 days. Date of receipt of payment is earlier.
4	April 20 th 2014	April 30 th 2014	Part payment received on April 10 th 2014. Remaining Amount received on May 10 th 2014.	April 10 th 2014 to the extent of Part payment. April 30 th , 2014 For the remaining amount.	Invoice is issued within 30 days. Part payment is earlier. In case of remaining amount, date of invoice is earlier.

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

Meaning of Date of payment

1	Normal cases	Date of entry in books or date of crediting in bank

		account, Whichever earlier.
2	Special cases in case of Change in effective rate of tax	
(a)	Rate changes between entry in books and credited in bank account	Payment is credited with in 4 days from the effective date of new rate- date of entry in the books is the date of payment Otherwise, date of Crediting in the bank account is the date of payment
(b)	New service brought in to service tax between entry in books and credited in bank account	Same as above

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

1	Date of provision of service	Any two Before change in rate- Old rate
2	Date of issue of invoice	
3	Date of receipt of payment	Any two after change in rate- New rate

Rule 5 – Point of tax in cases of new services (New service brought under tax net)

Rule	Event	Point of taxation
5(a)	Invoice issued <i>and</i> 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 under Reverse Charge other than the cases of Rule 5 point of tax in case of new services**This Rule No 7 over ride Rule 3, 4, and Rule 8**

Rule	Event	Point of taxation
7	Payment made in advance or within 3 months from the date of invoice of service provider	Date of payment
proviso	Payment not made in advance or within 3 months from the date of invoice of service provider for invoices issued	Date immediately following the period of 3 months

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 entry (Debit) in books of account of Service receiver 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 Date of Invoice issued by service provider whichever is earlier

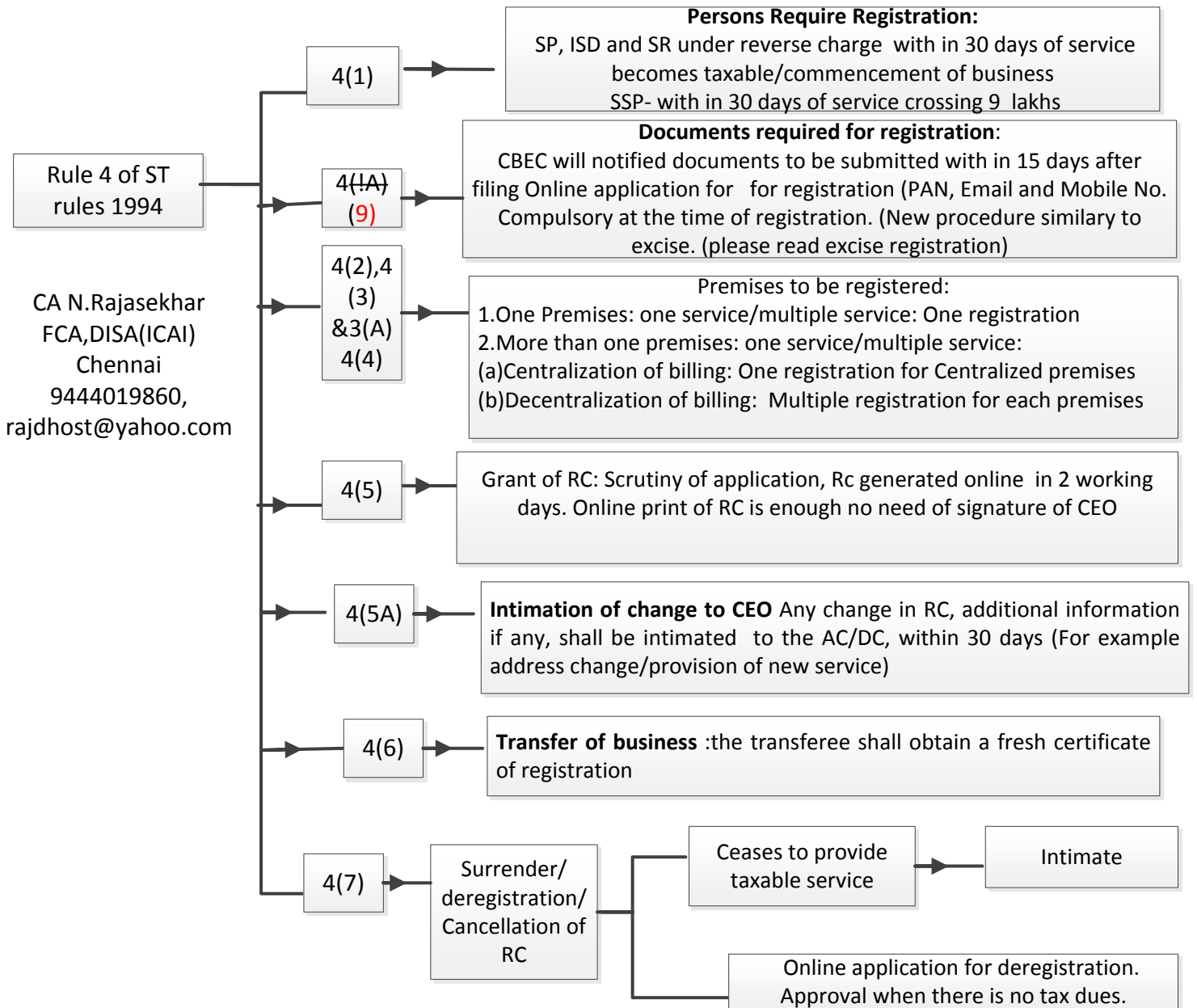
Note: If the consideration is ascertainable at the time of service Rule 3 is applicable

Rule 8A Determination of point of taxation in other cases Best of judgment rule

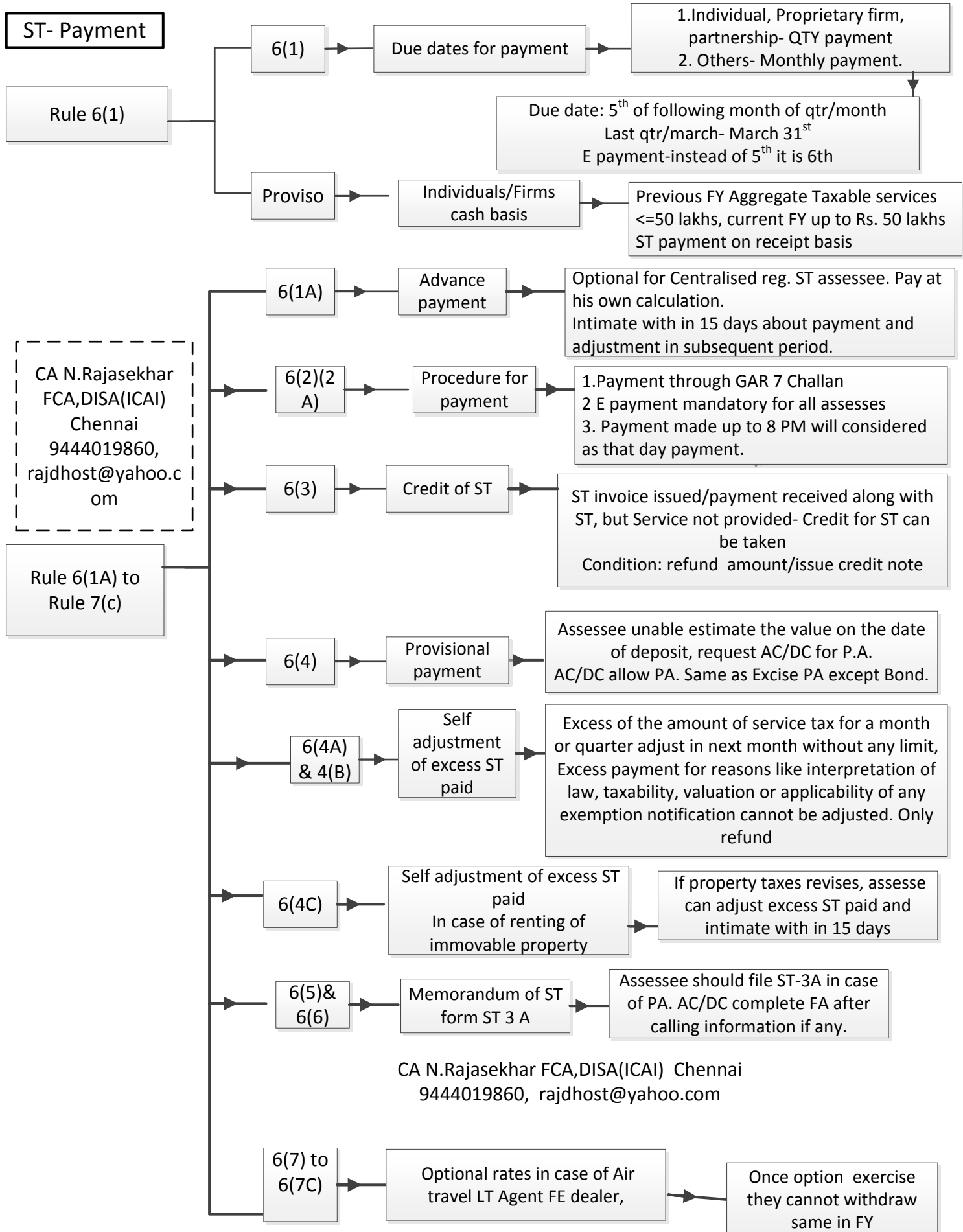
- POT cannot be determined as per these rules
- Date of invoice or the date of payment or both are not available,
- CEO, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary
- After taking into account such material and the effective rate of tax 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

Service tax Registration

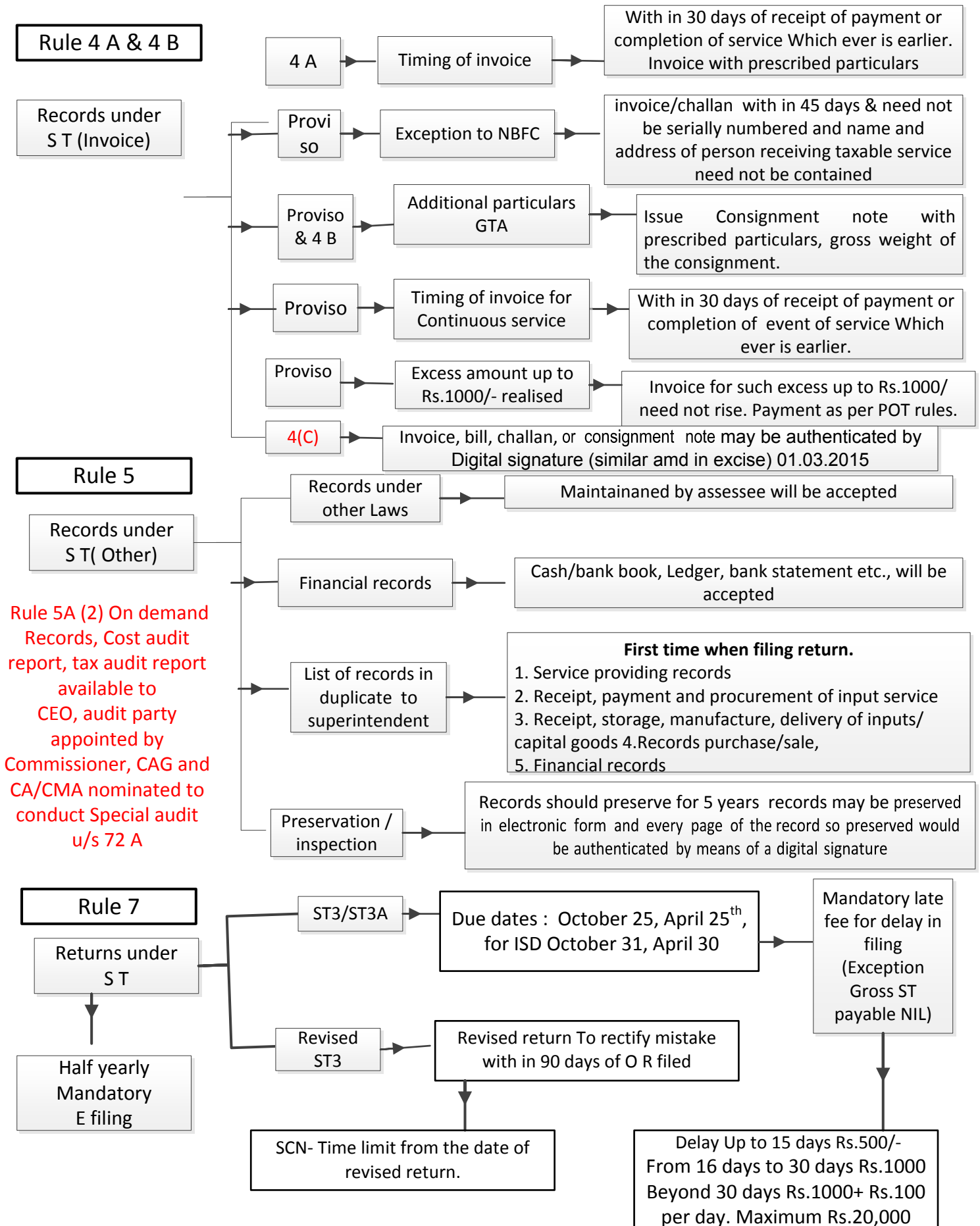
Service tax procedures -1



Service tax procedures -2



Service tax procedures -3



Optional Service tax Rates in case of some specified Services (all new rates are effective from 01.06.2015)

Rule	Service	Rate change from 01.06.2015
Rule 6(7)	Air travel agent's service (Domestic Bookings)	0.6% 0.7% of the basic Fare
	Air travel agent's service (International Bookings)	1.2% 1.4% of the basic Fare
Rule 6(7A)	Life insurance service (First year)	3% 3.5% of the premium Charged (from 01.06.2015)
	Life insurance service (Subsequent year)	1.5% 1.75% of the premium Charged (from 01.06.2015)

Rule 6(7C)	Money Changing Service	Rate change from 01.06.2015
	Upto Rs.100,000	0.12% 0.14 % of the gross amount of currency exchanged or Rs. 30 Rs. 35 whichever is higher
	Exceeding Rs. 1,00,000 and up to Rs. 10,00,000Es.	Rs120 +0.06% Rs140 +0.07% of the gross amount of currency exchanged
	Above Rs.10,00,000	Rs 660+0.012% Rs.770+0.014% of the gross amount of currency exchanged or Rs 6000 Rs 7000 whichever is higher

Rule 6(7D)	Lottery selling Agent/Distributor service	Rate change from 01.06.2015
	Where the guaranteed lottery Prize payout is > 80%	Rs,7000/- Rs,8200/- on every 10 lakh (or part of 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
	. Where the guaranteed lottery Prize payout is < 80%	Rs,11,000/- Rs,12,800/- on every 10 lakh (or part of 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw

Note: students can apply old rates for Nov 2015 examination.

Interest/Penalties under Service tax

Sec 75 interest for delay for payment of Service tax from 1.10.2014

Extent of delay	Simple interest rate per annum
Up to 6 months	18%
More than 6 months & up to 1 year	18% for first 6 months, and 24% for the period of delay beyond 6 months
More than 1 year	18% for first 6 months, 24% for second 6 months, and 30% for the period of delay

Concessional rate of 3% is available for assessee whose receipts in previous PY is less than 60 lakhs

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 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 50% service tax if true and complete details of the transactions are available in the specified records

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Section 78A

a	Providing/receiving taxable service without issue invoice	Up to Rs. 1,00,000/-
b	Avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially	
c	Maintains false books of account or fails to supply any information/supply false information	
d	Service tax collected but not paid within 6 months from the due date. This is cognizable offence when the amount is Rs. 50 lakh or more, the police can empowered to arrest, investigate without court warrant. It is not non bailable offence	

Section 80 - Waiver of Penalty

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

Central Excise Officer has no power to waive the said 50% penalty for non/short levy or non/short payment or erroneous refund of service tax by reason of fraud, collusion etc u/s 78(1). From 06.08.2014

Prosecution provisions (Criminal Penalties) Sec 89

Category 'A' offences are:

Willful evasion of payment of service tax; or

availment and utilization of credit of service tax / excise duty without actual receipt of taxable service / excisable goods either fully or partially in violation of the rules made under the provisions of Chapter V; or

(c) Maintenance of false books of account or failure to supply any information which a person is required to supply or knowingly supplying false information.

Category 'B' offence

is collection of any amount as service tax but failure to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due [Sub-section (1)].

Term of imprisonment Category A Offence

If any person is convicted of an offence under this section for the:		
First time	In the case of an offence where the amount is	Term of imprisonment
	(i) up to `50 lakh	Up to 1 year
	(ii) more than `50 lakh	6 months to 3 years
Second and every subsequent time	Irrespective of the amount of tax, The term of imprisonment shall be 6 months to 3 years	
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.(this provision same as central excise)		

Term of imprisonment Category B Offence

If any person is convicted of an offence under this section for the:		
First time	In the case of an offence where the amount is	Term of imprisonment
	(i) up to `50 lakh	Up to 1 year
	(ii) more than `50 lakh	6 months to 7 years
Second and every subsequent time	(i) up to `50 lakh	6 months to 3 years
	(ii) more than `50 lakh	6 months to 7 years
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.(this provision same as central excise)		

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

Sec 90: Cognizance of offences

- ❖ Collects any amount as service tax but fails to pay beyond a period of six months from the date on which such payment becomes due, where the amount is exceeding Rs. 50 lakhs shall be cognizable. And arrest can be made without warrant.
- ❖ All A category offence and B Category below Rs, 50 lakhs is be non-cognizable and bailable

Sec 91: Power to Arrest

- ❖ If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified sec 89(1) where the amount is exceeding Rs.50 lakhs he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.
- ❖ Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.
- ❖ In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.
- ❖ All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

Comparison between Excise, Customs and Service Tax

Certain provisions in the Central Excise, Customs and Service Tax are similar. However, these similar provisions were not elaborated in the Customs and Service Tax. The comparison is given as under:

Comparison of classification under excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Classification rules	Rules under CETA, 1985 Rule 1 to 6	Rules 1 to 6 of the CTA. Same as excise	With the introduction of negative list, replacing taxable services, the question of classification does not arise. However, interpretation provides 1. reference to main service does not include reference to auxiliary service. 2. Prefer specific definition, than general definition 3. Classification of bundled services
Tariff headings HSN, tariff nos.	Similar in excise and customs. Eg: Chapter 39 - Plastics	Similar in excise and customs. Eg: Chapter 39 – Plastics	N/A

Comparison of valuation under excise and customs

Factor of comparison	Excise	Customs
Tariff valuation	Section 3(2), provisions similar to customs	Section 14(2), provisions similar to excise
MRP, Annual Capacity Production, Compound levy scheme	Sections 4A and 3A and Rule 15	No such valuations in customs. MRP Valuation will be considered for CVD payment.
Transaction value	Section 4 1. Price of goods sold at the time and place of removal 2. Buyer and seller not related to each other (Meaning of Relative - 4 persons are listed - Mutual interest, holding and subsidiary, Relative under Companies Act, relative who is distributor) 3. Price is sole consideration for sale	Section 14(1) and Valuation rules 1. Price of goods sold at the time and place of Importation/exportation 2. Buyer and seller not related to each other [Meaning of Relative - 8 persons are listed, For example Employee-, Employer, director, 5% holding etc. (these persons are not relatives under excise)] 3. Price is sole consideration for sale
Inclusions and exclusions in Transaction value	More or less same. For example, Packing, design, etc., Installation, discount, local taxes	More or less same. For example, Packing, design, etc., Installation, discount, local taxes

Factor of comparison	Excise	Customs
Valuation Rules	Applicable when value cannot be determined under transaction value - Section 4	Transaction value determined as per Section 14(1) read with valuation rules.

Comparison of demand, recovery of duty and tax in case of excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Demand	Section 11A: Not levied, Not paid, Short Levied, Short paid, Erroneously Refunded	Section 28: Not levied, Not paid, Short Levied, Short paid, Erroneously Refunded	Section 73 of the Finance Act (FA), 1994; Similar to Section 11A of the CE Act (instead of duty, it is tax)
Relevant Date	1. Return filed: Date of filing 2. Return not filed: due date of Filing 3. Provisional assessment: date of Final assessment. 4. Erroneous refund: Date of refund 5. Other cases:/demand for interest: Date of payment	Non-levy: Date of clearance order Short-levy: Date of payment Provisional assessment: Date of Final assessment. Erroneous refund: Date of refund Other cases/ demand for interest: : Date of payment	Same as under Excise
Time Limit	Normal - 1 year Extended (Fraud cases) - 5 years, in case of fraud, collusion, wilful misstatement, suppression of facts, violation of law with intention to evade duty,	Normal – 1 year Extended - 5 years, in case of fraud, collusion, wilful misstatement, suppression of facts, violation of law with intention to evade duty,	Normal-18 months Extended Same as under Excise If Extended period notice is sustainable in appeal, the notice is treated as notice for normal period.(FA 2013)
Levy of interest on recovered duty/tax)	Section 11AA (@18% p.a.) From the first day after due date.	Section 28AA (@18% p.a.) From 1st day of the month succeeding the month in which duty was ought to be paid.	Section 75 Slab system 18% to 30% For small service providers up to taxable value of Rs. 60 lakhs in last financial year – concession by 3%
Penalty in fraud cases (similar provisions in all 3 Acts)	Section 11AC	Section 114A	Section 78
Deposit Amount collected in excess from buyer /customer	Section 11D	Section 28B	Section 73A

Factor of comparison	Excise	Customs	Service tax
(similar provisions in all 3 Acts)			
Interest leviable on amount collected in excess	Section 11DD (@18% p.a.)	No Corresponding provision	Section 73B Similar to excise
Provisional attachment of property (similar provisions in all 3 Acts)	Section 11DDA	Section 28BA. Applicable for the new section 28 AAA also	Section 73C

Factor of comparison	Excise	Customs	Service tax
Publication of names of persons	Section 9B, Section 37E	Section 135B, 154B	Section 73D
Recovery of amount due to government	Section 11 1. Adjustment in Refund 2. Attachment of movable/ immovable property 3. Recovery by issuing a Certificate to the collector 4. Recovery from successor	Section 142 Similar to excise	Section 87 Same as excise
Power to Grant exemption in public Interest (similar provisions in all 3 Acts)	Section 5A	Section 25	Section 93
Liability under the Act - first Charge (similar provisions in all 3 Acts)	Section 11E	Section 142A	Section 88

Comparison of refunds under excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Refund	Section 11B Time limit: 1 Year from Relevant date Exceptions to Doctrine of Unjust Enrichment: (a) Rebate on export of goods (b) Refund of CENVAT Credit; (c) Unspent balance of PLA; (d) ED paid and borne by manufacturer; (Cum-duty price) (e) ED paid and borne by buyer (f) ED paid and borne by notified persons	Section 27 Time limit: 1 year from the date of payment of duty or interest. Exceptions to Doctrine of Unjust Enrichment: (a) Duty Drawback on export of goods; (b) Customs duty (CD) to be paid and borne by importer/exporter; (c) CD paid and borne by buyer (d) CD paid and borne by notified persons (e) CD paid on imports made by an individual for his personal use (f) Refund of Export duty on re-import of goods (in situations covered under section 26);	Section 83 of the FA, 1994 provides that section 11B of the CE Act will apply
Interest on delayed refund	Section 11BB	Section 27A	Section 83 of the FA, 1994 provides that

Factor of comparison	Excise	Customs	Service tax
			section 11BB of the CE Act will apply
ED/ST to be shown separately on invoice	Section 12A	Section 28C (Though provision says, Customs duty will not be shown and charged in invoice like excise, service tax).	Section 83 of the FA, 1994 provides that section 12A of the CE Act will apply
Presumption that duty burden passed on Consumer	Section 12B	Section 28D	Section 83 of the FA, 1994 provides that section 12B of the CE Act will apply

Comparison of administration and appeals under excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Administration Hierarchy	CBEC, Principal Chief Commissioner,, to Inspector	CBEC to DC/AC; same as excise No Superintendent/Inspector - Appraiser/Examiner instead (Such other class of officer as appointed for the purpose of the Customs Act	Excise Dept. will administer service tax
Appeal Hierarchy	CESTAT and Commissioner (Appeals)	CESTAT and Commissioner (Appeals)	CESTAT and Commissioner (Appeals)
Appeal to Commissioner (Appeals) Order of Subordinate to Commissioner	Sections 35 and 35A Forms EA-1 and EA-2 (Dept) Time limit 2 months extension: 1 month	Sections 128 and 128A Forms CA-1 and CA-2 (Dept) Time limit 2 months extension: 1 month	Section 85 Form ST-4 Time limit 2 months extension: 1 month
Appeals to CESTAT Order passed by C.CE appeals/CCE Time limit 4 months	Sections 35B, 35C and 35D Form EA-3, EA-4, EA-5 Exceptions: Order of 1. Goods lost in transit 2. Rebate on exports 3. Export of goods without payment of duty 4. Admissibility of CENVAT credit Revisionary Application to be made to the Central Govt. Sec 35 EE - Form EA-8	Sections 129A, 129B and 129C Form CA-3, CA-4, CA-5 Exceptions: Order of 1. Duty drawback 2. Baggage 3. Short landing of goods In above 3 cases Revisionary Application to be made to the Central Govt. sec 129 DD in Form CA-8	Section 86 Form ST-5, ST-6, Dept appeal ST-7 Exceptions: No corresponding provision.

Factor of comparison	Excise	Customs	Service tax
Pre-deposit of duty in appeal	Sec 35 F	Sec 129F similar	Central excise sec 35 F is applicable
Power of CBEC to issue instructions	Sec 35 R	-	Central excise sec 35 R is applicable
Appeal to High court	Sec 35 G to K	Sec 130 to 130 D Similar	Central excise provisions Applicable
Appeal to Supreme court	Sec 35 K, 35 M	Sec 130 E Similar	Central excise provisions Applicable

Comparison on settlement commission

Factor of comparison	Excise	Customs	Service tax
Person who can make application	Manufacturer/Registered person of a private warehouse	Importer/Exporter, any other person may in respect of a case	Person liable to pay service tax
Case	Section 31 Case means pending adjudication proceedings before CEO on the date of application When a tribunal, court, or any authority sends back proceedings to Adjudicating authority it is not a case	Section 127A Similar to excise Wherever CEO substitute Proper officer.	Settlement Commission provisions of Central excise is applicable to Service tax Where the word duty the word tax & where the word goods, the word service
Conditions for admissibility of settlement application	Section 32E (a) Applicant has filed returns showing production, clearance and duty paid; Exception available (b) SCN for recovery of duty has been issued by CEO; (c) Additional ED accepted by the applicant in his application should exceed Rs. 3,00,000. (d) Additional ED accepted has been deposited along with interest @18%; (e) Question involved is not to be related to "Classification of Goods";	Section 127B (a) Applicant has filed Bill of Entry / Shipping Bill (b) to (g) similar to excise Wherever excise, substitute Customs duty Additional point: No settlement is possible in relation to: Section 123 Goods (smuggled goods) Goods in relation to which offence under NDPS (Narcotics, Drugs and Psychotropic Substances) Act has been committed	

Factor of comparison	Excise	Customs	Service tax
	(f) When the case is pending before tribunal/court - Application will not be accepted (g) Where seizure operation has been carried out and Excisable Goods/Books of Accounts/ other documents have been seized - Settlement Application shall be admissible only when made after expiry of 180 days of seizure		has to substitute.
Procedure after receipt of application (similar provisions in both the acts)	Section 32F	Section 127C Similar to Excise	
Powers of settlement commission (similar provisions in both the acts)	Sections 32G to 32L	Sections 127D to 127I Similar to Excise	
Order of settlement (similar provisions in both the acts)	Section 32M	Section 127J Similar to Excise	

Comparison on Authority for Advance Ruling

Factor of comparison	Excise	Customs	Service tax
Activity	Section 23A "Activity" means production or manufacture of goods. and includes any new business of Production or manufacture proposed to be undertaken by the existing producer or manufacturer	Section 28E "Activity" means Import or Export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter	Section 96A "Activity" not defined, it usually means providing of service.
Applicant Similar provisions	i. Nonresident setup Jv with resident/non resident ii. Resident setup Jv with Nonresident iii. Indian subsidiary of foreign holding iv. Company v. Indian public sector company vi. Private limited Co.	Similar	Similar

Factor of comparison	Excise	Customs	Service tax
	vii. Resident firm, LLP, Proprietor		
Application for Advance Ruling	Section 23C Eligible issues on which Advance Ruling can be sought: a) Valuation of goods; b) Classification of goods; c) Applicability of Exemption notification; d) Applicability of Other Notifications; e) Admissibility of CENVAT Credit Of excise duty and service tax f) Determination of liability to pay ED	Section 28H Eligible issues on which Advance Ruling can be sought: (a) to (d) & (f) similar (e) not applicable Substitute Customs duty for excise duty/ Service tax for Service	Section 96C Eligible issues on which Advance Ruling can be sought: (a) to (f) similar Substitute service for goods/ Service tax for Service.
Procedure on receipt of application	Section 23D Similar	Section 28I Similar	Section 96D Similar
Applicability of Advance Ruling	Section 23E Similar	Section 28J Similar	Section 96E Similar
Advance Ruling to be void in certain circumstances	Section 23F Similar	Section 28K Similar	Section 96F Similar

Provisions of Central Excise Act, 1944 applicable to Service Tax

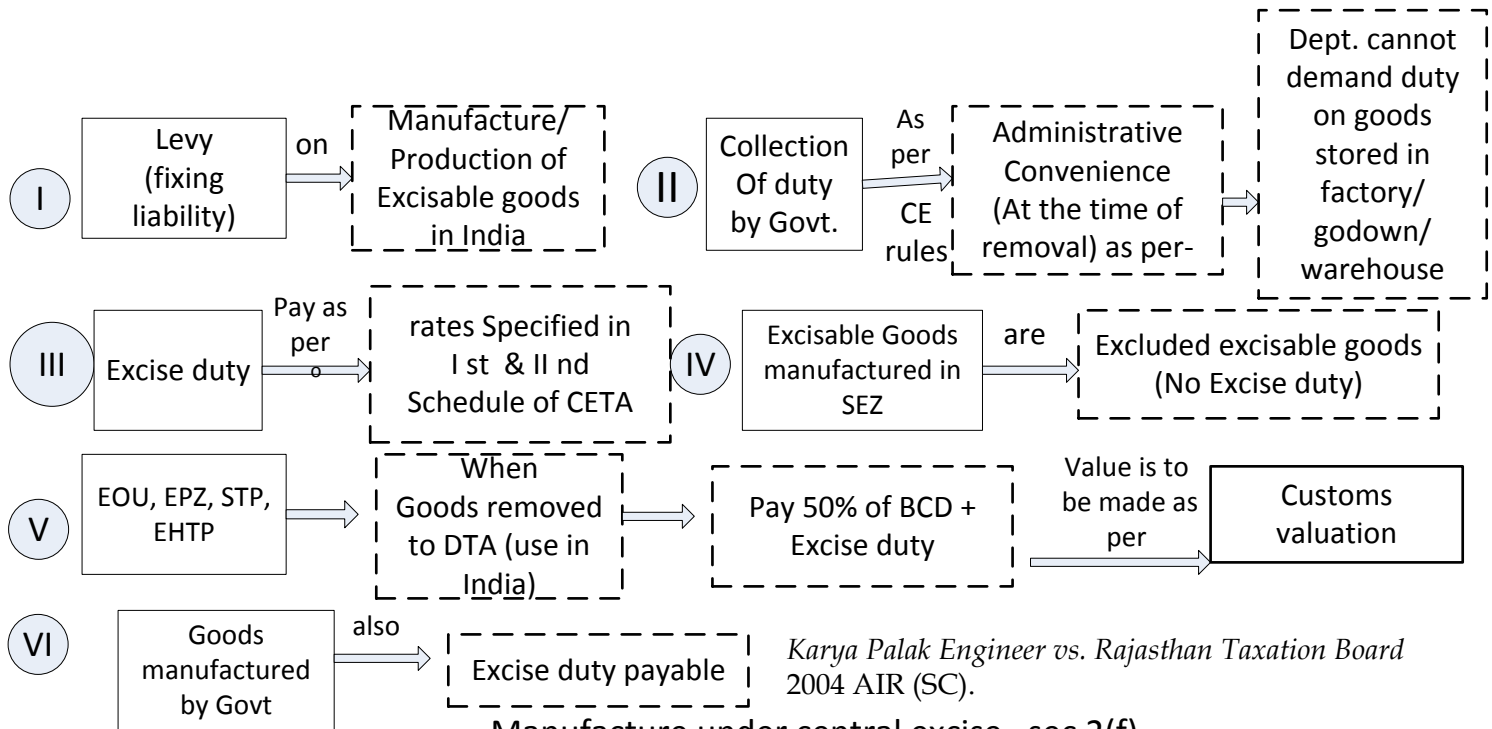
As per section 83 of the Finance Act, 1994, provisions of the following sections of the Central Excise Act, 1944 have been made applicable to service tax:

Excise section no.	Contents of the section	Parallel section no. in Customs
Sec 5A	Exemption notification scope of applicability from 06.08.2014	
9A(2)	Certain offences to be non-cognizable.	
9AA	Offences by companies.	
9B	Power of Court to publish name/ place of business, etc., of persons convicted	9B

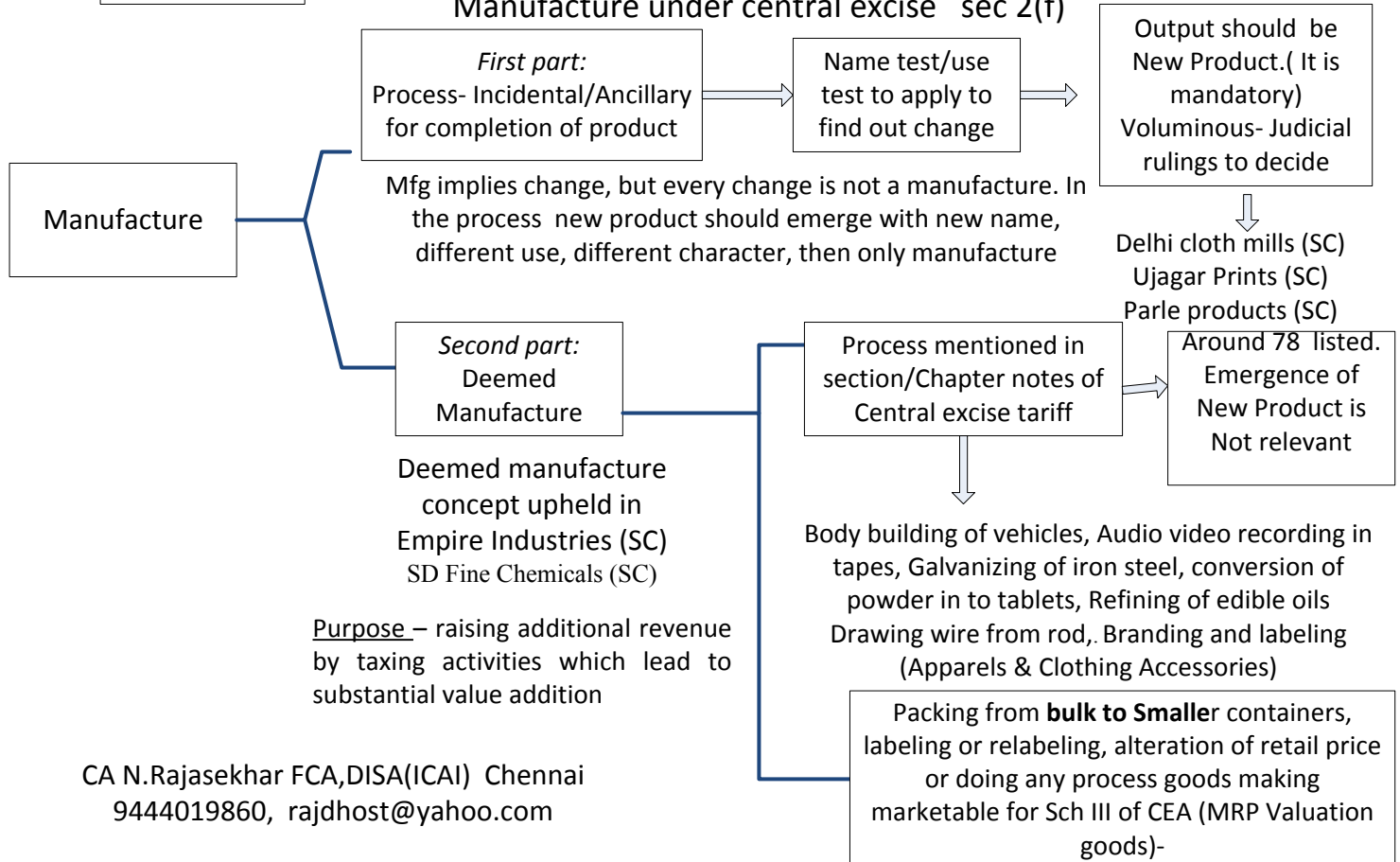
Excise section no.	Contents of the section	Parallel section no. in Customs
9C	Presumption of culpable mental state	138A
9D	Relevancy of statements under certain circumstances	138B
9E	Application of section 562 of the Code of Criminal Procedure, 1898	9E
11B	Claim for refund of duty	27
11BB	Interest on delayed refunds	27A
11C	Power not to recover duty of excise not levied or short levied as a result of general practice	28A
12	Application of the provisions of Act No. 52 of 1962 to Central Excise Duties	N.A.
12A	Price of goods to indicate the amount of duty paid thereon	28C
12B	Presumption that the incidence of duty has been passed on to the buyer	28D
12C	Consumer Welfare Fund	2(21A) adopting definition in CE
12D	Utilisation of the Fund	N.A.
12E	Powers of Central Excise Officers	5
14	Power to summon persons to give evidence and produce documents in inquiries under this Act	108
15	Officers required to assist Central Excise Officers	151
15 A and 15 B	Annual return with specific information and penalty from 06.08.2014	
31,32, 32A to 32P	Settlement commission provisions	
33A	Adjudication procedure	122A
35F	Deposit, pending appeals, of duty demanded or penalty levied	129E
35FF	Interest on refund of pre-deposit if delayed beyond three months [section inserted vide Finance Act, 2008]	129EE
35G	Appeal to High Court	130
35H	Application to High Court	130A
35I	Power of High Court or Supreme Court to require statement to be amended	130B
35J	Case before High Court to be heard by not less than two judges	130C
35K	Decision of High Court or Supreme Court on the case stated	130D
35L	Appeal to the Supreme Court	130E
35M	Hearing before Supreme Court	130F
35N	Sums due to be paid notwithstanding reference, etc.	131
35O	Exclusion of time taken for copy	131A
35Q	Appearance by authorised representative	146A

Excise section no.	Contents of the section	Parallel section no. in Customs
35R	Appeal not to be filed in certain cases	35R
36	Definitions Appellate tribunal	131C
36A	Presumption as to documents in certain cases	139(i)
36B	Admissibility of micro-films, facsimile copies of documents and computer print outs as documents and as evidence	138C
37A	Delegation of Power	152
37B	Instructions to Central Excise Officers	151A
37C	Service of decisions, orders, summons, etc.	153
37D	Rounding off of duty, etc.	154A
38A	Savings clause – Amendments in law	159A
40	Protection of action taken under the Act	155

Excise Charging section. Sec. 3 of CEA



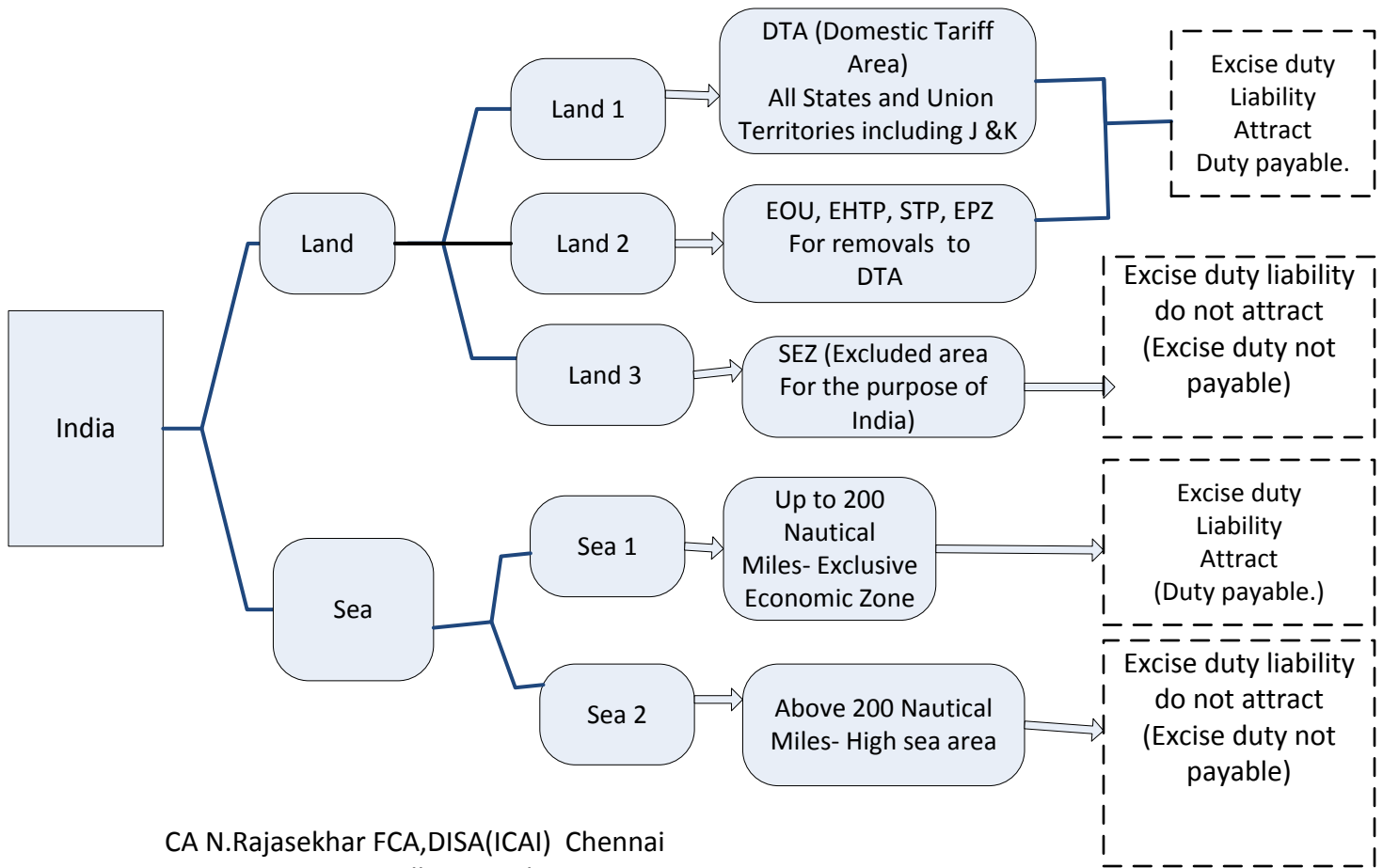
Manufacture under central excise sec 2(f)



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1. Value addition in the packing activity is mandatory to call as deemed manufacture and levy of ED.
2. If goods 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)

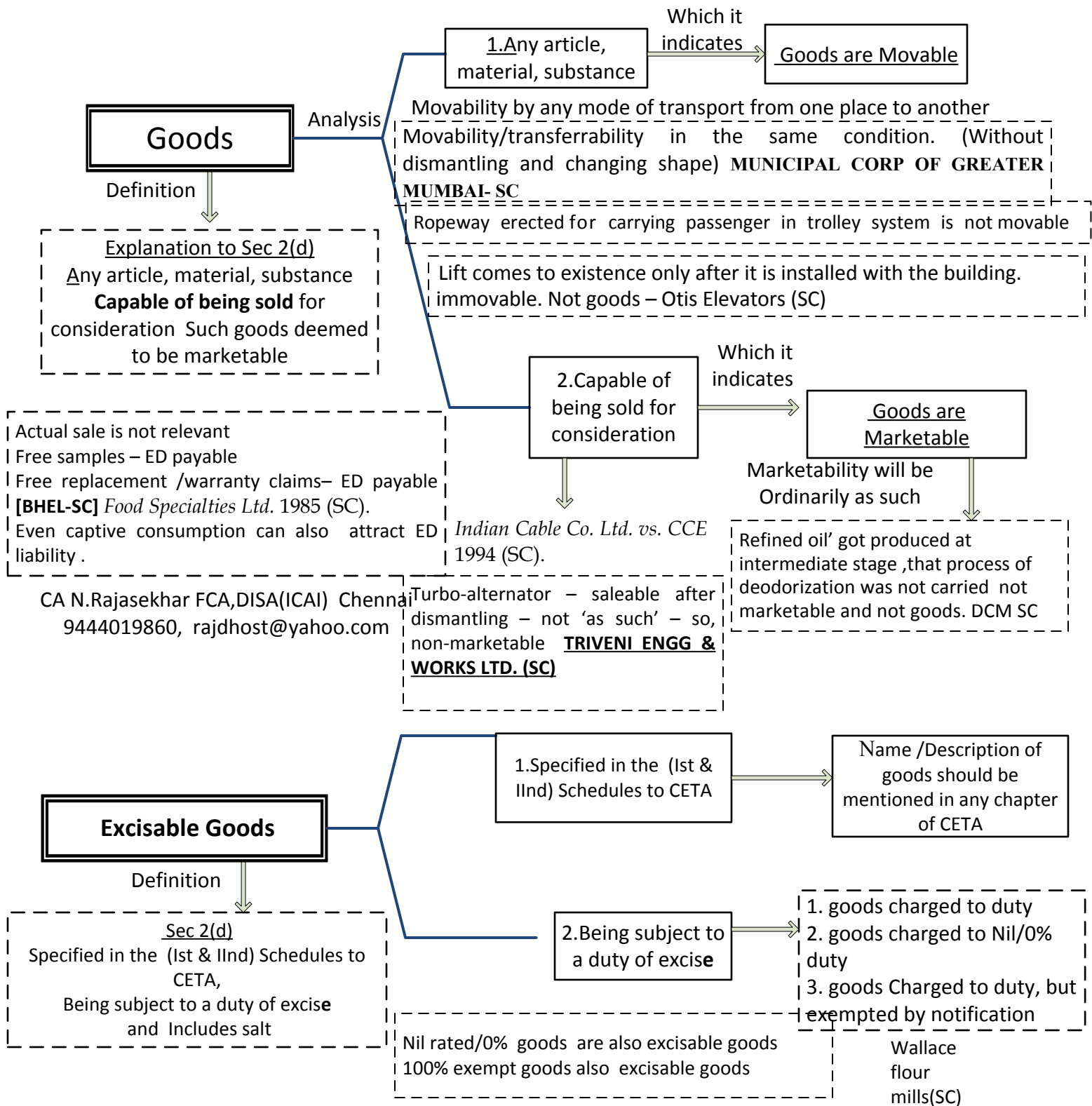
India for the purpose of Excise duty



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Goods and Excisable goods



Specification in Schedule is not determinative or conclusive as to marketability

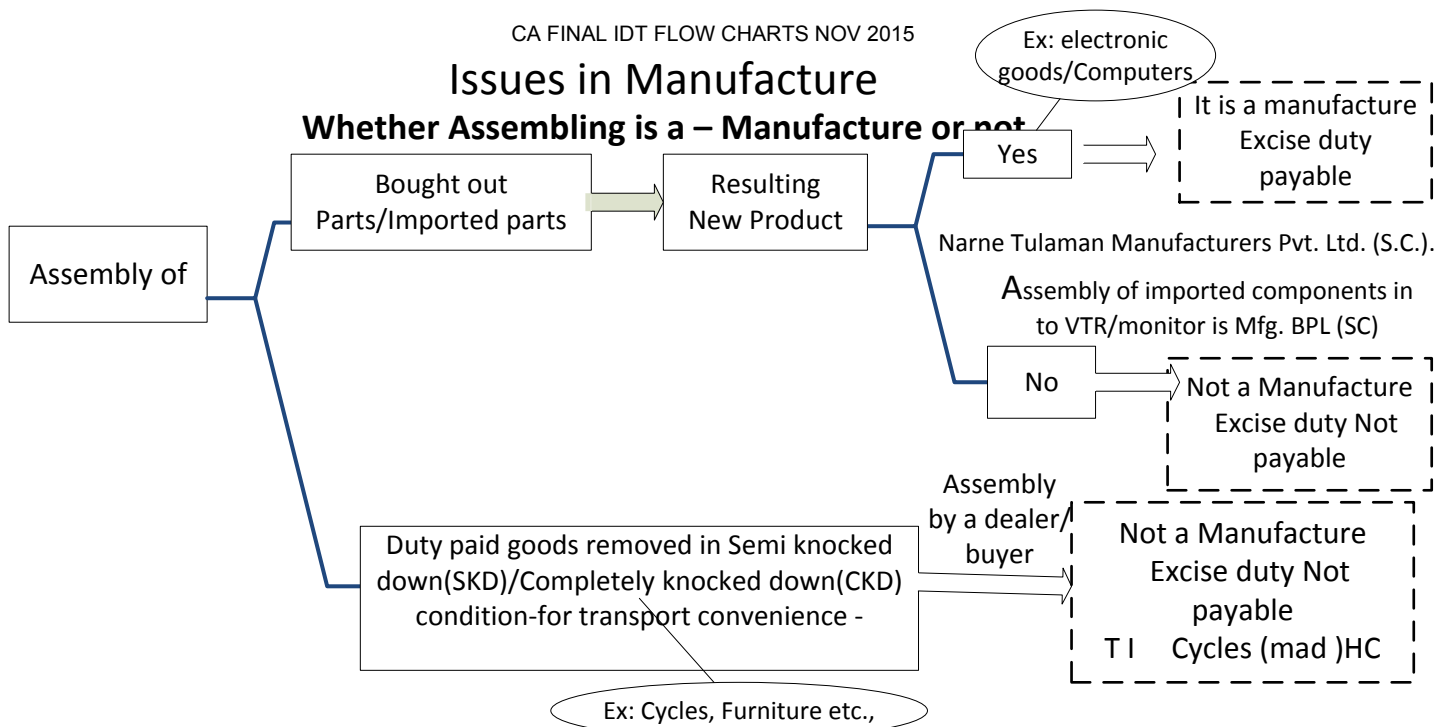
Item specified in Schedule – but not proved to be marketable --- not excisable – (as marketability is the decisive test)

Conclusion:

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

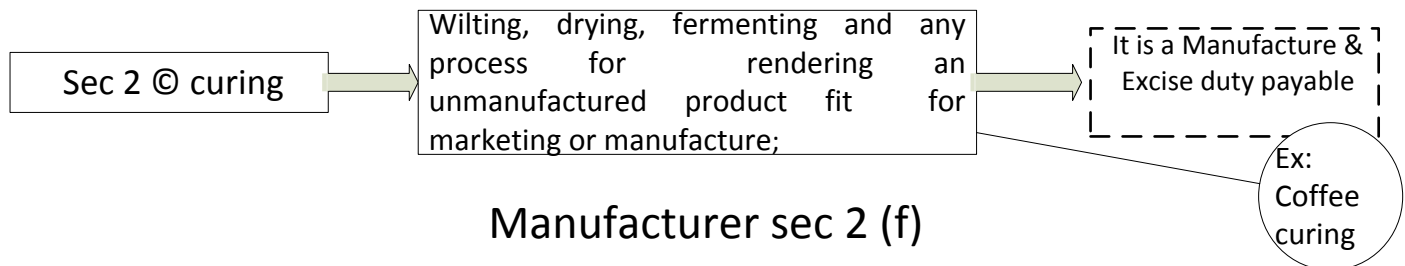
Issues in Manufacture

Whether Assembling is a – Manufacture or not

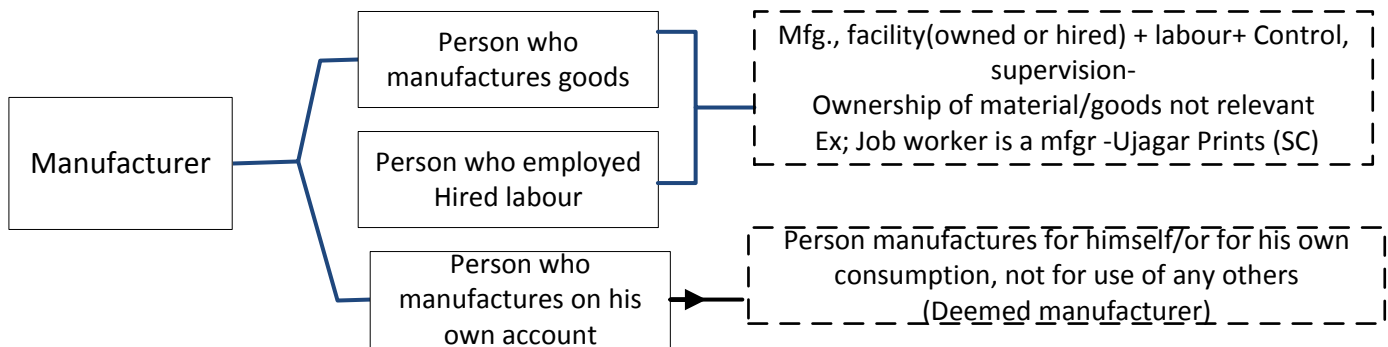


Assembly of components of air conditioner in car does not amount to manufacture - CBE&C Circular dt. 17-8-1999.

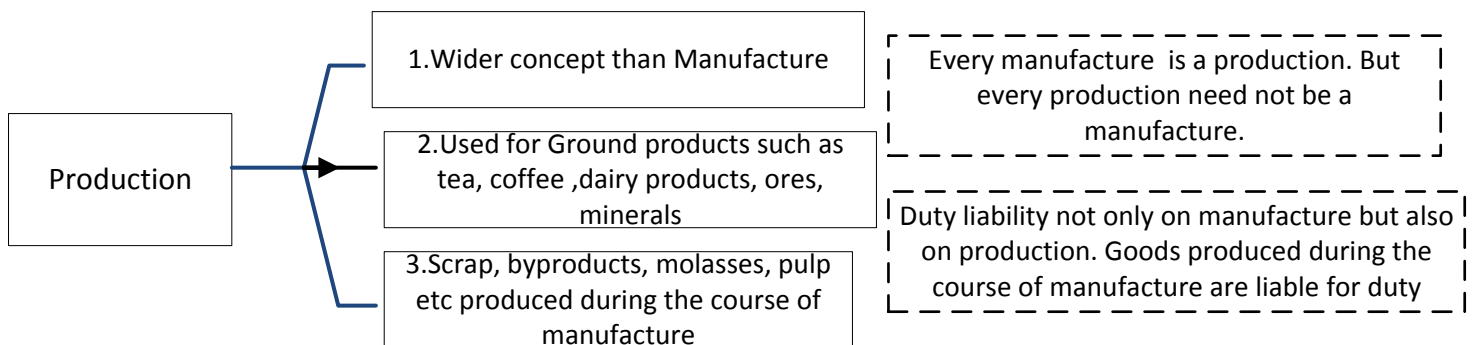
Whether Curing is a Manufacture or not



Manufacturer sec 2 (f)

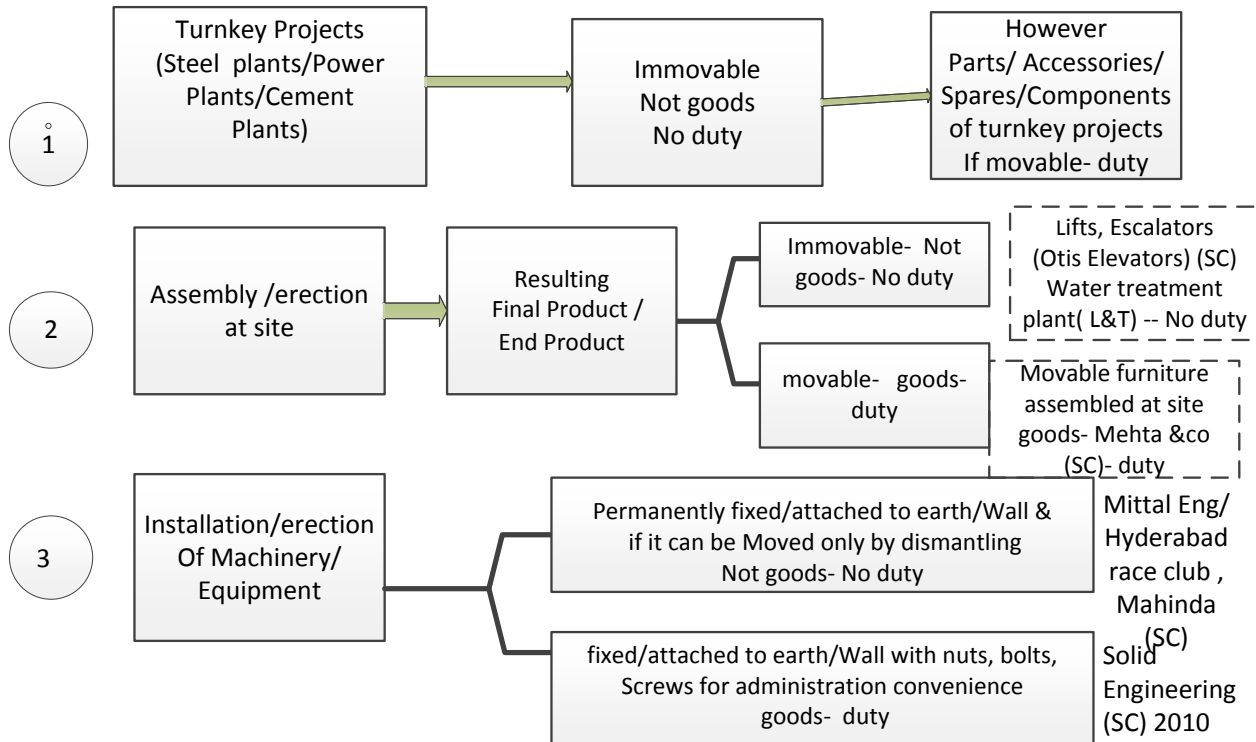


RM Supplier, brand name owner, loan licensee are not manufacturer
Cibatul Ltd. vs. UOI 1978 (SC)/Philips India Ltd. vs. UOI (All HC)Food Specialties Ltd. 1985 (SC)



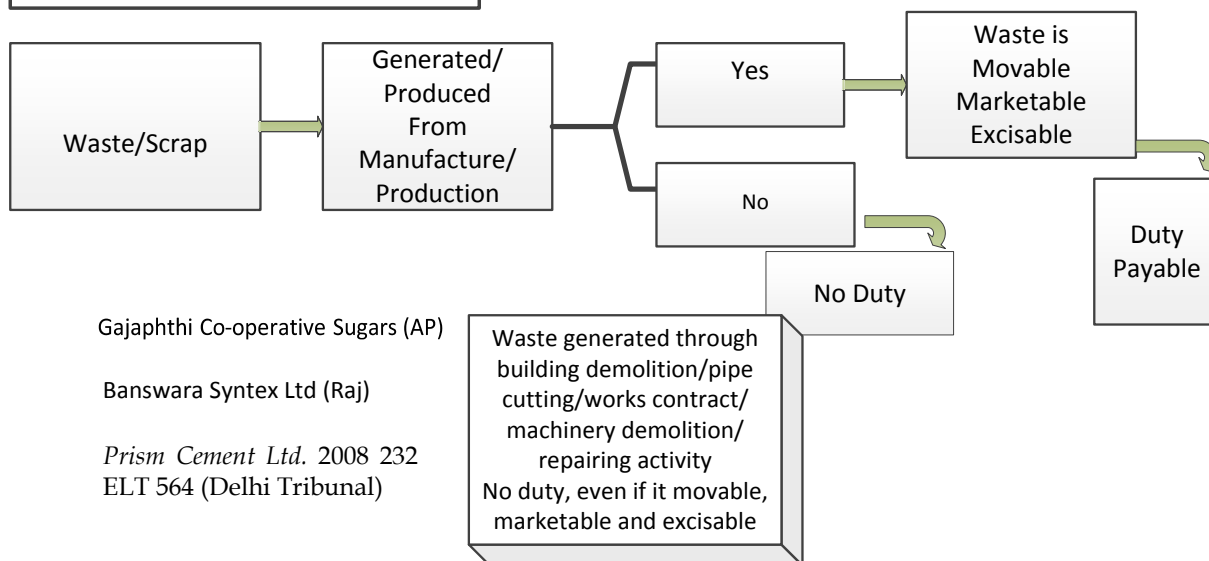
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Dutiability of site related activities/ Structures, erections, assembly at site



Khandelvalmetal Metal Engineering (SC)
Indian Aluminum Co (SC)

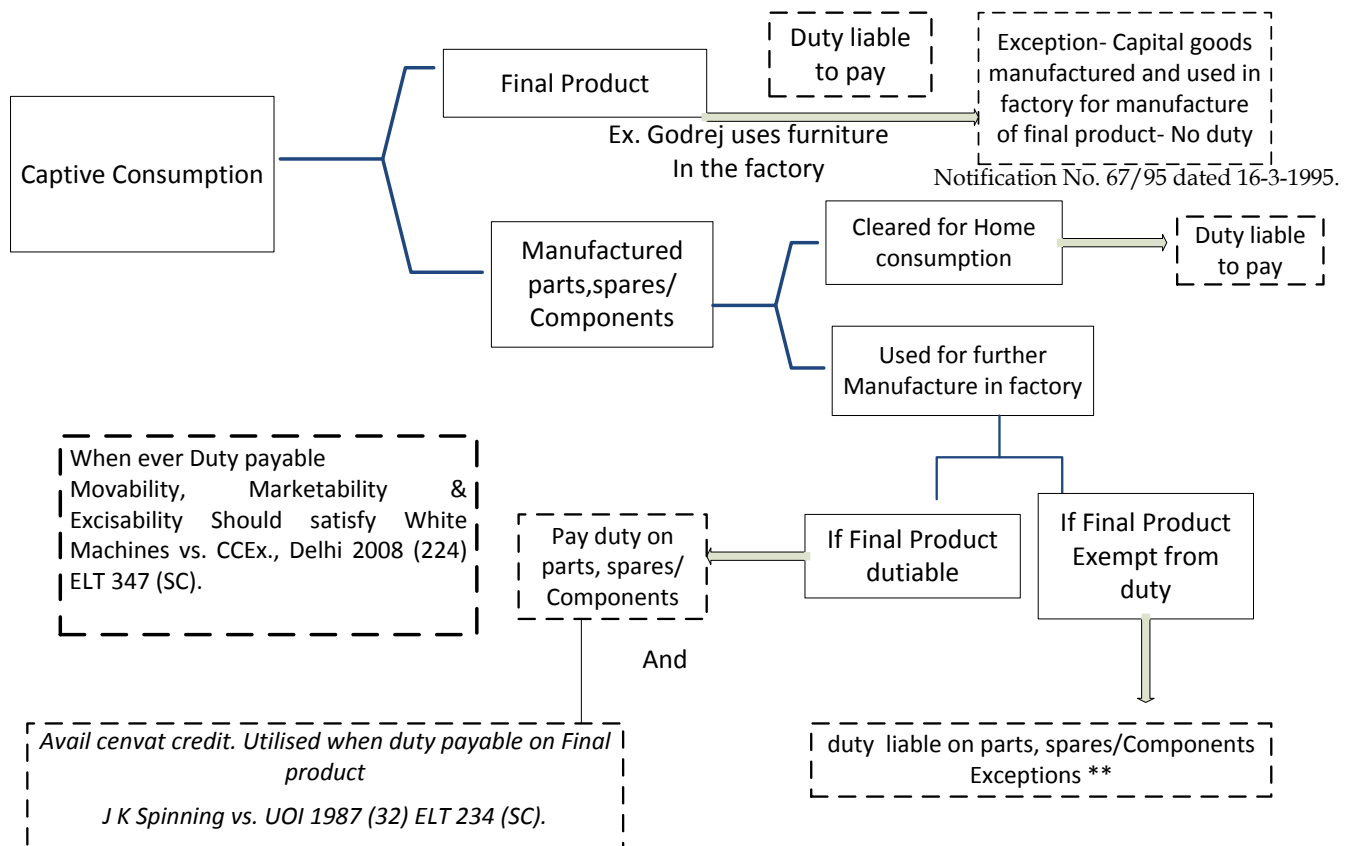
Dutiability of Waste/Scrap



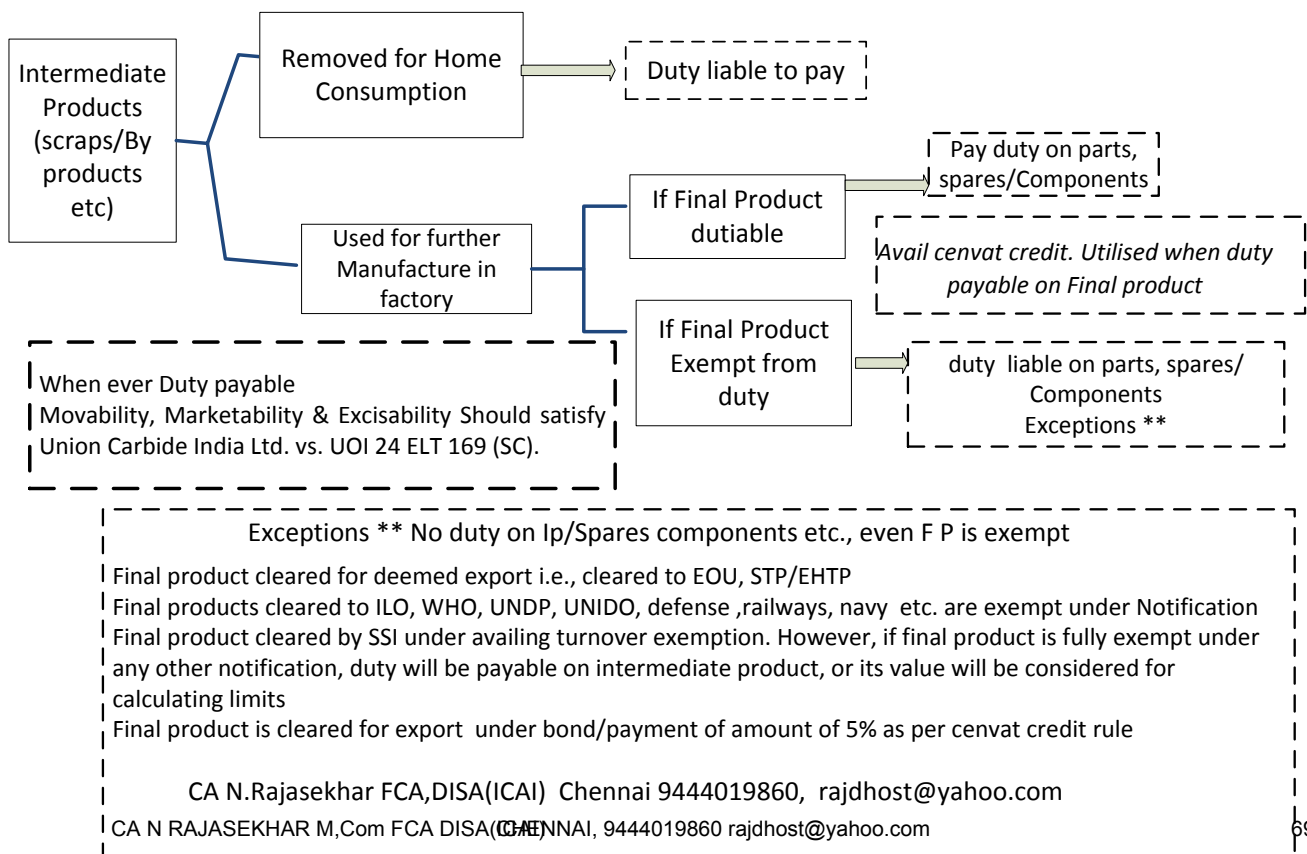
Gajaphthi Co-operative Sugars (AP)
Banswara Syntex Ltd (Raj)
Prism Cement Ltd. 2008 232
ELT 564 (Delhi Tribunal)

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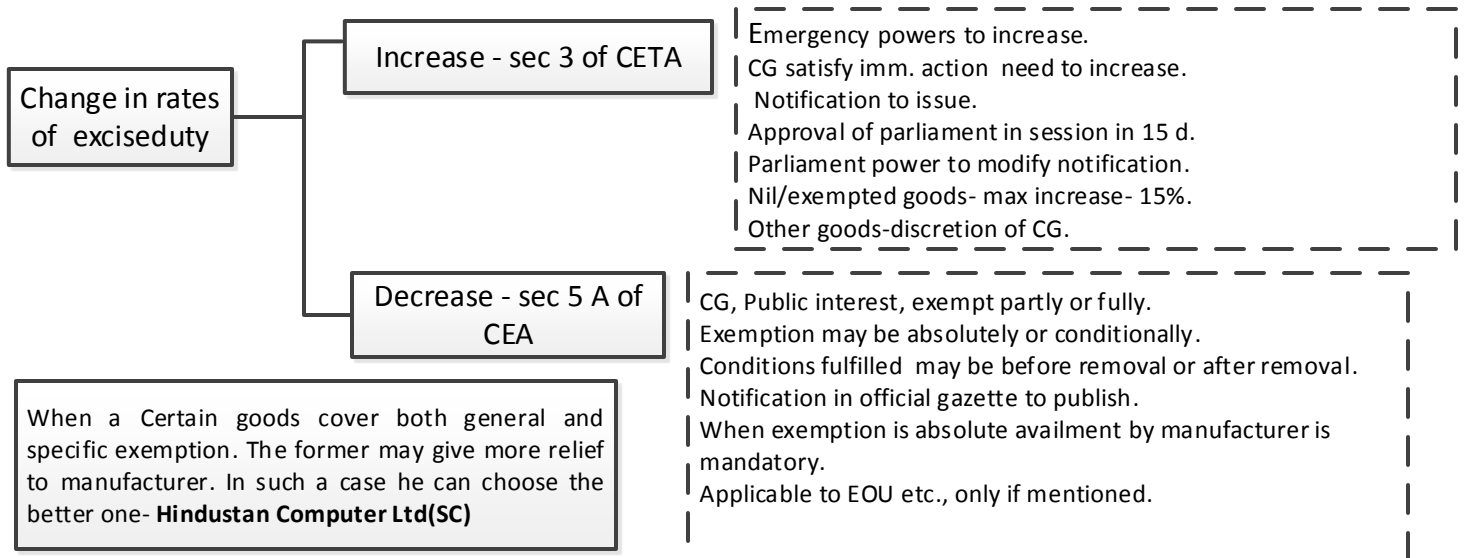
Duty liability on Captive Consumption



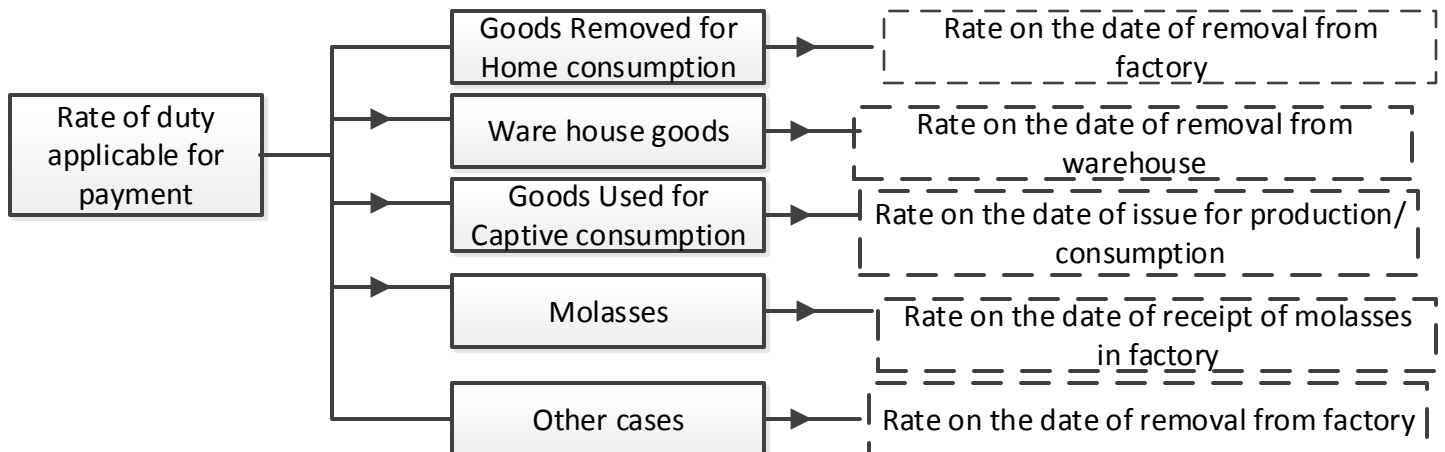
Duty liability on Intermediate products



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

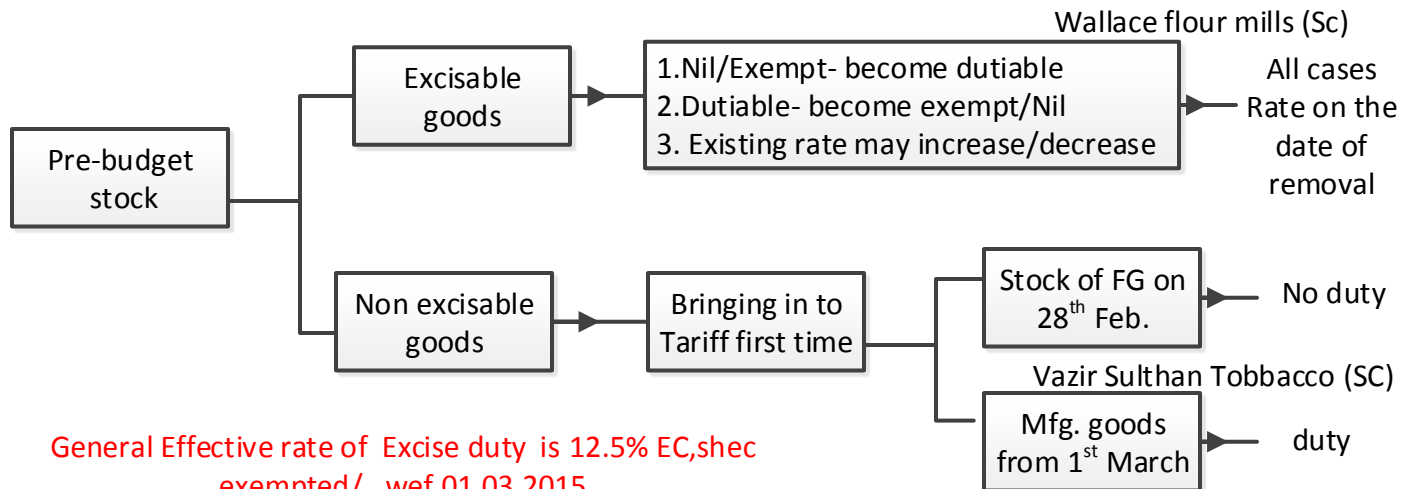


Rate of duty applicable for payment/ Taxable event- Rule 5



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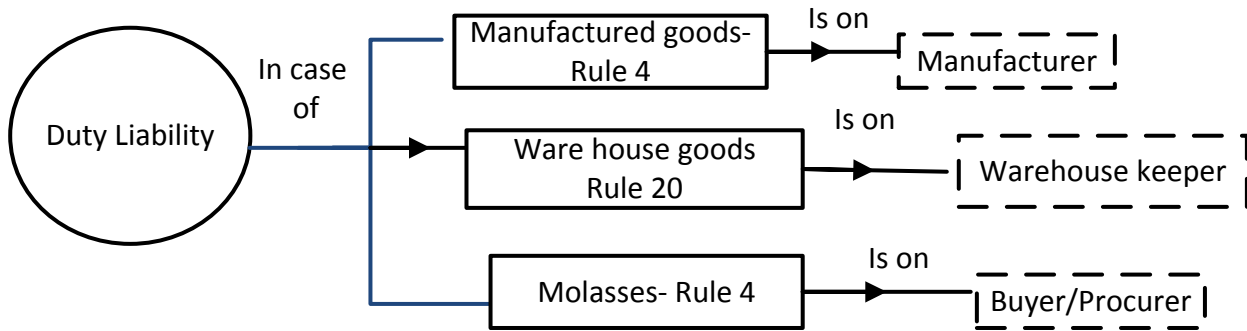
Rate of duty in case pre budget stock- Taxable event



General Effective rate of Excise duty is 12.5% EC,shc exempted/. wef 01.03.2015

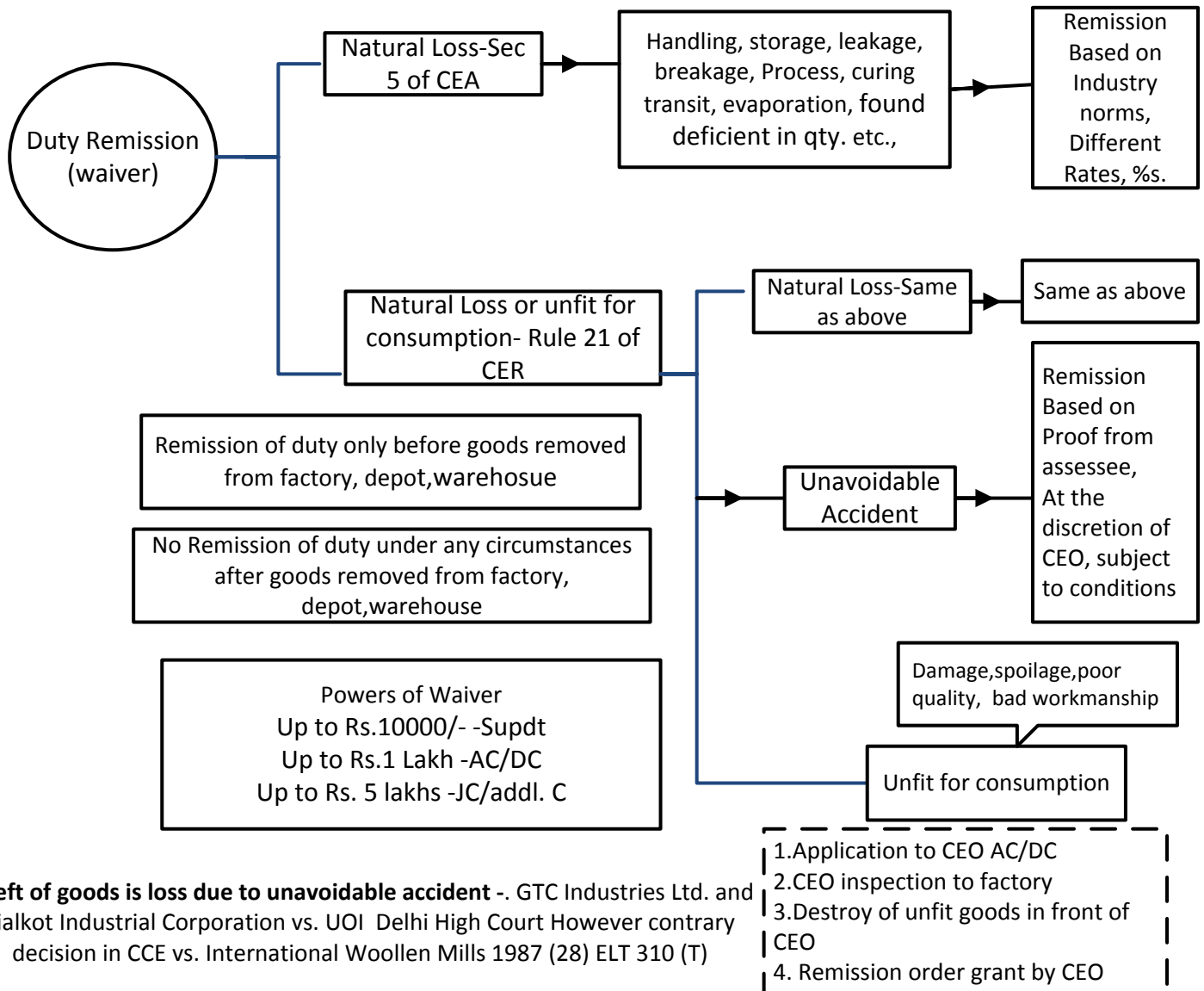
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Duty liability & duty Remission(waiver)



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 cum duty price (price inclusive of duty)- Maruti Udyog (SC)



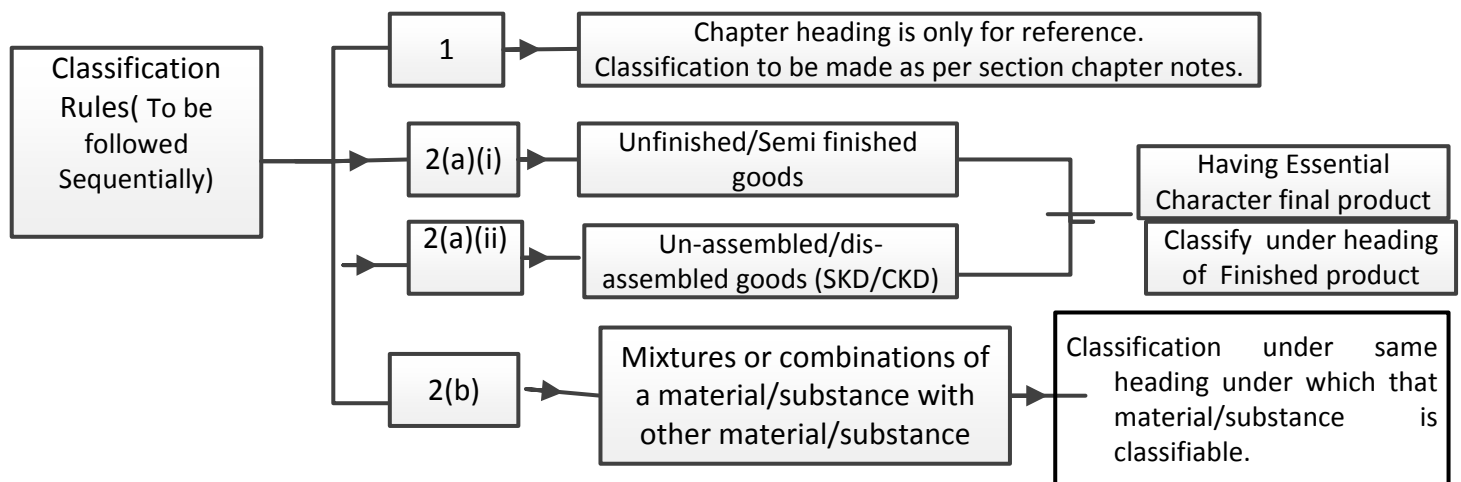
Theft of goods is loss due to unavoidable accident -. GTC Industries Ltd. and Sialkot Industrial Corporation vs. UOI Delhi High Court However contrary decision in CCE vs. International Woollen Mills 1987 (28) ELT 310 (T)

Insurance Compensation on loss of goods by fire etc: If any insurance compensation received towards duty paid amount, remission will be available on the remaining amount of duty if any not covered by insurance claim

Excise Classification 1

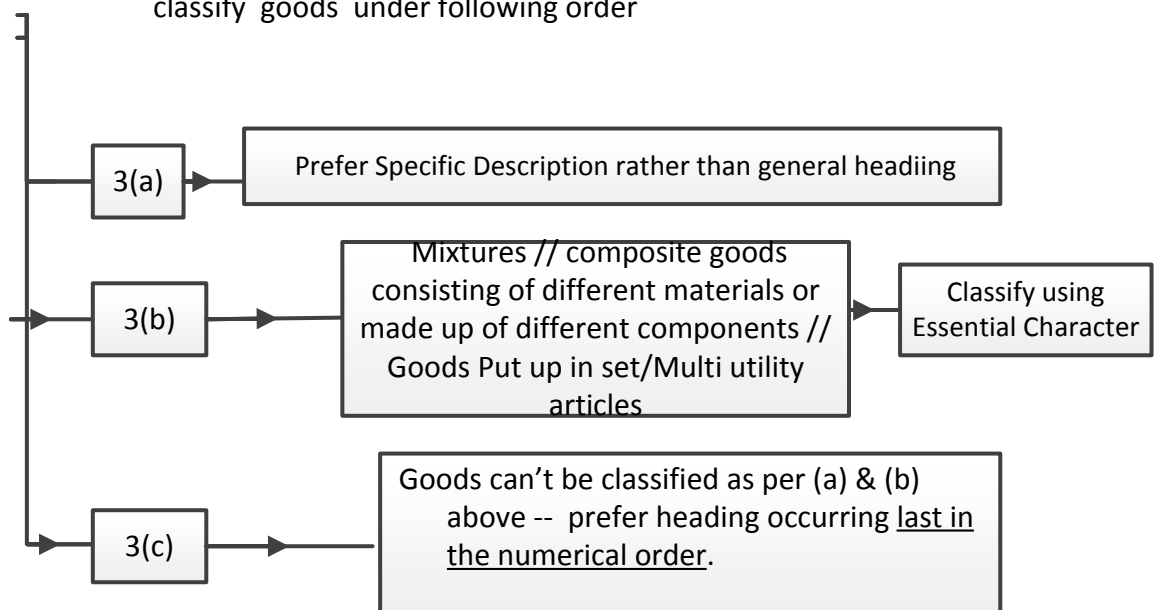
Classification implies, Grouping and subgrouping of goods under various chapter for rate of duty purpose.

Coverage- CETA- Schedule I – Basic excise duty & Schedule II- special excise duty

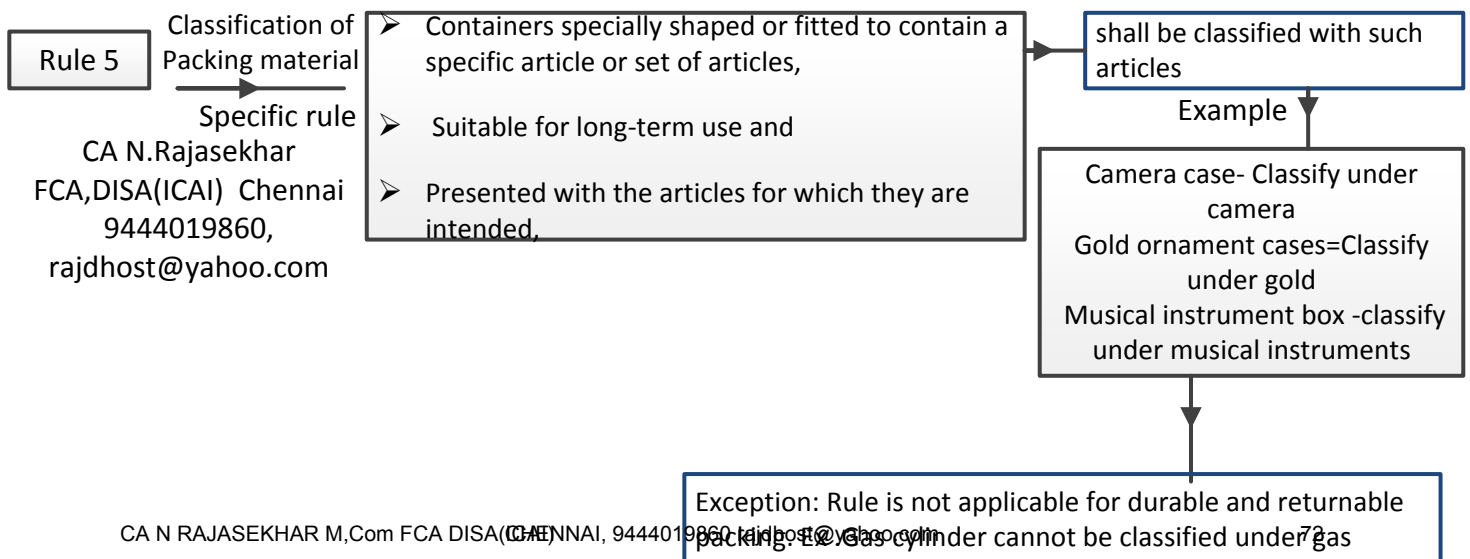
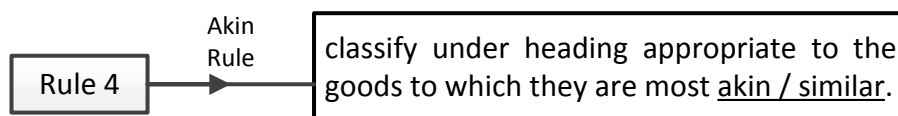


If goods are classifiable under two or more heading as per rule 2(b) or under any other reason classify goods under following order

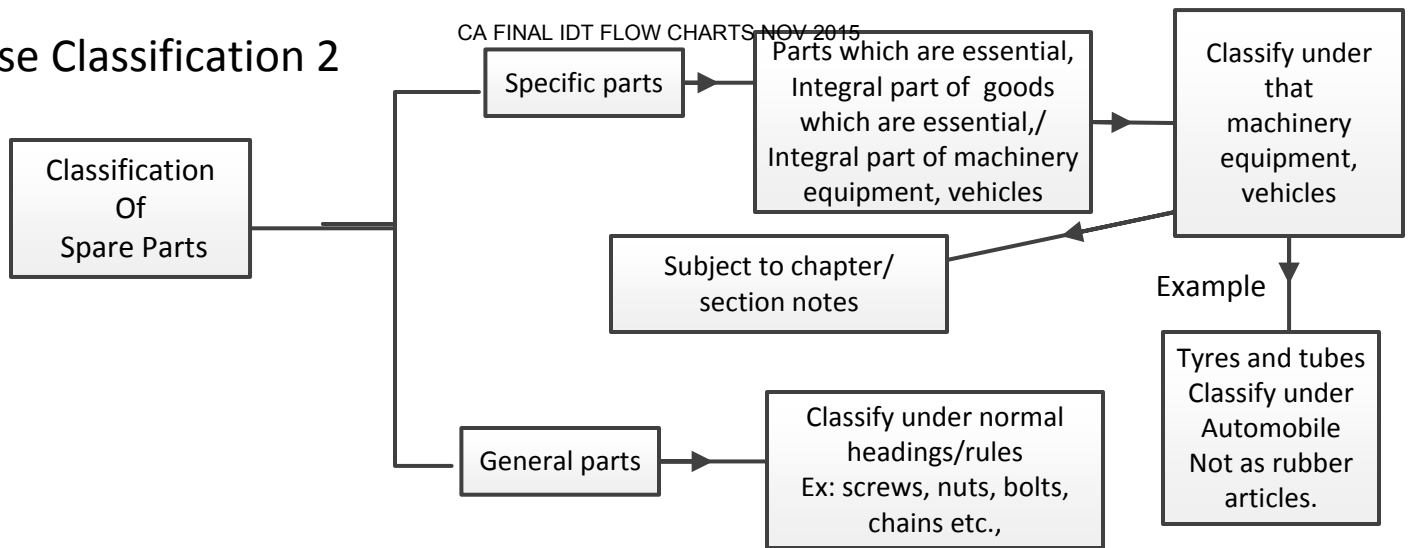
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Goods not classifiable as per Rule 1 to 3(c) above, Classify under rule 4



Excise Classification 2



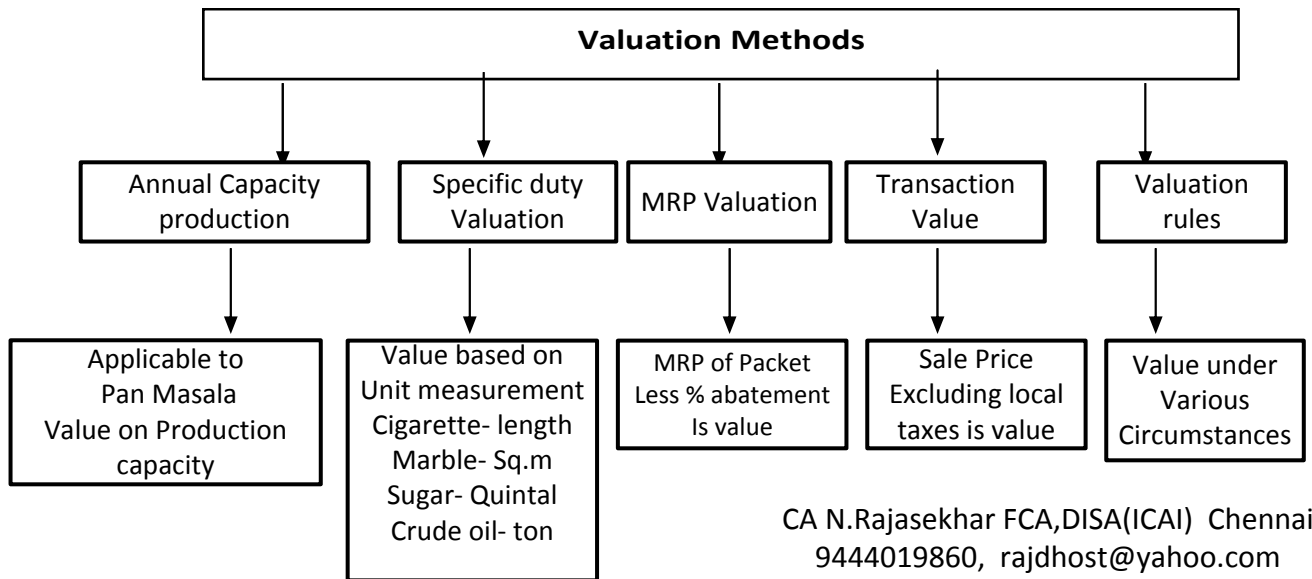
Non Statutory Classification rule

Trade parlance Theory/Common Man theory of classification

Applicable only when classification is not possible under rule 1 to 5
 Words used in CETA but not defined separately , to be understood according to the common commercial understanding .
 The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification - *Atul Glass Industries (P.) Ltd. vs. CCE (1986) (SC)*.
 Classification has to be made based on customer use and identity of a product.

Example

- Lal Dant Manjan (Red Tooth Powder) cannot be classified as a Medicine. It is tooth powder only.
- Mineral Water cannot be classified as a beverage.
- Mirror cannot be classified as glass article. It is cosmetic item only.
- Plastic torch cannot be classified as plastic article.
- Windscreen cannot be classified as glass article. It is automobile part only.
- Prickly heat powder cannot be classified as toiletry preparations and should be classified as medicines

**Meaning of MRP:****MRP Valuation**

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

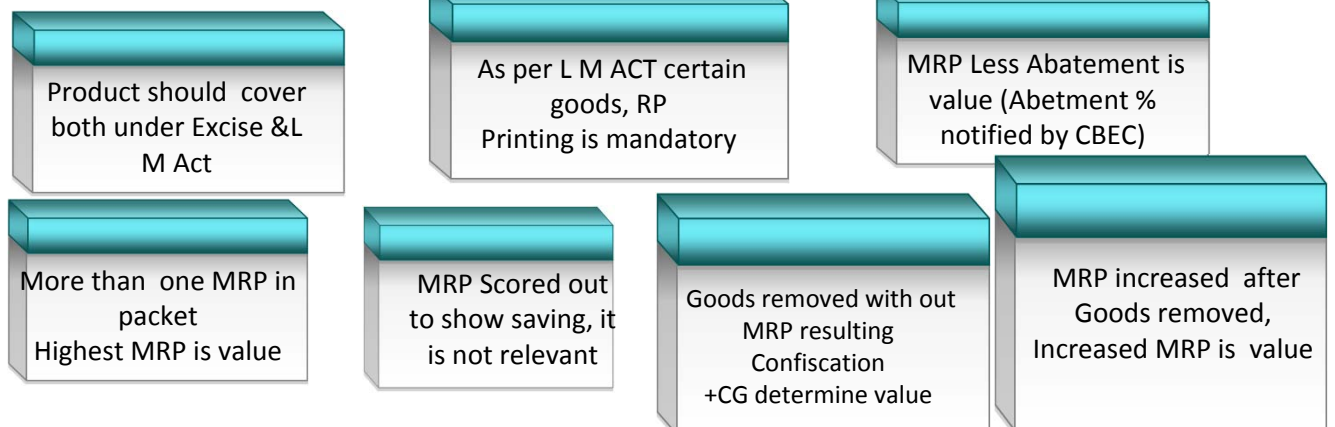
MRP includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding

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**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

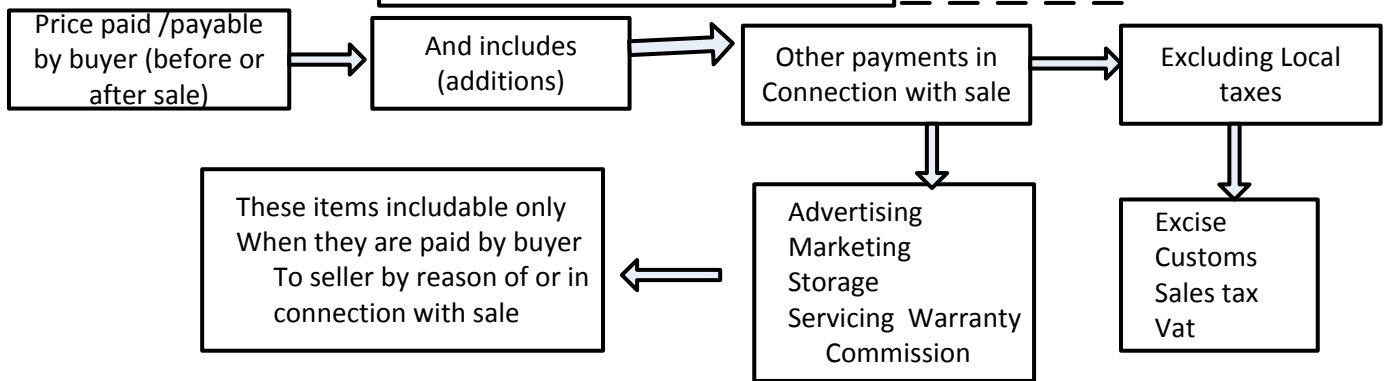
Carton boxes containing 500 Sachets of Shampoo cannot be considered as Multi-piece Package for retail sale. MRP Valuation not applicable - *Kraftech Products 2008 (224) ELT 504 (SC)*.

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)*,

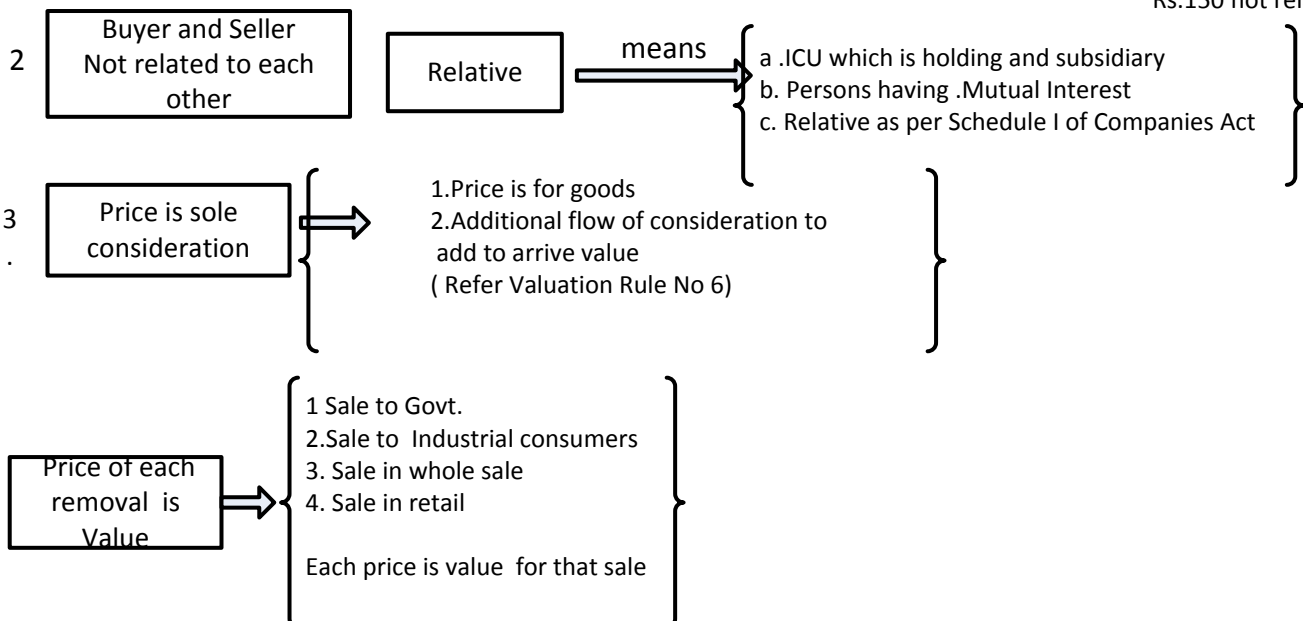
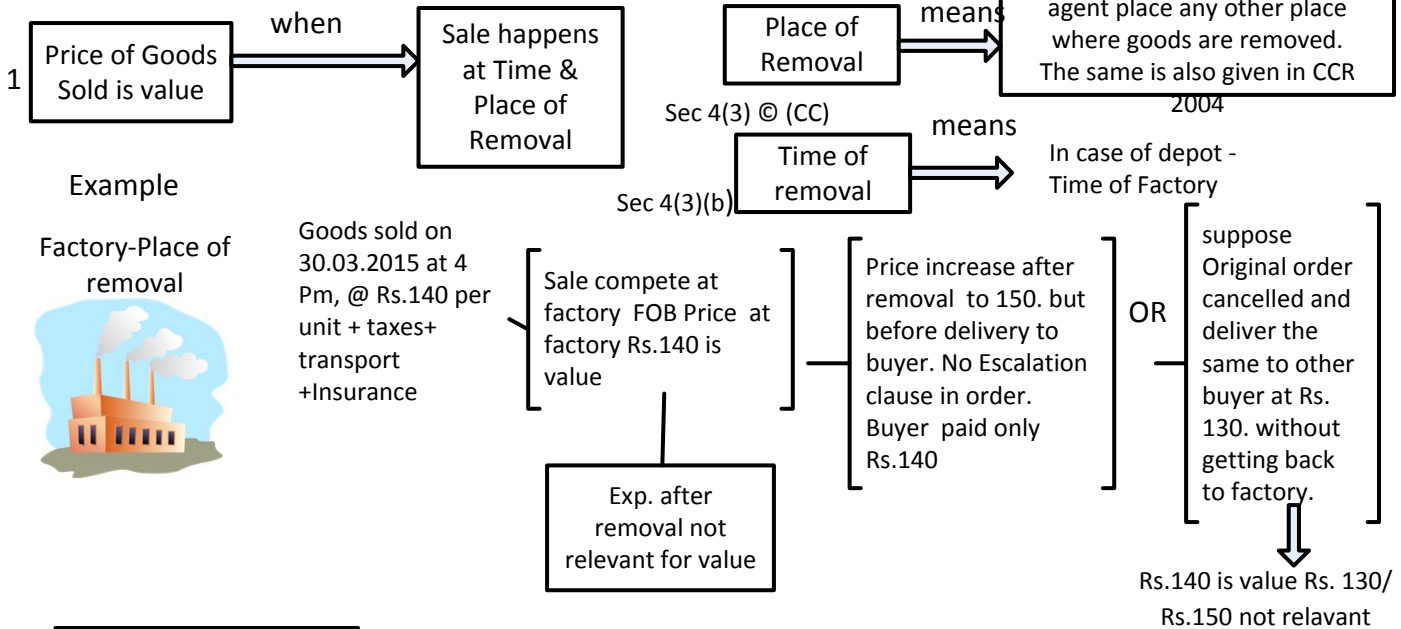
Meaning of transaction value | Sec 4(3)(d)



Transaction Value valuation Sec 4(1) (a)

Conditions

1. Price of the goods sold at the time and place of removal(Sale and delivery at the place of removal)
2. Buyer and Seller not related to each other
3. Price is a sole consideration for the sale



Inclusions and Exclusions in Valuation

Sec 4(3)(d) of CEA

Sale Price for goods	XXX
+ Addl. Recoveries	XXX
Less	
Sales Tax	(XX)
- Other Taxes	(XX)
- Excise Duty	(XX)
Transaction Value	XXXX

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 (Ex. Movable furniture assembled at site)
6. consultancy charges for Manufacturing
7. Design, drawing and Engineering of goods
8. Hire charges for D & R packing

Include all above only if they are not included in price

Exclusions in Value

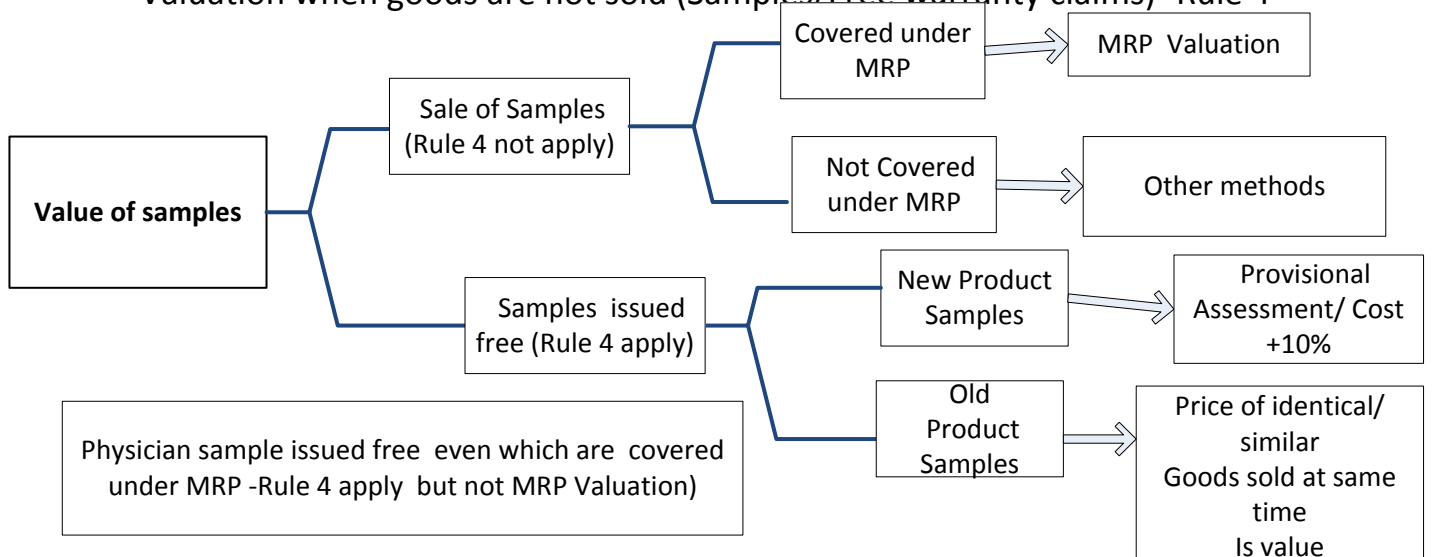
1. Installation& erection
2. All discounts if pass to buyer.
3. Prorate cost of durable packing if inbuilt in price
4. Notional Int. on deposits. if not affect price
5. Int., on receivables, bank charges
6. All Local taxes
7. Freight, insurance from place of removal to buyer place.
8. Advt, Sales promotion by buyer on his own
9. Subsidy received from Government(from buyer is includible)
10. Security deposit 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
For example (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



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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

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

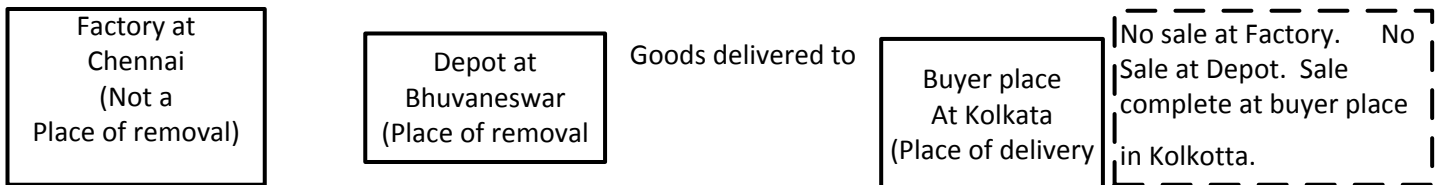


In this example, No sale at Factory. Sale will complete at buyer place, when buyer receives and acknowledges goods

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 (120-10)

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

Example 2

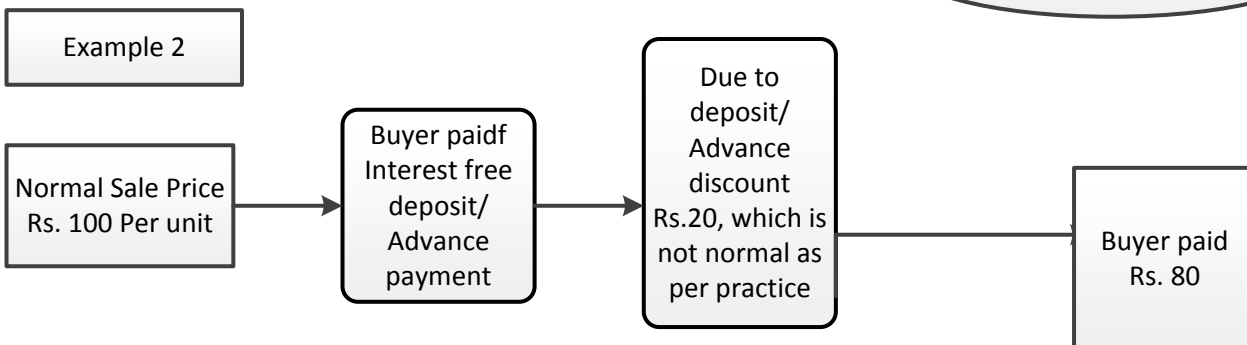
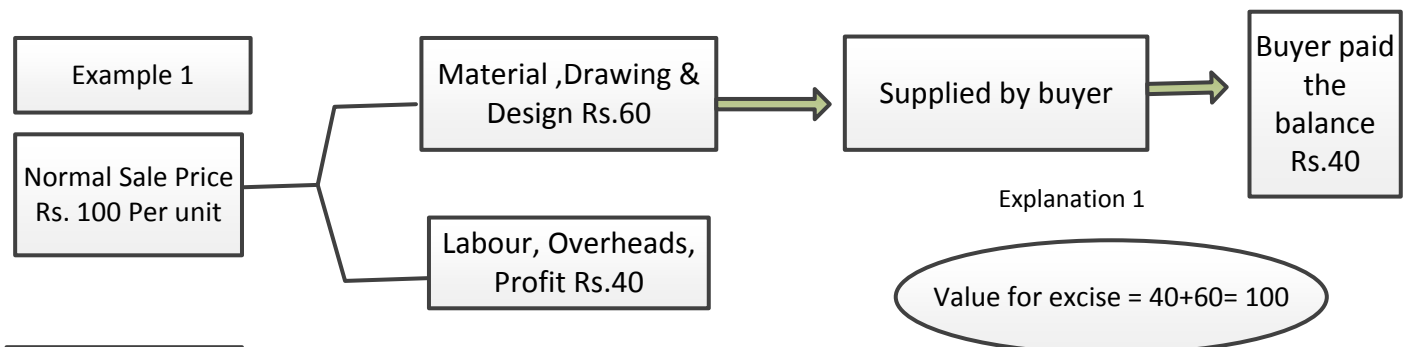


If, FO R price from Chennai to Kolkata is Rs. 200 per unit and freight from Chennai to Bhuvanewar is per unit Rs. 20, and freight from Bhuvanewar to Kolkotta is Rs. 10 Per unit Value per unit will be Rs. 190 (200-10)

No deduction for freight from Chennai to bhuvanewar 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

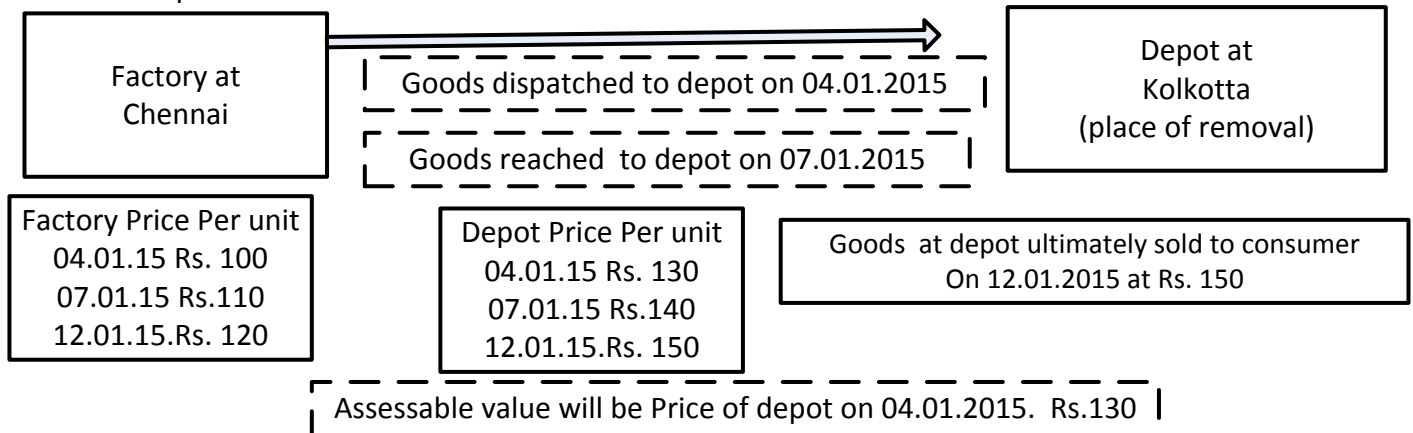


When the goods are sold at less than the manufacturing cost and if no additional consideration is passed from buyer to seller, it is considered as transaction value *Notification No.20/2014 CE (NT) dated 11.07.2014 ,This amendement makes fiat india case is ineffective.*

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

Example



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

When part of the goods are consumed for captive consumption and part are sold, Part of the goods are to valued as per rule 8 and remaining part should be valued on transaction value

Ignore Selling and distribution costs

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

Applicable only

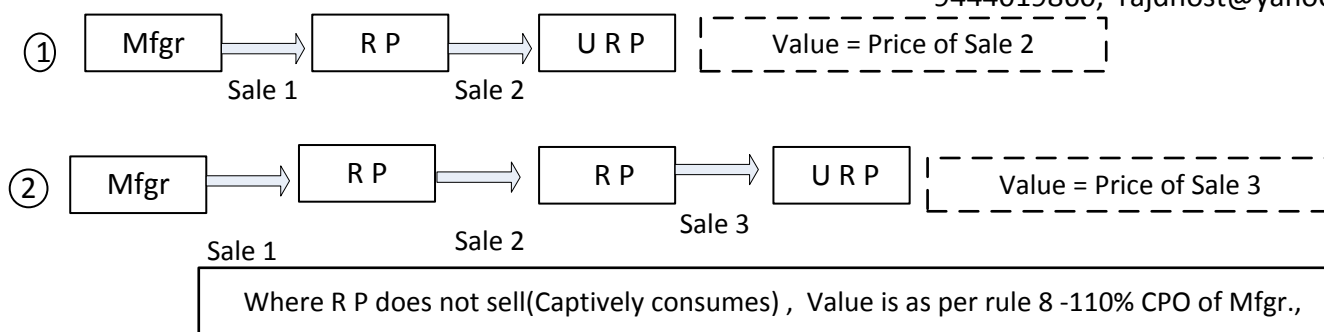
1. When all goods or part of the goods are sold to Relative person or through relative person

Not Applicable

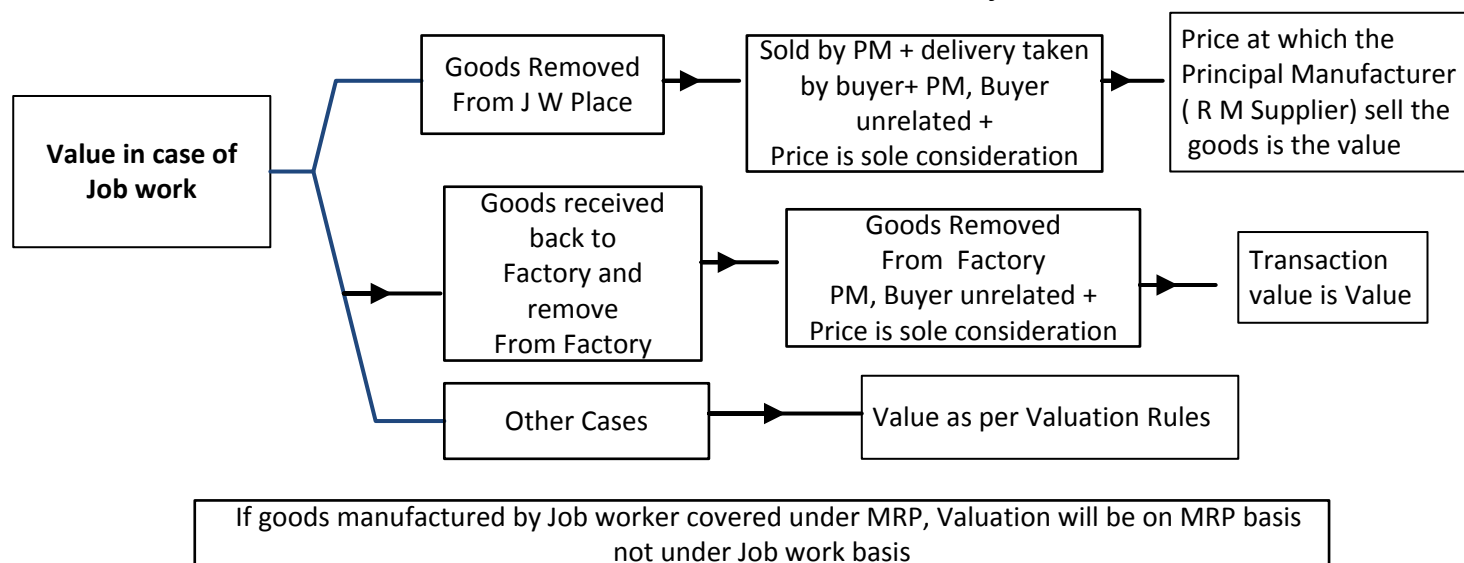
1. When the price at which goods sold relative person at normal price which is similar to unrelated person

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

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



When part of the goods are sold to relative/through ICU and part are sold to unrelative person, Part of the goods are to valued as per rule 9/10 and remaining part should be valued on transaction value

Valuation Rule No 11. best of judgment method

Applicable

1. When all other rules not applicable

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

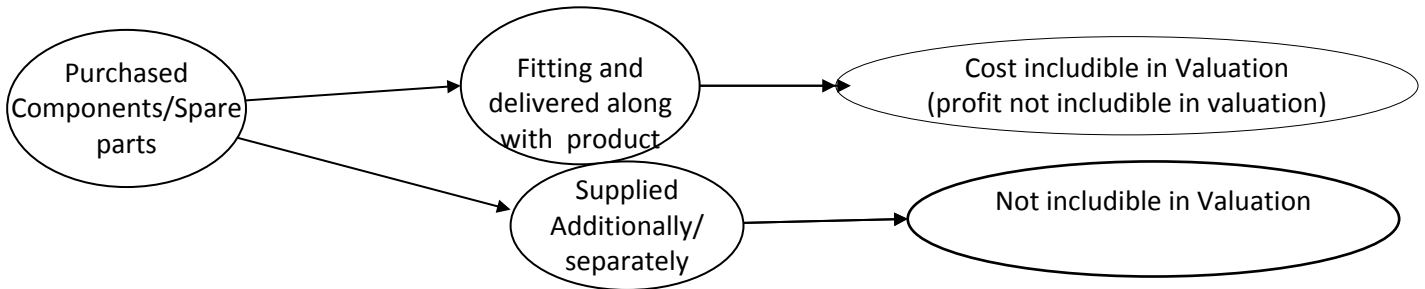
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Valuation Miscellaneous Topics

Valuation in case of computer
Acer India (SC)

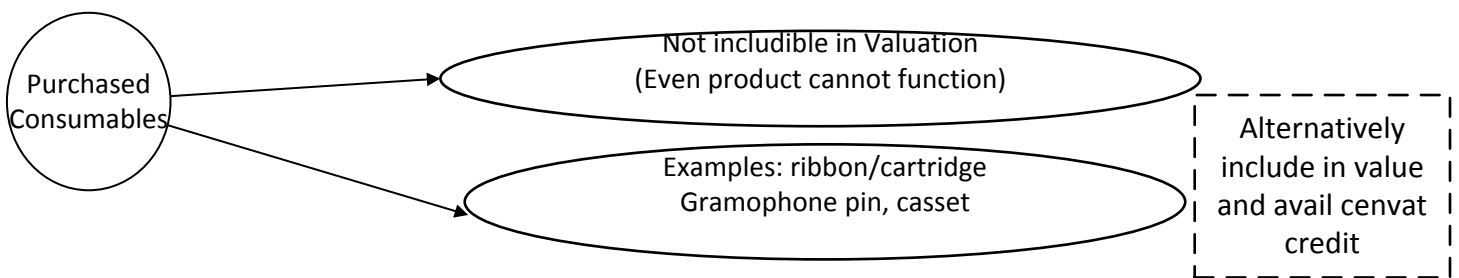
- Value of preloaded operational software not includible in valuation in case of computer
- Not includible even computer cannot function without software.
- Software is not a part of Computer
- Computer is complete without software. CCE Vs Acer India Ltd (2004) (SC) 172ELT289

Valuation in case of Purchased parts and components



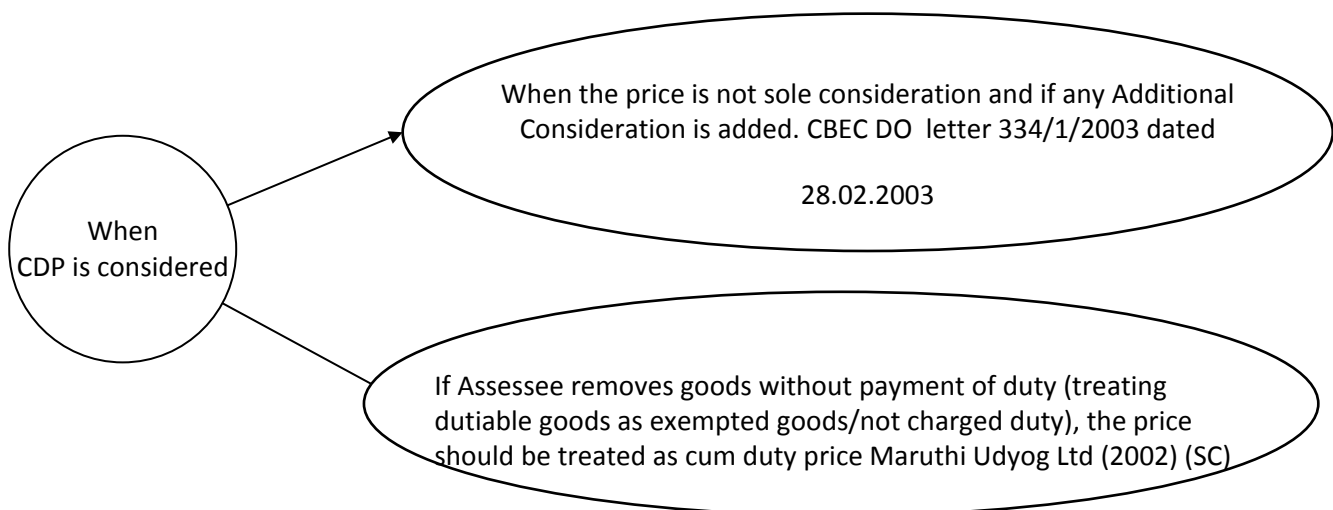
Valuation in case of
Consumables

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Accessories Which are optional not includible in Valuation

Cum duty Price (Price inclusive of duty)

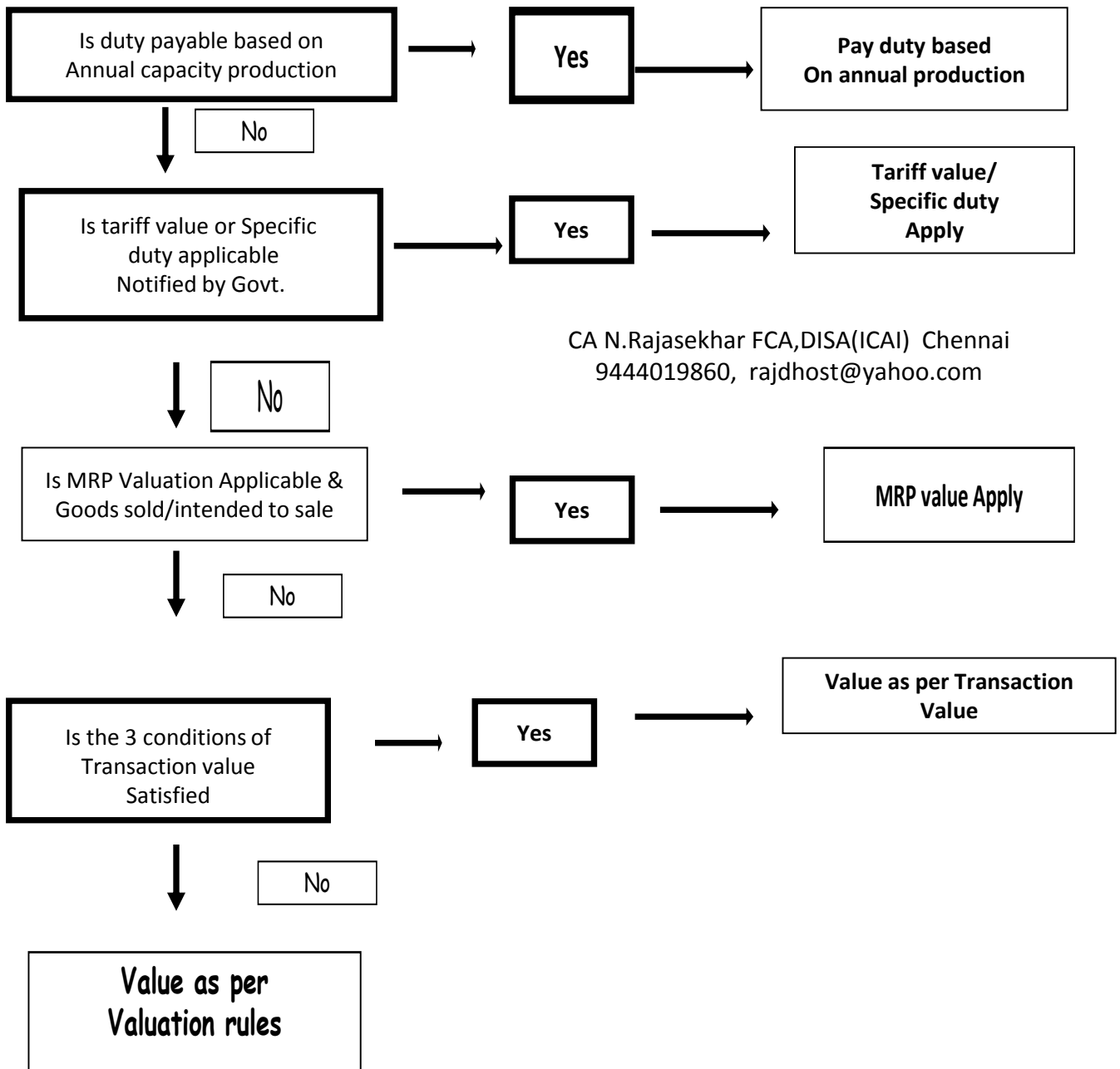


Av in case of CDP = $CDP \times 100 / 100 + \text{rate of duty incl. ec}$

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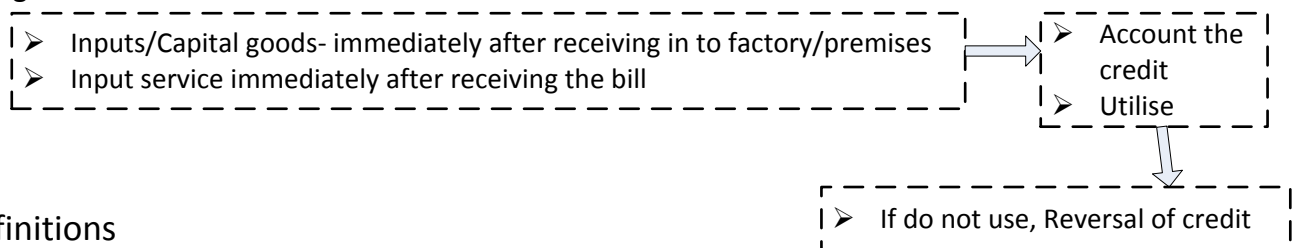
Valuation Application/Order to follow



CENVAT Credit System

- Coverage CENVAT Credit Rules, 2004
- Rules provide integration of central excise and service tax.
- Credit can be taken by both manufacturer and service provider.
- Manufacturer can take credit for payment of excise duty and service tax.
- Service provider can also take credit for payment of service tax and excise duty.
- Credit is available for duty paid on inputs, Capital goods and service tax paid on input services used for manufacturing final product/ providing output services.
- The input should be used with in factory directly or in relation to manufacture.
- No input credit is available if final product/output service is exempt from duty / service tax.
- CENVAT Credit Rules do not require input-output correlation to be established.
- Credit is available for specified duties.
- Credit of excise duty and/or service tax can be availed only on the basis of documents.
- Records need to be maintained and returns need to be furnished.

Timing of credit



Imp Definitions

Exempted goods means:

- Excisable goods which are fully exempted from duty;/NIL duty goods
- 1% duty goods as per notification No 1/2011 if benefit availed & .
- Goods at serial numbers 67 and 128 of Notification No. 12/2012 & 21/2012 (Bitumen, fertilisers not used as a fertilizer)-.

Exempted service means:

- Negative list of Services where no service tax payable;
- Taxable services wholly exempted from tax;
- Taxable services whose part of value is exempted (Abatement applicable services)
- Exempted service shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

Output service means:

Any service provided by a provider of service located in the taxable territory Output service shall not include a service,-

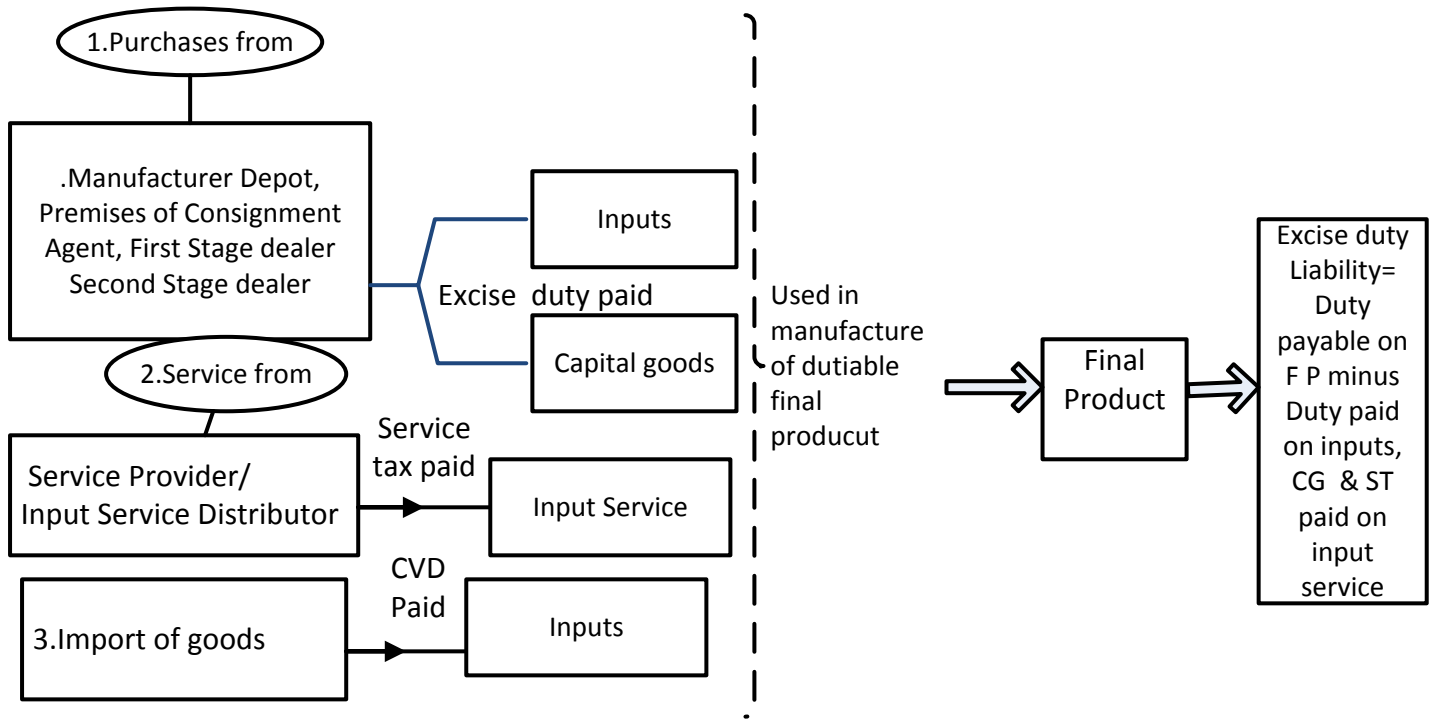
(i) Negative list of services specified in Sec 66D of Finance Act 1994

(ii) Where the whole of service tax is liable to be paid by the recipient of service.

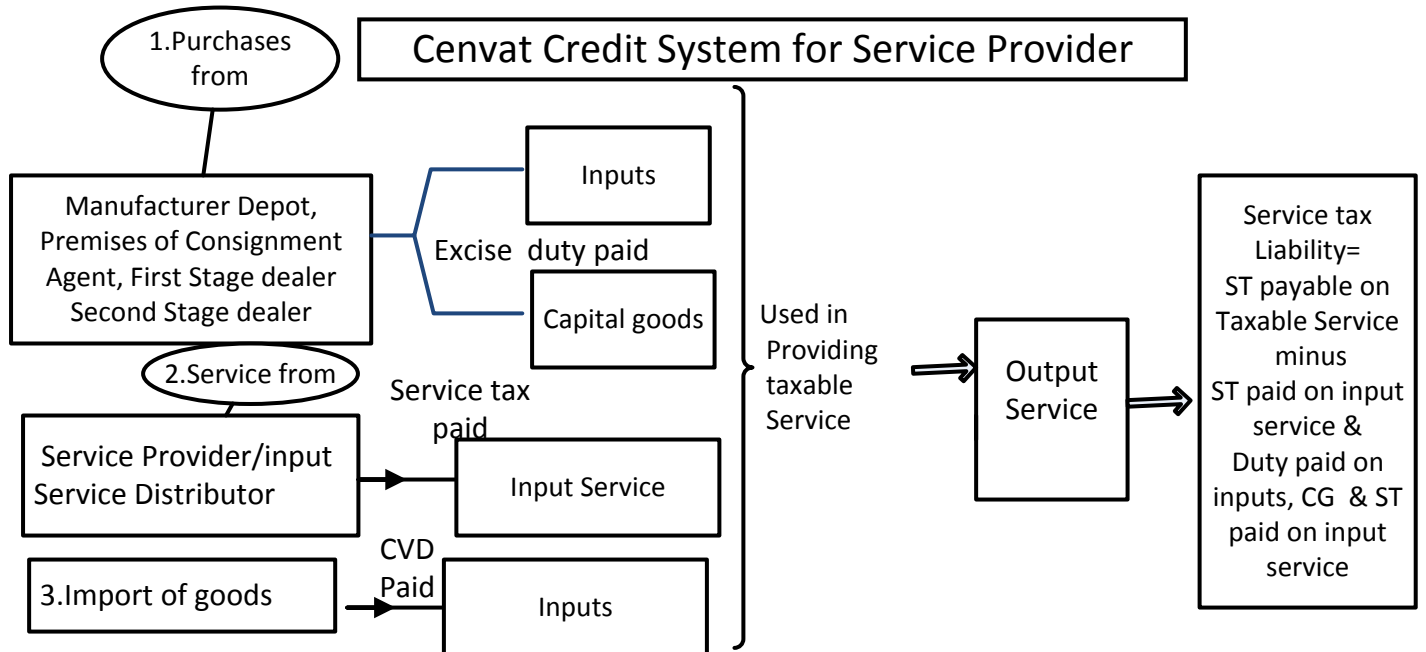
:

Place of removal-Definition same as given in transaction value Sec 4

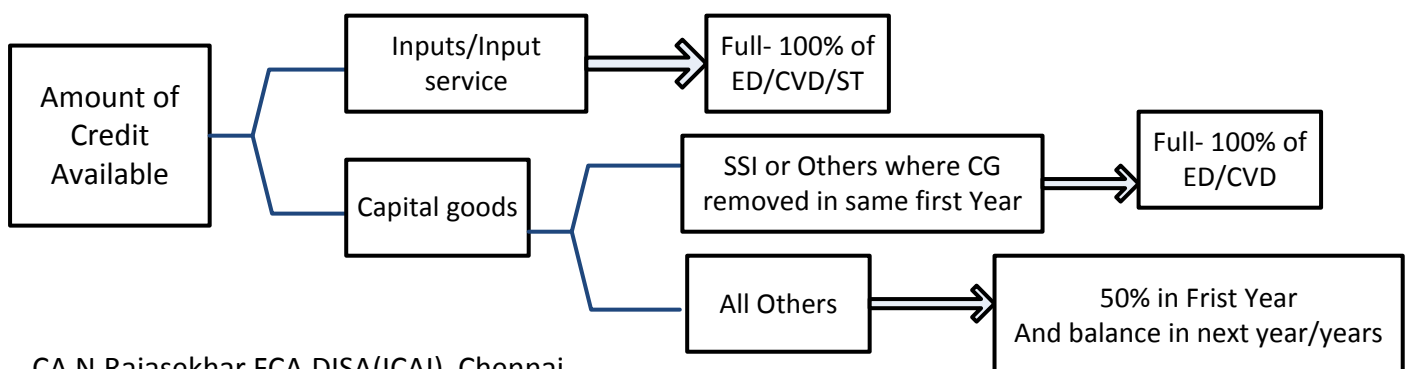
Cenvat Credit System for Manufacturer



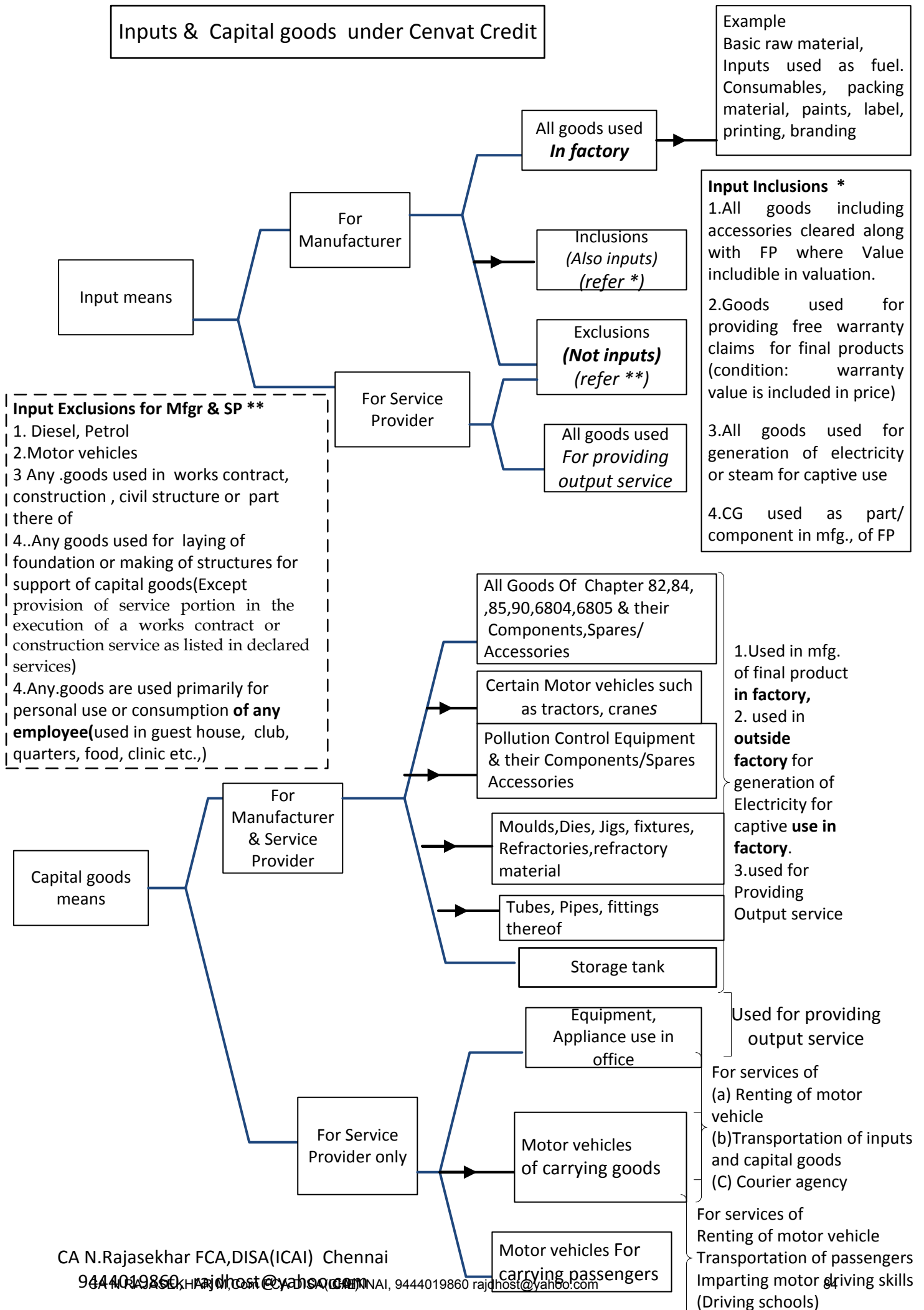
Cenvat Credit System for Service Provider

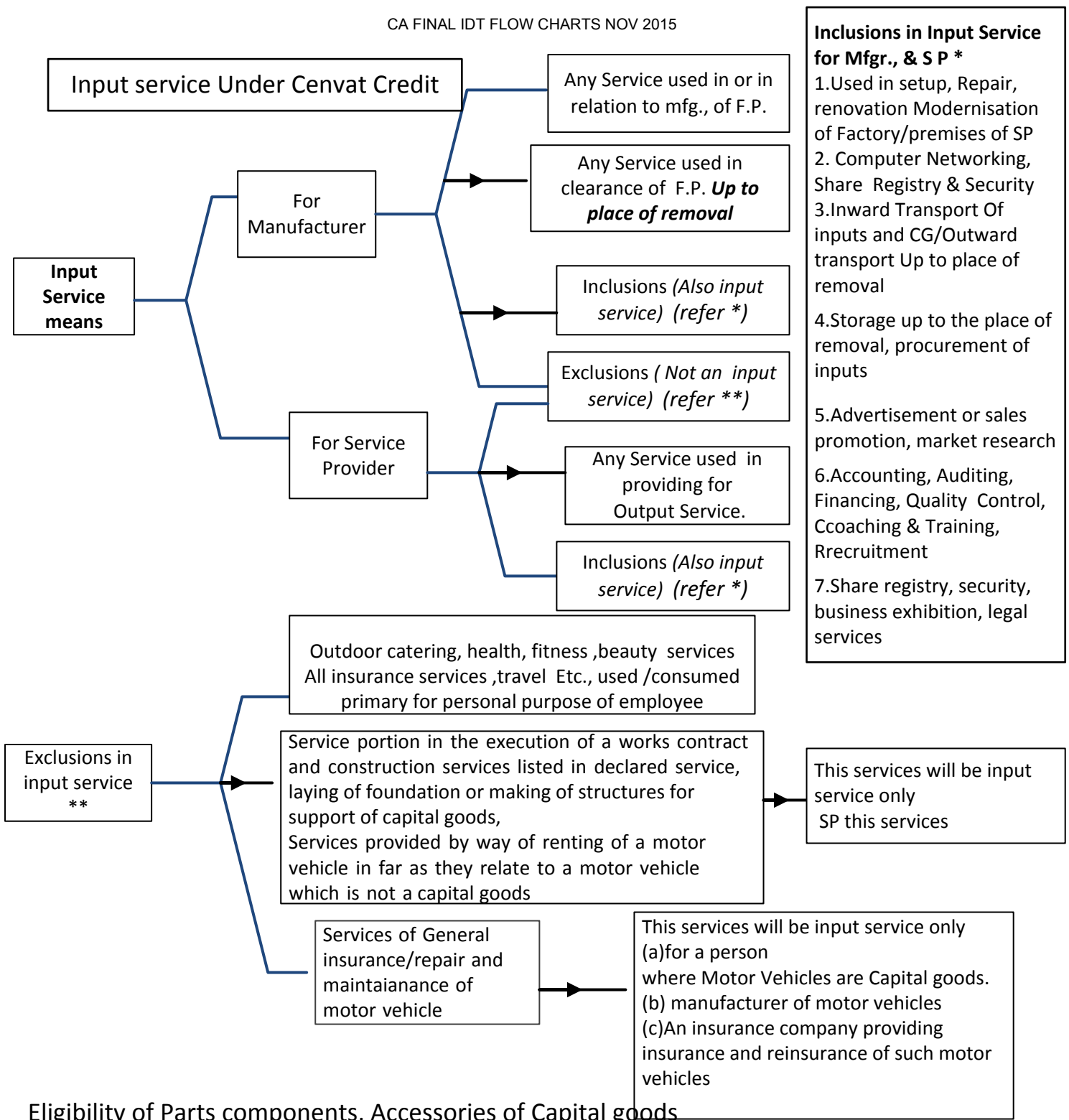


Quantum of Credit (Amount of Credit) Available

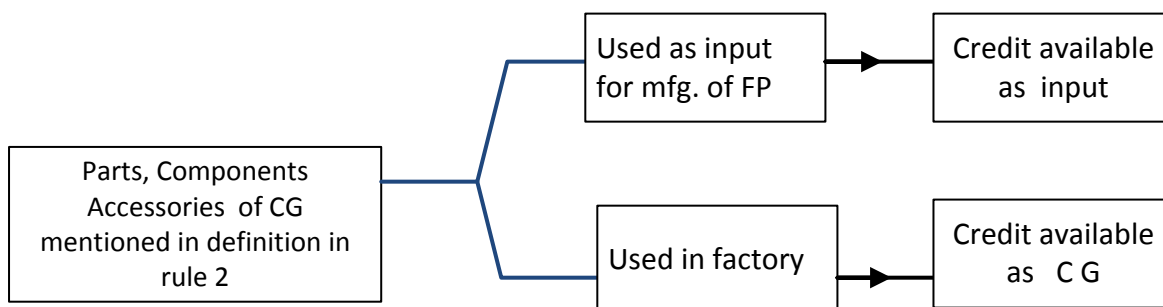


Inputs & Capital goods under Cenvat Credit



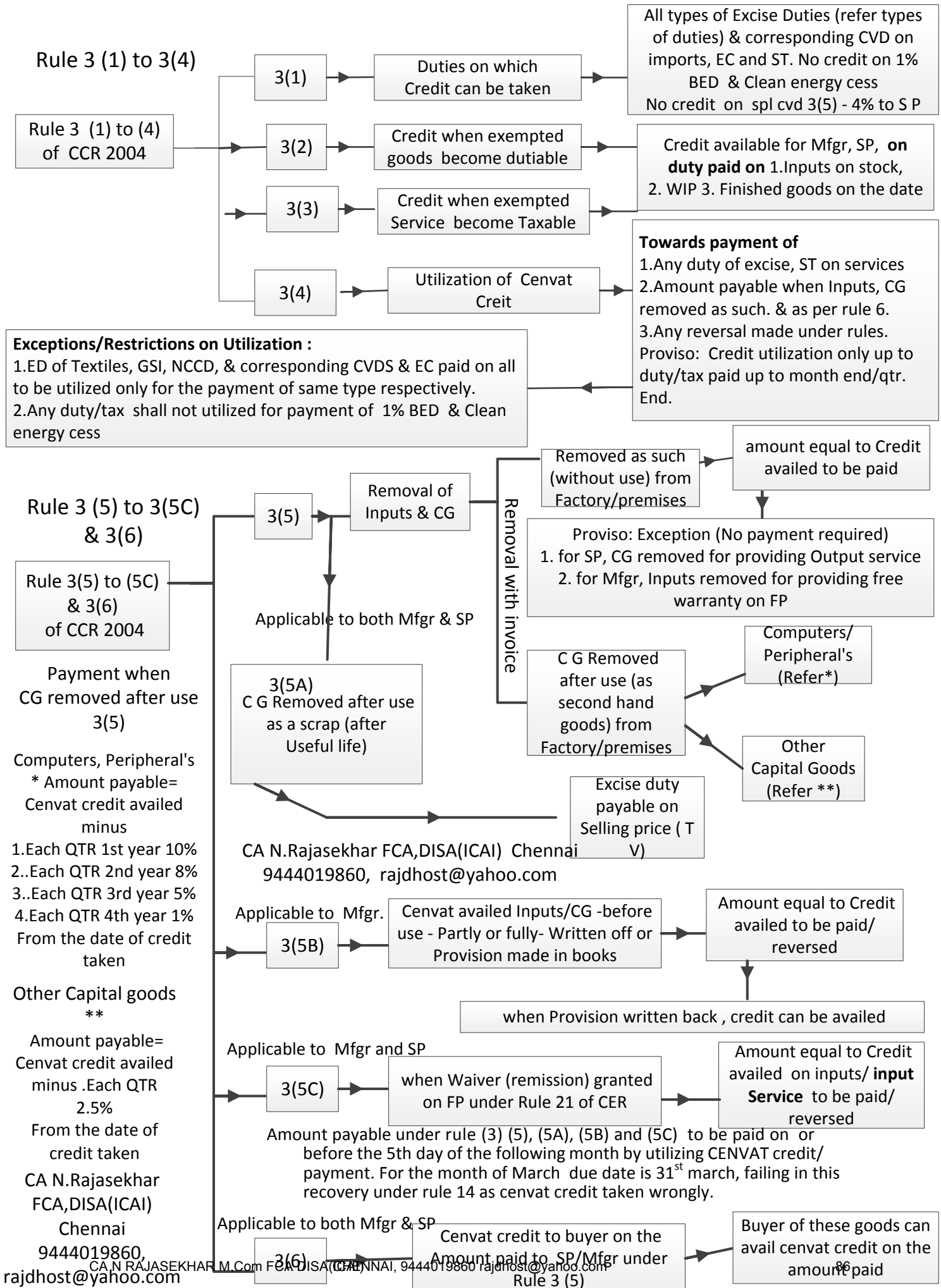


Eligibility of Parts components, Accessories of Capital goods

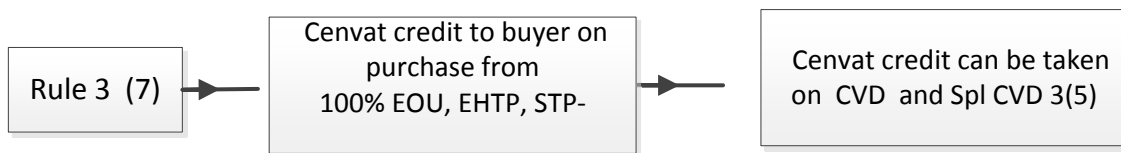


Parts, Components Accessories of CG not mentioned in definition in rule 2 if they are *Used as input for mfg. of FP* Credit available as input if it not in exclusion list.,

Cenvat Credit Rule No 3

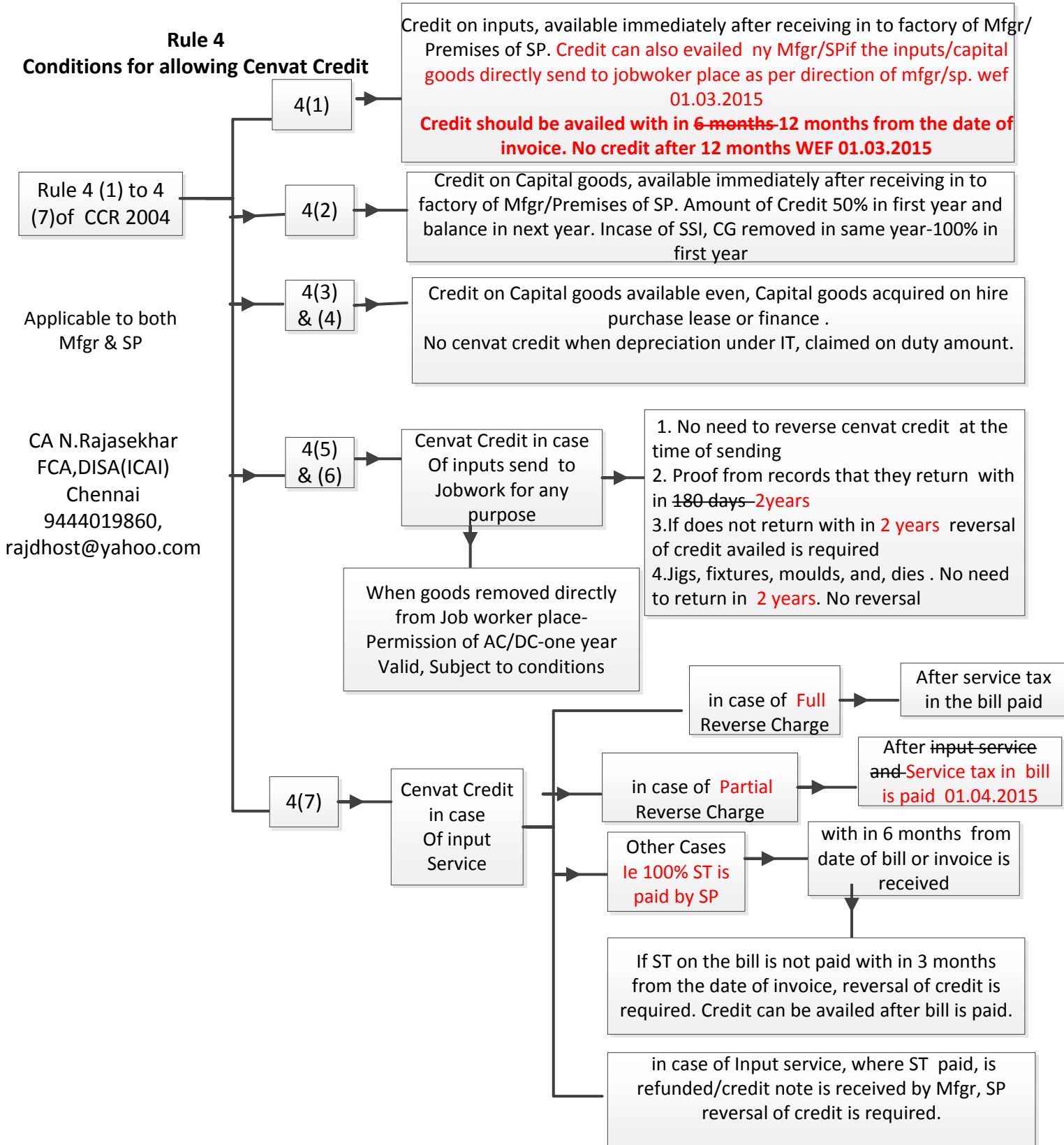


Cenvat credit Rule 3(7) & 4

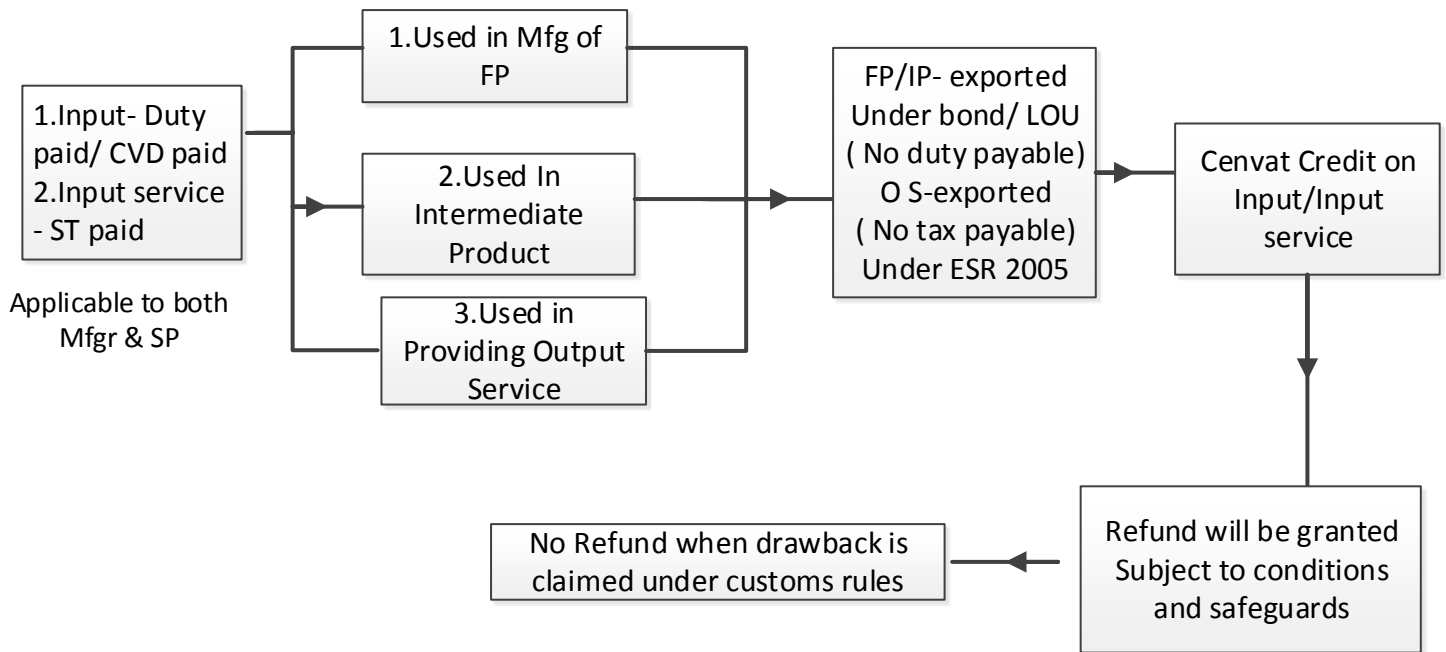


Cenvat credit on education cess can be used for payment of excise duty on wef 30.04.2015

Rule 4 Conditions for allowing Cenvat Credit



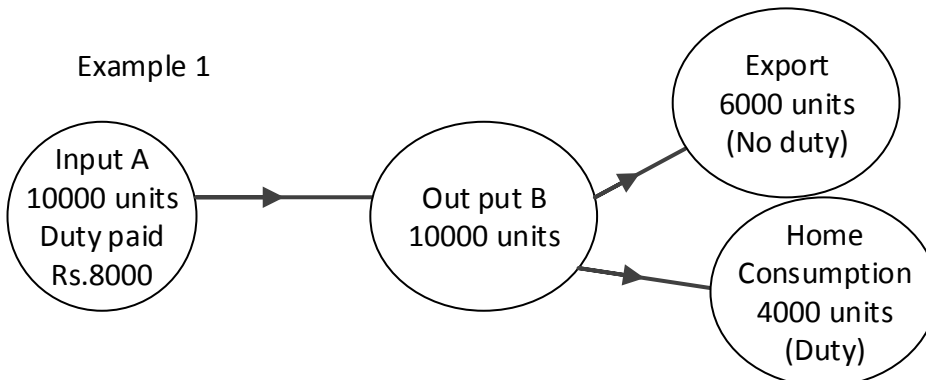
Rule 5 of Cenvat Credit Rules 2004-Refund of Cenvat Credit



$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

export service' means service as per Rule 6A of STR 94 and Export of goods means mean any goods which are to be taken out of India to a place outside India. Wef 013.06.2015

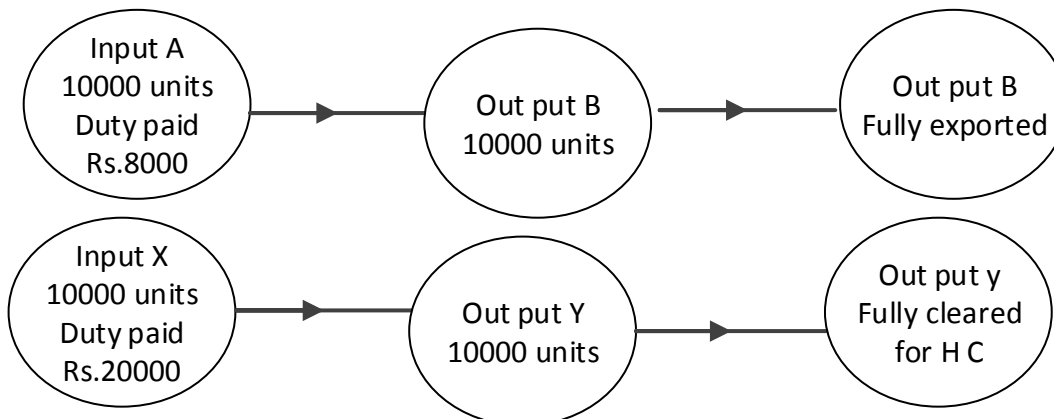
Example 1



Refund will be given on duty paid on input A ie $8000 \times 6000/10000 = \text{Rs.4800}$

Example 2

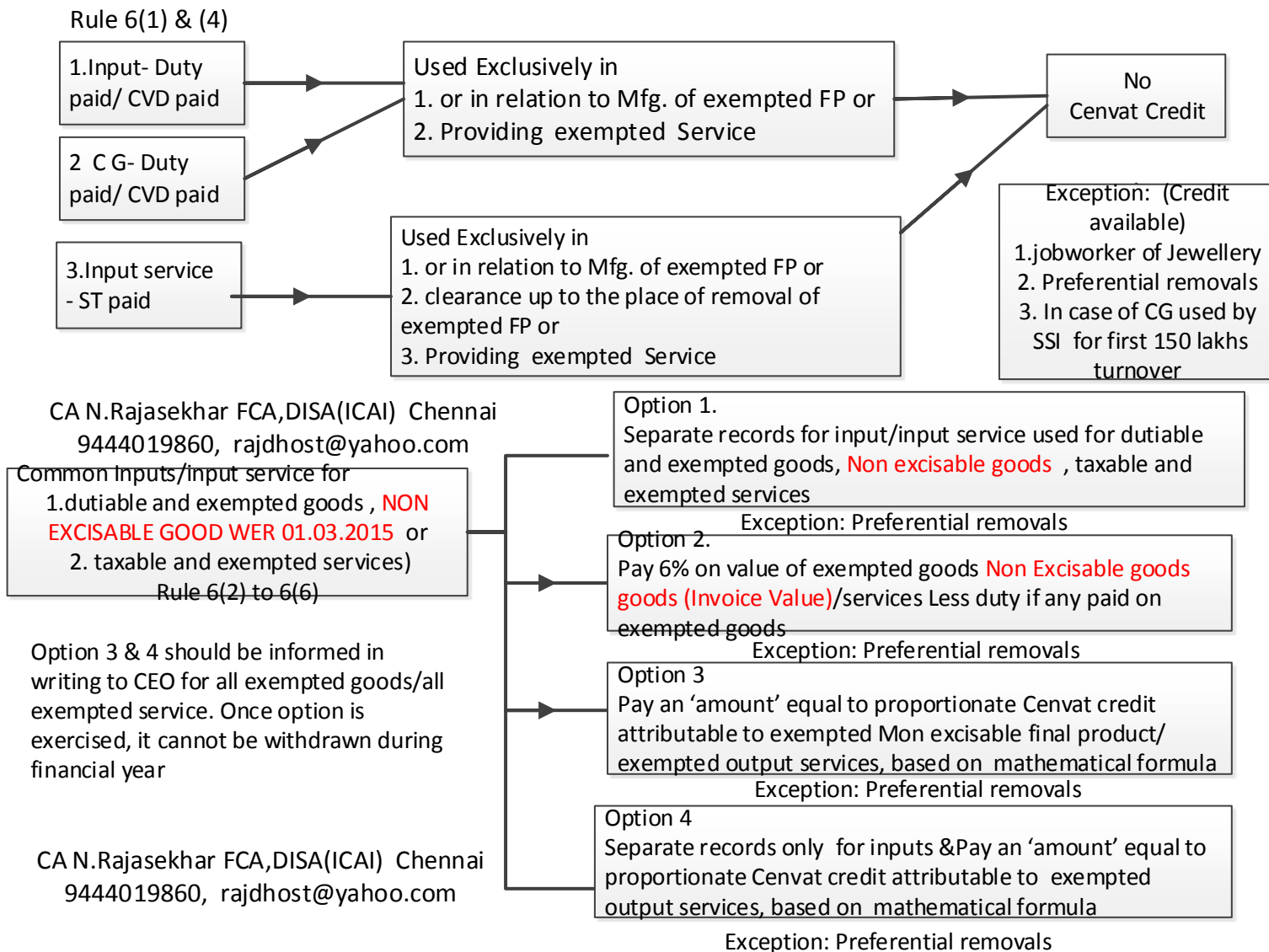
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Refund will be given on duty paid on input A

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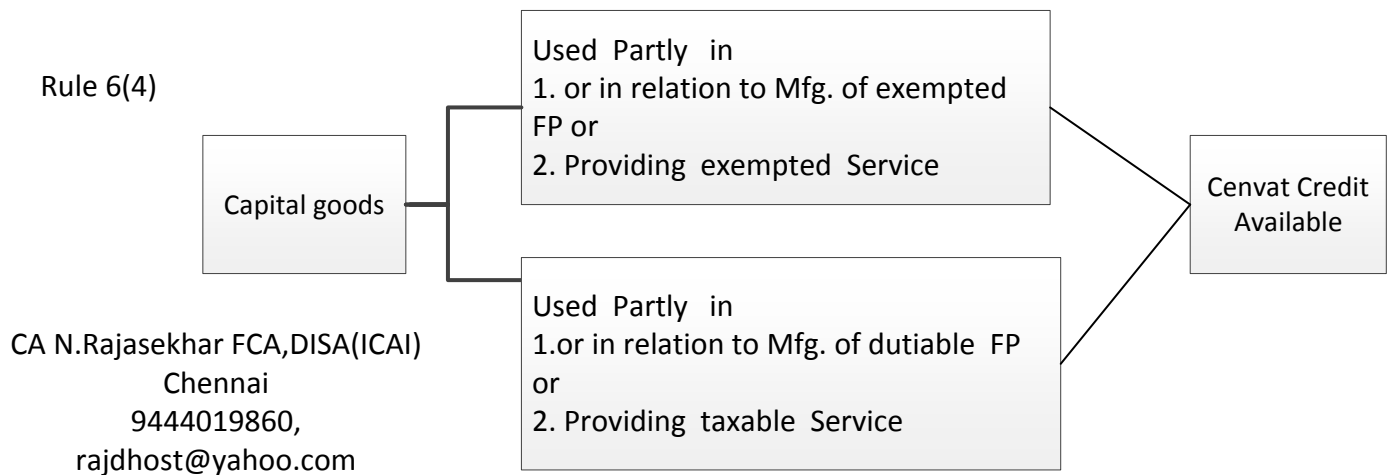
Rule 6 CCR 2004-Obligation of a manufacturer or producer of final products and a provider of taxable service(Common inputs/input services for dutiable and exempted goods& taxable and exempted services)



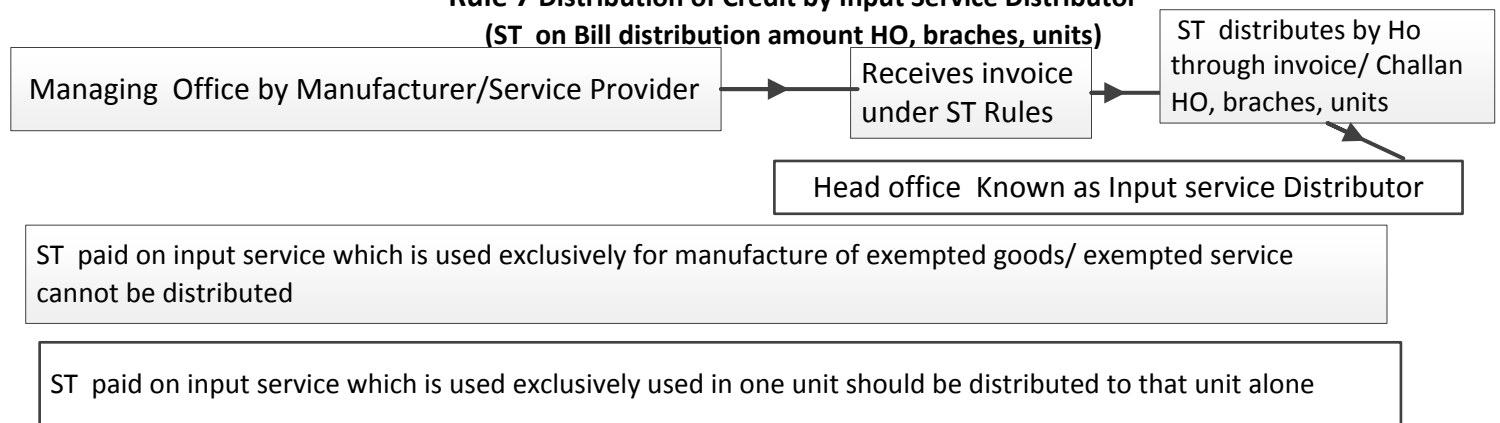
Preferential Removals :

- 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
- Supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents
- In case of taxable services provided , without payment of Service tax to SEZ or developer of SEZ for their authorized operation Rule 6(6A)-
- All goods which are exempt from customs BCD/CVD u/s 3(1)
 - (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

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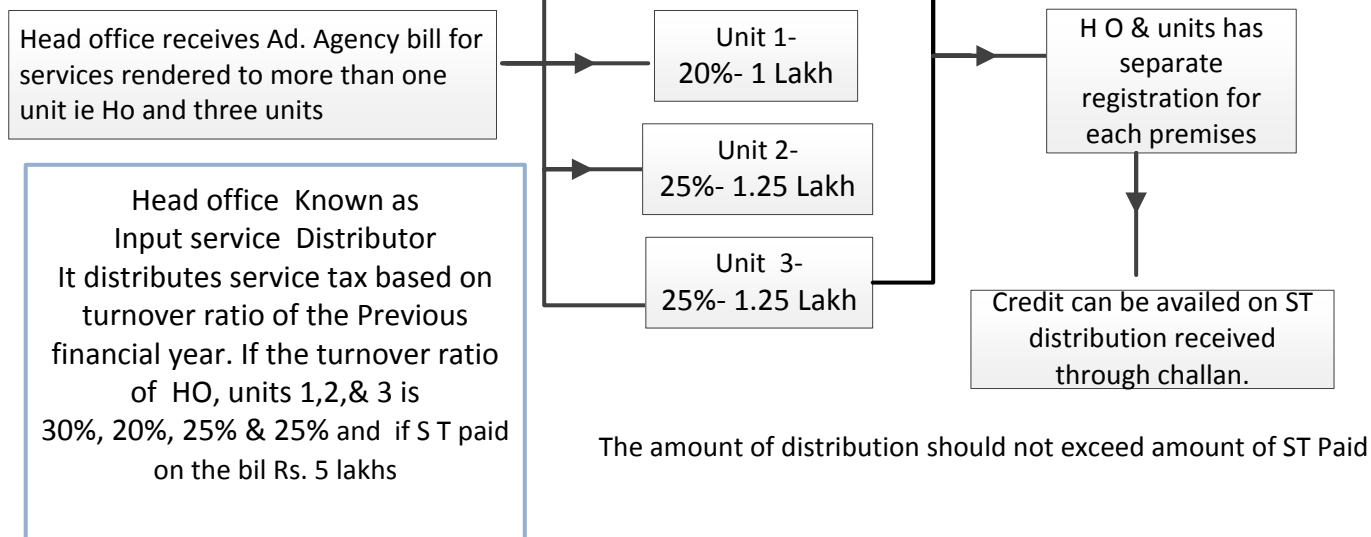


**Rule 7 Distribution of Credit by Input Service Distributor
(ST on Bill distribution amount HO, braches, units)**



ST paid on input service which is used used in more than one unit should be distributed as below

Example

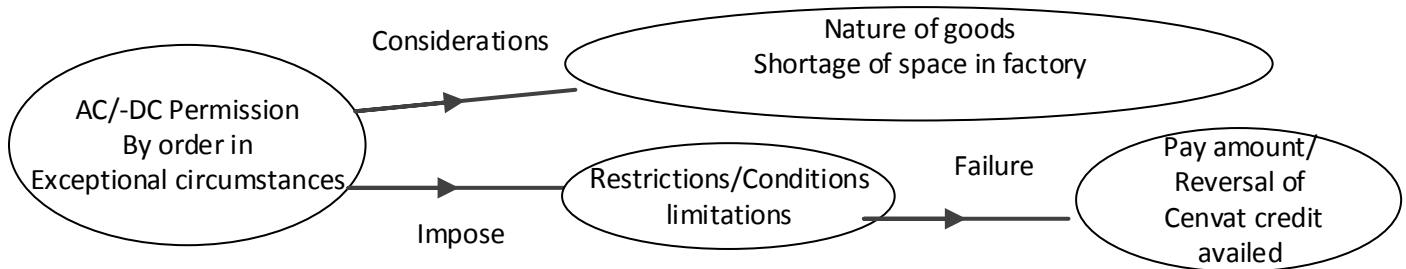


Same as Rule 7 instead of ST, it is ED paid on inputs/Capital goods
Through invoice under rule 11 of CER

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

Rule 8 of CCR 2004 Storage of inputs outside factory



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

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 of CVD)

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

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

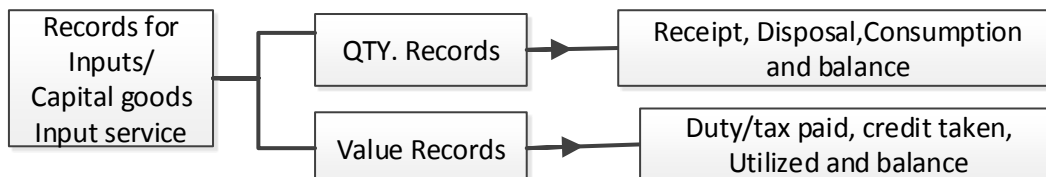
Particulars of documents 9(2)

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/Importer invoice Rule 9(4)

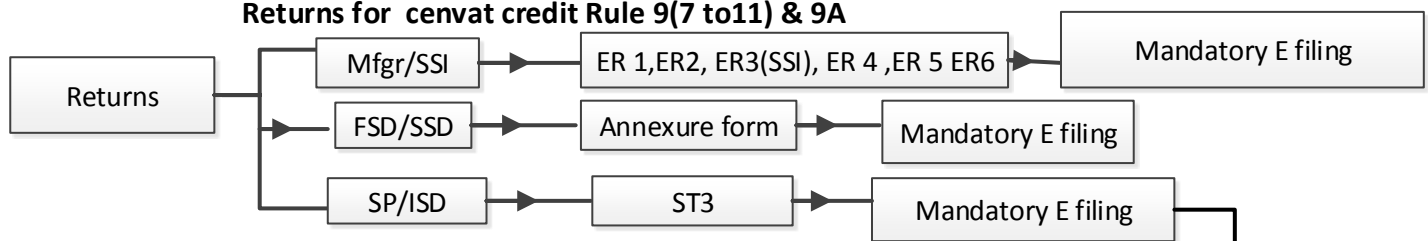
Records to be maintained. The invoice should indicate duty suffered or prorate duty suffered in case proportionate stock is sold.

Records for cenvat credit Rule 9(5&6)

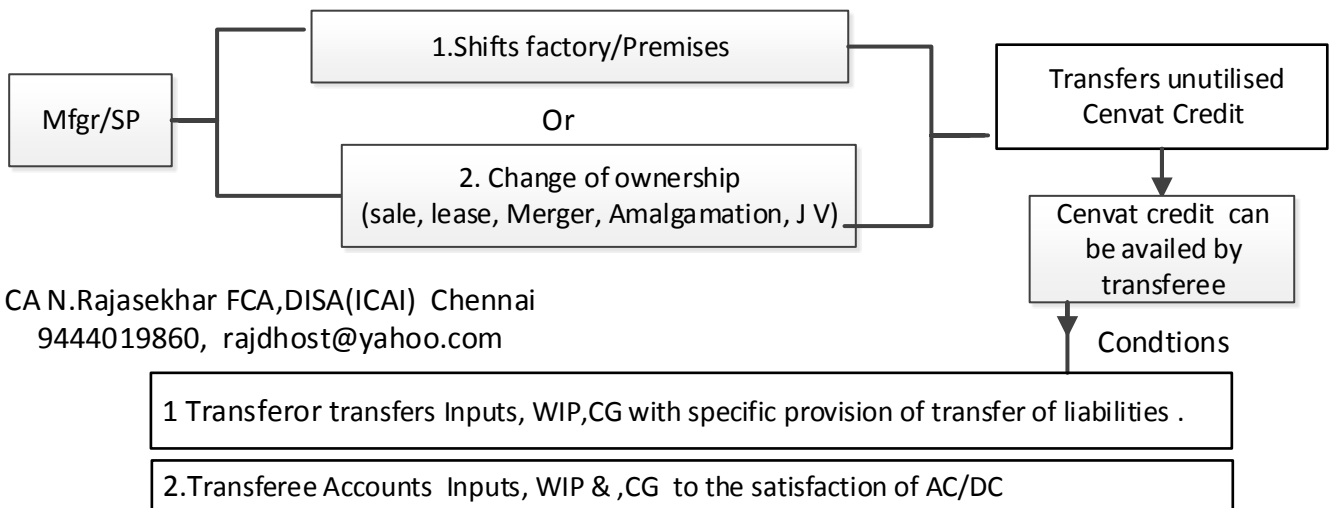


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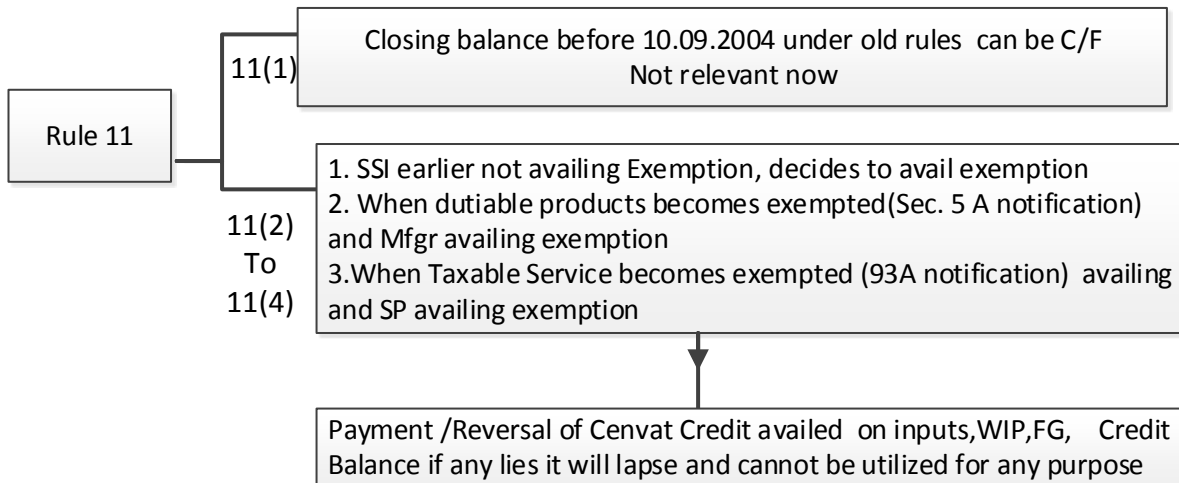
Returns for cenvat credit Rule 9(7 to 11) & 9A



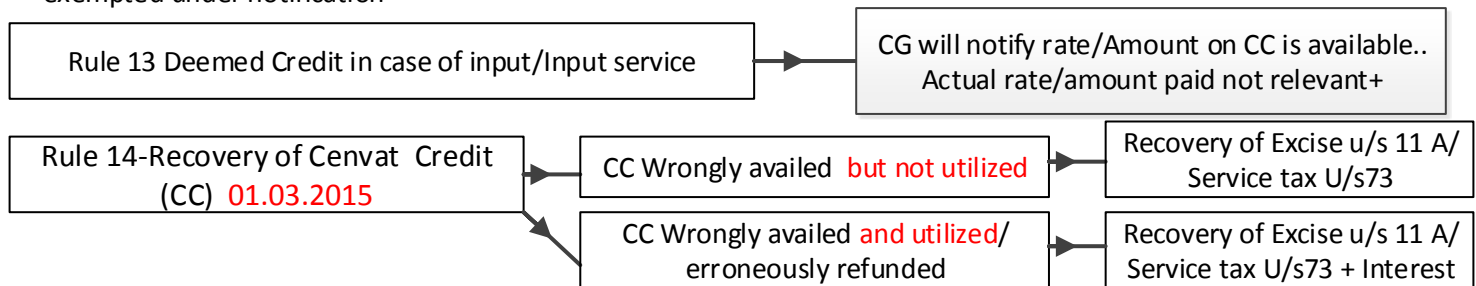
Rule 10- Transfer of Cenvat Credit



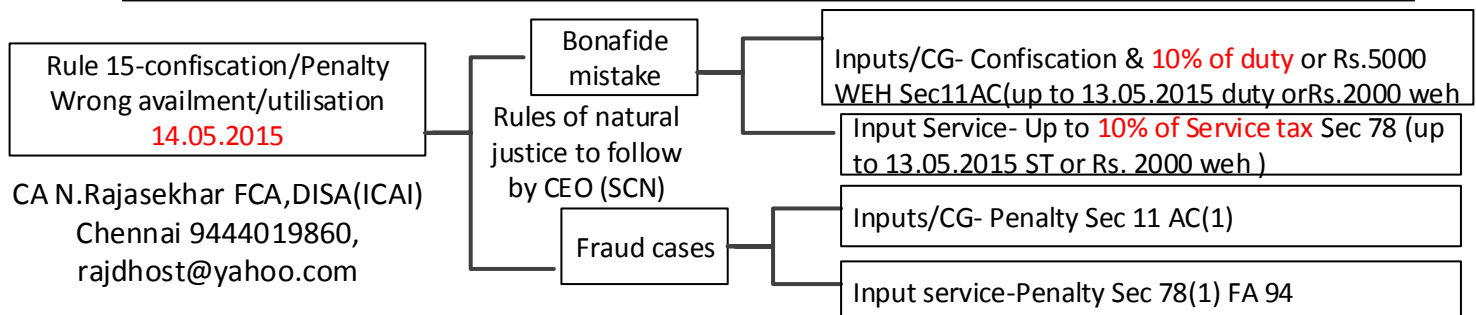
Rule 11- Transitional provisions of Cenvat Credit



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



All credits taken during a month will be deemed to have been taken on the last day of the month and the utilisation thereof. FIFO method for utilization is deemed to be occurred.



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Reduction or waiver of penalty is granted as per conditions given in 11AC and 78

Excise Registration New procedure from 01.03.2015

Excise laws contain various elaborate procedures. The intent behind such elaborate procedures is to keep a check and control on production activity undertaken across the country and prevent evasion of duty on goods.

Excise procedures include:

- Registration;
- Maintenance of proper production and stock registers;
- Procedures, to be followed at the time of removal of goods and payment of duty;
- Filing of returns; and
- Special procedure for large tax payer.

Coverage of excise procedures

The procedures are covered in:

- Central Excise Rules, 2002
- CENVAT Credit Rules, 2004
- Central Excise Manual, 2001
- Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001
- Excise Circulars and Notifications

In this chapter we are going to study about the various important procedures contained in the excise laws.

Registration of factory/warehouse Section 6 and Rule 9 (Notification Nos. 35 & 36/2001) amended wef 01.03.2015

Persons requiring registration

- Every manufacturer of excisable goods (including Govt., autonomous corporations) on which excise duty is leviable
- An **importer**/dealer who desires to issue Cenvatable invoices
- Persons holding private warehouses
- Persons who obtain excisable goods for availing end-use based exemption notification
- Exporters manufacturing or processing export goods intending to claim rebate of such duty
- EOU units procuring goods from DTA or supplying goods to DTA

Persons exempted from obtaining registration (Notification No. 36/2001, dt.26.6.2001)

- Persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification.
- SSI units availing the slab exemption based on value of clearances under a notification. Only declaration when the value of their clearances touches Rs. 90 lakhs.
- Job-workers of readymade garments/jewellery need not get registered if the principal manufacturer gets registered and undertakes to discharge the duty liability.
- Persons manufacturing excisable goods can be exempted by following the warehousing procedure under section 65 of the Customs Act.
- The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in CENVAT Credit Rules, 2004).

- 100% EOU/SEZ, licensed under the provisions of the Customs Act, is exempted from obtaining registration.
- Unregistered premises used solely for affixing lower ceiling prices on pharmaceutical products to comply with DPCO, 2013

Procedure for registration

- Application in form A-1, duly filled up and signed, along with f PAN, should be submitted to Jurisdictional AC/DC through online in aces.gov.in. PAN is mandatory. Government assessee is exempted from having PAN.
- For an EOU located in port towns, application should be submitted to DC/ AC Customs.
- Separate registration is required in respect of each separate premises
- In case of textile and Compressed natural manufacturing assessee single registration for all the premises falling in the jurisdiction of commissioner
- Applicant has to quote mobile No and email address for communication
- Business transaction no like customs reg., BIN , CST, VAT, ST, Excise reg No. Company CIN,
- Registration certificate will be granted within 7 2 working days through online. Print out of RC is Sufficient. Signature of CEO is not required.
- Registration No. is based on 15 digit PAN (ECC No.)
- Range Officer and Sector Officer shall verify the premises and documents after registration.

Other provisions with regard to registration

- The applicant shall tender self-attested copies of the following documents at the time of verification of the premises:
 - (a) Plan of the factory premises;
 - (b) Copy of the PAN Card of the proprietor or the legal entity registered;
 - (c) Photograph and Proof of the identity of the applicant;
 - (d) Documents to establish possession of the premises to be registered;
 - (e) Bank account details;
 - (f) Memorandum or Articles of Association and List of Directors; and
 - (g) Authorization by the Board of Directors or Partners or Proprietor for filing the application by a third party.

Physical verification:

- The authorized officer shall verify the premises physically within 7 days from the date of receipt of application through online.
- Where errors are noticed during the verification process or any clarification is required, the authorized Officer shall immediately intimate the same to the assessee for rectification of the error within 15 days of the receipt of intimation failing which the registration shall stand cancelled.
- The assessee shall be given a reasonable opportunity to represent his case against the proposed cancellation, and if it is found that the reasons given by the assessee are reasonable, the authorized Officer shall not cancel the registration to the premises.
- On the physical verification of the premises, if it is found to be non-existent, the registration shall stand cancelled.
- The assessee shall be given a reason opportunity to represent his case against the proposed cancellation, and if it is found that the reasons given by the assessee are reasonable, the authorized Officer shall not cancel the registration to the premises recording the complete and correct address

Change in Constitution of Assessee

- Registration is not transferable.
- Where a registered person transfers his business to another person, the transferee shall get himself registered afresh.
- Where an applicant has acquired an old factory from a Bank or a Financial Institution, he shall get himself registered afresh
- Where a registered person is a firm or a company or association of persons, then in the event of any change in the constitution of the firm **leading to change in PAN**, he shall get himself registered afresh.
- Any change in constitution when there is **no Change in PAN** to be intimated within 30 days of change. No fresh registration is required in such a case. If there is any change in information given in form A-1, the change should be informed in a fresh form A-1

Cancellation of registration:

- A registration certificate granted under rule 9 may be cancelled after giving a reasonable opportunity to the assessee to represent his case against the proposed cancellation by the Deputy or Assistant Commissioner of
- Central Excise, in any of the following situations, namely:—
 - (a) where on verification , the premises proposed to be registered is found to be non-existent;
 - (b) where the assessee does not respond to request for rectification of error noticed during the verification of the premises within 15 days of intimation;
 - (c) where there is substantial mis-declaration in the application form; and
 - (d) where the factory has closed and there are no dues pending against the assessee

Procedure to be followed in case of closure of business /Deregistration

- Assessee will have to apply for de-registration through online,.
- Where there are no dues pending recovery from the assessee, application for deregistration shall be approved within 30 days from the date of filing of online declaration and the assessee shall be informed, accordingly.

Penalty for non-registration

- Up to the duty payable on contravening goods or Rs. 5,000 whichever is higher.
- In addition, the goods can also be confiscated.
- It is also an offence under section 9 of the CEA. Imprisonment up to seven years (minimum 6 months) can be imposed.

Factory' under Central Excise - Section 2(e)

It is important to know the meaning of word 'Factory' as it is the place to be registered for excise purpose.

- Factory means any premises, including the precincts thereof, wherein or in any part of which, excisable goods are manufactured.
- Precincts refer to the area enclosed by compound wall. A canteen, a recreation club, a shed and a cycle stand, located inside the compound wall will come under the definition of a precinct.
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured.
- It is not necessary that factory should be registered under the Factories Act.

Excise returns

Periodical returns - Rule 12

The following are the various returns which are to be filed by the assessee. The returns are required to be filed in quintuplicate, and the assessee will have sixth copy as his record copy.

Form of Return	Description	Who is required to file	Due date for filing return
ER-1 [Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER-2 [Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3	Quarterly Return by SSI	Assessee availing SSI concession	10th of following month of a quarter
ER-4 [Rule 12(2) of Central Excise Rules]	Annual Financial Information Statement	Assessee paying duty of Rs. one crore or more per annum through PLA	Annually by 30th November of succeeding year
ER-5 [Rules 9A(1) and 9A(2) of CENVAT Credit Rules]	Information relating to Principal Inputs	Assessee paying duty of Rs. one crore or more per annum through PLA and manufacturing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30-4-2010).
ER-6 [Rule 9A(3) of CENVAT Credit Rules]	Monthly return of receipt and consumption of each of principal Inputs	Assessee required to submit ER-5 return	10th of following month
ER-7 [Rule 9A(4) of CENVAT Credit Rules]	Annual Installed Capacity production Statement	Assessee required to submit ER-5 return	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30.04.2010).
Dealer/Importer return	Quarterly Return	Dealer/Importer who issue cenvat invoice	10th of following month of a quarter
Quarterly return	Quarterly Return	Manufacturer of 1%, 2% goods	10th of following month of a quarter
Financial information Sec 15 a FA 2014 From 06.08.2014	Annual Return	Specified persons like bank, Sub registrar, assessee	Section is similar to section 285BA Annual Finance information under Income tax At

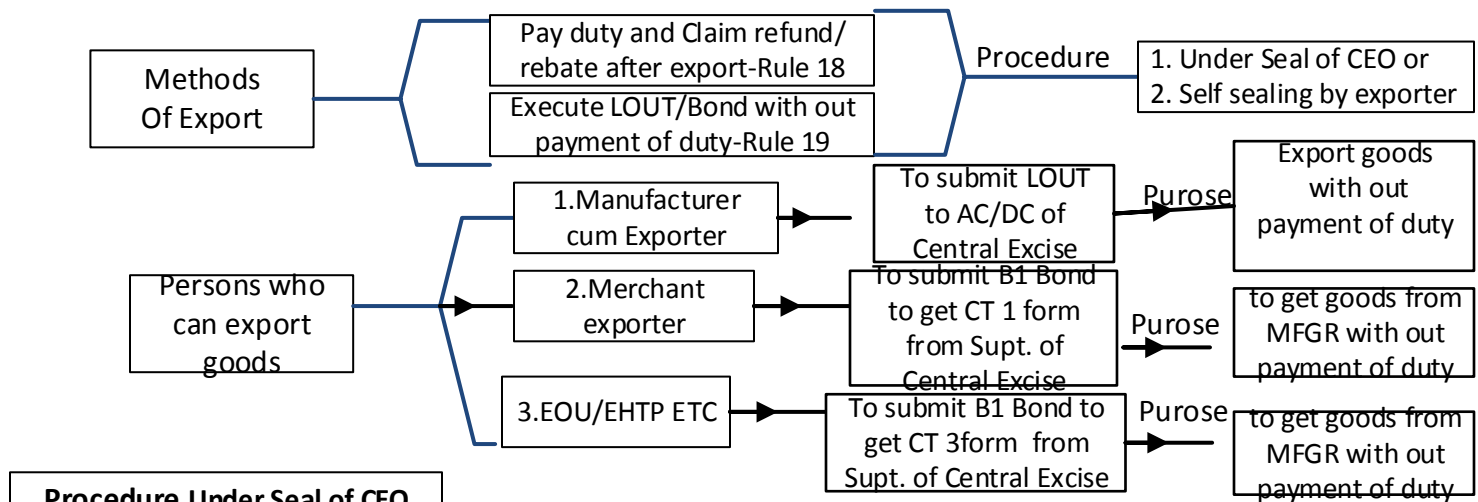
Exemption from ER-7

Certain Manufacturers are exempt from filing of Annual Installed Capacity production return such as biris manufactured without the aid of machines, matches manufactured without the aid of power & reinforced cement concrete pipes (Notification dated 26/2009, dt.18.11.2009).

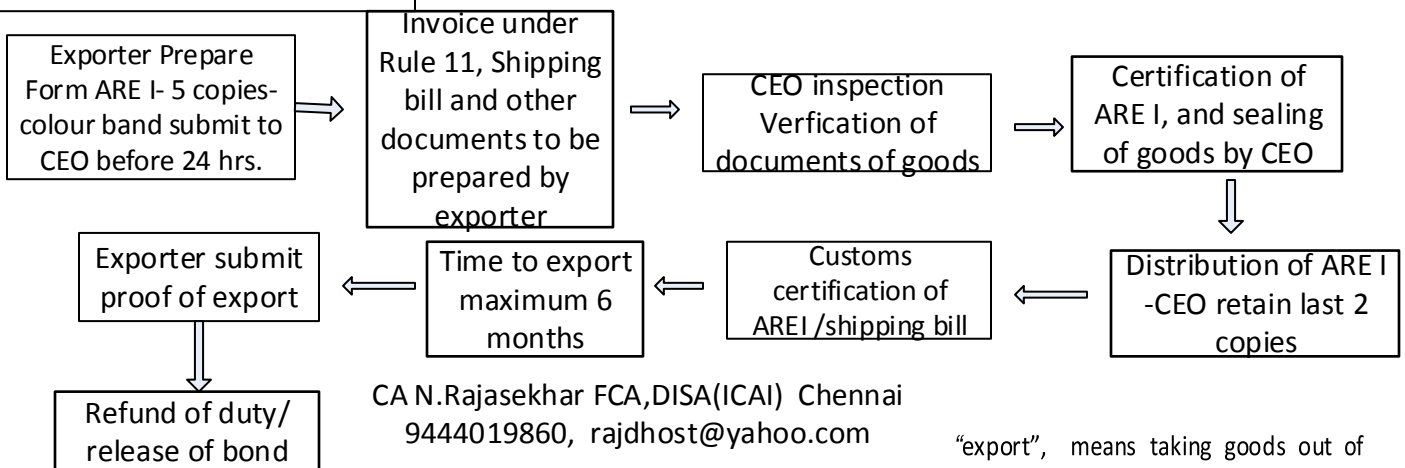
E filing of returns: E-filing of returns is mandatory.

Penalty for late filing of returns ER1 to ER 8 : Rs. 100 per day up to maximum Rs. 20,000/- to be paid at the time of submission of return.

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



Procedure Under Seal of CEO



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“export”, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.” Thus, rebate of excise duty will not be available on supply of goods to 100% EOU. However supplies to SEZ rebate available wef 01.03.2015

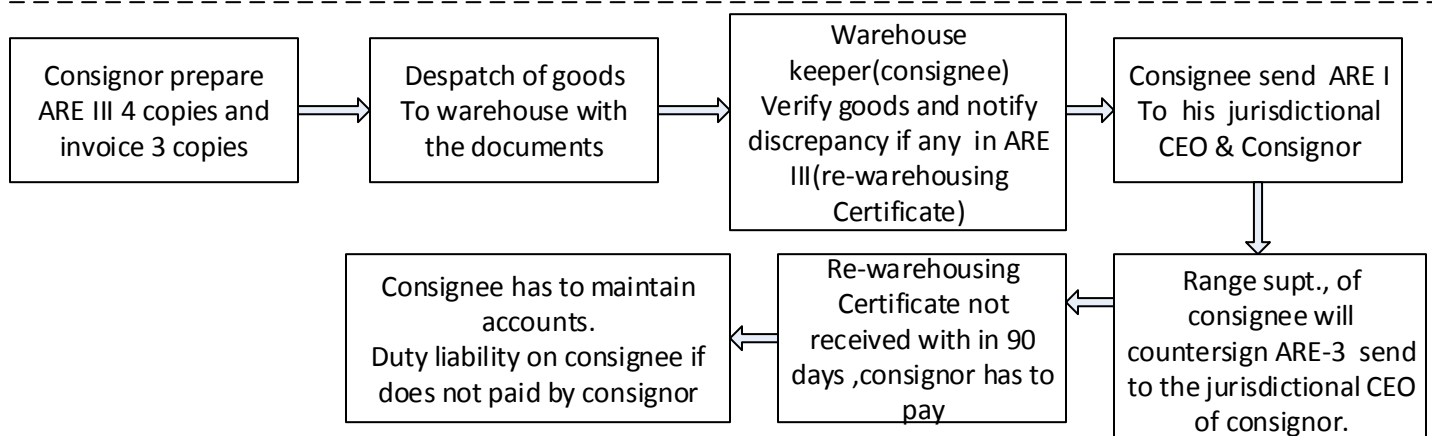
Procedure Under self Seal By Exporter

Same as above except

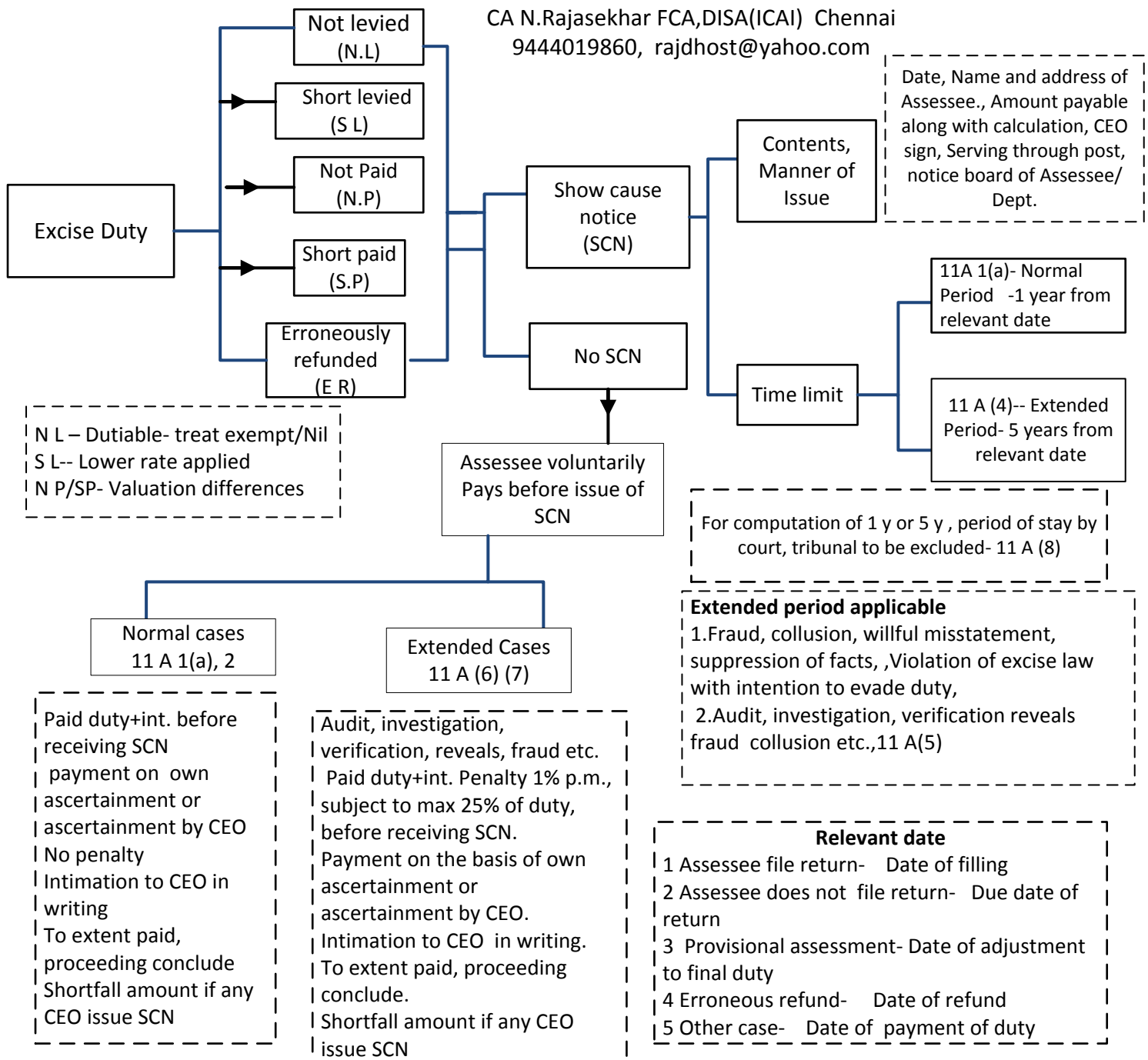
- 1.ARE I to be submitted to CEO after 24 hours of export
2. Self sealing by exporter instead of CEO verification and certification in ARE I

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.



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

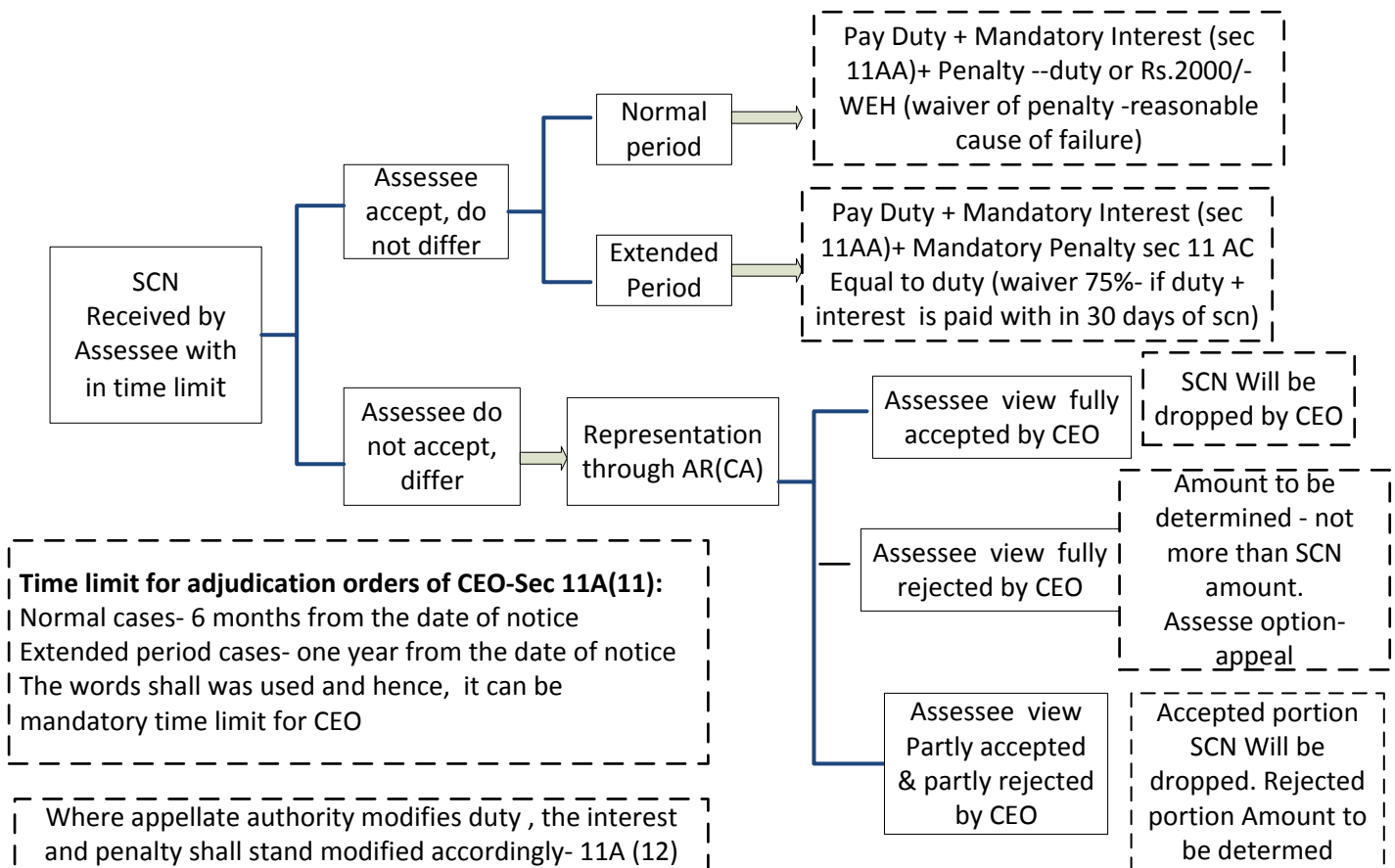


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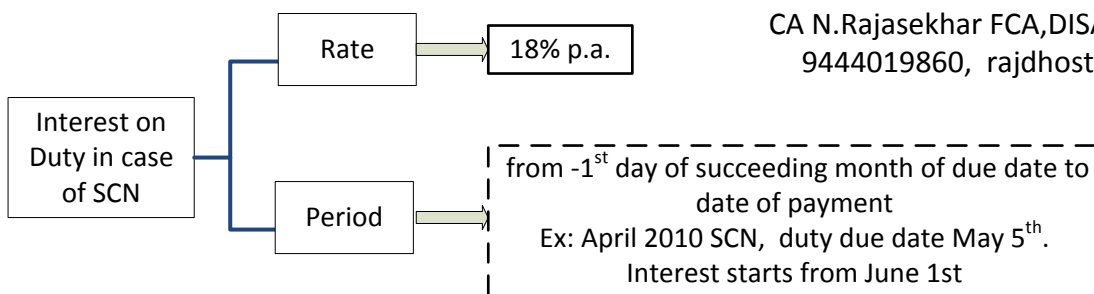
SCN issued after lapse of time limit, it is invalid.

In case of extended period, it is on the part of department to prove fraud, collusion etc., on the part of assessee.

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



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



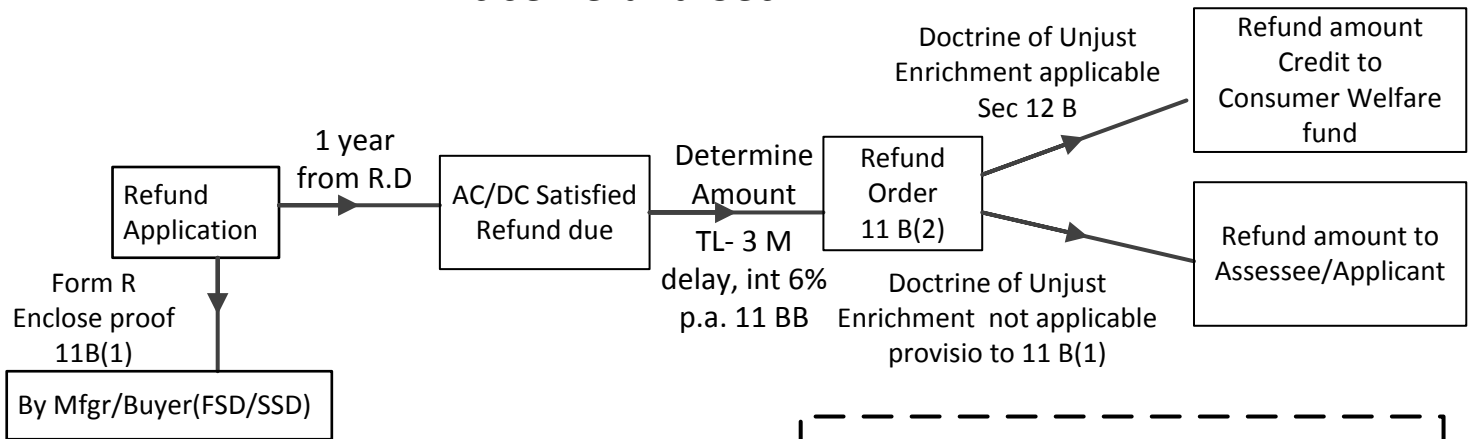
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1. If SCN amount was increased in appeal, Interest on increased amount is payable from date of order- Sec 11 A (13)
2. Interest is payable whether the adjudication order shown interest separately or not- Sec 11 A (14)

For Other sections from 11 AC to 11 E, Point wise, self explanatory read the book

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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

4 In Case of Provisional Assessment-Date of final adjustment of duty

5-In case of FSD/SSD Date of Purchase of goods

6 In case of Order of court/Appellate authority-Date of order

7 In any other case Date of payment of duty

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 undeserved 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)

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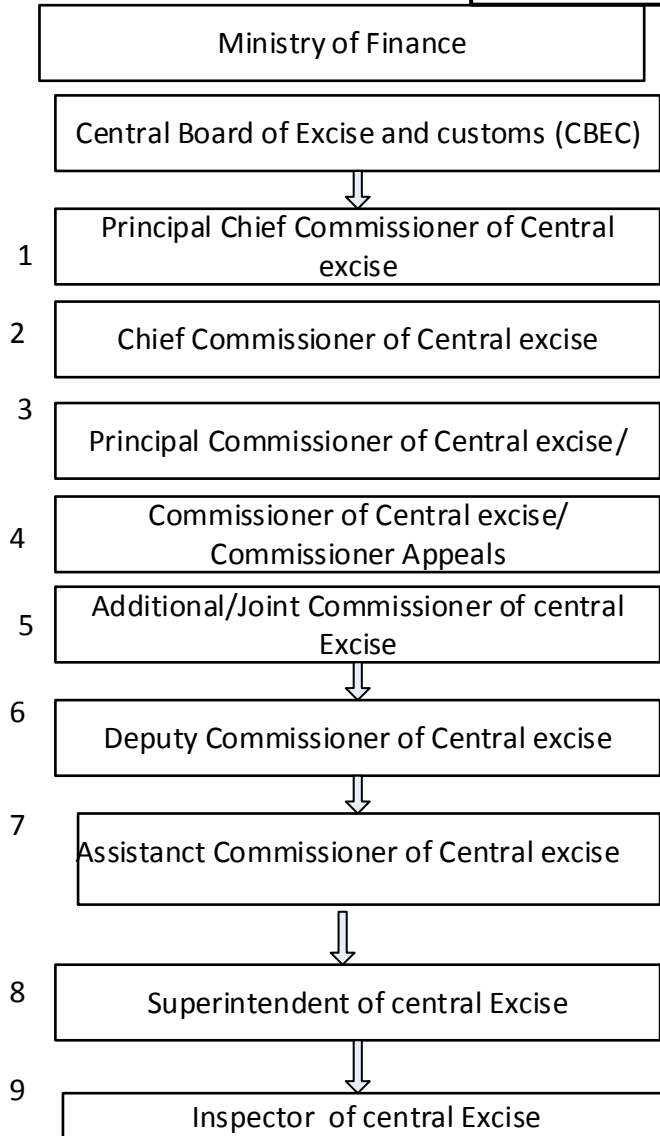
Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- 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

For Comparison with customs and service tax, read chapter 13 Division IV of the book

Hierarchy

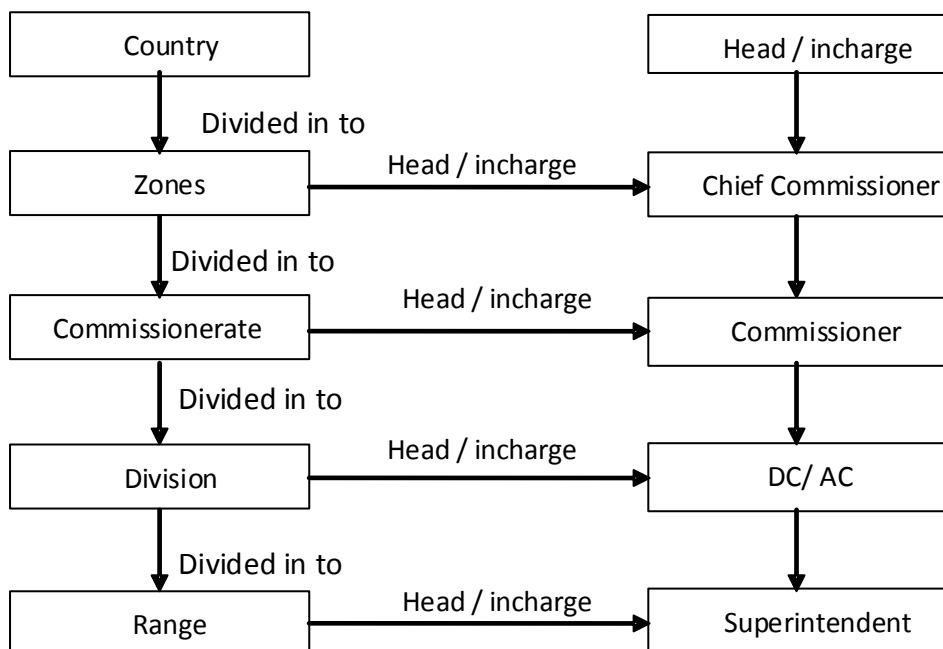
Excise Administration



Sec 2(b) : C.E.O
SI No. 1 to 9 & Officer CE Dept., Officer of State, Central Govt. powers entrusted by CBEC

Sec 2(a) : Adjudicating Authority:
(Authority competent to pass orders under Act except Commissioner Appeals and CESTAT)

Segregation of functions/Division 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

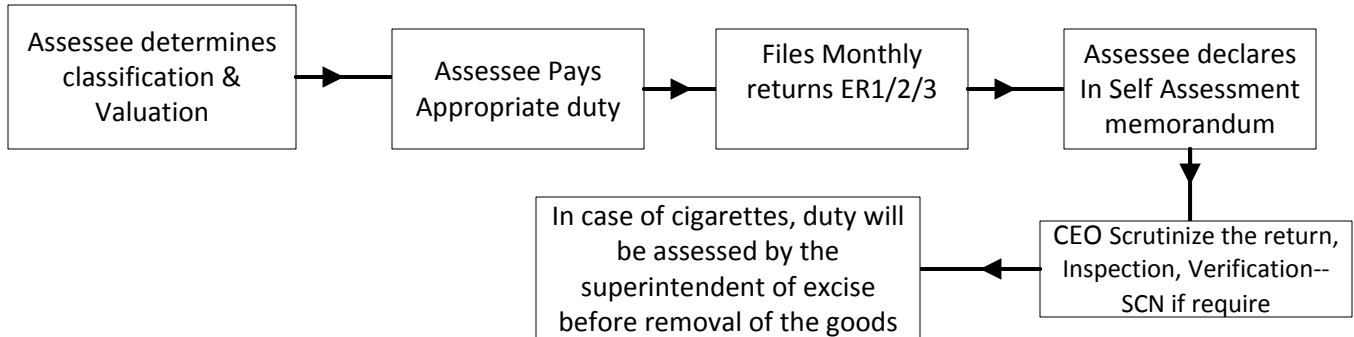
Types of Assessments

1 Self Assessment Rule 6

2. Provisional Assessment Rule 7

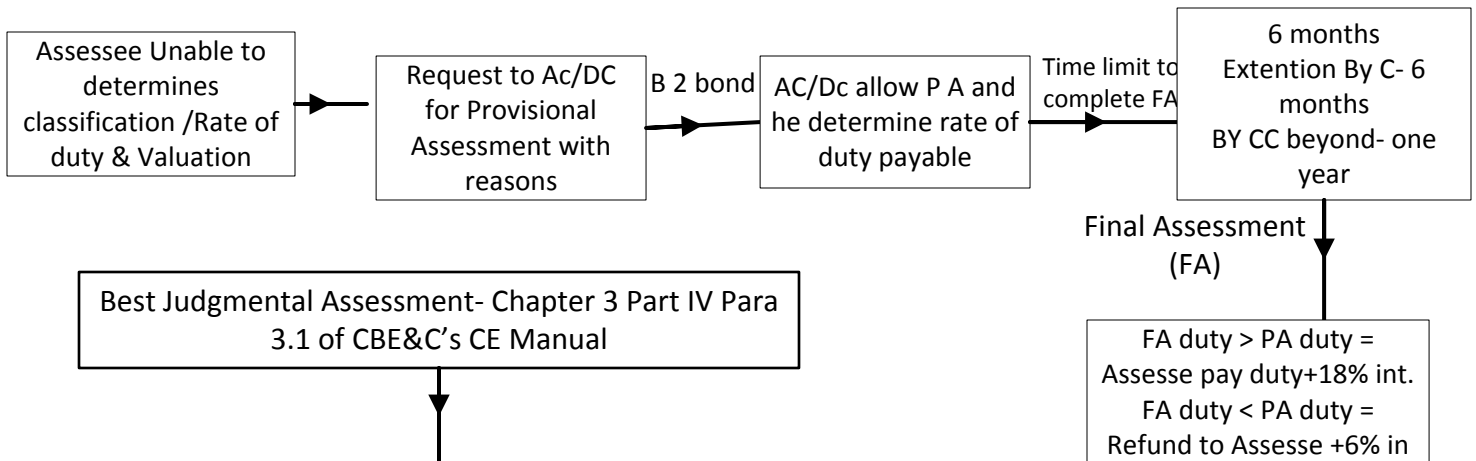
3. Best Judgment Assessment

Self Assessment- Rule 6



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Provisional Assessment- Rule 7

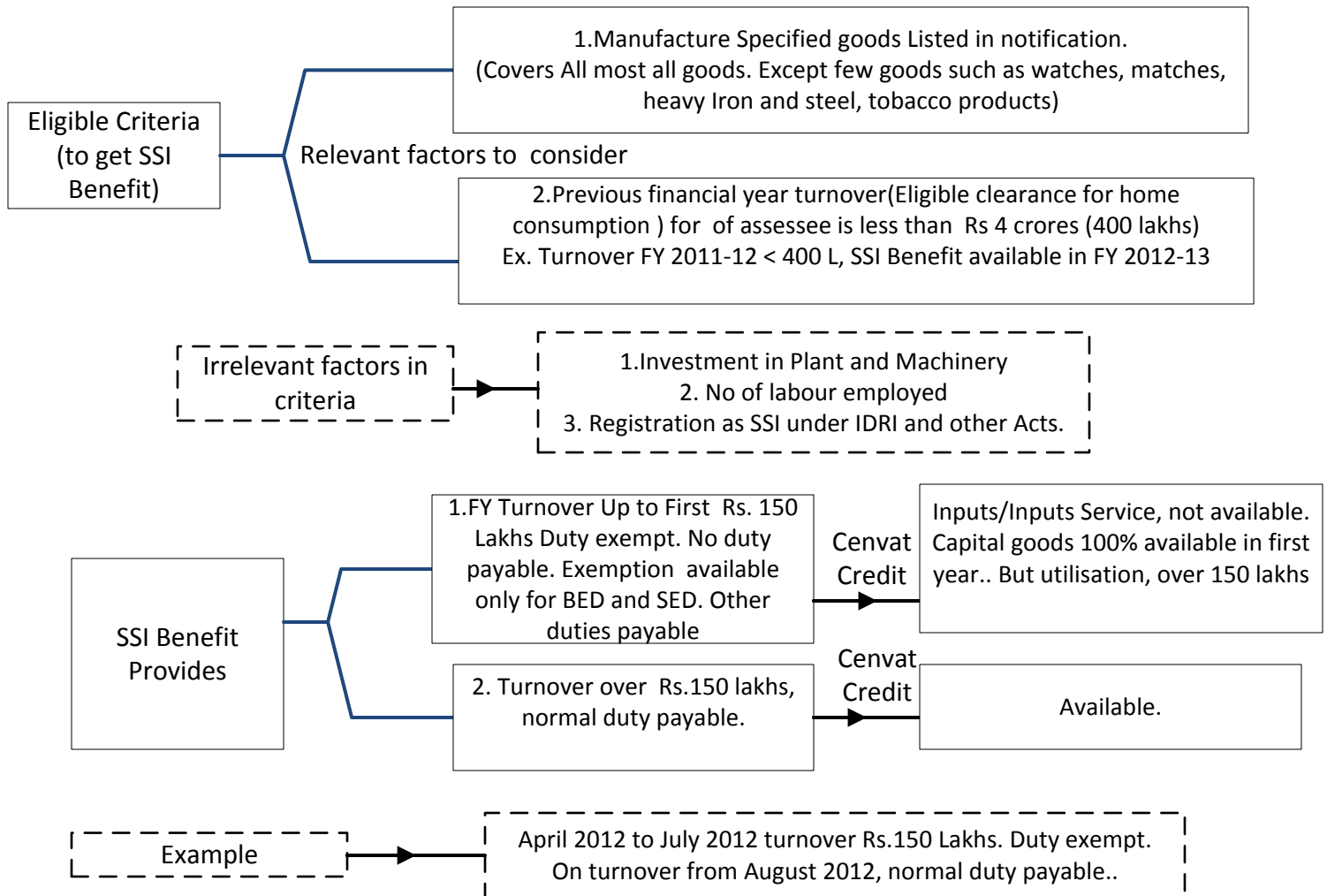


Best Judgmental Assessment- Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual

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



Procedural Concessions for SSI units

- No registration is required until they cross Rs.150 Lakhs of turnover.
- Quarterly return
- 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.
- Get 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 Rs.150 and Rs.400 lakhs is same except few items. CA N. Rajasekhar FCA, DISA (ICAI) Chennai
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Common Exclusions for 150 and 400 lakhs

The following shall be excluded / not be considered from the turnover calculation for 150 lakhs and 400 lakhs

- Export turnover other than from exports to Nepal and Bhutan
- Clearance to SEZ/STP/EHTP/EOU/FTZ/EPZ/ **without payment of duty** /United Nations organization
- Export **under bond** through merchant exporter
- Turnover of goods manufactured with other's brand name in urban area (No SSI benefit, duty payable)
- Turnover of inputs/capital goods bought by assessee and cleared as such (since it is not a manufacture)
- 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 used as inputs in manufacturing final products which are eligible for SSI exemption
- Job work of test, repairs, reconditioning, processing, etc. which is not a manufacture.

Common Inclusions for 150 and 400 lakhs

The following shall be taken in to account while calculating the turnover (value of clearances for both 150 lakhs and 400 lakhs):

- Exports to Nepal and Bhutan (To be included even money received in foreign currency)(
- Goods manufactured with other's brand name in rural area (SSI need not pay duty on these goods, But include for limits)
- Clearances which are eligible for SSI benefit where no duty payable (goods manufactured in the brand name of Khadi village, National small scale industries, Turnover of Packing material, notebooks, writing pads)
- Goods may be exempt under some other notification, i.e. other than SSI exemption notification - Intermediate product of such goods
- Turnover of goods charged to Nil duty
- Turnover of Non excisable goods

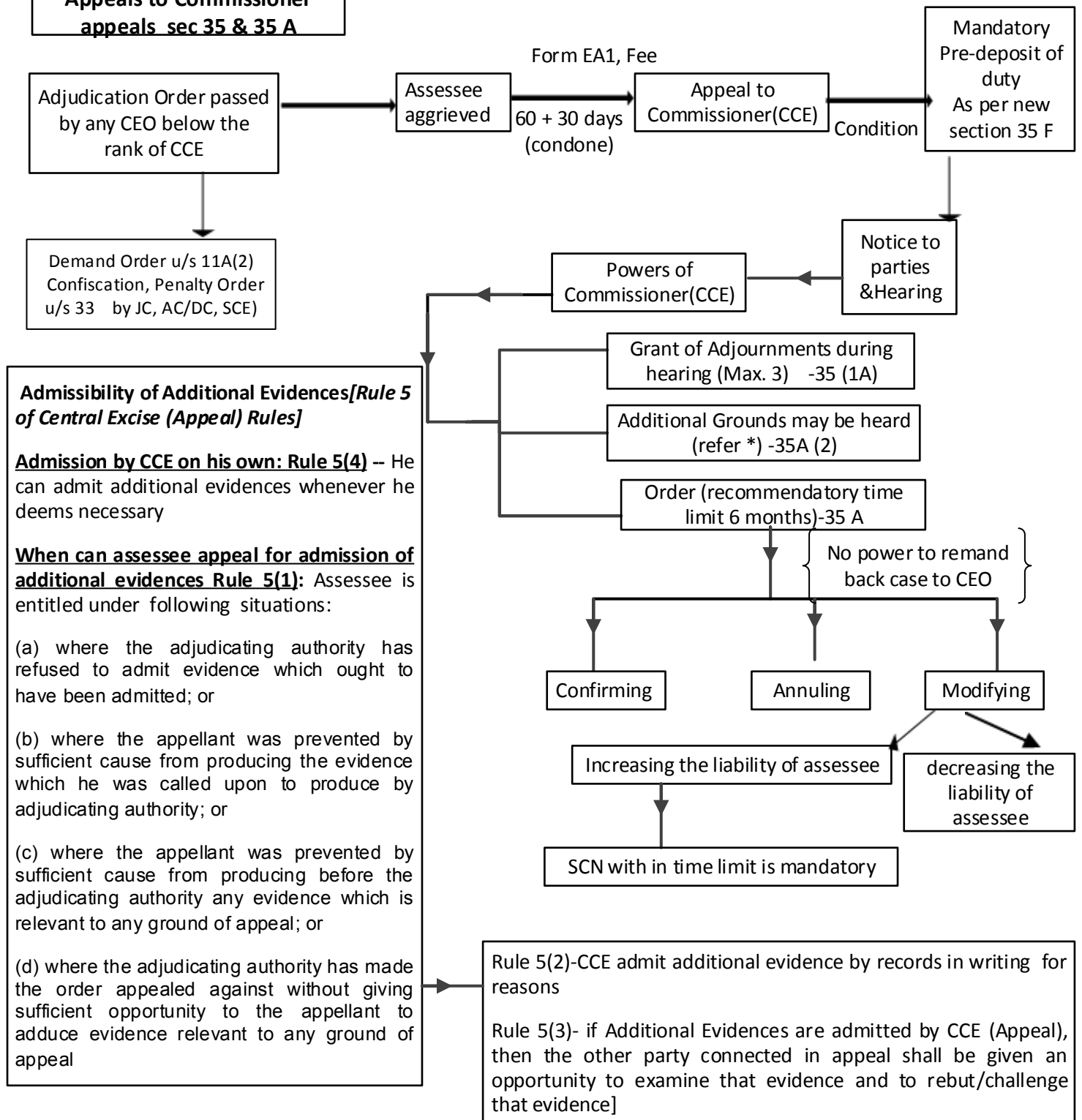
Differential treatment

The following is to be included in 400 lakhs limits calculation and to be excluded for 150 lakhs limits calculation

- Turnover of goods which are exempt from duty other than SSI Notification and Other than Job work notification (For example U/s 5A notification)

Appeals under Central Excise

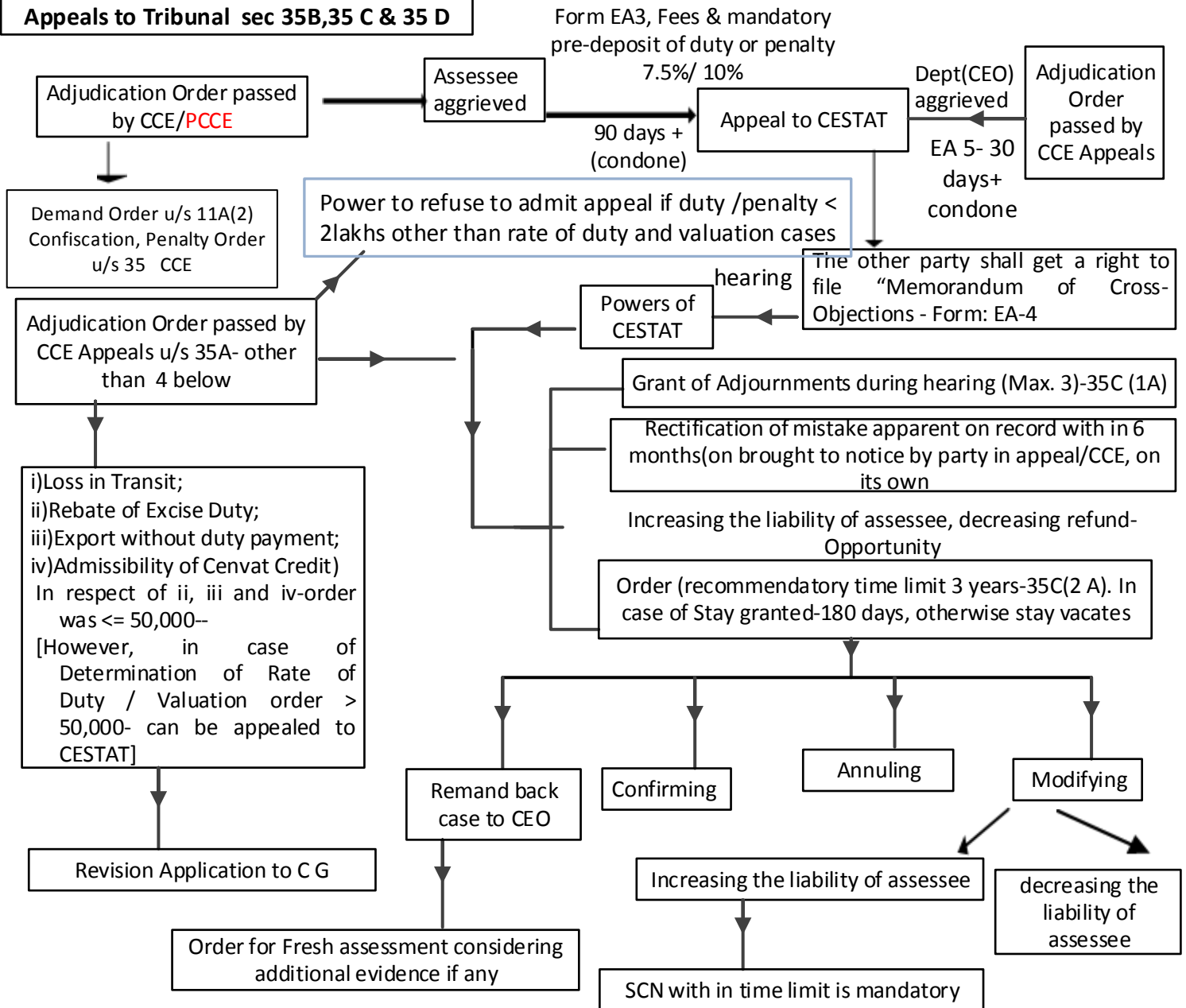
Appeals to Commissioner appeals sec 35 & 35 A



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Appeals under Central Excise- 2

Appeals to Tribunal sec 35B, 35 C & 35 D

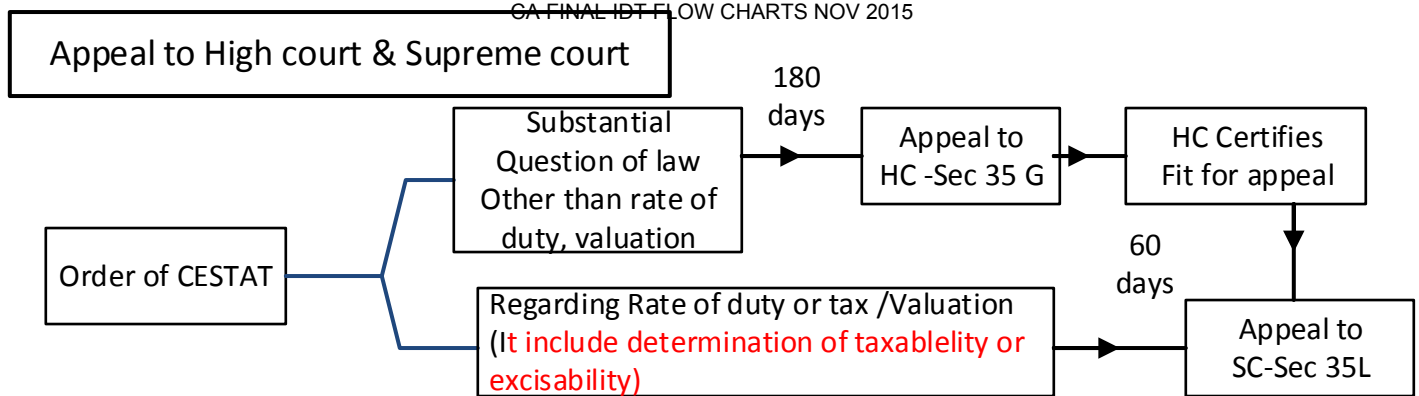


Other inherent Powers of CESTAT:

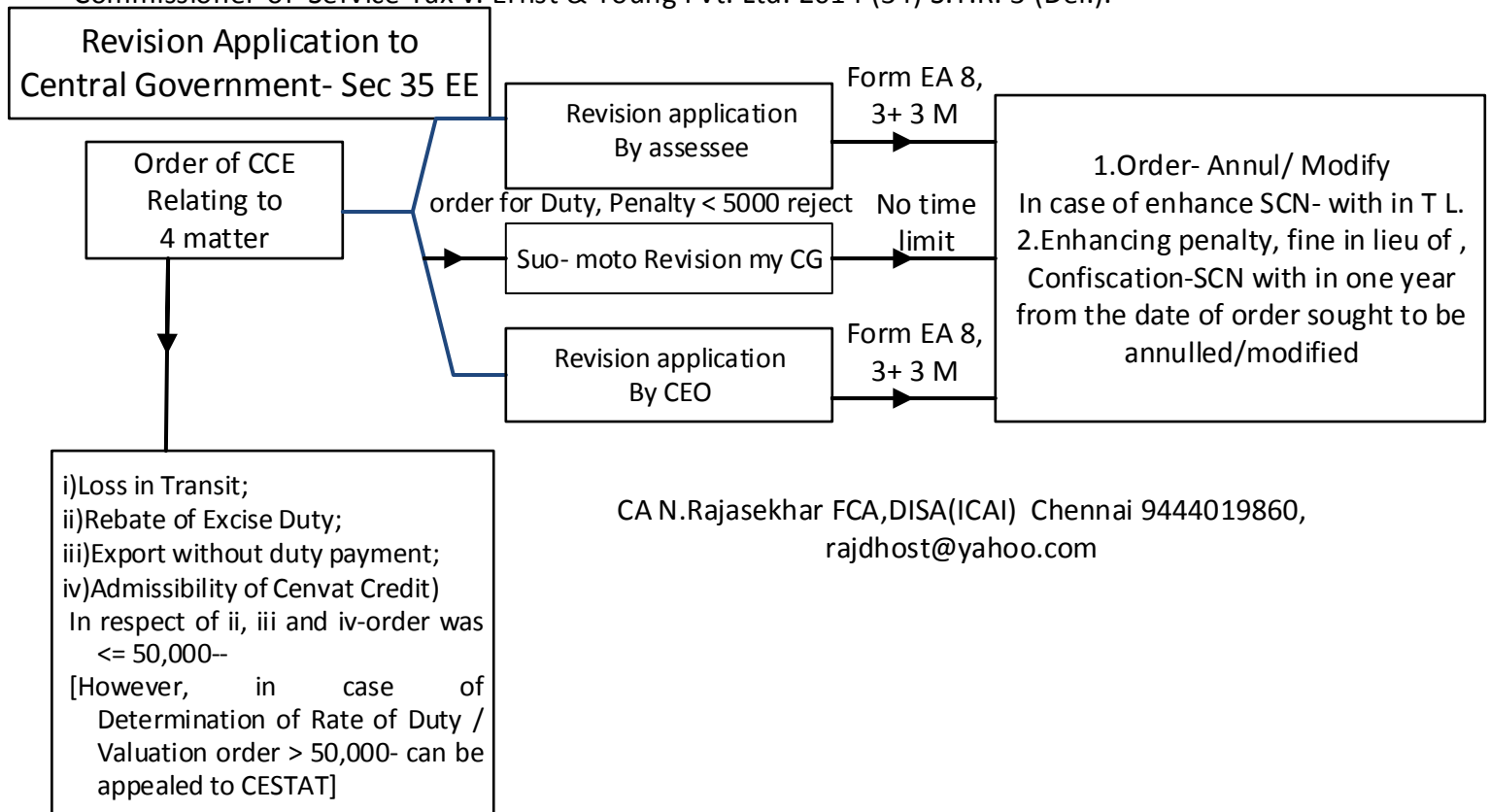
1. Recall dismissed order, if deposit of duty as ordered paid late
 2. Quash its own order, if found obtained by fraud, disregard of statutory provision, by mistake
 3. Correct an error so that justice is done
- The above powers are subject to some limitations.

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

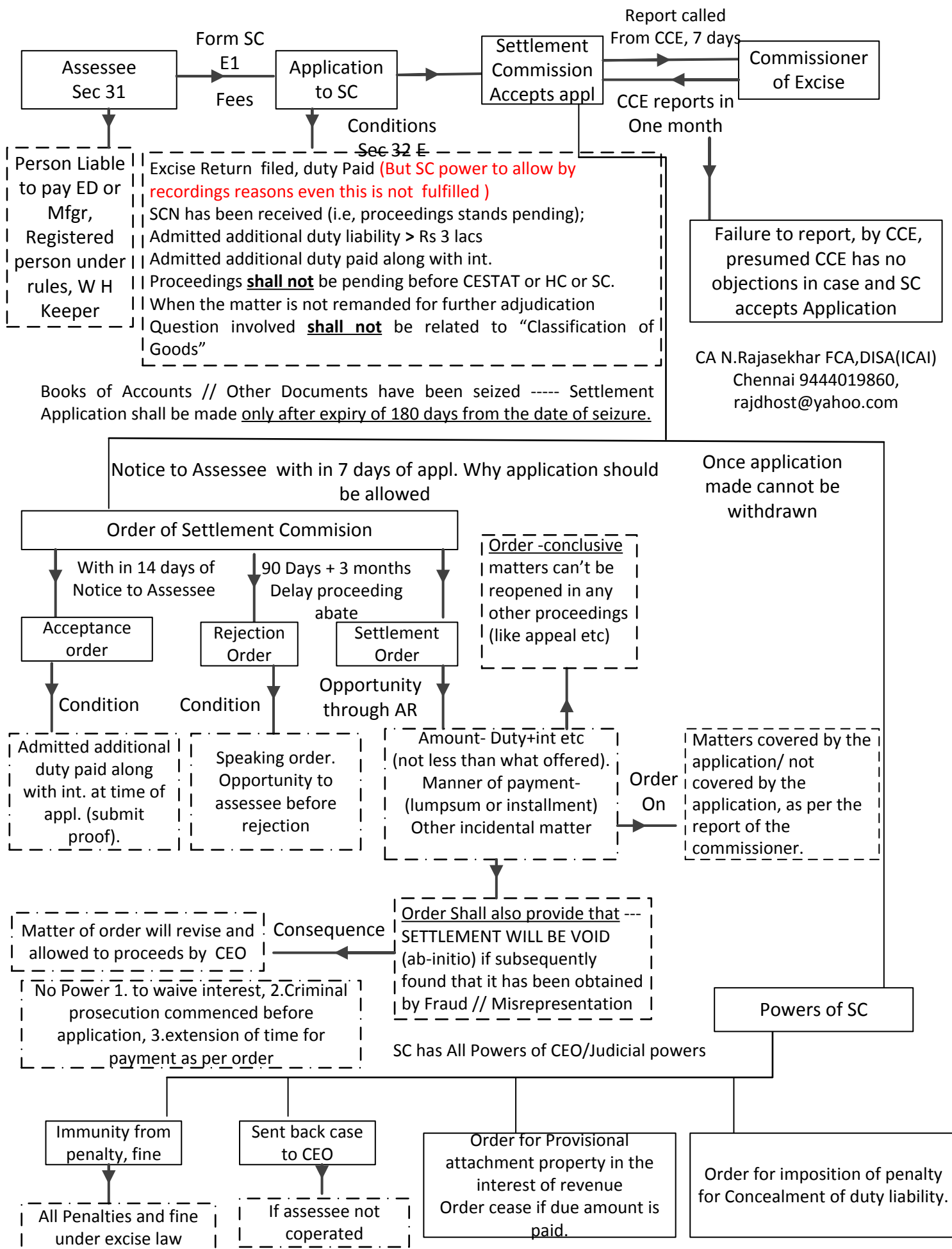
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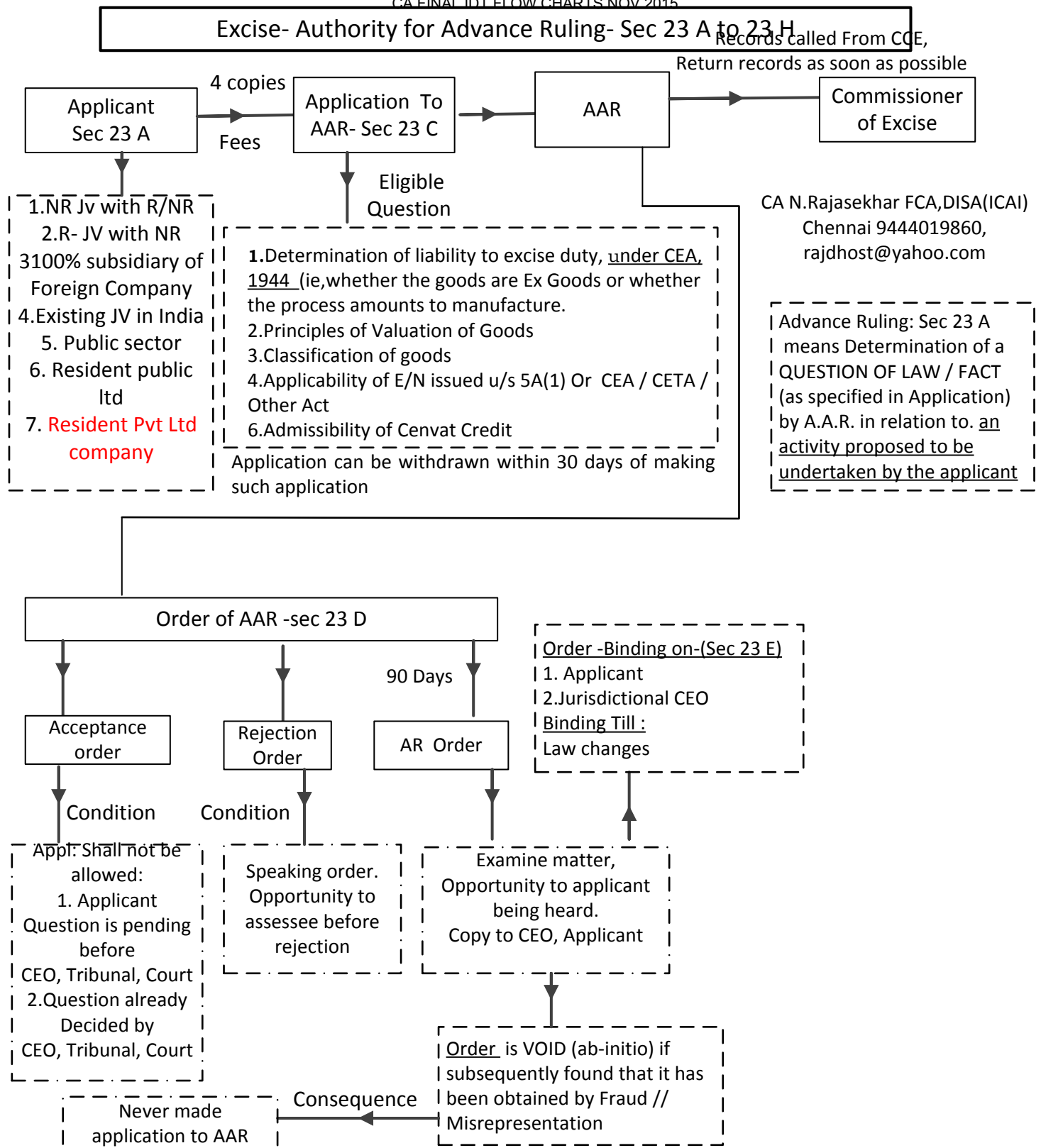
Whether particular activity is a manufacture or not/ taxable service or not, whether it is changeable or not under the act is covered by the cases of rate of duty and valuation and hence appeal lies with Supreme Court Commissioner of Service Tax v. Ernst & Young Pvt. Ltd. 2014 (34) S.T.R. 3 (Del.).



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



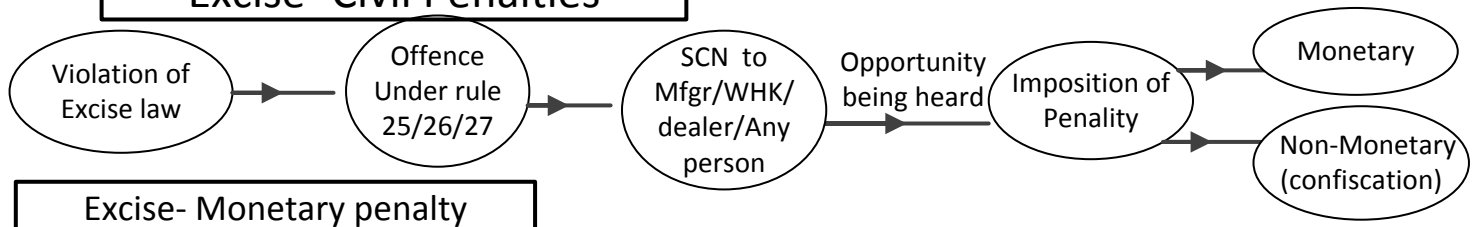
Benefit of seeking advance ruling from Authority would be applicable only in relation to activity which is proposed to be undertaken (& not in respect of that which has already been undertaken) --- MCDONALD'S INDIA PVT. LTD.-

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- Civil Penalties

FINAL IDT FLOW CHARTS NOV 2015



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.

Penalty can be 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

Penalty can be 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

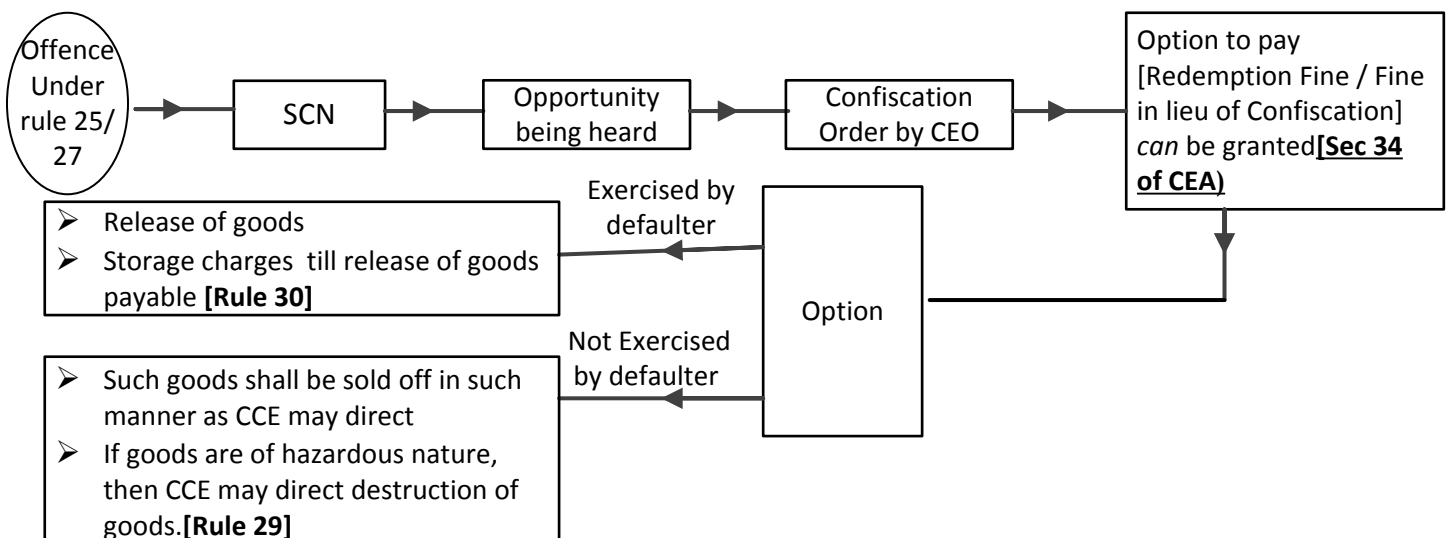
Any person
Max Rs.5000/
or Value of
benefit which
ever is higher

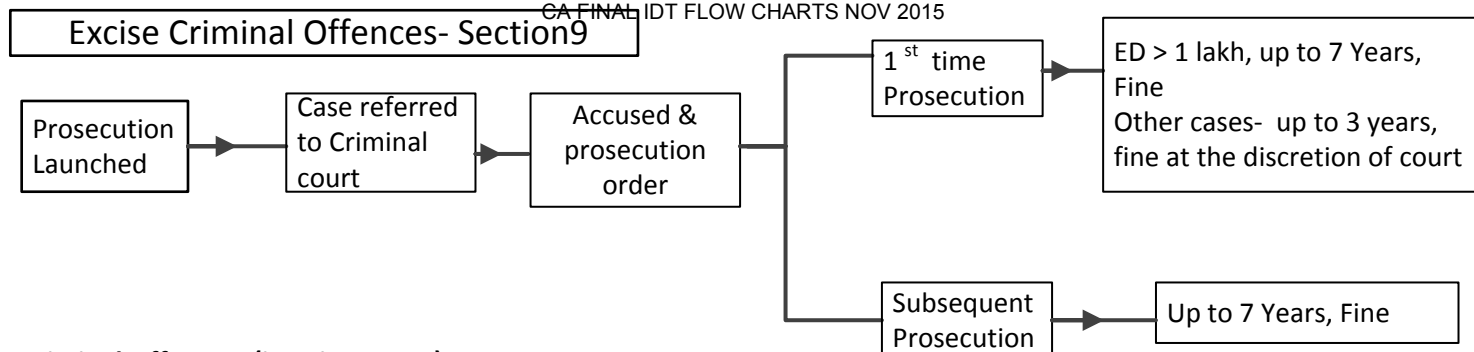
Offences Under Rule 27: General penalty: For breach of excise rules, if no penalty has been prescribed under Act or rules

Penalty can be levied on

Any person
Max Rs.5000/
And
Confiscation
Also possible

Excise- Non Monetary penalty- Confiscation





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.

There are certain guidelines for arrest and bail read,, CBEC vide Circular No. 974/08/2013 CX dated 17.09.2013

Pre-deposit of duty in appeals and refund of such duty

Sec 35 F Effective from 06.08.2014 & Classification through Circular No. 984/08/2014 CX dated 16.09.2014

The predeposit of duty in case of appeals is as follows.

Stage of appeal	Appellate Authority	Mandatory Quantum of pre-deposit of duty demanded
First appeal		
(a) Order Below the rank of CEO the Commissioner	Commissioner Appeals	7.5% of the duty where only duty or both duty and penalty are in dispute OR 7.5% of the penalty where only penalty is in dispute The amount of pre-deposit shall not exceed `Rs.10 crores.
(b) Order of Commissioner	CESTAT	Example : JC of Excise confirmed duty demand on X ltd Rs. 10 lakhs + Penalty u/s 11 AC Rs. 10 lakhs + Penalty under CE rules 26 Rs. 3 lakhs Pre deposit = 10 lakhs x 7.5% = Rs.75000/- No predeposit on penalty Rs. 13 lakhs Example 2 AC of Excise confirmed Penalty on X ltd .u/s 11 AC Rs. 10 lakhs + Penalty under CE rules 26 Rs. 5 lakhs Pre deposit = 15 lakhs x 7.5% = Rs.1,12,500/- Both penalty to be added for redeposit
Second appeal		10% of the duty where only duty or both duty and penalty are in dispute OR 10% of the penalty where only penalty is in dispute The amount of pre-deposit shall not exceed `Rs.10 crores. Example same as above given in the first appeal but if the order issued by Commissioner appeals rate of pre deposit is 10% in case of second appeal
Order of Commissioner Appeals	CESTAT	

Pre-deposit of 7.5%/10% **would exclude interest**, if any, payable on the **duty demanded**.

Duty demanded shall include the following

Adjudication order amount as per sec 11	xxxxxxx
Duty collected amount to be deposited u/s 11D	xxxxxxx

erroneous CENVAT credit taken	XXXXXXXX
Amount payable under Rule 11D	XXXXXXXX
Total amount	XXXXXXXX

All the above provisions will also applicable to service tax also Parallel amendments have been made in the Customs Act, 1962 in section 129E.

All pending appeals/stay applications filed prior to 06.08.2014 (the date of enactment of the Finance (No. 2) Bill, 2014) shall be governed by the erstwhile old provisions.

Payments made during investigation

- Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10% (subject to a limit of ` 10 crore), will be considered as payments towards pre-deposit for filing the appeals.

Date of filing of appeal will be deemed to be the date of deposit of such payments.

Refund of Pre-Deposit

- Refund of pre-deposit is not refund of duty and hence the same will not be governed by provisions of section 11B of Central Excise Act/section 27 of Customs Act, 1962. Therefore, once the appeal is decided in favour of the assessee, he can apply for refund of pre-deposit.
- Refund of pre-deposit along with interest will have to be made within 15 days of receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.
- **Refund of pre-deposit should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party.**
- In the event of a remand, refund of the pre-deposit shall be payable along with interest.

Interest on delayed refund of amount deposited under section 35FR from 06.08.2014

- Payment of interest on the refund of such pre-deposit from the date of its payment to the date of refund. Also, the rate of interest would be 6% p.a.
- Interest on delayed refund of pre-deposit made prior to 06.08.2014, the old provision interest @6%p.a after three months from the date of communication of the order will apply

Parallel amendments

All the above provisions will also applicable to service tax sec 83/ Customs, Sec 129

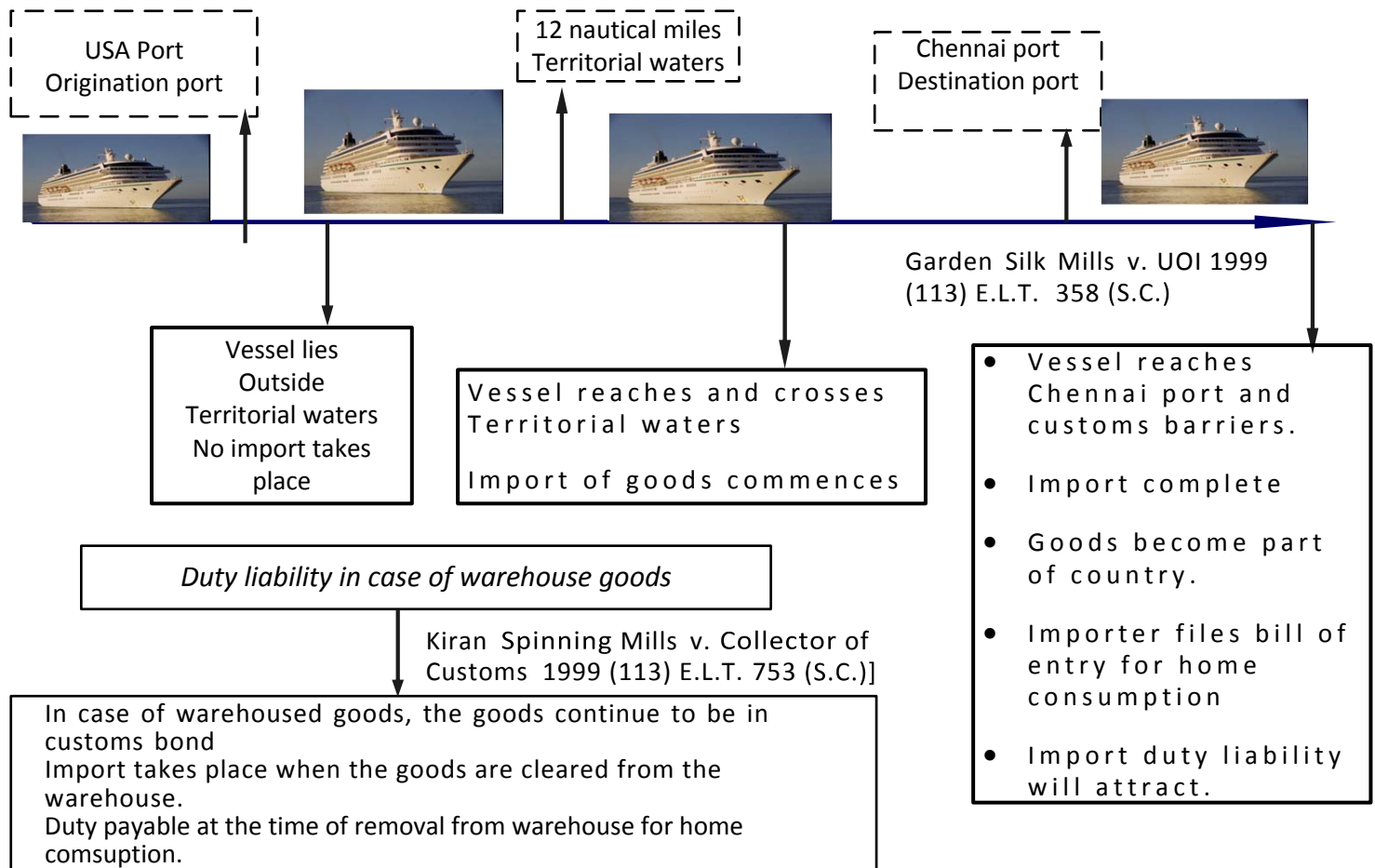
Customs Duty Liability Sec 12

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

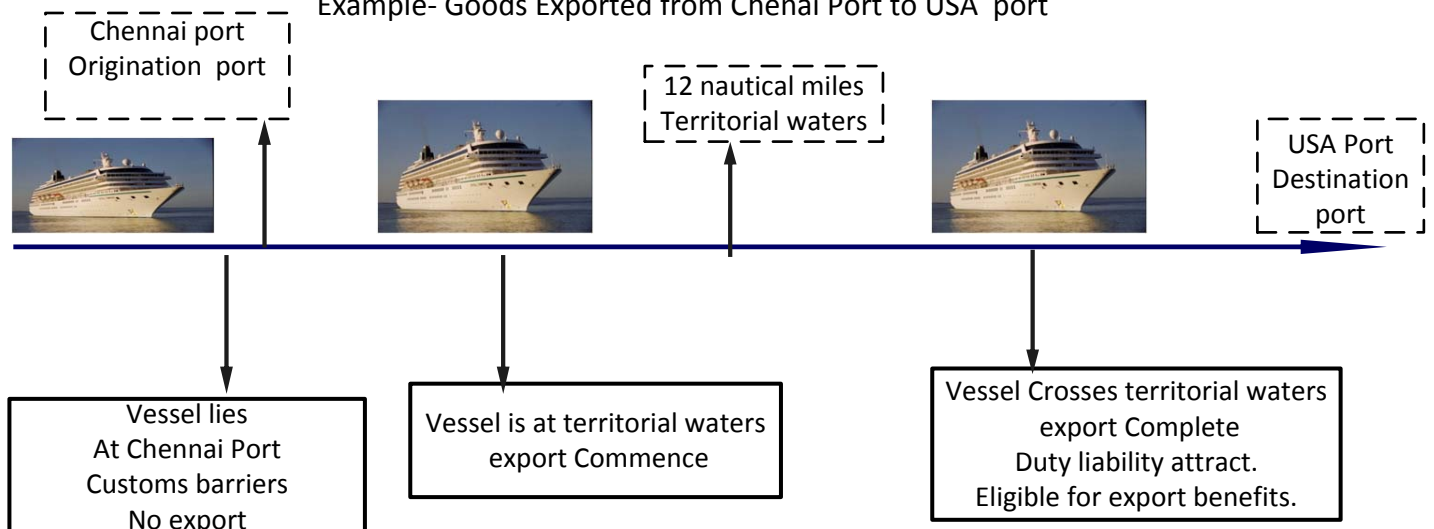
Example- Goods imported from USA Port to Chennai port



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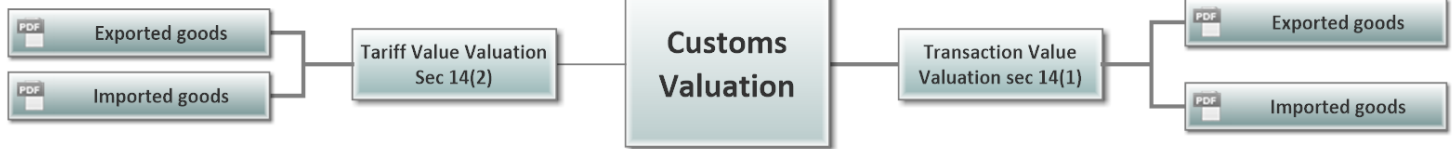
Taxable event for Export goods

Example- Goods Exported from Chennai Port to USA port



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Customs Valuation 1-



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

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 be 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

Rule 10: Transaction value = Price of goods sold at the time and place of importation + costs and services, assists (i.e 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 other

TV in case of relative is accepted if (i) relationship 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

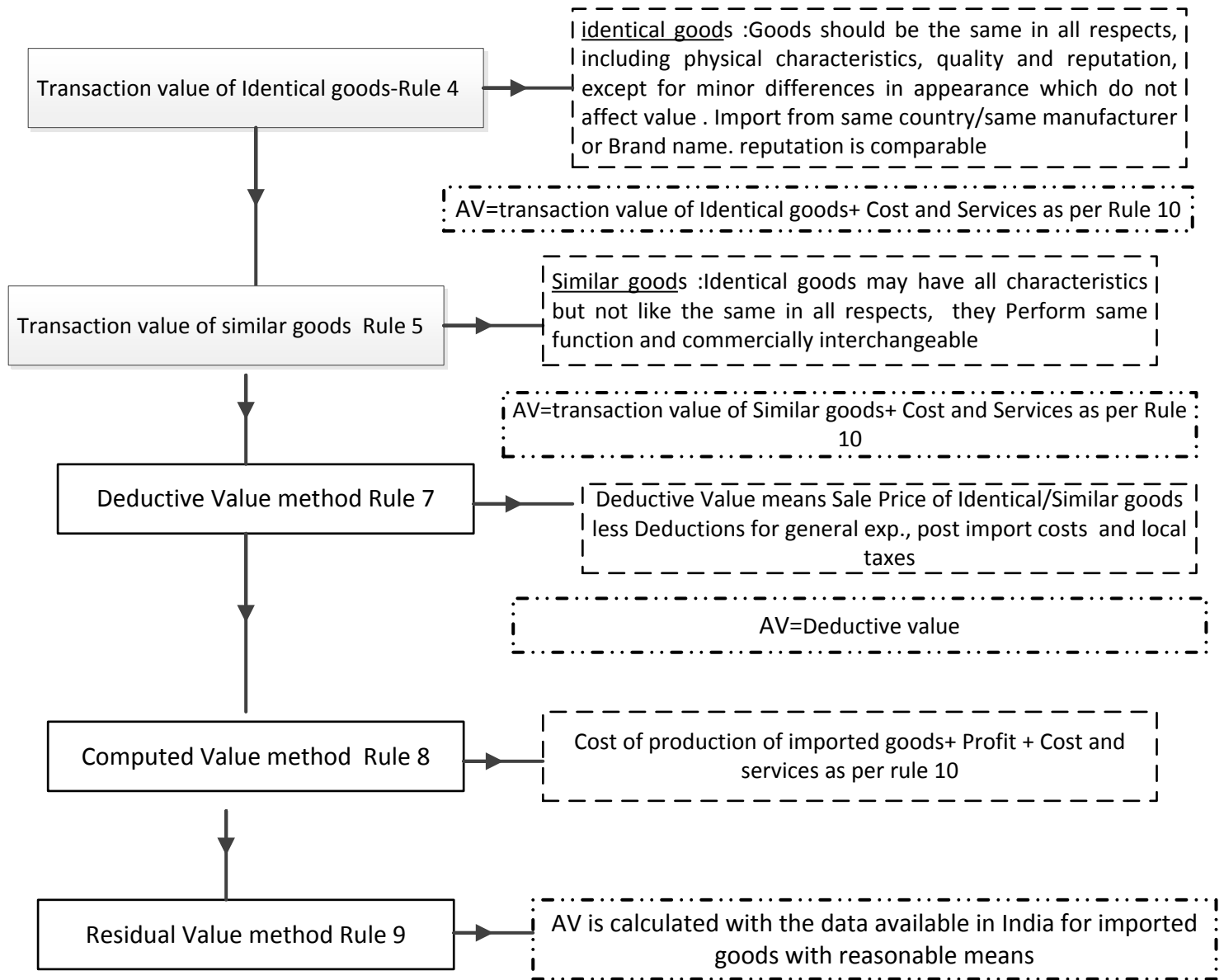
Cost and services to add Rule 10(2)

- (a) Cost of Transport:
Actual amount. If not ascertainable 20% of FOB
In case of Air, Actual restricted to 20% of FOB
- (b) Transit Insurance:
Actual amount, if Not ascertainable 1.125% of FOB
- (c) Landing Charges- flat 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

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



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Meaning of relative Rule 2 (2)

1.They are

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

2.Both of them

- Are controlled by a third person;
- Control a third person;
- ONE OF THEM
- Control the other

3.Any person

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

Explanation:

- 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 (i.e. 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 value 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

Procedure By Person in-charge PIC

((Provisions relating to clearance of Imported Goods))

Sec 29

- Arrival of Conveyance only at Customs Port / Airport in India)
- Arrival at other place is possible: -
- Forced landing or calling due to Accident // Stress of Weather // Other Unavoidable reason
- Duty of PIC : shall report the arrival to nearest Police/ Customs Officer. No unloading. Not allow departure of passenger (Exception health safety, preservation of life property)

Sec 30: Delivery of IGM/IR by PIC of Conveyance/ Other Notified person

- PIC file IGM Before arrival of Vessel, air Carft, Import report in case of vehicle with in 12 hours after arrival
- Belated filing --- Penalty upto Rs 50,000

Sec 31 Imported goods not to be unloaded unless Entry inwards granted

- In case of import by Vessel --- unloading of goods only subsequent to grant of Entry Inward
- Entry Inward is granted only subsequent to filing of IGM.
- For unloading of baggage nails, perishables, hazardous material Entry Inward is not required:

UNLOADING of goods

- Sec 32 : Imported goods not to be unloaded unless mentioned in the Import Manifest (IGM) / Import Report (IR)
- Sec 33 : Imported goods shall be unloaded at approved landing places approved by Commissioner only r]
- Sec 34 : Imported goods shall be unloaded under supervision of customs officer
- Sec 35 : Restrictions on goods being water-borne (Boat Note is must --- which is obtained from PO)
- Restrictions on unloading of goods on holidays etc. (Unloading after Working Hours or on Holiday (Sunday / other Holiday) --- only upon payment of Merchant Overtime Fees)

Procedure By Importer

(Provisions relating to conveyance carrying Imported Goods)

Sec 46 : Entry of goods on Importation

- Importer should file BOE for Home consumption/ Warehouse / ware house to home consumption latter
- BOE can be file after filing of IGM/IR; PO allow advance filling of BOE in 30 days advance before expected arrival vessel, aircraft, vehicle
- PO allow if no fraudulent intention/interest of revenue substitute BOE substitute home consumption to warehouse or vice versa
- PO allow amendment change in IGM/IR/BOE if no fraudulent intention/clerical error, mistake
- Date of filing of substituted B/E shall be considered as "relevant date" for the purposes of Sec 15 (i.e., for determination of applicable rate of duty and assessable value)
- Amendment of BOE after clearance is allowed based on proof of documents.
- Importer shall produce all other documents for the purpose of assessment to PO
- Sec 45 unloaded in a customs area shall remain in the custody of Port/airport
- person having custody of any imported goods in a customs area shall keep a record
- person shall not permit such goods to be removed from the customs area without the written permission of the Proper Officer
- Sec 47: Clearance of goods for Home Consumption
- B/E filed for H/C will be assessed and returned – Assessed Duty & other charges
- Custodians dues etc. paid within 2 Working days – Clearance Order issued (*this order is called "out-of-Charge Order"*) --- Delivery given to importer
- importer fails to pay the import duty within two days, interest@18% p.a, Board has power to waive interest.

Import procedures-2

Disposal if goods are not cleared within 30 days [Section 48]

- Goods must be cleared within 30 days after unloading.
- Customs Officer can grant extension.
- If not cleared, goods can be sold after giving notice to importer.
- There is no time limit on clearance thereof of animals, perishable goods and hazardous goods.
- Arms and ammunition can be sold only with the permission of CG.

- **Sec 49:** Storage of imported goods in warehouse pending clearance [/Warehousing without warehousing
- (Goods intended to be cleared for H/C – **BOE for H/C also filed** – but such clearance not possible within a reasonable period
- the Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time
- Storage of such Goods in WAre house allowable
- Goods reached the warehouse but provisions of “Warehousing Chapter” will not be applicable to such goods

- Sec 44: -- Sec 45, 46, 47, 48, 49 are Not Applicable to a)Baggage, b) Goods imported by post

Sec 37: Power to Board Conveyance

PO may, if he thinks it necessary, board any conveyance carrying imported goods.

Sec 38: Power to require production of documents and ask questions

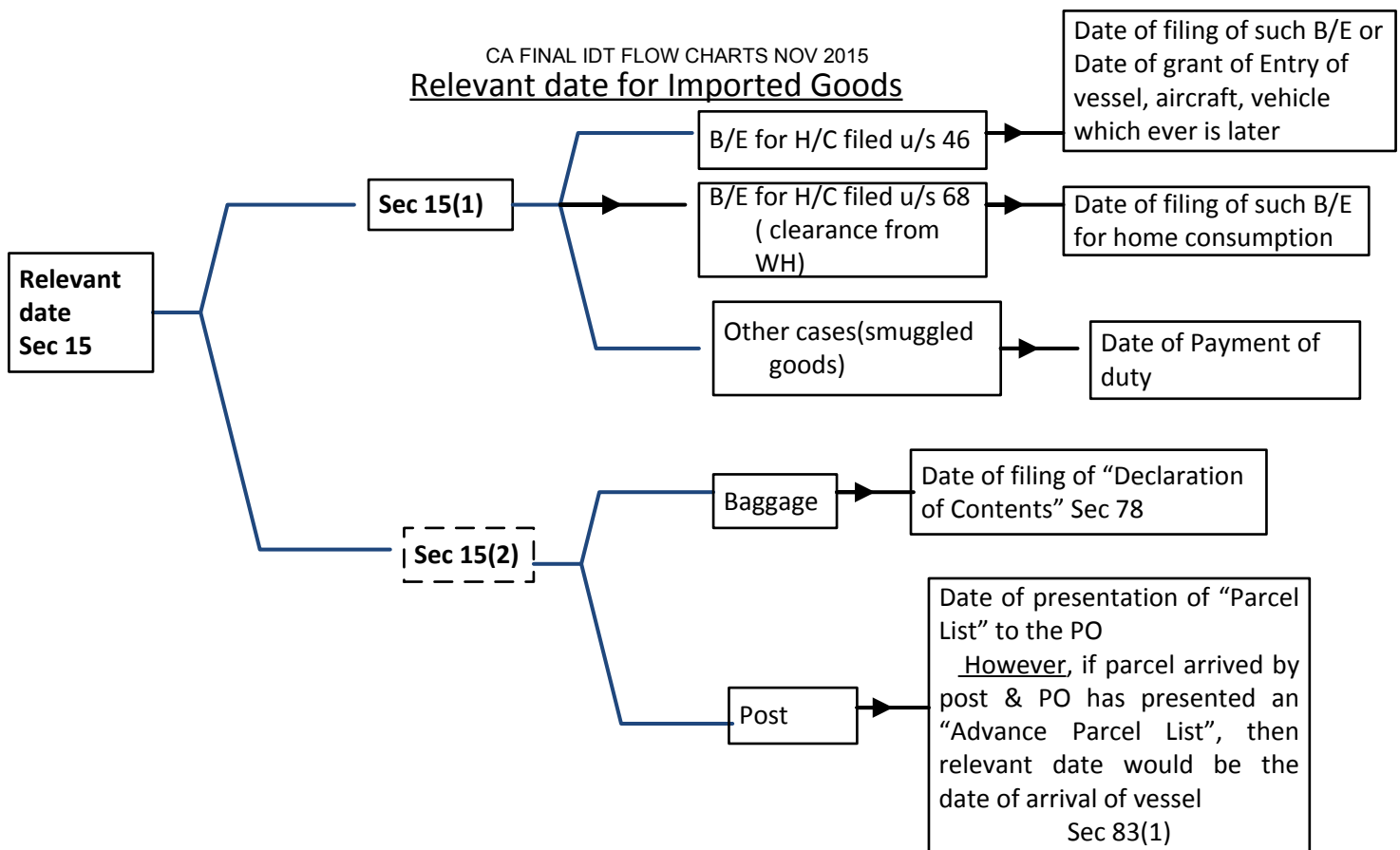
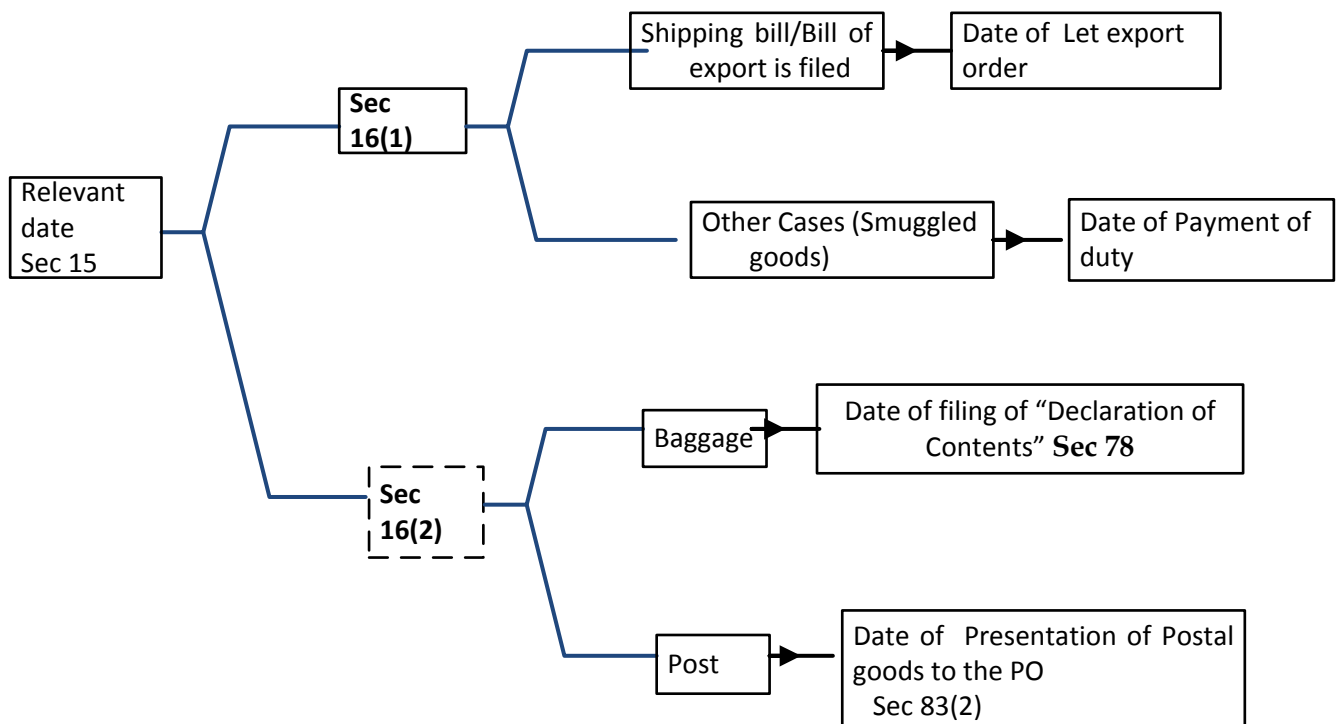
Any document may be demanded from PIC --- Questions may also be asked by the PO.

Relinquishment of title of goods by Importer

- Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit into a warehouse./In case of WH goods before order for H/C
- Owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
- Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

Reasons for relinquishment

- goods are in much deteriorated condition and it is not worthwhile to pay duty./assessment at higher side
- If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23(2) of Customs Act].
- In case of relinquishment of warehouse goods the importer will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable.

Relevant date for Imported GoodsRelevant date for Export Goods

EXPORT PROCEDURES**Procedures for EXPORTER****(Clearance of Export Goods)**

- **Sec 50 : Entry of goods for Exportation**
- **Filing of Shipping Bill (SB)** (if Export is in Vessel / Aircraft) or **Bill of Export (BE)** (if Export is in Vehicle)]
- **Prescribed forms of Shipping Bill Color code**
- 1,SB for Export of Goods under claim of Duty Drawback Green
- 2.SB for export of dutiable goods Yellow
- 3.SB for export of duty free goods White
- 4SB for export of duty free goods ex-bond (i.e., direct exportation from the Customs Warehouse) Pink
- 5.SB for export under DEPB (Duty Entitlement Pass Book) Scheme Blue
- **Sec 51: Clearance of goods for Exportation**
- S.B / BE filed
- Inspection of goods is necessary to ensure that prohibited goods are not exported; Goods tally with description and invoice; and Duty drawback, where applicable, is correctly claimed
- PO satisfied that goods are not prohibited goods and assessed duty (if any) and any other charges have been paid
- **Clearance Order** issued :Order permitting clearance and loading of goods onto the conveyance – such order is known as **“Let Export Order” / “Let Ship Order”**]

Sec 44: -- Sec 50 & 51 are Not Applicable to
a) *Baggage*, b) *Goods imported by post*

Sec 37: Power to Board Conveyance

PO may, if he thinks it necessary, board any conveyance carrying export goods.

Sec 38: Power to require production of documents and ask questions

Any document may be demanded from PIC --- Questions may also be asked by the PO.

Procedures for PIC**(Provisions relating to conveyance carrying Export Goods)****Sec 39 : Export goods not to be loaded on vessel unless “Entry Outward” granted**

MASTER OF VESSEL SHALL NOT PERMIT LOADING OF EXPORT GOODS – UNTIL RECEIPT OF ENTRY OUTWARD” FROM THE PO

Exceptions: i) Baggage & ii) Mail Bags]

Sec 40: Export Goods not to be loaded unless duly passed by the PO

PIC of Conveyance shall allow loading of goods only upon submission by the Exporter to him of a duly assessed Shipping Bill // Bill of Export]

Exceptions: i) Baggage & ii) Mail Bags

Loading of Goods

Sec 33 Loading shall be done only at approved places

Sec 34 Loading shall be done under supervision of Customs Officer

Sec 35 Export Goods can be loaded with the help of small boats. If **goods are accompanied with Shipping Bill**, no Boat Note is required. However, **if goods are not accompanied with shipping bill**, boat note is must.]

Sec 36 Loading after Working Hours or on Holiday --- only upon payment of Merchant Overtime Fees)

Sec 41 Delivery by PIC (before departure from India)

- Export Manifest (EGM) in case of Vessel / Aircraft or Export Report (ER) in case of Vehicle)

[EGM/ER has to be filed EGM/ER before Departure]

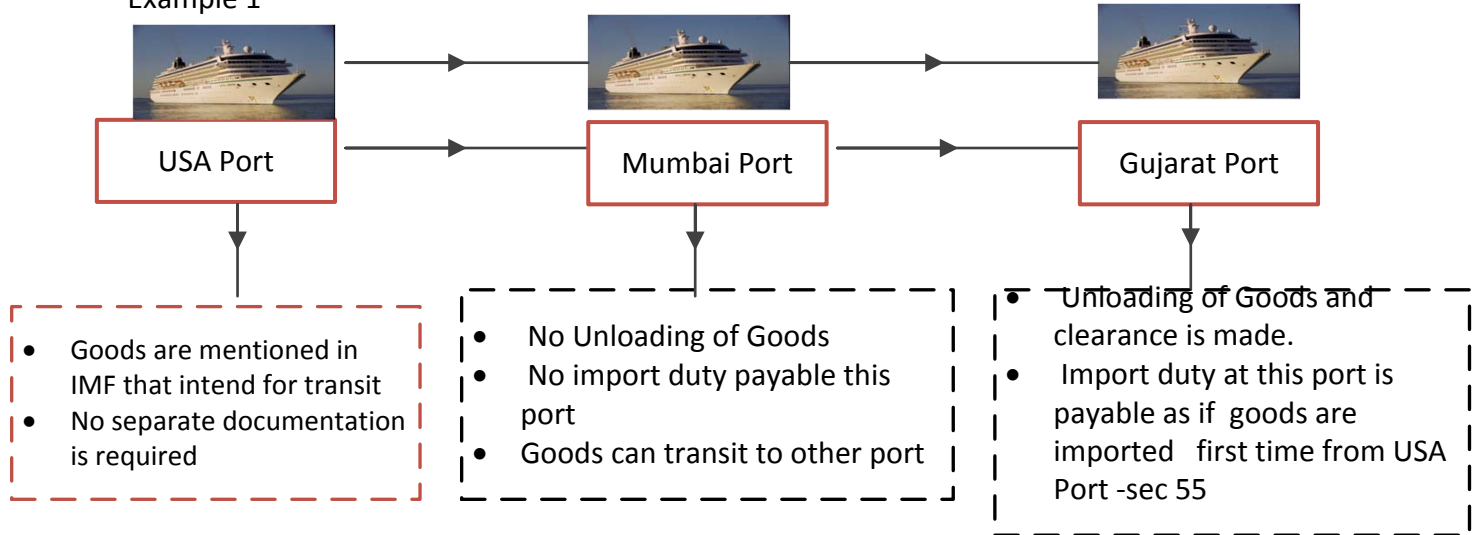
Sec 42 : Conveyance carrying Export Goods shall leave Customs Station only upon receipt of “written order to that effect” (This order is known as “Departure Permission”)

Transit and transshipment of goods Sec 53, Sec54 and Sec 55

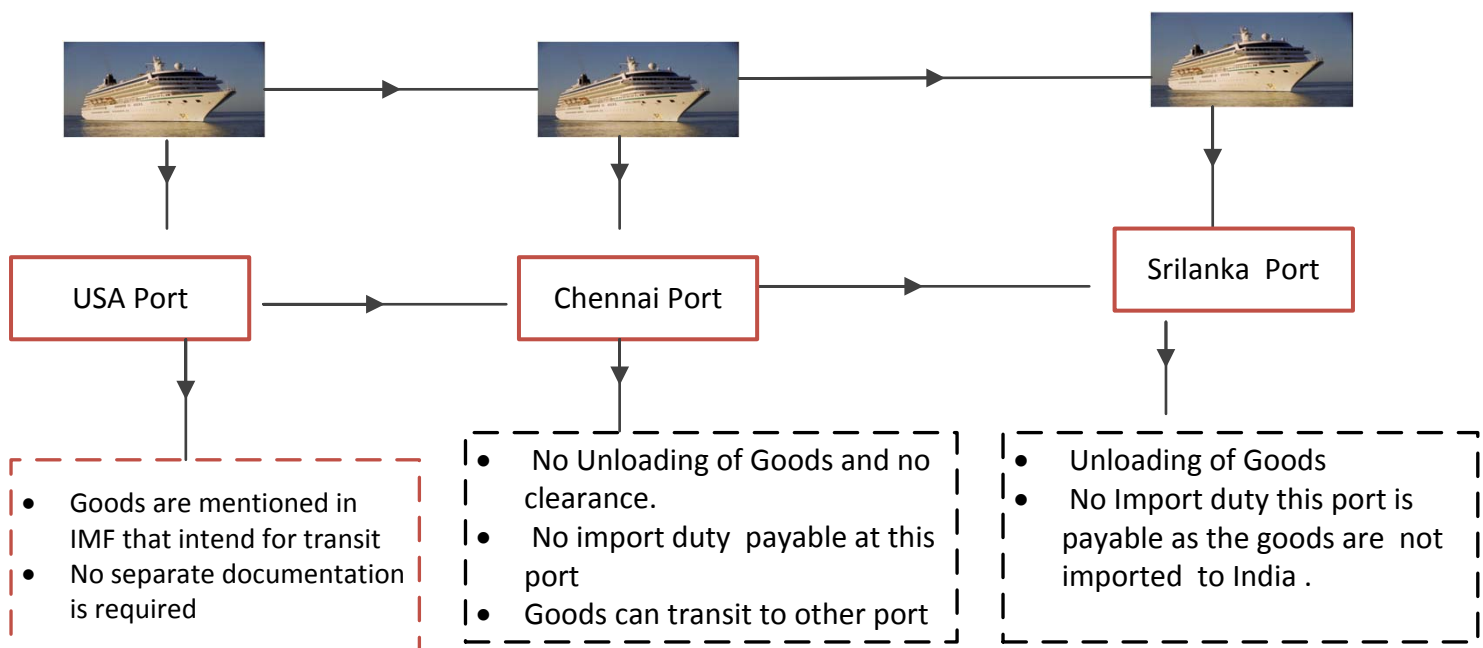
Transit of goods sec 53

- Any vessel, aircraft or Vehicle coming out of India, reaches any port, airport customs station in India, the goods may be allowed to transit any port or airport, customs station in India / Outside India without payment of duty, if such goods are mentioned in IMF for transit

Example 1



Example 2

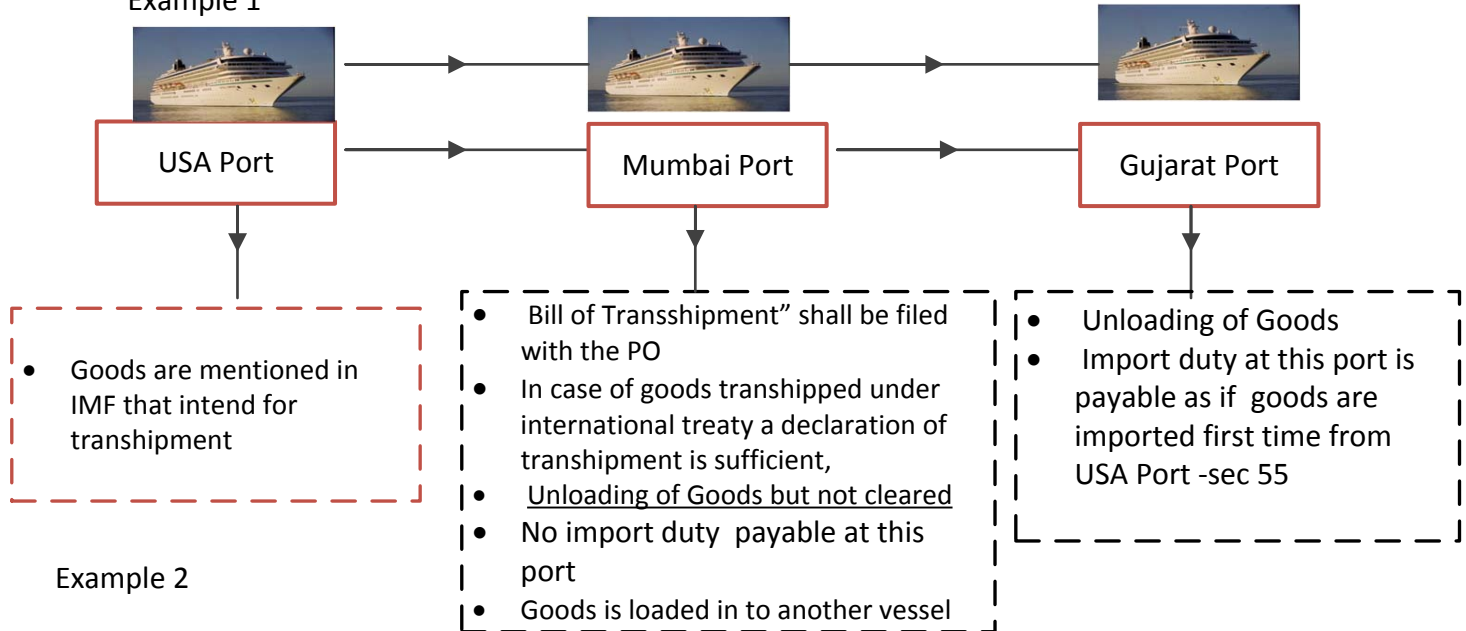


Transit and transshipment of goods-2, Sec 53, Sec54 and Sec 55

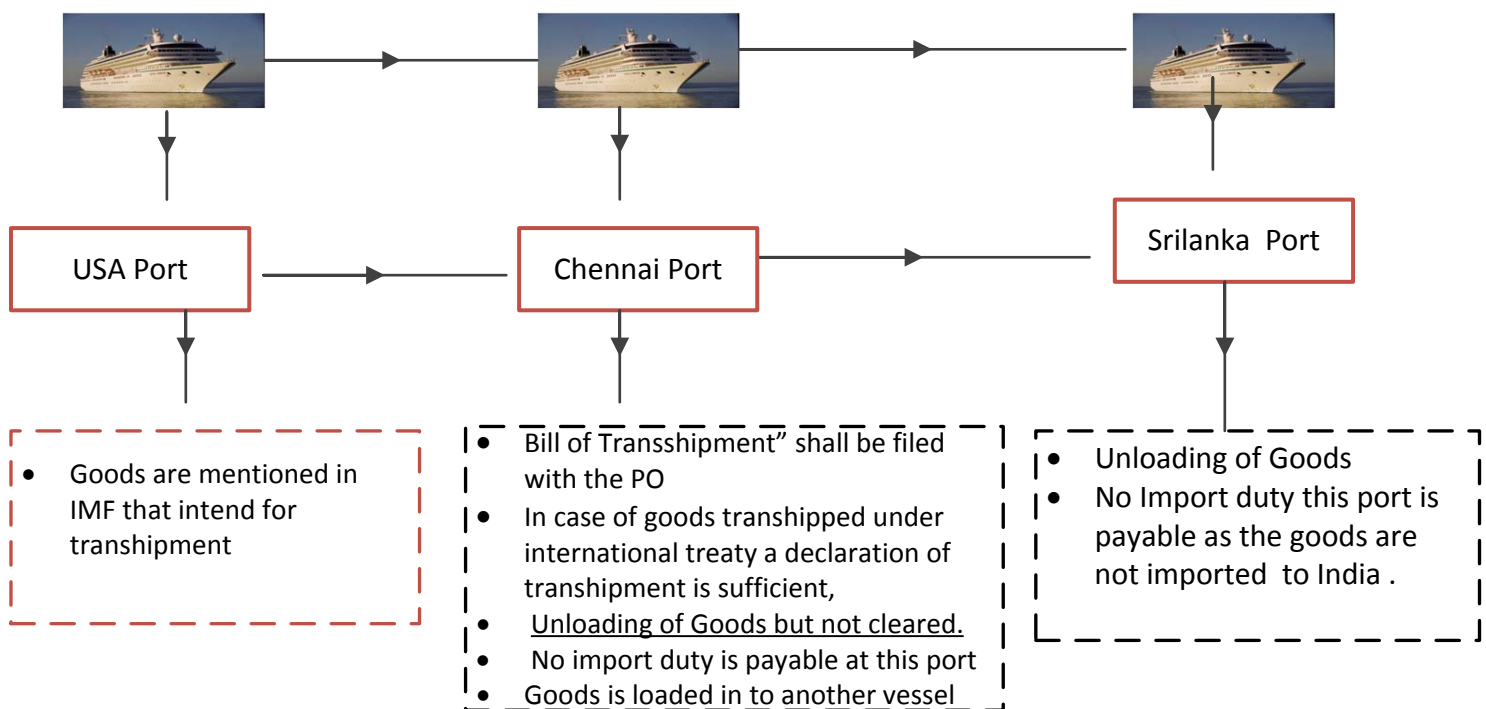
Transshipment of goods sec 54

- Any vessel, aircraft or Vehicle coming out of India, reaches any port, airport customs station in India, the goods may be allowed for transshipment to any other port or airport, customs station in India /Outside India without payment of duty, if such goods are mentioned in IMF, A bill of transshipment is filed.

Example 1



Example 2

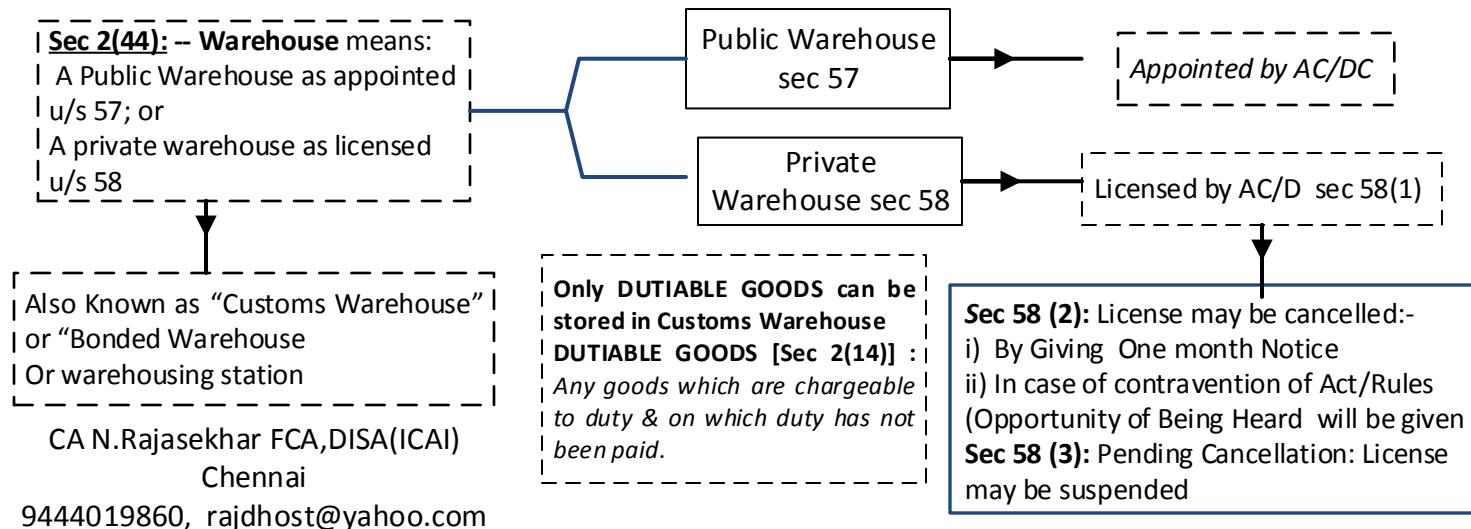


Transit VS Transshipment

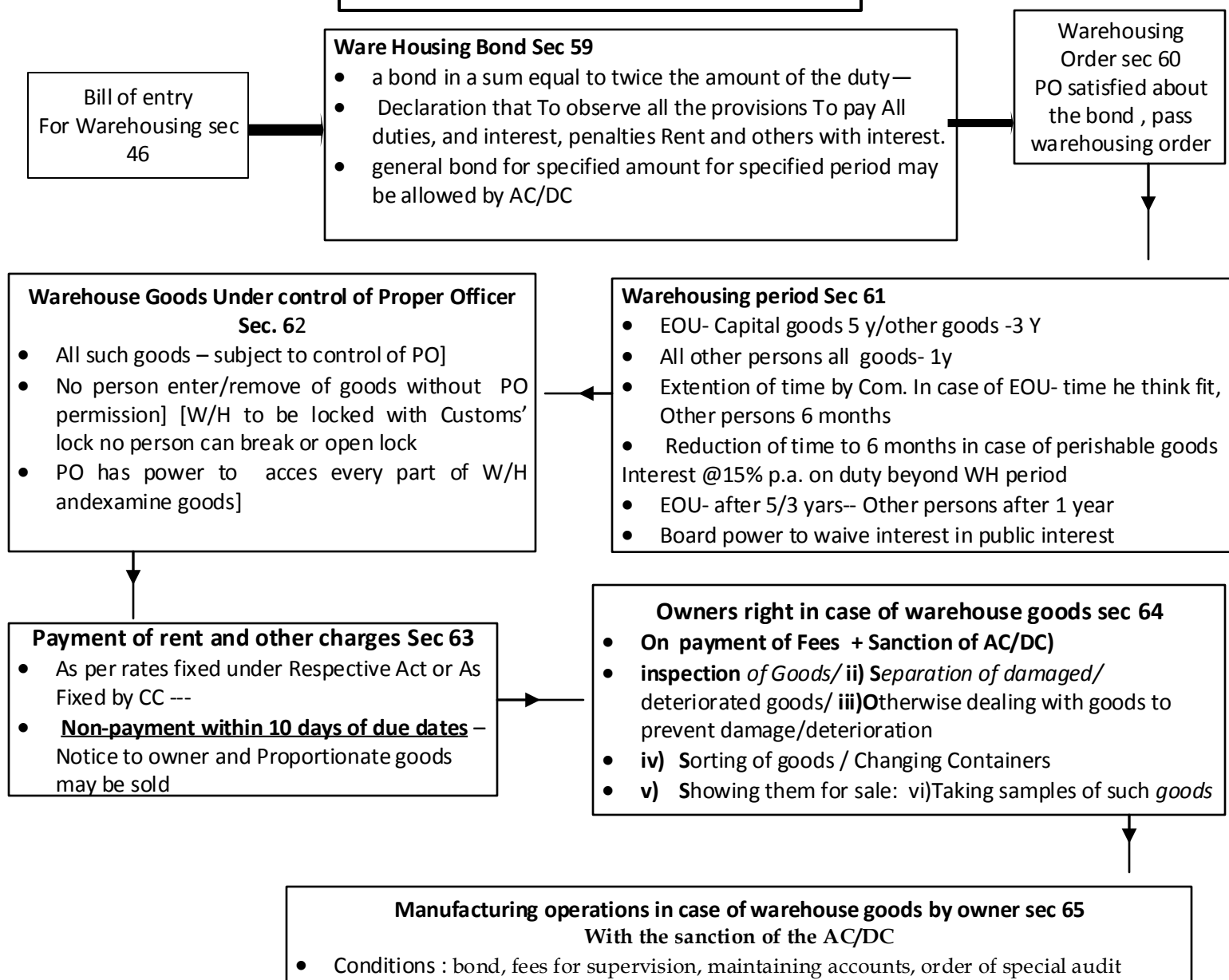
Transit	Transshipment
- Goods remain in the same conveyance in transit - No fresh documents is need to file at port/air port	- Goods will be loaded in to another Conveyanceremain in the same conveyance in transit - Fresh documents of bill of transshipment is to filed at port/air port

WAREHOUSING OF IMPORTED GOODS

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WAREHOUSING Procedure



Duty liability on imported goods present in the waste/final product

- If waste is generated when the waste was exported or destroyed, no duty is payable
- If the waste is cleared for home consumption, import duty is payable on the waste as if the waste was imported
- If final product is exported no duty payable
- If Final product is cleared for home consumptions, import duty is payable on the import material present in final product. The rate of duty prevailing on the date of presentation of bill of entry for home consumption will apply. Normally it would not be less than the rate prevalent at the time Classification will be the same as import material, if the material undergoes change they have to be classified with regard to their finished condition
- Relevant date for determination of rate of duty leviable on import material content in the Waste is date of payment of duty

Exemption from excess duty [Section 66]

- If any imported materials are used in manufacturing operations in warehouse and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods;
- CG, if satisfied, that in the interests of the establishment or development of any domestic industry it is necessary to do so;
- may, by notification in the Official Gazette, Exempt the imported materials from the whole or part of the excess rate of duty

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): Inability 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 be 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)

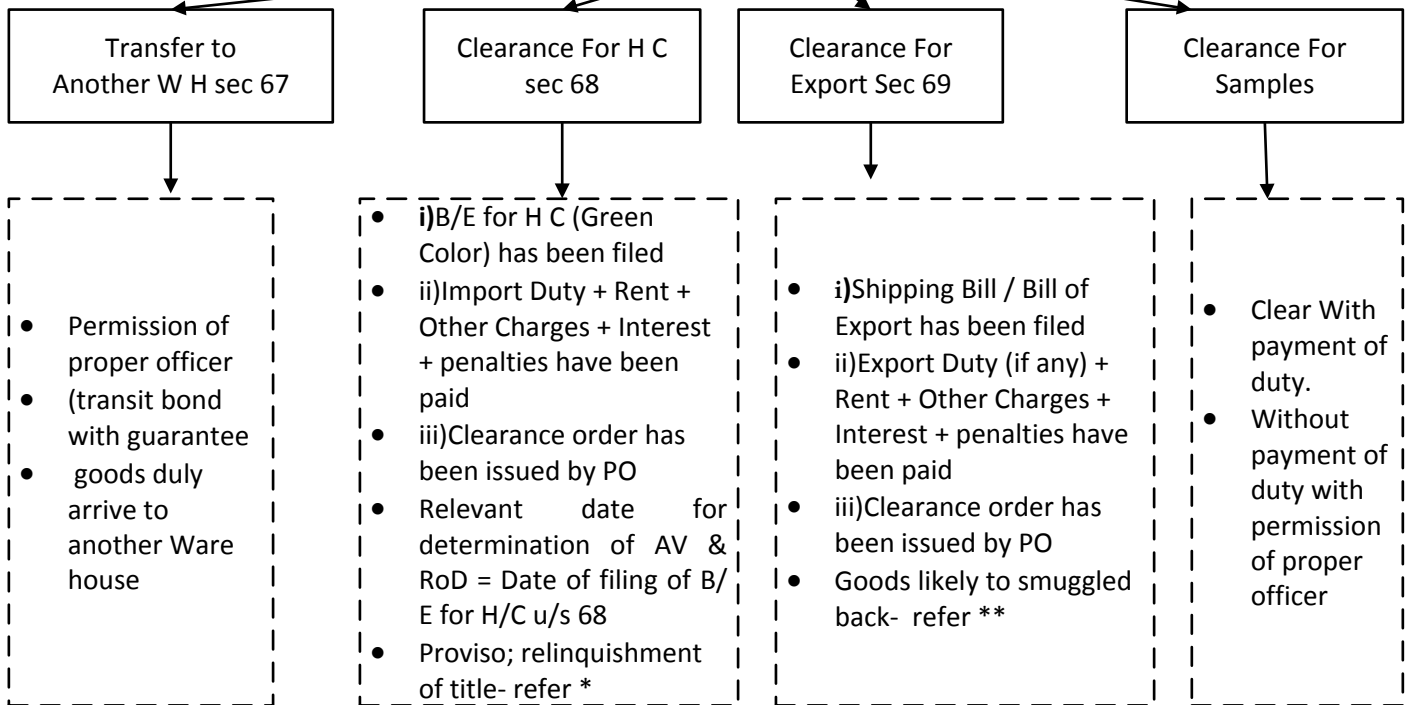
iii) Sec 85: B/E filed for Warehousing – Importer submitting a declaration that these are to be supplied as Stores – without payment of duty (i.e., to Foreign Going Vessel/Aircraft or Ship of Indian Navy) --- such stores may be warehoused without assessment of duty thereon (i.e., No Bond Execution).

Rate of duty if the goods are not removed from warehouse within the permissible period

- Goods which are not removed within the permissible period are deemed to be improperly removed on the day it should have been removed.
- Thus, duty applicable on such date i.e. last date on which the goods should have been removed is relevant and not the date on which the goods were actually removed.

WAREHOUSING OF IMPORTED GOODS-2

Removal of goods From Warehouse except as below Sec 71



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

- Importer may relinquish his title to goods **Before passing of Clearance Order** for Home consumption-
- **Then, he shall not be liable to pay DUTY..** Title may be relinquished only upon payment of warehousing 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.**

** 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

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- **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.

Sec 73

- Where whole of the W/Hed goods have been cleared + All AMOUNTS thereon have been paid
- PO shall cancel Bond (discharged in full)
- If the importer demands such cancelled bond – it shall be delivered to him

Customs Assessments

Self Assessment Sec 17

- Importer/Exporter file BOR/SB and Self assesses duty.
- stores warehoused without assessment
- The P.O verify the self-assessment
- the Proper Officer may require to produce documents
- PO re-assess the duty when that the self-assessment is not done correctly,
- Where any re-assessment in verification which is contrary to the self-assessment
- Proper Officer shall pass a speaking order in writing with in 15 days of re assessment of BOE/SB
- When re-assessment has not been done or a speaking order has not been passed on re-assessment, the Proper Officer may audit the assessment of duty at his office or at the premises of the importer or exporter,

Provisional Assessment Sec 18

Reasons

- Importer/Exporter file BOR/SB and unable to Self assesses duty.
- imported goods or export goods to get any chemical or other test; or
- In addition to submitted documents the Proper Officer deems it necessary to make further enquiry

Procedure

- The P.O direct for P.A
- Bond/Guarantee by Importer/Exporter
- Final assessment difference pay/ refund . in case of warehouse, bond for difference
- Interest 18% p.a from first day after duty provisionally assessed.
- Refund interest 6% if not paid with in 6 months of final assessment
- Doctrine of Unjust enrichment applicable

Special cases of assessment and duty rates

Assessment of Set of articles Sec 19

- **Article attracting "Specific Duty"** = Shall be charged to that specific duty only
- **Article attracting "Ad-Valorem Duty"** = Shall be charged to MAXIMUM of the "ad-valorem" rates
- **Article Not liable to duty at all** = Shall be charged to the "Ad-Valorem Rate" as above

Exception

Set of Article = [Main Article Accessories / Spare Parts / Repairs & Maintenance Implements]

- ---- Main Article --- Rate as applicable to it
- --- **Accessory etc.** -- Rate as applicable on the main article
- **Conditions:**
- i) Compulsory Supply;
- ii) Price of Main Article is inclusive of charges for accessories etc.

Any Set of Article - Importer furnishes proper evidence as to the independent values of different articles therein - then, each of the article shall be charged to duty as applicable to it independently

Project Imports for eligible projects Chapter 98.01 Machinery, Equipment, apparatus

Benefits

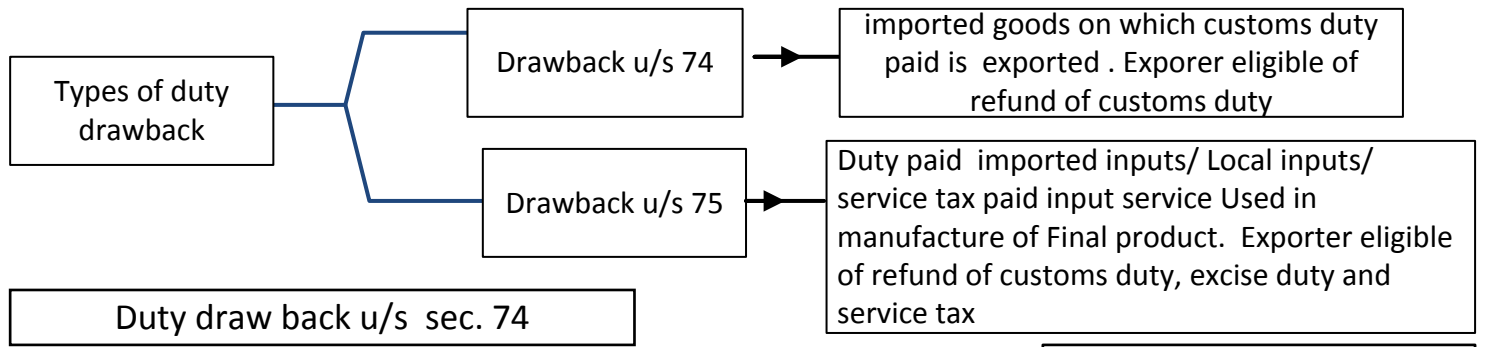
- Single Classification of different machineries;
- **Concessional lower rate of duty**

Examples

Power projects
Irrigation projects
Industrial plant
Mining project

Duty Drawback

Duty draw back means refund of customs duty, and excise duty paid, Service tax paid on inputs/material, input service to exporter on export goods



- Goods have been import in to India
- Import duty on goods is paid
- Same imported goods is entered for Export
- General export of cargo, baggage export, export by post is eligible
- Shipping bill/Bill of export is filed by exporter
- AC/DC examined goods and Ensure that there is no prohibition/restriction for export Of goods

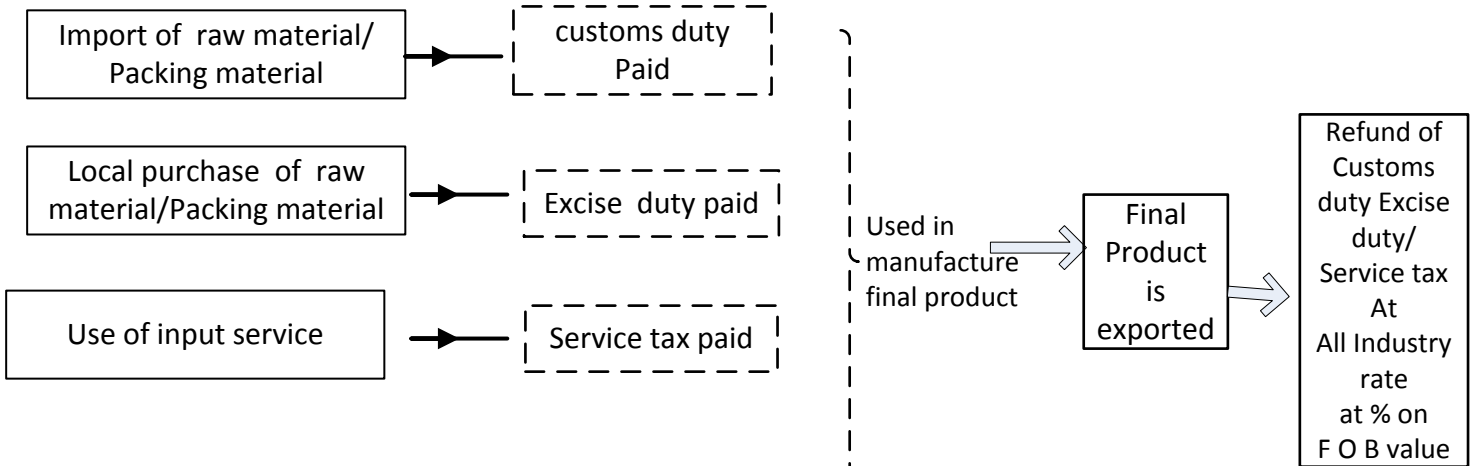
CG fixes Two types of rates

- Rates for business goods
- Rates for personal goods

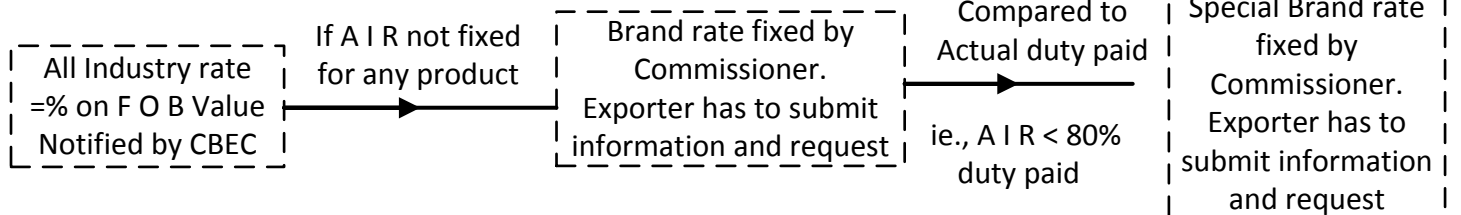
Duty draw back u/s sec. 75

- Refund of import duty up to 98% of duty paid
- Proportionate Reduction of % of refund in case of delay in export by usage of goods

- Export is made With in 2 years from date of payment of duty
- CBEC has power to extend unlimited time
- Let export order issued u/s 51 for clearance of goods.



Rates of draw back



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Duty Drawback 2 (details)

Draw back u/s 74 comparison

S No	Situation	DBK u/s 74 (1)	DBK u/s 74 (2)
1	When admissible	Imported goods exported as such (without being used)	Imported goods exported after having being used in India for some period
2	Rates of DBK	98% of the import duty paid at the time of importation	DBK at reduced rate (Notified Rates)
3	Time limit for Export	2 years from date of payment of import duty + Extension by CBEC	Maximum up to 3 Years or 4 years , As the case may be

DBK 74 (2) Rates

DBK 74 (2) Rates				
Business Goods		Personal goods including Motor car		
S No	Usage time	Rate of DBK	Usage time	Rate of DBK : For personal goods including motorcar imported by individual
1	< 3 months	95%	1st year	100% -(4% per quarter of part of quarter)
2	> 3months<= 6 months	85%	2 nd year	100% -(16%+ 3% per quarter of part of quarter)
3	> 6 months<= 9 months	75%	3 rd Year	100% -(28%+ 2.5% per quarter of part of quarter)
4	> 9 months<= 12 months	70%	4 th year	100% -(38%+ 2% per quarter of part of quarter)
5	> 12 months<= 15 months	65%	More than 4 years	NIL. No DBK
6	> 15 months<= 18 months	60%	No DBK for used --- i) Wearing Apparel; ii) Tea; iii) Exposed Cinema Film; iv) Unexposed Photographic films/Paper Plates/X-ray films Note: If the above are not used after import, drawback u/s 74(1) is eligible @ 98%	
7	> 18 months	NIL		

Procedure for claiming drawback U/s 74

Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Rule 3	Export by Post:
	❖ outer packing shall carry the words "DRAWBACK EXPORT" ❖ exporter shall deliver to the DBK claim to competent Postal Authority ❖ date of filing of drawback claim is considered for one month calculation for interest ❖ Deficiencies if any rectify within 15 days. ❖ Deficiency rectification memo acknowledgement date is considered for DBK claim
Rule 4	Export by other than Post:
	❖ Exporter at the time of export declaration to be made in the shipping bill/Bill of export about imported goods, duty paid/ whether used or not after importation. ❖ To furnish documents as proof of import/duty payment & Export invoice packing list etc.,
Rule 5	❖ A Claim for DBK to be filed within 3 months from the date of let export order
(a) Time limit	❖ Application for extension of time can be made by exporter by payment of application fees ❖ Extension of time another 3 months by AC/DC ❖ Extension of time further 6 months by Com.,/Principal Com., ❖ Extension of time may be given or refused by writing reasons
(b) Docum ents to file	❖ Triplicate copy of shipping bill, BOE, Import invoice, Export invoice, packing list ❖ Other documents if any mentioned in deficiency memo ❖ Deficiencies if any rectify within 15 days. ❖ Deficiency rectification memo acknowledgement date is considered for DBK claim

Drawback u/s 75

DBK = Refund of [Customs Duty paid on imports + Excise Duty paid on local Inputs)+ Service Tax paid on Input Service used in manufacture of goods which are exported

Drawback not allowed 75(1)

- ❖ The export value of the finished goods is less than the value of the imported material used in manufacture (i.e. There shall NOT BE (-ve) Value Addition,
- ❖ The (+ve) Value Addition shall exceed the minimum notified % of Value Addition
- ❖ Export sale proceeds are not received in with in time as per FEMA
- ❖ However, Central Government is empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA

More import material used 75 (1A)

- ❖ Where it appears to the Central Government that the quantity of a particular Material imported into India, is more than the total quantity of like material that has been used in the goods manufacture, Central Government, by notification declare that material is deemed to be import material for drawback

Power to frame Drawback Rules 75(2)

CG has power to notify DBK rules for Payment of DBK,/ procedure for claim DBK/ Documents for DBK/DBK disallowance/inspection of factory/recovery of DBK etc. are as follows

Customs, Central Excise Duties and Service Tax (DBK) Rules, 1995

Rule 3	❖ Drawback will be paid based on the percentage of FOB as per All Industry Rates notified by the CBEC. By considering the following ❖ Fixed considering <u>average quantity and value of each class of inputs</u> imported or manufactured in India. ❖ Average amount of duties paid imported material indigenous material/ waste produced in manufacture/Service tax paid on input service is considered. ❖ These rates are fixed for broad categories of products. The rates include drawback on packing materials. ❖ any other information which the Central Government may consider relevant or useful for the purpose No drawback in certain cases: (i) Packing materials for export of tea, except tea chests. (ii) Goods manufactured out of duty free materials. (iii) Jute batching oil used in manufacture jute yarn, twine etc. (iv) Packing material used for jute yarn, fabrics etc. (v) Rice falling under heading 1006 and wheat falling under heading 1001 of Customs Tariff.				
Rules 4	The Central Government will revise these rates and specify the period in which the rates will be in force				
Rule 5	Determination of relevant date for application of amount or rate of DBK i) The Central Government will specify the period of validity for the drawback. (ii) Retrospective effect – from the date of notification The relevant date shall be: <table border="0"> <tr> <td>In case of Goods exported by filing Shipping Bill / Bill of Export</td><td>Date of issuance by “Let Export Order</td></tr> <tr> <td>In case of Goods Exported by Post</td><td>Date of delivery of Export Goods to the Postal Authority</td></tr> </table>	In case of Goods exported by filing Shipping Bill / Bill of Export	Date of issuance by “Let Export Order	In case of Goods Exported by Post	Date of delivery of Export Goods to the Postal Authority
In case of Goods exported by filing Shipping Bill / Bill of Export	Date of issuance by “Let Export Order				
In case of Goods Exported by Post	Date of delivery of Export Goods to the Postal Authority				
Rule 6	Brand rate ❖ Brand rate is fixed if it is not possible to fix All Industry Rate in case of some special products. ❖ The manufacturer has to submit an application with all the details to Commissioner, Central Excise. ❖ Such application must be made within 90 days of export. The time limit can be extended up to 90 days and it can be further extended by 180 days by the Commissioner of customs. rank and above ❖ There should not be ‘negative value addition’				

Rule 7)	Special brand rate ❖ A particular manufacturer may find that the actual duty paid on inputs is higher than the All Industry Rate fixed for his product. ❖ In such cases, he can apply for fixation of Special Brand Rate, within 90 days from export, plus an extension of 90 days, and it can be further extended by 180 days by the Commissioner of customs. Rank and above ❖ The conditions of eligibility are that the fixed All Industry Rate should be less than 80% of the duties paid by him.
Rule 8]:	Limit of DBK ❖ No DBK shall be sanction if :-- it is less than 1% of FOB ➤ [However, in respect of any shipment it exceeds Rs 500/-, then it shall be sanctioned even if it is less than 1% of FOB
Rule 8A	Upper Limit of Drawback money or rate Money or rate determined under rule 3 should not exceed one third of the market price of the Export product.
(Rules 9 & 10)	❖ Manufacturers and exporters have to submit information to officers sent by the AC/DC with regard to class of material, correctness of data, duty paid, etc., ❖ Officers authorized by the AC/DC should be allowed to access the factory, examine the process of manufacture, and entitlement of drawback.
Rule 11	Export by Post ❖ Mention “DBK Export” on outer package ❖ Prepare DBK claim separately ❖ Submit to the postal authorities along with the package ❖ The date of claim of drawback will be the date of filing of to customs by the postal authorities
Rule 12 & 13	Procedure Export other than by Post ❖ Declaration by exporter on shipping bill that all duties paid. Additional declaration in case of brand rates ❖ Submit other documents ARE 1/Insurance certificate/invoice/LC
Rule 14.	Payment of drawback and interest One or more claims can be combined and adjustments of all dues can be made and cheque issued or amount credited to exporter
Rule 15	Supplementary claim ❖ DBK sanction is found to be less than what the exporter is entitled to ❖ Supplementary claims can be made in Form Annexure III within 3 months from ▪ Date of publication of such rate in case of revised rate granted ▪ Date of communication of the said rate in case of brand rate (rule 6 & 7) ▪ (Date of payment of original drawback in other cases.
[Rule 16]	Repayment of erroneous or excess payment of drawback and interest It shall be repaid upon demand by the PO./recovered u/s 142
[Rule 16A]:	Recovery of amount of drawback where export proceeds not realised ❖ AC/DC will send notice to exporter to bring evidence of sale proceeds (30 days' time given) ❖ failure to bring the evidence, AC/DC shall pass recovery orders --- exporter r shall pay within next 30 days (<i>Failure will attract recovery Procedures u/s 142</i>) ❖ However, as and when foreign exchange is brought in India --Proof can be submitted and then, recovered DBK shall be repaid to the importer.

Common points for drawback u/s 74 and 75

Eligibility for drawback

The exporter is eligible for drawback in the following situations:

	Situation	Eligibility
1	In case of goods entered for export	Proper Officer has made order of clearance for loading /exportation under section 51
2	In case goods are to be exported as baggage (Not applicable for 75 drawback)	When the owner makes a declaration of its contents to the Proper Officer under section 77
3	In case goods are entered for export by post	The Proper Officer makes an order permitting clearance of the goods for exportation under section 81

Interest for Delay payment of drawback 75 A

- ❖ Failure to pay DBK due to the exporter within 1 Month of filing of DBK Claim
- ❖ Exporter shall be entitled to interest @ 8% p.a. for the period of delay beyond 1 Month
- ❖ DBK granted erroneously to Exporter, SCN served for recovery of such DBK –
- ❖ Exporter shall pay interest @ 18% p.a. from the date the DBK was erroneously granted till the date of actual payment
- ❖ Failure of to pay the demand within 2 Month from date of demand, recovery action shall be initiated

PROHIBITION & REGULATION OF DBK Sec 76

- ❖ No DBK if DBK due is less than Rs., 50/- / Market Price (of Export Goods) is < the DBK Due
- ❖ Goods likely to be smuggled back into India: CG (by Notification -- May
 - Prohibit allowance of DBK on export of such goods; or
 - Impose restrictions and conditions as to allowance of DBK on export of such goods.

Distinction between Drawback u/74 and 75

Situation	<u>DBK u/s 74</u>	<u>DBK u/s 75</u>
When admissible	Imported goods exported as such (without being used) or after use	IG used in manufacture of goods which are exported
Related Rules	Re-export of Imported Goods (DBK of Customs Duties) Rules, 1995	Customs, Central Excise Duties and Service Tax Drawback Rules, 1995
Means of export	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post
Coverage of Duty refund	Customs Duty is only refunded.	Customs, Excise Duty as well as Service Tax are refunded.
Rates of DBK	98% of the import duty paid at the time of importation DBK at reduced rate for used goods	i) AIR (All Industry Rate) --- generally; ii) BR (Brand Rate)—when no AIR is fixed in the DBK Schedule; iii) SBR (Special Brand Rate)--- when fixed AIR < 80% of the actual duties incidence
Time limit for export	2 years + extention	No time limit

BAGGAGE

BAGGAGE Sec 2(3):

It includes – unaccompanied baggage but it doesn't include Motor Vehicle.

Baggage normally means the luggage of a passenger accompanied or unaccompanied,

Baggage comprises of trunks or bags and the personal belongings of the passenger.

The statutory provisions relating to Baggage are covered by sections 77 to 81 of the Customs Act as below

Sec 77	Entry of Baggage/Declaration by Owner of the Baggage ❖ The owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing (for import/export) it. ❖ This is known as Baggage Declaration Form.
Sec 78	Relevant Date for determination of AV & RoD ❖ Relevant Date = Date of filing of Declaration of its contents ❖ All dutiable Articles <u>when imported as Baggage</u> shall be classifiable into Entry No. 98.03 [they shall be assessed collectively under this Heading --- & not to their individual Heading. The effective rate is 36.05%
Sec 79	Bonafide Baggage Exempt from Customs Duty Subject to <u>LIMITS & CONDITIONS</u> as specified in the BAGGAGE RULES, 1998 --- PO will allow clearance of baggage without charging any customs duty as below ❖ Articles in use for minimum period by passenger/crew member the Baggage : Any Quantity (which appears reasonable keeping in mind status of the passenger) ❖ Unused Articles in the Baggage: for passenger/ his family members up to limit ❖ A bonafide gift or souvenir up to limit
Sec 80	Article in the Baggage ---- [Dutiable // Prohibited Article + True Declaration about the article has been made u/s 77] ❖ Passenger may request PO to detain (keep in custody) such article with him for the purpose of returning him said article at the time of his leaving India ❖ If passenger is not able to collect the article at the time of his leaving India, he can claim return of his articles in either of the following modes: ❖ He can authorize any other passenger (who is also leaving India) to collect the detained baggage on his behalf; or ❖ He can make a request to PO to later on send the baggage as cargo consigned in his name.
Sec 81	Regulations in respect of baggage Board may make regulations in the following matters: a) providing for the manner of declaring the contents of any baggage; b) providing for the custody, examination, assessment to duty and clearance of baggage; c) providing for transit or transshipment of baggage from one customs station to another or to a place outside Indi

Valuation of Baggage: there is no separate rules. Price tags, online prices are not relevant.. Value is to be made as per Customs valuation Rules.

Bonafide Baggage: Baggage declaration form prescribed that 'bona fide baggage' includes - wearing apparel / personal and household effects meant for personal use of passenger or family members travelling with him and not for sale or gift /.Jewellery including articles made wholly or mainly of gold, in reasonable quantity according to status of passenger '/Tools of draftsman /Instruments of physician or surgeon.

Import of consumer goods in commercial quantity is not permissible as per Foreign Trade policy and it cannot be treated as 'bona fide baggage'

Baggage Rule 1998

Type of passengers and Classification:

Tourists can be broadly classified as

- a) Indian persons going abroad for a short trip and coming back
- b) Indian persons gone abroad for work and coming back after few years
- c) Tourists visiting India for sightseeing or business purpose.

Accordingly, 'Baggage Rules, 1998' contain different provisions for

- a) Residents from India
- b) Tourists visiting India and
- c) Persons transferring their residence

General Free Allowance:

In addition to personal effects (excluding jewellery) and a laptop computer, a passenger is more allowed general free allowance of up to `Rs.45,000,. The limit for Rs.45,000/- is reduced up to Rs.1500/- for various category of persons depending upon different circumstances

Annexure I

Following cannot be accommodated in General free allowance. Ie this items are dutiable

1. Fire Arms
2. Cartridges of fire arms > 50 units
3. Cigarettes > 100 no
4. Cigar>25 no.
5. Tobacco > 125 g
6. Alcoholic Liquor > 2 lt
7. Gold or silver, in any form, other than jewellery
8. Flat Panel (LCD/LED/Plasma) Television

Personal effects: Departmental clarification - Following will be covered in 'personal effects'. Only used personal effects are permitted. However, as long as it is not prima facie new goods in their original pickings which can be disposed of off hand, it will be permitted. The list as given in MF(DR) circular No. 72/98-Cus dated 24-9-1998 is as follows

- Personal Jewellery
- One camera with film-rolls not exceeding 20
- One video camera/camcorder with accessories and with video cassettes not exceeding 12
- One pair of binoculars
- One portable colour TV (not exceeding 15 cms in size)
- One music system including compact disc player
- One portable typewriter
- One perambulator
- One tent and other camping equipment
- One computer (laptop/note book) [Laptop/note book computer has been exempted from customs duty vide notification No. 11 /2004-Cus dated 8-1-2004]
- One electronic diary
- One portable wireless receiving set (transistor radio)
- Professional equipment, instruments and apparatus of appliances including professional audio/ video equipment's
- Sports equipment such as one fishing outfit, one sporting firearm with 50 cartridges, one non- powered bicycles, one canoe or ranges less than 5 metres long, one pair of skids, two tennis rackets, one golf set (14 pieces with a dozen of golf balls)
- One cell phone

Important Definitions

Resident" means a person holding a valid passport issued under the Passports and normally residing in India;

tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business;

"Family" includes all persons who are residing in the same house and form part of the same domestic establishment;

"Professional equipment" means such portable equipment's, instruments, apparatus and appliances as are required in his profession, by a carpenter, a plumber, a welder, a mason, and the like and shall not include items of common use such as cameras, cassette recorders, Dictaphones, personal computers, typewriters, and other similar articles.

Rule 3: Passengers returning from countries other than Nepal, Bhutan, Myanmar or China.

An Indian resident or a foreigner residing in India, returning from any country other than Nepal, Bhutan, Myanmar or China shall be allowed clearance free of duty articles in his bona fide baggage as below:

Age of the Passenger	Duration of Stay in abroad	Articles allowed free of duty
>10 Years	>3 days	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 45,000/- if these are carried on the person or in the accompanied baggage of the passenger
	<= 3 days	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 17500/- if these are carried on the person or in the accompanied baggage of the passenger
<= 10 years	>3 days	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 17500/- if these are carried on the person or in the accompanied baggage of the passenger 4
	<= 3 days	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 3,000/- if these are carried on the person or in the accompanied baggage of the passenger

The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger. e.g. husband and wife bringing one item of Rs.90,000 will not be permitted duty free.

Rule 4: Passengers returning from countries Nepal, Bhutan, Myanmar or China.

Age of the Passenger	Duration of Stay in abroad	Articles allowed free of duty
>10 Years	> 3 days	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 6,000/- if these are carried on the person or in the accompanied baggage of the passenger -
<= 10 years	>3 days	Used personal effects, excluding jewellery, required for satisfying daily necessities of life
		Articles other than those mentioned in Annex. I up to a value of Rs. 1500/- if these are carried on the person or in the accompanied baggage of the passenger -

Rule 5, Indian Professionals returning to India

An Indian passenger who was engaged in his profession abroad shall on his return to India be allowed clearance free of duty, in addition to what he is allowed under rule 3 or Rule 4

Type of Passenger	Duration of Stay in abroad	Articles allowed free of duty
Non tourist Indian origin Professional Return to India	>= 3 months	Used household articles up to an aggregate value of Rs. 12,000
		Professional equipment up to a value of Rs. 20,000
	>= 6 months	Used household articles up to an aggregate value of Rs. 12,000
		Professional equipment up to a value of Rs. 40,000
Indian passenger returning after a stay of minimum 365 days during the preceding 2 years on termination of his work, and who has not availed this concession in the preceding three years.	>=365 days	Used household articles and personal effects, (which have been in the possession and use abroad of the passenger or his family for at least six months), and which are not mentioned in Annex I, Annexure II or Annexure III upto an aggregate value of Rs.75,000

Rule 6 Jewellery.

A passenger returning to India shall be allowed clearance free of duty Jewellery in his bona fide baggage as below

Type of Passenger	Duration of Stay in abroad	Articles allowed free of duty
Indian Passenger	Over 1 year	Up to an aggregate value of Rs.. 50,000 by a gentleman passenger,
		Up to aggregate value of Rs. 1,00,000 by a lady passenger

Rule 7 Tourists.

A tourist arriving in India shall be allowed clearance free of duty articles in his bona fide baggage as below

Class of Tourist	Articles allowed free of duty
Tourists of Indian origin coming to India (Except coming by prescribed land routes.	Used personal effects and travel souvenirs Condition: goods should be used for personal Goods not be consumed during stay/ re-exported when leaving Articles as allowed to be cleared under rule 3 or rule 4. As above
Tourists of foreign origin, other than those of Pakistani origin coming from Pakistan, coming to India by air	used personal effects articles other than those mentioned in Annexure I up to a value of Rs. 8000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.
Tourists – (i) of Pakistani origin coming from Pakistan other than by land routes; (ii) of Pakistani origin or foreign tourists coming by land routes as specified in Annexure IV; (iii) of Indian origin coming by prescribed land routes.	used personal effects articles other than those mentioned in Annexure I up to a value of Rs. 6,000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.

Rule 8 Transfer of residence to India

A person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is

SNO	Articles Allowed free of duty	Conditions
1	Used personal and household articles, other than those listed at Annex. I or Annex. II, but including the article listed at Annexure III	❖ Minimum Stay abroad 2 years prior to the date of arrival (relaxation 2 months eligible) ❖ total stay in India on short visit during the 2 prior years should not exceed 6 months, (Relaxation in deserving cases) ❖ Passenger has not availed this concession in the preceding three years (No relaxation)
2	Jewellery up to Rs,50,000 by a gentleman passenger Rs.1,00,000/- by a lady passenger.	
3	Jewellery taken out earlier by the passenger or by a member of his family from India.	Satisfaction of the A.C regarding the jewellery having been taken out earlier from India

Rule 9. Provisions regarding unaccompanied baggage

- ❖ Provisions of these Rules are also extended to unaccompanied baggage except where they have been specifically excluded.
- ❖ The unaccompanied baggage had been in the possession abroad of the passenger and is dispatched within one month of his arrival in India or within such further period as the AC/DC may allow.

- ❖ The unaccompanied baggage may land in India up to 2 months before the arrival of the passenger or within such period, not exceeding one year, as the AC/DC may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

Rule 10 Members of the crew.

- ❖ These baggage rules are applicable to the members of the crew engaged in foreign going vessels, when they are finally paid off on termination of their engagement.
- ❖ However, a crew member of a vessel and aircraft shall be allowed to bring items like chocolates cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of Rs.1500

Annexure II:

1. Colour Television/ Monochrome television
2. Digital Video Disc Player
3. Video Home Theatre System
4. Dish Washer
5. Music System
6. Air conditioner
7. Domestic Refrigerators of capacity above 300 litres or its equivalent
8. Deep Freezer
9. Microwave Oven
10. Video camera or the combination of such video camera with one or more of the following goods viz.
 - (a) Television receiver.
 - (b) Sound recording or reproducing apparatus.
 - (c) Video reproducing apparatus.
11. Word Processing Machine
12. Fax Machine
13. Portable Photocopying Machine
14. Vessel
15. Aircraft
16. Cinematographic films of 35 mm and above
17. Gold or silver in any form other than ornaments

Annexure III:

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player
2. Washing Machine
3. Electrical or Liquefied Petroleum Gas Cooking Range
4. Personal computer (Desktop Computer)
5. Laptop Computer (Notebook Computer)
6. Domestic Refrigerators of capacity up to 300 litres or its equivalent

Customs officers Powers

Section 100 Power to search

- ❖ Any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;/ Vehicle/foreign going aircraft
- ❖ Power to search suspected persons entering or leaving India
- ❖ any person in a customs area

Section 101

- ❖ Power to search suspected person in certain other cases.
- ❖ Search is conducted by the officer of customs empowered by the commissioner.
 - Search of person for notified goods which are liable for confiscation order by commissioner anywhere in India.
 - Notified goods are gold, diamonds, manufacture of gold and diamonds, watches, any other goods notified by CG

Persons to be searched may require to be taken before gazetted officer of customs or magistrate [Section 102]

- ❖)Person may require to be searched before Gazetted Officer/Magistrate
- ❖ Gazetted Officer/Magistrate may discharge the person/direct the search to be made if he sees no reasonable ground for search,
- ❖ Two or more persons to attend and witness search

Power of Customs Officers to screen or X-ray bodies [Section 103]

If customs officer has reasons to believe that any person coming to India or leaving from India or any person in customs area has secreted inside his body any goods liable to confiscation,

- He can detain and take him to the nearest magistrate.
- If the Magistrate is satisfied that reasonable grounds exist, he can order that the body of such person may be X-rayed.
- A qualified radiologist will take the X-rays and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out the goods as per the advice of a qualified doctor.
- The Magistrate can order that the person may be kept in custody.
- If the person himself admits that the goods are secreted inside his body and voluntarily submit for action to bringing out the goods, X-ray etc. may not be taken.

Power to arrest [Section 104]

An officer of customs who has been empowered by the Commissioner of Customs by general or special order can arrest a person in India or Indian Customs waters whom they have a 'reason to believe' is indulging in evasion of duty or importing prohibited goods or dealing in goods liable to confiscation.

- The officer can arrest him and inform him about the ground of arrest
- The person arrested has to be forwarded to the magistrate
- He must be produced before a magistrate within 24 hours
- The magistrate may grant the bail on bond or refuse the bail and remand him to custody

Search of premises [Section 105]

- If AC/DC of customs/an officer of customs empowered by Board has reasons to believe that any goods liable to confiscation or any document or thing are secreted in any place,

he can authorize any Customs Officer or he may himself search for such goods, documents or things.

- Search should be as per the provisions of Criminal Procedure Code.
- Report of search is to be submitted to Commissioner of Customs.

Power to stop and inspect conveyance [Section 106]

- Where the Proper Officer has a reason to believe that any aircraft, vehicle or animal in India or
- any vessel in India or within the Indian customs waters has been, is being or is about to be used in the smuggling of any goods or
- in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in
- the case of an aircraft, compel it to land, and
- the Customs Officer is empowered to stop any aircraft, vessel, vehicle to examine and search the aircraft, vehicle or vessel.
- He can break open any lock of door or package, if key is withheld.
- If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased
- If it refuses to stop after firing a signal, the vehicle may be fired upon.

Power of customs officers to inspect [Section 106A]

- Customs officers have powers to inspect the storage premises notified/specified goods; the inspection can be at any reasonable time, with or without notice.
- The officers can check the records and inspect the goods.
- The person in charge of premises is required to produce accounts records.

Power to call for documents and examine a person [Section 107]

An officer of customs, empowered by Commissioner, during enquiry in connection with smuggled goods, may require any person to produce relevant documents or examine any person acquainted with the facts of the case.

Power to summon [Section 108]

- All gazetted officers of customs have the power to issue summons to any person for inquiry in connection with any provisions under Customs Act.
- He can require a person to produce any document or things of a certain description in the possession or under the control of the person summoned relevant to enquiry and examine a person.
- All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth.

Power to require production of order permitting clearance of goods imported by land [Section 109]

- Customs officer of land frontier may require any person in possession of any goods, which such officer has reason to believe to have been imported into India by land, to produce the order for permitting clearance of the goods.
- If any imported goods passing from a land frontier to a land customs station by a route appointed under section 7, this power cannot be exercised.

Seizure of goods, documents and things [Section 110]

- During search, if some goods are found, Customs Officers can seize if he has a reason to believe that the goods are liable for confiscation.

- If the goods are bulky, they can be kept in possession of the owner himself.
- A notice is served on him that he should not remove or in any way deal with the goods.

Immediate sale of seized goods [Section 110(1A)]

- If the goods are perishable or hazardous or if storage space is not adequate or if the goods depreciate fast, Customs Officers can dispose of such goods immediately.
- Before disposing them, full inventory will be taken and application will be made by Customs Officer to Magistrate to:
 - Certify correctness of inventory
 - Certify photographs of goods
 - Take samples and certify its correctness.

The goods covered under this section are

- Liquor, photographic films, medicines, wrist watches, electronic goods, gold, silver, dangerous drugs, vehicles etc.
- If the goods are not confiscated or if the confiscation is set aside by appellate authority, sale proceeds must be refunded to the owner of goods.

Return of seized goods within 6 months if no SCN

- If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation,
- Asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act.
- If no show cause notice is issued within six months of seizure, the goods shall be returned to person from whose possession they were seized.

Seizure of documents [Section 110(4)]

- Documents relevant to proceedings under the Customs Act can also be seized.
- The person from whom the documents are seized is entitled to take copies in the presence of Customs Officer.

Provisional release of goods, documents and things seized pending adjudication [Section 110A]

- Any goods, documents or things seized under section 110 may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

Vexatious search/arrest by customs officer [Section 136]

- Vexatious search means searching a person or place/arresting a person without any 'reason to believe'.
- Officer is punishable with imprisonment up to six months or fine up to Rs. 1,000 or both.
- This punishment can be imposed only by Court of Law.

Power to take samples [Section 144]

- The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for:
 - examination or testing or,
 - ascertaining the value thereof, or
 - any other purposes of this Act.
- Samples may be taken on the entry, or clearance of any goods or at any time while such goods are being passed through the customs area.

- After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.
- No duty shall be chargeable on any sample of goods taken under this section that is consumed or destroyed during the course of any test or examination thereof, (Finance Act 2013).

Procedure for sale of goods and application of sale proceeds [Section 150]

- Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.
- The proceeds of any such sale shall be applied
 - firstly to the payment of the expenses of the sale,
 - next to the payment of the freight and other charges, if any, payable in respect of the goods sold to the carrier if notice of such charges has been given to the person having custody of the goods,
 - next to the payment of the duty, if any, on the goods sold,
 - next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods,
 - next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to Customs,
 - and the balance, if any, shall be paid to the owner of the goods.
- Where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

Certain officers required to assist officers of customs [Section 151]

- The following officers are hereby empowered and required to assist officers of customs in the execution of this Act, namely:
 - officers of the Central Excise Department
 - officers of the navy;
 - officers of police;
 - officers of the Central or State Governments employed at any port or airport;
 - such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

Service of order, decision, etc. Sec 153.

Any order or decision passed or any summons or notice issued under this Act, shall be served -

- a) by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs –(Finance Act, 2012 (With effect from 28.05.2012)
- b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house

Customs penalties

Penalties in respect of improper importation of goods, etc. [Section 112]

Imported Goods (A)	Value in (Rs.)	Minimum Penalty in (Rs.) (C)	Maximum Penalty in (Rs.) (B) or (C)
Prohibited Goods	Value of prohibited goods	Rs. 5,000	Whichever is higher
Dutiable goods (Other than prohibited goods)	Duty sought to be evaded	Rs. 5,000	Whichever is higher
Mis-declaration of value	Value declared - Actual value = Rs. XXXX	Rs. 5,000	Whichever is higher
Prohibited goods plus misdeclaration value	Value of prohibited goods or Value declared – Actual value whichever is higher	Rs. 5,000	Whichever is higher
Dutiable goods plus misdeclaration of value	Duty sought to be evaded or Value declared – Actual value whichever is higher	Rs. 5,000	Whichever is higher

Penalties in respect of attempt of improper exportation of goods, etc. [Section 114]

Exported Goods (A)	Value in (Rs.)	Value/Amount in (Rs.) (C)	Penalty in (Rs.) (B) or (C)
Prohibited Goods	Three times the value of the goods declared by the exporter	Value of prohibited goods	Whichever is higher
Dutiable goods (Other than prohibited goods)	Duty sought to be evaded	Rs. 5,000	Whichever is higher
Any Other goods	Value of the goods declared by the exporter	Value as determined under the	Whichever is higher

Mandatory Penalty for short-levy or non-levy of duty in certain cases [Section 114A]- similar to Sec 11A C of CEA

Penalty for false declaration [Section 114AA]: Section

- ❖ 114AA lays down that if a person knowingly or intentionally makes/signs or uses, or causes to be made,/signed used,
- ❖ Any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty.
- ❖ **Maximum penalty:** Penalty shall not exceed 5 times the value of goods

Section 116: Penalty for not accounting (short landing)

- If the goods were loaded for importation in India, or
- If any goods are trans-shipped, or
- Coastal goods carried in a conveyance
 - And if they were not unloaded in India – partly or fully – the person in charge of the carriage explains the reason for deficiency.

- If it is not satisfactorily explained, the AC/DC can impose a penalty on the 'person-in-charge of conveyance' i.e. carrier of goods.

Quantum of penalty

- Not exceeding twice the amount of duty on the value of goods which are not unloaded or the deficient goods.
- In case of coastal goods, amount of export duty that would have been chargeable on the goods

Section 117: Residual Penalty

- General penalty to a person who contravenes any provision of the Act, or abets in contravention and *if no penalty has been prescribed*, the penalty would be up to Rs. 10,000.

Adjudication of confiscation and penalties [Section 122]: Where anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged as below

S.No	Particulars	Adjudicating officer
1.	Value of goods liable to confiscation ≤ Rs. 50,000	Gazetted Officer of Customs lower in rank than an
2.	Value of goods liable to confiscation ≤ Rs. 5,00,000	Assistant/Deputy Commissioner of Customs
3.	Without limit	Principal Commissioner/Commissioner/Joint Commissioner of Customs

Criminal penalties

The criminal penalties include imprisonment and fine.

S No	Offence	Penalty
1	False declaration, false documents, sec 132	Imprisonment for a term which may extend to 2 years, or with fine, or with both.
2	Obstruction of officer of Customs sec 133	Same as above
3	Refusal to be X-rayed [Section 134	Imprisonment for a term which may extend to six months, or with fine, or with both.

Section 135: Penalty for evasion of duty or prohibitions

Penalty can be levied on a person

- Who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty *or* of any prohibition imposed on the imports/export of such goods
- Who attempts for improper import/export/ goods liable for confiscation
- fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

Quantum of punishment

Offence relating to	Penalty
(a) any goods the market price of which exceeds one crore of rupees; or (b) the evasion or attempted evasion of duty exceeding Rs. 50 lakh (c) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause exceeds Rs. 50 lakh (d) Prohibited goods in case of goods covered under section 123 (i.e. gold, watches, synthetic yarn and metallised yarn, fabrics of synthetic yarn, electronic calculators, zip fasteners and silver bullion)	Imprisonment up to seven years and fine (without limit) In the absence of special and adequate reasons, the punishment shall not be less than one year
In other cases	Three years or with fine or both
Repeated conviction	The imprisonment punishment can be seven years and fine. In the absence of special and adequate reasons, the punishment shall not be less than one year

Section 135A: Preparation for improper export

Attempting to make exports in contravention of the Customs Act is punishable with imprisonment up to three years or fine or both.

Section 136: Offence by Officers of Customs

- If an Officer of Customs enters into any agreement to do or abstains from doing or permits any act, whereby any fraudulent export is effected, or by which customs duty is evaded or prohibited and goods are allowed to enter India or go out of India, he shall be punishable with imprisonment up to a term of three years, or with fine, or both [Section 136(1)].
- If any customs officer
 - requires a person to be searched for goods without any reason to believe that he has such goods,
 - arrests a person without any reason to believe that he has committed an offence under section 135, or
 - searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place;

He shall be punishable with imprisonment up to 6 months, or fine up to Rs. 1,000, or both [Section 136(2)].

- If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment up to six months or fine up to Rs. 1,000, or both.
- He can disclose the information in discharge of his duties or in compliance with any law in force [Section 136(3)].

In the above cases of section 136, the prosecution can be launched in Court only with the previous sanction of the Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required [Section 137(2)]

Section 140: Offence in case of Company

- Penalties can be imposed on a person who was in-charge of, or was responsible to the affairs of the Company/firm such as employee, partner and Director of the company.

The person will be relieved from penalties if he proves that the offence was committed without his knowledge or he had taken due care to prevent the offence