CA Final Indirect taxes

Flow charts

Nov. 2016 exams

(Also useful for CWA/CS)

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Coming up- GST Flow charts for Nov 2017

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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)

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Service

1 → Activity → means → Work done, deed done, Act done, Performance, execution etc

2 → One person to Other → Means → 1. Existence of two parties is must(SP & SR)
2.Self service not taxable (ex HO to branch)
The word person has been defined.

Exception

1. Unincorporated Body and members are different persons
2.Ho Outside Taxable territory and Branch in Taxable territory different persons
In above cases services are taxable
3.

(3) → Consideration
- Monetary → Includes → Cash,Cheque, Negotiable instrument
- Non-Monetary → Includes → Supply of goods and services in return of service
Doing, not doing, forbearance,refrain of act

4 → Activity Without Consideration Or Consideration without Activity → Not a service No Service tax

Examples

1. A without C: Govt. Services, free access to channels ,free tourism information, street performances
2.C without A: Gifts, Exgratia payments, tips, Donations without conditions, pocket money

(4) → Service include declared service → Services taxable → Total 9 Services Specified:
Renting of Immovable property
Construction, IT, Service portion of WC, HP, lease etc.,

(5) → Service Excludes → NO ST
- Sale of goods/ immovable property)/ Deemed sales (WC, HP, Lease, food
- Services of employee
- Transactions only in money/Actionable claims Ex: Deposits, withdrawals, Discharge of liabilities
- Services of MP,MLA,MLC,Corporater,Govt nominated posts/Constitutional posts
- Services of Court/Tribunal

ST on JV CBEC Clarification)
1.Members service to JV and JV service to members are taxable
2.Cash calls (Capital contributions by Members to JV, If they are, transactions only in money and not a consideration. There is No ST liability in such cases. A close scrutiny of JV agreements may be required to ensure to determine service tax in each case

Transactions only in money not include
1.Activities of chitfund foreman <u>in relation to chit</u> in any manner
2.Activities of lottery distributors/selling agents <u>for selling marketing , promoting, distributing or organising conducting lotter</u>
These 2 activies are liable for Service tax (FA 2015 / from 14.05.2015)

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.

Incentives received by air travel agents from computer reservation system companies (CCRS) are liable to service tax [DOF No. 334/8/2016 TRU dated 29.02.2016]

incentives received by the ATAs from the companies providing computer reservation system (CCRS) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, the service provided by CCRS is to the Airlines and ATA is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same.

Services provided by Institutes of Language Management (ILMs) are liable to service tax [DOF No. 334/8/2016 TRU dated 29.02.2016]

Institutes of Language Management (ILMs) are engaged by various schools/institutions to develop knowledge and language skills of students. The services provided by the ILMs are not covered by negative list. They are not providing pre-school education or education up to higher secondary school (or equivalent) or education for obtaining a qualification recognized by law. It is the schools/ colleges/institutions (in which the students take admissions) which provide such education. They are not eligible for exemption under negative list or exempted list.

Service Tax Charging Section

SBC 0.5% on the value of service Payable in case of reverse charge mechanism also. NO SBC on exempted services

KKC 0.5% on the value of service from 01.06.2016 (Not relevant for Nov 2016)

ST Charging Sec 66B

- (1) Rate of ST 14.5% from 15.11.2015(ST14% + 0.5% SBC on the value of services → When Change in rate, rate to be determined as per POT Rules
- (2) Levy (liability)on Value of services Other than Negative list → No Levy on Negative list services(17 Services) Value to be determined as per S.T Valuation Rules
- (3) Payment to be made on Services agreed to provided/ to be provided → Advance received liable for ST Advance retained after cancellation also liable for ST
- (4) Liability only when Service rendered in taxable territory → Taxable territory= India excluding J & K, Sea up to 200 Nautical miles.
- (5) Collection of ST as per Prescribed manner → Timing of payment as per Point of Taxation Rules/ Service Tax rules

ST- Interpretation /Classification- Sec 66 F

Rules of Interpretation

- (1) Exemption to main service does not mean exemption to auxiliary service used for main service → Explanation: FA 2015. when Service provided by RBI is exempt, Any service to RBI by banks for consideration is an input service used for RBI for providing output service.. Such input service is not exempt, and it is liable for service tax in the hands of banks
- (2) When service capable of differential treatment, Prefer Specific description rather than general Description → Ex. When Hotel Provides Convention service with food, it is Convention service. It is not a Mandap service or catering service
- When there is no Specific description under (2) as above, classify as below
- (3) Classification of Bundled services (Composite service) Ex. Package Tour,
  - Ordinary course of Business → Classify as single service based on Essential character
  - Not in the Ordinary course of business → Classify as Service which gives highest rate of Service tax

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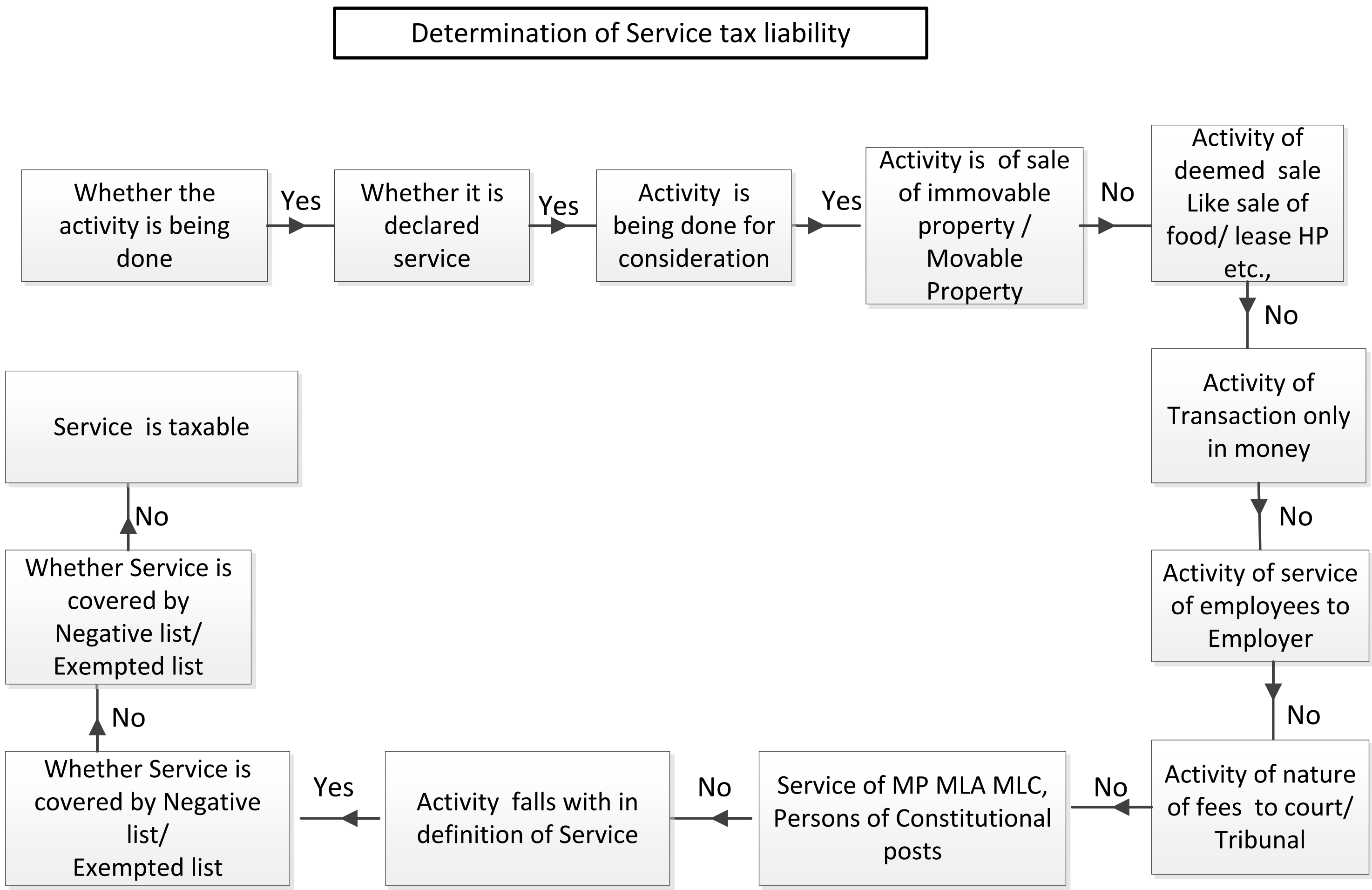
Determination of Service tax liability
Whether the activity is being done
Yes
Whether it is declared service
Yes
Activity is being done for consideration
Yes
Activity is of sale of immovable property / Movable Property
No
Activity of deemed sale Like sale of food/ lease HP etc.,
No
Activity of Transaction only in money
No
Activity of service of employees to Employer
No
Activity of nature of fees to court/ Tribunal
No
Service of MP MLA MLC, Persons of Constitutional posts
No
Activity falls with in definition of Service
Yes
Whether Service is covered by Negative list/ Exempted list
No
Whether Service is covered by Negative list/ Exempted list
No
Service is taxable

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 Ie 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 Ie not taxable
1	Construction service provided by the builder /developer is taxable when any consideration is received from Buyer/society/members of society 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.

Construction service provided by a builder/developer to a land owner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer –*Circular No. 151/2/2012 ST dated 10.2.2012* to prevail over Education Guide [Instruction F. No. 354/311/2015 TRU dated 20.01.2016]

In a tri-partite construction business model, there are 3 parties involved:

i. The land owner;

ii. The builder/developer; &

iii. The contractor (who undertakes the construction)

Typically, in such a model, the land owner enters into an agreement with the builder, whereby, the land owner gives either land /development rights (to construct/develop a residential complex and sell flats/houses of such complex to buyers) to the builder. The builder/developer, in turn, agrees to assign a portion of the constructed area, in the form of flats in favour of the land owner. The remaining flats are sold by the builder/developer to various buyers. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers:

i. from land owner, in the form of land /development rights; and

ii. from other buyers, normally in the form of money.

CBEC Education Guide vs. *Circular No. 151/2/2012 ST dated 10.2.2012*: According to CBEC Education Guide on Taxation of Services, 2012 value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly. However, *Circular No. 151/2/2012 ST dated 10.2.2012* states that value of land / development rights in the land may not be ascertainable ordinarily and therefore, value, in the case of flats given to first category of service receiver, that is, the land owner, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006.

Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

The Circular dated 10.02.2012 is in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006. The Education Guide is neither a "Departmental Circular" nor a manual of instructions issued by the CBEC. To that extent it does not command the required legal backing to be binding on either side in any manner. Hence, Circulars such as the present one would prevail over the Education Guide, 2012.

In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer, the valuation will be in accordance with the Board Circular dated 10.02.2012 and not the Education Guide.

[Instruction F. No. 354/311/2015 TRU dated 20.01.2016]

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 Ie 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 copy rights 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)]

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S No	Coverage of declared service _taxable	SNO	Not covered _Exemption/Negative list Ie 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

Exempted services vs. Services included in the negative list

S No	Exempted Service	Negative service
1	taxable service but which has been exempted by the Central Government by issuing a notification under section 93(1) of the Finance Act, 1994	Service is not taxable at all as it is outside the scope of the charging section- section 66B of the Finance Act, 1994
2	any change in the existing exemptions or any new exemption can be granted by the Central Government by issuing a notification in the Official Gazette	whereas for amending the negative list of services under section 66D, Finance Act, 1994 has to be amended seeking approval from both houses of the Parliament.

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 biils, 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	All the Services of Govt and Local Authority to Business Entity FA 2015 effective from 01.04.2016 This services are taxable on reverse charge basis from 01.04.2016. If the business entity turnover is up to Rs. 10 Lakhs in previous FY services will be exempted as they covered in the exemption list

FA 2015: Act [Section 65B(26A)] 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". [Effective from 14.05.2015]

Business entity means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession [Section 65B(17)].

CBEC Clarification on the aspects, pertaining to the taxation of services provided by Government to business entities the Circular No. 192/02/2016 ST dated 13.04.2016

Sl.No.	Issue	Clarification
1.	Services provided by Government or a local authority to another Government or	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.(Refer positive list given above sl no 1,2 and 3)
2.	Services provided by Government or a local authority to an individual who may be carrying out a profession or business	*1.* Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016.* 2. Services provided up to a taxable value of up to gross amount charged is up to Rs. 5000/- is exempt. by Notification No. 22/2016 ST dated 13.4.2016.
3.	Service tax on taxes, cesses or duties	Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to service tax. These taxes, cesses or duties include excise duty, customs duty, service tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.
4.	Service tax on fines and penalties	1. It is clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to service tax. *2.* Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted vide Notification No. 22/2016 ST dated 13.4.2016.

5.	Services provided in lieu of fee charged by Government or a local authority	1. It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to service tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a quid pro quo for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that service tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority. 2. However, services provided by the Government or a local authority by way of: (i) registration required under the law; (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide Notification No. 25/2012 ST dated 20.6.2012 as amended by Notification No. 22/2016 ST dated 13.4.2016. 3. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed ₹5000/-have exempt. by Notification No. 22/2016 ST dated 13.4.2016. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. .(Refer positive list given above sl no 1,2 and 3) Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed ₹ 5000/- in a financial year.
6.	Services in the nature of allocation of natural resources by Government or a local authority to individual farmers	Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by Notification *No. 22/2016 ST dated 13.4.2016*. Such allocations/auctions to categories of persons other than individual farmers would be leviable to service tax.
7.	Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under *Notification No. 25/2012 ST dated 20.6.2012*. The said services when provided by Government or a local authority have also been exempted from service tax vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.

8.	Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.
9.	When does the liability to pay service tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) installments under deferred payment option for rights assigned after 01.04.2016?	Rule 7 of the Point of Taxation Rules, 2011 has been amended vide Notification No. 24/2016 ST dated 13.04.2016 to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which: (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made. Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then service tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then service tax would be payable as and when the payments are due or made, whichever is earlier.
10.	How to determine the date on which payment in respect of any service provided by Government or a local authority becomes due for determination of point of taxation?	The date on which such payment becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued by the Government or a local authority demanding such payment [Point of Taxation Rules, 2011 as amended by Notification No. 24/2016 ST dated 13.4.2016].

11.	Whether service tax is payable on the interest charged by Government or a local authority where the payment for assignment of natural resources is allowed to be made under deferred payment option?	Rule 6(2)(iv) of the Service Tax Determination of Value) Rules, 2006 has been amended vide Notification No. 23/2016 ST dated 13.04.2016 so as to provide that interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where payment for such service is allowed to be deferred on payment of interest, shall be included in the value of the taxable service
12.	When and how will the allottee of the right to use natural resource be entitled to take CENVAT credit of service tax paid for such assignment of right?	The CENVAT Credit Rules, 2004 have been amended vide Notification No. 24/2016 CE (NT) dated 13.4.2016. Consequently, the CENVAT credit of the service tax on one time charges (whether paid upfront or in installments) paid in a year, may be allowed to be taken evenly over a period of 3 (three) years [Rule 4(7) of CENVAT Credit Rules, 2004 as amended]. Service tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid. Amendments have also been made in CENVAT Credit Rules, 2004 so as to allow CENVAT credit to be taken on the basis of the documents specified in sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource [Fifth Proviso to sub-rule (7) of rule 4 of CENVAT Credit Rules, 2004].
13.	On basis of which documents can CENVAT credit be availed in respect of services provided by Government or a local authority?	CENVAT credit may be availed on the basis of challan evidencing payment of service tax by the service recipient [Clause (e) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004].

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 ie 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

CBEC Clarification on Seed testing [Circular No.189/8/2015 ST dated 26.11.2015

Issue: Whether all activities incidental to seed testing are leviable to service tax and only the activity in so far it relates to actual testing has been exempted in the negative list under section 66D(i) of the Finance Act, 1994

Clarification: Seed is not covered under the definition of agriculture produce. All services relating to agriculture by way of agriculture operations directly relating to production of agriculture produce including testing are covered in section 66D(i).

It has been clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in section 66D(d)(i) of the Finance Act, 1994. Therefore, **such services are not liable to service tax** under section 66B of the Finance Act, 1994.

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		

<u>Goods means</u> 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

Service of carrying out of Processes amounting to manufacture or production of goods

Other than Alcoholic Liquor for human consumption (FA 2015)

	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	contract manufacturing/job work for production of potable liquor for a consideration. FA 2015 (14.05.2015)
2	Manufacturing process where Central Excise duty is leviable on a particular process, but excise duty is exempt	2	central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit
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		

"process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or 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 for the time being in force".*

Selling of space for advertisements in <u>print media</u>

	Negative list not taxable		Positive list taxable
1	Selling of space for advertisements in print media ie advertisement in newspapers, books **<u>other than</u>** commercial books like yellow pages, just dail , business directories, trade catalogues which are primarily meant for commercial purposes	1	advertisement in newspapers, books **<u>other than</u>** commercial books like yellow pages, just dail , business directories, trade, catalogues, hoardings,
		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

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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 amended—Certain specific service Exempted under exemption list wef 01.06.2015.- FA 2015

	~~Negative list not taxable~~		Positive list-- taxable
1	~~Entry to entertainment events and access to amusement facilities~~	1	Membership of a club
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 Education of preschool/ Service of higher secondary school (may or may not be recognized)	1	Private tutorship
2	Services of Education 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 Education 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
	CA N.Rajasekhar FCA,DISA(ICAI) Chennai,9444019860, rajdhost@yahoo.com	4	Rooms in a hotel or a lodge let out whether or not for temporary stay
		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 banks and authorized dealers	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 general public
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 other than GTA/Courier Agency	1	Services of GTA (There is an exemption for transportation of some specified goods in Exemption list and some specified amount for all goods other than, these remaining goods tranportation services are taxable) Please refer exemption for GTA
		2	All services of Courier Agency
		3	Courier services of express cargo, Angadia service of delivering documents/

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4	Transportation of goods by rail. station (There is an exemption for transportation of some specified goods in Exemption list other than, these remaining goods transportation services are taxable) 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 up to custom station of clearance in India is not taxable.	Transport of goods by air/vessel In India and from Customs station (There is an exemption for transportation of some specified goods in Exemption list other than, these remaining goods transportation services are taxable) 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 2nd class, sleeper class	2	Transport in Rail in Ist 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, in a vessel between places located in India:	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.other than radio taxi	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

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 Sec 65B (49)

Exempted Services

Services provided to the United Nations or a specified international organisation

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

Health Care services

Coverage (Exempted and not taxable)

- Health care Services of diagnosis, treatment for illness, injury, deformity, abnormality and pregnancy rendered by
  - Authorised Medical Practioners (ie doctors registered under medical council or any Indian law),
  - Hospitals, clinics, nursing homes sanatoriums, Laboratories
  - Paramedics, (ie Support staff like nurses, lab technicians and Physio therapist).
- 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

System of medicine exempted: Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha, Unani, Any other system of medicine that may be recognized by Central G o v e r n m e n t

Not covered- (taxable)

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

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 by way of care or counselling to
  - ill persons, severe physical or mental disable/ HIV or alcohol or drug addict persons
- Public awareness of preventive health, family planning
- Advancement of religion or spirituality including YOGA wef 21.10.2015.
- 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**;**

Religious place means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.

General public means the body of people at large sufficiently defined by some common quality of public or impersonal n a t u r e

Legal Services

I. Service provider is arbitral tribunal (Sole arbitrator/panel of arbitrators)

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 means Any person including individual ordinarily carrying any activing 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~~ Taxable from 01.04.2016

IV Service provider is a senior advocate from 01.04.2016

.S No	Service receiver who is	Taxability
1	Individual advocate/Firm of advocates	Taxable
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;	Taxable
4	business entity with a turnover exceeding rupees ten lakh in the preceding financial year;	Taxable

Senior advocate has the meaning assigned to it in section 16 of the Advocates Act, 1961 which, inter alia, provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

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(l) 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 Indian law;
- Education as a part of an approved vocational education course.

S No	Service provider	Service receiver	Transaction	Taxability
1	Educational institution	Students, faculty and staff	(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	Any person	Educational institution	Consideration from service of (i)transportation of students, faculty and staff; (ii)catering, including any mid-day meals scheme sponsored by the Government; (iii)security or cleaning or house-keeping services performed in such educational institution; (iv)services relating to admission to, or conduct of examination by, such institution The word auxiliary services is omitted list is given as above from (i) to (iv) is only exempt remaining other services may be taxable	Exempt

Renting of immovable property service received by educational institutions is now taxable

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	recognised sports body	Participation in a sporting event organized by a recognized sports body	Exempt
2	recognized sports body	recognised sports body	Any service	Exempt
3	individuals such as selectors, commentators, curators, technical experts	recognised 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	Unrecognized sports body like 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 Kreeda 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. Withdrawn exemption restored from 01.03.2016 till 31.03.2020
    - 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. Withdrawn exemption restored from 01.03.2016 till 31.03.2020
    - 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. Withdrawn exemption restored from 01.03.2016 till 31.03.2020

(a,) (c,) and(f) exemption available from 01.03.2016 to 31.03.2020 if contract entered before 01.03.2016 and appropriate stamp duty was paid

"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 ot 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** (**construction of roads in a factory, residential complex would be taxable.)**

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) (i)an airport, port (withdrawn exemption restored till dated 31.03.2020 for the contract ~~e~~ntered prior to 01.03.2015 and stamp duty, where applicable, had been paid .
(ii) or railways, including monorail or metro; (Exemption withdrawn. It is taxable from ~~01.03.2016). Exemption pertaining to monorai~~l or metro will be available, where contracts were entered into before 01.03.2016, on which appropriate stamp duty was paid .

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 a (i), (b) to (e) above
Taxability	Service is exempt.

Original works means

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

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~~ Rs. 1,50,000 from 01.04.2016
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~~ Rs. 1,50,000 from 01.04.2016

S No	Service provider	Service receiver	Service	Taxability
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

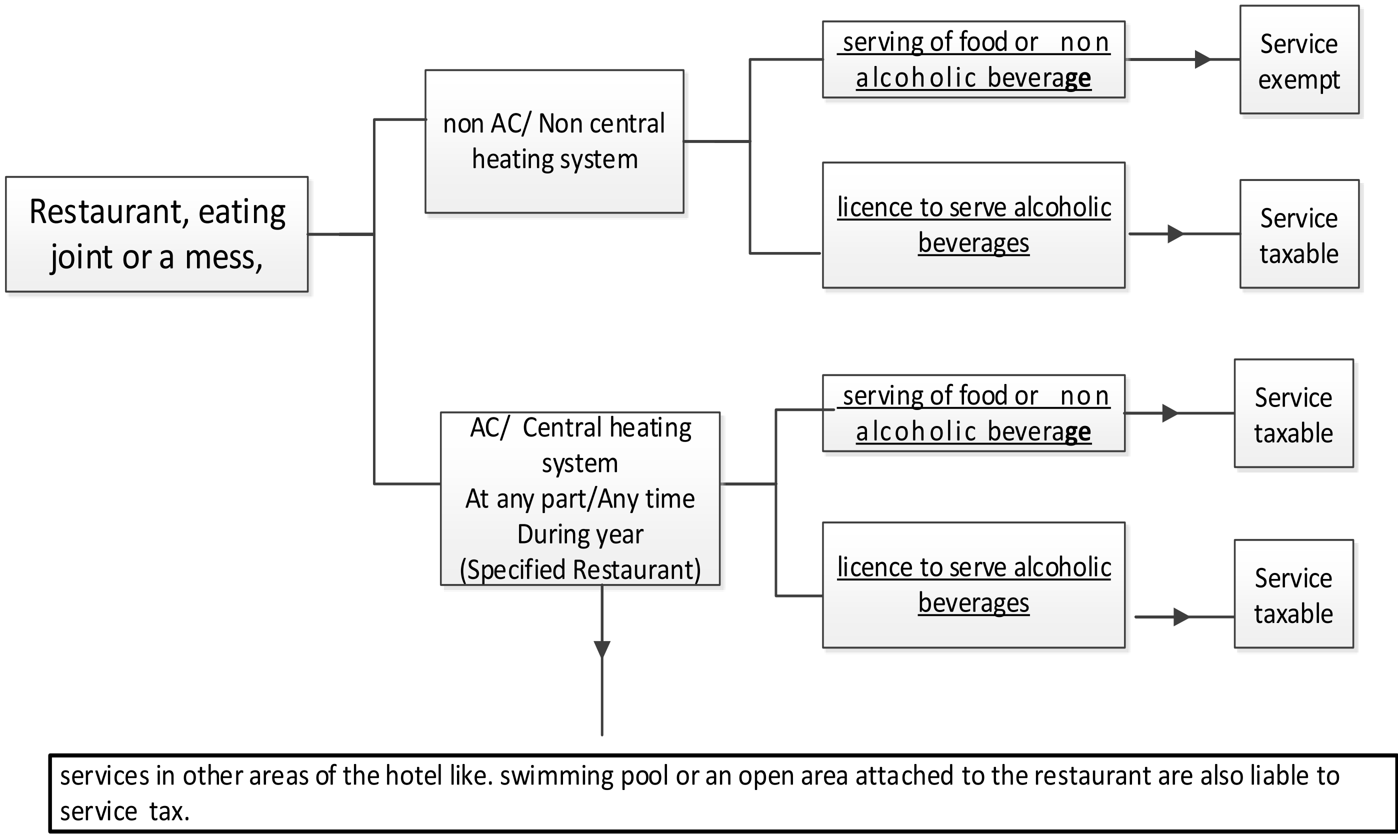
Service	Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes
Exemption	When declared tariff <=Rs.1000/-

Declared tariff = Room rent Published or printed (without excluding discount) + Charges for all amenities like furniture, air-conditioner, refrigerators or any other 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 tas liability

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

Services provided in relation to serving of food or beverages:



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. 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), <u>they have to be excluded from total amount for the determination of value of service portion.</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.

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, Organic manure 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 bailed

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 not 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, Mizzoram, 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	NON A/C Contract carriage Other than radio taxi
Taxability	Service exempt

Note:

1. transportation of passenger for tourism, conducted tour, charter or hire, there is no exemption and service is taxable
2. Similarly transportation of passenger through radio taxi is taxable,
3. 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
4. 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 -Exemption withdrawn from 01.04.2016

Service Provider	Passenger transport service through rope way, cable car or aerial tramway
Service	Transportation of passengers with or without belongings
Transport through	ropeway, cable car or aerial tramway
Taxability	~~Service exempt~~ Service taxable from 01.04.2016

Services provided in relation to public services to Government, Local Authority, or a governmental authority

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 -

a) Sub-broker or an authorised person to a stock broker;
b) Authorised person to a member of a commodity exchange;
~~c) Mutual fund agent to a mutual fund or asset management company;~~
~~d) Distributor to a mutual fund or asset management company;~~
~~e) Selling or marketing agent of lottery tickets to a distributer or a selling agent;~~
f) Selling agent or a distributer 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 alchoholic 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

Notes:

- 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].

CBEC Clarification on Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments: . [Circular No.190/9/2015 ST dated 15.12.2015)
The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided which would vary from case to case. If it is manpower supply it is taxable. It is a job work it is exempt if appropriate duty on excise paid on it.

Public telephone services

~~Scope of Exempt Service –~~ Exemption with drawn from 01.04.2015. Now taxable

- ~~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

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 Rs.500 per person.
- recognized sporting event to mean any sporting evenf-
- (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 Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

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

Exemption to services provided by TBI/ STEP *[Notification No. 32/2012 ST dated 20.06.2012*

All taxable services provided or to be provided by Technology Business Incubators (TBI)/Science and Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science & Technology have been exempted from the whole of service tax leviable thereon.

Conditions to be satisfied

(i) The STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information containing the details of the incubator along with the information received from each incubatee to the concerned Assistant/Deputy Commissioner of Central Excise before availing the exemption; and

(ii) The STEP or the TBI shall thereafter furnish the information in the formats mentioned above in the same manner before the 30th day of June of each financial year.

New amendments Budget notifications applicable for Nov 2016

Service tax exempt on software recorded on media when RSP is required to be declared on the package. Notification No. 11/2016 ST dated 01.03.2016

- Transactions involving supply of software media bearing RSP, not amounting to sale/deemed sale, service tax has been exempted. Thus, only central excise duty is levied on such transactions *DOF No. 334/8/2016 TRU dated 29.02.2016*
- Information Technology services (ITS) exempt from service tax when such ITS is recorded on a media on which it is required, under the provisions of the Legal Metrology Act, 2009 or under any other law for the time being in force, to declare on package of such media, the retail sale price (RSP). The exemption is subject to the condition that-
    - The value determined as per MRP Provisions
    - Appropriate Excise duty / BCD/CVD paid on it
    - service provider has made a declaration on the invoice that no amount in excess of the retail sale price of such media has been recovered from the customer**.**
- In certain situations like delivering customized software on media, such media with recorded ITS is not required to bear the RSP when supplied domestically or imported. There were difficulties in the assessment of such media to central excise duty/CVD besides giving rise to the issue of double taxation – levy of central excise duty/CVD as well as service tax.
- DOF No. 334/8/2016 dated 29.02.2016 further clarifies that in order to resolve the issue, media with recorded ITS which is not required to bear RSP, has been exempted from so much of the central excise duty/CVD as is equivalent to the duty payable on the portion of the value of such ITS recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore, be required to pay central excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfillment of certain conditions. Thus, the levy of central excise duty/CVD and service tax will be mutually exclusive [Notification No. 11/2016 CE and 11/2016 Cus. both dated 01.03.2016].

Services provided by Government and Local authority exempted as details given below from 1304.2016.

Sl. No.	Service	Exemption details
1.	Services provided by Government or a local authority to another Government or a local authority	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Ie Department of Posts, services in relation to an aircraft or

2.	Services provided by Government or a local authority to an individual who may be carrying out a profession or business	Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016.*
3	All services	Services provided up to a taxable value of up to gross amount charged is up to Rs. 5000/- is exempt. by Notification No. 22/2016 ST dated 13.4.2016. Threshold limit in case of continuous supply of services In case where continuous supply of service* is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed ` 5000/- in a financial year Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed ` 5000/- in a financial year.
4.	Services by way of tolerating non-performance of a contract	Fines and liquidated damages payable to Government or a local authority for non- performance of contract entered into with Government or local authority have been exempted vide Notification No. 22/2016 ST dated 13.4.2016.
5	Services in the nature of allocation of natural resources by Government or a local authority to individual farmers	Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide Notification No. 25/2012 ST dated 20.6.2012 as amended by Notification No. 22/2016 ST dated 13.4.2016. Such allocations/auctions to categories of persons other than individual farmers would be
6.	Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under Notification No. 25/2012 ST dated 20.6.2012. The said services when provided by Government or a local authority have also been exempted from service tax vide Notification No. 25/2012 ST dated 20.6.2012 as amended by Notification No. 22/2016 ST dated 13.4.2016.
7.	Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution	Such services have been exempted vide Notification No. 25/2012 ST dated 20.6.2012 as amended by Notification No. 22/2016 ST dated 13.4.2016.

8.	Services of inspection, container stuffing etc. in relation to import export cargo after office hours or on holidays	Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).
9	**Right to use natural resources assigned before 1st April, 2016**	Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before 1st April, 2016 are exempt from service tax. However, said exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.
10	Services of inspection, container stuffing etc. in relation to import export cargo after office hours or on holidays	Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

Specified services provided by the Indian Institutes of Management (IIM) exempted from 01.03.2016

services provided by the Indian Institutes of Management (IIM), as per the guidelines of the Central Government, to their students, by way of the following educational Programmes, except Executive Development Programme:

- two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by IIM;
- fellow Programme in Management;
- five years integrated Programme in Management

- Services by assessing bodies empaneled centrally by DGT, Ministry of Skill Development & Entrepreneurship under SDI scheme exempted from 01.04.2016
- Services provided by way of skill/vocational training by DDU-GKY training providers exempted from 01.04.2016
- General insurance provided under Niramaya Health Insurance Scheme exempted from 01.04.2016
- Annuity under the National Pension System (NPS) exempted from 01.04.2016
- Services provided by Employees Provident Fund Organisation (EPFO), Insurance Regulatory and Development Authority of India (IRDA) to insurers, Securities and Exchange Board of India (SEBI), National Centre for Cold Chain Development (NCCCD) under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination. from 01.04.2016
- Specified construction related services provided under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana exempted fromm 01.03.2016
- Services by way of construction, erection, commissioning, or installation of original works pertaining to low cost houses up to a carpet area of 60 m2 per house in a housing project approved by the competent authority under:
  - o Affordable Housing in Partnership" component of PMAY, or
  - o any housing scheme of a State Government. From 01.03.2016
- Services provided by BIRAC approved bio-incubators to incubatees from 01.03.2016

All other Miscellaneous exemptions

Services provided **BY** a veterinary clinic in relation to health care of animals or birds are exempt from service tax.

Exemption from service tax is granted for the Services provided under the Power System Development Fund Scheme of the Ministry of Power *[Notification No. 17/2015 ST dated 19.05.2015]*

1. Services by way of-

(A) re-gasification of Liquefied Natural Gas (LNG) imported by the Gas Authority of India Limited (GAIL);

(B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to specified power generating companies or plants

2. subject to fulfillment of certain conditions prescribed in the exemption notification.

3. However, the exemption shall not be available if such RLNG and LNG are used for generation of electrical energy by captive generating plant as defined in section 2(8) of the Electricity Act, 2003.

4. Further, the exemption shall be valid only till 31.03.2017.

Services provided by (i) business facilitator/business correspondent with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana and (ii) an intermediary to business facilitator/business correspondent with respect to such services, exempt from service tax [Notification No. 20/2015 ST dated 21.10.2015]

- 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.

- 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.
- 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.

- Services by way of loading, unloading, packing, storage or warehousing of rice, cotton ginned or baied have been exempted from service tax.*[Notification No. 04/2014-ST dated 17.02.2014]*
- 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.
- Services provided by common bio-medical waste treatment facility operators to clinical establishments exempted from 11.07.2014.
- (IRDA approved life micro-insurance schemes with sum assured not exceeding Rs. 50,000 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 AtaI 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 Effecfive from 01.04.2015]

Small Service Providers Exemption

Salient features of Small service provider's exemption:

The Notification provides exemption of service tax up to aggregate value of taxable services of Rs. 10 lakhs. if the aggregate value taxable services is not exceeding Rs.10 lakhs during previous financial year.

Exemption is not applicable for certain persons

- Taxable services provided by a person under a brand name or trade name, whether registered or not, of another person
- In case of persons where Service taxis payable under reverse charge,

Conditions to be fulfilled to avail exemption.

- While calculating the limit, services provided by service provider from all the premises and from all the services to be considered for calculation of limit of Rs. 10 lakhs.
- The payments received towards wholly exempt services are to be excluded for determining the amount of Rs.10 lakhs.

- Where in cases of certain services abatement is available, the limit is to be calculated on the gross amount without considering the abatement.
- The provider of taxable service shall not avail CENVAT credit of service tax paid on any input services/excise duty paid on capital goods used for the providing of the said taxable service for which exemption from payment of service tax is availed.
- The provider of taxable services shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax and used for the provision of taxable service for which service tax is payable.
- The provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider starts availing the exemption under this notification. The unutilised amount will lapse.

3. Special provision for Goods transport agency

In case of Goods Transport Agency (GTA) service, the value of service tax payable by consignor/consignee is to be excluded. Value of service where service tax is payable by the GTA, is to be considered for the purpose of calculation of limit of Rs.10 lakhs to avail exemption

For example:

A profit and loss account of GTA shows the following details of gross receipts:

Amount received Where the Service tax is payable by Consignor/consignee	Rs.45,00,000
Amount received Where the Service tax is payable by Goods Transport agency	Rs.8,00,000

In the above example GTA is eligible for small service provider exemption.

4. The exemption is only optional

Note: Students should also read

1.Refund/Rebate of service tax paid on services used in the export of goods
2.Refund of service tax for SEZ
3.Exemption to taxable services provided against duty credit scrips - MEIS and SEIS

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	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	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: <u>Service performed outside India on deputation where both service receiver and service provider is india.</u>	location of the recipient of service

Rule	Applicability	Place of provision of service shall be
9	(a) 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	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>.(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)**	location of the service provider
10	The place of provision of services of transportation of goods, other than by way of mail or courier	Place of destination of the goods
	the place of provision of services of goods transportation agency	the location of the person liable to pay service 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) *Where the services are provided from/used at a place other than the business establishment, that is to say, a **fixed establishment** elsewhere,*	The location of such establishment
	(iii) *Where services are provided from/used at more than one establishment, whether business or fixed*	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
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 other than Senior 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%

Note: Services provided by a senior advocate to an advocate or partnership firm of advocates, Business entity liable for service tax. Service tax would be payable under forward charge by Senior Advocate from 01.04.2016

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. All Taxable Services by Government or Local Authority *excluding* renting of immovable property and Postal, port, airport and railway services from 01.04.2016

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

9 Service of Recovery Agent

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 %

10.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%

11. 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	NIL
4	Service tax liability of service receiver	100% from 01.04.2015

~~12. Services of mutual fund agent or distributor from 01.04.2015~~ ST liability shifted from reverse charge to forward charge from 01.04.2016

~~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%~~

Note: Mutual fund agent or distributor liable to pay service tax under forward charge from 01.04.2016

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%

Person liable to pay service tax: In all the above cases of reverse charge service receiver is person liable to pay service tax.

Partial Reverse Charge

14 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 Availment of cenvat credit**
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; (Interest =Instalment amount-Principal amount in the instalment) and ♦ Other charges such as lease management fees, processing fees, documentation charges and administrative fees.	90% Of interest	10% Of interest + Other charges	Cenvat credit can be availed
2	Transport of goods by rail	70%	30%	Cenvat credit on Inputs, capital goods, Cannot be availed Cenvat credit on input services can be availed
2A	Transport of goods in containers by rail by any person other than Indian Railways from 01.04.2016	60%	40%	Cenvat credit on Inputs, capital goods, Cannot be availed Cenvat credit on input services can be availed
3	Transport of passengers, with or without accompanied belongings by rail	70%	30%	Cenvat credit on Inputs, capital goods, Cannot be availed Cenvat credit on input services can be availed
4	Transport of goods in a vessel	70%	30%	Cenvat credit on Inputs, capital goods, Cannot be availed Cenvat credit on input services can be availed
5	Services of goods transport agency in relation to transportation of goods other than used house hold goods	70%	30%	Cenvat credit on Inputs, capital goods, input service not taken by Service Provider
5A	Services of goods transport agency in relation to transportation of used house hold goods from 01.04.2016	60%	40%	Cenvat credit on Inputs, capital goods, input service not taken by Service Provider

	Service tax Abatements			
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for Availment of cenvat credit
6	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, Input Services Cannot be availed
7	Transport of passengers by air, with or without accompanied belongings in Other than Economy Class from 01.04.2015	40%	60%	
8	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 renting motor alone can be availed Consideration include fair market value of all goods (including fuel) from 01.04.2016
9	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(food items) of the Central Excise Tariff Act Cannot be availed
10	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

	Service tax Abatements			
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for Availment of cenvat credit
11	Services provided by a foreman in relation to chit from 01.04.2016	~~0%~~ 30%	~~100%~~ 70%	Cenvat credit on Inputs, capital goods, Input Services Cannot be availed
12	(i)a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person Conditions: (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
14	~~(iii) services other than those specified in (i) and (ii) above~~ (ii)–All other tour packages including package tour from 01.04.2016	~~60%~~ 70%	~~40%~~ 30%	No CC Inputs, capital goods, But CC input service for the service paid to other tour operated can be taken
15	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. . From 01.04.2016 (a) for residential unit having carpet area upto 2000 square feet & where the amount charged is less than rupees one crore;	~~75%~~ 70%	~~25%~~ 30%	No cenvat Credit on Inputs CC on input service can be taken Condition: The value of land is included in the amount charged from the service recipient
	(b) for others	70%	30%	

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

Consideration includes *clause (a) of Explanation to section 67-- FA 2015 (14.05.2015)*

- any amount that is payable for the taxable services provided or to be provided;
- any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in case pure agent cases
- any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket

Consideration for taxable services	1. Amount payable for the taxable services
	2. reimbursable expenditure or cost incurred by the service provider and charged except pure agent cases
	3. any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission,
	4.discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket

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 SV Rules, he can reject value, issue SCN, give opportunity and determine value
Rule 5	Inclusions of certain expenses/ Reimbursement of expenses. Expenses not includible in value if act as a pure agent.

Inclusion in or exclusion from value of certain expenditure or costs [Rule 5]

1	Telecommunication service	recharge coupons or prepaid cards value includible
2	All services	Includible in value: Reimbursement of expenses like traveling, hotel, accommodation, telephone, food driver charges, tickets Above all includible even they are shown separately in invoice

Reimbursement of expense not includible if service provider act as Pure agent as explained below:

Pure agent" means a person who–

- ❖ enters into a contractual agreement with service receiver to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- ❖ neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- ❖ does not use such goods or services so procured; and
- ❖ receives only the actual amount incurred to procure such goods or services(ie recovers only cost and not profit)

Conditions to be satisfied to exclude reimbursement of expenses from service tax value in this regard: The expenditure or costs incurred by the service provider as a pure agent of the recipient of service shall be excluded from the value of the taxable service if all the following conditions are satisfied:

- ❖ the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- ❖ the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- ❖ the recipient of service is liable to make payment to the third party;
- ❖ the recipient of service authorises the service provider to make payment on his behalf;
- ❖ the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- ❖ the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- ❖ the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

- the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account

Value of taxable service for Custom House Agent's service

- The principal job of a custom house agent (CHA) is to get the import/export consignments cleared through customs
- However, CHA also provide services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges.
- Similar arrangement can occur for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.
- The above expenses will be excludable in the value of service in similar line with pure agent concept.
- Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded [Circular No. 119/13/2009 ST dated 21.12.2009].

Rule 6: Certain Specific inclusions and exclusions in the service tax valuation -Subject to the provisions of section 67

Inclusions

S No	Type of service	Inclusion
1	stock-broker	commission or brokerage including commission and brokerage paid to sub broker
2	Telecommunication	the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
3	Insurance service	amount of premium charged by the insurer from the policy holder;
4	air travel agent	commission received from the airline
5	actuary, or intermediary or insurance intermediary or insurance agent from the insurer;	commission, fee or any other sum received
6	authorized service station	reimbursement received from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer
7	rail travel agent	commission or any amount received from the Railways or the customer
8	clearing and forwarding agent	remuneration or commission, by whatever name called from client/service receiver

9	insurance auxiliary services provided by an insurance agent.	remuneration or commission, by whatever name called from insurer/insurance company
10	Any service	demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service

Exclusions

S No	Type of service	Exclusion
1	Telecommunication	initial deposit made by the subscriber at the time of application
2	air travel agent/rail travel agent	Air fare/rail fare
3	Any service/service for sale of movable/immovable property	interest on delayed payment of any consideration
4	air travel agent	the taxes levied by any Government/ foreign Governments to passenger if separately shown in invoice
5	Any service	accidental damages due to unforeseen actions not relatable to the provision of service.
6	Any service	subsidies and grants disbursed by the Government, not directly affecting the value of service.

Value in case of service provided by Government/Local authority to a business entity- Rule 6(2) (iv) : In case of service provided by Government to a business entity, interest chargeable on deferred payment to be included in the value of the taxable service [Rule 6(2)(iv) of the Service Tax Determination of Value Rules, 2006] WEF 13.04.2016

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 computed for state vat purpose	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

Original works means

(i)all new constructions;

(ii)all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii)erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

Total amount means

S. No.	Particulars	AMOUNT (in Rs.)
1	Gross amount received excluding taxes	xxxxxxxxx
2	Add: Fair market value of goods supplied by the service receiver excluding taxes	xxxxxxxxx
		xxxxxxxxx
3	Less: Amount charged by service receiver for 2 excluding taxes	xxxxxxxxx
4	Total amount charged (1 +2-3)	xxxxxxxxx
5	Value of service portion(40% of 4 in case of original works/ 70% of 4 in case of repair/other 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

No cenvat credit : It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985. (ie. food related goods)

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

Case	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation	Remarks
1	April 1st 2015	April 30th 2015	May2nd 2015	April 30th 2015	Date of Invoice is POT (Invoice issued with 30 days)
2	April 1st 2015	May 1std 2015	May2nd 2015	April 1st 2015	Date of completion of service is POT (Invoice not issued with 30 days)
)3	April 1st 2015	April 20th 2015	April 16th 2015	April 16th 2015	Day of receipt of Payment is POT (Invoice issued within 30 days. Date of Payment or date of invoice whichever is earlier)
4	April 20tht 2015	May 30th 2015	Part payment received on April 10th 2015	April 10th 2015 to the extent of Part payment. Remaining Part April 20th	Day of receipt of part Payment is POT (Invoice not issued within 30 days. Date of completion of service or date of invoice whichever is earlier)

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

- Same as above except, invoice is to be raised with in 30 days <u>from the date of completion of an event</u>

Continuous supply of service means

any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,

or

Any Service where the Central Government notifies .CG Notifies so far 2 services namely (i)Telecommunication Services (ii) Works Contract Services

Meaning of Date of payment

<table>
<tr><th></th><th></th><th></th></tr>
<tr><td>1</td><td>Normal cases</td><td>Date of entry in books or date of crediting in bank account, Whichever earlier.</td></tr>
<tr><td>2</td><td colspan="2">Special cases in case of Change in effective rate of tax</td></tr>
<tr><td rowspan="2">(a)</td><td rowspan="2">Rate changes between entry in books and credited in bank account</td><td>Payment is credited in the bank with in 4 days from the effective date of new rate- date of entry in the books is the date of payment</td></tr>
<tr><td>Payment is credited in the bank after 4 days- date of Crediting in the bank account is the date of payment</td></tr>
<tr><td>(b)</td><td>New service brought in to service tax between entry in books and credited in bank account</td><td>Same as above</td></tr>
</table>

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

<table>
<tr><td>1</td><td>Date of provision of service</td><td rowspan="3">Any two Before change in rate- Old rate

Any two after change in rate- New rate</td></tr>
<tr><td>2</td><td>Date of issue of invoice</td></tr>
<tr><td>3</td><td>Date of receipt of payment</td></tr>
</table>

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 *and* payment received before service became taxable	No service tax
(b)	Payment received before service became taxable and invoice issued after service became taxable within **14 days)**	No service tax

Rule 7 - Determination of point of taxation in case of specified services or persons under Reverse Charge other than AE.

This Rule No 7 over ride Rule 3, 4, and Rule 8 and does not override Rule 5

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 1	Payment not made in advance or within 3 months from the date of invoice of service provider	Date immediately following the period of 3 months
Proviso 3 From 30.03.2016	that where there is change in the liability or extent of liability of a person liable to pay service tax under reverse charge in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date,	date of issuance of invoice
Proviso 4 From 13.04.2016	services provided by Government /Local authority to business entities	any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority or payment for such services is made

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

Rule 7	**Event**	**Point of taxation**
Proviso 2	Providing of service	Date of entry(debit) in books of account of person receiving service or Date of making payment whichever is earlier

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

Rule 8	**Event**	**Point of taxation**
8	Providing of service	Receipt of payment by service provider or 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

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Rule 4 of ST rules 1994

4(1) → **Persons Require Registration:**
SP, ISD and SR under reverse charge with in 30 days of service becomes taxable/commencement of business which ever is later.
SSP- with in 30 days of service crossing 9 lakhs

~~4(!A)~~ (9) → **Documents required for registration**:
CBEC will notified documents to be submitted with in 15 days after filing Online application for for registration (PAN, Email and Mobile No. Compulsory at the time of registration. (New procedure similary to excise. (please read excise registration)

4(2),4(3) &3(A) 4(4) → Premises to be registered:
1.One Premises: one service/multiple service: One registration
2.More than one premises: one service/multiple service:
(a)Centralization of billing: One registration for Centralized premises with CC
(b)Decentralization of billing: Multiple registration for each premises with Sup

4(5) → Grant of RC: Scrutiny of application, Rc generated online in 2 working days. Online print of RC is enough .no need of signature of CEO

4(5A) → **Intimation of change to CEO** Any change in RC, additional information if any, shall be intimated to the AC/DC, within 30 days (For example address change/provision of new service).

4(6) → **Transfer of business** :the transferee shall obtain a fresh certificate of registration

4(7) → Surrender/ deregistration/ Cancellation of RC
- Ceases to provide taxable service → Intimate
- Online application for deregistration. Approval when there is no dues.

Service tax procedures -2

ST- Payment

Rule 6(1)

- 6(1) → Due dates for payment → 1.Individual, Proprietary firm, Partnership, HUF, and One man company Previous FY turnover less than 50 lakhs (WEF 01.04.2016)- Quarterly payment
  2. All Others- Monthly payment.
  → Due date: 5^{th} of following month of qtr/month
  Last qtr/march- March 31^{st}
  E payment-instead of 5^{th} it is 6th
- Proviso → Individuals/Firms cash basis → Previous FY Aggregate Taxable services <=50 lakhs, current FY up to Rs. 50 lakhs ST payment on receipt basis

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Rule 6(1A) to Rule 7(c)

- 6(1A) → Advance payment → Optional for Centralised reg. ST assessee. Pay at his own calculation. Intimate with in 15 days about payment and adjustment in subsequent period.
- 6(2) (2A) → Procedure for payment → 1.Payment through GAR 7 Challan. Multiple services single challan with breakup/separate challans can use.
  2 E payment mandatory for all assesses AC/DC allow manual payment by recording reasons.
  3. Payment made up to 8 PM will considered as that day payment.
- 6(3) → Credit of ST → ST invoice issued/payment received along with ST, but Service not provided- Credit for ST can be taken Condition: refund amount/issue credit note
- 6(4) → Provisional payment → Assessee unable estimate the value on the date of deposit, request AC/DC for P.A. AC/DC allow PA. (Same as Excise PA, except Bond.)
- 6(4A) & 4(B) → Self adjustment of excess ST paid → Excess of the amount of service tax for a month or quarter adjust in next month without any limit, Excess payment for reasons like interpretation of law, taxability, valuation or applicability of any exemption notification cannot be adjusted. Only refund
- 6(4C) → Self adjustment of excess ST paid In case of renting of immovable property → If property taxes revises, assesse can adjust excess ST paid and intimate with in 15 days
- 6(5)& 6(6) → Memorandum of ST form ST 3 A → Assessee should file ST-3A in case of PA. AC/DC complete FA after calling information if any.

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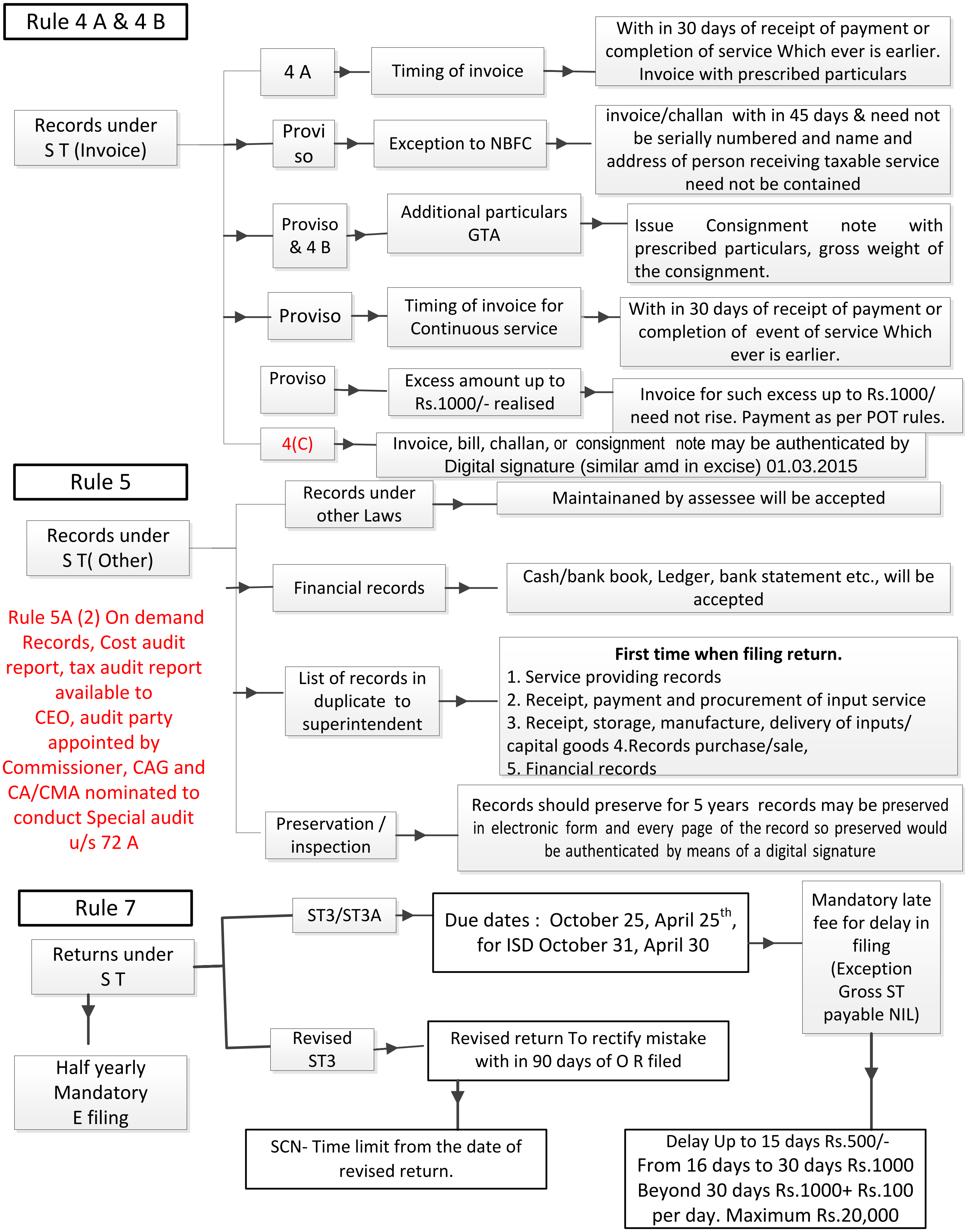
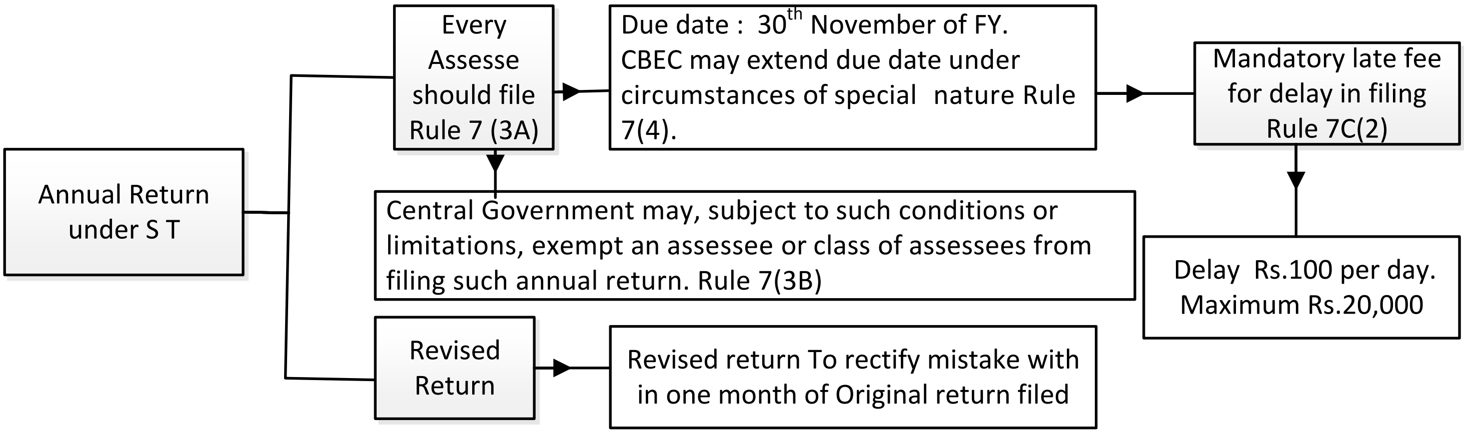
- 6(7) to 6(7C) → Optional rates in case of Air travel LT Agent FE dealer, → Once option exercise they cannot withdraw same in FY

Service tax procedures -3



Service tax Annual Return for Financial year. WEF 01.04.2016

Rule 7 (3A),(3B)& (4)



Service tax Annual financial Information Return WEF 01.04.2016

- In exercise of the powers conferred by section 15A, read with section 37 of the Central Excise Act, 1944 and section 94, read with section 83 of the Finance Act, 1994, the Central Government has issuedService Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016 vide Notification No. 4/2016 ST dated 15.02.2016.
- RBI, State Electricity board (SEB),Electricity Distribution or Transmission Licensee under the Electricity Act 2003 (EDTL), or any other entity entrusted with such functions by the Central Government or State Government will have to furnish the Annual Information Return
- Rule 3 provides (Reserve Bank of India (RBI) to furnish an Annual Information Return giving details of foreign remittances for the receipt of certain specified services for such entities whose value of remittances aggregates to more than Rs.50 lakh in a financial year to which the return pertains
- SEB, (EDTL has to file Annual return giving details of electricity consumed by such manufacturers, using an induction furnace or rolling mill to manufacture goods falling under Section XV of the First Schedule to the Central Excise Tariff Act, 1985 whose aggregate value of clearances exceeds Rs.150 lakh in the financial year to which the return pertains. Such manufacturers will be identified and intimated to SEB/EDTL/other entity by the Principal Chief Commissioner or Chief Commissioner incharge of the Central Excise or Service Tax Zone, by 30th June of the subsequent financial year
- Rule 4 provides that such Information Return referred will be filed electronically with the Directorate General of Systems and Data Management by 31st December of the financial year following the financial year to which the return pertains. The Board can, however, extend such due date.

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

air travel agent

Rule	Service	New Rates from 01.06.2015
Rule 6(7)	Air travel agent's service (Domestic Bookings)	0.7% of the basic Fare
	Air travel agent's service (International Bookings)	1.4% of the basic Fare

insurer carrying on life insurance business

Rule 6(7A)	Life insurance service (First year)	3.5% of the Gross premium Charged
	Life insurance service (Subsequent year)	1.75% of the Gross premium Charged
	Single premium annuity policies 01.04.2016	1.4% of the single premium charged

Sale/purchase of foreign currency including money changing

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

Service of promotion, marketing or organising/assisting in organising lottery

Rule 6(7C)	Lottery selling Agent/Distributor service	Rate from 01.06.2015
	Where the guaranteed lottery Prize payout is > 80%	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,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

Rule 6(7D): SBC on the alternative rates of ST
Total Service tax liability, computed on the basis of alternative rates provided under sub-rules (7), (7A), (7B) or (7C), as the case may be, multiplied by 0.5 and dividing the product by 14 = SBC amount
The said option once exercised, will apply uniformly in respect of such services and cannot be changed during a financial year under any circumstances. Notification No. 25/2015 ST dated 12.11.2015 WEF 15.11.2015
Example for Rule 6(7C): Where the total ST liability =Rs. 8200, SBC amount = 8200 x0.5/14 = Rs. 293

Interest/Penalties under Service tax

Sec 75 interest for delay for payment of Service tax

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

Period of interest: Delay period beyond due date

Concessional reduction in rate by 3%:

In case of All service providers, whose value of taxable service provided in a financial year does not exceed Rs.60 lakh <u>during any of the financial years covered by the notice or during the preceding financial year</u>, as the case may be, such rate of interest shall be reduced by 3% per annum.

Interest on amount collected in excess [Section 73B]

- Where a person collected excess service tax than determined/assessed such person has to pay tax along with interest@18% per annum
- The interest shall be payable from the first day of the month succeeding the month in which the amount ought to have been paid till the date of payment of such amount
- Concession reduction in rate by 3% also available

Penalties

S. No.	Section	Nature of Violation	Penalty
1.	76	Failure to pay Service tax (Non Fraud Cases) FA 2015 from 14.05.2015	Up to 10% of ST in addition to ST payable + interest
			No 10% of ST penalty, if ST and interest is paid within 30 days of SCN. Demand proceedings conclude
			Penalty payable reduced to 25% (75% waiver) of the penalty imposed <u>in the order,</u> if service tax, interest and also such reduced penalty is paid <u>within 30 days of the date of receipt of the order of the Central Excise Officer</u>.
2.	77(1)(a)	Failure to get registration	Rs.10,000 or Rs.200 per day from the first day after due date till the day of actual compliance whichever is higher.
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.

S. No.	Section	Nature of Violation	Penalty
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)	Failure to pay ST due to Suppression of Value (fraud cases) FA 2015 from 14.05.2015	Up to 100% of ST in addition to ST payable + interest
			Penalty reduced to 15% of ST (85% waiver) if ST and interest is paid within 30 days of SCN. Demand proceedings conclude
			Penalty payable reduced to 25% (75% waiver) of the penalty imposed in the order, if service tax, interest and also such reduced penalty is paid within 30 days of the date of receipt of the order of the Central Excise Officer.

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 boilable offence	

Section 80 - Waiver of Penalty for penalty u/s 76 & 77 – Omitted by FA 2015. Now there is no waiver of penalty for penalties levied u/s 76 and 77.

Adjudication of penalty [Section 83A]: Where any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power under a notification issued by Central Board of Excise and Customs.

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under section 83A
(1)	Superintendent of Central Excise	Up to Rs. 1,00,000 (excluding the cases relating to taxability of services or valuation of services and cases involving extended
(2)	Assistant/Deputy Commissioner of Central	Up to Rs. 5,00,000 (except cases where Superintendents are empowered to
(3)	Joint Commissioner of Central Excise	Rs. 5,00,000 to Rs.50,00,000
(4)	Additional Commissioner of Central Excise	Rs. 20,00,000 to Rs.50,00,000

However, these provisions shall not apply where a decision or order passed under Chapter V of the Finance Act, 1994 or the rules made thereunder has been referred back to any authority which passed such decision or order, with such directions, for a fresh adjudication or decision, as the case may be.

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

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

Term of imprisonment Category B Offence

<table>
<tr><td colspan="3">If any person is convicted of an offence under this section for the:</td></tr>
<tr><td rowspan="3">First time</td><td>In the case of an offence where the amount is</td><td>Term of imprisonment</td></tr>
<tr><td>(i) up to Rs.50 lakh</td><td>Up to 1 year</td></tr>
<tr><td>(ii) more than Rs.50 lakh</td><td>6 months to 7 years</td></tr>
<tr><td rowspan="2">Second and every subsequent time</td><td>(i) up to Rs.50 lakh</td><td>6 months to 3 years</td></tr>
<tr><td>(ii) more than Rs.50 lakh</td><td>6 months to 7 years</td></tr>
<tr><td colspan="3">Such imprisonment shall be for a term of less than six months if there are special and adequate reasons to be recorded in the judgment of the Court.(this provision same as central excise)</td></tr>
</table>

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

Note: Monetary limit of Rs. 50 lakhs for prosecution and arrest in excise and service tax are increased to Rs. 1 crore as per [Circular No.1009/16/2015 CX dated 23.10.2015/[Circular

No.1010/17/2015 CX dated 23.10.2015] that these directions have been issued to optimally utilize limited resources of the Department.

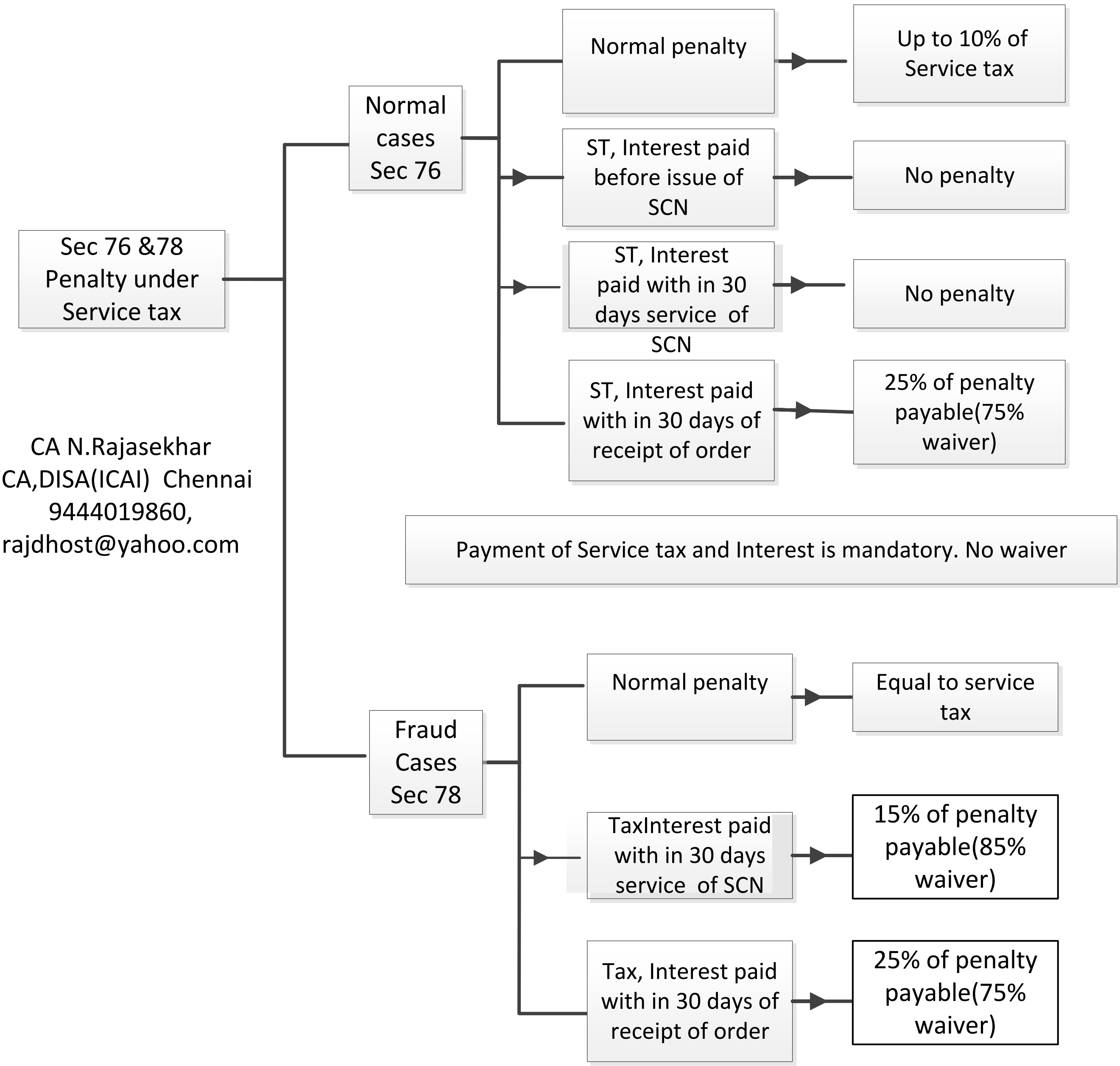
Sec 90: Cognizance of offences

- 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 Catergory 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.

Service tax Penalty Under sec 76 and 78



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If ST and interest and penalty paid by person as per the above sec 76 and 78, the proceedings deemed to be have concluded.

In case of extended period of limitation (fraud cases) assesee can request for waiver of written SCN where he pays service tax, interest and 15% of penalty. The similar provison applicable for Excise, customs

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. interest is to be recovered. - the date of payment of duty to which such interest relates 6. 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 interest is to be recovered. - the date of payment of duty to which such interest relates 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, willful misstatement, suppression of facts, violation of law with intention to evade duty,	Normal – 1 year Extended - 5 years, in case of fraud, collusion, willful 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%~~ 15% p.a.) .	Section 28AA ~~(@18%~~ 15% p.a.)	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	Section 11AC Amended in FA 2015	Section 114A Amended in FA 2015	Section, sec 76 & 78 Amended in FA 2015

Factor of comparison	Excise	Customs	Service tax
(similar provisions in all 3 Acts)			
Deposit Amount collected in excess from buyer /customer (similar provisions in all 3 Acts)	Section 11D	Section 28B	Section 73A
Interest leviable on amount collected in excess	Section 11DD	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 Self-assessed/duty ST, declared in return but not paid, is recovered without Serving any notice (FA 2015)	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 extention: 1 month	Sections 128 and 128A Forms CA-1 and CA-2 (Dept) Time limit 2 months extention: 1 month	Section 85 Form ST-4 Time limit 2 months extention: 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. Loss of process in goods 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 has to substitute.
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"; (f) When the case is pending before tribunal/court - Application will not be accepted	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 Cases of smuggling of gold cannot be admitted for settlement case.	

Factor of comparison	Excise	Customs	Service tax
	(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		
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. vii. Resident firm, LLP, Proprietor viii. Oneman company	Similar	Similar

Factor of comparison	Excise	Customs	Service tax
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	Section 96C Eligible issues on which Advance Ruling can be sought: (a) to (f) similar Substitute service for goods/ Service tax for duty
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
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

Excise section no.	Contents of the section	Parallel section no. in Customs
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
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

Excise section no.	Contents of the section	Parallel section no. in Customs
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

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

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

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

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

V EOU, EPZ, STP, EHTP When Goods removed to DTA (use in India) Pay 50% of BCD + Excise duty Value is to be made as per Customs valuation

VI Goods manufactured by Govt also Excise duty payable

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

Manufacture under central excise sec 2(f)

Manufacture

First part: Process- Incidental/Ancillary for completion of product → Name test/use test to apply to find out change → Output should be New Product.(It is mandatory) Voluminous- Judicial rulings to decide

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

Mfg implies change, but every change is not a manufacture. In the process new product should emerge with new name, different use, different character, then only manufacture

Second part: Deemed Manufacture

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

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

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

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

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

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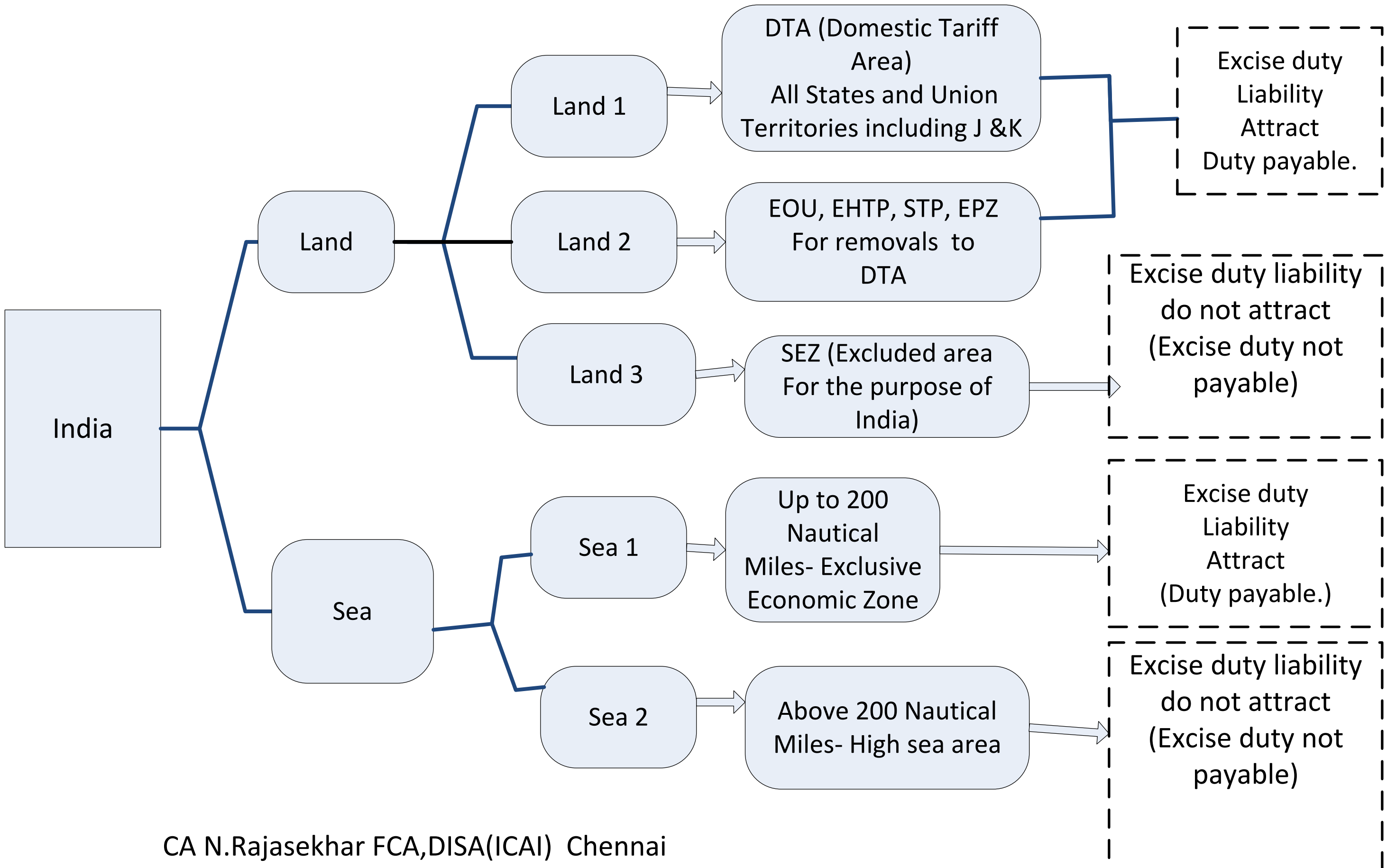
1.Value addition in the packing activity is mandatory to call as deemed manufacture and levy of ED.
2.If good are already marketable, mere packing and repacking them is not a manufacture.
3. Labeling/relabeling should include declaration or alteration of retail sale price. mere labeling or relabeling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

India for the purpose of Excise duty



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Goods and Excisable goods

Goods

Analysis

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

Movability by any mode of transport from one place to another

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

Ropeway erected for carrying passenger in trolley system is not movable

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

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

Marketability will be Ordinarily as such

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

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

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

Definition

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

Actual sale is not relevant
Free samples – ED payable
Free replacement /warranty claims– ED payable **[BHEL-SC]** *Food Specialties Ltd.* 1985 (SC).
Even captive consumption can also attract ED liability .

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Excisable Goods

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

2.Being subject to a duty of excise →
1. goods charged to duty
2. goods charged to Nil/0% duty
3. goods Charged to duty, but exempted by notification

Wallace flour mills(SC)

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

Definition

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

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

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

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

Whether Curing is a Manufacture or not

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

Ex: Coffee curing

Manufacturer sec 2 (f)

Manufacturer

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

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

Production

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

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

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

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

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

2. Assembly /erection at site → Resulting Final Product / End Product
   - Immovable- Not goods- No duty — Lifts, Escalators (Otis Elevators) (SC) Water treatment plant(L&T) -- No duty
   - movable- goods- duty — Movable furniture assembled at site goods- Mehta &co (SC)- duty

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

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

Dutiability of Waste/Scrap

Waste/Scrap → Generated/ Produced From Manufacture/ Production
- Yes → Waste is Movable Marketable Excisable → Duty Payable
- No → No Duty

Gajaphthi Co-operative Sugars (AP)

Banswara Syntex Ltd (Raj)

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

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

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Duty liability on Captive Consumption

Captive Consumption

Final Product

Duty liable to pay

Exception- Capital goods manufactured and used in factory for manufacture of final product- No duty

Ex. Godrej uses furniture In the factory

Notification No. 67/95 dated 16-3-1995.

Manufactured parts,spares/ Components

Cleared for Home consumption

Duty liable to pay

Used for further Manufacture in factory

If Final Product dutiable

If Final Product Exempt from duty

When ever Duty payable Movability, Marketability & Excisability Should satisfy White Machines vs. CCEx., Delhi 2008 (224) ELT 347 (SC).

Pay duty on parts, spares/ Components

And

Avail cenvat credit. Utilised when duty payable on Final product

J K Spinning vs. UOI 1987 (32) ELT 234 (SC).

duty liable on parts, spares/Components Exceptions **

Duty liability on Intermediate products

Intermediate Products (scraps/By products etc)

Removed for Home Consumption

Duty liable to pay

Used for further Manufacture in factory

If Final Product dutiable

Pay duty on parts, spares/Components

Avail cenvat credit. Utilised when duty payable on Final product

If Final Product Exempt from duty

duty liable on parts, spares/ Components Exceptions **

When ever Duty payable Movability, Marketability & Excisability Should satisfy Union Carbide India Ltd. vs. UOI 24 ELT 169 (SC).

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

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

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

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

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

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

Change in rates of exciseduty

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

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

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

Rate of duty applicable for payment

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

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Rate of duty in case pre budget stock- Taxable event

Pre-budget stock

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

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

  Vazir Sulthan Tobbacco (SC)

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

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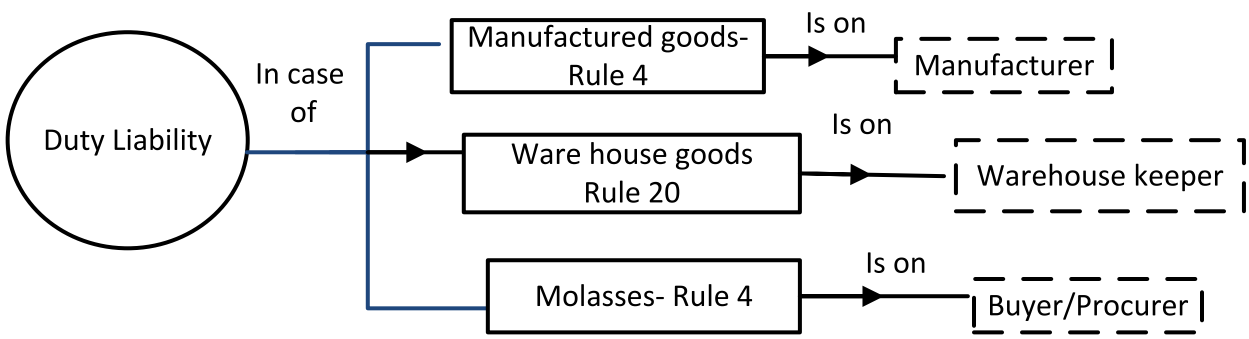
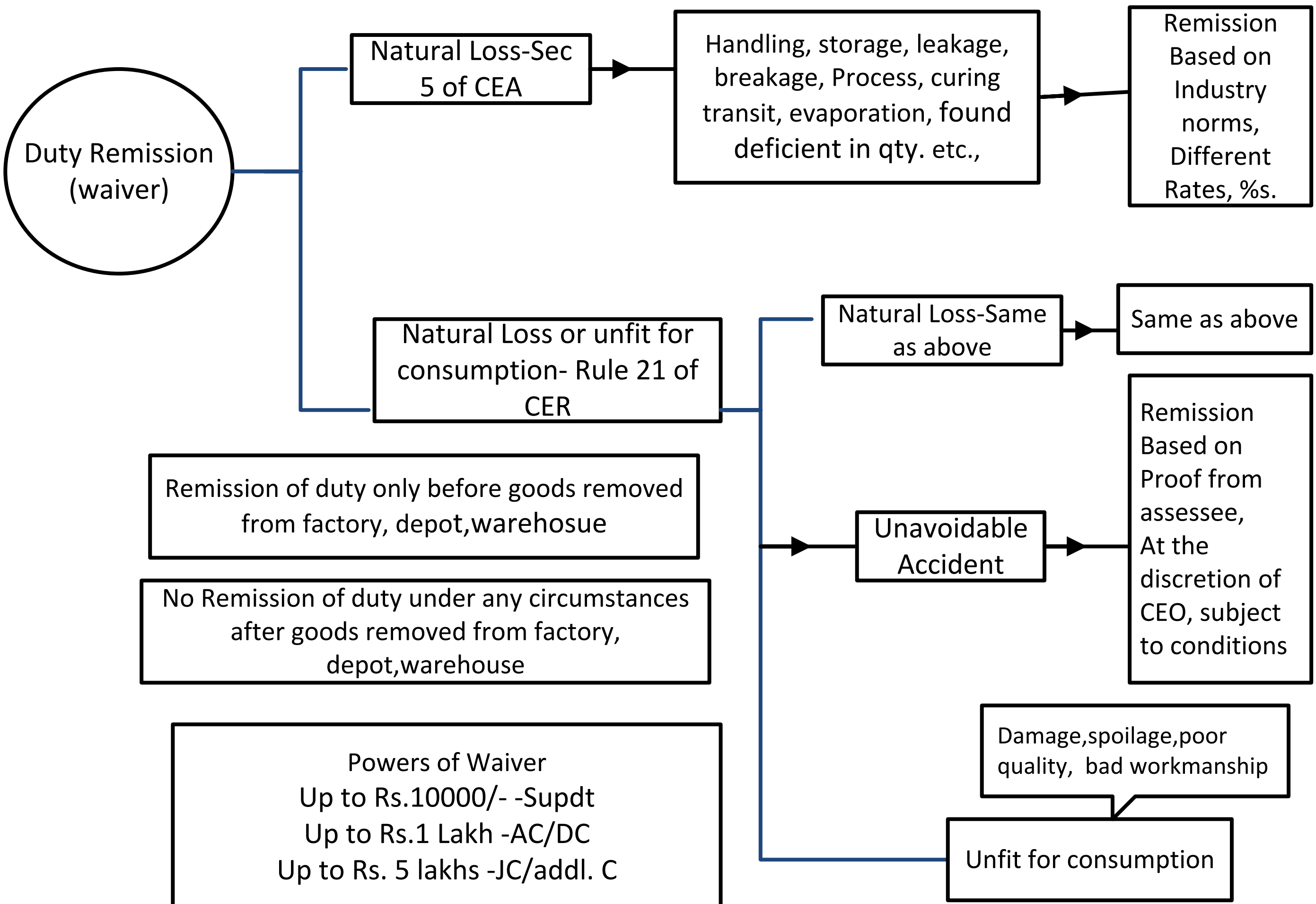
Duty liability & duty Remission(waiver)



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



1.Application to CEO AC/DC
2.CEO inspection to factory
3.Destroy of unfit goods in front of CEO
4. Remission order grant by CEO

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

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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

Classification Rules(To be followed Sequentially)

1 → Chapter heading is only for reference. Classification to be made as per section chapter notes.

2(a)(i) → Unfinished/Semi finished goods

2(a)(ii) → Un-assembled/dis-assembled goods (SKD/CKD)

Having Essential Character final product

Classify under heading of Finished product

2(b) → Mixtures or combinations of a material/substance with other material/substance → Classification under same heading under which that material/substance is classifiable.

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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3(a) → Prefer Specific Description rather than general headiing

3(b) → Mixtures // composite goods consisting of different materials or made up of different components // Goods Put up in set/Multi utility articles → Classify using Essential Character

3(c) → Goods can't be classified as per (a) & (b) above -- prefer heading occurring <u>last in the numerical order</u>.

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

Rule 4 → Akin Rule → classify under heading appropriate to the goods to which they are most <u>akin / similar</u>.

Rule 5 → Classification of Packing material → Specific rule

- Containers specially shaped or fitted to contain a specific article or set of articles,
- Suitable for long-term use and
- Presented with the articles for which they are intended,

→ shall be classified with such articles

Example

Camera case- Classify under camera
Gold ornament cases=Classify under gold
Musical instrument box -classify under musical instruments

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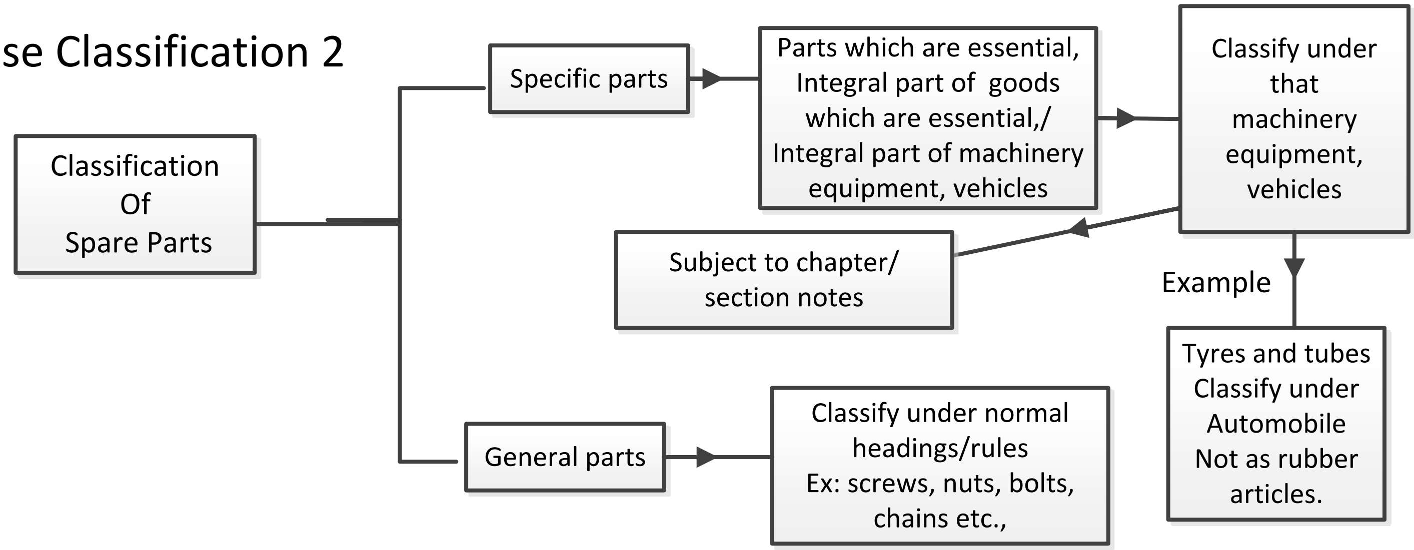
Exception: Rule is not applicable for durable and returnable packing. Ex .Gas cylinder cannot be classified under gas

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 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

Valuation Methods

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

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MRP Valuation

Meaning of MRP:

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

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

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

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

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

MPP Provision salient features

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

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

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

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

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

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

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

Price paid /payable by buyer (before or after sale) → And includes (additions) → Other payments in Connection with sale → Excluding Local taxes

Other payments in Connection with sale → Advertising Marketing Storage Servicing Warranty Commission → These items includable only When they are paid by buyer To seller by reason of or in connection with sale

Excluding Local taxes → Excise Customs Sales tax Vat

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

1 Price of Goods Sold is value → when → Sale happens at Time & Place of Removal

Place of Removal → means → Factory, depot ,ware house, agent place any other place where goods are removed. The same is also given in CCR 2004

Sec 4(3) © (CC)

Sec 4(3)(b) Time of removal → means → In case of depot - Time of Factory

Example

Factory-Place of removal

Goods sold on 30.03.2015 at 4 Pm, @ Rs.140 per unit + taxes+ transport +Insurance

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

Exp. after removal not relevant for value

Price increase after removal to 150. but before delivery to buyer. No Escalation clause in order. Buyer paid only Rs.140

OR

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

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

2 Buyer and Seller Not related to each other

Relative → means → a .ICU which is holding and subsidiary
b. Persons having .Mutual Interest
c. Relative as per Schedule I of Companies Act

3 . Price is sole consideration →
1.Price is for goods
2.Additional flow of consideration to add to arrive value
(Refer Valuation Rule No 6)

Price of each removal is Value →
1 Sale to Govt.
2.Sale to Industrial consumers
3. Sale in whole sale
4. Sale in retail

Each price is value for that 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
9.Dharmada

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

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

Physician sample issued free even which are covered under MRP -Rule 4 apply but not MRP Valuation)

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

Set top boxed imported by DTH Service provider issued free to consumers CVD is payable on Transaction value not on MRP Circular No. 1020/8/2016 CX dated 11.03.2016]

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

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

Example 1

Factory at Chennai (Place of removal

Goods delivered to

Buyer place At Bangalore (Place of delivery

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

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

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

Example 2

Factory at Chennai (Not a Place of removal)

Depot at Bhuvaneswar (Place of removal

Goods delivered to

Buyer place At Kolkata (Place of delivery

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

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

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

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

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

Example 1

Normal Sale Price Rs. 100 Per unit

Material ,Drawing & Design Rs.60

Supplied by buyer

Buyer paid the balance Rs.40

Labour, Overheads, Profit Rs.40

Explanation 1

Value for excise = 40+60= 100

Example 2

Normal Sale Price Rs. 100 Per unit

Buyer paidf Interest free deposit/ Advance payment

Due to deposit/ Advance discount Rs.20, which is not normal as per practice

Buyer paid Rs. 80

Explanation 2

Value for excise = 80+20= 100

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

Factory at Chennai → Depot at Kolkotta (place of removal)

Goods dispatched to depot on 04.01.2015

Goods reached to depot on 07.01.2015

Factory Price Per unit
04.01.15 Rs. 100
07.01.15 Rs.110
12.01.15.Rs. 120

Depot Price Per unit
04.01.15 Rs. 130
07.01.15 Rs.140
12.01.15.Rs. 150

Goods at depot ultimately sold to consumer On 12.01.2015 at Rs. 150

Assessable value will be Price of depot on 04.01.2015. Rs.130

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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1 Mfgr → (Sale 1) R P → (Sale 2) U R P — Value = Price of Sale 2

2 Mfgr → (Sale 1) R P → (Sale 2) R P → (Sale 3) U R P — Value = Price of Sale 3

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

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

Value in case of Job work

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

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

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

Purchased Components/Spare parts → Fitting and delivered along with product → Cost includible in Valuation (profit not includible in valuation)

Purchased Components/Spare parts → Supplied Additionally/ separately → Not includible in Valuation

Valuation in case of Consumables

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Purchased Consumables → Not includible in Valuation (Even product cannot function)

Purchased Consumables → Examples: ribbon/cartridge Gramophone pin, casset

Alternatively include in value and avail cenvat credit

Accessories Which are optional not includible in Valuation

Cumduty Price (Price inclusive of duty)

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

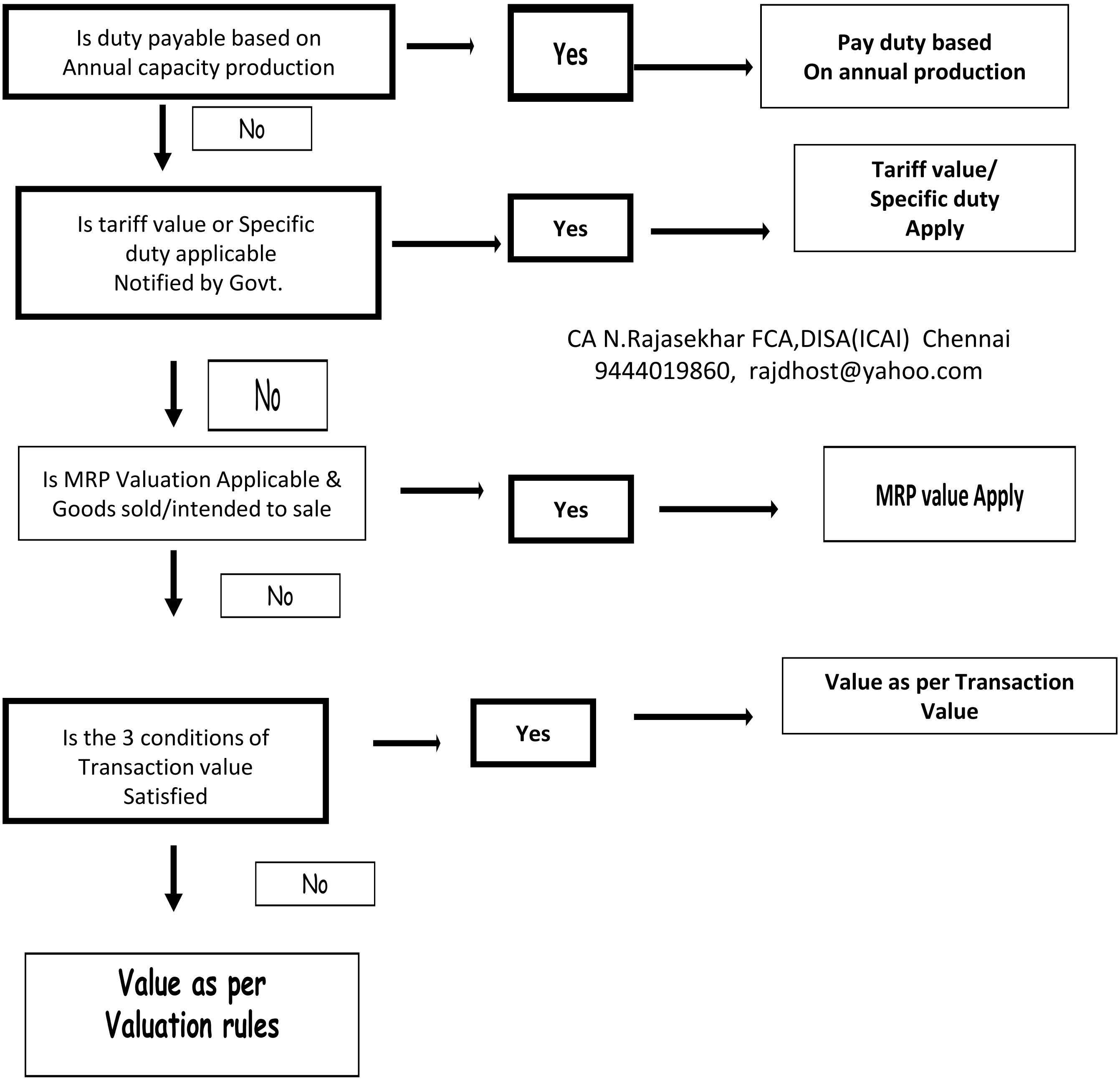
When CDP is considered → When the price is not sole consideration and if any Additional Consideration is added. CBEC DO letter 334/1/2003 dated 28.02.2003

When CDP is considered → If Assessee removes goods without payment of duty (treating dutiable goods as exempted goods/not charged duty), the price should be treated as cum duty price Maruthi Udyog Ltd (2002) (SC)

Value of trade mark/ brand name in the assessable value:

- Where a manufacturer is the owner of the brand name, the price including the value of the brand name, at which he sells the goods in the course of wholesale trade, would constitute the normal price.
- where the goods are manufactured by somebody else and then sold to a dealer who owns the brand name, the value of the brand name cannot be added for computing the assessable value for the brand name owner cannot be treated as manufacturer and the price at which the brand name owner sells the goods cannot be taken as assessable value.

Valuation Application/Order to follow



Cenvat Credit Basics

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

- Inputs/Capital goods- immediately after receiving in to factory/premises
- Input service immediately after receiving the bill

- Account the credit
- Utilise

- If do not use, Reversal 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;
- Activity which is not a service
- 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

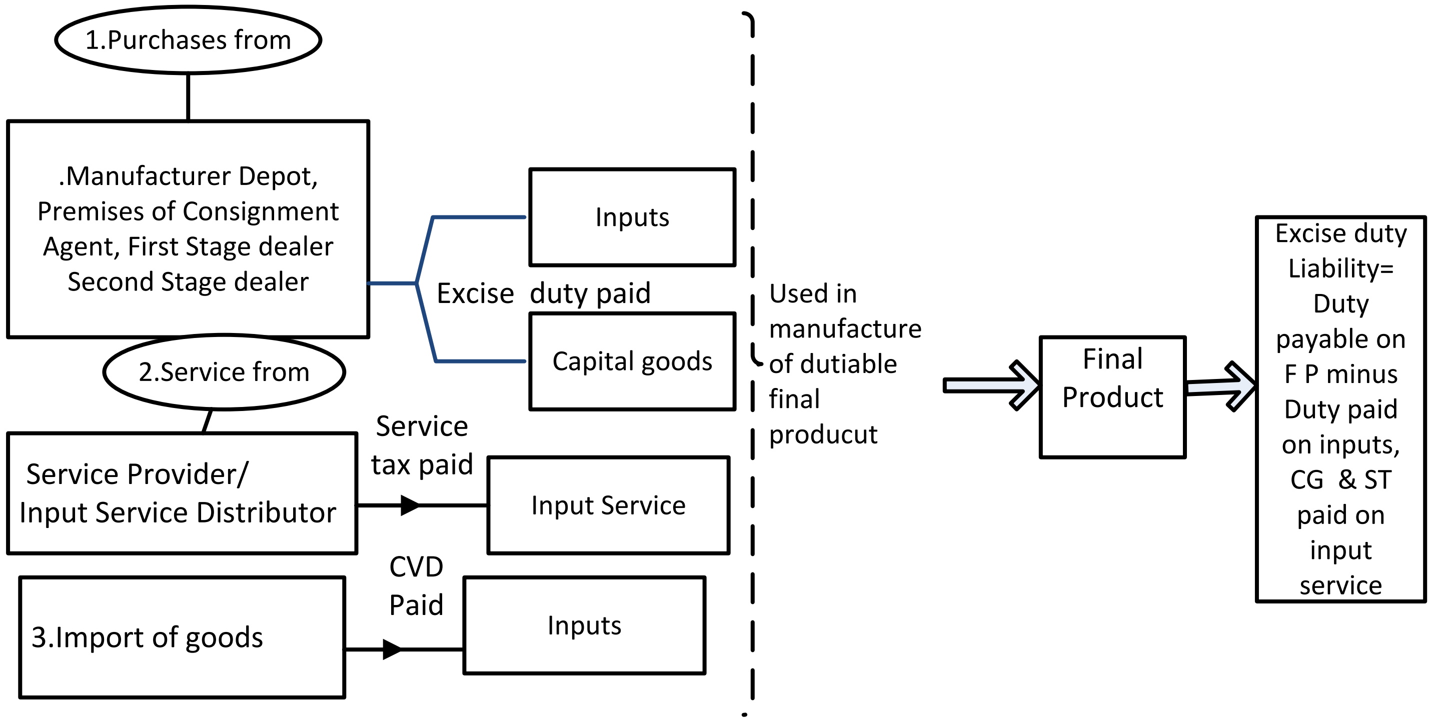
(ii)Where the whole of service tax is liable to be paid by the recipient of service.

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

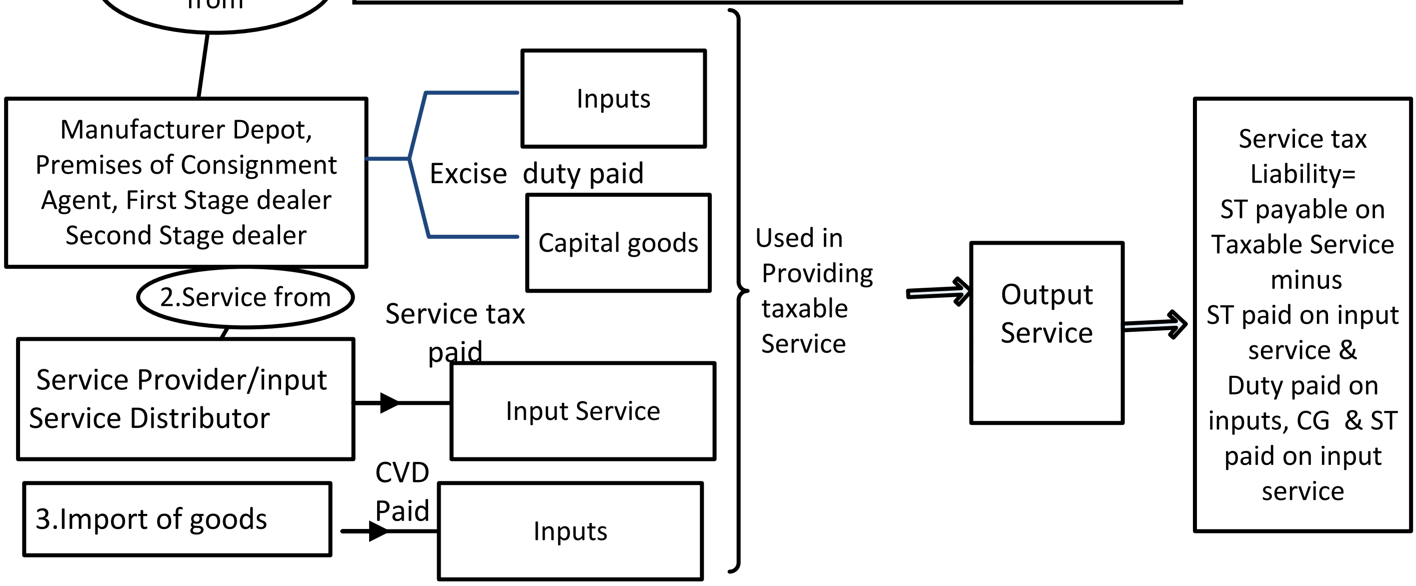
With regard to determination of place of removal in case of export of goods, following has been clarified:

- (*i*) Place of removal in case of direct export of goods by the manufacturer exporter to his foreign buyer will be the port/ICD/CFS where the shipping bill is filed by the manufacturer exporter.
- (ii) Place of removal in case of clearance of goods from the factory for export by a merchant exporter will be the factory gate. However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ ICD/CFS where shipping bill is filed by the merchant exporter. [Circular No. 999/6/2015 CX dated 28.02.2015]

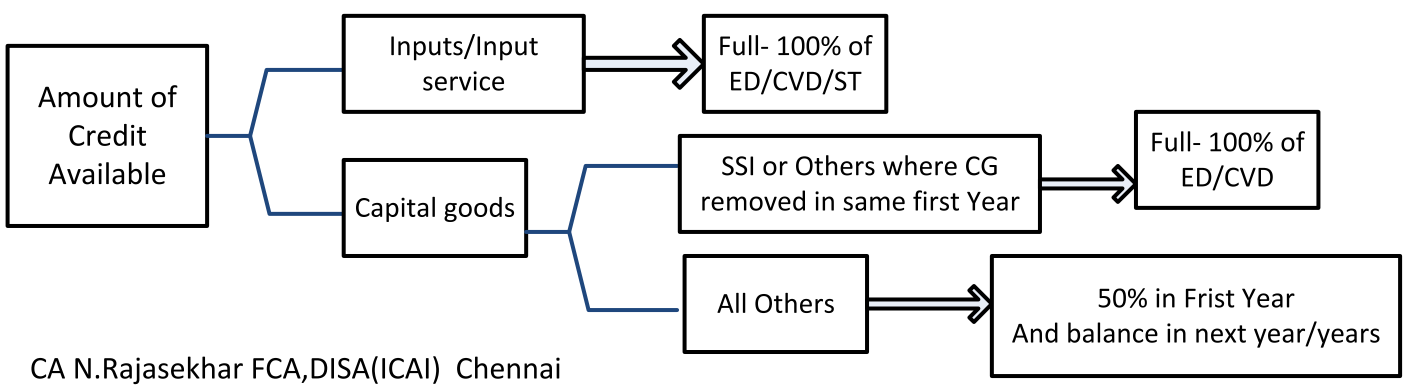
Cenvat Credit System for Manufacturer



Cenvat Credit System for Service Provider



Quantum of Credit (Amount of Credit) Available



Inputs & Capital goods under Cenvat Credit

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Input means Rule 2(k)

- For Manufacturer
  - All goods used *In factory* — Example → Basic raw material, Inputs used as fuel. Consumables, packing material, paints, label, printing, branding
  - Inclusions *(Also inputs)* *(refer *)*
  - Exclusions ***(Not inputs)*** *(refer **)*
- For Service Provider
  - Exclusions ***(Not inputs)*** *(refer **)*
  - All goods used *For providing output service*

Input Inclusions *
1.All goods including accessories cleared along with FP where Value includible in valuation.
2.Goods used for providing free warranty claims for final products (condition: warranty value is included in price)
3.All goods used for generation of electricity or steam for captive use
4.All goods used for pumping of water for captive use.
5.All capital goods which have a value up to Rs.10,000 per piece
6.CG used as part/component in mfg., of FP

Input Exclusions for Mfgr & SP **
1. Diesel, Petrol
2.Motor vehicles
3 Any .goods used in works contract, construction , civil structure or part there of
4..Any goods used for laying of foundation or making of structures for support of capital goods(Except provision of service portion in the execution of a works contract or construction service as listed in declared services)
4.Any.goods are used primarily for personal use or consumption **of any employee(**used in guest house, club, quarters, food, clinic etc.,)

Capital goods means Rule 2(a)

- For Manufacturer & Service Provider
  - All Goods Of Chapter 82,84, ,85,90,6804,6805 & their Components,Spares/ Accessories, Wagons of chapter 860692 (01.04.2016)
  - Certain Motor vehicles such as tractors, cranes
  - Pollution Control Equipment & their Components/Spares Accessories,Equipment used in office located within factory
  - Moulds,Dies, fixtures, Jigs,Refractories,refractory material
  - Tubes, Pipes, fittings thereof
  - Storage tank

  → 1.Used in mfg. of final product **in factory,**
  2. used in **outside factory** for generation of Electricity for captive **use in factory**.
  3.used outside the factory of the manufacturer of the final products for pumping of water, for captive use within the factory.
  4.used for Providing Output service

- For Service Provider only
  - Equipment, Appliance use in office for providing output service
  - Motor vehicles of carrying goods → For services of (a) Renting of motor vehicle (b)Transportation of inputs and capital goods (C) Courier agency
  - Motor vehicles For carrying passengers → For services of Renting of motor vehicle, Transportation of passengers, Imparting motor driving skills (Driving schools)

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Input service Under Cenvat Credit

Input Service Means Rule 2(l)

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

Sales promotion includes services by way of sale of dutiable goods on commission basis. Hence Services by way of sale of dutiable goods on commission basis is sales promotion and thus, an eligible input service Notification 2/2016 dt 03.02.2016

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

1.Used in setup, Repair, renovation Modernisation of Factory/premises of SP

2. Computer Networking, Share Registry & Security

3.Inward Transport Of inputs and CG/Outward transport Up to place of removal

4.Storage up to the place of removal, procurement of inputs

5.Advertisement or sales promotion, market research

6.Accounting, Auditing, Financing, Quality Control, coaching & Training, Rrecruitment

7.Share registry, security, business exhibition, legal services

Exclusions in input service **

- Outdoor catering, health, fitness ,beauty services All insurance services ,travel Etc., used /consumed primary for personal purpose of employee
- Service portion in the execution of a works contract and construction services listed in declared service, laying of foundation or making of structures for support of capital goods,
  Services provided by way of renting of a motor vehicle in far as they relate to a motor vehicle which is not a capital goods
  → This services will be input service only for Service provider of this services
- Services of General insurance/repair and maintaiance of motor vehicle
  → This services will be input service only (a)for a person where Motor Vehicles are Capital goods.
  (b) manufacturer of motor vehicles
  (c)An insurance company providing insurance and reinsurance of such motor vehicles

Eligibility of Parts components, Accessories of Capital goods

Parts, Components Accessories of CG mentioned in definition in rule 2

- Used as input for mfg. of FP → Credit available as input
- Used in factory → Credit available as C G

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

Cenvat Credit Rule No 3

Rule 3 (1) to 3(4)

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

3(1)

Duties on which Credit can be taken

- Basic ED , NCCD & corresponding CVD on imports,
- Addl ED on panmasala , tobacco
- Service tax and spl cvd 3(5) - 4%
- No credit on 1%,2% BED & Clean energy cess, Swatch bharat cess
- No credit on spl cvd 3(5) - 4% to Service provider

Credit available on CVD paid on Project Imports
Credit available on ED :

- on capital goods at the de-bonding of a unit in case of 100% EOU/STP
- invoice in case of subsequent reduction in price
- Job-worker manufacturing exempted intermediate goods

3(2)

Credit when exempted goods become dutiable

3(3)

Credit when exempted Service become Taxable

Credit available for Mfgr, SP, **on duty paid on** 1.Inputs on stock, 2.inputs in WIP 3.inputs in Finished goods on the date

3(4)

Utilization of Cenvat Credit (Eligible payments)

Towards payment of

- Any duty of excise, ST on services
- Amount payable when Inputs, CG removed as such & as per rule 6.
- Removal of inputs after repairs/ partial process

Proviso:

- Credit utilization only up to duty/tax paid up to month end/ qtr. End balance

Exceptions/Restrictions on Utilization :

- NCCD, addl Ed on tobacco, panmasala & corresponding CVDS paid to be utilized only for the payment of same type respectively.
- Any duty/tax shall not utilized for payment of 1% BED & Clean energy cess and Swatch Bharat cess
- Service tax paid by service receiver under reverse charge
- Credit of Spl cvd 4% cannot be utilised by manufacturer for payment of service tax on output service

CENVAT credit in transit sale through dealer:
If goods are directly sent to any person on the direction of the registered dealer/importer, the invoice will also contain the details of the registered dealer as the buyer and the person as the consignee, and that person will take CENVAT credit on the basis of the registered dealer's invoice [Third/fourth proviso to rule 11(2)] of Excise Rules.

Rule 3 (5) to 3(5C) & 3(6) & 3(7)

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

3(5) → Removal of Inputs & CG → Removal with invoice

- Removed as such (without use) from Factory/premises → amount equal to Credit availed to be paid
- Proviso: Exception (No payment required)
  1. for SP, CG removed for providing Output service
  2. for Mfgr, Inputs removed for providing free warranty on FP
- C G Removed after use (as second hand goods) from Factory/premises
  - → Computers/ Peripheral's (Refer*)
  - → Other Capital Goods (Refer **)

Payment when CG removed after use 3(5)

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

3(5A) → C G Removed after use as a scrap (after Useful life) → Excise duty payable on Selling price (T V)

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

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

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

Amount payable or reversible= Amount caculated as above or Duty payable on Selling price(TV) which ever is higher

Amount payable under rule (3) (5), (5A), (5B) and (5C) to be paid on or before the 5th day of the following month by utilizing CENVAT credit/payment. For the month of March due date is 31st march, failing in this recovery under rule 14 as cenvat credit taken wrongly.

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

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Rule 3 (7) → Cenvat credit to buyer on purchase from 100% EOU, EHTP, STP- → Cenvat credit can be taken on CVD and Spl CVD 3(5)-4%

If buyer pays any other duties to EOU credit can be available as per rule 3(1)

Cenvat credit Rule 4

Conditions for allowing Cenvat Credit

Rule 4 (1) to 4 (7)of CCR 2004

4(1)

- Credit on inputs, available immediately after receiving in to factory of Mfgr/ Premises of SP.
- Credit can also availed by Mfgr/SP if the inputs/capital goods directly send to jobwoker place as per direction of mfgr/sp. wef 01.03.2015
- credit can be availed by an output service provider even if the inputs are not received in the premises of the output service provider, but are delivered at some other place; if documentary evidence of delivery and location of such inputs is maintained.
- Credit should be availed with in 12 months from the date of invoice.
- No credit after 12 months.

4(2)

Credit on Capital goods, available immediately after receiving in to factory of Mfgr/Premises of SP. Amount of Credit 50% in first year and balance in next year. Incase of SSI/ unit which CG removed in same year-100% in first year Jewellery manufacturer (excluding manufacturer of plain silver jewellery) having turnover upto Rs, 12 crore in preceding year eligible to avail 100% CENVAT credit on capital goods in the year of purchase

4(3) & (4)

- Credit on Capital goods available even, Capital goods acquired on hire purchase lease or finance .
- Mfgr/Service provider cannot enjoy the benefit of depreciation under IT and cenvat credit on the duty amount of capital goods. He can choose any one.

4(5) & (6)

Cenvat Credit in case Of inputs /Capital goods send to Jobwork for any purpose

- Credit on inputs/capital goods can be availed if they return back in 180/200days when necessary document proof for being returned
- If does not return with in 180 days /200 days reversal of credit availed is to be done
- Jigs, fixtures, moulds, and, dies . No need to return Credit can be taken if they to job worker or another manufacturer

When goods removed directly from Job worker place- Permission of AC/DC-~~one~~ 3 years Valid, Subject to conditions

4(7)

Cenvat Credit in case Of input Service

- in case of Reverse Charge (Partial or Full) → After service tax in the bill paid
- For Service Provider → On or after day of bill or invoice is received. Time limit to avail credit is year from the date of invoice
  - Time limit to avail credit with in one year from the date of invoice is not applicable in case of services provided by way of assignment of right to use any natural resource 13.04.2016
  - If ST on the bill is not paid with in 3 months from the date of invoice, reversal of credit is required. Credit can be availed after bill is paid.
- in case of Input service, where ST paid, is parly or fully refunded/credit note is received by Mfgr, SP --Pay amount/reversal of credit is to be made

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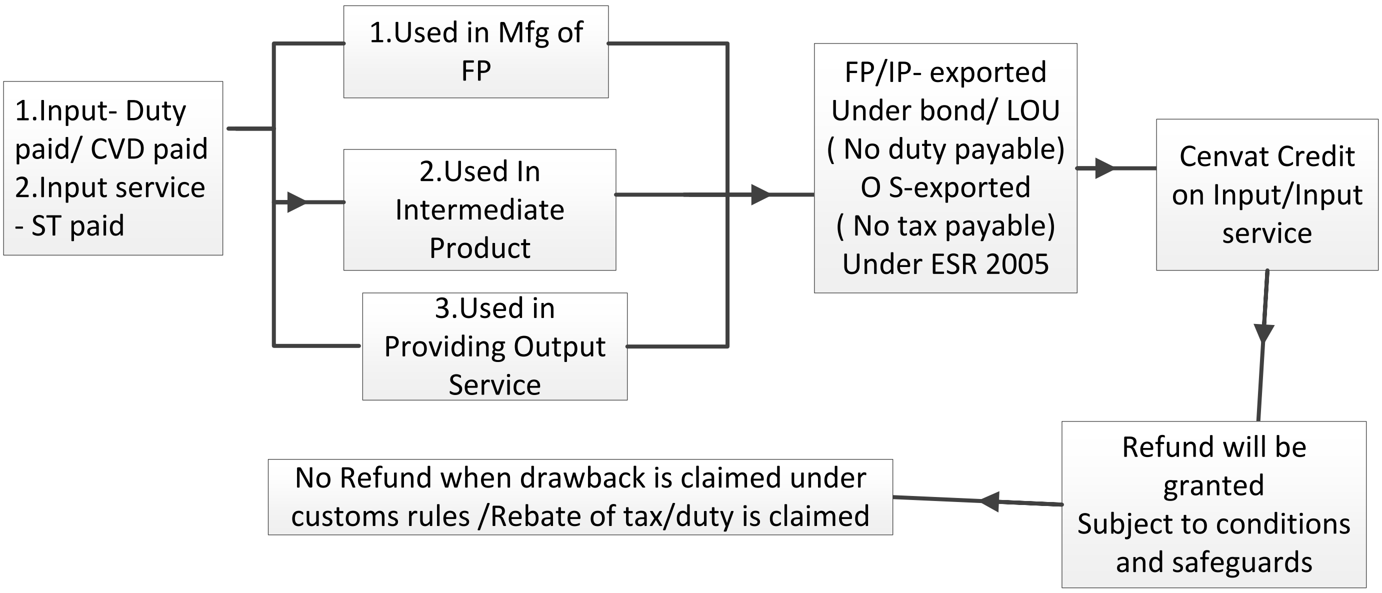
Rule 5 of Cenvat Credit Rules 2004-Refund of Cenvat Credit



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

Refund amount	Maximum Refund eligible
Net Cenvat Credit	Cenvat Credit Available to Mfgr/SP on input/input service minus amount reversed under Rule 3(5C)
Export turnover of goods	Value of FP/IP cleared for export without payment of duty by LOU/Bond during RP
Export turnover of Services	Payments received during the rp for export services + advance payments received in prior to RP for provision of export services completed – advances received for export services for which the provision of service has not been completed during the rp.
Total Turnover	Turnover of excisable goods+ Exempted goods+Export of services as above+ Inputs cleared as such
Relevant Period (RP)	Period of claim relates = QTR/6 months/one year

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Safeguards, conditions and limitations

- One claim for one qtr, qtr= april to june , july to sep so on
- Value of the goods, total value of goods is as per returns submitted.
- Value of services other than export should be as per POT Rules
- Refund claim should not be more than the credit balance of RP
- Refund claim should be debited to account. If refund amount is less credit can take back.

Procedure to claim refund

- Application to AC/DC in form A with in one year of exportl as per sec 11 B of CEA
- In case of ST, one year from receipt of payment or date of invoice
- Enclosures- proof of export/duty paid
- For export realization certificate from Bank and Certificate from CA
- AC/DC after satisfy allow refund full or part.

Rule 5A – Refund of CENVAT credit of duty paid in cash to units for specified goods supplied to areas in North east for duty paid in cash

- C G may allow refund of CENVAT credit of duties taken on inputs used in the manufacture of final products cleared in terms of Notification No. 20/2007-CE dated 25.04.2007 to North east states., if the manufacturer is unable to utilize such credit for paying duty on such final products
- However, the refund shall not be allowed if the final products are exempt or subject to nil rate of duty. The refund of credit shall be allowed subject to prescribed procedures, conditions and limitations.
- For the purposes of this rule, —duty means any of the duties specified in rule 3 (1).

Rule 5B – Refund of CENVAT credit to service providers providing services taxed on reverse charge basis

- A service provider rendering services which are taxes under reverse being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services,
- He shall be allowed refund of such unutilised CENVAT credit.
- The procedure, safeguards, conditions and limitations to which such refund shall be subject to have been prescribed by CBEC vide *Notification No. 12/2014 CE (NT) dated 03.03.2014* as under:

SAFEGUARDS, CONDITIONS AND LIMITATIONS

- Refund is admissible, of unutilised CENVAT credit taken on inputs and input services during the half year for which refund is claimed, for providing following output services:
  - o renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;
  - o ~~supply of manpower for any purpose or security services; or~~ from 01.04.2015
  - o service portion in the execution of a works contract;

Unutilised CENVAT credit taken on in puts and input services during the half year for providing partial reverse charge services =. **(A)-(B),** where

A= Cenvat Credit taken on inputs and input services during the year	x	Turnover of output service under partial reverse charge during the half year

Total turnover of goods and services during the half year

B = Service tax paid by the service provider for such partial reverse charge services during the half year.

- Refund shall not exceed the amount of service tax liability paid/payable by the service receiver with respect to the partial reverse charge services provided during the period of half year for which refund is claimed.
- Amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim. However, if the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and the amount sanctioned.
- The claimant shall submit not more than one claim of refund under this notification for every half year.
- Refund claim shall be filed after filing of service tax return for the period for which refund is claimed.
- Half year means a period of six consecutive months with the first half year beginning from the 1st day of April every year and second half year from the 1st day of October of every year

PROCEDURE FOR FILING THE REFUND CLAIM

- The output service provider shall submit an application in Form A, along with specified documents and enclosures, to jurisdictional Assistant Commissioner/Deputy Commissioner, before the expiry of 1 year* from the due date of filing of return for the half year. Copies of return(s) filed for the said half year shall also be filed along with the application.
- *In case of more than one return required to be filed for the half year, 1 year shall be calculated from due date of filing of the return for the later period.
- The Assistant Commissioner/Deputy Commissioner, may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim, and shall sanction the claim after satisfying himself that the refund claim is correct and complete in every respect.

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

Rule 6(1) & (4)

1.Input- Duty paid/ CVD paid

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

No Cenvat Credit

Exception: (Credit available)
1.jobworker of Jewellery under rule 12AA
2. Preferential removals

2.Input service - ST paid

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

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3 Capital Goods - Duty paid/ CVD paid

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

No Cenvat Credit <u>for a period of two years</u> from the date of commencement of the commercial production or provision of services

Where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods

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
- Supplies made without payment of duty for setting up of solar power generation projects or facilities
- ethanol produced from molasses generated from cane crushed in the sugar season 2015-16
- 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

Manufacturer manufactures two classes of goods namely
(i)non-exempted goods removed
(ii) exempted goods removed

Service provider provides
(i)non-exempted services
(ii) exempted services

Rule 6 (3)

Option 1
Pay 6% on invoice value of exempted goods Less duty if any paid on exempted goods (For example 1%, 2% goods)
7% on the value of exempted services /2% in case of transport by rail.(In case of abatement cases, amount to be calculated on taxable portion.)
The payment is Subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period

Exception: Preferential removals

Rule 6 (3A)

Option 2
Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted goods removed/ exempted services provided based on mathematical formula

Exception: Preferential removals

Rule 6 (3B)

A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, shall have the option to pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month..

Option 1 should be informed in writing to CEO for all exempted goods/all exempted service. Once option is exercised, it cannot be withdrawn during financial year

Procedure and conditions to reverse credit under rule 3A

Intimation to Sup of CE with

Name address, registration No.

Details of inputs, input service used for exempted not exempted goods, exempted service not exempted service

Date of exercising option

Balance of cenvat credit on date of exercising option

Details of eligble/ineligible credit common credit month wise/yearwise

Details of payment made interest etc

Credit determined and date of taking credit etc.,

- Non-exempted goods removed" means the final products excluding exempted goods manufactured and cleared upto the place of removal;
- "Exempted goods removed" means the exempted goods manufactured and cleared upto the place of removal;
- Non-exempted services" means the output services excluding exempted services.

Rule 7 Distribution of Credit by Input Service Distributor
(ST on Bill distribution amount HO, braches, units) 01.04.2016

Managing Office by Manufacturer/Service Provider

Receives invoice under ST Rules

ST distributes by ISD through invoice/ Challan , to Mfg units ,units providing output service, Outsourcing mfg. units

Person who distributes ST is Known as Input service Distributor

ST paid on input service which is used exclusively for manufacture of exempted goods/ exempted service cannot be distributed . ST paid on input service which is used exclusively used in one unit should be distributed to that unit alone

ST paid on input service which is used in more than one unit but not to all units to be distributed pro-rata on trunover basis to that units alone

ST paid on input service which is used in to all units to be distributed pro-rata on turnover basis to that all units alone

Example

Person receives Service tax bill for 5 lakhs. The ST paid Rs. 5lakhs is to be distributed on the turnover ratio of relevant period to all 4 units

Person Known as Input service Distributor
It distributes service tax based on turnover ratio to total turnover of the Previous financial year. If the turnover ratio units 1,2, 3 and 4is 25%, 30%, 20% & 25% and if S T paid on the bil Rs. 5 lakhs

The amount of distribution should not exceed amount of ST Paid

Unit -25% 1.25 lakhs

Unit 2- 30%- 1.50 Lakh

Unit 3- 20%- 1.00 Lakh

Unit 4 outsourcing mfg units 25%- 1.25 Lakh

Person & units has separate registration for each premises

Credit can be availed on ST distribution received through challan.

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Relevant period means Previous FY quarter/month . If no turnover for Previous turnover of unit/ units the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed
Turnover is to be calculated as per Rule 5.

Outsourced manufacturing unit" means a job-worker who is liable to pay duty on the value determined under rule 10A of Excise Valuation Rules. Who manufactures goods for ISD or Manufacturer who manufactures goods for ISD under the brandname of ISD

outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned

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7A. Distribution of credit on inputs by the office or any other premises of output service provider.

The office or premises of Output service provider can distribute credit of Excise/CVD on the basis of invoice on inputs/capital goods to its office/premises. The invoice is to be issued under rule 11 of CER.

The office/premises can take credit on the basis of invoice received from office/premises. The provision of first stage dealer and second stage dealer is applicable to office/premises who distribute credit

7B. Distribution of credit on inputs by warehouse of manufacturer. From 01.04.2016

warehouse of the manufacturer, who receives inputs under cover of documents specified under rule 9, towards the purchase of inputs can distribute credit to manufacturer having one or more factories, . The factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of manfacturer.

The provision of first stage dealer and second stage dealer is applicable to office/premises who distribute credit

Rule8 of CCR 2004 Storage of inputs outside factory

AC/-DC Permission By order in Exceptional circumstances

Considerations

Nature of goods
Shortage of space in factory

Impose

Restrictions/Conditions limitations

Failure

Pay amount/ Reversal of Cenvat credit availed

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

Documents for availing cenvat credit Rule 9(1)

For Excise/CVD

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

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

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

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

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.

Rule 9A Annual return from 01.04.2016
Due date 30th Nov of following FY.
Mandatory electronic filing .
The provisions of Excise returns under rule 12 is applicable
(Also refer service tax procedures topic Rule 7(3A))

Records for cenvat credit Rule 9(5&6)

Records for Inputs/ Capital goods Input service

QTY. Records → Receipt, Disposal,Consumption and balance

Value Records → Duty/tax paid, credit taken, Utilized and balance

Returns for cenvat credit Rule 9(7 to11)

Returns

Mfgr/ EOU → ER 1,ER2, ER3(SSI) → Mandatory E filing

FSD/SSD, Importer → Annexure form → Mandatory E filing

SP/ISD → ST3 → Mandatory E filing

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

Rule 10- Transfer of Cenvat Credit

Mfgr/SP

1.Shifts factory/Premises

Or

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

Transfers unutilised Cenvat Credit

Cenvat credit can be availed by transferee

Condtions

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

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

Rule 10A- Transfer of Special Additional customs duty U/s 3(5)-4%

- Manufacturer can transfer unutilised credit from one factory to another factory at the end of quarter having common PAN.
- Transfer can be made by documents by issuing challan containing name address and reg. No of registered premises of transferring credit
- Transferee can account credit based on challan
- Manufacturer has to file separate monthly returns for the both premises

Rule 11- Transitional provisions of Cenvat Credit

Rule 11

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

11(2) To 11(4)

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

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

Rule 13 Deemed Credit in case of input/Input service

CG will notify rate/Amount on CC is available.. Actual rate/amount paid not relevant+

Rule 14-Recovery of Cenvat Credit (CC) 01.03.2015

CC Wrongly availed but not utilized

Recovery of Excise u/s 11 A/Service tax U/s73

CC Wrongly availed and utilized/erroneously refunded

Recovery of Excise u/s 11 A/ Service tax U/s73 + Interest

Whether a particular credit has been utilized or not will be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assesse was equal to or more than the disputed amount of credit for the purpose of recovery and interest. From 01.04.2016

Rule 15-confiscation/Penalty Wrong availment/utilisation 14.05.2015

Bonafide mistake

Rules of natural justice to follow by CEO (SCN)

Fraud cases

Inputs/CG- Confiscation & 10% of duty or Rs.5000 WEH Sec11AC FA 2015 wef 14.05.2015

Input Service- Up to 10% of Service tax Sec 78 (FA 2015 wef 14.05.2015)

Inputs/CG- Penalty Sec 11 AC- New section- for details refer in penalties

Input service-Penalty Sec 78- New section- for details refer in penalties

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Reduction or waiver of penalty is granted as per conditions given in 11AC and 78 New section- for details refer in penalties

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;
- Maintaianance 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 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.

Single registration allowed for two or more premises of the same factory located within a close area on fulfillment of specified conditions Notification No. 19/2016 CE (NT) dated 01.03.2016

The Commissioner of Central Excise may allow single registration for two or more premises of the same factory, if the following conditions are satisfied:

(i) such premises are located within a close area in the jurisdiction of a Range Superintendent;

(ii) manufacturing process undertaken therein are interlinked;

(iii) units are not operating under any of the area based exemption notifications; and

(iv) there is proper accounting of the movement of goods from one premise to other and other conditions and limitations, if any, are complied with.

[Effective from 01.03.2016]

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. The post registration physical verification of the premises not necessary done for the factory/premises of Jewellery manufacturers (excluding manufacturer of plain silver Jewellery)
- 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.

Note: students should also read, Rule 10 DSA, Rule 11 invoicing and Rule 12 procedures

Centralised registration allowed to manufacturers of aluminium roofing panels *falling under tariff item 7610 90 10 of the First Schedule to the Central Excise Tariff Act, 1985 subject to fulfillment of specified conditions [Notification No. 17/2015 CE (NT) dated 08.06.2015]

- Every manufacturing unit engaged in the manufacture of aluminium roofing panels* has been exempted from obtaining the central excise registration, subject to fulfillment of the following conditions:

- such roofing panels are consumed at the site of manufacture for execution of the project and
- manufacturer of such goods has a centralised billing or accounting system in respect of such goods manufactured by different manufacturing units and he opts for registering only the premises or office from where such centralised billing or accounting is done.

Facility of centralized registration available to jewellery manufacturers (excluding manufacturer of plain silver jewellery) having centralised billing or accounting system Notification No. 5/2016 CE (NT) dated 01.03.2016.. This facility is an option**.** He is free to take separate registrations for all factories/premises where the accounts/records showing receipts of raw materials and finished excisable goods manufactured or received back from job workers are kept.

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.

Clarification regarding CENVAT credit in transit sale through dealer *[Circular No. 1003/10/2015 CX dated 05.05.2015]*

- If goods are directly sent to any person on the direction of the registered dealer/importer, the invoice will also contain the details of the registered dealer as the buyer and the person as the consignee, and that person will take CENVAT credit on the basis of the registered dealer's invoice [Third/fourth proviso to rule 11(2)].
- In this regard, following clarifications have been issued:
- Where a registered dealer negotiates sale of an entire consignment from a manufacturer/a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. In such cases no CENVATABLE invoice shall be issued by the registered dealer in favour of the consignee though commercial invoice can be issued.
- Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices

for each sale in favour of the consignees for such individual sale, the same procedure shall apply.

- o Where a registered dealer negotiates sale by splitting a consignment procured from a manufacturer or a registered importer and issues CENVATABLE invoices for each of the sale, it would now be possible for the dealer to order direct transport of the consignments as per the individual sales to the consignee without bringing the goods to his godown. This would save time and transportation cost for the dealer adding to ease of doing business. This is a new facility which flows from the amended provisions. Procedure as prescribed in the third proviso of rule 11(2) shall be applicable in such case.
- o Where a un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. As the dealer is not registered, there is no question of issuing any CENVATABLE invoice by him . Such dealers as in the past can continue to be un-registered.

- Where goods are sold by the registered importer to an end-user (say a manufacturer) who would avail credit on the basis of importer's invoice and the goods are transported directly from the port or warehouse at the port to the buyer's premises, the amendment prescribes that for such movement the factum of such direct transport to the buyer's premises needs to be recorded in the invoice. *[Circular No. 1003/10/2015 CX dated 05.05.2015]*

Conditions, safeguards and procedure for preserving digitally signed records and issuing digitally signed invoices prescribed Notification No. 18/2015 CE (NT) dated 06.07.2015:

Rule 10(4) and rule 11(8) of the Central Excise Rules, 2002 provide for authentication of every page of excise records preserved in electronic form and of invoices respectively, by means of digital signatures. Further, rule 10(5) and rule 11(9) have authorized CBEC to notify the conditions, safeguards and procedure to be followed by an assessee for preserving digitally signed records and issuing digitally signed invoices.

In this regard, following conditions, safeguards and procedure have been prescribed vide

Notification No. 18/2015 CE (NT) dated 06.07.2015:

(a) Every assessee proposing to use digital signature shall use Class 2* or Class 3** Digital Signature Certificate duly issued by the Certifying Authority in India.

(b) Every assessee proposing to use digital signatures shall intimate the following details to the jurisdictional Deputy/ Assistant Commissioner of Central Excise, at least 15 days in advance:

- name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
- name of the Certifying Authority;
- date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority.

However, in case of any change in aforesaid details, complete details shall be submitted afresh within 15 days of such change.

In case of assessees already using digital signature, aforesaid details should be intimated within 15 days of issue of this notification.

(c) Every assessee who opts to maintain records in electronic form:

   (i) and has more than one factory/ service tax registration shall maintain separate electronic records for each factory/ service tax registration.

   (ii) shall on request (in a letter or e-mail) by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document.

   (iii) shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

A Central Excise Officer, during an enquiry, investigation or audit, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.

Service tax

The above conditions will also apply in case of preservation of service tax records in electronic form and authentication of service tax invoices by digital signatures.

Customs

Further, all importers and exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines have also been required to file customs documents under digital signature certificates mandatorily with effect from 01.01.2016. The importers/ exporters desirous of filing Bill of Entry or Shipping Bill individually may however have the option of filing declarations/ documents without using digital signature [Circular No. 26/2015 Cus. dated 23.10.2015].

Students advised to read Rule 10-DSA, Rule 11-invoicing and Rule 12- Various procedures for removal of goods,

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	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER-2 [Rule 12(1) of Central Excise	Return by EOU	EOU units	10th of following month
ER-3	Quarterly Return by SSI	Assesses availing SSI concession	10th of following month of a quarter
Dealer/Importer return Annex Notification	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	Annual Return	Specified persons like bank, Sub registrar, assessee	Section is similar to section 285BA Annual Finance information under Income tax
Form to be notified by CBEC from 01.04.2016	Annual Return for Financial year	Central excise assesse including 100% EOU	30^{th} Nov of FY

Rule 12(7) has been inserted therein vide ***Notification No. 25/2015 CE (NT) dated 09.12.2015*** to provide that the CBEC may, by an order extend the period of due for filing of returns by such period as deemed necessary under the circumstances of special nature to be specified therein

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

Penalty for late filing of returns ER1 to ER3: 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

Methods Of Export

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

Procedure

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

Persons who can export goods

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

Procedure Under Seal of CEO

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

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Procedure Under self Seal By Exporter Except for bhutan

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

"export", means taking goods out of India to a place outside India and includes shipment ot 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

Exemption from sealing in a package/container to export of bulk cargo . Notification 23/2015-30.10.2015
where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by PCCC/CCC subject to safeguards
Safe guards:1.Method of verification of qty, quality at the place of removal,2, No remission for transit loss
3. Permission on case to case basis for a period of one year. 4. In case of missue permission is withdrawn.

Export rebate not allowable when Indian market price of goods exported is less than the rebate claimed: *Notification No. 18/2016 CE (NT) dated 01.03.2016*
Export rebate was allowed only when the Indian market price of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed.
The rebated claim should be filed as per the time limit given in sec 11B of CEA

Chartered Engineer certificate to be submitted for claiming rebate of inputs used in goods exported
Notification No. 18/2016 CE (NT) dated 01.03.2016
The notification provide that in addition to the declaration, a manufacturer will also have to file a Chartered Engineer's Certificate for correctness of ratio of input and output where SION is notified. The permission for manufacture and export of finished goods before commencement of export will be given on the basis of such certificate. Thus, there will be no verification by Assistant/Deputy Commissioner. In case, there is any doubt on the correctness of the declaration, the Assistant/Deputy Commissioner will visit the factory.
The rebated claim should be filed as per the time limit given in sec 11B of CEA

Export procedures -3

Entry of goods in another factory of the same manufacturer for consolidation and loading of consignment for export

- Goods removed without payment of duty for export on A.R.E.1 from one factory (first factory) of a manufacturer are allowed to enter in another factory of the said manufacturer subsequent factory) only for the purpose of consolidation and loading of goods manufactured in subsequent factory and export therefrom subject to following conditions: -
- The exporter shall be required to get his goods examined and sealed at each factory (the places of despatch) by a Central Excise Officer.
- The export goods shall be brought under cover on invoice and A.R.E.1 in the subsequent factory in original packing and duly sealed by Central Excise Officers. In case goods are stuffed in a container, Central Excise Officer shall duly seal the container in the first factory and the sealing of each package shall not be insisted upon.
- The Central Excise Officer having jurisdiction over the subsequent factory shall supervise the opening of the seal of container, loading of goods (duly sealed if these goods are to be loaded in open truck/vehicle) belonging to the subsequent factory in vehicle or container and sealing of the container.
- The exporter or the manufacturer shall pay the supervision charges.

Export to Bhutan on Payment of duty

- Export to and Bhutan can be done only under sealing by CEO. Self-sealing by exporter is not permissible.
- The clearance should be on normal invoice on payment of duty.
- Invoice should mention 'For export to Bhutan' (as the case may be) and make declaration in prescribed form.
- Extra copy of invoice should be made, which is to be used at India– border. Invoice in prescribed form has to be prepared in quadruplicate. This will be endorsed by excise officer. Its copies should be submitted at land customs station at border.
- Then, the goods along with invoice will be handed over to customs officer.
- These customs officer will have to endorse details of effective rate of duty.
- After the endorsement on the invoice, the duplicate copy will be sent to Indian customs office who will then forward it to Director General of Inspection, Customs & Central Excise (Refund Wing), New Delhi.
- After verification, the rebate will be paid to Government of and not to the exporter.
- India has rupee trade with Bhutan and hence there is no rebate system for export to and Bhutan.

Export to and Bhutan without payment of duty

- Export can be made from (the factory of production or manufacture (ii)warehouse, or any other premises as may be approved by the Commissioner of Central Excise.
- The export shall be required to file a general bond in the Form specified in the said notification with such security or surety.
- The bond shall be in a sum equal at least to the duty chargeable on the goods for the due arrival

of export goods at the place of export (Land Customs Station)

- Export there from under Customs supervision. The officer who will accept the bond, will also be responsible for discharging that bond upon furnishing proof of export by the exporter.
- Invoice in the Form specified in the said notification shall be used for export clearances. Six copies of invoice shall be prepared. This document shall bear running serial number beginning from the first day of the financial year. On the invoice, certain declarations are required to be given by the exporter. They should be signed by the exporter or his authorised agent.
- Certificate shall be required in the Form specified in the said notification from the Reserve Bank of India or any other bank authorised to deal in foreign exchange by the Reserve Bank of India, for the receipt of full payment in freely convertible currency. Certificate may also be required where remittance is received in Indian rupee.
- The bond will be discharged when the goods are duly exported, to the satisfaction of the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner or such other officer within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer, or until the full duty due upon any deficiency of goods, not accounted so, and interest, if any, has been paid.

LOUT and Bonds under excise

When goods are exported without payment of duty:

- Manufacturer has to execute a Letter of Undertaking (LOUT).
- Other persons have to execute a bond.

In both LOUT and Bond, manufacturer/exporter has to declare that:

- Goods will be exported within 6 months from the date of removal from factory.
- Provisions of excise Rules, regulations, Act, etc., have been complied with.
- The goods will be exported to the satisfaction of AC/DC.
- Duty, interest will be paid in event of failure to export.

LOUT

- Submitted by Manufacturer to CEO/Maritime commissioner in Form UT-1
- Executed in favor of President of India through CEO
- Contains the particulars of manufacturer and registration number
- LOUT should be accepted by CEO

Bonds

- 'Bond' means an undertaking given by the assessee to Government for due fulfillment of certain obligations. Bonds are of two types - surety bond and security bond. Bond should be accepted by CEO

Acceptance of Bonds

Bonds may be accepted by any of the following officers:

i. Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory or warehouse or any other premises approved by the Commissioner for storing non-duty paid goods
ii. Jurisdictional Maritime Commissioner in case of exports or
iii. Deputy/Assistant Commissioner of Central Excise (Export) as officers authorized by the Board for this purpose.

Exporters are required to indicate on the ARE-1 the complete address of the authority before whom the bond is executed and to whom the documents are to be submitted for admission of proof of export.

Types of Bonds

Bonds can be surety bonds or security bonds as below

Surety Bonds

- Surety bonds are covered under the Indian Contract Act, 1872.
- In surety bond, another person stands as surety to guarantee the performance.
- Surety should be for full value of bond. Surety should be solvent to the extent of bond amount.
- The department is at liberty to enforce the recovery of dues either from the obligor or from the surety.

Security Bonds

- These are executed where security is offered instead of guarantee.
- Security can be in nature of post office saving deposit, NSC, bank deposits, Govt. securities, etc.
- Bank guarantee can also be accepted as surety/security.

Particulars of Bonds

- Name, address, registration no. of assessee
- Declaration about compliance of rules, regulations
- Surety liability clause, damages, etc.

Forms/ kinds of Bonds

Bonds are of different nature and for various purposes. Forms of bond, etc., have been standardized. The main kinds of bonds are as follows:

B-1 - general bond

- This bond is for due dispatch of excisable goods removed for export without payment of duty.
- It can be with surety or security.

B-2 bond

- This is a General Bond for provisional assessment.
- It can be with security or surety.

B-4 bond

- The bond is for provisional release of seized goods.
- It can only be a security bond.
- This bond should be for whole value of seized goods.
- Amount of security will be as determined by adjudicating authority taking into consideration of gravity of offence (normally 25%).

B-8 bond

This bond is for obtaining goods at Nil or concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules.

B-11 bond

- This is not prescribed under new rules.
- However, it has been clarified that the old B-11 form should be used to clear seized goods on provisional basis.

B-17 bond

- This is a general surety / security bond to be executed by EOU, EHTP/ STP units.
- It is for provisional assessment of goods for export to foreign countries without payment of duty and for account / disposal of excisable goods procured without payment of duty.

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

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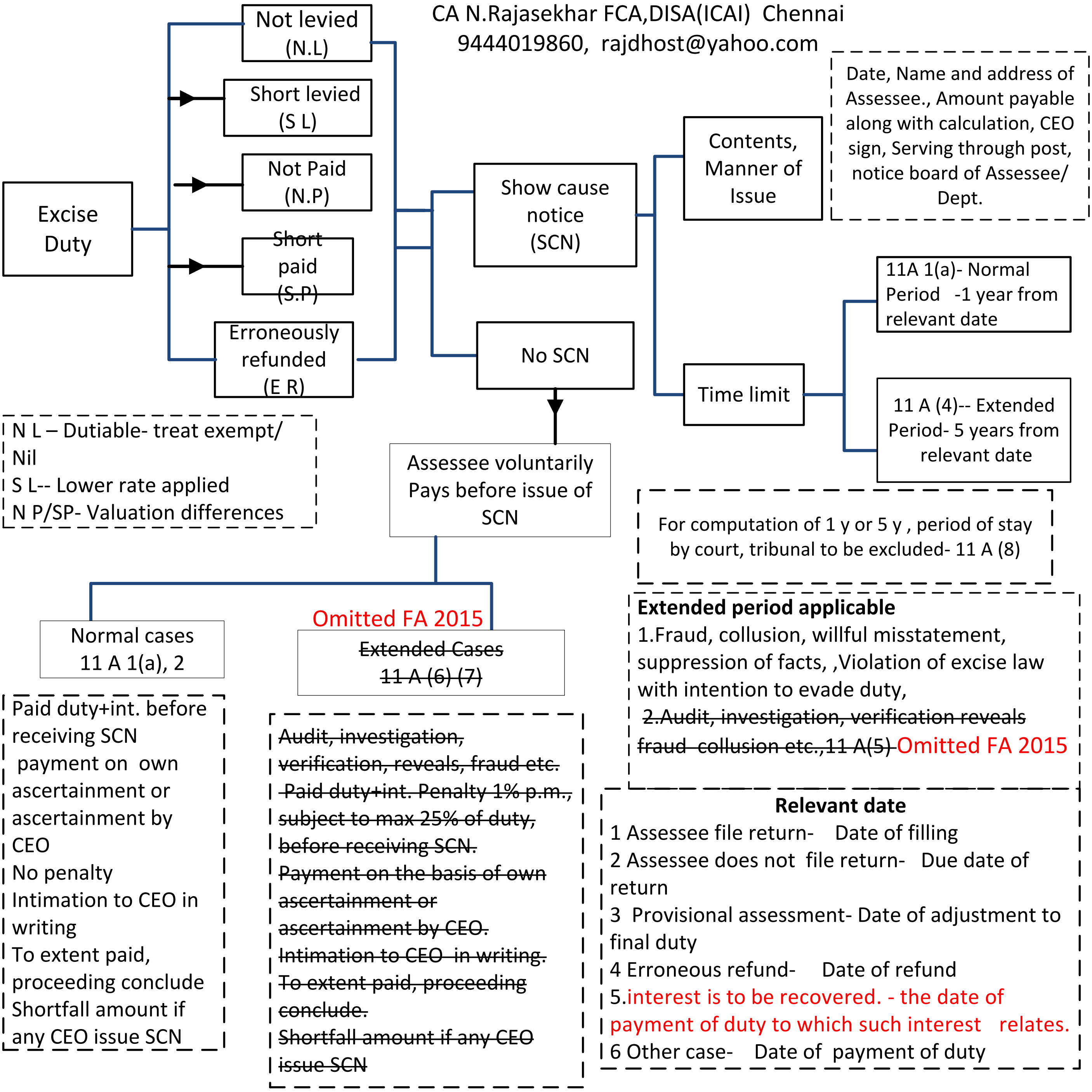

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1. the Provisions of 11 A (1) to (14) for demand and recovery of duty is also aplicable fordemand and recovery of interest 11 A (15)
2. Interest is payable whether the adjudication order shown interest separately or not- Sec 11 A (14)

Restriction of use of cenvat credit up to month end/quarter end supplies in case of self assement of payment of duty under rule 8, is not applicable in case of duty paid u/s 11 A.

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

- SCN Received by Assessee with in time limit
  - Assessee accept, do not differ
    - Normal period → Pay Duty + Mandatory Interest (sec 11AA)+ Penalty as per new section 11AC
    - Extended Period → Pay Duty + Mandatory Interest (sec 11AA)+ Penalty as per new section 11AC
  - Assessee do not accept, differ → Representation through AR(CA)
    - Assessee view fully accepted by CEO → SCN Will be dropped by CEO
    - Assessee view fully rejected by CEO → Amount to be determined - not more than SCN amount. Assesse option- appeal
    - Assessee view Partly accepted & partly rejected by CEO → Accepted portion SCN Will be dropped. Rejected portion Amount to be determed

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

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

1. If SCN amount was increased in appeal, Interest on increased amount is payable from date of order- Sec 11 A (13)
2. Demand and issue of SCN is not applicable when the duty liability is shown in periodical returns. Sec 11 A (16)- such duty is recovered as per sec 11.

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

- Interest on Duty in case of SCN
  - Rate → ~~18%~~15% p.a. From 01.04.2016
  - Period → Interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.

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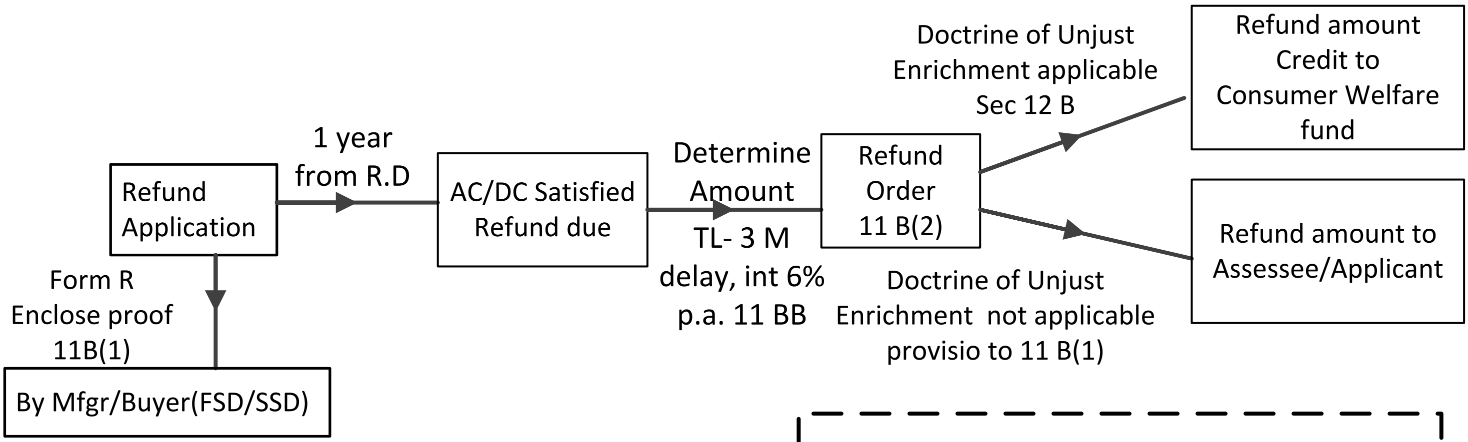
Excise Refund-Sec 11 B



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
4In Case of Provisional Assessment-Date of final adjustment of duty
5-In case of FSD/SSDDate of Purchase of goods
6 In case of Order of court/Appellate authority-Date of order7In any other caseDate of payment of duty

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

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

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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

Excise Administration

Hierarchy

Ministry of Finance

Central Board of Excise and customs (CBEC)

1 Principal Chief Commissioner of Central excise

2 Chief Commissioner of Central excise

3 Principal Commissioner of Central excise/

4 Commissioner of Central excise/ Commissioner Appeals

5 Additional/Joint Commissioner of central Excise

6 Deputy Commissioner of Central excise

7 Assistanct Commissioner of Central excise

8 Superintendent of central Excise

9 Inspector of central Excise

Sec 2(b) : C.E.O
Sl 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/Divsion of work

Country		Head / incharge
Divided in to ↓		↓
Zones	Head / incharge →	Chief Commissioner
Divided in to ↓		↓
Commissionerate	Head / incharge →	Commissioner
Divided in to ↓		↓
Division	Head / incharge →	DC/ AC
Divided in to ↓		↓
Range	Head / incharge →	Superintendent

Excise Assessments

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

It normally implies determination of duty liability

Types of Assessments

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

Self Assessment- Rule 6

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

Provisional Assessment- Rule 7

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Assessee Unable to determines classification /Rate of duty & Valuation → Request to Ac/DC for Provisional Assessment with reasons → B 2 bond → AC/Dc allow P A and he determine rate of duty payable → Time limit to complete FA → 6 months Extention By C- 6 months BY CC beyond- one year → Final Assessment (FA)

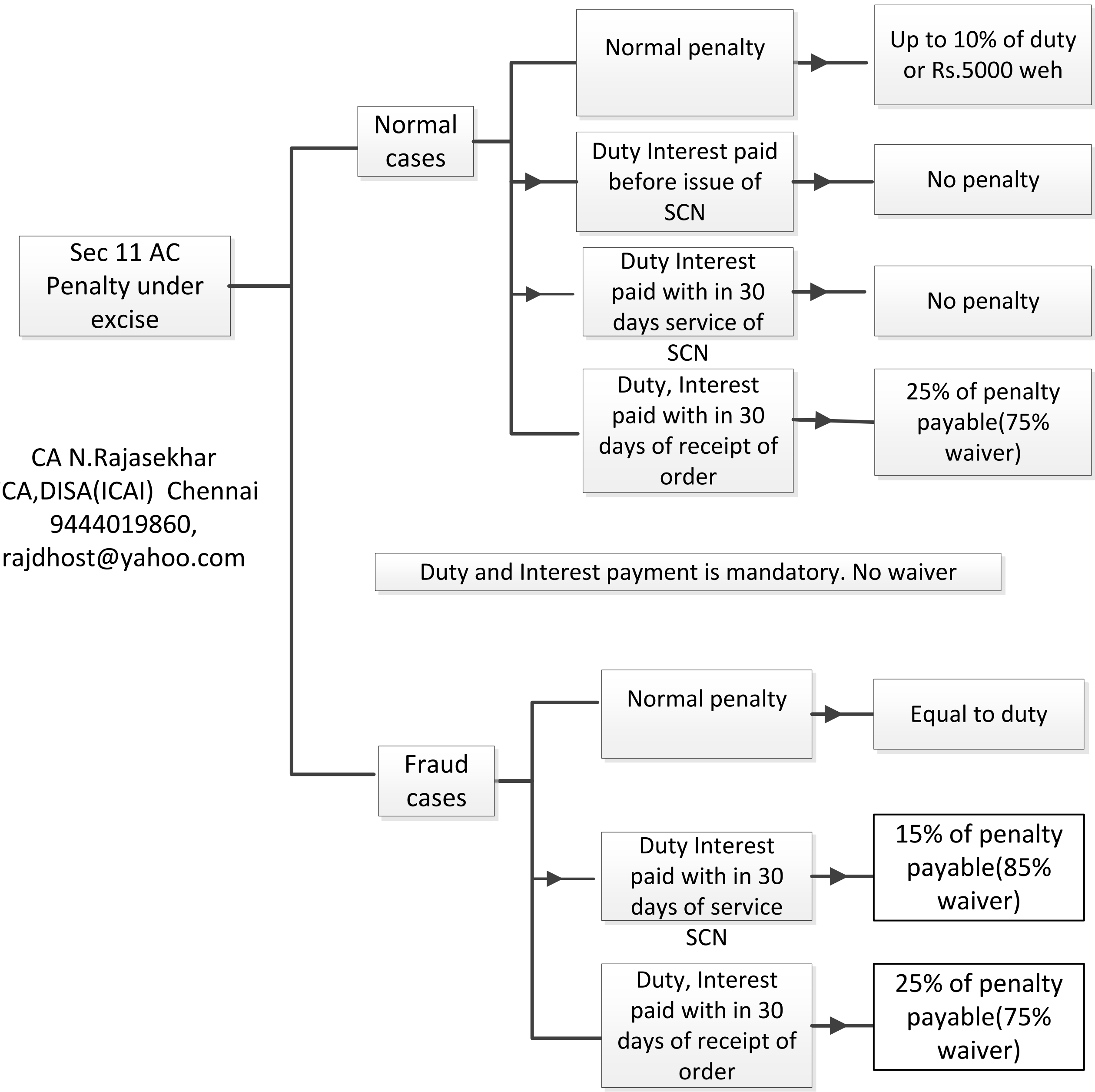
FA duty > PA duty = Assesse pay duty+18% int.
The interest will be payable for the period starting with the **first day after the due date** till the date of actual payment, **whether such amount is paid before or after the issue of order for final assessment**
Ie . If any part duty payment are made before date of final assessment. Interest is payable on part payments from the date after due date till the date of payment
FA duty < PA duty = Refund to Assesse +6% interest

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.

Excise Penalty Under sec 11AC



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If duty interest and penalty paid by person as per the above sec 11AC, the proceedings deemed to be have concluded.
If any penalty notice issued on other persons also, If the persons pays the penalty the co noticees are not required to pay penalty (Rule 26) from 01.03.2016. Similar amendment was also made in customs and service tax

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

Eligible Criteria (to get SSI Benefit) → Relevant factors to consider

1. Manufacture Specified goods Listed in notification. (Covers All most all goods. Except few goods such as watches, matches, heavy Iron and steel, tobacco products)
2. Previous financial year turnover(Eligible clearance for home consumption) for of assessee is less than Rs 4 crores (400 lakhs) Ex. Turnover FY 2014-15 < 400 L, SSI Benefit available in FY 2015-16

Irrelevant factors in criteria →

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

SSI Benefit Provides

1. FY Turnover Up to First Rs. 150 Lakhs Duty exempt. No duty payable. Exemption available only for BED and SED. Other duties payable → Cenvat Credit → Inputs/Inputs Service, not available. Capital goods 100% available in first year.. But utilisation, over 150 lakhs
2. Turnover over Rs.150 lakhs, normal duty payable. → Cenvat Credit → Available.

Example → April 2015 to July 2015 turnover Rs.150 Lakhs. Duty exempt. Normal duty payable on turnover from August 2015

New Turnover limits for Jewellery manufacturer[excluding silver Jewellery not studded with diamonds/ruby/emerald/sapphire] from 01.03.2016

In case of 150 lakhs it is Rs, 600 laks ie Rs. 6 crore, & In case of 400lakhs it is Rs, 1200 laks ie Rs.12 crore, ..
The SSI exemption for the month of March, 2016 is Rs. 50 lakhsm if the turnover during financial year 2014-15 should not be more than Rs,12 crore.

Note:

With effect from 01.03.2016, excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) has been levied on articles of jewellery [excluding silver jewellery not studded with diamonds/ruby/emerald/sapphire].

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.

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.

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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 including exports to Nepal other than from exports to Bhutan
Note: Exports to Nepal are like normal exports and the should be excluded for calculating turnover limits from 01.03.2016
●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~~ Bhutan (Note :Exports to Bhutan To be included)
- 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)

Note: Value is to be calculated as per excise valuation procedures like– Transaction value, MRP Value or tariff value

Appeals under Central Excise

Appeals to Commissioner appeals sec 35 & 35 A

Adjudication Order passed by any CEO below the rank of CCE

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

Assessee aggrieved

Form EA1 Signed + Fee

60 + 30 days (condone)

Appeal to Commissioner(CCE)

Condition

Mandatory Pre-deposit of duty As per new section 35 F

Notice to parties By Com. &Hearing the case

Powers of Commissioner(CCE)

Sufficient cause, at any stage of proceedings -Grant of Adjournments during hearing (Max. 3 to a party) -35 (1A)

Additional Grounds may be heard/Producing additional evidence (refer *) -35A (2)/Rule 5

to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal

Order-- where it is possible to do so, hear and dispose appeal with in 6 months from the date of file -Sec 35 A

No power to remand back case to CEO

Confirming

Annuling

Modifying

Increasing the liability of assessee

decreasing the liability of assessee

SCN with in time limit is mandatory

Order of enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund

Opportunity should be given to assessee

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

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

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

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

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

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

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

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

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

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Note: The same provisions is applicable for customs and service tax. Form Nos. will change. For details refer comparison chapter

Appeals under Central Excise- 2

Appeals to Tribunal sec 35B,35 C

Adjudication Order passed by CCE/PCCE

Assessee aggrieved

Form EA3, Fees & mandatory pre-deposit of duty or penalty 7.5%/ 10%

3 months + (condone)

Appeal to CESTAT

Dept(Com mity of com.) aggrieved EA 5- 30 days+ condone

Adjudication Order passed by CCE Appeals

Demand Order u/s 11A(2) Confiscation, Penalty Order u/s 35 CCE

Power to refuse to admit appeal if duty / penalty < 2lakhs, other than rate of duty and valuation cases

The other party shall get a right to file "Memorandum of Cross-Objections - Form: EA-4- within 45 days + condone from receipt of notice

hearing

Powers of CESTAT

Adjudication Order passed by CCE Appeals u/s 35A- other than 4 below

Sec 35 C

Sufficient cause at any stage of proceedings Grant of Adjournments during hearing (Max. 3to party)-35C (1A)

Amend its order by -Rectification of mistake apparent on record with in 6 months from date of order (on brought to notice by party in appeal/Principal Comm.

Increasing the liability of assessee, decreasing refund- Opportunity to assessee

Order (recommendatory time limit 3 years-35C(2 A). In case of Stay granted-180 days, otherwise stay vacates

i)Loss of goods in Transit from factory warehouse/ loss of goods in storage
ii)Rebate of Excise Duty on exports.
iii)Export without duty payment;
Iv)Processing loss

Revision Application to C G Sec 35 EE

Remand back case to CEO

Confirming

Annuling

Modifying

Order for Fresh assessment considering additional evidence if any

Increasing the liability of assessee

decreasing the liability of assessee

SCN with in time limit is mandatory

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

Appeal fees:
Amount of duty, interest penalty
Up to Rs. 5 lakhs -Rs. 1000/-
> 5 lakhs up to Rs. 50 lakhs -Rs.5000/-
>50 lakhs -Rs.10,000/-
No fees for dept appeal and for filing memorandum cross objection-

fees for filing application of Rectification of mistakes, for restoration of an appeal Rs. 500/-
No fees for dept appeal

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.

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Committee of Chief commissioners excise(Commt. of CC of CE) /Commissioners of excise (Commt. of C of CE)

CBEC Constitute committee consists of two CC of CE or C of CE.

Appeal by Commt. of C of CE:

- Commt. of C of CE if its opinion order of Commissioner of appeals is not legal proper direct any CEO to file appeal on his behalf.
- Where Commt. of C of CE difference of opinion in filing of appeal, matter will be refered to Chief commissioner/ Principal chief commissioner of juridiction of adjudicating authority
- The Principal Chief Commissioner/ Chief Commissioner shall direct any Central Excise Officer to appeal to the Appellate Tribunal against such order if it is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper.

Note: The same provisions is applicable for customs and service tax. Form Nos. will change. For details refer comparison chapter

Appeal to High court Sec 35 G

Order of CESTAT

Substantial Question of law (Other than rate of duty, valuation) Assesse or principal commissioner/ Commissioner of CE can file

180 days + Condone

Appeal to HC

Regarding Rate of duty or tax / Valuation (It include determination of taxablelity or excisability)

Appeal to SC-

Procedure sec 35 (4)

- If High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question
- The appeal shall be heard only on the question so formulated
- Respondent allowed to argue that the case does not involve such question.
- HC has the power to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied

Order of HC- sec 35 (5) and (6)

- The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit
- The High Court may determine any issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal, by reason of a decision on a question of law.
- The decision of HC is by majority of judges in a bench. If no majority, matter refer to other judges on the point of difference of opinion. Order is made by majority judges including judges who first heard the case

Appeal to Supreme court Sec 35 L

Order of HC

HC Certifies Fit for appeal to SC

60 days

Appeal to Supreme court

Order of CESTAT Regarding Rate of duty or tax /Valuation (It include determination of taxablelity or excisability)

Whether particular activity is a manufacture or not/ taxable service or not, whether it is changeable or not under the act is coverd 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.).

Note: The same provisions is applicable for customs and service tax. . For details refer comparison chapter

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 CEO Below the rank of 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. 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 pedeposit 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.1,12,5000/- Both penalty to be added for redeposit
(b) Order of Commissioner	CESTAT	
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	xxxxxxxx
Duty collected amount to be deposited u/s 11D	xxxxxxxx
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

Revision application to Central Government-- Secretary to Revenue, Depart of Finance Government of India ,New Delhi Sec 35 EE

Order of CCE Appeals Relating to Following four matters

i)Loss in Transit from factory to warehouse or warehouse to warehouse
ii)Rebate of Excise Duty on exports/Service tax /inputs used in providing output service which is exported FA 2015.
iii)Export without duty payment;
(iv) processing loss;

Revision application By assessee

order for Duty, Penalty < Rs.5000 CG may reject application

Form EA 8, 3months+ 3 M

Revision application By CEO : Principal comm. or comm Direct CEO to file if commissioner (appeals) order is not proper/legal.

Form EA 8, 3months+ 3 M

Suo- moto Revision my CG

No time limit

1.Order- Annul/ Modify In case of enhance -SCN- with in Time Limit is necessary.
2.Enhancing penalty, fine in lieu of , Confiscation- SCN with in one year from the date of order sought to be annulled/ modified

Review by Committee of Chief Commissioners and Principal Commissioner/ Commissioner [Section 35E]

Case 1

Order of Principal Commissioner/ Commissioner of Excise

Reviewed by

Same order cannot review twice

Committee of Chief Commissioners of Central Excise

review is made:

Case 2

Order of Adjudicating officer below rank of Principal Commissioner/ Commisioner of Excise

Reviewed by

Principal Commissioner/ Commisioner of Excise

review is made:

On their own motion, call for and examine the record of any proceeding. Any order passed so as to satisfy itself upon the legality or propriety of the order.
After considering the facts of the order, is of the opinion that the decision or order passed is not legal or proper direct to file appeal to CESTAT/Commissioner (appeals)- Time limit is one month from the date of communication of order. The provisions of appeals of CESTAT/Commissioner (appeals) is applicable.

If there is any difference of opinion among the Committee of Chief Commissioners of Central Excise, the matter will be refered to Board (CBEC). The board will decide. It order is not legal or proper it may direct Principal Commissioner/Commissioner of Excise to file appeal with CESTAT.

Monetary limits for filing appeals by the Department before CESTAT and High Court and Supreme court

Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015]

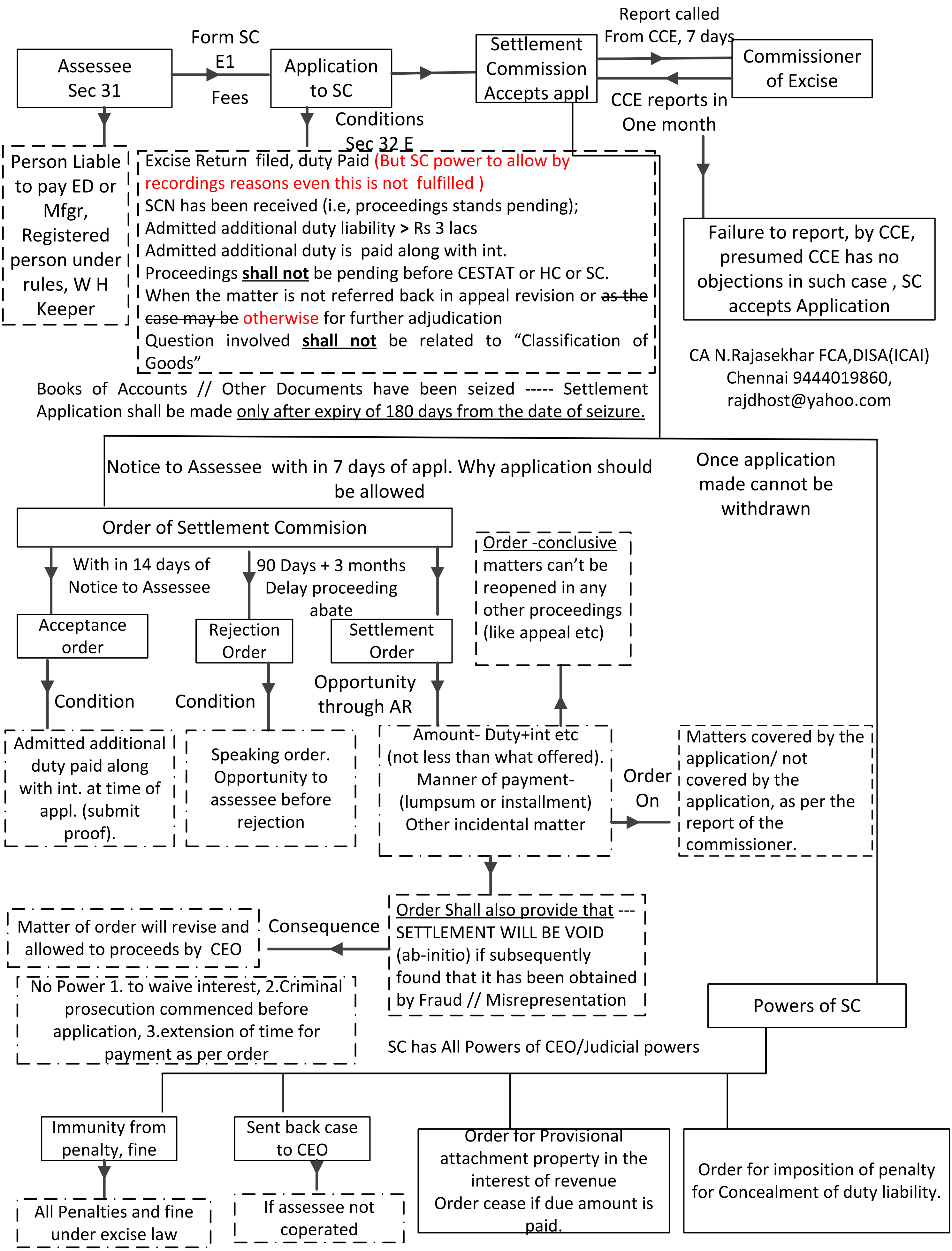
CESTAT- Rs. 10 lakhs,/ High Court Rs. 15 lakhs/ and supreme Court Rs. 25 lakhs

The above limits applicable for disputed duty and not total duty demanded. The limits applicable for refunds also.

The above limits not applicable for

- application filed before the Joint Secretary (Revision Application).
- constitutional validity of the provisions of an Act or Rule is under challenge
- Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.
- adverse judgments relating to classification and refunds issues which are of legal and/or recurring nature

Excise- Settlement Commission



Note: The same provisions is applicable for customs and service tax. For details refer comparison chapter

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

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

AAR may called records report From CCE, records should be returned as soon as possible

1.NR Jv with R/NR
2.R- JV with NR
3100% subsidiary of Foreign Company
4.Existing JV in India
5. Public sector
6. Resident public ltd
7. Resident Pvt Ltd
8. Resident firm, LLP
9.One Person Company
10.Resident Sole proprietorship

Eligible Question

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

Application can be withdrawn within 30 days of making such application

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

Order of AAR -sec 23 D

Acceptance order

Rejection Order

90 Days

AR Order

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

Condition

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

Condition

Speaking order. Opportunity to assessee before rejection

Examine matter, Opportunity to applicant being heard. Copy to CEO, Applicant

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

Consequence

Never made application to AAR

AAR under Service tax and customs- Please refer comparison chart

Note: The same provisions is applicable for customs and service tax. For details refer comparison chapter

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.-
A.TEX (INDIA) PVT. LTD. – SC-

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".

Excise- Civil Penalties

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

Excise- Monetary penalty

Offences Under Rule 25

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

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

Penality canbe levied on → Mfgr/WHK/dealer Max Rs.5000/ or duty on goods which ever is higher & Confiscation

Offences Under Rule 26(1)

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

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

Penality canbe levied on → Any person Max Rs.5000/ or duty on goods which ever is higher

Offences Under Rule 26(2):

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

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

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

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

Excise- Non Monetary penalty- Confiscation

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

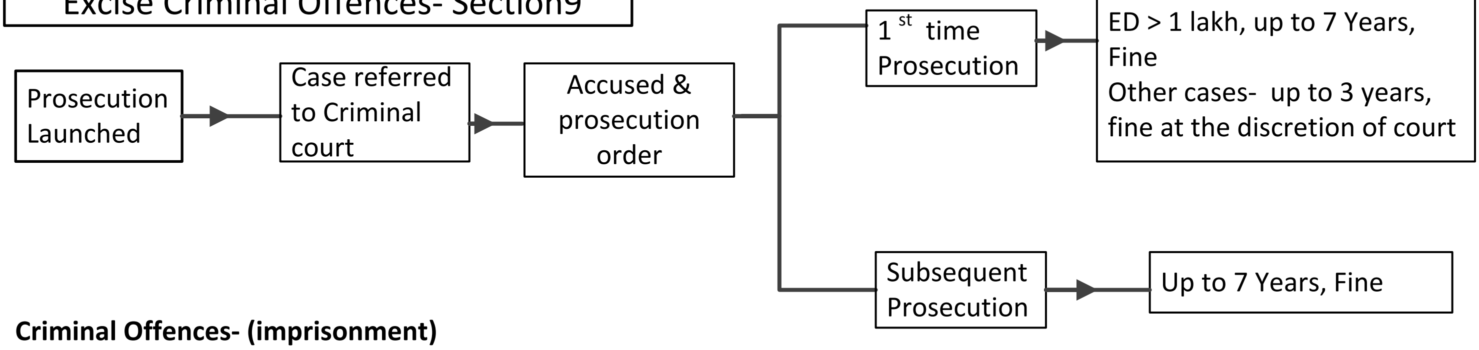
Option — Exercised by defaulter →

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

Option — Not Exercised by defaulter →

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

Excise Criminal Offences- Section9



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

Customs Duty liability Sec 12

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

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

Taxable event for Import goods

Example- Goods imported from USA Port to Chennai port

USA Port
Origination port

12 nautical miles
Territorial waters

Chennai port
Destination port

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

Vessel lies
Outside
Territorial waters
No import takes
place

Vessel reaches and crosses Territorial waters

Import of goods commences

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

Duty liability in case of warehouse goods

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

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

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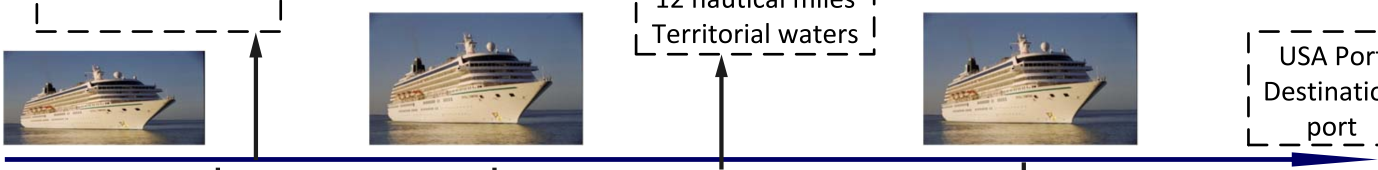
Taxable event for Export goods

Example- Goods Exported from Chenai Port to USA port

Chennai port
Origination port

12 nautical miles
Territorial waters

USA Port
Destination
port



Vessel lies
At Chennai Port
Customs barriers
No export

Vessel is at territorial waters
export Commence

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

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Customs Valuation 1-

Customs Valuation

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

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

"Transaction value" Valuation Imported goods

Transaction value of imported goods read with Valuation rules

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

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

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

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

Cost and services to add Rule 10(1)

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

Cost and services to add Rule 10(2)

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

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

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

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Customs Valuation 2

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

Transaction value of Identical goods-Rule 4

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

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

Transaction value of similar goods Rule 5

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

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

Rule 6: If value canot be determine under rule 3, 4 and 5 value will be determined as per rule 7, 8

Deductive Value method Rule 7

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

AV=Deductive value

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Computed Value method Rule 8

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

Residual Value method Rule 9

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

Factors not to consider in value:
Selling price of Indian goods produced in India, price of domestic market of export country, highest price of two alternatives, price of goods export to country other than India, arbitrary or fictitious values.

Meaning of relative Rule 2 (2)

<u>1.They are</u>
- Officer/Director in each other's business
- Legally Recognized partner
- Employer & Employee;
- Members of same family;

<u>2.Both of them</u>
- Are controlled by a third person;
- Control a third person;

<u>ONE OF THEM</u>
- Control the other

<u>3.Any person</u>
- Owns/controls 5% or more of voting power/ shares in both of them;
-

<u>Explanation:</u>
1. Person include legal person
*2.*Sole Distributor/ Sole Selling Agent – shall not be treated as RP unless they fall under any of the above criteria

Customs Valuation Format for solving numerical problems (Imported Goods)

FOB (Free on board) Value	xxxxxxxxxxx
Add: Freight – Actual freight, if actual is not given: 20% of FOB Note: In case of air transport, 20% of FOB or actual air freight, whichever is less has to be considered	xxxxxxxxxxx
Add: Insurance – Actual insurance, if actual is not given: 1.125% of FOB	xxxxxxxxxxx
Add: Inclusions in valuation, if not included in price (Rule 10)	xxxxxxxxxxx
CIF (Cost insurance and freight) value	xxxxxxxxxxx
Convert the CIF value to Indian rupees	xxxxxxxxxxx
Add: 1% toward handling charges	xxxxxxxxxxx
A. Total CIF value (Assessable value for the purpose of duty payment)	**xxxxxxxxxxx**
B. Basic Customs duty @ --% on A	**xxxxxxxxxxx**
C. Sub Total (A+B)	xxxxxxxxxxx
D. Countervailing duty/Additional Customs duty @ --% on C	**xxxxxxxxxxx**
E. Education Cess- 3% on (B+D)	xxxxxxxxxxx
F. Sub Total (C+D+E)-Value of imported goods.	xxxxxxxxxxx
G. Special countervailing duty u/s 3(5) if applicable -4% on F	xxxxxxxxxxx
H. Total customs duty payable round of (B+D+E+G)	xxxxxxxxxxx

Note: If CIF is given CIF-FREIGHT-INSURANCE =FOB

- The rate of exchange announced by CBEC/Central government on the date of presentation of Bill of entry is to be considered for conversion. The rate announced by RBI, Banks, FEDAI is not relevant.
- Rate of duty as on the date of presentation of bill of entry or on the date of grant of entry/arrival of vessel aircraft/vehicle should be taken
- Note: Ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value

In case of Exports:

- Assessable value will be FOB Price. Ie cost up to origination port.
- The rate of exchange announced by CBEC/Central government on the date of presentation of Bill of entry is to be considered for conversion. The rate announced by RBI, Banks, FEDAI is not relevant.
- Rate of duty as on the date of Order of clearance for export should be taken.

Customs Valuation 3

"Transaction value" Valuation Export goods

Transaction value of Export goods

: Transaction value =Price of goods sold at the time and place of Exportation (Ie FOB Value) All costs up to origination port

T V in case of relative is accepted if (i) relation ship does not influence price

Rule 8:When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

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

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

Goods of kind and Quality -similar to that Identical goods/ similar goods

AV=transaction value of goods of kind and Quality-

Computed Value method Rule 5

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

Residual Value method Rule 6

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

Rule 7: **Declaration by the exporter:** The exporter shall furnish a declaration relating to the value of export goods.

Rule 7: **Declaration by the exporter:** The exporter shall furnish a declaration relating to the value of export goods.

Rule 8: **Rejection of value of proper officer:** If the Proper officer is of the doubt about truth and accuracy of the value, may ask information give opportunity to the exporter and determine the value

Import Procedures

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: <u>Delivery of IGM/IR by</u> PIC of Conveyance/ Other Notified person

- PIC file IGM Before arravial of Vessel, air Carft, Import report in case of vehicle with in 12 hours after arraival
- 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:

<u>UNLOADING of goods</u>

- 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
- Ccustodians 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

<u>Sec 37: Power to Board Conveyance</u>

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

<u>Sec 38: Power to require production of documents and ask questions</u>

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 <u>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</u>

●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.

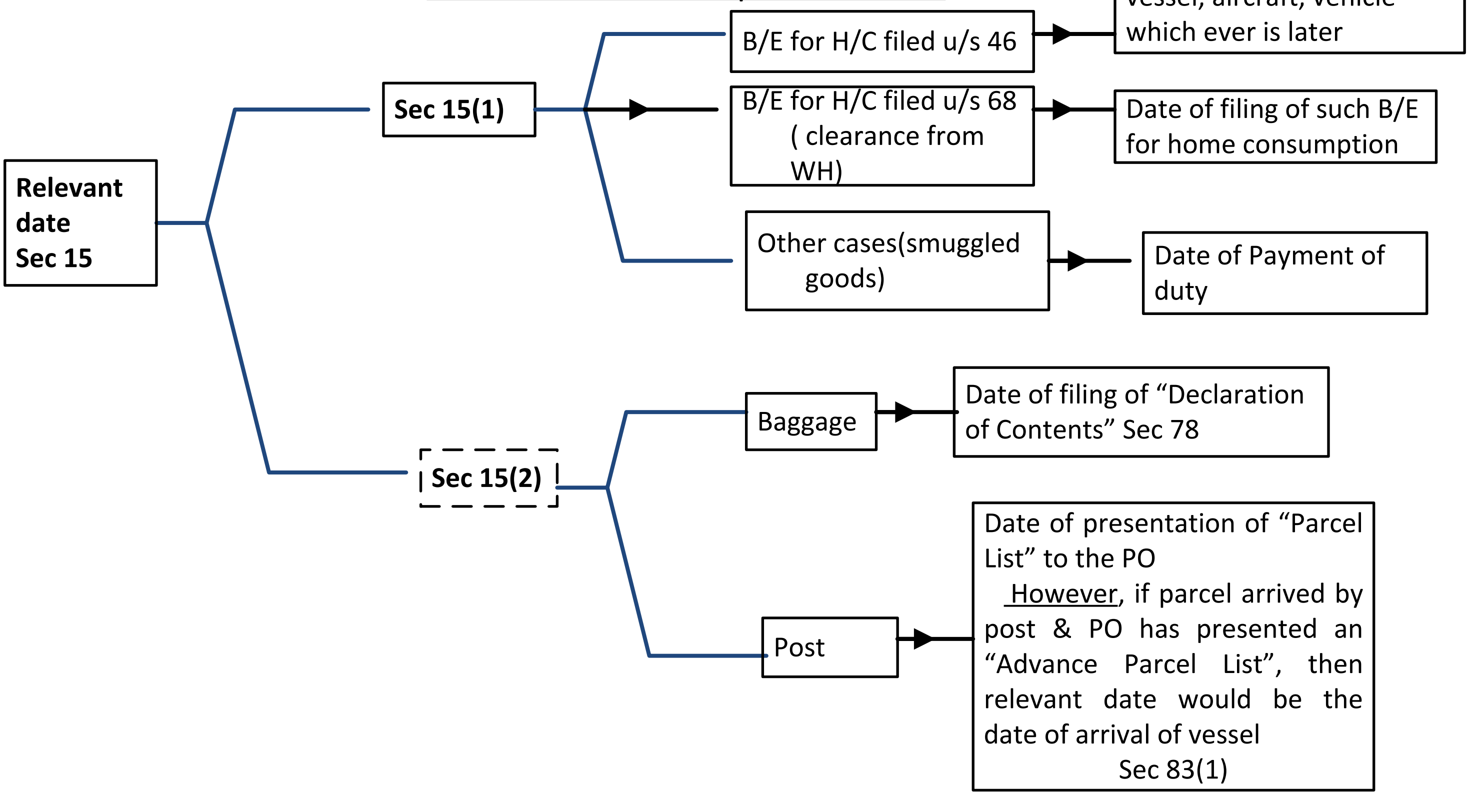
Reasons for relinquishment

● goods are in much deteriorated condition and it is not worthwhile to pay duty./assessment at higher side

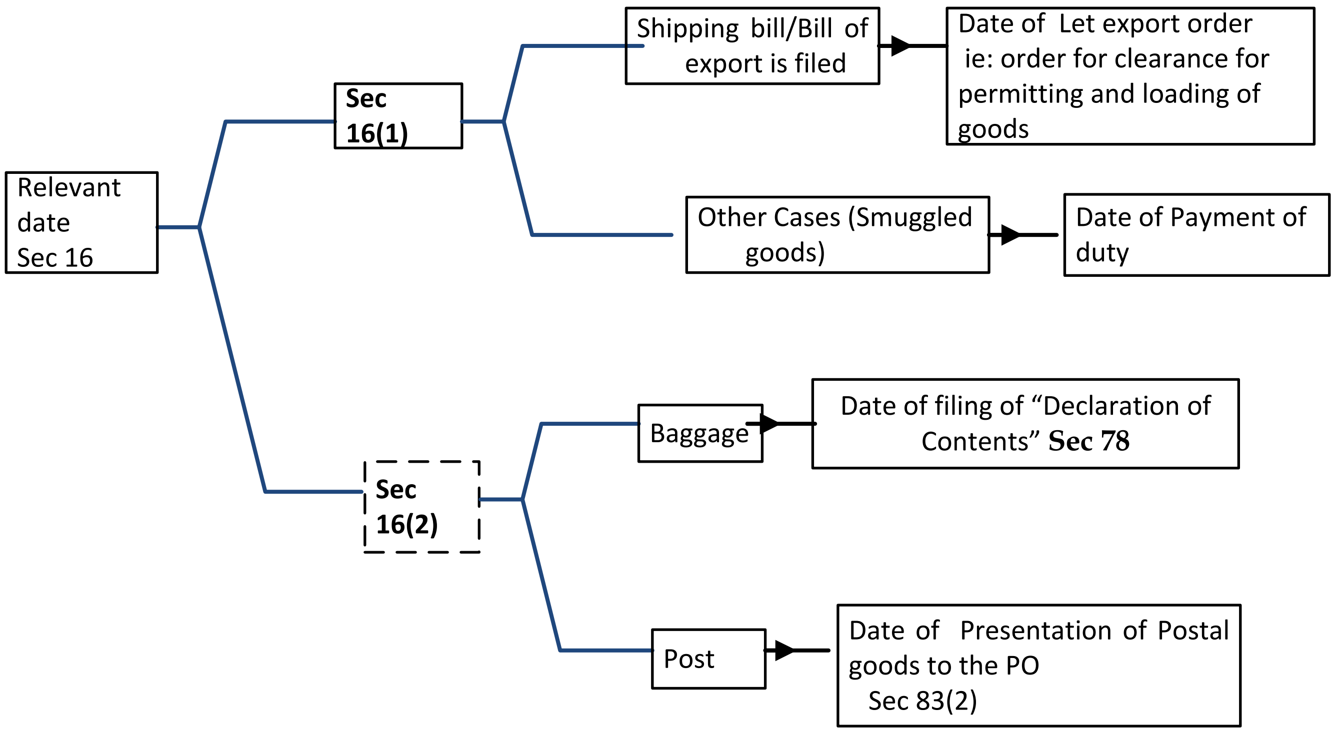
●If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23(2) of Customs Act].

● 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 Goods



Relevant 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,S B 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* PI C

(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 orExport Report (ER) in case of Vehicle)

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

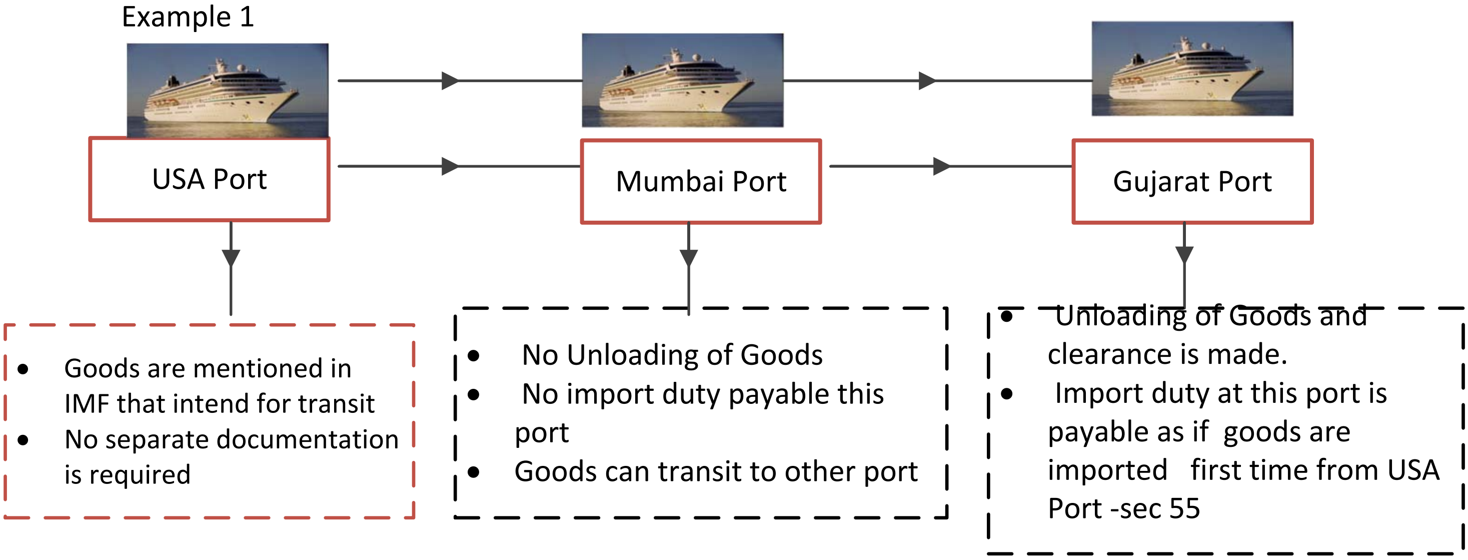
Sec 42 : Conveyance carrying Export Goods shall leave Customs Station only upon receipt of "written order to that effect" (This order is known as "Departure Permission")

Transit and transhipment of goods Sec 53, Sec54 andSec 55

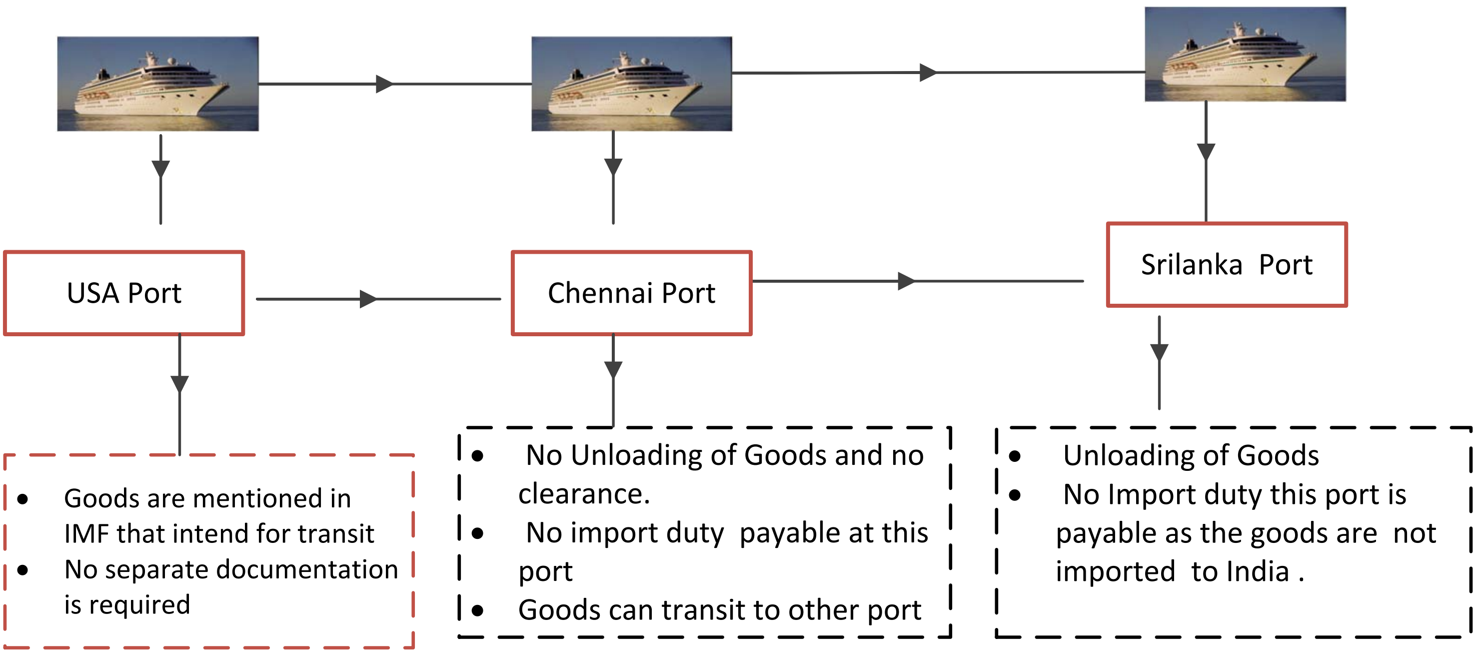
Transit of goods sec 53

- 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 transhipment of goods-2, Sec 53, Sec54 andSec 55

Transhipment 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 transhipment 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 transhipment is filed.

Example 1



USA Port → Mumbai Port → Gujarat Port

USA Port:
- Goods are mentioned in IMF that intend for transhipment

Mumbai Port:
- Bill of Transshipment" shall be filed with the PO
- In case of goods transhipped under international treaty a declaration of transhipment is sufficient,
- Unloading of Goods but not cleared
- No import duty payable at this port
- Goods is loaded in to another vessel

Gujarat Port:
- Unloading of Goods
- Import duty at this port is payable as if goods are imported first time from USA Port -sec 55

Example 2



USA Port → Chennai Port → Srilanka Port

USA Port:
- Goods are mentioned in IMF that intend for transhipment

Chennai Port:
- Bill of Transshipment" shall be filed with the PO
- In case of goods transhipped under international treaty a declaration of transhipment is sufficient,
- Unloading of Goods but not cleared.
- No import duty is payable at this port
- Goods is loaded in to another vessel

Srilanka Port:
- Unloading of Goods
- No Import duty this port is payable as the goods are not imported to India .

Transit VS Transhipment

Transit	Transhipment
• 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 transhipment is to filed at port/air port

Transit andtranshipment provisions are not applicable for goods imported through baggage, post and courier

WAREHOUSING OF IMPORTED GOODS

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

Public Warehouse sec 57

Appointed by AC/DC

Private Warehouse sec 58

Licensed by AC/D sec 58(1)

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

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

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

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WAREHOUSING Procedure

Bill of entry For Warehousing sec 46

Ware Housing Bond Sec 59
- a bond in a sum equal to twice the amount of the duty—
- Declaration that To observe all the provisions To pay All duties, and interest, penalties Rent and others with interest.
- general bond for specified amount for specified period may be allowed by AC/DC

Warehousing Order sec 60 PO satisfied about the bond , pass warehousing order

Warehousing period Sec 61
- 100% EOU- Capital goods 5 y/other goods -3 Y
- All other persons all goods- 1y
- Extention of time by Com. In case of EOU- time he think fit, Other persons 6 months
- Reduction of time to 6 months in case of perishable goods

Interest @15% p.a. on duty beyond WH period
- EOU- after 5/3 years-- Other persons after 1 year (sec 47)
- Board Has power to waive interest in public interest

Warehouse Goods Under control of Proper Officer Sec. 62
- All such goods – subject to control of PO]
- No person enter/remove of goods without PO permission] [W/H to be locked with Customs' lock no person can break or open lock
- PO has power to acces every part of W/H and examine goods]

Payment of rent and other charges Sec 63
- As per rates fixed under Respective Act or As Fixed by CC ---
- **<u>Non-payment within 10 days of due dates</u>** – Notice to owner and Proportionate goods may be sold

Owners right in case of warehouse goods sec 64
- **On payment of Fees + Sanction of AC/DC)**
- **inspection** *of Goods/* **ii)** S*eparation of damaged/* deteriorated goods/ **iii)**Otherwise dealing with goods to prevent damage/deterioration
- **iv)** Sorting of goods / Changing Containers
- **v)** Showing them for sale: vi)Taking samples of such *goods*

Manufacturing operations in case of warehouse goods by owner sec 65
With the sanction of the AC/DC
- Conditions : bond, fees for supervision, maintaining accounts, order of special audit

WAREHOUSING OF IMPORTED GOODS-2

Removal of goods From Warehouse execept as below Sec 71

Transfer to Another W H sec 67

- Permission of proper officer
- (transit bond with guarantee
- goods duly arrive to another Ware house

Clearance For H C sec 68

- **i)**B/E for H C (Green Color) has been filed
- ii)Import Duty + Rent + Other Charges + Interest + penalties have been paid
- iii)Clearance order has been issued by PO
- Relevant date for determination of AV & RoD = Date of filing of B/E for H/C u/s 68
- Proviso; relinquishment of title- refer *

Clearance For Export Sec 69

- **i)**Shipping Bill / Bill of Export has been filed
- ii)Export Duty (if any) + Rent + Other Charges + Interest + penalties have been paid
- iii)Clearance order has been issued by PO
- Goods likely to smuggled back- refer **

Clearance For Samples

- Clear With payment of duty.
- Without payment of duty with permission of proper officer

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

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

** **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.
- Notified items include liquid items like petrol, diesel, kerosene, wine ,liquid helium gas, furnace oil and crude stored in caverns

Sec 73

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

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 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.

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 t o 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 15 % p.a from first day after duty provisonally 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

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

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

<u>Any Set of Article –</u> 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 serice to exporter on export goods

Types of duty drawback

- Drawback u/s 74 → imported goods on which customs duty paid is exported . Exporer eligible of refund of customs duty
- Drawback u/s 75 → Duty paid imported inputs/ Local inputs/ service tax paid input service Used in manufacture of Final product. Exporter eligible of refund of customs duty, excise duty and service tax

Duty draw back u/s sec. 74

- 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

→

- 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.

→

- 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

→

CG fixes Two types of rates
1. Rates for business goods
2. Rates for personal goods

Duty draw back u/s sec. 75

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

Used in manufacture final product → Final Product is exported → Refund of Customs duty Excise duty/ Service tax At All Industry rate at % on F O B value

Rates of draw back

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

Safeguard duties are rebatable as duty drawback *[Circular No. 23/2015 Cus dated 29.09.2015]*

- AIR u/75 are not includes safe guard duty paid u/s 8B/8C , Hence exporter can apply for brand rate who pays safe guard duties at the time of importation
- Similarly exporter can claim drawback u/s 74 in who pays safe guard duties at the time of importation

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

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%	Ist 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%	<u>**No DBK for used**</u> **--- 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 nor after importation. ❖ To furnish documents as proof of import/duty payment & Export invoice packing list etc.,
Rule 5 (a) Time limit	❖ A Claim for DBK to be filed within 3 months from the date of let export order ❖ Application for extention of time can be made by exporter by payment of application fees ❖ Extention of time another 3 months by AC/DC ❖ Extention of time further 6 months by Com.,/Principal Com., ❖ Extention of time may be given or refused by writing reasons
(b) Documents 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 average quantity and value of each class of inputs 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~~. (drawback for rice allowed wef 13.02.2015). (drawback for Wheat allowed wef 23.11.2015)
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: 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. ❖ where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate. ❖ The exported should be paid an amount equal to the customs component of the AIR provisionally, pending processing of the application for brand rate of drawback (effective from 23.11.2015)
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 *(Failure will attract recovery Procedures u/s 142* ❖ 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	DBK u/s 74	DBK u/s 75
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	**<u>Relevant Date for determination of AV & RoD</u>** ❖ 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%. This rate is not applicable for cigar tobacco, fire arms in excess of prescribed quantity.
Sec 79	**<u>Bonafide Baggage Exempt from Customs Duty</u>** Subject <u>to 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 transhipment 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

Amended with notification No. 30/2016 Cus (NT) dated 01.03.2016 and Notification No. 43/2016 Cus (NT) dated 31.03.2016).
New rules are applicable from 01.04.2016

Type of passengers and Classification:

Tourists can be broadly classified as
a) Indian persons going abroad and coming back
b) Foreign Tourists visiting India for sightseeing or business purpose.
Accordingly, 'Baggage Rules, 1998' contain different provisions for
a) Residents from India
b) Foreigners residing in India
c) Infants
d) Tourists visiting India and
e) Persons transferring their residence

General Free Allowance:

In addition to personal effects (excluding jewellery) ,a passenger is allowed general free allowance of up to Rs. 50,000/-. The limit for Rs. 50,000/- is reduced up to Rs.15,000/- 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 ornaments
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 Act 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,

For example : 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;

Personal effects" means things required for satisfying daily necessities but does not include Jewellery.

Infant" means a child not more than two years of age

Rule 3: Passengers arriving from countries other than Nepal, Bhutan, Myanmar

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

Class of Passenger	Origination Country	Articles allowed free of duty
Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	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. 50,000/- if these are carried on the person or in the accompanied baggage of the passenger
Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	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. 15000/- if these are carried on the person or in the accompanied baggage of the passenger -

In case of infant only used personal effects excluding Jewellery will be allowed as duty free

Note: Old slabs like age of passenger and duration of stay abroad by passengers was removed from 01.04.2016.

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.1,00,000 will not be permitted duty free.

Rule 4: Passengers arriving from countries Nepal, Bhutan, Myanmar

Class of Passenger	Origination Country	Articles allowed free of duty
Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan, Myanmar	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. 15,000/- if these are carried on the person or in the accompanied baggage of the passenger

In case of infant only used personal effects excluding Jewellery will be allowed as duty free

In case of arrival by land only used personal effects excluding Jewellery will be allowed as duty free

Note: Old slabs like age of passenger and duration of stay abroad by passengers was removed from 01.04.2016.

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.30,000 will not be permitted duty free.

Rule 5 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
Any Passenger coming from Any Country	Over 1 year	Gentleman: Jewellery upto a weight of 20 gms with a value cap of Rs.50,000
		Lady Passenger: Jewellery upto a weight of 40 gms with a value cap of Rs.1,00,000

Rule 7 Currency

The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

Rule 8 Transfer of residence to India

A person who is engaged in profession abroad or transferring his residence to India shall be allowed clearance free of duty, in addition to what he is eligible under rule 3 or rule 4

S NO	Duration of Stay	Articles Allowed free of duty	Condition
1	From 3 months up to 6 months	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 60,000/-	Indian Passenger
2	From 6 months up to 12 months	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 1,00,000/-	Indian Passenger
3	Minimum stay of one year during the preceding two years.	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 2,00,000/-	The Indian passenger should not have availed this concession in the preceding three years.
4	Minimum stay of two years or more.	Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 5,00,000/-	(i)Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence; (ii)Total stay in India on short visit during the two preceding years should not exceed six months; and (iii)Passenger has not availed this concession in the preceding three years.

Relaxation for Sl. No. 4

(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of - (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing.
(b) For condition (ii), the Principal Commissioner or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing.
(c) For condition (iii)- No relaxation.

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
2. Video Home Theatre System
3. Dish Washer
4. Domestic Refrigerators of capacity above 300 litres or its equivalent
5. Deep Freezer
6. Video camera or the combination of 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.

7. Cinematographic films of 35 mm and above
8. 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. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent

Notification No. 31/2016 Cus (NT) 01.03.2016*:* the baggage declaration will have to be filed only by those passengers who carry dutiable or prohibited goods or have anything to declare.

Notification No. 26/2016 Cus dated 31.03.2016. The rate of duty, on baggage remains at 35%. This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service**.**

Domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form. **[Circular No. 08/2016 Cus dated 08.03.2016]**

Comparison between old and new rules

S No	**Old rules up to 31.03.2016**	**New rules from 01.04.2016**
1	General free allowance Rs. 45000	General free allowance Rs. 50,000
2	Rule 3 and Rule 4 exemption based on Slabs system for age of passenger/ duration of stay	Rule 3 and Rule 4,Slabs system removed and simplified
3	Rule 4 Special provision for passengers returning from Nepal, Bhutan, Myanmar or China	Rule 4 Special provision for passengers returning from Nepal, Bhutan, Myanmar
4	Rule 5 Indian professionals returning India	Rule 5 Removed
5	Rule 6 for Jewellery	New Rule 5 inserted for Jewellery
6	Rule 7 for Tourists	Rule 7 Removed
7	Rule 8 for transfer of residence	New Rule 6 Inserted for transfer of residence
8	Rule 9. Provisions regarding unaccompanied baggage	New Rule 8 Inserted for Provisions regarding unaccompanied baggage
9	-------	New rule No 7 for currency
10	Rule 10 Members of the crew.	New Rule 9 inserted for Members of the crew.

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

Distinction between the provisions of section 100 and section 101

S.No.	Section 100	Section 101
1.	A person can be searched if he has secreted **any** goods liable to confiscation/any documents relating thereto in his person.	A person can be searched if he has secreted **specified** goods liable to confiscation/documents relating thereto in his person.
2.	**Proper officer** is empowered to search the person.	**Officer of customs** can search the person only if he is empowered in this behalf by general or special order of the Principal Commissioner/ Commissioner of Customs.

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)	10% of the Duty sought to be evaded(FA 2015)	Rs. 5,000	Whichever is higher (Penalty will be 25% if duty along with interest is paid within 30 days of the order)
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)	10% of the Duty sought to be evaded(FA 2015)	Rs. 5,000	Whichever is higher (Penalty will be 25% if duty along with interest is paid within 30 days of the order)
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 Assistant/Deputy Commissioner of Customs
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

Circulars

Clarification on applicability of pre-deposit provisions under section 129E of the Customs Act, 1962 Recent to first stage appeal in matters relating to drawback

CBEC has clarified that mandatory pre-deposit would be payable in cases of demand of drawback when the appeal is filed before Commissioner (Appeals) as the new section 129E of Customs Act, 1962 would apply to such cases. However, the ambit of section 129E does not extend to appeals under section 129DD before Joint Secretary (Revision Application).

Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner(Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA). ***[Circular No. 993/17/2014-CX dated 05.1.2015]***

Monetary threshold limits enhanced for prosecution and arrest under customs

Prosecution

Circular No. 27/2015 Cus dated 23.10.2015]

Revised guidelines have been issued on prosecution under Customs Act, 1962. The significant aspects of the guidelines are:

(a) **Person liable to be prosecuted:** As per the provisions of the Customs Act, prosecution may be launched against any person including legal person for offences covered under sections 132, 133, 134, 135, 135A or 136 of the Customs Act, 1962.

(b) **Threshold limits for launching of prosecution:** CBEC has laid down the following threshold limits for launching prosecution:

S.No	Particulars	Threshold limits
(i)	**Baggage and Outright smuggling cases:**	
	Cases involving unauthorized importation in baggage/ cases under Transfer of Residence Rules	CIF value of the goods involved is` 20 lakh or
	Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Act or offence involving foreign currency	Value of offending goods is ` 20 lakh or more
(ii)	**Appraising Cases/ Commercial Frauds**	
	Importation of trade goods involving willful mis-declaration in value/ description of goods/ concealment of restricted goods/ goods notified under section 11 of the Act	CIF value of the offending goods is ` 1 crore or more
	Fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962	Amount of drawback or exemption from duty is ` 1 crore or more
	Exportation of trade goods involving willful mis-declaration in value /description, concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962	FOB value of the offending goods is` 1 crore or more

(a) **Exceptions:**

Threshold limit will not apply in following cases:

(i) In case of habitual offenders or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. provided the cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit(s) indicated in above table.

(ii) In cases involving offences relating to items i.e., fake Indian currency notes (FICN), arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution would be launched invariably, irrespective of value of offending goods involved.

(iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs detected at the time of departure back from India, exceeding the threshold limits of ` 20 lakh, if it is claimed that the currency has been legally acquired and brought into India, prosecution would not be considered as a routine.

Prosecutions will not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.

(b) **Authority to sanction prosecution:** Prosecution may be launched after due sanction by the Commissioner / Principle Commissioner or Additional Director General / Principle Additional Director General of Revenue Intelligence (collectively known as 'sanctioning authority'). However, in case of habitual offenders and appraising cases/commercial frauds, prior approval of the Chief Commissioner/Principal Chief Commissioner or Director General/Principal Director General of Revenue Intelligence, as the case may be, will be required for launching prosecution.

(c) **Stage for launching of prosecution:** Normally, prosecution may be launched immediately on completion of adjudication proceedings.

Exceptions:

(iv) Prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

(v) If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available [in view of the decision of Supreme Court in case of *Radhe Shyam Kejriwal 2011 (266) ELT 294**.

Circular No. 27/2015 Cus dated 23.10.2015]

Arrest

Threshold limits for arrest are also the same as mentioned in case of initiating prosecution. It has been clarified that powers of arrest should be exercised in exceptional situation. However, such threshold limit would not apply in case of offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

Stage for launching of prosecution: Normally, prosecution may be launched immediately on completion of adjudication proceedings.

If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available [in view of the decision of Supreme Court in case of *Radhe Shyam Kejriwal 2011(266)ELT [Circular No.1009/16/2015 CX dated 23.10.2015]*

The Supreme Court of India in the case of *Radhe Shyam Kejriwal 2011 (266) ELT 294 (SC)* had*, inter alia,* observed that

(i) adjudication proceedings and criminal proceedings can be launched simultaneously;

(ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) adjudication proceedings and criminal proceedings are independent of each other in nature and

(iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.