CA Final Indirect taxes

Flow charts May. 2018 exams

(Amended as per Finance Act 2017

Circulars and notifications up to 31.10.2017)

(Also useful for CWA/CS)

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Read and Understand the concept and work out some problems in study material

Numerical problems will be asked from the topics of

SN	GST	Customs
1	Basic Concepts and GST Calculation	Basic concepts
2	Exempted services from GST	Valuation
3	Input tax edibility and GST Calculation	Duty drawback
4	Time and place of supply of goods and Services	baggage
5	Valuation inclusions and exclusion	
6	Composition scheme eligibility and turnover limit calcuation	
7		

Additional reading suggested.

1. ICAI Study material problems
2. RTP May 2018

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GST Basics and Introduction

Concept of GST

- GST is a **value added tax** levied on manufacture, sale and consumption of goods and services
- GST Provides **comprehensive and continuous chain of tax credits** from the producer/Service provider up to retail level /Consumer level.
- Each person will get credit for the taxes paid at earlier stage. The consumer will bear the final tax.
- Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system
- GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

Need for GST in India

- Concept of one nation, one tax, and one market.
- Compete with global market as many nations are following GST regime
- Deficiency in earlier indirect tax system:
- Cenvat credit of excise and service tax is not available to retailer and vat dealers
- Central excise is includible in value for vat calculation resulting double tax.
- CST credit is not vatable for dealers.
- Difficulty in distinguish between goods and services especially in case of intellectual properties, drawings and designs, Restaurant services, software and work contract

GSTCommonPortal

- Common GST Electronic Portal – **www.gst.gov.in** – a website managed by Goods and Services Network (GSTN) [
- GSTN is a company incorporated under the provisions of section 8 of the Companies Act, 2013. It has been set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.
- The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc.
- The portal is one single common portal for all GST related services.
- A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders.
- The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.
- Primarily, GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.
- The functions of the GSTN include:
    - facilitating registration;
    - forwarding the returns to Central and State authorities;
    - computation and settlement of IGST;
    - Matching of tax payment details with banking network;
    - Providing various MIS reports to the Central and the State Governments based on the taxpayer return information;
    - Providing analysis of taxpayer's profile; and running the matching engine for matching, reversal and reclaim of input tax credit

Taxes subsumed in GST

SN	Central taxes	SN	State taxes
1	Central excise	1	Sales tax/Vat
2	Additional excise duties	2	Luxury tax
3	Excise duty on medical and toilet preparations Act	3	Tax on Advertisement
4	Service tax	4	Purchase tax
5	Counter vailing duty	5	Entry tax/octroi
6	Special counter vailing duty (SAD 4%)	6	Tax on lottery, betting and gambling
7	Central sales tax	7	Surcharge and cess relating to goods and Services
8	Surcharge and cess relating to goods and Services	8	

Taxes continue to remain after GST

- Central excise on petroleum products
- State Central excise duty on alcoholic liquor for human consumption
- State vat on petroleum products
- Custom duty on imports (BCD and safe guard duties)

BENEFITS OF GST

- GST brings benefits to all the stakeholders of industry, Government and the consumer. It will lower the cost of goods and services, give a boost to the economy and make the products and services globally competitive.
- Creation of unified national market:
    - ST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.
- Mitigation of ill effects of cascading:
    - By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.
- Elimination of multiple taxes and double taxation:
    - GST has subsumed majority of existing indirect tax levies both at Central and State level into one tax i.e., GST which is leviable uniformly on goods and services. This will make doing business easier and will also tackle the highly disputed issues relating to double taxation of a transaction as both goods and services.
- Boost to ‘Make in India' initiative:
    - GST will give a major boost to the ‘Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.
- Buoyancy to the Government Revenue:
    - GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the taxpayer compliance.

FRAME WORK OF GST

Frame work of GST

I — Dual GST
- Centre and States simultaneously tax goods and services.
- Centre has the power to tax intra-State sales and services
- States are empowered to tax services also

→ CGST & IGST → CG Levy On Goods And Services

→ SGST/ UTGST → SG/UT Levy On Goods And Services

II — Destination based tax → SGST will accrue to the state which consumes goods and services. The purchasing state will get the share of revenue

III — Legal Frame work
- Central Government → CGST Act 2017 & IGST Act 2017
- State Government → SGST Act 2017
- Union territory With out state legislature → Ex Chandigarh, daman diu → UTGST Act 2017

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IV — HSN Classification of goods and Services
- Goods → Classification as per Sch. I of Customs Tariff Act 1975
- Services → Classification as per Service codes, sections, headings and groups

V — Registration
- Existing dealers automatic conversion by enrolling in GSTN
- Basic exemption from Registration for turnover up to Rs. 20 lakhs, In case of NE states, J & K it is Rs. 10 lakhs

VI — Composition Schme
- Relief to small businesses making intra-State supplies, a simpler method of paying taxes and accounting
- Lower rates of GST 0.5%, 1% and 2.5% without ITC

VI — Exemptions
- Notifications provides Certain exemptions to essential goods and services from the purview of GST. Like basic food items, health services etc

VII — Utilization of Credit
- Credit of CGST used for payment of CGST and then IGST
- Credit of IGST used for payment of IGST.CGST and then SGST/ UTGST
- Credit of SGST used for payment of SGST and then IGST

VIII — GST Network (GSTN)
- GSTN Company registered u/s 8 of the Companies Act 2013.
- Common portal for registration, payment , returns filing, reports analysis etc for CGST, IGST and SGST

IX — GST Council → For Administration of GST comprising of state and Central government representatives

X — GSPS and ASPS → Certain approved GST Suvidha providers (GSPS) and Application Service providers (ASPS) work as faciliators for GST related Services

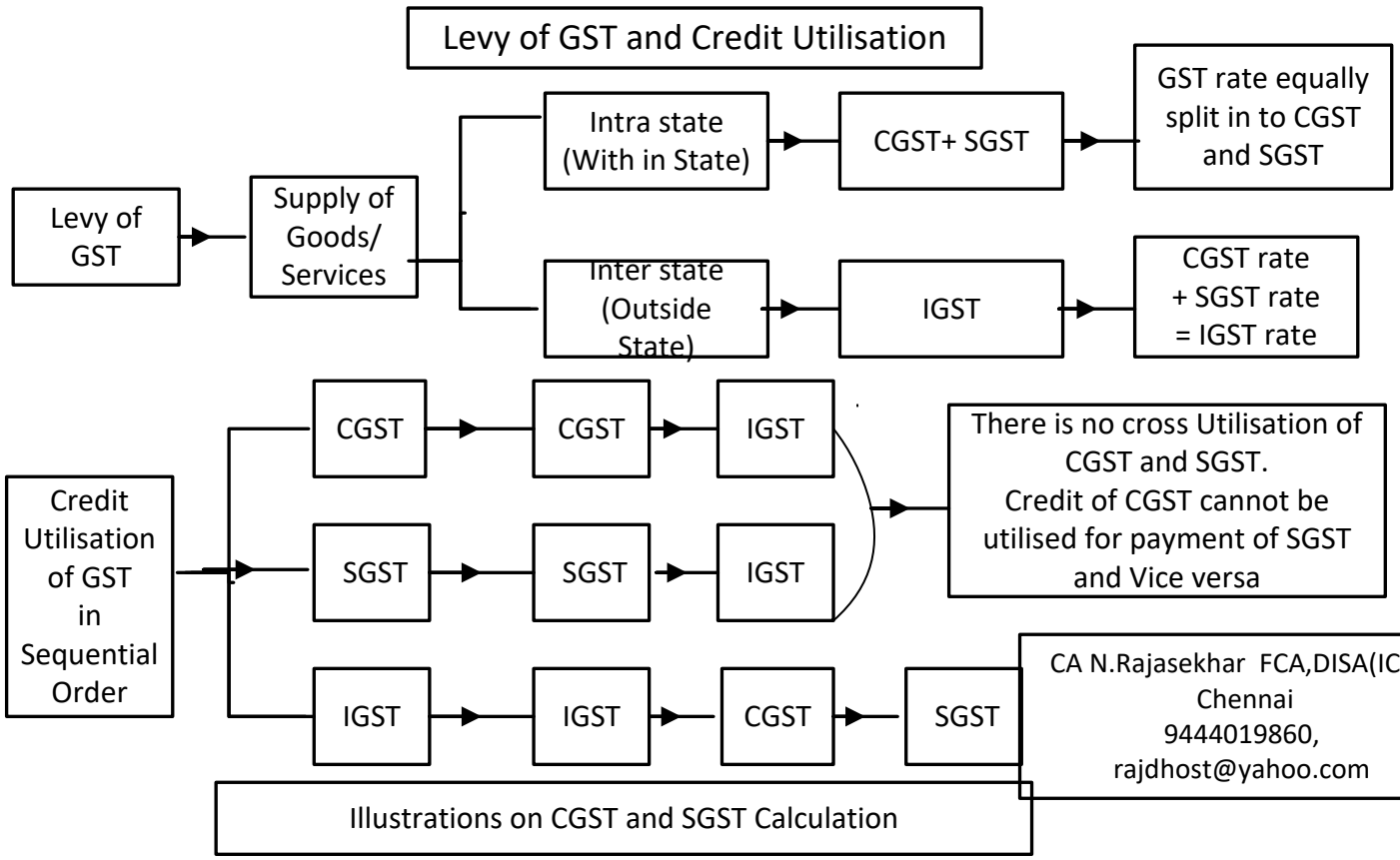
- Introduction of GST is biggest indirect tax reform since independence.
- There is no provision for levy of GST in the Constitution and hence Levy of GST need Constitutional amendment
- The Constitution amendment Bill 2014 was passed in Lok Sabha on 6th May 2015 and on the Rajya Sabha on 3rd August 2016. The bill was subsequently ratified by more than 50% of State legislatures. Finally, Constitution 101st(Amendment) Act, 2016 received the president assent on 08.09.2016.
- The central legalisations of GST were passed in parliament and finally received the assent of President on 12th April 2017. State GST laws are also passed by the state legislatures passed and pave way for levy of GST.

GST Constitutional provisions 101(-Constistutional amendment)Act 2016

Constitutional Provisions

- Article 246 A → Power to Levy GST
  - Centre and States has power to levy Goods and services tax
  - Levy of GST on petroleum products will be applicable from the date notified by GST Council
- Article 269 A → Power to Levy IGST
  - GST on inter state supply (IGST) will be levied and collected by Central government
  - IGST will be shared between state and central in a manner provided by parliament on the recommendation of GST council.
  - import of goods or services or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce.
- Article 366(12A) → Meaning Of GST
  - Goods and services tax means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.
  - GST can be levied on supply of all goods and services except alcoholic liquor for human consumption
- Article 366(26A) → Meaning Of Service
  - Services means anything other than goods.
- Article 279 A → GST Council

1	President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
2	The provisions relating to GST Council came into force on 12 th September2016. President constituted the GST Council on 15th September, 2016.
3	The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members.
4	The Union Minister of State in charge of Revenue or Finance is also its member.
5	The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
6	It shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.
7	Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. Vote of the Centre has a weightage of one-third of total votes cast and votes of all the State Governments taken together has a weightage of two-thirds of the total votes cast, in that meeting.



Illustrations on CGST and SGST Calculation

1. Supply of goods and services with in state

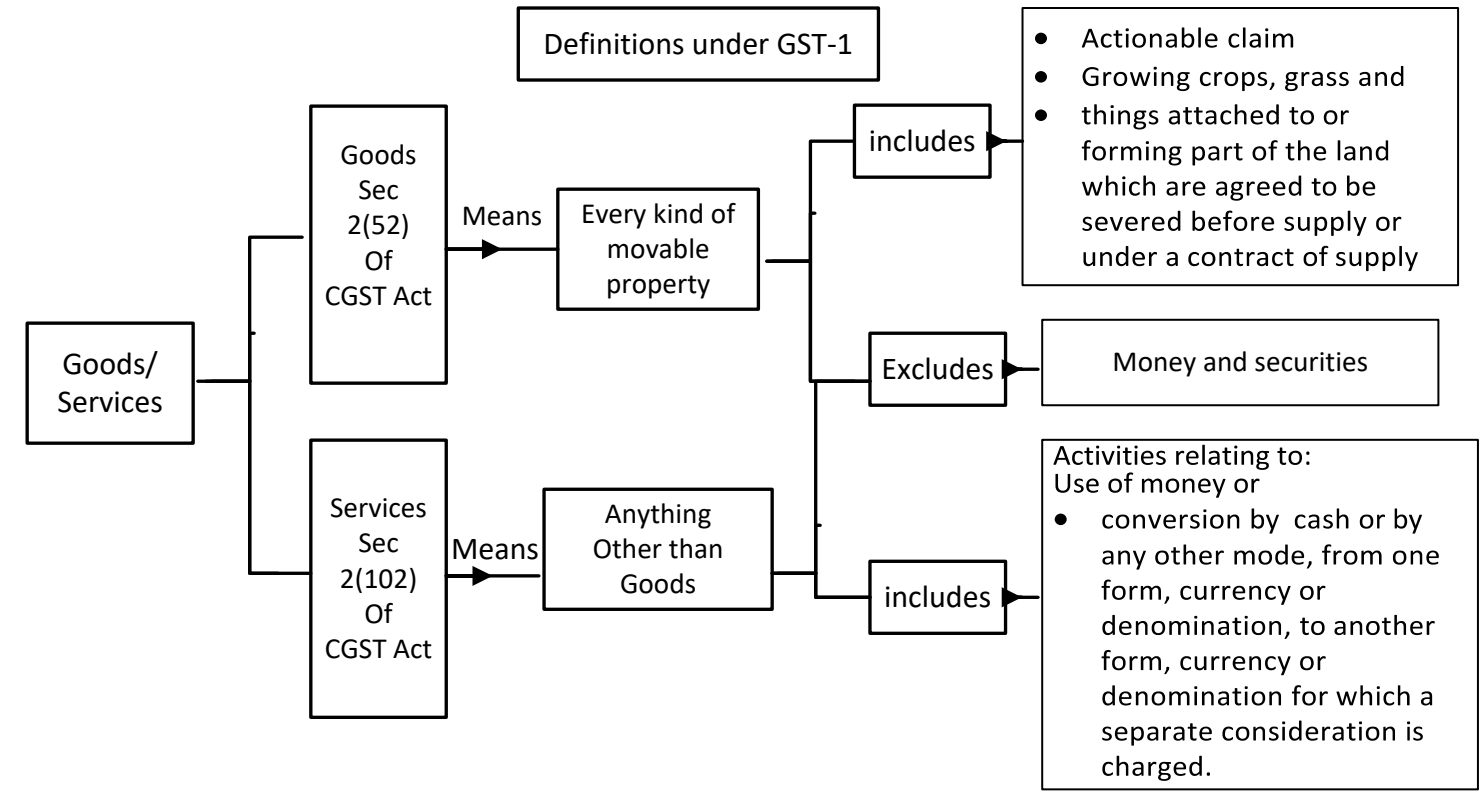
Mr. A supplies goods/Services to B with in the same state. Assume GST rate 18%	
Particulars	**Amount (in Rs.)**
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by A to B for local supply of goods/ services	11,800
Mr. A pays CGST Rs. 900 and SGST Rs. 900/- to Govt. He is the first seller and will not get any credit	

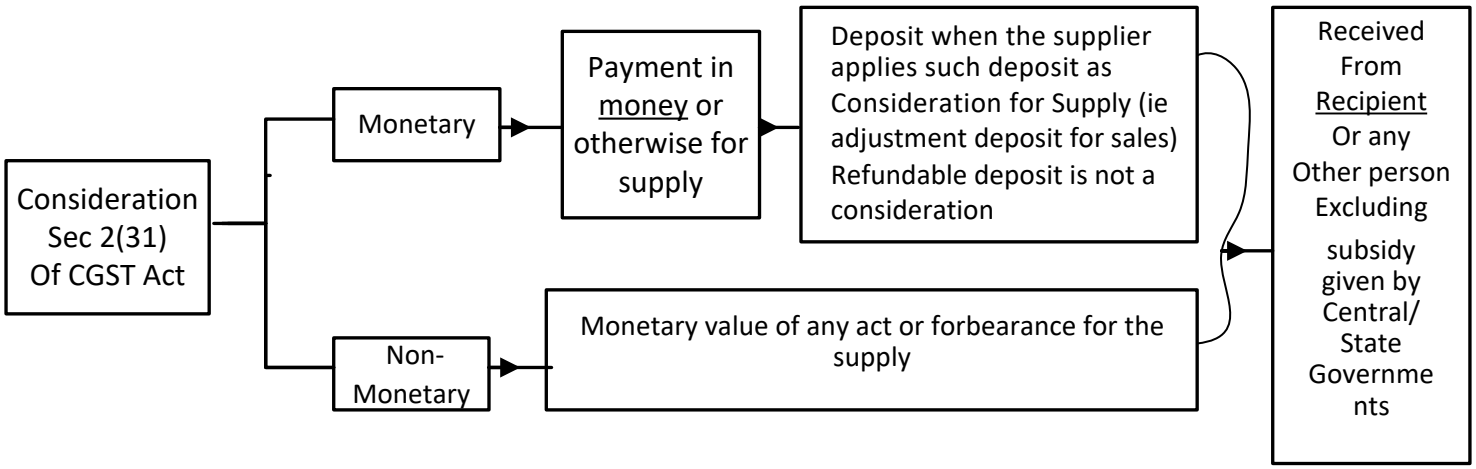
Mr. B supplies the same goods/Services to C with in the same state. Assume GST rate 18%	
Particulars	**Amount (in Rs.)**
Value of goods/ services purchased from A	10,000
Add: Value addition- 30% (profit and overheads)	3,000
Value of goods	13,000
Add: CGST @ 9%	1,170
Add: SGST @ 9%	1,170
Total price charged by B to C for local supply of goods/ services	15,340
Computation of GST payable by B to the Government	
CGST payable	1170
Less: Credit of CGST	900
CGST payable to Central Government	270
SGST payable	1170
Less: Credit of SGST	900
SGST payable to State Government	270

1. Supply of goods and services outside state (interstate supply)

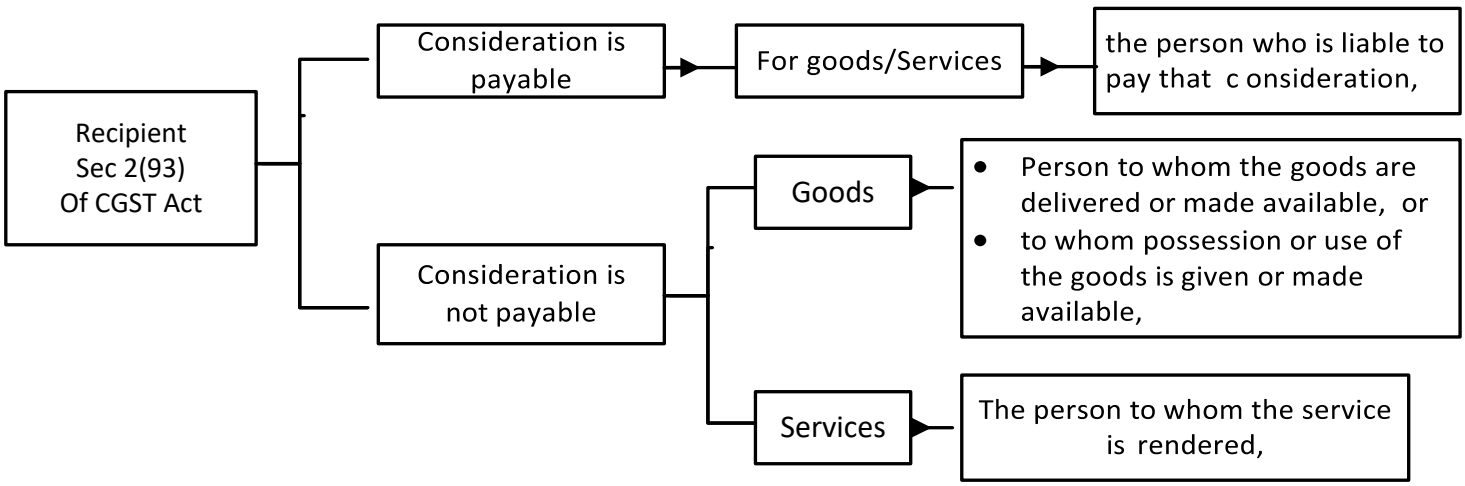
Mr. X supplies goods/Services to Y with in the same state. Assume GST rate 18%	
Particulars	**Amount (in Rs.)**
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X to Y for local supply of goods/ services	11,800
Mr. X pays CGST Rs. 900 and SGST Rs. 900/- to Govt. He is the first seller and will not get any credit	

Mr. Y supplies the same goods/Services to Z in another state. Assume GST rate 18%	
Particulars	**Amount (in Rs.)**
Value of goods/ services purchased from A	10,000
Add: Value addition- 30% (profit and overheads)	3,000
Value of goods	13,000
Add: IGST @ 18%	2,340
Total price charged by Y to Z for Interstate supply of goods/ services	15,340
Computation of IGST payable by Y to the Government	
IGST payable	2340
Less: Credit of CGST	900
Less: Credit of SGST	900
IGST payable to Central Government	540

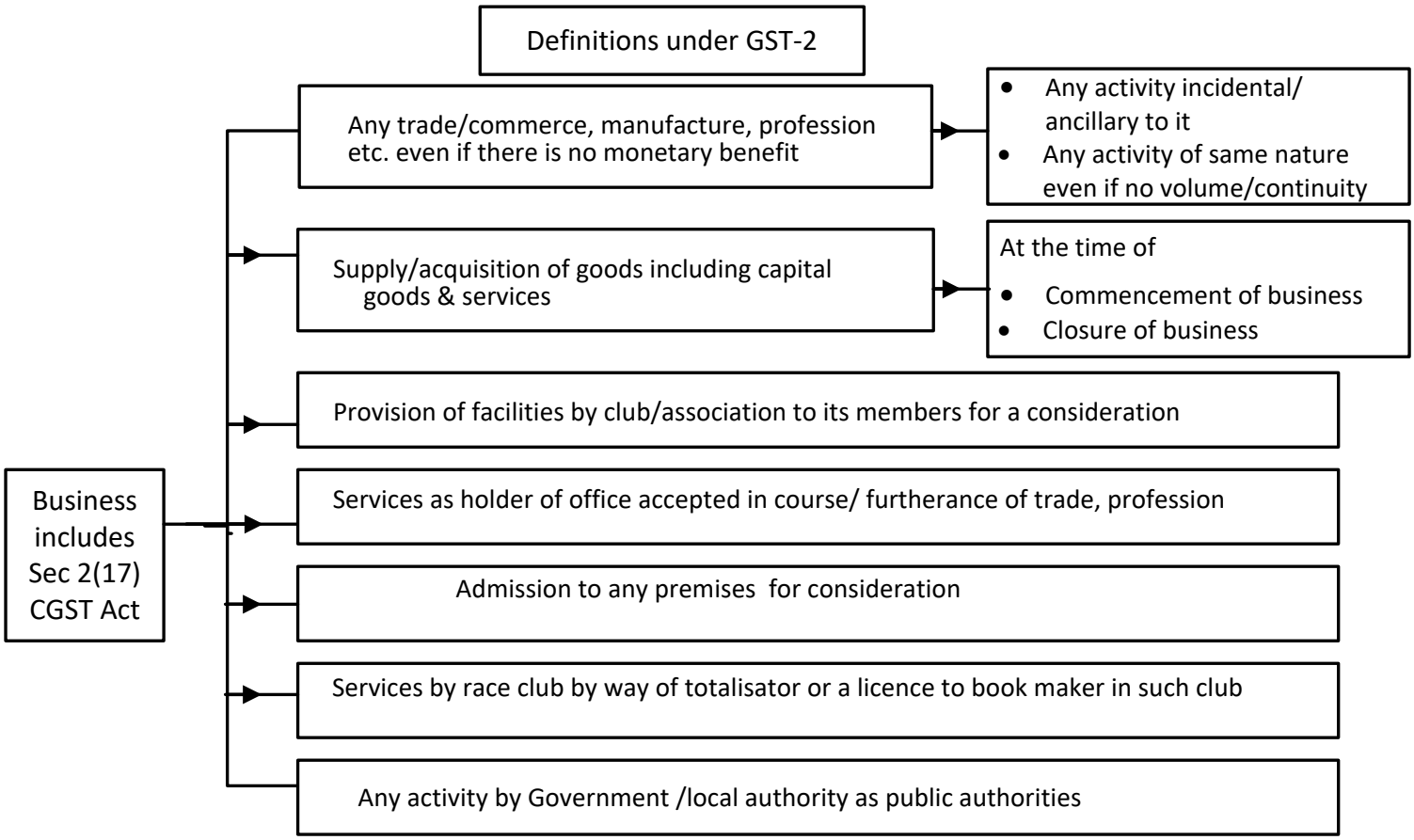




Money: means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75) of CGST Act]



Person include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.



Manufacture: means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly [Section 2(72) of CGST Act].
Taxable supply: means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].
Taxable territory: means the territory to which the provisions of this Act apply [Section 2(109) of CGST Act]
India including J & K. GST is applicable to J & K also.
Supplier: in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of CGST Act]

E-Commerce operator: means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section 2(45) of CGST Act]
Exempt supply: means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47) of CGST Act].
Reverse charge: means the liability to pay tax by the recipient of supply of goods or services **or** both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98) of CGST Act].
Non-taxable supply: means a supply of goods or services or both which is not leviable to tax under CGST Act or under IGST Act. [Section 2(78) of CGST Act]
Taxable person: means a person who is registered or liable to be registered under section 22 or section 24. [Section 2(107) of CGST Act]

Intrastate supply
Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as **intra-State supply** of goods or services respectively.
Interstate supply
Where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as **inter-State supply** of goods or services respectively.

Concept of supply under GST -Sec 7 of CGST Act

Supply under GST

7(1) inclusions

7(1)(a) — All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business

Essentials:
- Consideration
- in the course of Business (Commercial business transactions)
- Taxable supply By Taxable person

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7(1)(b) — importation of services, for a consideration whether or not in the course or furtherance of business,

Essentials:
- Consideration
- in the course of Business Or not in the course of business (personal purpose)

7(1)(c) — Supplies made without Consideration listed in Schedule I

Schedule I:

1	**Permanent transfer / disposal** of business assets for which ITC is availed
2	Supplies between **related persons/ distinct persons (person has more than one registration in same state or different state ex. Ho and branches)** in the course or furtherance of business (gifts of less than Rs. 50,000 in value in a FY by employer to employee not to be treated as supply)
3	Supply of goods **by / to principal to / by agent** where agent undertakes to supply / receive such goods on behalf of principal
4	**Importation of service from a related person** or from any of his other establishments outside India, in the course or furtherance of business.

7(1)(d) — Activities treated as deemed supply of goods/Services (Deemed Supplies) Schedule II

7(2) Exclusions — Activities not be considered as supply (Sch-III)- Negative list of supply

7(3) — By Notification on recommendation of GST Council treat activity as
- Supply of goods and not service
- Supply of service and not goods

Continue on next

Concept of supply in GST -2

Deemed Supply of Goods/Services Schedule II

Deemed Supply of Goods/ Services Sch II

1. Transfer Of
   - Title in goods → Supply of Goods
   - Title in goods under an agreement which stipulates that property shall pass at a future date. → Supply of Goods
   - Right in goods/ undivided share in goods without transfer of title in goods → Supply of Service
2. Land and buildings
   - Lease, tenancy, easement, licence to occupy land. → Supply of Service
   - Lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly (lease rentals) → Supply of Service
3. Treatment or Process
   - Applied to another person's goods 'Job Work' performed by a job worker like dyeing of fabric in various colours. → Supply of Service
4. Transfer of goods forming part of Business Assets
   - transferred or disposed off by/under directions of person carrying on the business , whether or not for consideration → Supply of Goods
   - Allowing or made available for other than business use under directions of person carrying on the business whether or not for consideration
     Ex. Company car used by director for personal purpose → Supply of Service
   - When person who ceases to be a taxable person, shall be deemed to be goods supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.
     Ex: A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable.
     Exceptions:
     Business is transferred as a going concern to another person.
     Business is carried on by a personal representative who is deemed to be a taxable person
     → Supply of Goods
5. Declared Services under Service tax other than Right to use radio spectrum fee/, works contract,/ hiring, leasing/hire purchase,/ supply of food
   (for detail refer declared services under ST) → Supply of Service
6. Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.
   Ex: A local club supplies snacks etc. to its members during its monthly meeting for a nominal payment. → Supply of Goods

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Levy and Collection of GST Sec 9 of CGST Act Sec 5 of IGST Act and Sec 9 of STGST/UTSGST of various states

Levy and Collection Of GST

- **Levy (fixing liability)** → Supply of goods and services Other than alcoholic liquor for human consumption
  - With in state → CGST + SGST/UTSGST
  - Outside state → IGST
- **Valuation** → GST is payable on the value determine as per sec 15 (Transaction Value)
- **Rates of GST**
  - 5%, 12%, 18%, 28%. This rates split equally as CGST and SGST/UTGST
  - IGST will be approximately the sum total of CGST and SGST/UTGST.
  - Maximum rate of CGST + SGST / IGST is 40%
- **GST On petroleum products Sec 9(2)/5(2)**
  - GST on petroleum products crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the GST Council.

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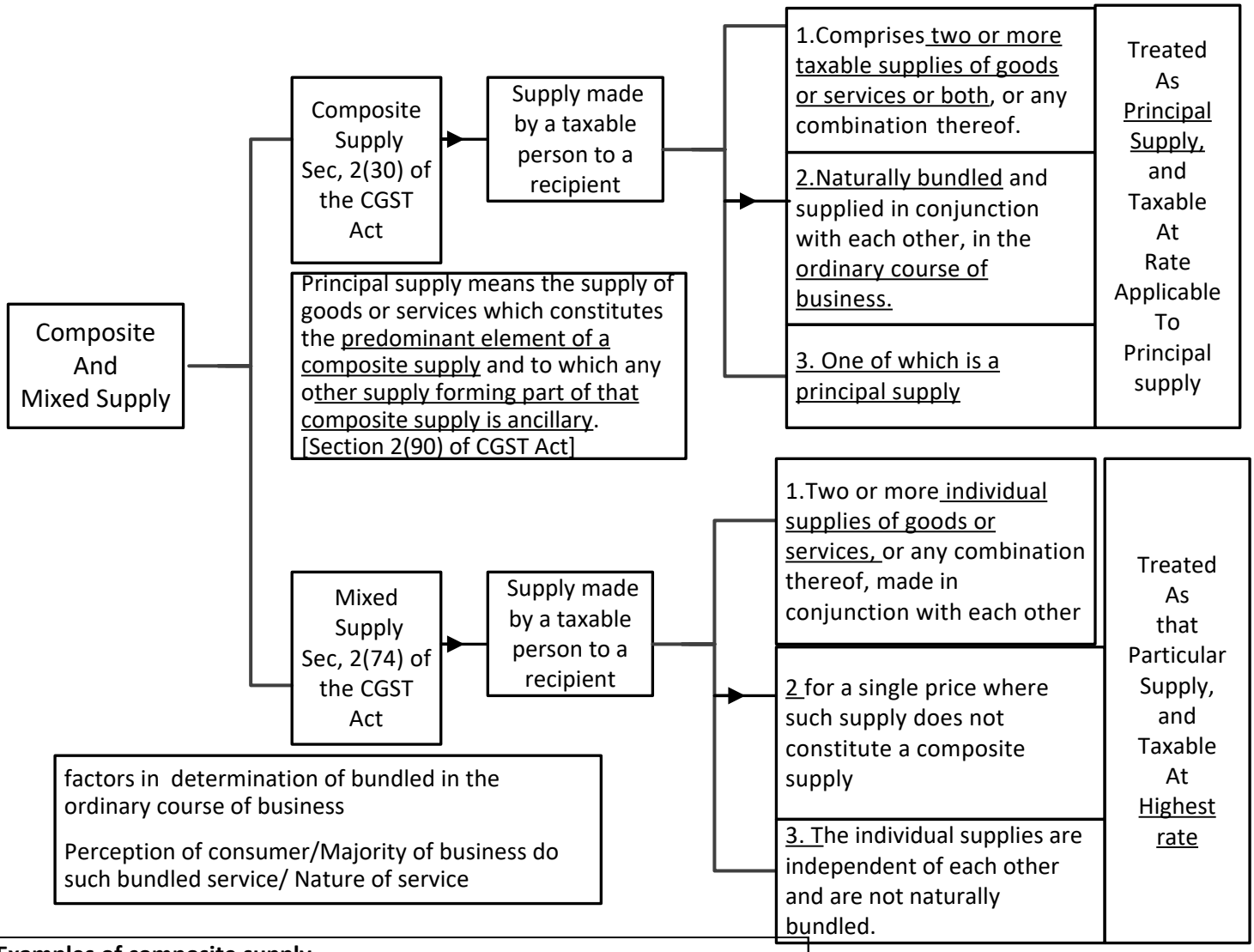
- **Reverse Charge Under GST Sec 9(3),9(4) /5(3)/5(4)**
  - CG on the recommendation of council specify the categories of supply of goods/services or both, GST shall be paid by recipient.
  - Taxable supply of goods/services by unregistered person to registered person(Purchases/services from unregistered person) GST shall be paid by recipient.

  All the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- **GST Liability in case of Electronic Commerce Operator (ECO) Sec 9(5)/ 5(5)**
  - CG on the recommendation of council specify the categories of supply of goods/services or both, GST which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it
  - All the provisions of this Act shall apply to such ECO as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

  - IF ECO located in taxable territory → Person liable to pay GST is ECO
  - IF ECO does not physical presence in taxable territory → Person liable to pay GST is Person representing ECO
  - If the ECO has neither the physical presence nor any representative in the taxable territory → Person liable to pay GST is person appointed by the ECO for the purpose of paying the tax

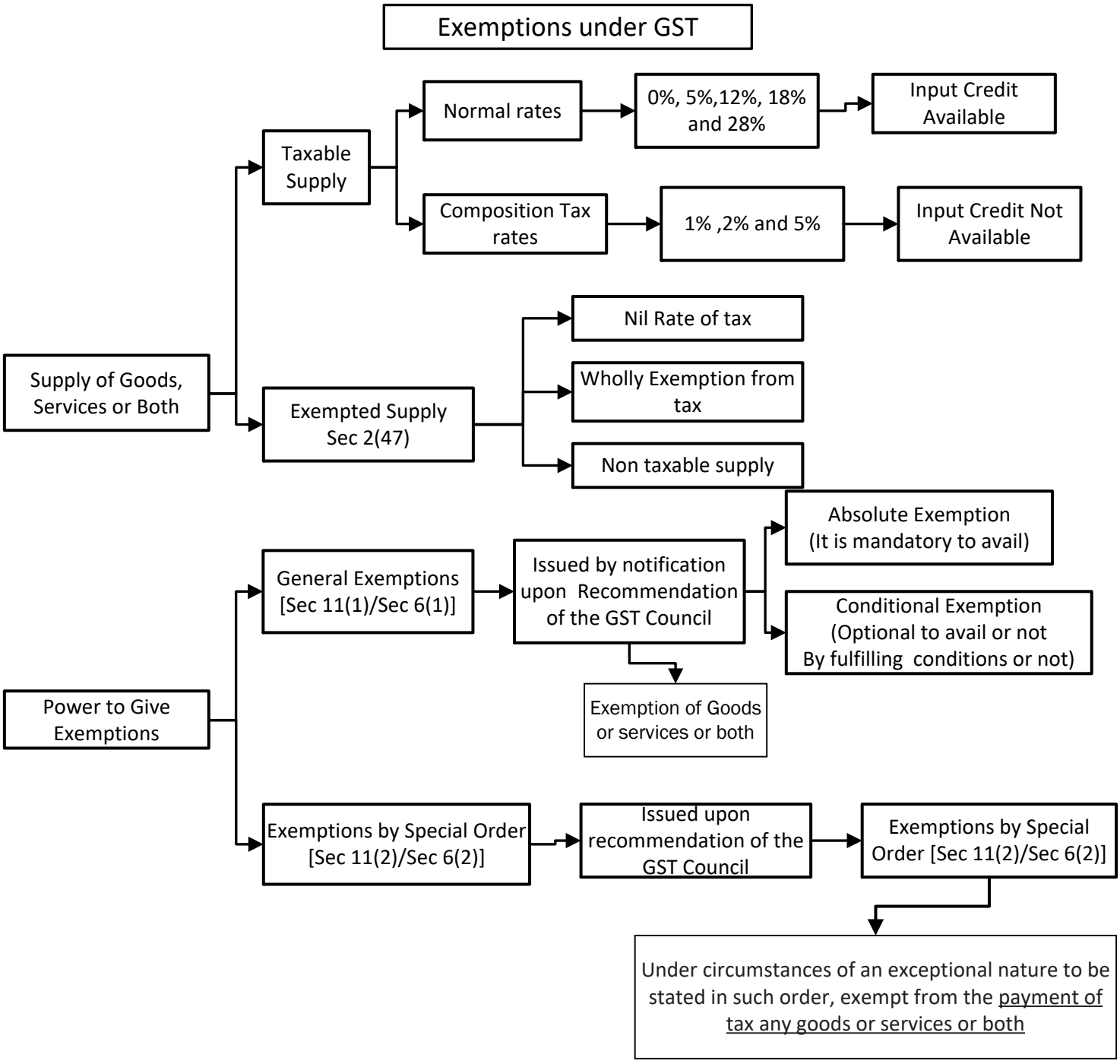
Taxability of Composite and Mixed Supply Sec 8 of CGST Act



Examples of composite supply		
SNo	**Nature of supply**	**Principal supply**
1	Charger supplied along with mobile phones.	Mobile phone
2	Transportation of goods along with packing insurance loading and unloading	Transportation of goods
3	Supply of food along with service charges	Restaurant service
4	Works Contract	Work contract service
5	Air ticket along with food, insurance and free longue	Airline transport of passengers
6	Supply of Equipment along with accessories and warranty	Supply of equipment
7	Hotel service along with food, telephone, laundry	Renting of immovable property

Examples of Mixed supply	
SNo	Nature of supply
1	A supply of a package consisting of canned foods, sweets, Chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.
2	A gift pack comprising of chocolates and sweets.

Guiding principle of Composite and Mixed supply			
SNo	Descriptions	Composite supply	Mixed supply
1	Naturally bundled	Yes	No
2	Supplied together	Yes	No
3	One is predominant supply	Yes	No
4	Can be supplied separately	No	No
5	Each supply priced separately	No	No
6	Other supply is not aim in itself	Yes	No
7	All supplies or goods or services	Yes	Yes
8	One supply is goods other service	Yes	Yes



- Sec 11(3) of the CGST Act, 2017 or sec 6(3) of the IGST Act, 2017, Government is empowered to clarify the scope of applicability of any notification or special order by inserting an explanation in such notification or order.
- Such clarification shall only be issued by notification within ONE year of issuing of notification or special order and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be

Charitable activities
Condition to claim exemption:
It should register u/s 12AA of Income Tax Act 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
Advancement of educational programs or skill development relating to,-- Orphans, persons over the age of 65 years residing in a rural area,, prisoners, mentally retarded persons
Preservation of environment including watershed, forests and wildlife
Rural area" means the area comprised in a village as defined in Land Revenue Records, but excluding: (a) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as urban area by the Central Govt. or State Govt

Health Care services
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)
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

Services by a Veterinary Clinic
Services **by** a Veterinary Clinic **in relation to** health care of animals or birds.
Cord Blood Bank
Service provided **by** cord blood banks **by way of** preservation of stem cells or any other service in relation to such preservation.

Renting of immovable property of precincts of religious place
Services by a person by way of-
renting of precincts of a religious place *meant for general public* owned by charitable or religious trust registered u/s 12AA/institution registered u/s 10(23(C)/Body Authority covered u/s 10(23BBA)
Or For 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 s p i r i t u a l i t y .
Precincts include immovable located within outer boundary wall or immediate vicinity of religious place is eligible for exemption benefit
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
Example: Hall attached to temple renting for religious function
exemption shall not apply to,-
renting of rooms where charges are ` 1,000 or more per day;
renting of premises, community halls, kalyanmandapam or open area, and the like where charges are
`10,000 or more per day;
renting of shops or other spaces for business or commerce where charges are ` 10,000 or more per month

Renting of a hotel, inn, guest house, club, campsite or other commercial places
Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes
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, GST 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 GST liability

Pure labour contracts of a single residential unit
Services **by way of** pure labour contracts of construction, erection, commissioning, or installation of **"original works"** pertaining to a **single residential unit otherwise than as a part of a residential complex**.
"Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit. **"Single residential unit"** means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

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

Exempted Services	
1	Services by way of renting of residential dwelling for use as residence
2	Houses allotted by Government department to its employees and a license fee is charged for the same
3	Furnished flats given on rent for temporary stay (a few days for a family
Taxable	
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay	
Residential house taken on rent used only or predominantly for commercial or nonresidential use	
House given on rent and the same being used as a hotel or a lodge	
Rooms in a hotel or a lodge let out whether or not for temporary stay	
Furnished flats given on rent for is given for a short stay for different persons over a period of time	

Pilgrimage Services
Services **by** a **"specified organization"** in respect of a **"religious pilgrimage facilitated by the Ministry of External Affairs, Govt. of India, under bilateral arrangement"**.
"Specified organization" means: (a) Kumaon Mandal Vikas Nigam Limited (a Govt. of Uttarakhand Undertaking), (b) Haj Committee of India, (c) State Haj Committee.
Exemption available to Services provided by "Kumaon Mandal Vikas Nigam Limited" in relation to "Kailash Mansarovar Yatra" and Service provided by "Haj Committee of India" and "State Haj Committee" in relation to "Haj Pilgrimage" is exempt.

CONSTRUCTION SERVICES
Pure labour contracts under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojna
Services provided **by way of** pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other **"original works"** pertaining to the "Beneficiary- Led (individual house) Construction or Enhancement (BLC)" under the **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojna.**
"Original works" means – (a) all new constructions, (b) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable, or (c) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise
Entry No 11 Pure labour contracts of a single residential unit
Services **by way of** pure labour contracts of construction, erection, commissioning, or installation of **"original works"** pertaining to a **single residential unit otherwise than as a part of a residential complex**.

"Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit.

"Single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

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

	Exemption of Services
1	Services by way of renting of residential dwelling for use as residence
2	Houses allotted by Government department to its employees and a license fee is charged for the same
3	Furnished flats given on rent for temporary stay (a few days for a family
Exemption Not available	
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay	
Residential house taken on rent used only or predominantly for commercial or nonresidential use	
House given on rent and the same being used as a hotel or a lodge	
Rooms in a hotel or a lodge let out whether or not for temporary stay	
Furnished flats given on rent for is given for a short stay for different persons over a period of time	
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay	
Residential house taken on rent used only or predominantly for commercial or nonresidential use	

Hiring of motor vehicle
Services **by way of** giving on hire – (a) to a State Transport Undertaking, a motor vehicle meant to carry **more than** 12 passengers, or (b) to a Goods Transport Agency (GTA), a means of transportation of goods.

Transportation of Passengers		
Coverage 1		
1	Supplier of Service	Airways like Air India, spice jet /Indigo
2	Service	Transportation of passengers with or without belongings
3	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
4	Taxability	Service exempt
Coverage 2		
1	Supplier of Service	Passenger transport service
2	Service	Transportation of passengers by road with or without belongings
3	Transport through	NON A/C Contract carriage Other than radio taxi [except the transportation of passengers for tourism, conducted tour, charter or hire], or by **non-air-conditioned stage carriage.**
4	Taxability	Service exempt

Coverage 3		
1	Supplier of Service	Passenger transport service
2	Service	Transportation of passengers with or without belongings
3	Transport through	Transport in Rail in 2nd class, sleeper class
		Transport of passengers by metro, monorail or tramway
		Transportation in Inland water ways
		Transport of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India:
		Transport in Metered cabs or auto rickshaws fare as per Govt Rules. And E - rickshaw
4	Service	Exempt
		"E-rickshaw" means a special purpose battery powered vehicle of power not exceeding 4000 watts, having 3 wheels for carrying goods or passengers, for hire or reward

Notes
transportation of passenger for tourism, conducted tour, charter or hire, there is no exemption and service is taxable
Similarly transportation of passenger through radio taxi is taxable,
Contract carriage Means: Motor vehicle transporting passengers on a contract, runs on a fixed or agreed rate on any route or point to point and includes- (i) a maxicab; and (ii) a motorcar
Radio taxi means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

Transportation of Goods by Road, Rail, Vessel		
Coverage 1		
1	Supplier of Service	Transporter of goods other than GTA or Courier Agency
2	Service	Transportation of goods by road
3	Taxability	Exempt
Coverage 2		
1	Supplier of Service	Transporter of goods
2	Service	Transportation of goods by Inland waterways
3	Taxability	Exempt
Coverage 3		
1	Supplier of Service	Goods transport agency by road
2	Service	**Transportation of any goods**
3	Value based exemption	gross amount charged single goods carriage <=Rs.1500/-
		gross amount charged for all goods of single consignee <=Rs.750/-
Coverage 4		
1	Supplier of Service	Goods transport by road/ rail/Vessel

2	Service	Transportation of goods of description of goods SLNo 4
3	Taxability	Service is exempt.
4	List of services exempted	
	Agricultural Produce	
	(a) milk, salt and food grain including flours, pulses and rice	
	(b) organic manure	
	(c) newspaper or magazines registered with the Registrar of Newspapers	
	(d) relief materials meant for the victims of natural or man-made disasters, calamities, accidents or mishap	
	(e) defence or military equipment	
Coverage 5		
1	Supplier of Service	Transporter of goods by Air/Vessel
2	Service	Services **by way of** transportation of goods **by** an **aircraft/vessel** from a place outside India up to the **customs station** of clearance in India.
3	Taxability	Exempt
4	Note	Transportation of goods through vessel from Outside India to customs station is taxable.
Coverage 6		
1	Supplier of Service	Goods transport Agency
2	Recipient	Unregistered person (including an unregistered casual taxable person
2	Service	Transportation of goods
3	Taxability	Service is exempt.
4	Exemption Not available when the Recipient is	
	(a) any factory registered under or governed by the Factories Act, 1948, or	
	(b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India, or	
	(c) any Co-operative Society established by or under any law for the time being in force, or	
	(d) anybody corporate established, by or under any law for the time being in force, or	
	(e) any partnership firm whether registered or not under any law including AOP,	
	(f)any casual taxable person registered under the CGST Act or IGST Act or SGST Act or UTGST	

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

Legal Services

ISupplier of Service is arbitral tribunal (Sole arbitrator/panel of arbitrators)

S No	Recipient who is	Taxability
1	any person other than a business entity	Exempt
2	business entity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
3	Other business entity	No exemption. Taxable

II.Supplier of Service who is of Individual advocate <u>other than Senior Advocate</u> /Firm of advocates

S No	Recipient 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 Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
4	Other business entity	No exemption. Taxable

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

III Supplier of Service is a senior advocate (

.S No	Recipient who is	Taxability
1	any person other than a business entity	Exempt
2	business entity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
3	Other business entity	Taxable
4	Individual advocate/Firm of advocates by way of Consultancy or Representation capacity with a turnover up to Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the in the preceding financial year;	Exempt
5	Individual advocate/Firm of advocates by way of Consultancy or Representation capacity with a turnover Exceeding Rs. 20 Lakhs (Rs. 10 lakhs in case of Special category states) in the 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

IV. Supplier of Service is of person representing arbitral tribunal

S No	Recipient who is	Taxability
1	arbitral tribunal	Taxable

Sports Services

Services provided to a recognized sports body

S no	Supplier of Service	Recipient	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 organized:

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.

Services by and to FIFA
Supply of services by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India.

Admission to FIFA U-17 World Cup 2017
Supply of services by way of right to admission to the events organised under FIFA U-17 World Cup 2017.

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 GST.

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)].

The 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 Exemption**
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

6	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 Taxable

	Agricultural Activity	**Examples cover under taxable Service**
1	Processes which 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 <u>for sale in retail market</u>
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

Educational Services

S N	Supplier of Service	Recipient	Transaction
1	Educational institution	Students, faculty and staff	Consideration from Services to students, faculty and staff
2	Any person	Educational institution <u>Of Preschool and Up to Higher Secondary</u>	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

Educational institution Means 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.

Skill Development Services	
Services provided by:-	
1	the National Skill Development Corporation (NSDC) set up by the Government of India;
2	a Sector Skill Council (SSC) approved by the NSDC;
3	(an assessment agency approved by the SSC or the NSDC;

4	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
	(c) any other Scheme implemented by the NSDC

Sponsorship of tournaments or championships
Scope of Exempt Service –
Services by way of sponsorship of sporting events organized:
by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone/ any COUNTRY
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;
by Central Civil Services Cultural and Sports Board;
as part of national games, by Indian Olympic Association; or
Under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

Skill Development Initiative **SDI**
Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship **by way of** assessments under the Skill Development Initiative (SDI) Scheme.
Services of DDU-GKY
Services provided **by** Training Providers (called "Project Implementation Agencies") under Deen Dayal Upadhyaya Grameen Kaushalya Yojana **(DDU-GKY)** under the Ministry of Rural Development, Govt. of India, by way of offering skill or vocational training courses certified by the National Council for Vocational Training **(NCVT)**.

Services by a performing artist in folk or classical art forms			
Supplier of Service	Recipient	Service	Taxability
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. 1,50,000
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. 1,50,000
Above (1) and (2) as a brand ambassador	Any person	Performance in above(1) and (2)	Taxable
Artist of Western music, mimicry, modern theatre, magic shows	Any person	Performance	Taxable
Artists of cinema, television	Any person	Performance	Taxable
Artists of Painting, sculpture	Any person	Performance	Taxable

Admission to museum, zoo etc.
Service **by way of** admission to a museum, zoo, national park, wildlife sanctuary or a tiger reserve.
Admission to entertainment events
Services **by way of** right to admission to,-- (i) **c**ircus, **d**ance or theatrical performance including drama or ballet; (ii) recognized sporting event; (iii) **a**ward function, **c**oncert, **p**ageant, **m**usical performance or any **s**porting event other than a recognised sporting event ***(Remember – CAMPS)***, where the consideration for admission is not more than Rs. 250 per person.
If the consideration exceeds Rs. 250/-, **NO** exemption is allowed.

Specified financial services Exempt

1	Interest, discount received on advancing loans, bills and deposits made
2	Service by way of purchase/sale of foreign currency among banks and authorized dealers
3	transactions are entered into by banks in instruments like repos and reverse repos (trading of goods)
4	Subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD)
	Taxable Services
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	Investments by way of equity or any other manner where the investor is entitled to a share of profit.
3	Service by way of purchase/sale of foreign currency among banks/ authorized dealers and general public

Services by the intermediaries	
Services by the following persons in respective capacities -	
1	**by** a business facilitator / a business correspondent **to** a banking company with respect to accounts in its "rural area" branch.
2	**by** any person as an intermediary **to** a business facilitator / business correspondent with respect to services mentioned in above
3	**by** a business facilitator / business correspondent **to** an insurance company in a rural area

Renting of Motor Vehicle for transportation of passengers and goods	
Scope of Exempt Service –	
1	Services by way of giving on hire-
	to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
	to a goods transport agency, a means of transportation of goods

Services provided by an incubatee		
1	Supplier of Service	Incubatee located within premises of incubator
2	Service	Service Up to Total turnover of Rs.50 lakhs is exempt from GST
3	Condition for exemption	total turnover during the preceding financial year <= 50 lakhs
4	Period of exemption	Three years from the date of entering into an agreement as an incubate with incubator.
5	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.	

Services provided by TBI or STEP		
1	Supplier of Service	Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP)
2	Service	Any Service to Incubatee

Business exhibition
Service **by** an organizer **to** any person **in respect of** a business exhibition held outside India.

Tour operator
Services provided **by** a tour operator **to** a foreign tourist **in relation to** a tour conducted wholly outside India.
"Tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.
Example: Service provided by **Tavel Agency** to a Foreign National for a tour conducted in Outside India is exempted.

Import of services
Services **received from** a **Supplier of Service located in a Non-taxable Territory (NTT) by** - (a) the Central Govt., State Govt., Union Territory, Local authority, Governmental authority or an individual in relation to any purpose other than commerce, industry, business or profession; or (b) an entity registered u/s 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory (NTT).

This exemption is not allowed to –

(i) Online information and database access or retrieval services **(OIDAR)** received by persons specified in Entry (a) or Entry (b); or

Services by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India.

Service by a club/association/society to own members		
Coverage 1		
1	Supplier of Service	Registered trade union
2	Service	To its own members by way of reimbursement of charges or share of contribution
3	Taxability	Exempt
Coverage 2		
1	Supplier of Service	Registered unincorporated body or a non- profit entity
2	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 GST
3	Taxability	Exempt
Coverage 3		
1	Supplier of Service	Registered unincorporated body or a non- profit entity
2	Service	To its own members by way of reimbursement of charges or share of contribution provided by Resident welfare Association.
3	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 under earlier law is also made applicable		
	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. Maintenance 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 GST 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 GST
3	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 Supplier of Service 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 ITC credit available to RWA for payment of GST	RWA may avail ITC and use the same for payment of GST

SERVICES BY CERTAIN BODIES / INSTITUTIONS

ESI
Services **by** the Employees' State Insurance Corporation (ESIC) to the persons governed under the ESI Act, 1948.
EPFO
Services provided **by Employees Provident Fund Organisation (EPFO) to** the persons governed under EPF Act, 1952.
IRDA
Service provided **by** the **Insurance Regulatory and Development Authority of India (IRDA) to** insurers (i.e. insurance companies) under the IRDA Act, 1999.
SEBI
Service provided **by** the Stock Exchange Board of India **(SEBI) by way of** protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
RBI
All services provided **by** Reserve Bank of India (RBI).
The services provided **by** RBI **to** any person are exempted but the services provided **by** any person **to** RBI are not exempted.
FDM
All services provided by a 'Foreign Diplomatic Mission' (FDM) located in India.
• 'FDM' does not cover any office or establishment of an international organization / multi-national company. Hence the services provided by such office or establishment are not exempt. • Services provided by FDM are exempt. But services provided to FDM are not exempt under this Entry.
NCCCD
Service provided by the National Centre for Cold Chain Development (NCCCD) by way of cold chain knowledge dissemination.

Miscellaneous Services

Going concern
Services **by way of** transfer of a going concern, as a whole or an independent part thereof.
Services associated with transit cargo to Nepal and Bhutan
Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
Acquiring Bank
Services provided by an "acquiring bank" to any person in relation to settlement of an amount upto Rs. 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card services.
"Acquiring Bank" means any banking company, financial institution including non- banking financial company (NBFC) or any other person [Example – Paytm] , who makes the payment to any person who accepts such card.
Upfront amount for industrial leasing
Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (30 years or more) lease of industrial plots or plots for

Spectrum service
Service provided by the Central Govt., State Govt., Union Territory or Local authority by way of allowing a business entity to operate as a telecom Supplier of Service or use radio frequency spectrum during the period prior to
Leasing of Railways assets
Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railway Finance Corporation to Indian Railways.
Journalist
Services by way of collecting or providing news by an independent journalist, Press Trust of India (PTI) or United News of India.
Public libraries
Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
Slaughtering service
Services by way of slaughtering of animals
Public conveniences
Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
Services in Nepal or Bhutan
Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) exempt from CGST
Specified services received by RBI
Services received by the RBI, from outside India in relation to management of foreign exchange reserves.
"External asset management" services received by RBI from overseas financial institution is exempt under this Entry.
Supply of service by way of access to a road or a bridge on payment of annuity, has been exempted from GST

Insurance Services Exempt from tax
NPS
Services of life insurance business provided by way of annuity under the National Pension System (NPS).
Group insurance of forces
Services of life insurance business provided by the Army, Naval and Air Force Group Insurance Funds to the members of Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Govt.
Specified schemes of General Insurance Business
Services of **general insurance business** provided under **certain specified schemes**.
(a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on CattleInsurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; Pradhan Mantri Suraksha BimaYojna
Services of **life insurance business** provided under **certain specified schemes**.
(a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees; (d) Varishtha Pension Bima Yojana; (e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yogana; Pradhan Mantri Vaya Vandan Yojana
Collection of contribution under Atal Pension Yojna (APY)
Service by way of collection of contribution under Atal Pension Yojna (APY).
Collection of contribution under Pension Scheme of State Govt.
Service by way of collection of contribution under any pension scheme of the State Governments.

Services to and BY Government Exempt from tax
SERVICES TO GOVT.
Pure services to Govt. in relation to Panchayat / Municipality function
Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Govt., State Govt., Union Territory, local authority or Governmental authority by way of any activity: (i) in relation to any function entrusted to a Panchayat under article 243G of the Constitution, or (ii) in relation to any function entrusted to a Municipality under article 243W of the Constitution.
Service by a Govt. entity to Govt.
Supply of service by a "Government entity" to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.
"Government entity" means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."
Services by Fair Price Shops to Central Govt. State Govt. / UT
Supply of services by Fair Price Shops to Central Govt State Govt. / UT. by way of sale of wheat, rice and coarse grains under Public Distribution System (PDS) against consideration in the form of commission or margin.
Air services to the Central Govt.
Services provided to the Central Govt. by way of transport of passengers (with or without accompanied belongings), by air, embarking from or terminating at a Regional Connectivity Scheme Airport (RCS Airport), against consideration in the form of viability gap funding.
This exemption shall not be allowed after expiry of a period of 1 year from the date of commencement of operations of the RCS Airport as notified by the Ministry of Civil Aviation.
Insurance services to Govt.
Services provided to the Central Govt., State Govt., Union Territory under any insurance scheme for which total premium is paid by the Central Govt., State Govt. or Union Territory.
Training services to Govt.
Services provided to the Central Govt., State Govt. or Union Territory administration under any training programme for which total expenditure is borne by the Central Govt., State Govt. or Union Territory administration.
Services provided by GSTN to Govt.
Services provided by the Goods and Service Tax Network (GSTN) to the Central Govt., State Govt. or Union Territories for implementation of GST.

SERVICES BY GOVT
Municipality services by Govt.
Services by Central Govt., State Govt., Union Territory, Local authority or Govermental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.
Panchayat services by Govt.
Services by Central Govt., State Govt., UT Govt., 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.
All services by Govt.
All services provided by Central Govt., State Govt., Union Territory or Local authority excluding following services (unless the following services are covered under any other Entry of Exemption): (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than the Central Govt., State Govt., Union territory. (ii) Services in relation to an aircraft or a vessel (inside or outside the precincts of a port or airport). (iii) Transport of goods or passengers. (iv) Any service [other than services covered under above provided to a business entity.
Services by Govt. to a small business entity
Services provided by the Central Govt., State Govt., Union Territory or Local authority to a business entity with an Aggregate Turnover of upto Rs. 20 lakh (Rs. 10 lakh in case of a Special Category States) in the preceding Financial Year [i.e. a small business entity
"Renting", in relation to immovable property, 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.
This exemption is not allowed to following services: Services like (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than the Central Govt., State Govt., Union territory. (ii) Services in relation to an aircraft or a vessel (inside or outside the precincts of a port or airport). Transport of goods or passengers (iii) And Services by way of renting of immovable property
Services by Govt. to Govt.
Services provided by the Central Govt., State Govt., Union Territory or Local authority to another Central Govt., State Govt., Union Territory or Local authority.

This exemption is not allowed to the services (v) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than the Central Govt., State Govt., Union territory. (vi) Services in relation to an aircraft or a vessel (inside or outside the precincts of a port or airport). Transport of goods or passengers.
Services by Govt. upto Rs. 5,000
Services provided by Central Govt., State Govt., Union Territory or a Local authority where the consideration for such services does not exceed Rs. 5,000/-.
(iv) This exemption is not allowed to the services like Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than the Central Govt., State Govt., Union territory. (v) Services in relation to an aircraft or a vessel (inside or outside the precincts of a port or airport). Transport of goods or passengers
Where continuous supply of service (CSS) as defined in section 2(33) is provided by the Central Govt., State Govt., Union Territory or a Local authority, the exemption shall be available only if the consideration charged for such service does not exceed Rs. 5,000/- in a financial year.
If the consideration exceeds Rs. 5,000/-, No exemption is allowed.
Certain services by Govt.
Services provided by Central Govt., State Govt., Union Territory or Local Authority by way of – (a) registration required under any law, or (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law.
Certain services by Govt. / local authority
Services provided by the Central Govt., State Govt., Union Territory or Local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
Services provided by the Central Govt., State Govt., Union Territory or Local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damage is payable to the Central Govt., State Govt., Union Territory or Local authority under such contract.
Services provided by the Central Govt., State Govt., Union Territory or Local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals (except the rearing of horses) for food, fiber, fuel, raw material or other similar products.
Services provided by the Central Govt., State Govt., Union Territory or Local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Govt., State Govt., Union Territory or Local authority before 01.04.2016. This exemption is allowed only to the tax payable on one time charge (payable, in full upfront or in installments).
Service provided by the Central Govt., State Govt., Union Territory 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 Charges).

Time of supply of Goods/Services

Old relevant topic point of taxation Rules

Time of supply of Goods/Services various types (Point in which tax liability arise)

- Time of supply under forward charge
- Time of supply under reverse charge
- Time of supply of vouchers exchangeable for goods
- Time of supply in residual cases

Time of supply of Goods Under forward charge

- Date of issue of invoice/Due date of issue of invoice
- Date on which payment recorded in the books of supplier
- Date on which the payment is credited to the supplier's bank account

→ Which ever is earlier

The time of supply for suppliers of goods having aggregate turnover up to Rs.1.5 crore in the preceding financial year (excluding composition suppliers) will be the time of issue of invoice. Thus, GST will not be leviable on advances received against supply of goods in case of such suppliers. ***[Notification No. 40/2017 CT dated 13.10.2017]***

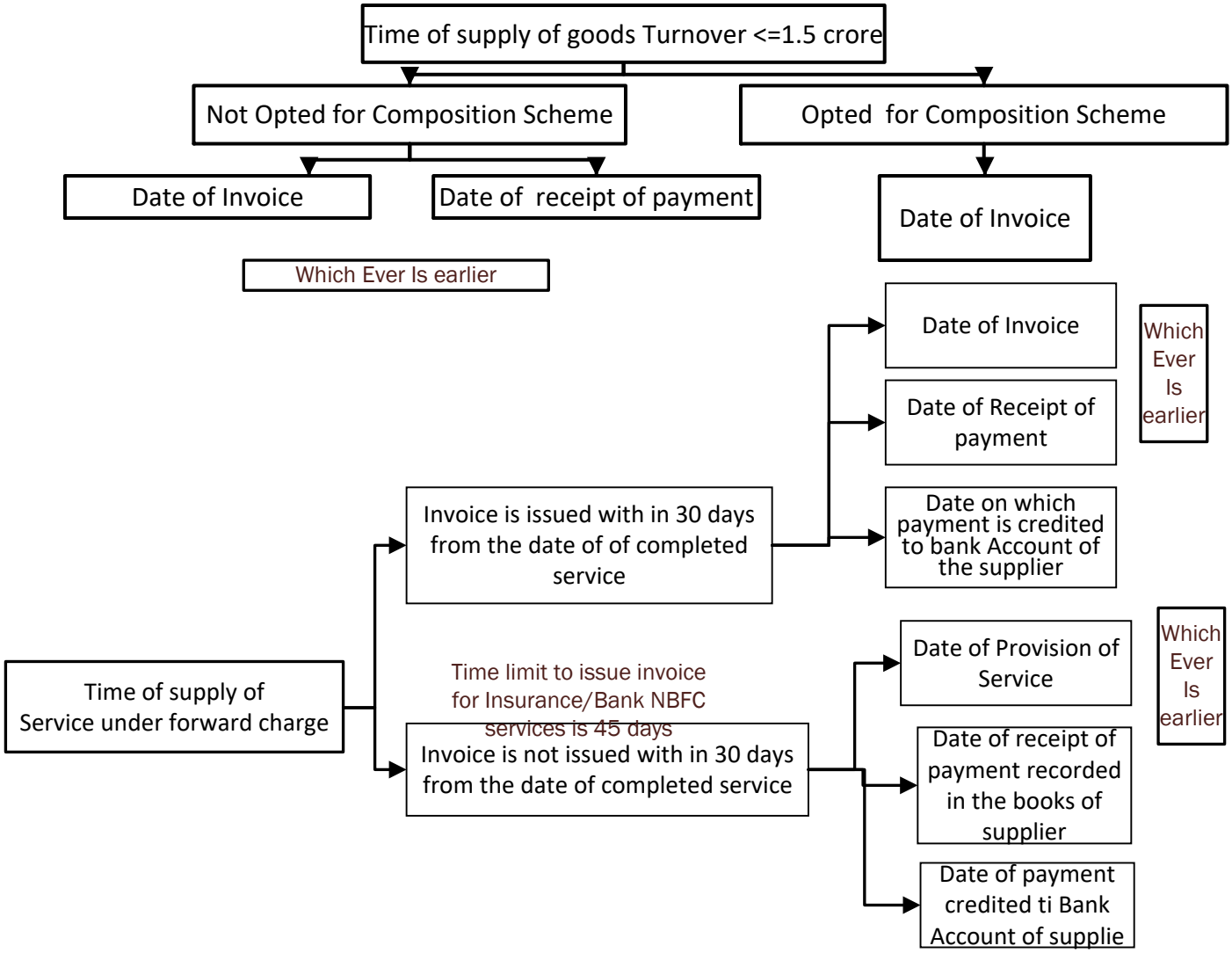
Time of supply of vouchers exchangeable for goods

- Food pass (Any food item can be purchases)
  - Supply is identifiable at the time of issue of voucher → DATE OF ISSUE OF VOUCHER
  - Supply is not identifiable at the time of issue of the voucher → DATE OF REDEMPTION OF VOUCHER
- Shirt coupon (Only Shirt can be purchased)
  - Supply is identifiable at the time of issue of voucher → DATE OF ISSUE OF VOUCHER
  - Supply is not identifiable at the time of issue of voucher → DATE OF REDEMPTION OF VOUCHER

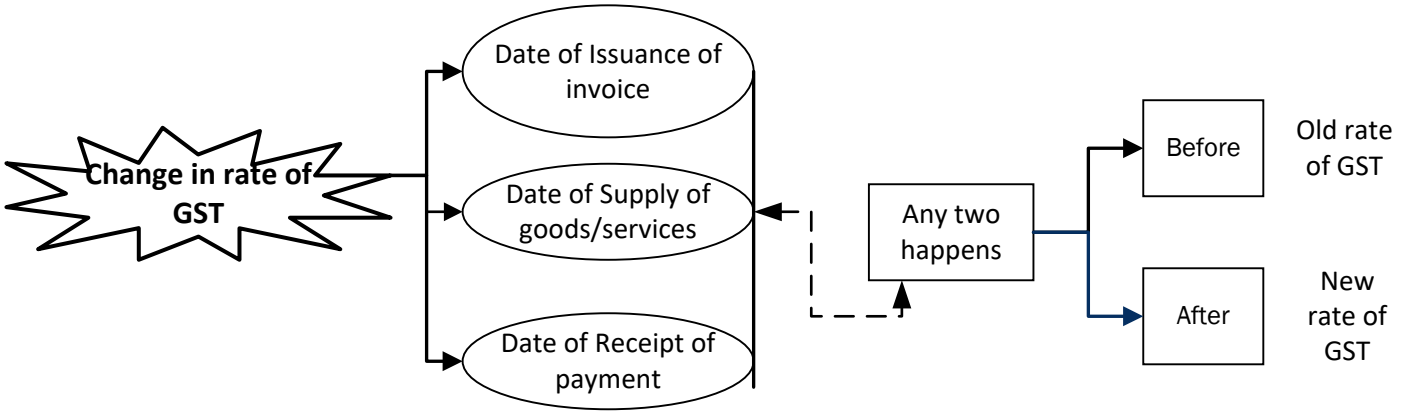
Addition in value by way of interest, late fee/penalty for delayed payment of consideration for goods → Time of supply → Date on which the supplier receives such addition in value

Time of supply in residual cases

- When GST Return is filed → Due date of filing of Return
- Other cases → Date of payment of GST



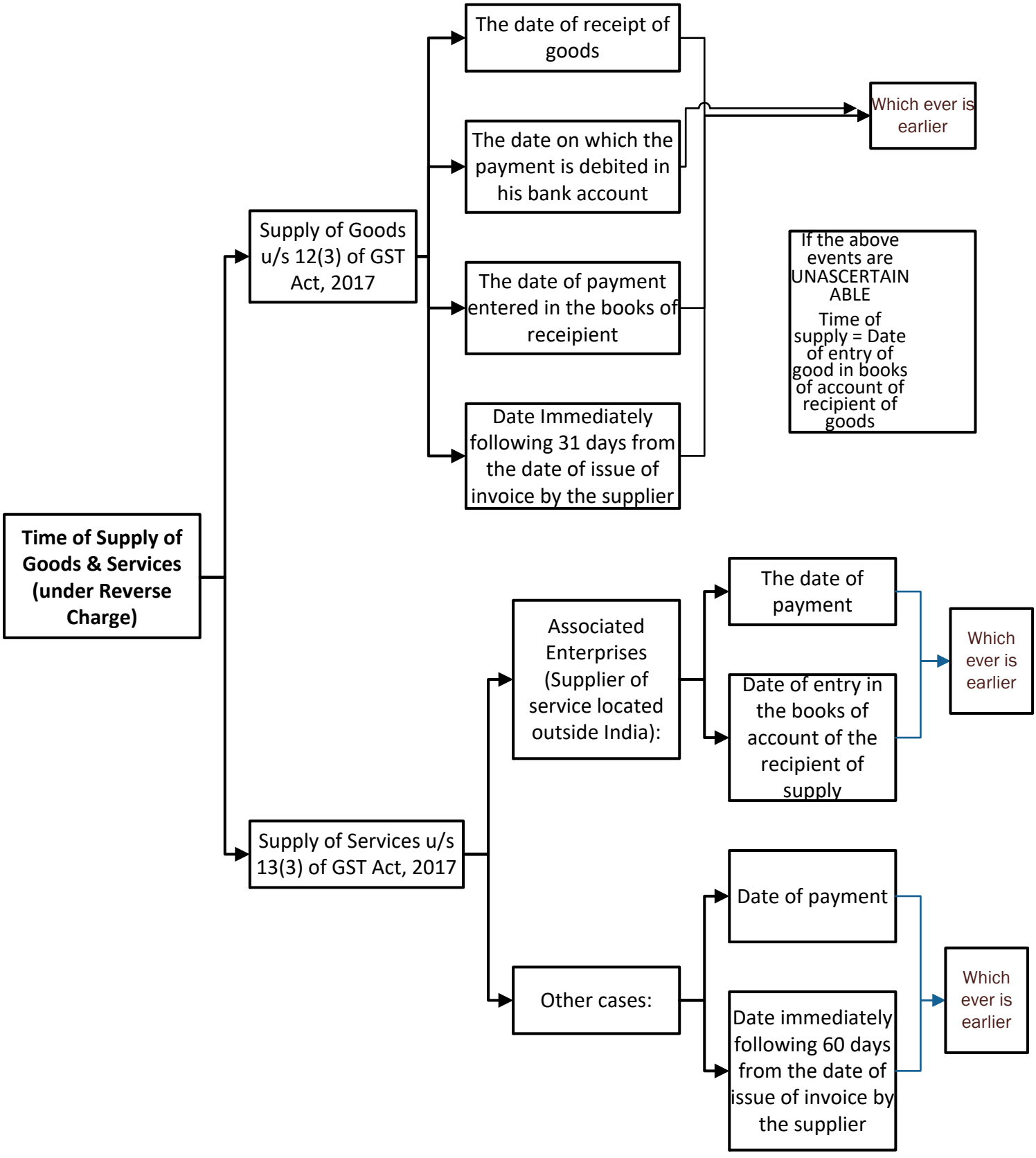
Change in rate of GST in case of supply of goods/Services



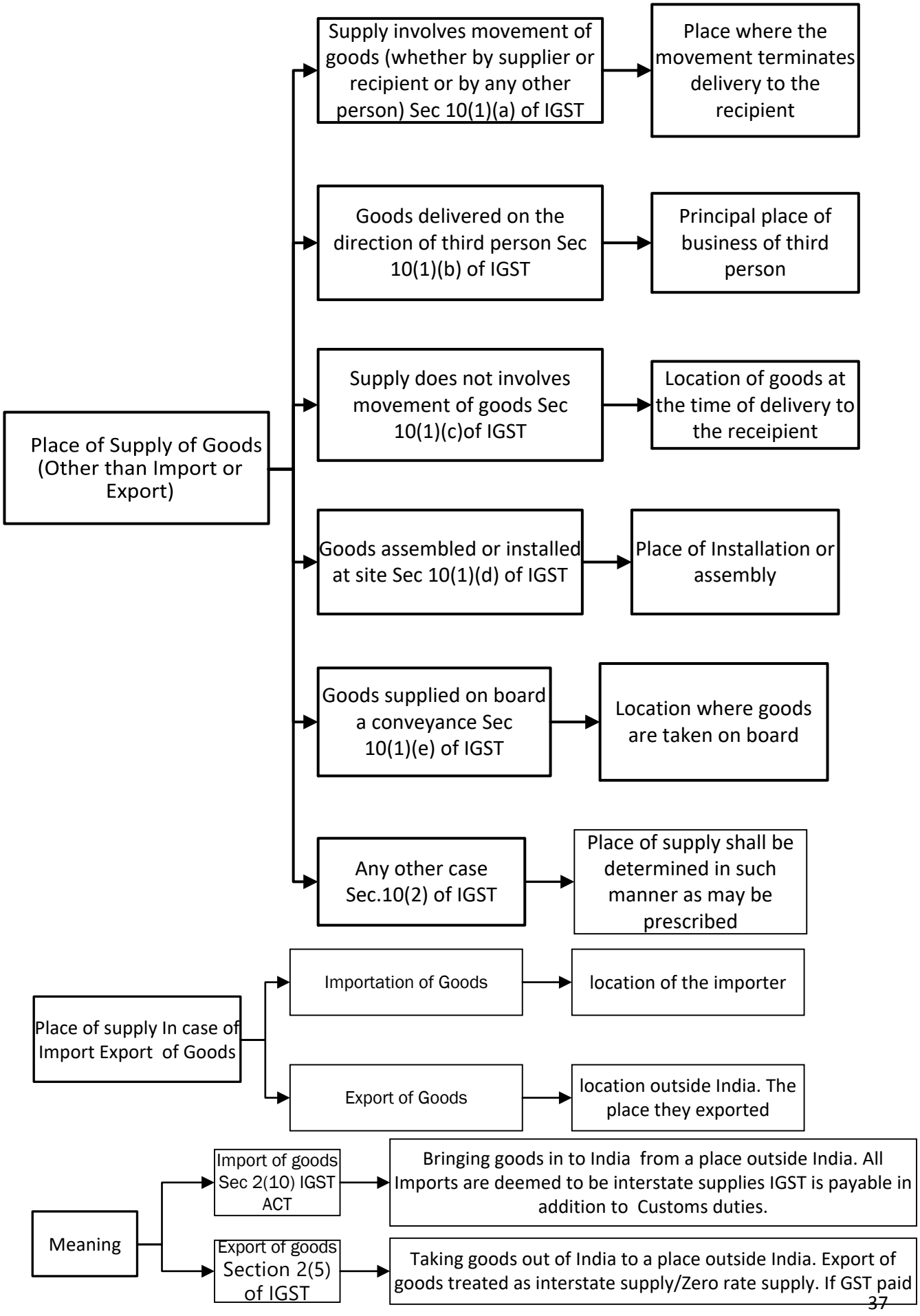
Meaning of Date of Receipt payment

1	Normal cases	Date of entry in books or date of crediting in bank account, Whichever earlier.
2	Special cases in case of Change in rate of GST	
	Rate changes between entry in books and credited in bank account	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
		Payment is credited in the bank after 4 days- date of Crediting in the bank account is the date of payment

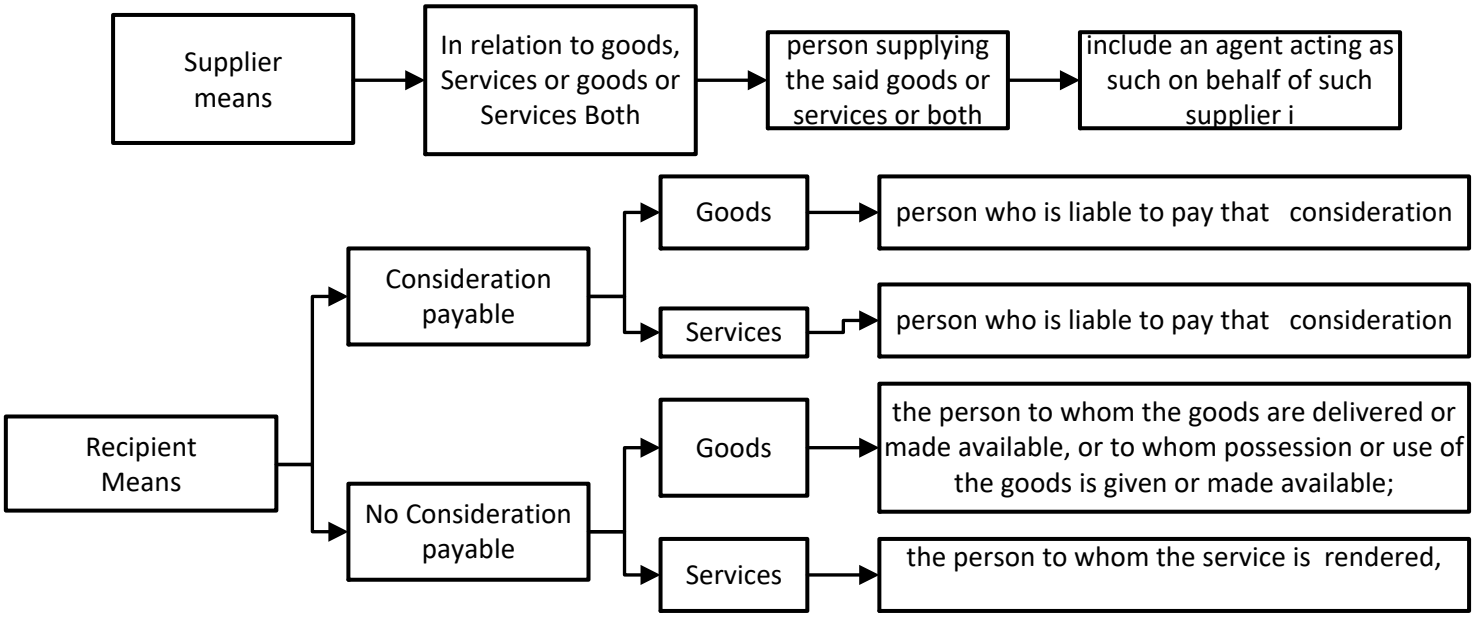
Time of Supply of Goods & Services (under Reverse Charge)



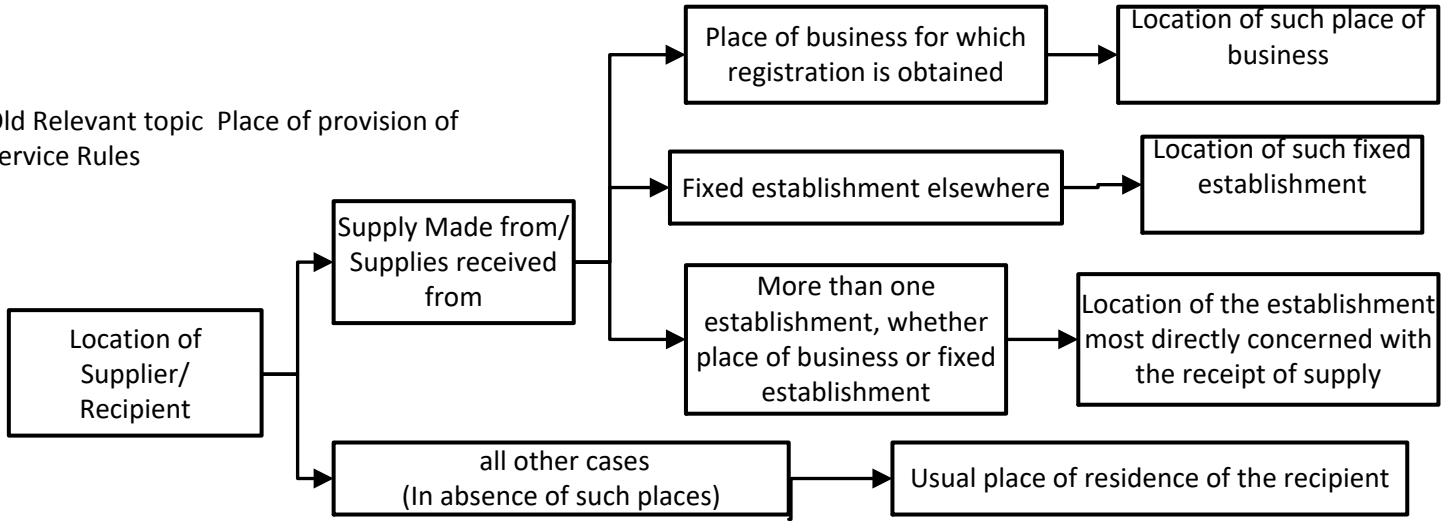
Place of Supply of Goods (Other than Import or Export)

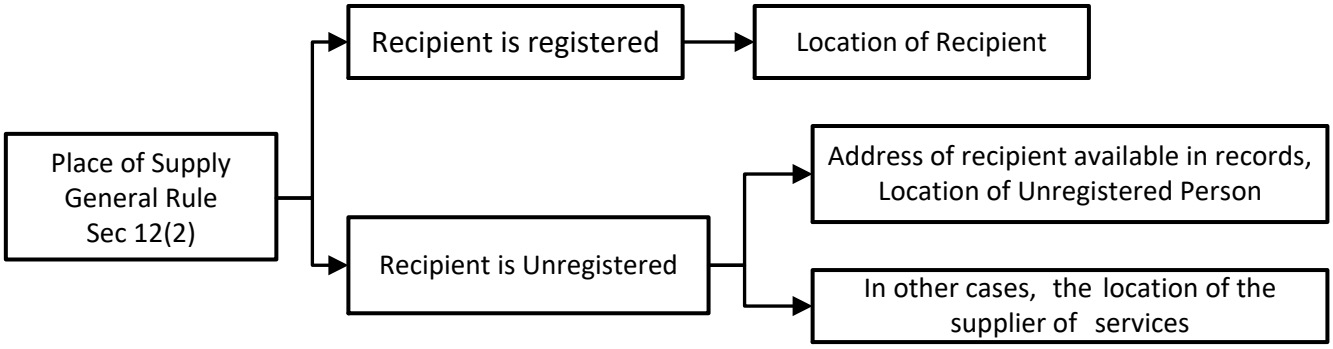


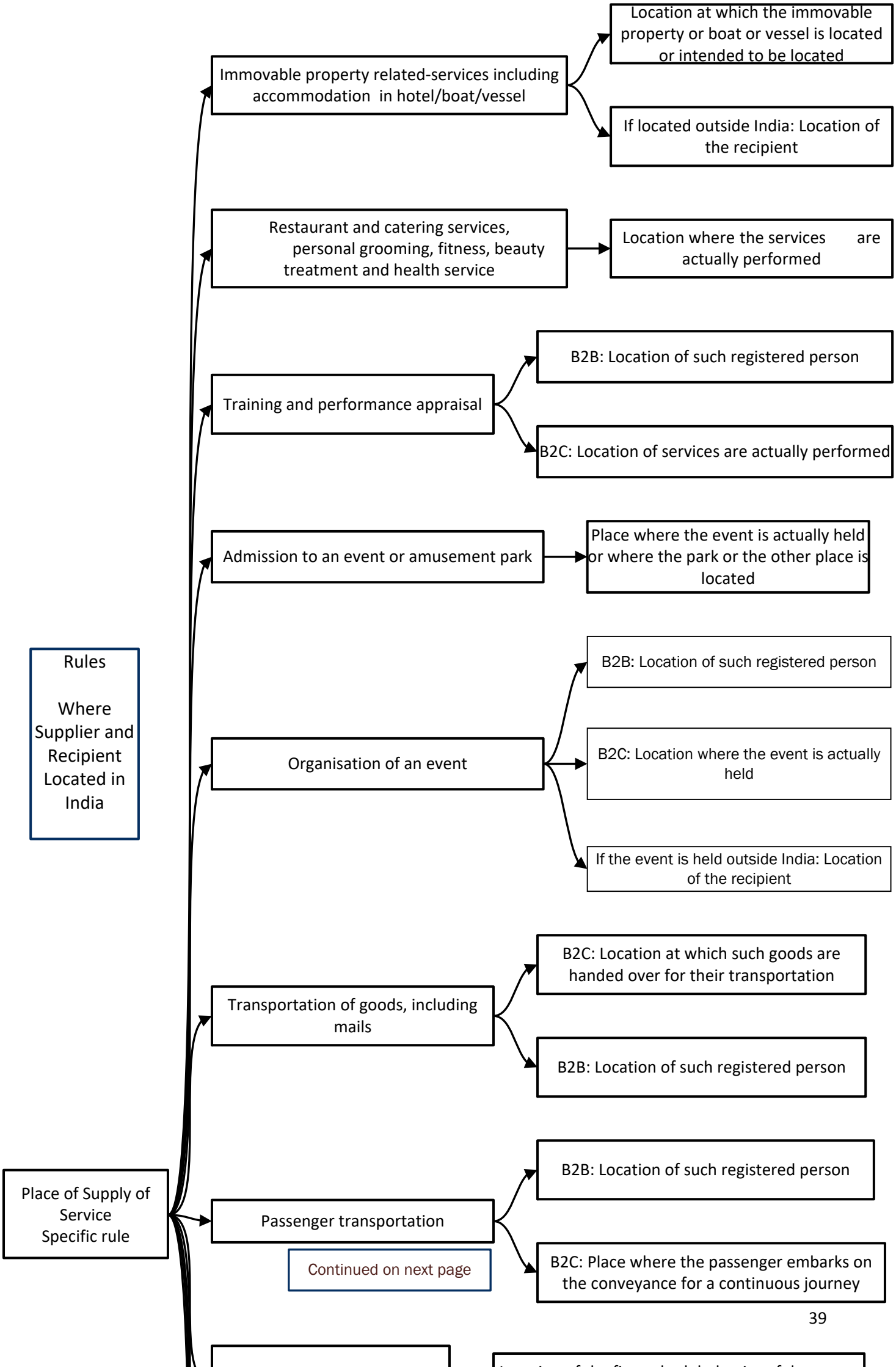
Place of Supply of Services- Important definitions

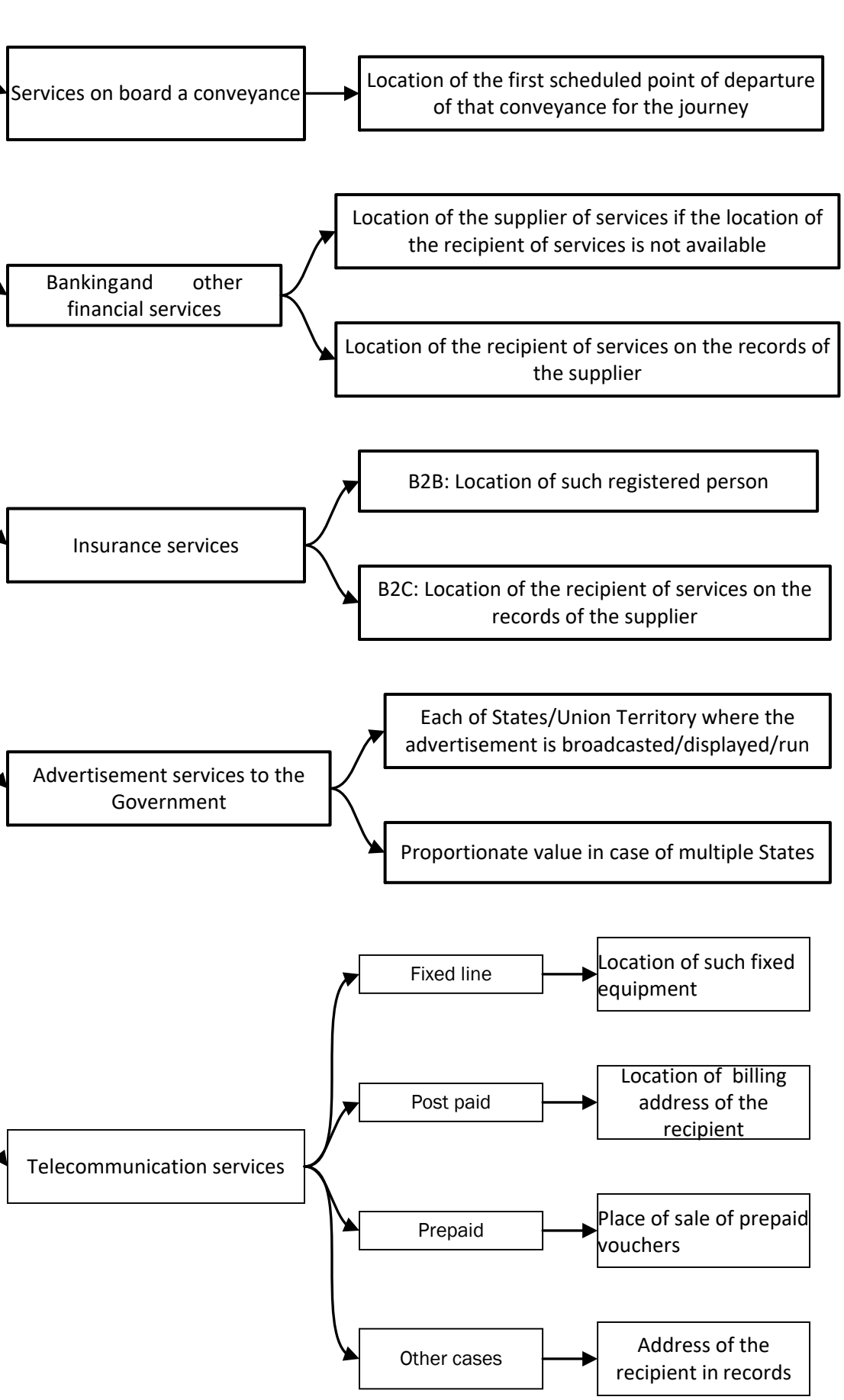


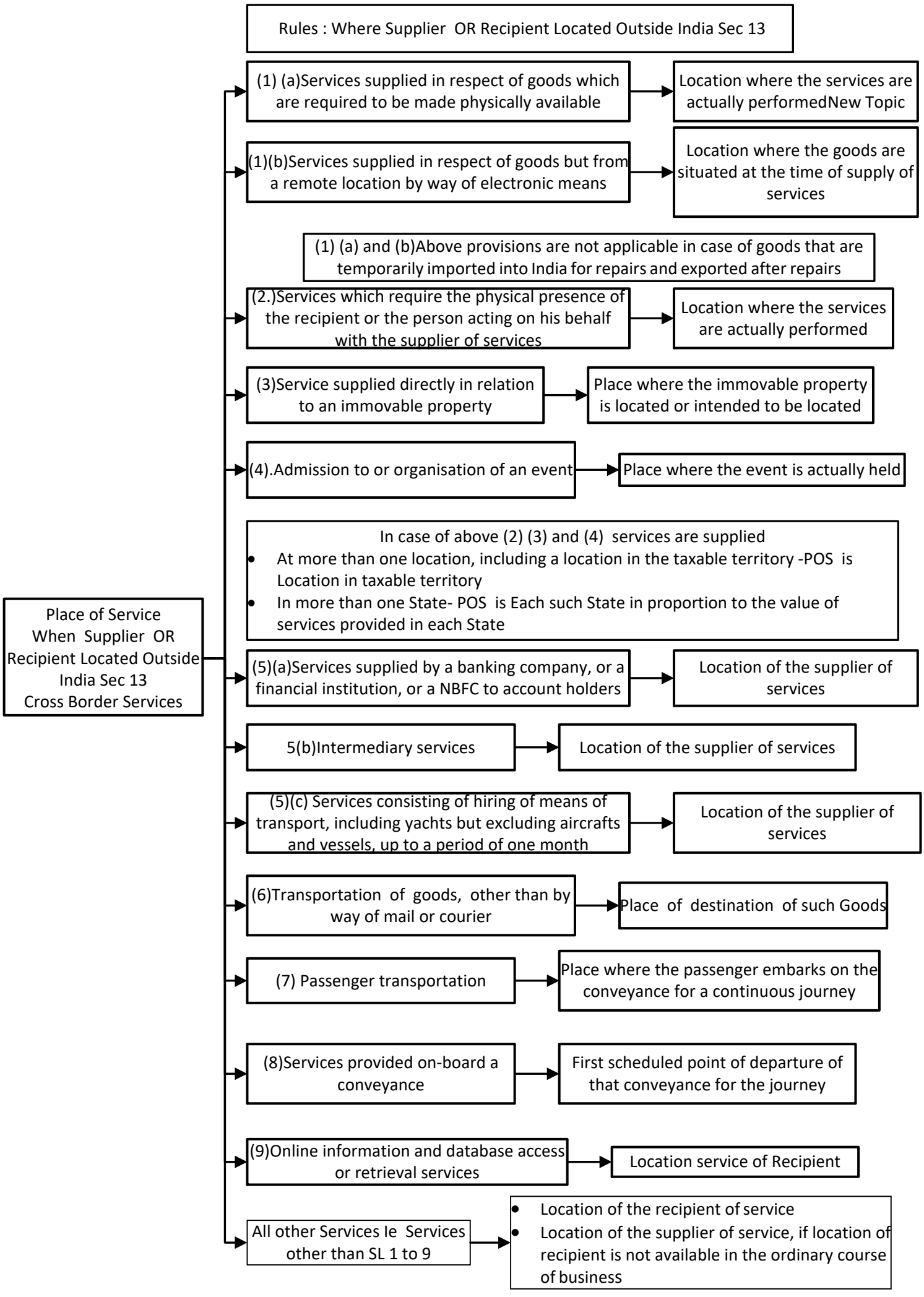
Old Relevant topic Place of provision of Service Rules





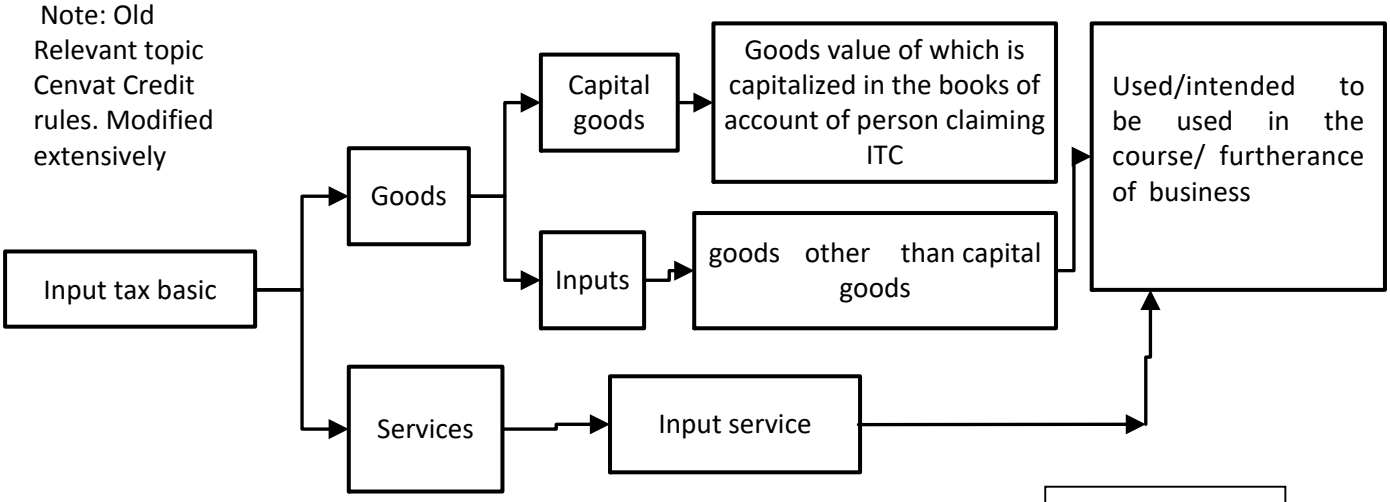

Place of Supply of Service Specific rule
Rules
Where Supplier and Recipient Located in India
Immovable property related-services including accommodation in hotel/boat/vessel
Location at which the immovable property or boat or vessel is located or intended to be located
If located outside India: Location of the recipient
Restaurant and catering services, personal grooming, fitness, beauty treatment and health service
Location where the services are actually performed
Training and performance appraisal
B2B: Location of such registered person
B2C: Location of services are actually performed
Admission to an event or amusement park
Place where the event is actually held or where the park or the other place is located
Organisation of an event
B2B: Location of such registered person
B2C: Location where the event is actually held
If the event is held outside India: Location of the recipient
Transportation of goods, including mails
B2C: Location at which such goods are handed over for their transportation
B2B: Location of such registered person
Passenger transportation
B2B: Location of such registered person
B2C: Place where the passenger embarks on the conveyance for a continuous journey
Continued on next page

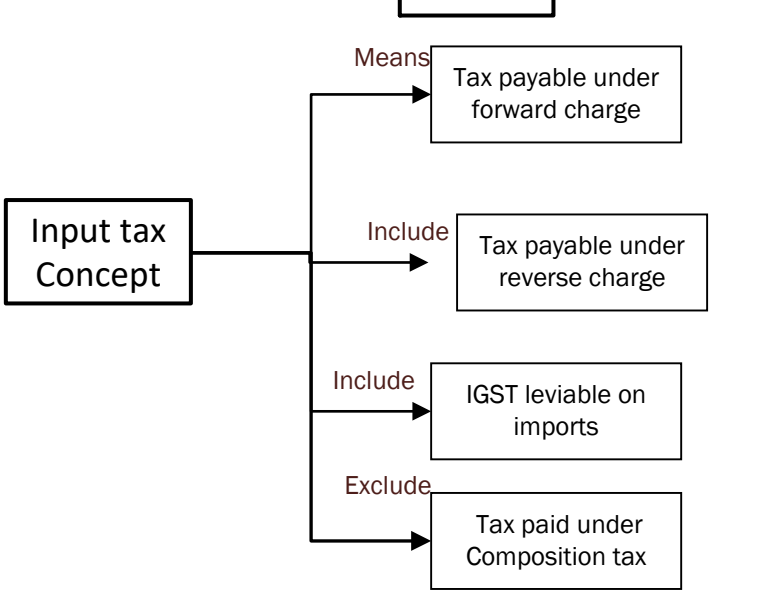

Services on board a conveyance
Location of the first scheduled point of departure of that conveyance for the journey
Bankingand other financial services
Location of the supplier of services if the location of the recipient of services is not available
Location of the recipient of services on the records of the supplier
Insurance services
B2B: Location of such registered person
B2C: Location of the recipient of services on the records of the supplier
Advertisement services to the Government
Each of States/Union Territory where the advertisement is broadcasted/displayed/run
Proportionate value in case of multiple States
Telecommunication services
Fixed line
Location of such fixed equipment
Post paid
Location of billing address of the recipient
Prepaid
Place of sale of prepaid vouchers
Other cases
Address of the recipient in records

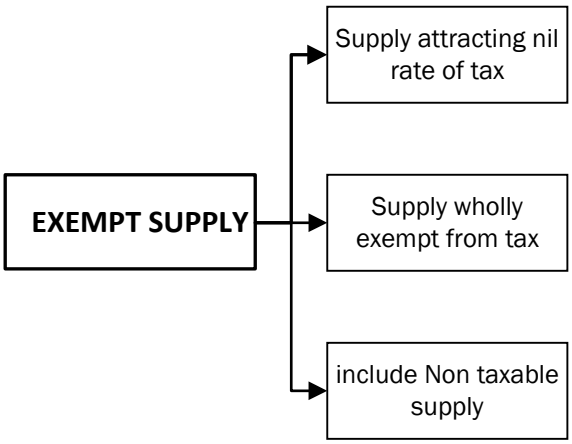

Rules : Where Supplier OR Recipient Located Outside India Sec 13
Place of Service When Supplier OR Recipient Located Outside India Sec 13 Cross Border Services
(1) (a)Services supplied in respect of goods which are required to be made physically available
Location where the services are actually performedNew Topic
(1)(b)Services supplied in respect of goods but from a remote location by way of electronic means
Location where the goods are situated at the time of supply of services
(1) (a) and (b)Above provisions are not applicable in case of goods that are temporarily imported into India for repairs and exported after repairs
(2.)Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services
Location where the services are actually performed
(3)Service supplied directly in relation to an immovable property
Place where the immovable property is located or intended to be located
(4).Admission to or organisation of an event
Place where the event is actually held
In case of above (2) (3) and (4) services are supplied
At more than one location, including a location in the taxable territory -POS is Location in taxable territory
In more than one State- POS is Each such State in proportion to the value of services provided in each State
(5)(a)Services supplied by a banking company, or a financial institution, or a NBFC to account holders
Location of the supplier of services
5(b)Intermediary services
Location of the supplier of services
(5)(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month
Location of the supplier of services
(6)Transportation of goods, other than by way of mail or courier
Place of destination of such Goods
(7) Passenger transportation
Place where the passenger embarks on the conveyance for a continuous journey
(8)Services provided on-board a conveyance
First scheduled point of departure of that conveyance for the journey
(9)Online information and database access or retrieval services
Location service of Recipient
All other Services Ie Services other than SL 1 to 9
Location of the recipient of service
Location of the supplier of service, if location of recipient is not available in the ordinary course of business

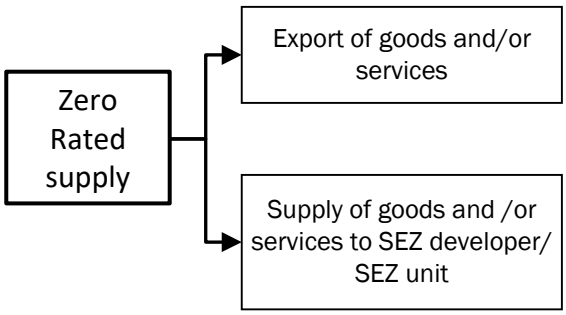
Input tax Basic Definitions

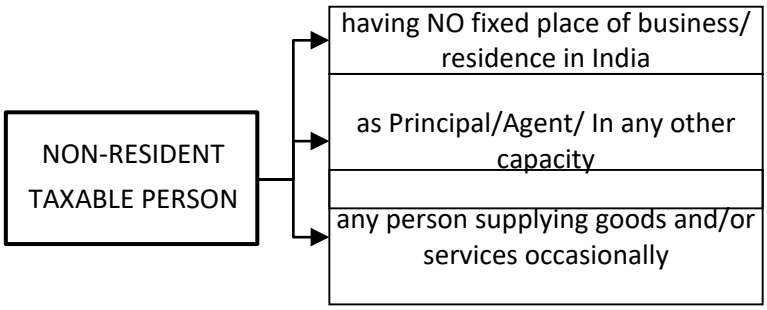
Note: Old Relevant topic Cenvat Credit rules. Modified extensively

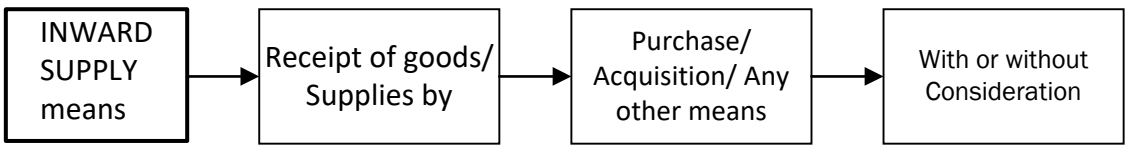


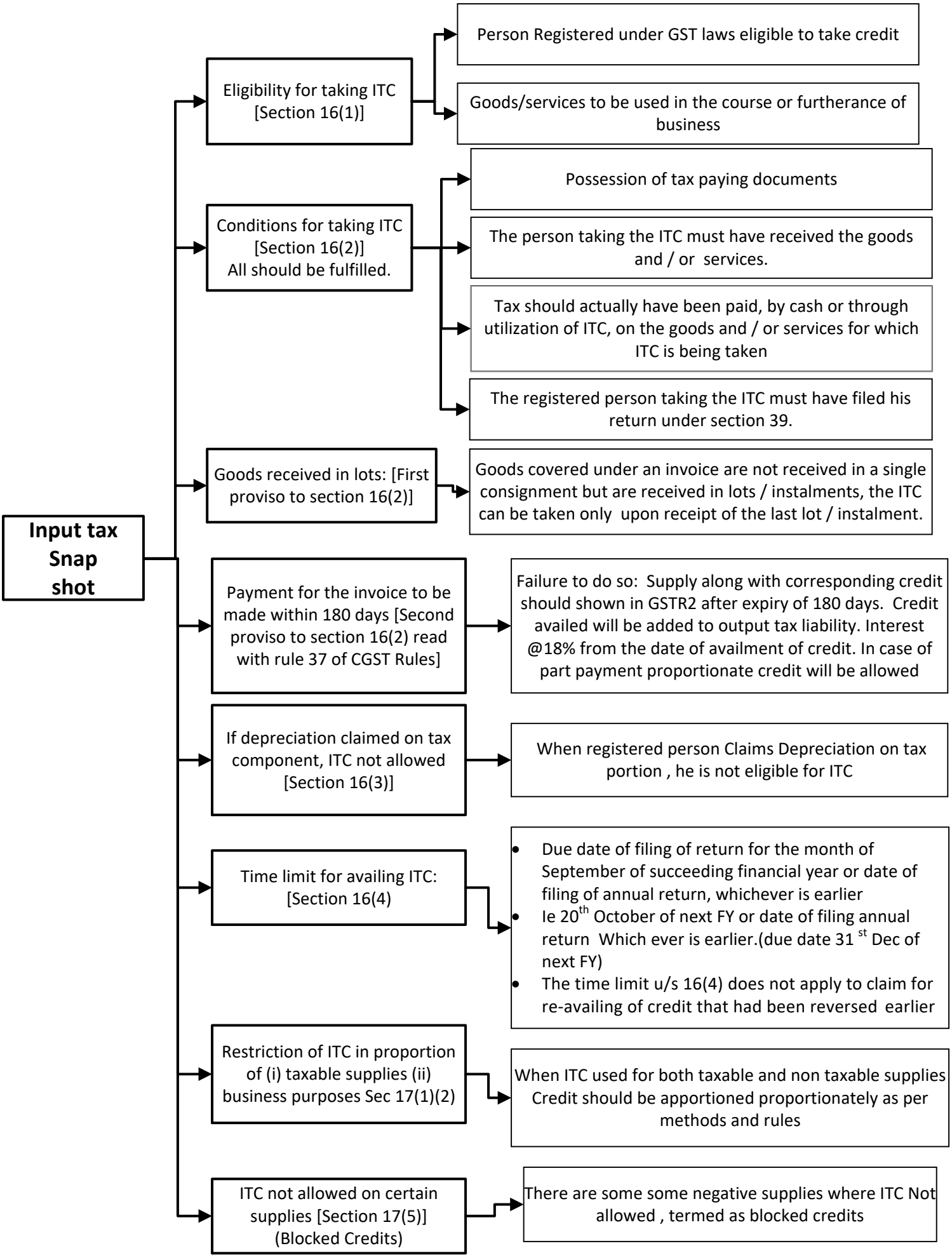


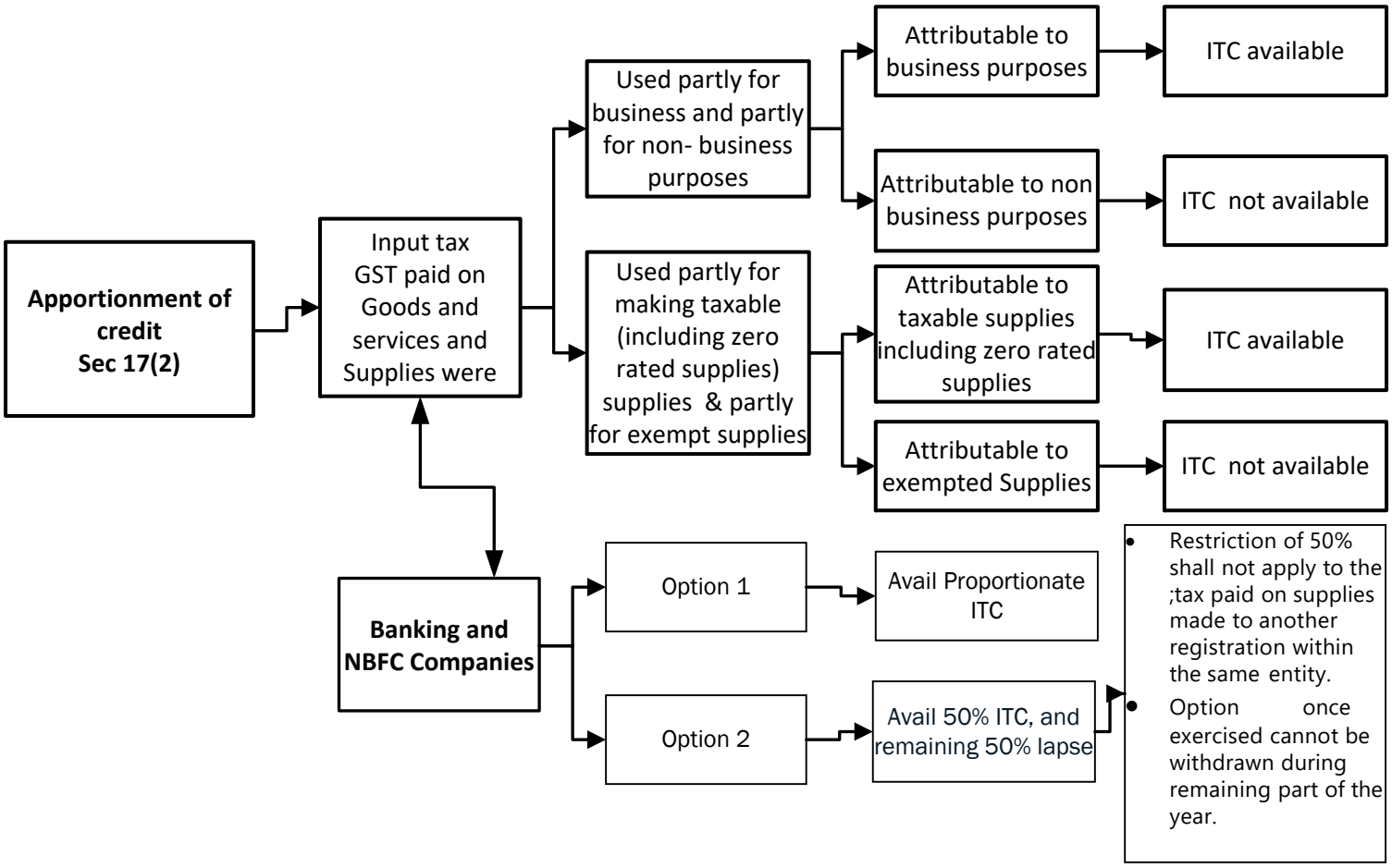






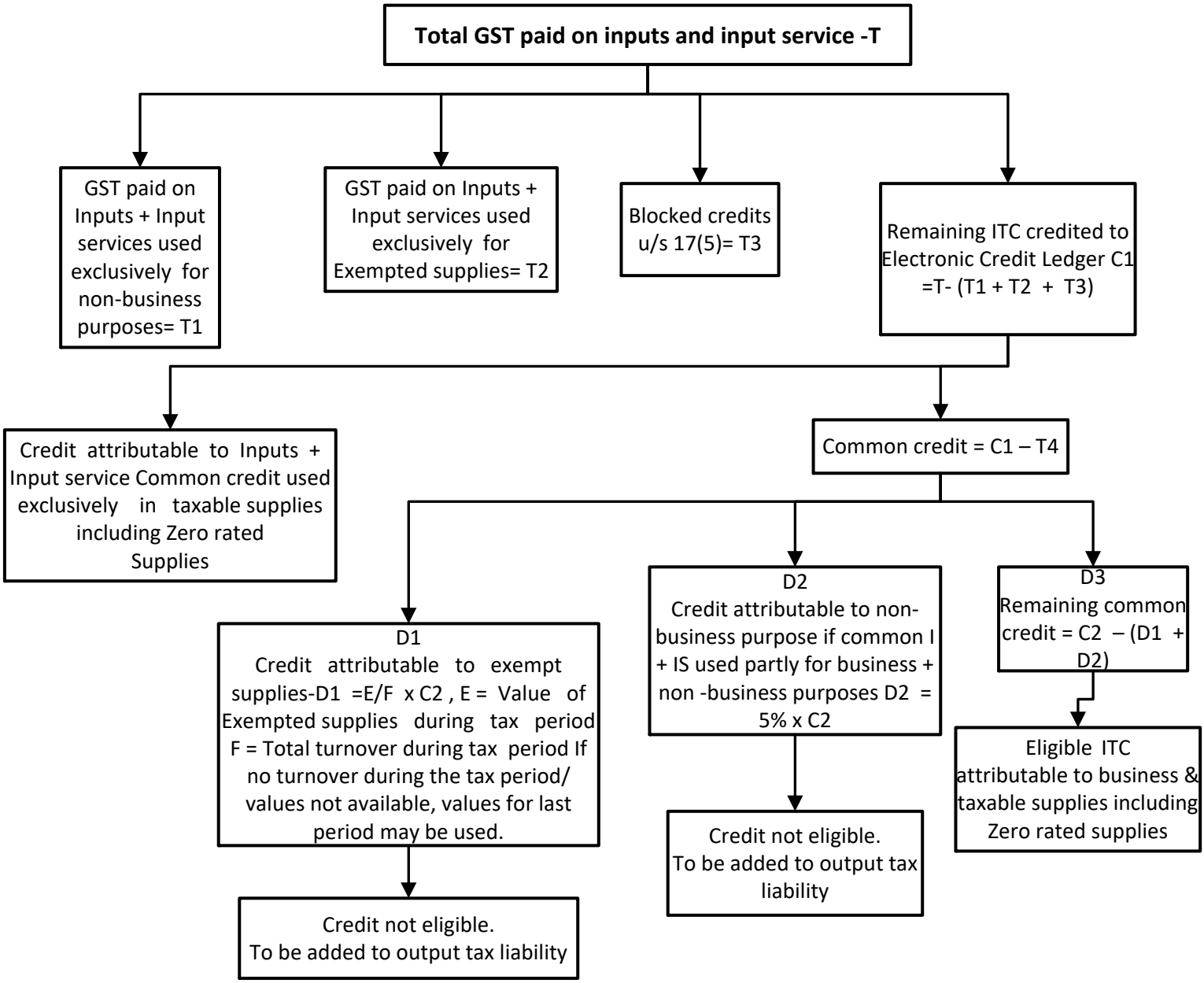



Input tax Snap shot
Eligibility for taking ITC [Section 16(1)]
Person Registered under GST laws eligible to take credit
Goods/services to be used in the course or furtherance of business
Conditions for taking ITC [Section 16(2)] All should be fulfilled.
Possession of tax paying documents
The person taking the ITC must have received the goods and / or services.
Tax should actually have been paid, by cash or through utilization of ITC, on the goods and / or services for which ITC is being taken
The registered person taking the ITC must have filed his return under section 39.
Goods received in lots: [First proviso to section 16(2)]
Goods covered under an invoice are not received in a single consignment but are received in lots / instalments, the ITC can be taken only upon receipt of the last lot / instalment.
Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]
Failure to do so: Supply along with corresponding credit should shown in GSTR2 after expiry of 180 days. Credit availed will be added to output tax liability. Interest @18% from the date of availment of credit. In case of part payment proportionate credit will be allowed
If depreciation claimed on tax component, ITC not allowed [Section 16(3)]
When registered person Claims Depreciation on tax portion , he is not eligible for ITC
Time limit for availing ITC: [Section 16(4)
Due date of filing of return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier
Ie 20th October of next FY or date of filing annual return Which ever is earlier.(due date 31 st Dec of next FY)
The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier
Restriction of ITC in proportion of (i) taxable supplies (ii) business purposes Sec 17(1)(2)
When ITC used for both taxable and non taxable supplies Credit should be apportioned proportionately as per methods and rules
ITC not allowed on certain supplies [Section 17(5)] (Blocked Credits)
There are some some negative supplies where ITC Not allowed , termed as blocked credits



Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received post completion certificate.

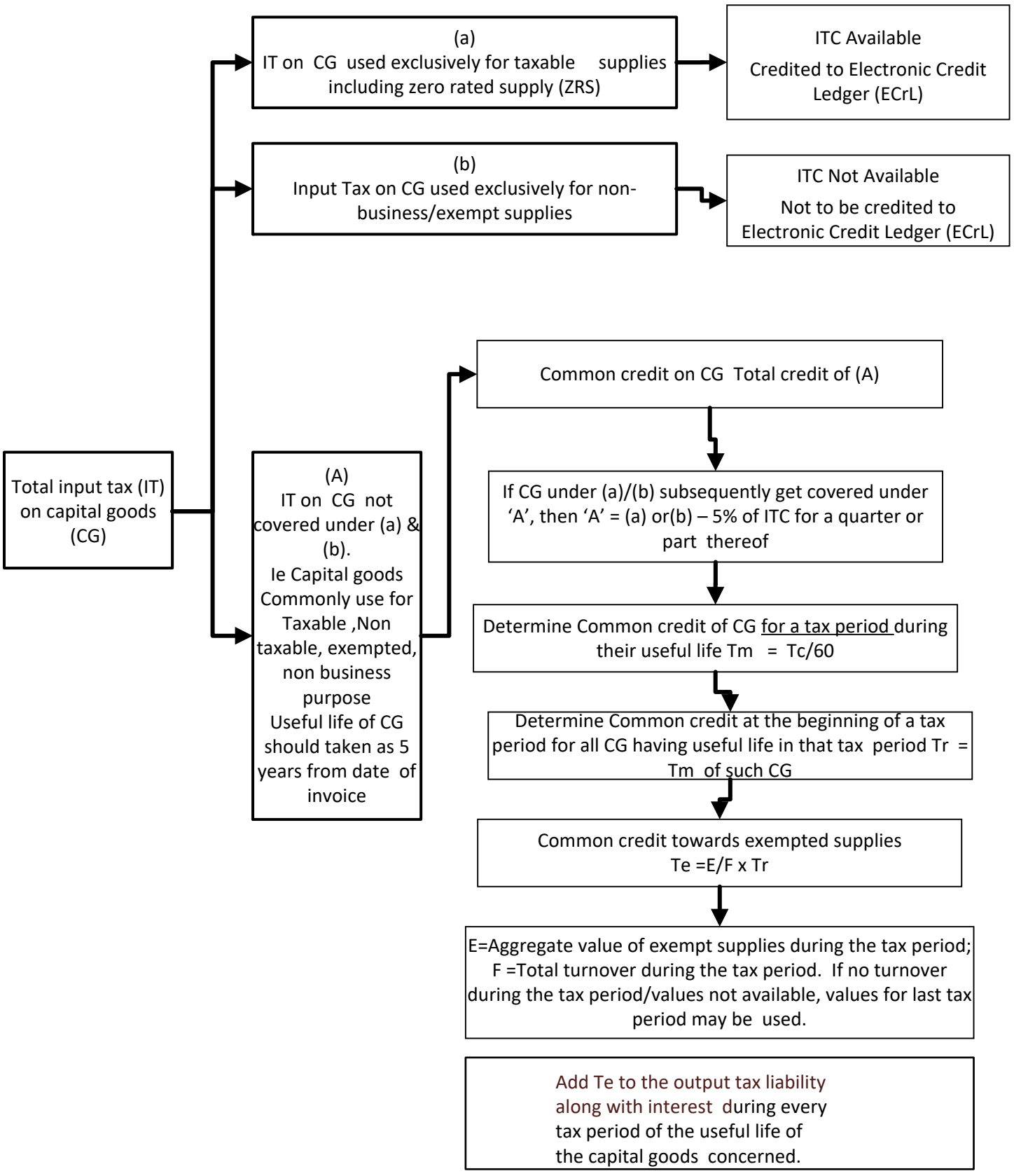
Apportionment of common credit in case of inputs and Input service



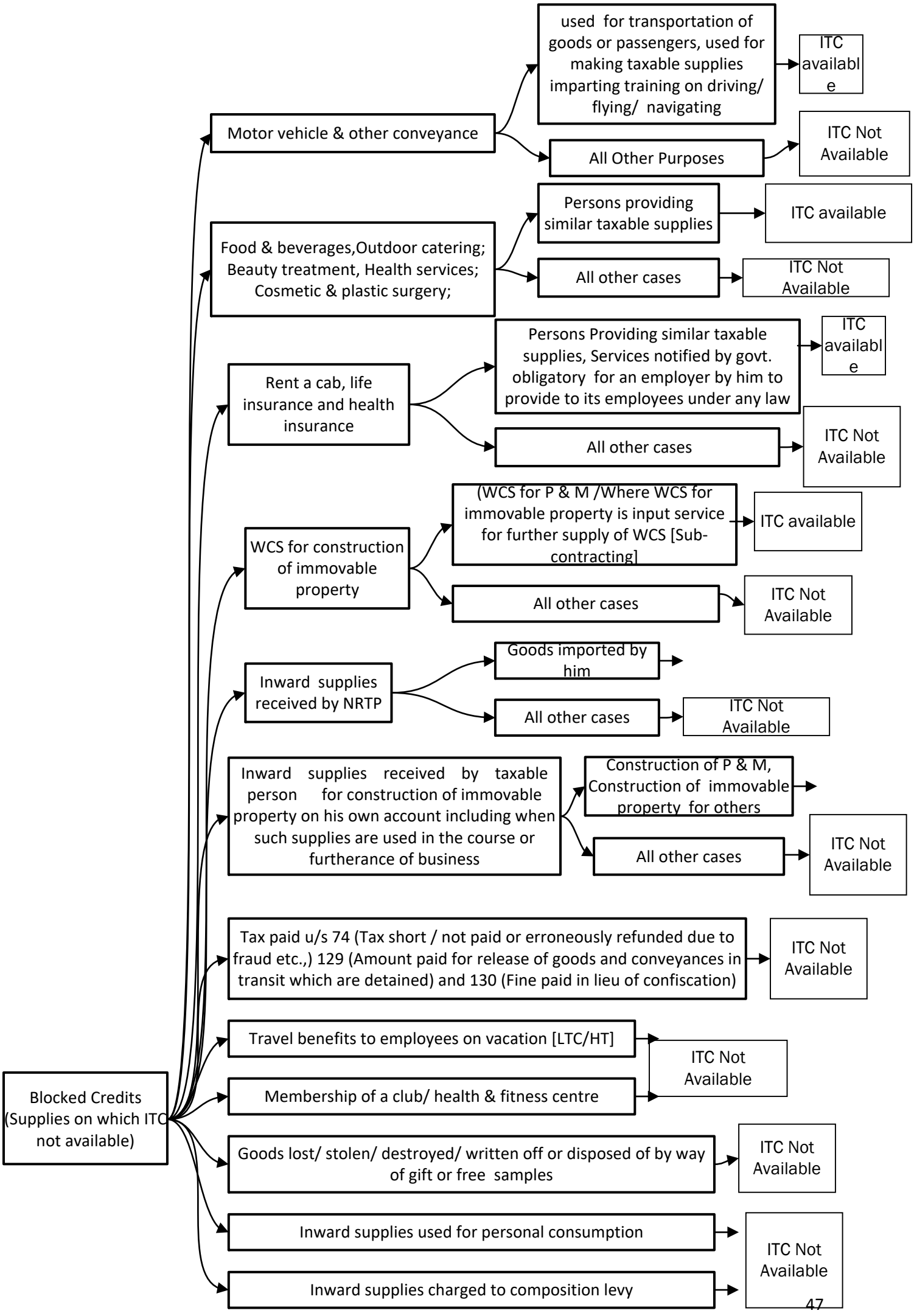
(Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after CC. Aggregate value of exempt supplies and total turnover exclude the Central excise duty, State excise duty & VAT.

- C_3 will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- $\sum (D_1 + D_2)$ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already added to output tax liability every month, the differential amount will be added to the output tax liability in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount added to output tax liability every month, the additional amount paid has to be claimed back as credit in GSTR 3 of any month till September of the succeeding year.

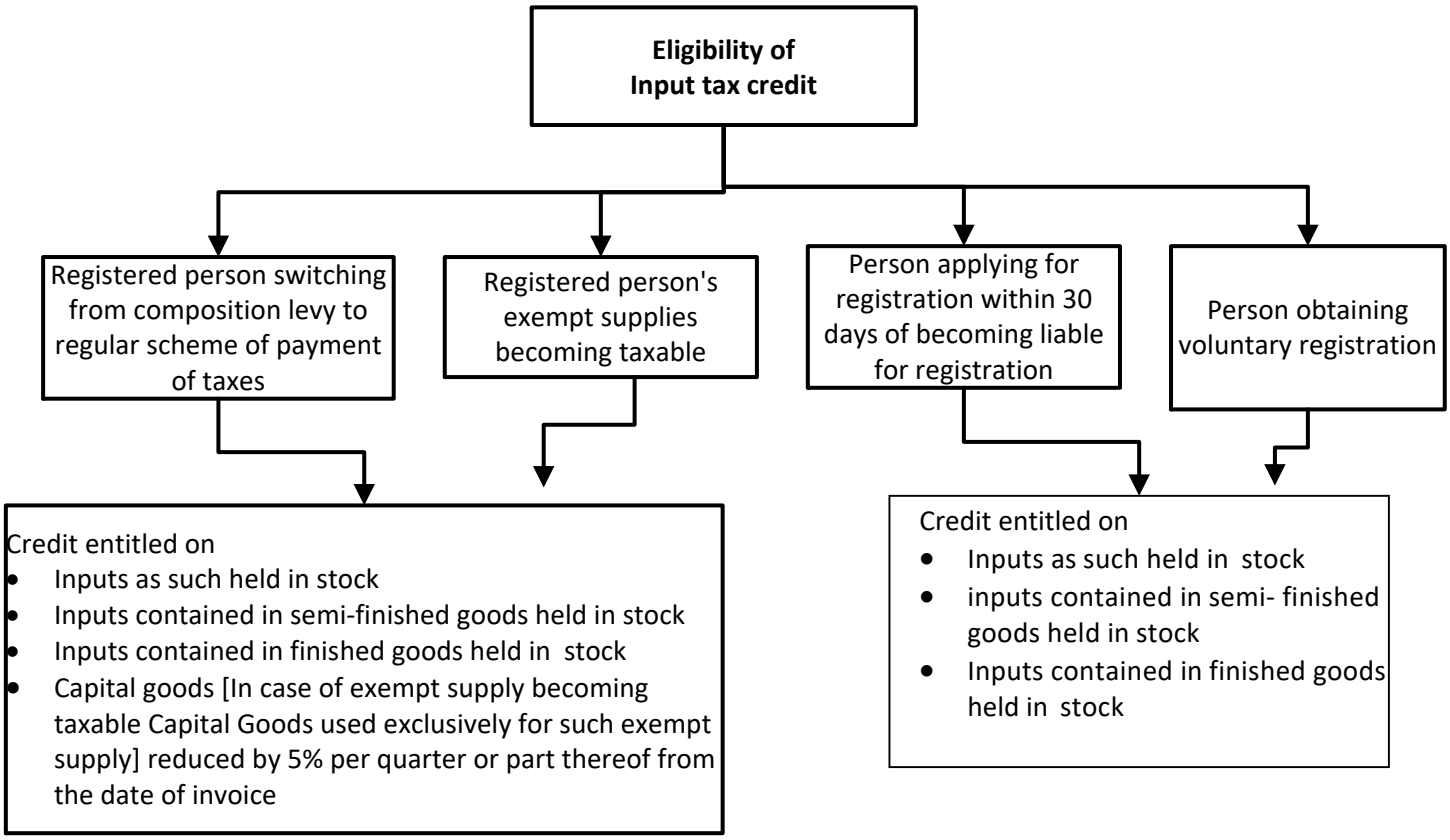
Apportionment of Common Credit in case of Capital goods Rule 43 of CGST



Te will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate.
Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty & VAT.


Blocked Credits (Supplies on which ITC not available)
Motor vehicle & other conveyance
used for transportation of goods or passengers, used for making taxable supplies imparting training on driving/ flying/ navigating
ITC available
All Other Purposes
ITC Not Available
Food & beverages,Outdoor catering; Beauty treatment, Health services; Cosmetic & plastic surgery;
Persons providing similar taxable supplies
ITC available
All other cases
ITC Not Available
Rent a cab, life insurance and health insurance
Persons Providing similar taxable supplies, Services notified by govt. obligatory for an employer by him to provide to its employees under any law
ITC available
All other cases
ITC Not Available
WCS for construction of immovable property
(WCS for P & M /Where WCS for immovable property is input service for further supply of WCS [Sub-contracting]
ITC available
All other cases
ITC Not Available
Inward supplies received by NRTP
Goods imported by him
All other cases
ITC Not Available
Inward supplies received by taxable person for construction of immovable property on his own account including when such supplies are used in the course or furtherance of business
Construction of P & M, Construction of immovable property for others
All other cases
ITC Not Available
Tax paid u/s 74 (Tax short / not paid or erroneously refunded due to fraud etc.,) 129 (Amount paid for release of goods and conveyances in transit which are detained) and 130 (Fine paid in lieu of confiscation)
ITC Not Available
Travel benefits to employees on vacation [LTC/HT]
Membership of a club/ health & fitness centre
ITC Not Available
Goods lost/ stolen/ destroyed/ written off or disposed of by way of gift or free samples
ITC Not Available
Inward supplies used for personal consumption
Inward supplies charged to composition levy
ITC Not Available

Special circumstances enabling availing of credit when non paying tax entities becomes tax paying entities



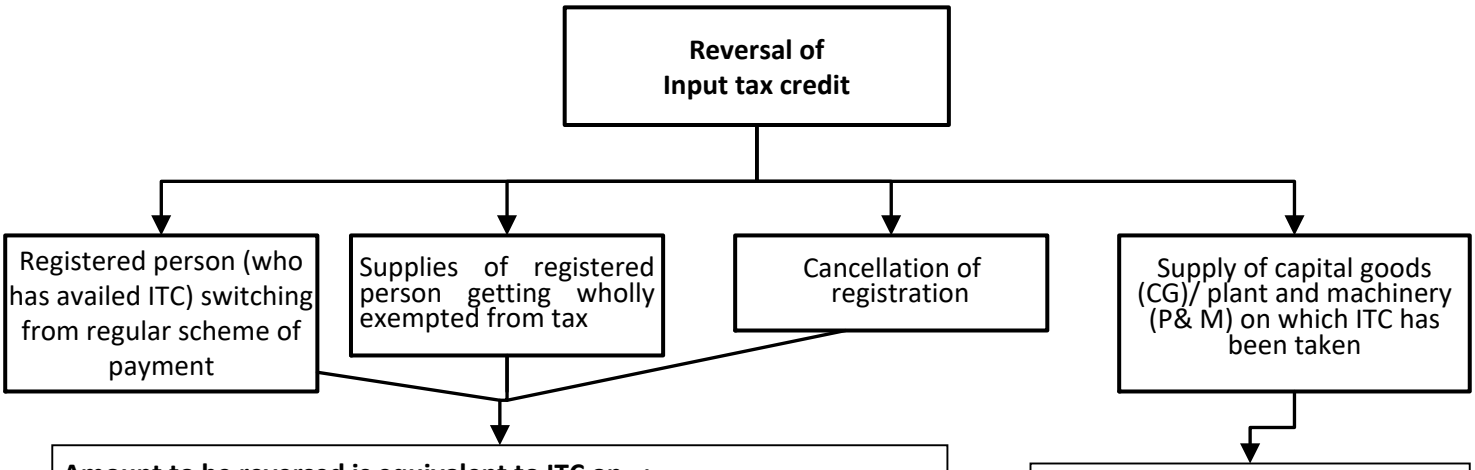
Credit available on the day immediately preceding day happening of an event in all the cases

ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.

Conditions for availing above credit:

- Filing of electronic declaration giving details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible.
- Declaration has to be filed within 30 days from becoming eligible to avail credit.
- Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than ` 2,00,000.

Special circumstances enabling availing of credit when tax paying entities becomes non tax paying entities



Amount to be reversed is equivalent to ITC on :
Inputs held in stock/ inputs contained in semi-finished or finished goods held in stock
Capital goods
on the day immediately preceding the date of switch over/ date of exemption/date of cancellation of registration

Amount to be paid is equivalent to higher of the following:

- ITC on CG or P&M less 5% per quarter or part thereof from the date of invoice
- Tax on transaction value of such CG or P & M
- If amount at (i) exceeds (ii), then reversal amount will be added to output tax liability.
- Separate ITC reversal is to be done for CGST, SGST/UTGST and IGST
- Tax to be paid on transaction value when refractory bricks, moulds, dies, jigs & fixtures are supplied as scrap.

Manner of reversal of credit on inputs and capital goods & other conditions

(i) **Inputs** – Proportionate reversal based on corresponding invoices. If such invoices not available, prevailing market price on the effective date of switch over/ exemption/cancellation of registration should be used with due certification by a practicing CA/ Cost Accountant

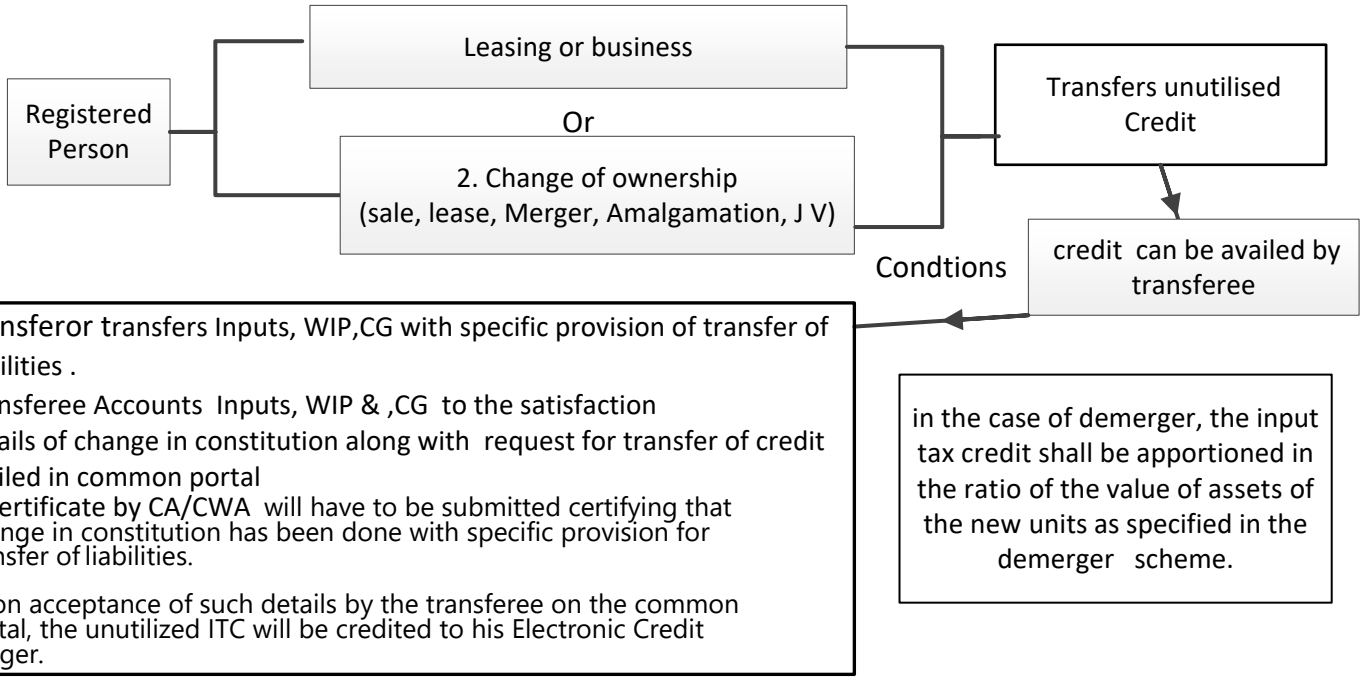
(ii) **Capital goods** – Reversal on *pro rata* basis pertaining to remaining useful life (in months), taking useful life as 5 years.

(iii) ITC to be reversed will be calculated separately for ITC of CGST, SGST/UTGST and IGST.

(iv) Reversal amount will be added to output tax liability of the registered person.

(v) Electronic credit/cash ledger will be debited with such amount. Balance ITC if any will lapse.

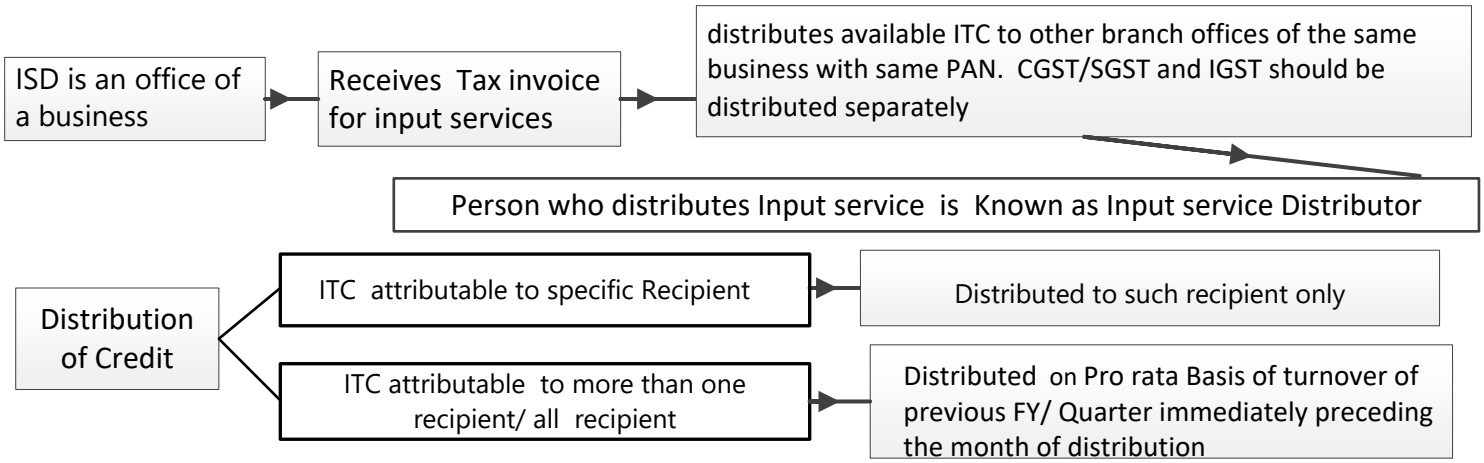
Transfer of Unutilised Credit



Procedure and ITC on goods sent for job work Sec 19

- Principal can take credit o goods (inputs and capital goods) sent for job work.
- Credit can be taken even if t said goods are sent directly t job worker without being first brought to the principal' place of business
- The inputs and/or capital goods are required to be sent to the job worker under the cover of a challan issued by the principal with prescribed form
- The challan needs to be issued even for the inputs or capital goods sent directly to the job worker
- Time limit for return of goods sent for job work/supply from job worker's place of business
  - Inputs - 1 year/ Capital goods - 3 years from the date of sending the same for job work or from the date of receipt of the same by the job worker
- On failing to comply with the time limit for return of goods, the goods will be deemed to be supplied to the job worker on the day they were sent out.
- Principal is liable to pay tax along with applicable interest on such supply.
- Time-limit for return of goods do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.
- The details of various challans relating to goods sent to /received from job worker or sent from one job worker to another job worker are to be included in quarterly Form GST ITC 04 submitted by 25th day of the month succeeding the relevant quarter.
- CGST Commissioner or SGST/UTGST Commissioner to grant extension of time period for furnishing of the said details ***Notification No. 51/2017 CT dated 28.10.2017***

Distribution of Credit by Input Service Distributor Sec 20 and Rule 39



The credit attributable to a recipient is distributed even if such recipient is unregistered or is making exempt supplies. Ineligible credit also to be distributed.

Illustration

XYZ Ltd, having its head Office at Chennai is registered as ISD. It has three units in different cities situated in different States namely 'Hyderabad, Bangalore' and Cochin. M/s XYZ Ltd furnishes the following information. CGST paid on services used only for Chennai Unit: ` Rs. 60,000 IGST, CGST & SGST paid on services used for all units: Rs.2,40,000/-Turnover of the units for the relevant period are as follows

Place	Turnover in Rs.
Chennai	5,00,00,000
Hyderabad	8,00,00,000
Bangalore	10,00,00,000
Cochin	7,00,00,000
Total Turnover	30,00,00,000

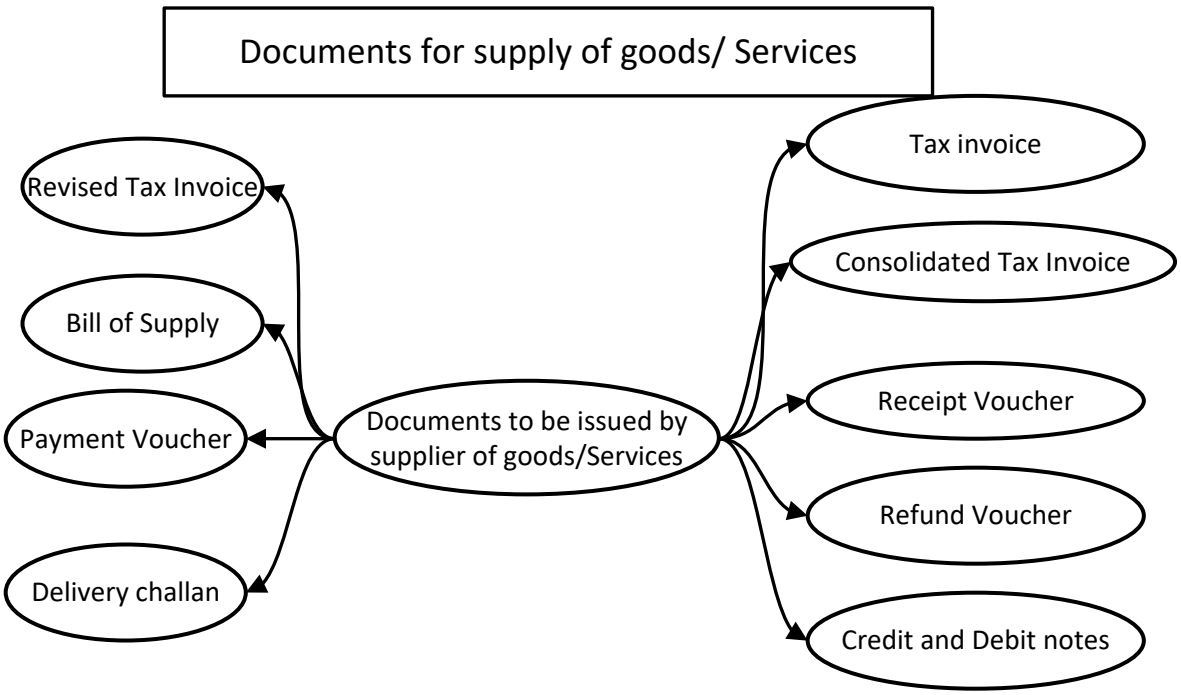
Solution

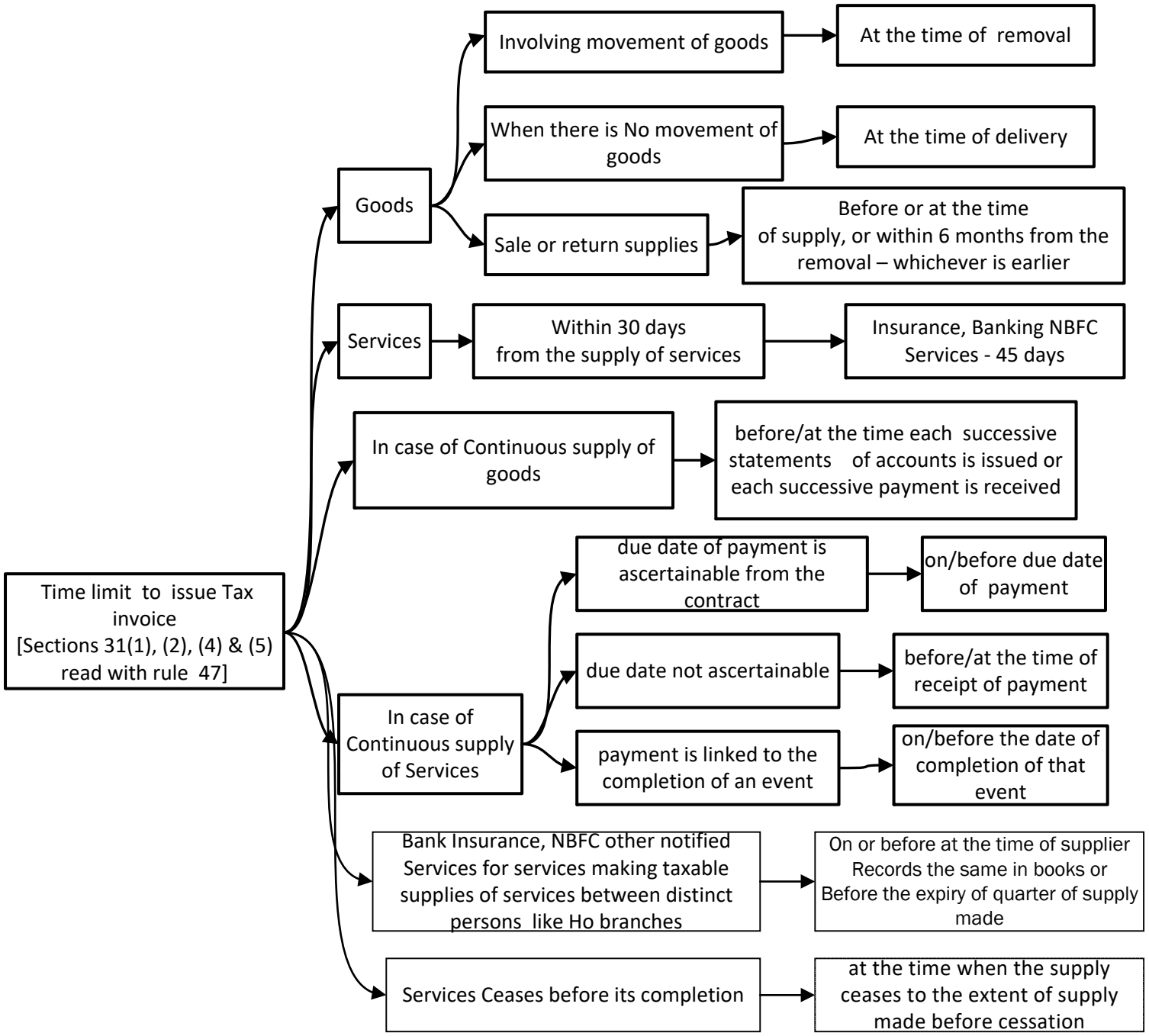
Particulars	Total Credit	Distribution of total credit			
		Chennai	Hyderabad	Bangalore	Cochin
CGST Credit	60,000	60,000	NIL	NIL	NIL
IGST Credit turnover ratio	2,40,000	40,000	64,000	80,000	56,000

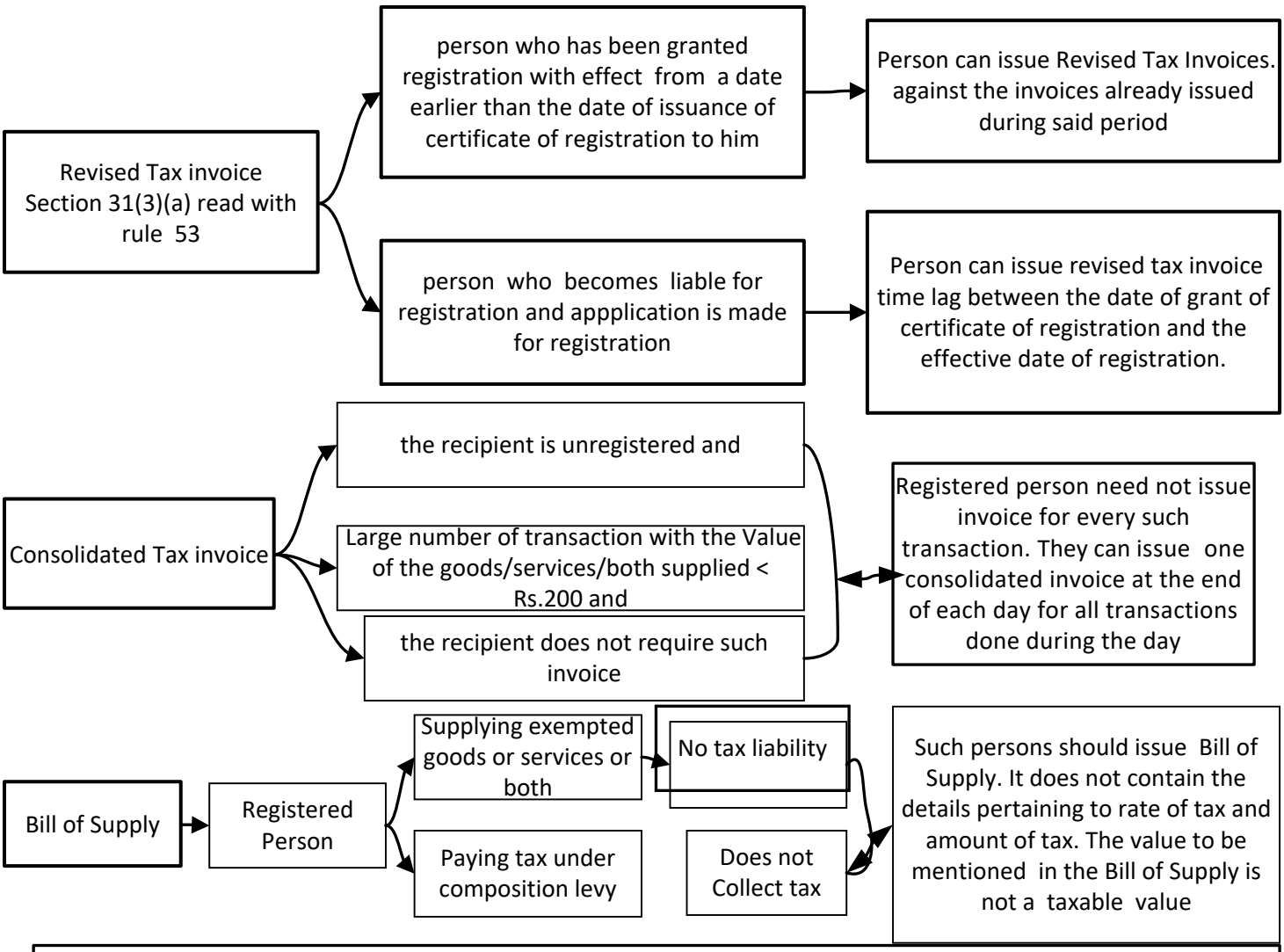
CA N.Rajasekhar FCA,DISA(ICAI) Chennai 9444019860, rajdhost@yahoo.com

Procedure for ISD

- Should register as ISD. He cannot accept supplies under reverse charge mechanism. In such case he need a separate registration as a tax payer.
- The ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.
- The ISD needs to issue a ISD credit note, for reduction in credit if the distributed credit gets reduced for any reason.
- The additional ITC on account of issue of a debit note to the ISD is distributed by the ISD
- If the ISD is a banking company/ financial institution including NBFC, the document for distributing credit need not be serially numbered.
- ITC available for distribution in a month is to be distributed in the same month.
- Details of distribution of credit and all ISD invoices issued should be furnished by ISD in monthly GSTR-6 within 13 days after the end of the month.
- The details in the returns are made available to the respective recipients in their GSTR 2A.The recipients may include these in its GSTR- 2 and take credit.
- An ISD is not required to file annual return.
- If the ISD has distributed excess credit to any recipient, the excess will be recovered from the recipient with interest as if it was tax not paid by initiating action under section 73 or 74

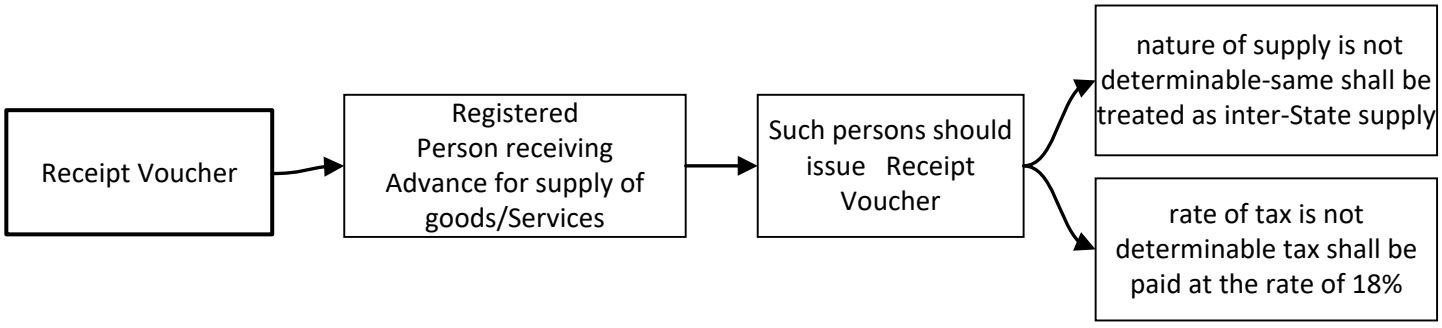

Documents for supply of goods/ Services
Revised Tax Invoice
Bill of Supply
Payment Voucher
Delivery challan
Documents to be issued by supplier of goods/Services
Tax invoice
Consolidated Tax Invoice
Receipt Voucher
Refund Voucher
Credit and Debit notes

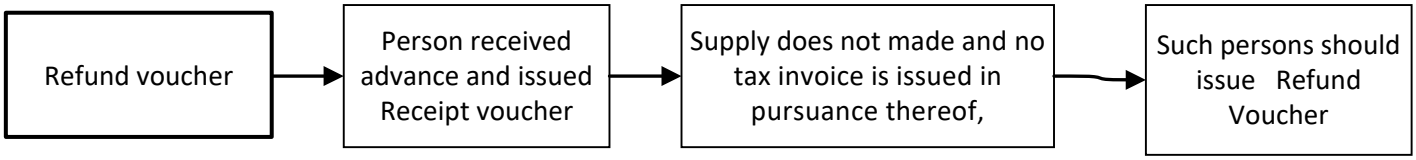

Time limit to issue Tax invoice [Sections 31(1), (2), (4) & (5) read with rule 47]
Goods
Involving movement of goods
At the time of removal
When there is No movement of goods
At the time of delivery
Sale or return supplies
Before or at the time of supply, or within 6 months from the removal – whichever is earlier
Services
Within 30 days from the supply of services
Insurance, Banking NBFC Services - 45 days
In case of Continuous supply of goods
before/at the time each successive statements of accounts is issued or each successive payment is received
In case of Continuous supply of Services
due date of payment is ascertainable from the contract
on/before due date of payment
due date not ascertainable
before/at the time of receipt of payment
payment is linked to the completion of an event
on/before the date of completion of that event
Bank Insurance, NBFC other notified Services for services making taxable supplies of services between distinct persons like Ho branches
On or before at the time of supplier Records the same in books or Before the expiry of quarter of supply made
Services Ceases before its completion
at the time when the supply ceases to the extent of supply made before cessation

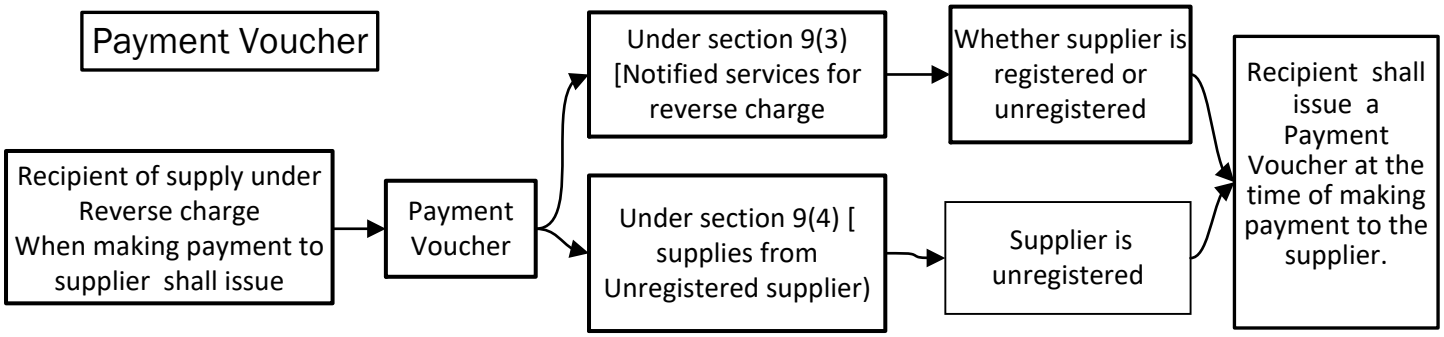


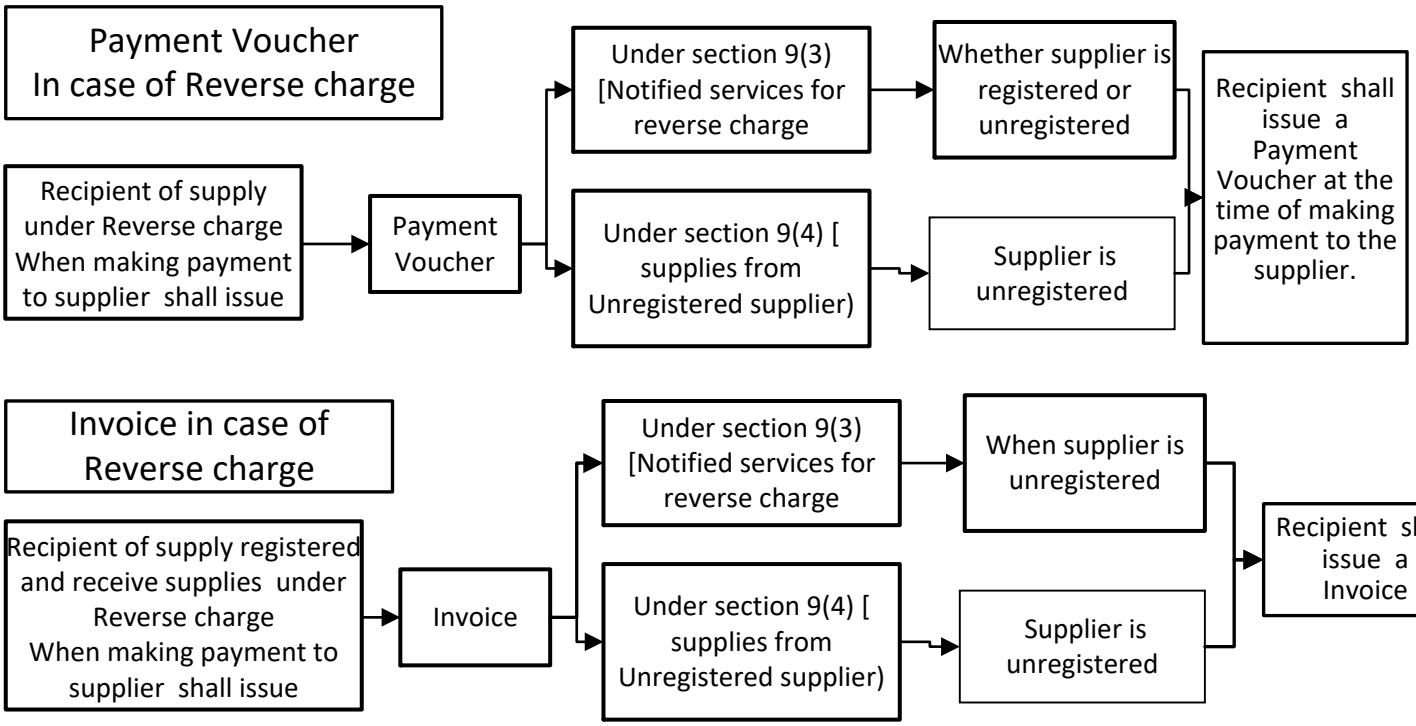
Invoice-cum-bill of supply: Notification No. 45/2017 - Central Tax dated 13th October 2017 -

If a registered person is supplying taxable as well as exempted goods/services to an unregistered person, then he can issue a single "invoice-cum-bill of supply" for all such supplies.








Payment Voucher
In case of Reverse charge
Recipient of supply under Reverse charge When making payment to supplier shall issue
Payment Voucher
Under section 9(3) [Notified services for reverse charge
Under section 9(4) [supplies from Unregistered supplier)
Whether supplier is registered or unregistered
Supplier is unregistered
Recipient shall issue a Payment Voucher at the time of making payment to the supplier.
Invoice in case of Reverse charge
Recipient of supply registered and receive supplies under Reverse charge When making payment to supplier shall issue
Invoice
Under section 9(3) [Notified services for reverse charge
Under section 9(4) [supplies from Unregistered supplier)
When supplier is unregistered
Supplier is unregistered
Recipient shall issue a Invoice

Contents of Tax Invoice		
[Subject to rule 54 (i.e. other than input service Distributor, Banking or NBFC and so on) Section 31 read with Rule 46 of the CGST Rules, 2017] There is no format prescribed for an invoice, however, invoice rules makes it mandatory for an invoice to have the following fields (only applicable field are to be filled		
1	Name, address and GSTIN of the supplier	
2	A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolized as "-" and "/" respectively, and any combination thereof, unique for a financial year	
3	Date of its issue	
4	Name, address and GSTIN or UIN, (Unique Identity Number for specialized agency like UNO) if registered, of the recipient	
5	If the recipient is unregistered and value of supply	Particulars of Invoice
	Rs. 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State Code.
	Less than Rs.50,000	Above details should be given only if unregistered recipient ask for
6	Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more	
7	HSN code of goods or Accounting Code of Services	
8	Description of goods or services	
9	Quantity in case of goods and unit or Unique Quantity Code there of	
10	Total value of supply of goods or services or both	
11	Taxable value of supply of goods or services or both, taking into account the discount or abatement, if any	
12	Rate of tax (Central tax, State tax, Integrated tax, union territory tax or cess)	
13	Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, union territory tax or cess)	
14	Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce	
15	Address of delivery where the same is different from the place of supply	
16	Whether the tax is payable on reverse charge basis	
17	Signature or digital signature of the supplier or his authorized representative	

- A registered person may not issue a Tax Invoice if: Value of the goods/services/both supplied < Rs.200, the recipient is unregistered; and the recipient does not require such invoice.
- Instead such registered person shall issue a **Consolidated Tax Invoice** for such supplies at the close of each day in respect of all such supplies.

where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single **"invoice-cum-bill of supply"** may be issued for all such supplies. This rule is notwithstanding anything contained in rule 46 or rule 49 or rule 54 of CGST Rules. ***[Notification No. 45/2017 CT dated 13.10.2017]***

Invoice in case of export of goods or services [Third proviso to rule 46]

- In the case of the export of goods or services, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT ON PAYMENT OF INTEGRATED TAX" or "SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX, as the case may be
- Particulars of an Export Invoice are same as a Tax Invoice. However, where recipient is unregistered and value of supply is Rs.50,000 or more, instead of name of State and its code, in case of an export invoice, name of the country of destination is to be mentioned

Particulars of Revised Tax Invoice

The word "Revised Invoice", wherever applicable, indicated prominently;
Name, address and GSTIN of the supplier;
Nature of the document;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
Date of issue of the document;
Name, address and GSTIN or UIN, if registered, of the recipient;
Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
Value of taxable supply of goods or services, rate of tax and the amount of the tax credited/debited to the recipient
Signature/digital signature of the supplier/his authorized representative

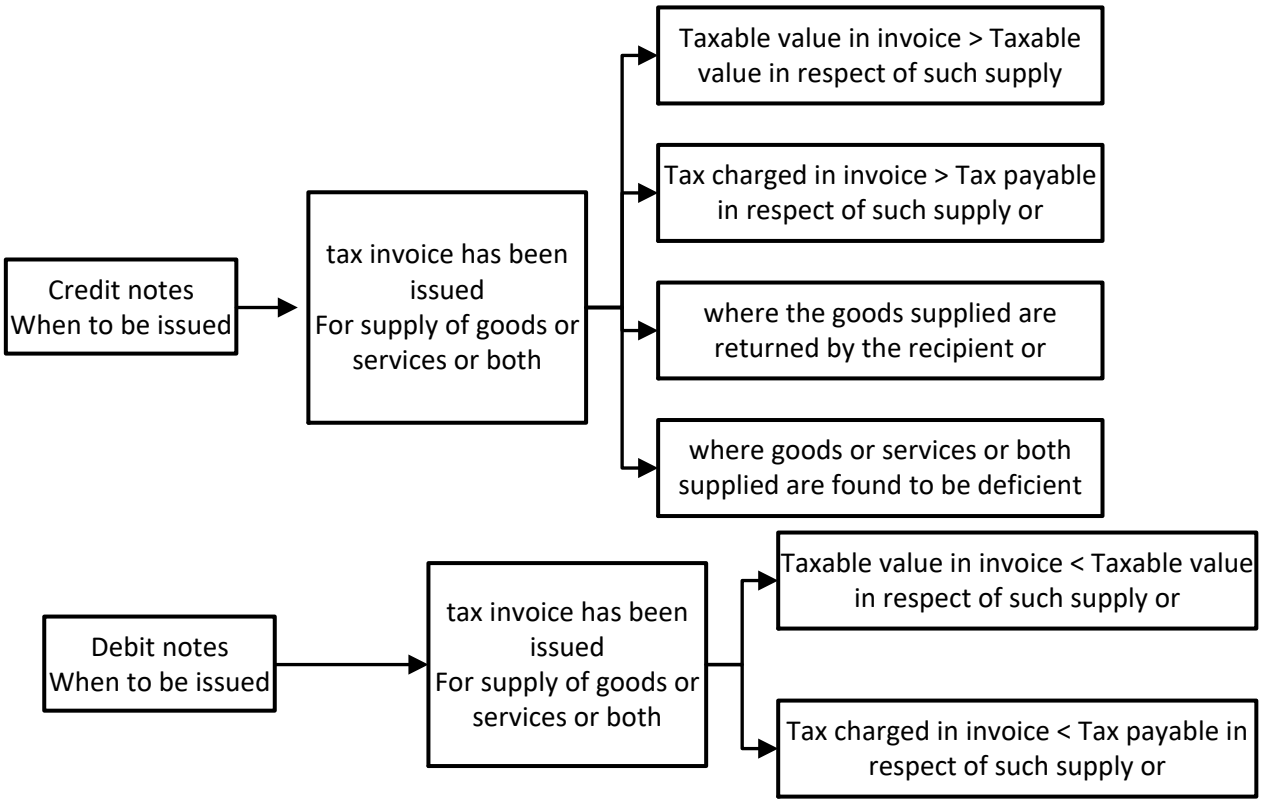
Particulars of Bill of Supply
Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding 16 characters, in one or more multiple series, containing alphabets or numerals or special
characters -hyphen or dash and slash and any combination thereof, unique for a FY;
Date of its issue;
Name, address and GSTIN or UIN, if registered, of the recipient;
HSN Code for goods or services;
Particulars of Refund Voucher
Particulars of Receipt Voucher
Signature/digital representative.

Particulars of Payment Voucher
Name, address and GSTIN of the supplier if registered;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and any combination thereof, unique for a FY
Date of its issue;
Name, address and GSTIN of the recipient;
Description of goods or services;
Amount paid;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
Amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
Signature/digital signature of supplier/his authorized representative

	Particulars/Contents of Delivery Challan
1	Date and number of the delivery challan
2	Name, address and GSTIN of the consigner, if registered
3	Name, address and GSTIN or UIN of the consignee, if registered
4	HSN code and description of goods,
5	Quantity (provisional, where the exact quantity being supplied is not known)
6	Taxable value
7	Tax rate and tax amount – central tax, state tax, integrated tax, union territory tax or cess, where the transportation is for supply to the consignee
8	Place of supply, in case of inter-state movement
9	Signature

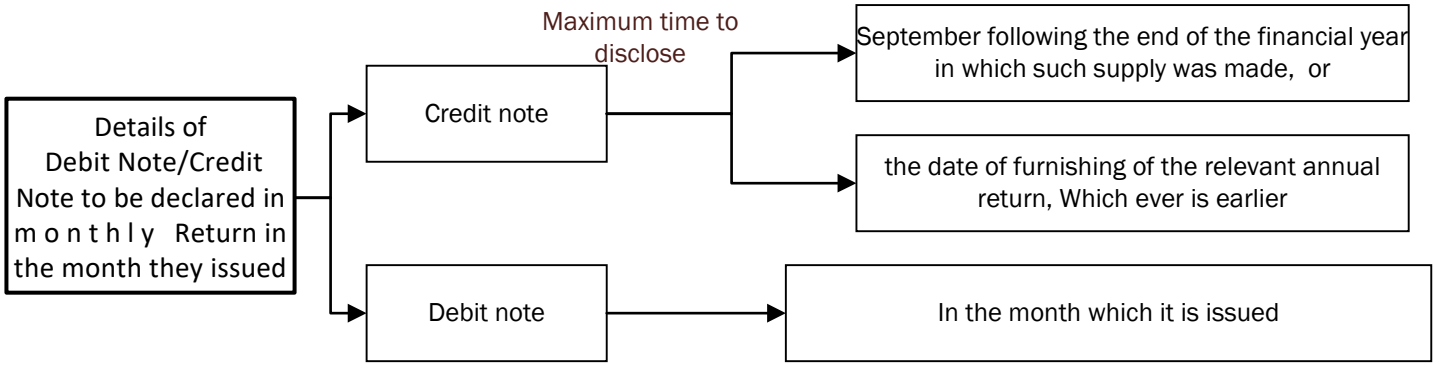
Debit notes and Credit Notes Sec 34 CGST ACT 2017

Registered Supplier of goods or services or both shall issue Credit or Debit notes to Recipient of goods or services or both



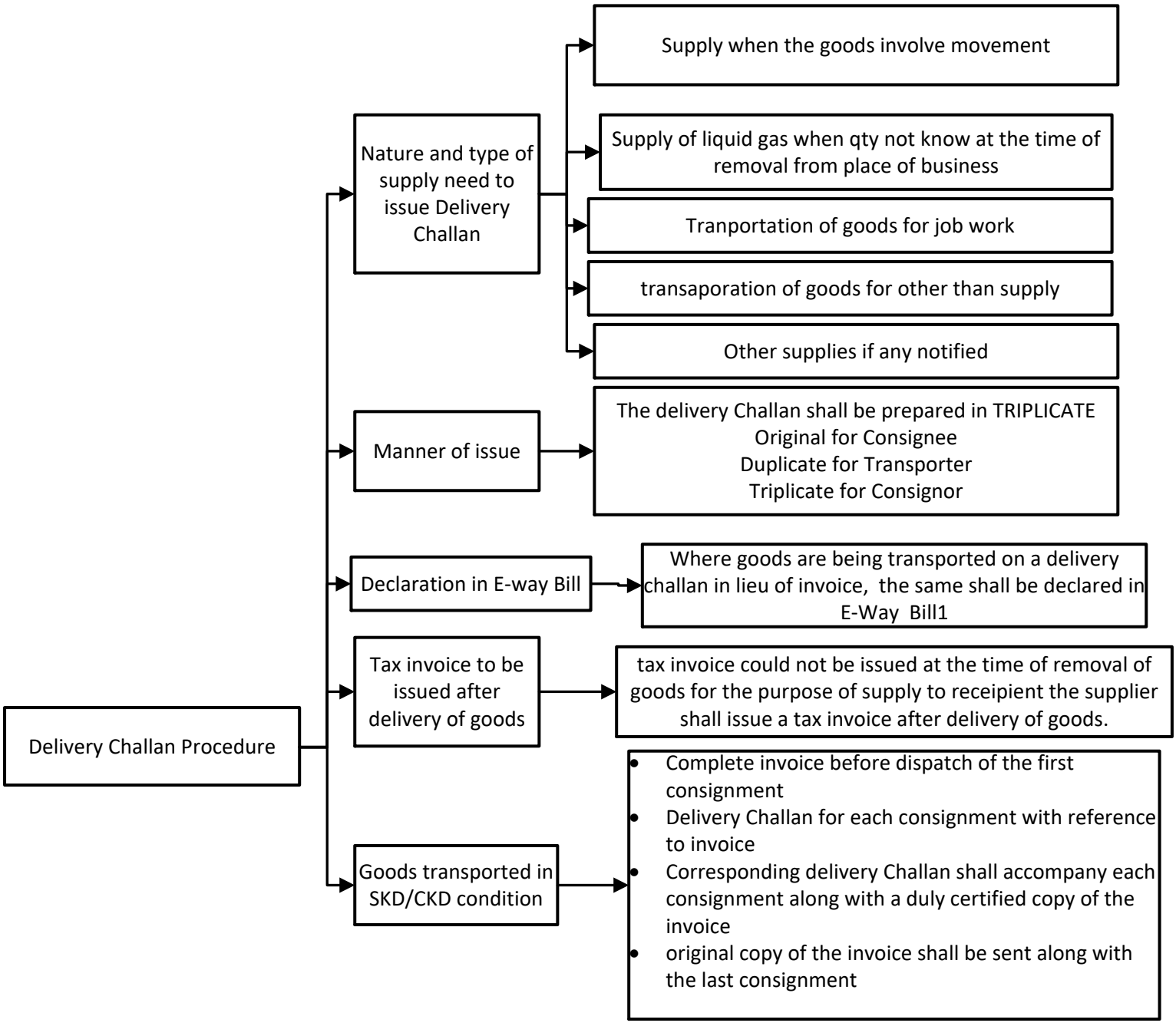
Debit note shall include a supplementary invoice.

Particulars of the Debit and Credit Notes are same as the particulars of revised tax invoices.



Delivery Challan

Rule 55 : Specifies the cases where at the time of removal of goods, goods may be removed on delivery challan and invoice may be issued after delivery



Particulars/Contents of Delivery Challan
Date and number of the delivery challan
Name, address and GSTIN of the consigner, if registered`
Name, address and GSTIN or UIN of the consignee, if registered
HSN code and description of `,
Quantity (provisional, where the exact quantity being supplied is not known)
Taxable value
Tax rate and tax amount – central tax, state tax, integrated tax, union territory tax or cess, where the transportation is for supply to the consignee
Place of supply, in case of inter-state movement
Signature

PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS [SECTION 49)

Payment of Tax Sec 49

- **(1) Mode of payment of tax dues and other dues**
  - Internet banking or by using credit or debit cards or NEFT or RTGS
  - Up to Rs.10,000 over the counter in approved banks per Challan per tax period by cash/ Cheque/DD
  - Limit of Rs 10,000 not applicable in case of tax recovery proceedings under sale/attachment enforcement/ in case of govt. Persons authorised by Commissdioner
  - Date of credit to CG is the date of payment
- **(2) Credit of input tax to Electorinic Credit ledger**
  - The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger
- **(3) Usage of amount in electronic Cash ledger**
  - Towards payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules
- **(4) Usage of amount in electronic Credit ledger**
  - Used for making any payment towards output tax and IGST
- **(5) Manner of Utilisation of Credit**

Input Tax Credit	Can be utilized against	Order of utilization
CGST	CGST & IGST	1. CGST
		2. IGST
SGST	SGST & IGST	1. SGST
		2. IGST
UTGST	UTGST & IGST	1. UTGST
		2. IGST
IGST	IGST, CGST, SGST & UTGST	1. IGST
		2. CGST
		3.SGST/UTGST

- **(6)Refund of amount in Electronic Cash Ledger**
  - The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee and any other amount shall be refunded
- **(7)All liabilities of a taxable person recorded in Electronic liabilities register**
- **(8)Manner of discharge of tax liability**
  - self-assessed tax, and other dues as per return of previous tax period
  - self-assessed tax, and other dues as per return of current tax period
  - any other amount payable under this Act or the rules and demand determined u/s 73/74
- **(9) It is assumed that tax paid by Taxable Person deemed to have passed the incidence of tax to recipient**

- tax dues" means the tax payable tax dues" means the tax payable under this Act and does not include interest, fee and penalty
- "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made there under.

Electronic Ledgers (E ledger under GST)

Electronic Cash Ledger Rule 87 FORM GST PMT-05

- It will reflect all deposits made in cash, and TDS/TCS made on account of the tax payer.
- Challan *FORM GST PMT-06* generated in common portal along with details of payments to be made. Challan valid for 15 days
- This ledger can be used for making ANY PAYMENT towards tax, interest, penalty, fees or any other amount on account of GST.

Electronic Cash Ledger	
Debit Amount (DR)	**Credit Amount (CR)**
Credit amount of this ledger may be used for payment of tax, interest, fees etc.	Any deposit made towards tax, interest, penalty, late fee etc. via internet banking, RTGS, fund transfer etc.
Remaining credit balance amount after payment of above tax etc. will be refunded to taxable person	TDS/TCS claimed

Electronic liability register Rule 85 FORM GST PMT-01

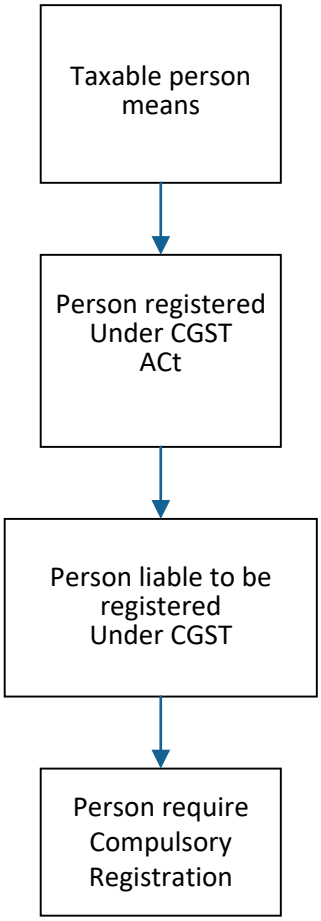
- Electronic Liability Register will Contain the total tax liability of a taxpayer (after netting) for the particular month.

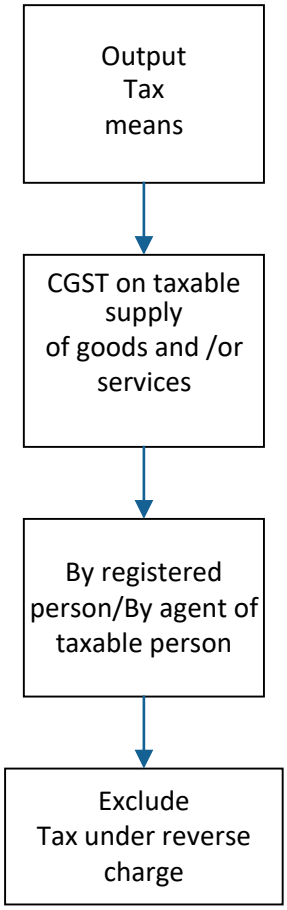
Electronic Liability Register	
Debit Amount (DR)	Credit Amount (CR)
❖ Tax and Other dues as per return ❖ Tax and other dues determined by proper officer; ❖ Tax or interest payable due to mismatch ❖ Any other dues	Amount as per Electronic Cash Ledger
Amount payable towards output tax	Amount as per Electronic Cash Ledger

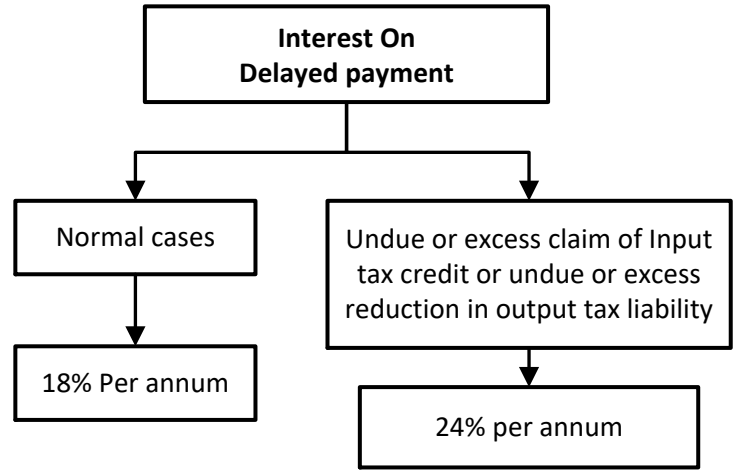
Electronic credit ledger Rule 86 FORM GST PMT-02

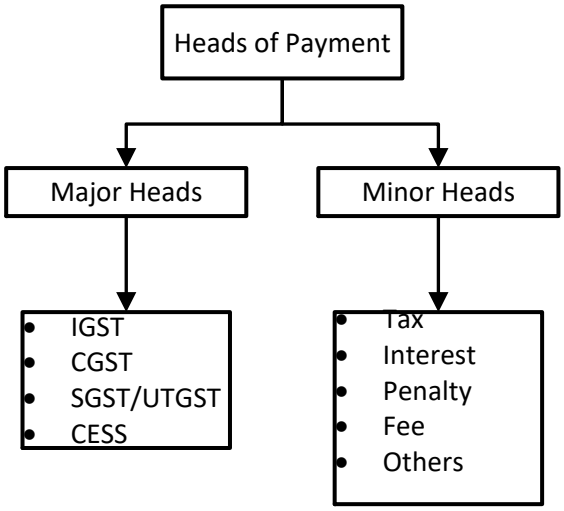
- It will reflect Input Tax Credit as self-assessed in monthly returns.
- The credit in this ledger can be used to make payment of TAX ONLY i.e. output tax and not other amounts such as interest, penalty, fees etc.

Electronic Credit ledger	
Debit Amount (DR)	**Credit Amount (CR)**
Credit amount of this ledger may be used for payment of output tax viz IGST, CGST, SGST, UTGST in the prescribed order.	Input Tax credit as self-assessed in the return in the form of IGST, CGST, SGST, UTGST


Taxable person means
Person registered Under CGST ACt
Person liable to be registered Under CGST
Person require Compulsory Registration


Output Tax means
CGST on taxable supply of goods and /or services
By registered person/By agent of taxable person
Exclude Tax under reverse charge


Interest On Delayed payment
Normal cases
18% Per annum
Undue or excess claim of Input tax credit or undue or excess reduction in output tax liability
24% per annum


Heads of Payment
Major Heads
IGST
CGST
SGST/UTGST
CESS
Minor Heads
Tax
Interest
Penalty
Fee
Others

Note: Old Relevant topic Reverse charge of Service tax . More or less same

Reverse Charge under GST

The following table provides a combination of Supplier of service and Service Recipient where the reverse charge of GST is applicable. Any other combination of Supplier of Service or Service Recipient, if the GST is not exempted the GST is payable by Supplier of Service.

1 Services of Goods Transport Agency (GTA)

S. No	Particulars	Particulars
1	Supplier of Service	GTA who has not paid CGST @ 6%
2	Service Recipient	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	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	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 GST

2.Services of Individual Advocate/ Senior Advocate,

S. No	Particulars	Particulars
1	Supplier of Service	An individual advocate including a senior advocate or firm of advocates.
2	Nature of Service	by way of representational services before any court, tribunal or authority, directly or indirectly
3	Service Recipient	Any business entity located in the taxable territory
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100%

3. Services of Arbitral tribunal to a business entity.

S. No	Particulars	Particulars
1	Supplier of Service	An arbitral tribunal
2	Service Recipient	Business entity turnover
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

4. Services provided by way of **sponsorship** to anybody corporate or partnership firm

S. No	Particulars	Particulars
1	Supplier of Service	Any person
2	Service Recipient	Anybody corporate or partnership firm located in the taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

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

S. No	Particulars	Particulars
1	Supplier of Service	Central Government/State Government /Union Territory or Local Authority
2	Service Recipient	Any Business entity located in taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

6. Services of director to company/Body Corporate

S. No	Particulars	Particulars
1	Supplier of Service	Director
2	Service Recipient	Company/Body Corporate located in taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

7.Services supplied by an insurance agent to any person carrying on insurance business.

S. No	Particulars	Particulars
1	Supplier of Service	Insurance Agent
2	Service Recipient	Any person carrying on insurance business, located in the taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100%

8 Services supplied by a recovery agent

S. No	Particulars	Particulars
1	Supplier of Service	A recovery agent
2	Service Recipient	A banking company or a financial institution or a non- banking financial company, located in the taxable territory
3	GST liability of Supplier of Service	NIL
4	GST liability of Service Recipient	100 %

9.Supply of services by an author, music composer, photographer, artist. or the like

S. No	Particulars	Particulars
1	Supplier of Service	A recovery agent
2	Nature of service	by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literacy dramatic, music, literacy artistic work
3	Service Recipient	Publisher, music company, producer or the like, located in the taxable territory.
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

10.Services of Person located in nontaxable territory		
S. No	Particulars	Particulars
1	Supplier of Service	Any person located in a non-taxable territory
2	Nature of service	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient
3	Service Recipient	Any person located in the taxable territory other than non-taxable online recipient.
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

Non-taxable online recipient means:

As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017,

- any Government,
- local authority,
- governmental authority,
- an individual or
- any other person not registered

and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

11. Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India		
S. No	Particulars	Particulars
1	Supplier of Service	**A person located in nontaxable territory**
2	Nature of service	transportation of goods by a vessel from a place outside India up to the customs station of clearance in India
3	Service Recipient	Importer
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

12. Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab		
S. No	Particulars	Particulars
1	Supplier of Service	Driver of Cab
2	Nature of service	Transport of Passengers
3	Service Recipient	E Commerce Operator
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

13. Services of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places through electronic commerce operator		
S. No	Particulars	Particulars
1	Supplier of Service	Unregistered person Supplying services through Electronic Commerce Operator
2	Nature of service	Transport of Passengers
3	Service Recipient	E Commerce Operator
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

14 Services of Overseeing Committee members to RBI ***Notification No. 33 & 34/2017 IT (R) dated 13.10.2017]***		
S. No	Particulars	Particulars
1	Supplier of Service	Overseeing Committee members
2	Nature of service	Services to RBI
3	Service Recipient	RBI
4	GST liability of Supplier of Service	NIL
5	GST liability of Service Recipient	100 %

Valuation of Supply

Value of Goods/Services Sec 15

- Transaction value → Conditions to be fulfilled Sec 15(1)
  - Price is the sole Considseration for supply
  - Supplier and recipient are not related to each other
- Transaction Value is the price actually paid or payable for the said supply of goods or services or both
- Transaction Value conditions not fulfilled → Valuation Rules Sec 15(4)
  - Rule 27: Value of supply of goods or services where the consideration is not wholly in money
  - Rule 28 : Value of supply of goods or services or both between distinct or related persons, other than through an agent
  - Rule 29 : Value of supply of goods made or received through an agent
  - Rule 30 : Value of supply of goods or services or both based on Cost.
  - Rule 31 : Residual method for determination of value of supply of goods or services or both

Value of Supply Sec. 15(1)	
Price/Sale consideration of goods/Services	XXX
Add: If not included in the above	
Sec. 15(2)(a): • Any taxes (other than GST), • Duties, • Cesses,	XX XX XX XX
Sec. 15(2)(b): Supplies made by the recipient on behalf of supplier	XX
Sec. 15(2)(c): Commission and packing or incidental expenses	XX
Sec. 15(2)(d): Interest or late fee or penalty for delayed payment	XX
Sec. 15(2)(e): Subsidy directly linked to the price (other than Govt. subsidy)	XX
Less: If included in the above	
Sec. 15(3): Discount	XX
Transaction Value	XX

Rule 32 : Optional Valuation in case of
- Purchase and sale of foreign currency and money changing
- Travel agent
- Life insurance business
- Supplier of second hand goods

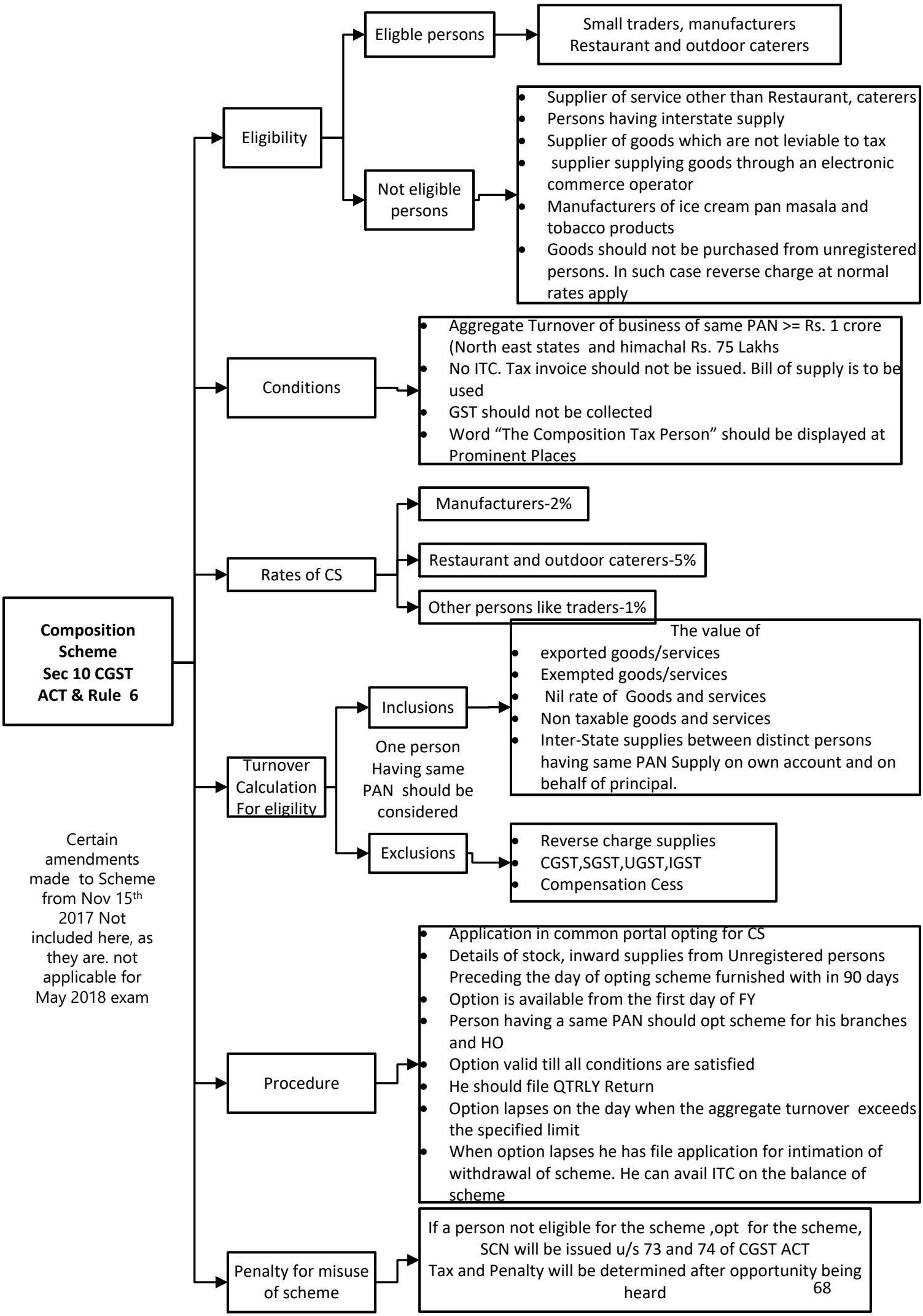
Rule 33 : Value of supply of services in case of pure agent

Rule 35: Value inclusive of taxes

Where value of supply is inclusive of CGST, SGST/UTGST or IGST, the tax amount is calculated by making back calculations. Tax amount = (Value inclusive of GST x GST rate in % of IGST or CGST, SGST/UTGST)/100 + sum of applicable GST rates in %)

Deduction of discounts from value

- Discounts given at the time of supply or before supply
  - discount shown in invoice → Discount deductible/Not includable in the value
  - discount not shown in inovice → Discount not deductible/ includable in the value
- Discounts given after the supply → As terms of an agreement that existed at the time of supply → Specifically linked to invoice → Proportionate ITC is Revrsed → Discount deductible/Not includable in the value


Composition Scheme Sec 10 CGST ACT & Rule 6
Eligibility
Eligble persons
Small traders, manufacturers Restaurant and outdoor caterers
Not eligible persons
Supplier of service other than Restaurant, caterers
Persons having interstate supply
Supplier of goods which are not leviable to tax
supplier supplying goods through an electronic commerce operator
Manufacturers of ice cream pan masala and tobacco products
Goods should not be purchased from unregistered persons. In such case reverse charge at normal rates apply
Conditions
Aggregate Turnover of business of same PAN >= Rs. 1 crore (North east states and himachal Rs. 75 Lakhs
No ITC. Tax invoice should not be issued. Bill of supply is to be used
GST should not be collected
Word "The Composition Tax Person" should be displayed at Prominent Places
Rates of CS
Manufacturers-2%
Restaurant and outdoor caterers-5%
Other persons like traders-1%
Turnover Calculation For eligility
Inclusions
The value of
exported goods/services
Exempted goods/services
Nil rate of Goods and services
Non taxable goods and services
Inter-State supplies between distinct persons having same PAN Supply on own account and on behalf of principal.
One person Having same PAN should be considered
Exclusions
Reverse charge supplies
CGST,SGST,UGST,IGST
Compensation Cess
Procedure
Application in common portal opting for CS
Details of stock, inward supplies from Unregistered persons Preceding the day of opting scheme furnished with in 90 days
Option is available from the first day of FY
Person having a same PAN should opt scheme for his branches and HO
Option valid till all conditions are satisfied
He should file QTRLY Return
Option lapses on the day when the aggregate turnover exceeds the specified limit
When option lapses he has file application for intimation of withdrawal of scheme. He can avail ITC on the balance of scheme
Penalty for misuse of scheme
If a person not eligible for the scheme ,opt for the scheme, SCN will be issued u/s 73 and 74 of CGST ACT
Tax and Penalty will be determined after opportunity being heard
Certain amendments made to Scheme from Nov 15th 2017 Not included here, as they are. not applicable for May 2018 exam

Registration under GST

Important Definitions

Agriculturist Sec 2(7) → Individual/HUF who undertakes cultivation of land—

- by own labour
- by the labour of family,
- by servants on wages payable in cash or kind or
- by hired lab our under personal supervision or the personal supervision of any member of the family

Place of Business Sec 2(85)

- a place from where the business is ordinarily carried on
- Ware house godown any other place goods are stored
- Place where the goods/services are received supplied
- a place where a taxable person is engaged in business through an agent, by whatever name called
- Plalce where the books of accounts are kept

Principal place of business: means the place of business specified as the principal place of business in the certificate of registration [Section 2(89)].

Agent: means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

Casual Taxable Person Sec 2(20) → person who occasionally undertakes transactions involving supply of goods or services or both → in the course or furtherance of business, → whether as principal, agent or in any other capacity → in a State/UT where he has no fixed place of business

Non-Resident Taxable Person Sec 2(77) → Person who occasionally undertakes transactions involving supply of goods or services or both → whether as principal, agent or in any other capacity → who has no fixed place of business or residence in India

Fixed establishment: means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(50)].

Registration Under GST

- Persons liable to get registered when turnover crosses Threshold limit Sec 22
- Person require Compulsory Registration irrespective of turnover limit Sec 24.
- Voluntary Registration by Person to boost their business Sec 25(3)
- Persons does not require Registration Sec 23

Registration Statutory Provisions

Persons liable to get registered when turnover crosses Threshold limit Sec 22

- Person whose taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakhs(SCS states 10 lakhs)
- Taxpayers registered under earlier indirect tax laws required to migrate to GST from appointed date
- In case of transfer of business the transferee should get registered from the date of transfer/ succession.

Aggregate Turnover All India Basis of same PAN of all Branches					
SN	Inclusions		SN	Exclusions	
1	Taxable supplies	xxxx	1	CGST/SGST/UTGST/IGST	xxxx
	Exempt supplies	xxxx	2	Compensation cess	xxxx
	Outward supplies on which tax is payable under reverse charge	xxxx	3	inward supplies on which tax is payable under reverse charge	xxxx
	Inter-State supplies	xxxx		Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals	
	Inter-State supplies of branch Ho transfers	xxxx			
	Exports	xxxx			
	Total				

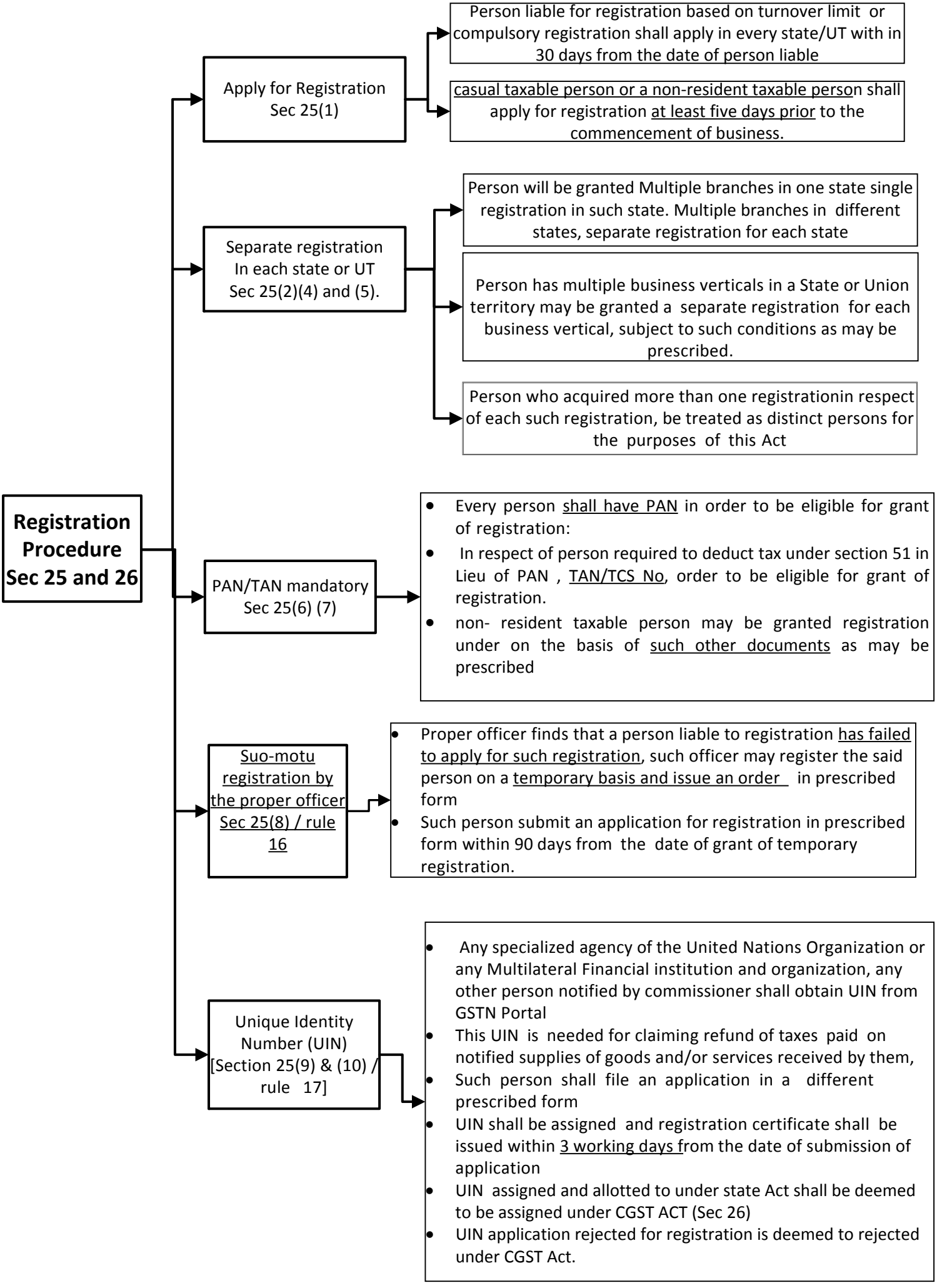
.

Person require Compulsory Registration irrespective of turnover limit Sec 24

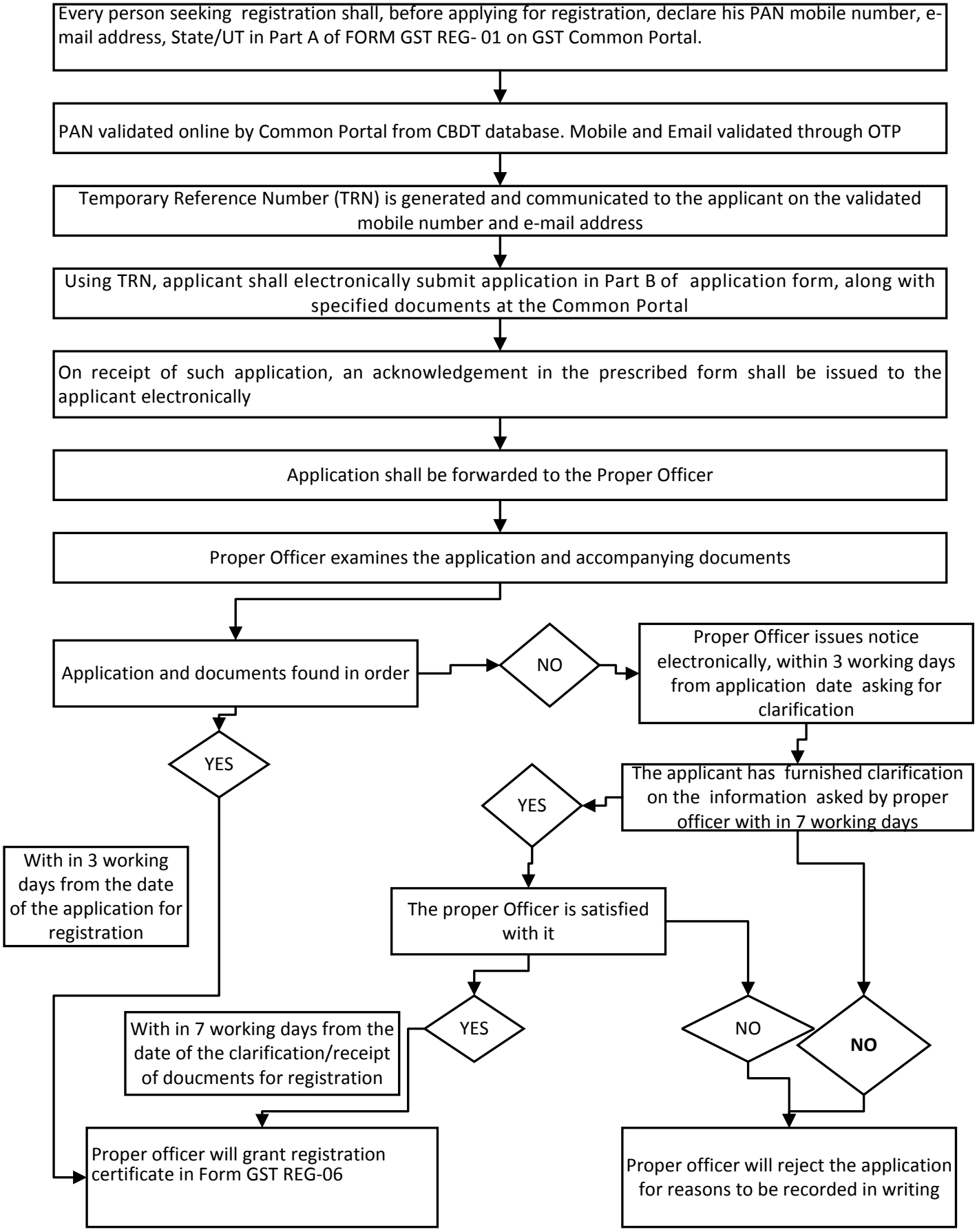
- Persons making any inter-State taxable supply Exceeding Rs. 20 lakh and in case of SCS states Rs. 10 lakhs in FY
- Casual taxable persons/Non resident taxable person making taxable supply
- A person receiving supplies on which tax is payable by recipient on reverse charge basis
- Ecommerce operators who are notified as liable for GST payment under Reverse charge
- Persons who are required to deduct tax under section 51 (TDS)whether or not separately registered under this Act
- Agents who supply taxable supplies on behalf of other taxable person
- Input Service Distributor, whether or not separately registered under this Act
- Every electronic commerce operator;
- Every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person;
- Such other person or class of persons as may be notified by the Government on the recommendations of the Council

Voluntary Registration by Person to boost their business Sec 25(3)

- A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily
- Voluntary registration is advantageous for the persons which supply of goods / services or to registered persons
- Once he get registered he is liable to pay GST irrespective of his turnover


Registration Procedure Sec 25 and 26
Apply for Registration Sec 25(1)
Person liable for registration based on turnover limit or compulsory registration shall apply in every state/UT with in 30 days from the date of person liable
casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.
Separate registration In each state or UT Sec 25(2)(4) and (5).
Person will be granted Multiple branches in one state single registration in such state. Multiple branches in different states, separate registration for each state
Person has multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.
Person who acquired more than one registrationin respect of each such registration, be treated as distinct persons for the purposes of this Act
PAN/TAN mandatory Sec 25(6) (7)
Every person shall have PAN in order to be eligible for grant of registration:
In respect of person required to deduct tax under section 51 in Lieu of PAN , TAN/TCS No, order to be eligible for grant of registration.
non- resident taxable person may be granted registration under on the basis of such other documents as may be prescribed
Suo-motu registration by the proper officer Sec 25(8) / rule 16
Proper officer finds that a person liable to registration has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in prescribed form
Such person submit an application for registration in prescribed form within 90 days from the date of grant of temporary registration.
Unique Identity Number (UIN) [Section 25(9) & (10) / rule 17]
Any specialized agency of the United Nations Organization or any Multilateral Financial institution and organization, any other person notified by commissioner shall obtain UIN from GSTN Portal
This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them,
Such person shall file an application in a different prescribed form
UIN shall be assigned and registration certificate shall be issued within 3 working days from the date of submission of application
UIN assigned and allotted to under state Act shall be deemed to be assigned under CGST ACT (Sec 26)
UIN application rejected for registration is deemed to rejected under CGST Act.

Procedure for Registration Covered under Rules 8, 9 and 10



Deemed Approval of Application

If the proper officer fails to take any action -

- within **3 working days** from the date of submission of application, or
- within **7 working days** from the date of receipt of clarification, information or documents furnished by the applicant,

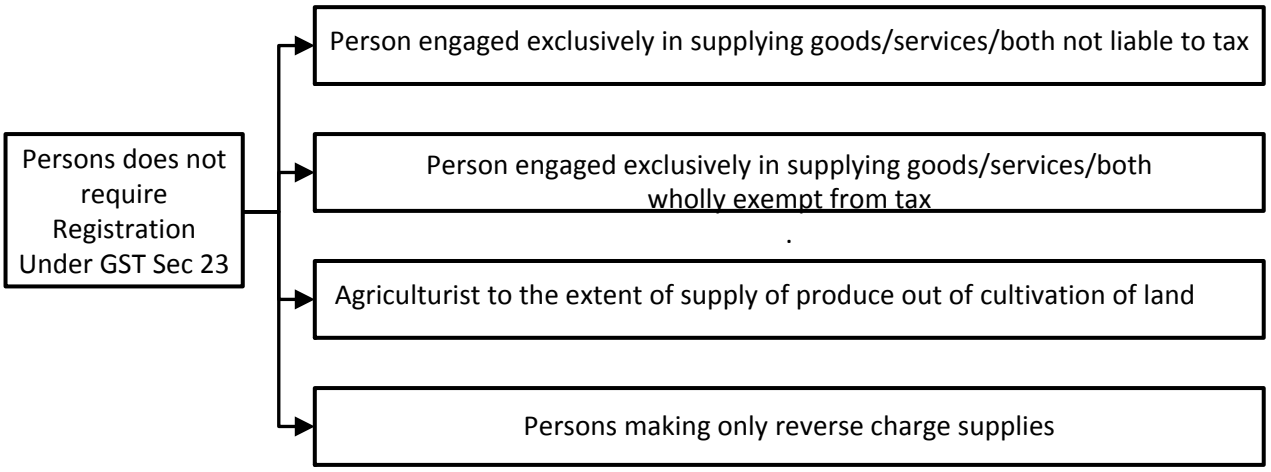
the application for grant of registration shall be deemed to have been approved.

Special Provision for grant of Registration in case of certain persons

Spl Provision for grant of Registration in case of certain persons

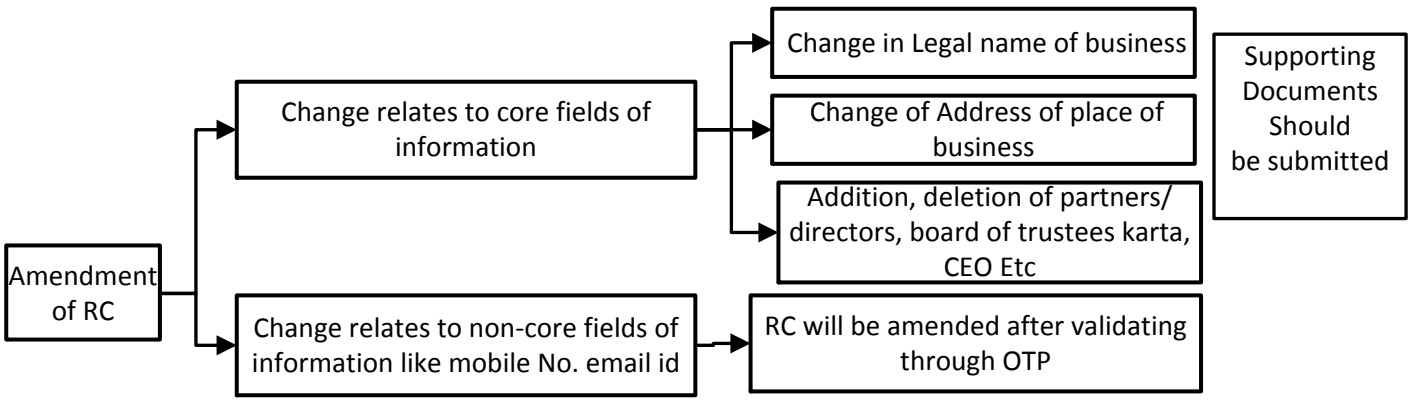
- Non-Resident Taxable Person (NRTP) and Casual Taxable Person (CTP) [Sections 25 & 27 read with rules 13 & 15]
  - (Both CRTP and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, at least 5 days prior to commencement of business.
  - CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.
  - Application will be submitted by NRTP in a different prescribed form along with valid passport/ TIN UIN of other country
  - CTP/NRTP are required to make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.
  - Registration Certificate granted to CTP/NRTP will be valid for (Period specified in the registration application, or 90 days from the effective date of registration/ can be extended for further period by making an application
  - CTP and NRTP will make taxable supplies only after the issuance of the certificate of registration
  - CTP and NRTP will make taxable supplies only after the issuance of the certificate of registration
- Persons require to deduct Tax(TDS) and collect TCS Sec 51 and 52
  - Application for registration has to be submitted by such persons in a different prescribed form at GST Common Portal.
  - They would be granted registration within 3 working days from the date of submission of application after due verification.
  - Registration will be cancelled if proper officer is satisfied that such person is no longer liable to deduct tax at source or collect tax at source
- Special Economic Zone (SEZ) [First proviso to rule 8(1)
  - SEZ/SEZ developer will make a separate application for registration as a business vertical distinct from his other units located outside SEZ
  - Where two units of a tax payer are located in same State - one in SEZ and another outside SEZ. Separate registrations have to be obtained for each of the two units as separate business vertical
- Input Service Distributor ISD [Second proviso to rule 8(1))
  - Every person being an ISD shall make a separate application for registration as such ISD
  - There is no threshold limit for registration for an ISD.
  - An ISD is required to obtain a separate registration even though it may have registered as supplier

Other than the above, the procedure for registration like verification, asking for clarification and granting registration is same as like , in case of any other person



Amendment of registration Sec 28 and Rule 19

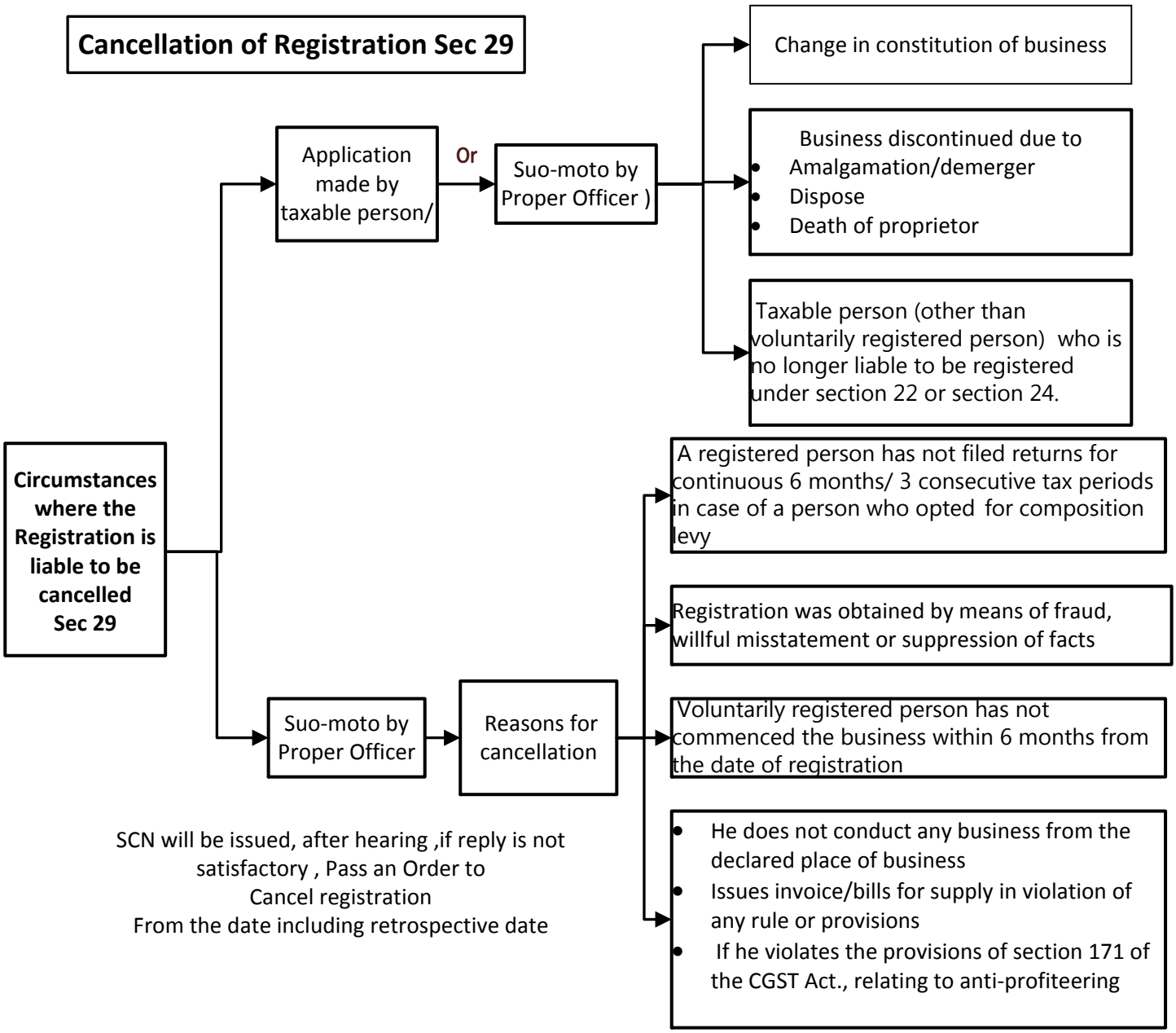
If is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, within 15 days of such change, along with documents relating to such change at the Common Portal.



- If the documents and particulars are correct, the RC will be amended within 15 working days
- If PO is of the opinion that amendment is unwarranted or documents furnished are incomplete/ incorrect,
- PO will serve a SCN why application for amendment should not be rejected
- Registered person should reply to the notice within 7 working days.
- If the reply is satisfied RC will be amended. If not satisfied application for amendment will be rejected

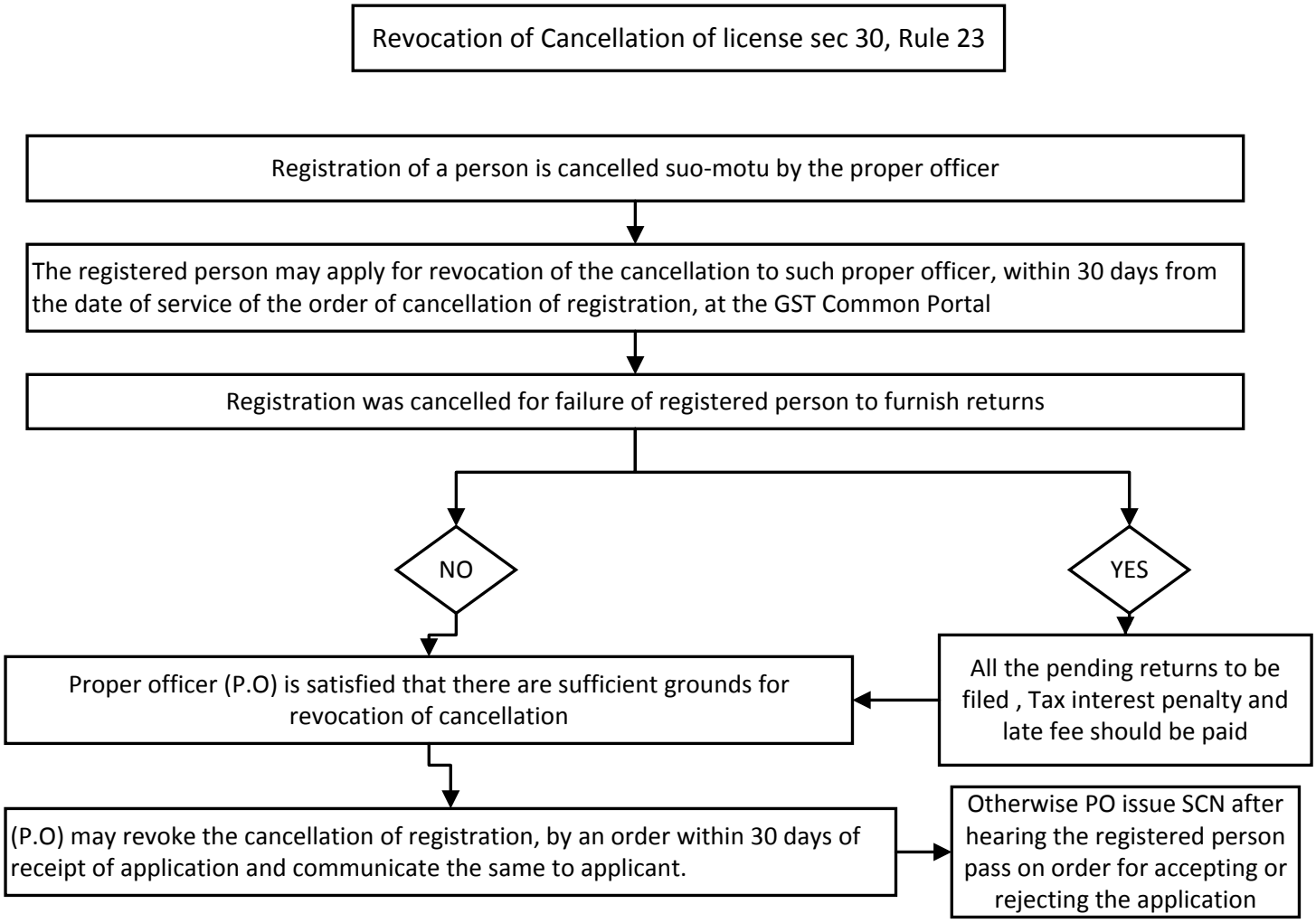
If the proper officer fails to take any action,-
(a)within a period of fifteen working days from the date of submission of the application, or
(b)within a period of seven working days from the date of the receipt of the reply to the show cause notice,
the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

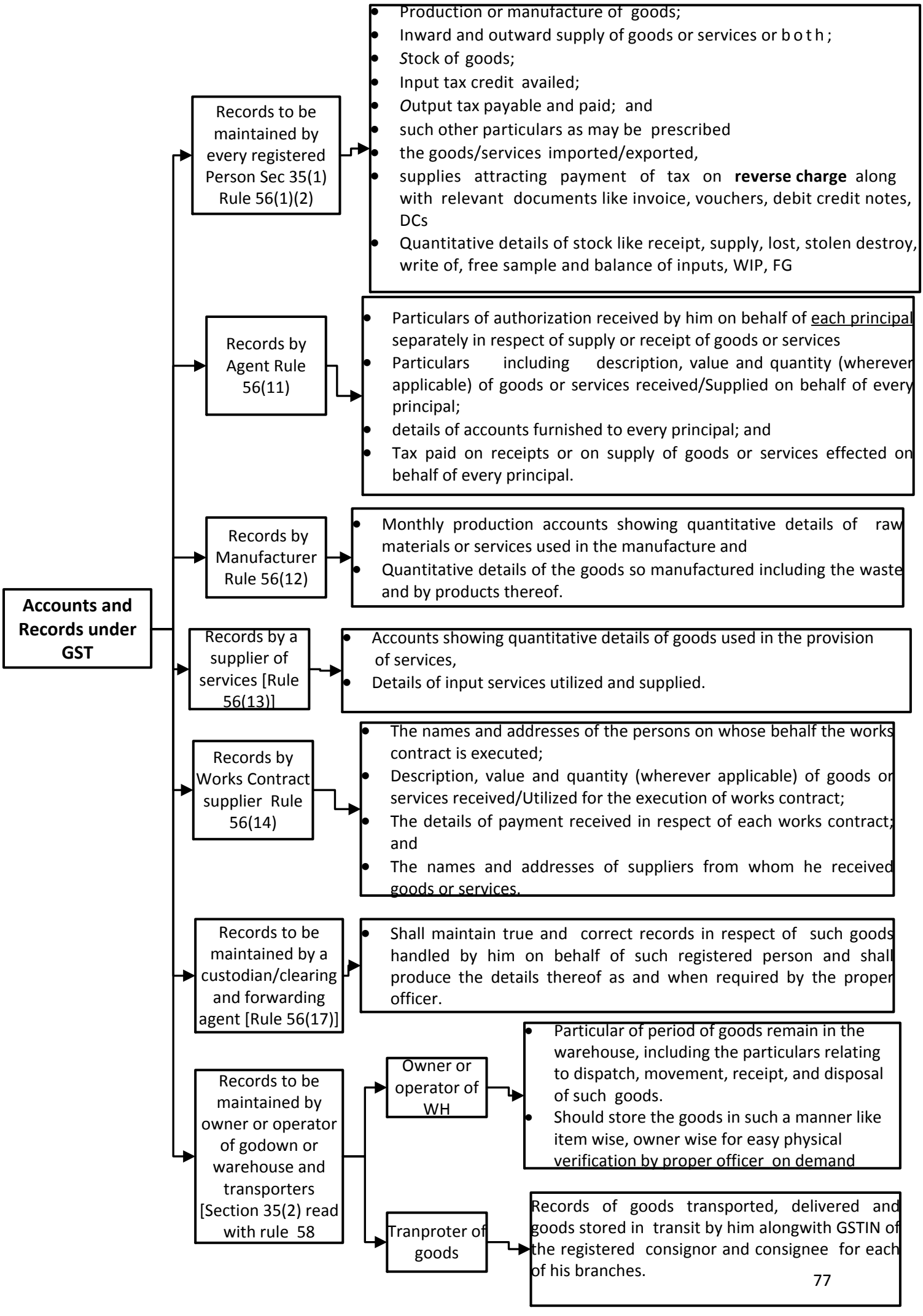
Cancellation of Registration Sec 29

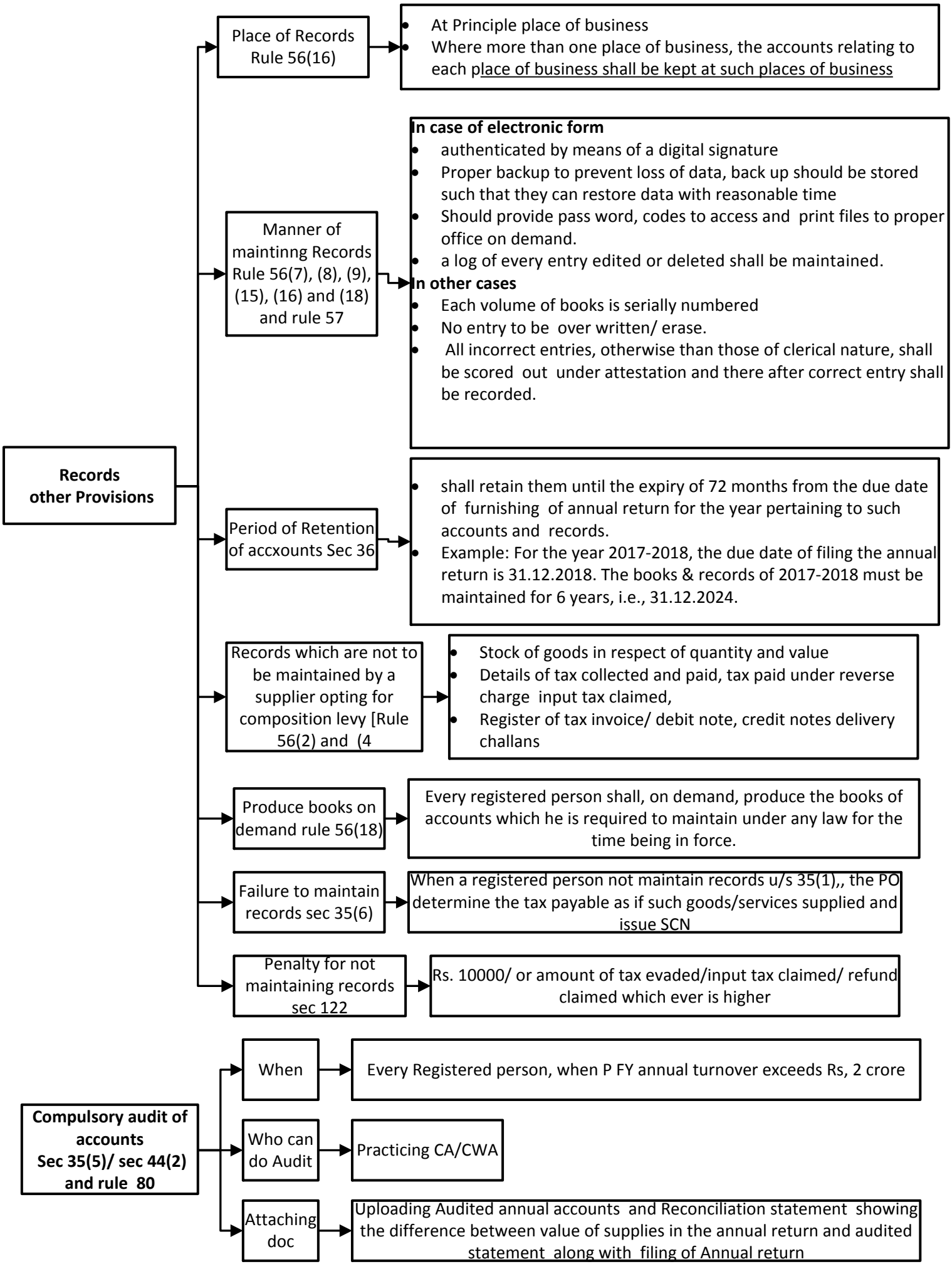


Procedure for Cancellation of Registration

- Application for Cancellation through common portal with in 30 days of occurrence of event
- Details of stock of inputs,WIP, FG and Capital goods along with details of tax liability on the date of application should be furnished
- A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equal to credit availed on inputs, WIP, finished goods, and capital goods or output tax payable whichever is higher
- In respect of capital goods, credit is to be reversed by taking useful of capital goods is 60 months
- Where the proper officer cancels the registration Suo-moto, SCN is to be issued, if registered person given reply within 7 working days and if is satisfactory, the cancellation proceedings should be dropped
- A voluntarily registered person cannot seek cancellation before the expiry of a period of 1 year from the effective date of registration [Proviso to rule 20]
- A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration [Rule 20]
- The cancellation of registration shall be effective from a date to be determined by the proper officer.
- The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act [Section 29(4)].
- The proper officer will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5)
- The registered person continues to liable for taxes due period prior to the date of cancellation


Revocation of Cancellation of license sec 30, Rule 23
Registration of a person is cancelled suo-motu by the proper officer
The registered person may apply for revocation of the cancellation to such proper officer, within 30 days from the date of service of the order of cancellation of registration, at the GST Common Portal
Registration was cancelled for failure of registered person to furnish returns
NO
YES
Proper officer (P.O) is satisfied that there are sufficient grounds for revocation of cancellation
All the pending returns to be filed , Tax interest penalty and late fee should be paid
(P.O) may revoke the cancellation of registration, by an order within 30 days of receipt of application and communicate the same to applicant.
Otherwise PO issue SCN after hearing the registered person pass on order for accepting or rejecting the application


Accounts and Records under GST
Records to be maintained by every registered Person Sec 35(1) Rule 56(1)(2)
Production or manufacture of goods;
Inward and outward supply of goods or services or b o t h ;
Stock of goods;
Input tax credit availed;
Output tax payable and paid; and
such other particulars as may be prescribed
the goods/services imported/exported,
supplies attracting payment of tax on reverse charge along with relevant documents like invoice, vouchers, debit credit notes, DCs
Quantitative details of stock like receipt, supply, lost, stolen destroy, write of, free sample and balance of inputs, WIP, FG
Records by Agent Rule 56(11)
Particulars of authorization received by him on behalf of each principal separately in respect of supply or receipt of goods or services
Particulars including description, value and quantity (wherever applicable) of goods or services received/Supplied on behalf of every principal;
details of accounts furnished to every principal; and
Tax paid on receipts or on supply of goods or services effected on behalf of every principal.
Records by Manufacturer Rule 56(12)
Monthly production accounts showing quantitative details of raw materials or services used in the manufacture and
Quantitative details of the goods so manufactured including the waste and by products thereof.
Records by a supplier of services [Rule 56(13)]
Accounts showing quantitative details of goods used in the provision of services,
Details of input services utilized and supplied.
Records by Works Contract supplier Rule 56(14)
The names and addresses of the persons on whose behalf the works contract is executed;
Description, value and quantity (wherever applicable) of goods or services received/Utilized for the execution of works contract;
The details of payment received in respect of each works contract; and
The names and addresses of suppliers from whom he received goods or services.
Records to be maintained by a custodian/clearing and forwarding agent [Rule 56(17)]
Shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.
Records to be maintained by owner or operator of godown or warehouse and transporters [Section 35(2) read with rule 58
Owner or operator of WH
Particular of period of goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.
Should store the goods in such a manner like item wise, owner wise for easy physical verification by proper officer on demand
Tranproter of goods
Records of goods transported, delivered and goods stored in transit by him alongwith GSTIN of the registered consignor and consignee for each of his branches.


Records other Provisions
Place of Records Rule 56(16)
At Principle place of business
Where more than one place of business, the accounts relating to each place of business shall be kept at such places of business
Manner of maintinng Records Rule 56(7), (8), (9), (15), (16) and (18) and rule 57
In case of electronic form
authenticated by means of a digital signature
Proper backup to prevent loss of data, back up should be stored such that they can restore data with reasonable time
Should provide pass word, codes to access and print files to proper office on demand.
a log of every entry edited or deleted shall be maintained.
In other cases
Each volume of books is serially numbered
No entry to be over written/ erase.
All incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and there after correct entry shall be recorded.
Period of Retention of accxounts Sec 36
shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.
Example: For the year 2017-2018, the due date of filing the annual return is 31.12.2018. The books & records of 2017-2018 must be maintained for 6 years, i.e., 31.12.2024.
Records which are not to be maintained by a supplier opting for composition levy [Rule 56(2) and (4
Stock of goods in respect of quantity and value
Details of tax collected and paid, tax paid under reverse charge input tax claimed,
Register of tax invoice/ debit note, credit notes delivery challans
Produce books on demand rule 56(18)
Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.
Failure to maintain records sec 35(6)
When a registered person not maintain records u/s 35(1),, the PO determine the tax payable as if such goods/services supplied and issue SCN
Penalty for not maintaining records sec 122
Rs. 10000/ or amount of tax evaded/input tax claimed/ refund claimed which ever is higher
Compulsory audit of accounts Sec 35(5)/ sec 44(2) and rule 80
When
Every Registered person, when P FY annual turnover exceeds Rs, 2 crore
Who can do Audit
Practicing CA/CWA
Attaching doc
Uploading Audited annual accounts and Reconciliation statement showing the difference between value of supplies in the annual return and audited statement along with filing of Annual return

RETURNS UNDER GST

- The term "return" ordinarily means statement of information (facts) furnished by the taxpayer, tax administrators, at regular intervals.
- The information to be furnished in the return generally comprises of the details pertaining to the nature of activities/business operations of taxpayer and Tax information like sale price, turnover, or value; deductions and exemptions; and determination and discharge of tax liability for a given tax period
- The return, therefore, constitutes a kind of working sheet/supporting document for the tax authorities that can be relied upon as the basis on which the tax has been computed by the taxpayer.
- Under GST, a regular taxpayer needs to furnish monthly returns, quarterly returns and annual return. it mandatory to file all returns electronically.
- The taxpayer is generally required to furnish the return in a specific statutory format
- There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer, Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number.
- The GST returns can be filed through GSTN portal, or GST Suvidha Providers (GSPs)
- The due date for payment of GST is on or before 20th of the following month

The Various return forms to be filed under GST

Return	Particulars	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services effected (Section 37 of the CGST Act, 2017).	Monthly	10th of the next month
GSTR-2	Details of inward supplies of taxable goods and/ or services effected claiming input tax credit (Section 38 of the CGST Act, 2017).	Monthly	15th of the next month
GSTR-3	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax (Section 39(1) of the CGST Act, 2017).	Monthly	20th of the next month
GSTR-3B	Simple return for Jul 2017- Mar 2018	Monthly	20th of the next month
GSTR-4	Return for compounding taxable person (Section 39(2) of the CGST Act, 2017)	Quarterly	18th of the month succeeding quarter
GSTR-5	Return for Non-Resident foreign taxable person (Section 39(5) of the CGST Act, 2017)	Monthly	20th of the next month or within 7 days after the last day of the period of registration specified u/s 27(1), whichever
GSTR-5A	Return for OIDAR Rule 64	Monthly	20th of the next month
GSTR-6	Return for Input Service Distributor (Section 39(4) of the CGST Act, 2017)	Monthly	13th of the next month

GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month
GSTR-9	Annual Return (section 44 of the CGST Act,217) (a) Who Files: Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer. (b) In this return, the taxpayer needs to furnish details of expenditure and details of income for the entire Financial Year.	Annually	31st December of next financial year
GSTR-10	Final Return (Section 45 of the CGST Act, 2017)	Once. When registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming refund.	Monthly	28th of the month following the month for which statement is filed
To be notified	Information return u/s 123 and 150 by third party like taxable person/bankers, sub registrar/Local authority/Stock exchange/govt.	To be notified	To be notified

The due date of filing of the returns in the table mentioned above) may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification

Persons not required to file GSTR 1 GSTR 2, and GSTR 3

- ISD
- NRTP
- Composition taxpayer
- Tax deductor/Collector
- ECO
- Supplier of OIDAR service

GSTR-3 filed without payment of self-assessed tax disclosed therein, is regarded as a invalid return in terms of section 2(117).

Due dates for payment of tax in respect of the persons required to file GSTR- 3, GSTR-4, GSTR-5 and GSTR-7 are linked with the due dates for filing of such returns i.e., the last dates (due dates) of filing

such returns are also the due dates for payment of tax in respect of persons required to file such returns.

Rectification of errors/omissions [Section 39(9)]

- The mechanism of filing revised returns for any correction of errors/omissions has been done away with.
- Errors due to mismatch of ITC can be rectified in the same tax period on the GSTR 3 Valid return
- Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month/quarter is allowed in the subsequent/future returns in the appropriate particulars in "Amendment Tables" contained Returns.
- Any tax liability due to omission/rectification should be paid along with interest.
- Rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities is not allowed in the returns.

Time limit for making rectification other than errors due to scrutiny/audit/ inspection etc.,

- Actual Date of annual filing of return or due date of filing of September month/quarter ending September of following financial year (20 the October of next Financial year)

Notice to furnish Return sec 46

Where a registered person fails to furnish a return under section 39 (GSTR 3 to GSTR 8) or section 44 (Annual return) or section 45 (final return) a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed

Late fee for filing of returns Sec 47

SN	Type of return	Penalty
1	All returns other than annual return	Rs. 100 per day during such failure continues or Rs. 5000 Whichever is less
2	Annual return	Rs. 100 per day during such failure continues or Rs.0.25% of turnover Whichever is less

Demand and adjudication -1

Demand (Recovery) of GST- Sec 73 and 74 of CGST

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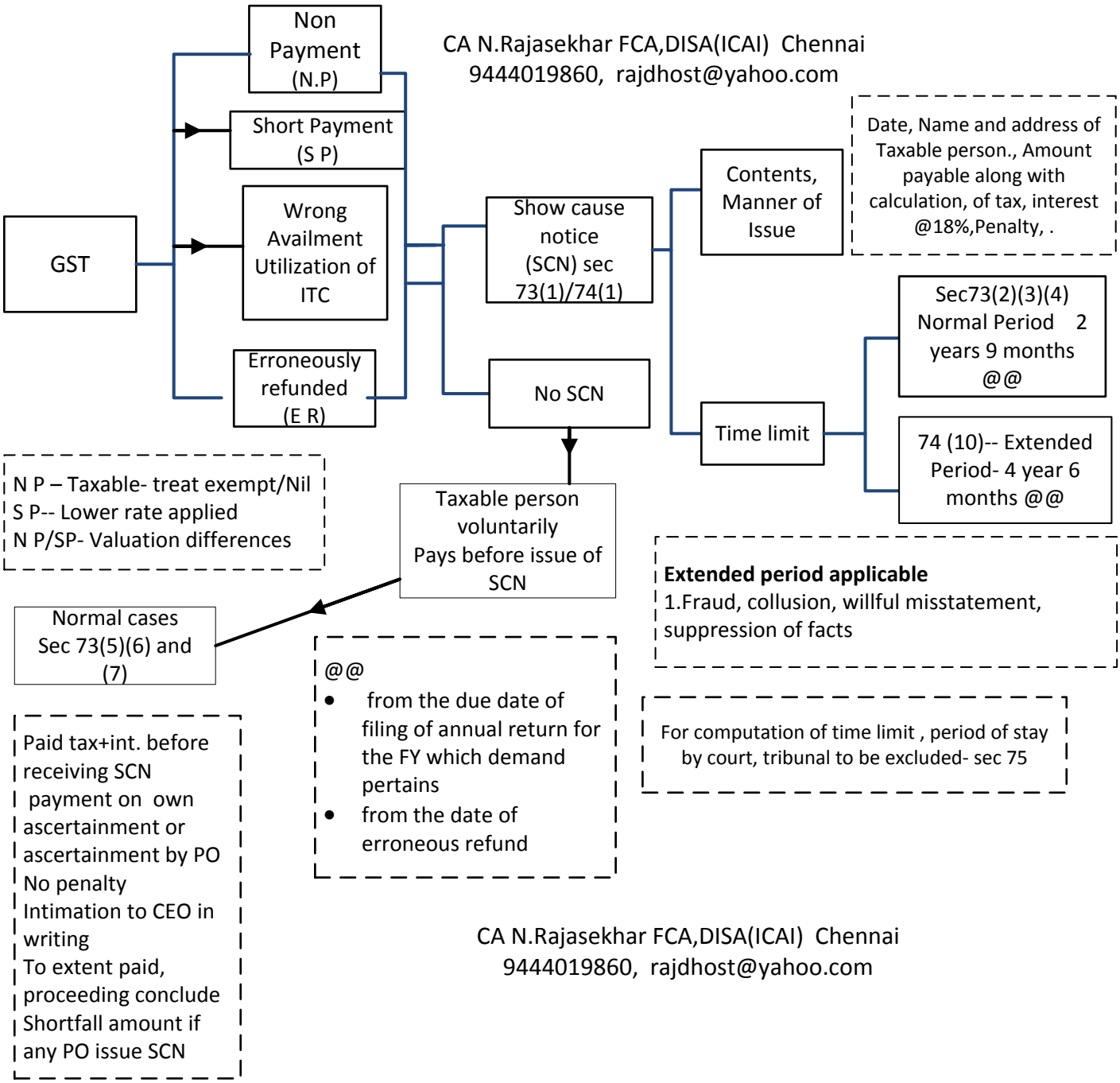

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Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised for such periods, can be issued.

(where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 (i.e. recovery of tax from various modes). No need to issue SCN Sec 75(12)

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 taxable person
Where the SCN was issued u/s 74(1) for extended period, and if it is not sustainable under tribunal court, it can be deemed as notice issued u/s 73(1) for normal period- sec 75(2)

Demand and adjudication -2

Adjudication orders of PO- Sec 74(9) and(11) of CGST

SCN Received by Assessee with in time limit

- Taxable person accept, do not differ
  - Normal period → Pay tax + Mandatory Interest 18%)+ applicable Penalty
  - Extended Period → Pay Tax + Mandatory Interest 18% + Applicable penality
- Taxable person do not accept,& differ → Representation through AR(CA)
  - Taxable person view fully accepted by PO → SCN Will be dropped by CEO
  - Assessee view fully rejected by PO → Amount to be determined - not more than SCN amount. Sec 75(7) Taxable person option-appeal
  - Taxable person view Partly accepted & partly rejected by PO → Accepted portion SCN Will be dropped. Rejected portion Amount to be determed

Max. adjournments 3 Sec 75(5)

Time limit for adjudication orders PO-Sec 73(10)/74(10):
Normal cases- 3 years from the due date of filing of Annual return
Extended period cases- 5 years from the due date of filing of Annual return

Where appellate authority modifies duty , the interest and penalty shall stand modified accordingly sec 75(8)

If SCN amount was increased in appeal, Interest on increased amount is payable from date of order- .

Mandatory Interest in case of Recovery of Tax

Interest on Duty in case of SCN

- Rate → 18%
- Period → Interest shall be calculated from the date on which such Tax becomes due up to the date of actual payment of the amount due.

Payment of interest mandatory even if not specified in the adjudication order [Section 75(9)]

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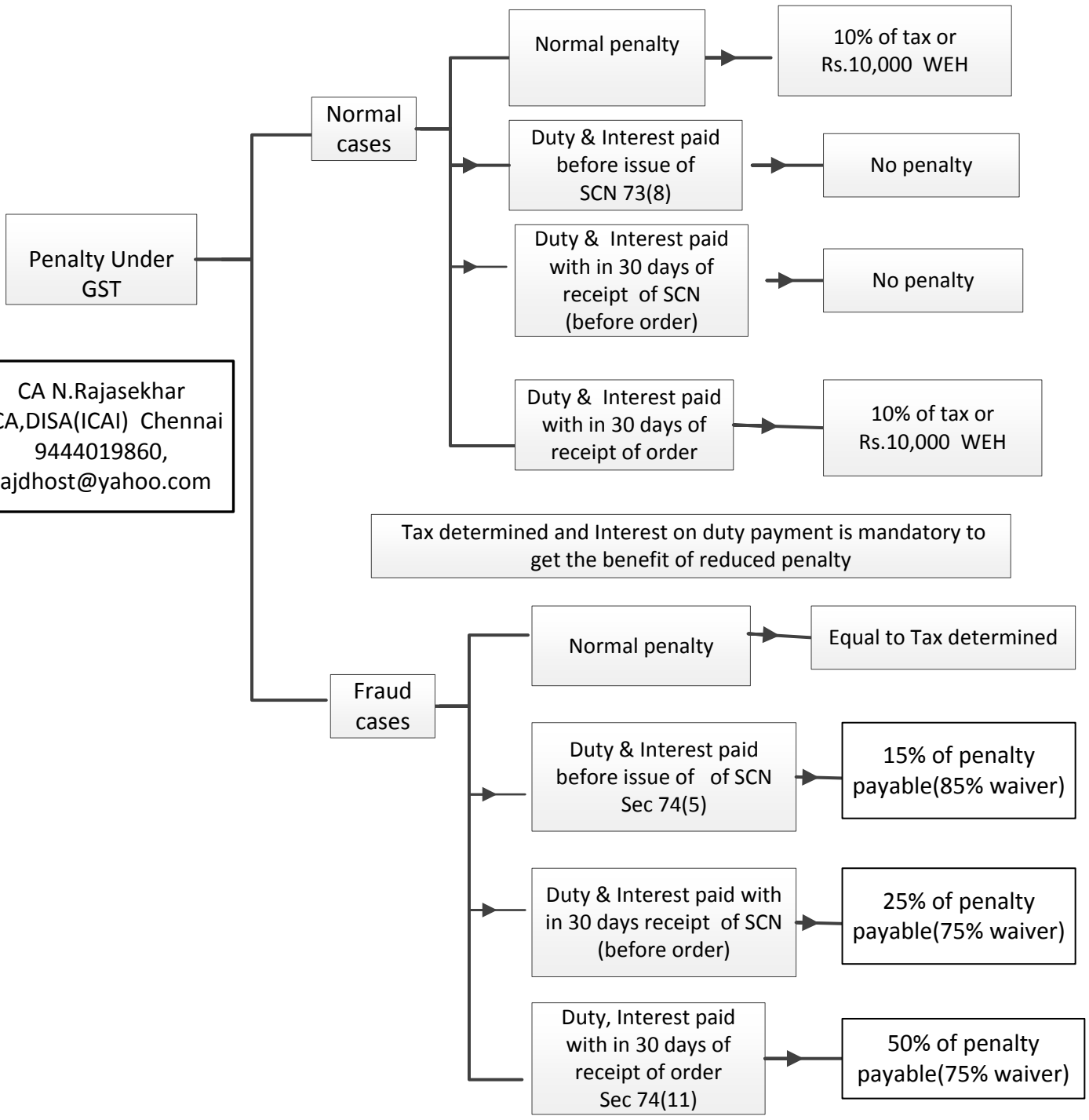
Time limit For SCN Adj orders Snap shot

- SCN
  - Normal period → 2years 9 months from the due date of filing of Annual return
  - Extended Period → 4 years 6 months from the due date of filing of Annual return
- Order
  - Normal period → 3 years from the due date of filing of Annual return
  - Extended Period → 5 year from the due date of filing of Annual return

There are various forms prescribed under GST for issue of SCN, reply by assesse, issue order, intimation by taxable person for tax paid before SCN.

GST Penalty Under sec 73 and 74



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

Where any penalty is imposed under as above under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Sec 75(13)

Assessments under GST

Assessment means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. [Section 2(11)]

Types of Assessments

- SELF ASSESSMENT [SECTION 59)
- PROVISIONAL ASSESSMENT [SECTION 60]
- SCRUTINY ASSESSMENT [SECTION 61]
- ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62)
- ASSESSMENT OF UNREGISTERED PERSONS/ BEST JUDGEMENT ASSESSMENT [SECTION 63)
- SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES [SECTION 64]

Self Assessment- Sec 59

Assessee determines classification & Valuation → assess the tax payable by him for a tax period → Files the required Return u/s 39

Provisional Assessment Sec 60

When

taxable person is unable to determine

- Value of goods/ services
- The rate of tax applicable to the goods or services

Procedure

- Taxable person should make application in common portal with supporting documents
- Proper officer may ask additional information/ask personal appearance if so desire
- PO Pass an order allowing PA indicate the rate/ value or both on which PA allowed

Security to furnish

- Proper officer indicate Security by bond not exceed 25% of amount of GST Covered under bond
- Taxable person execute bond with Bank guarantee

Finalisation of P.A.

- PO can issue notice calling for information, records
- Proper officer has to pass final assessment Order determine amount payable with 6 months from the date of ordering for allow of PA
- JC/Addl C extend further 6 months
- Commissioner further not exceeding 4 years
- FA duty > PA duty = tax payable +18% int.
- FA duty < PA duty = refund+6% int.

Release of security

- Taxable person should make an application
- PO release after he satisfy that amount as per FA is paid

SCRUTINY OF RETURNS [SECTION 61]

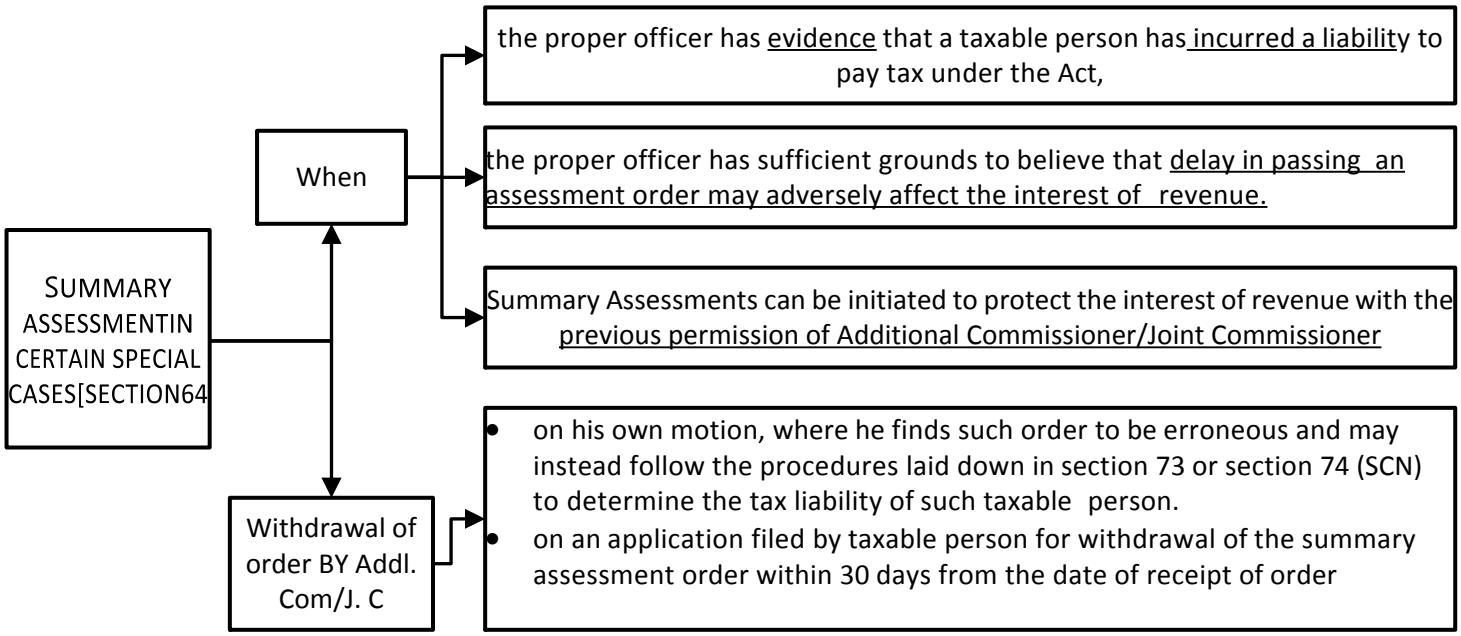
- **Issue of notice by PO**
  - The return furnished by a registered person may be selected for scrutiny by proper officer to verify its correctness on the basis of information available.
  - If discrepancy, notice will be issued seeking explanation where possible quantify the amount of tax and other amount payable
- **Reply to notice**
  - The registered Person may accept discrepancy pay tax, interest and penalty
  - submit his explanation regarding non-acceptance of discrepancy within 30 days or extended time permitted by PO
- **Action by PO**
  - Explanation furnished by registered person is acceptable to PO, no action is necessary
  - Where the explanation is not acceptable, or registered person fails to take corrective measures in the returns filed, the PO may take any of the following action
    - Undertake procedure of inspection, search, seizure
    - Order special audit/department audit
    - Issue SCN u/s 73 and 74

ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]

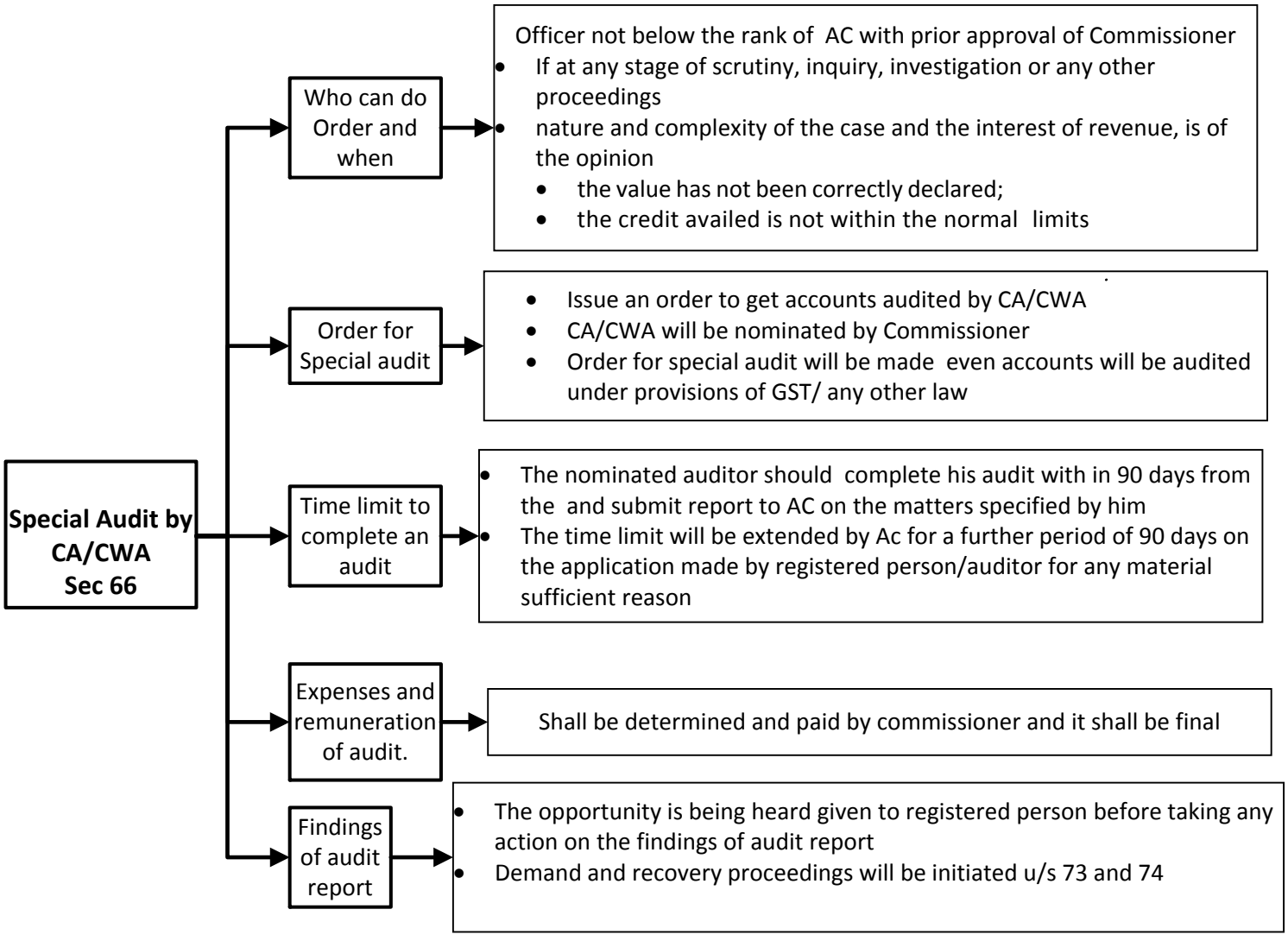
- **When**
  - Failure to furnish returns u/s 39, 44 or 45
  - Failure to respond a notice to file return u/s 46
- **BOJ**
  - The Proper office may proceed to assess tax liability of the return defaulter to the B to the best of his judgment
  - submit his explanation regarding non-acceptance of discrepancy within 30 days or extended time permitted by PO
- **Order of BOJ**
  - The PO should pass BOJ order with in 5 years from the due date of filing of annual return of that FY
  - Where the registered person files returns and pays tax assessed by him, <u>BOJ Assessment order shall stand withdrawn</u>
  - Interest on tax and late fee should be payable

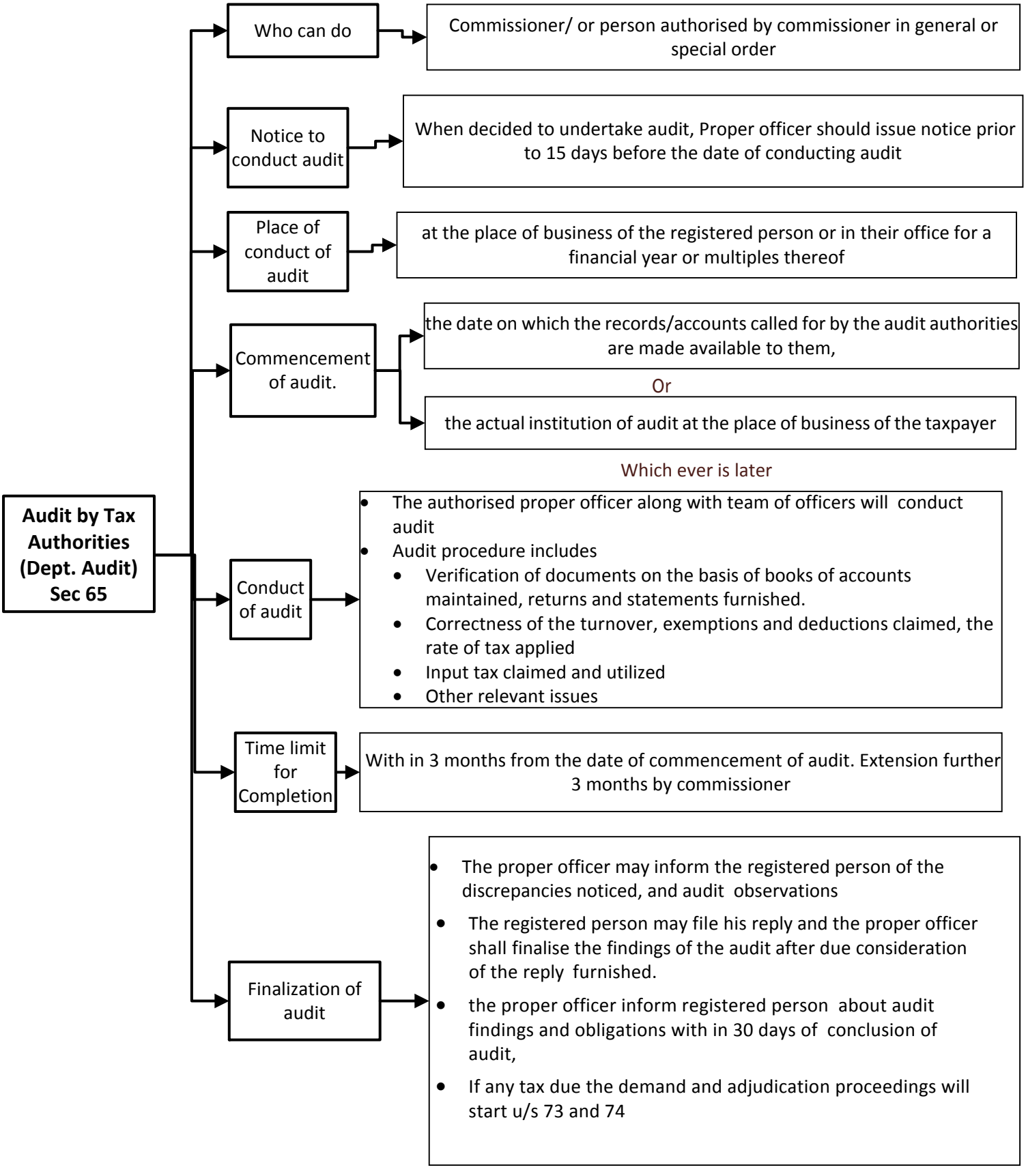
ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]

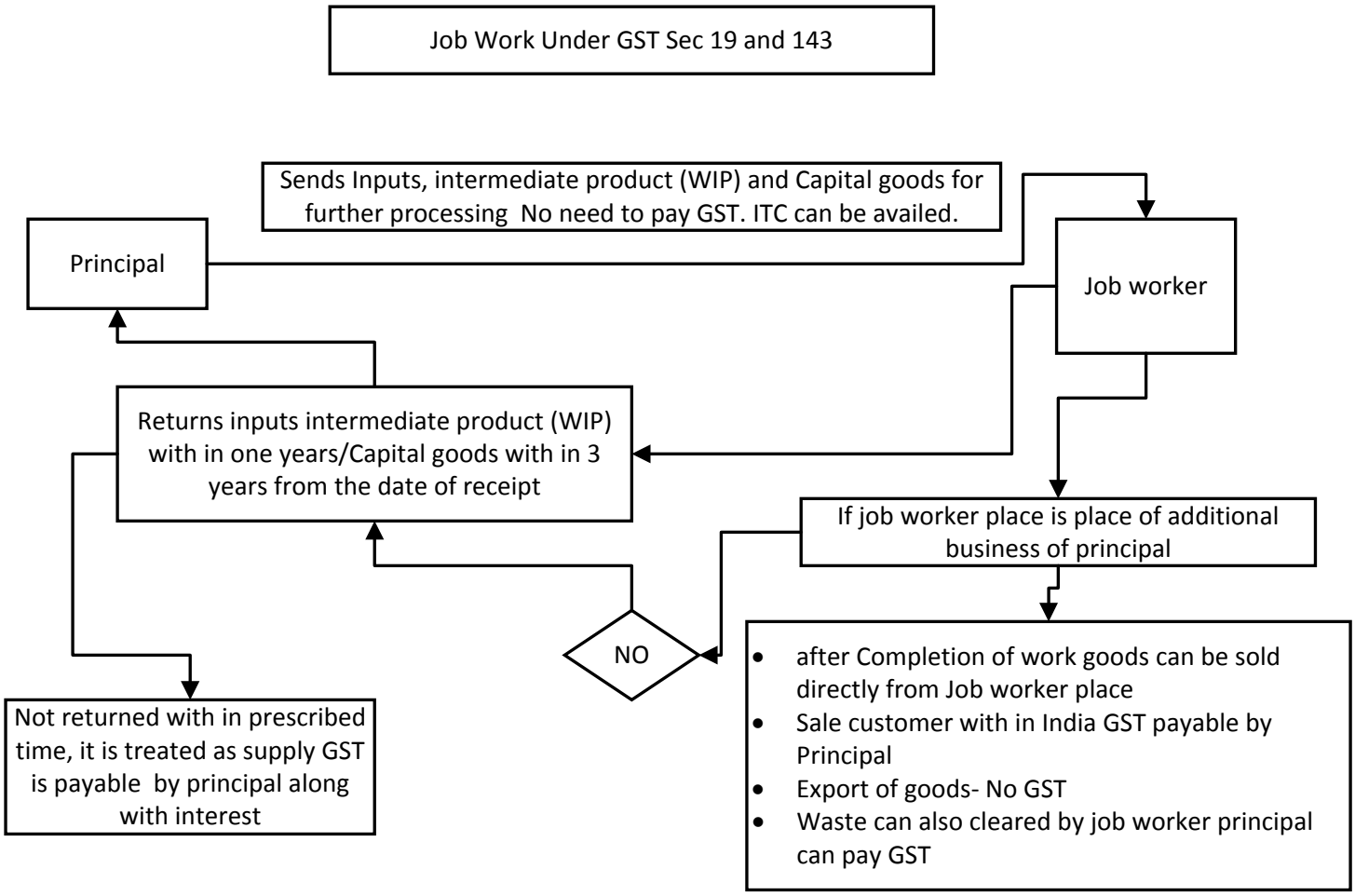
- **On Whom**
  - Person liable to pay GST but fail obtain registration
  - Persons registration has been cancelled on the following grounds
  - Contravening the provisions and rules
  - Registered person fails to furnish return for consecutive 6 months
  - Registered composite tax person fails to furnish return for 3 consecutive tax period
  - Person obtain voluntary registration fails to start business within 6 months.
  - Person obtains registration by means of fraud, willful misrepresentation suppression of facts
- **BOJ**
  - The Proper office may proceed to issue notice, giving opportunity being heard to reply why BOJ cannot be made
  - to assess tax liability of the return defaulter to the best of his judgment
  - The PO should pass BOJ order with in 5 years from the due date of filing of annual return of that FY
  - No order should be passed without giving opportunity being heard



Example: Deemed taxable person
When goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax




Audit by Tax Authorities (Dept. Audit) Sec 65
Who can do
Commissioner/ or person authorised by commissioner in general or special order
Notice to conduct audit
When decided to undertake audit, Proper officer should issue notice prior to 15 days before the date of conducting audit
Place of conduct of audit
at the place of business of the registered person or in their office for a financial year or multiples thereof
Commencement of audit.
the date on which the records/accounts called for by the audit authorities are made available to them,
Or
the actual institution of audit at the place of business of the taxpayer
Which ever is later
Conduct of audit
The authorised proper officer along with team of officers will conduct audit
Audit procedure includes
Verification of documents on the basis of books of accounts maintained, returns and statements furnished.
Correctness of the turnover, exemptions and deductions claimed, the rate of tax applied
Input tax claimed and utilized
Other relevant issues
Time limit for Completion
With in 3 months from the date of commencement of audit. Extension further 3 months by commissioner
Finalization of audit
The proper officer may inform the registered person of the discrepancies noticed, and audit observations
The registered person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
the proper officer inform registered person about audit findings and obligations with in 30 days of conclusion of audit,
If any tax due the demand and adjudication proceedings will start u/s 73 and 74



Example:
A Ltd. sends the goods to B & Co job worker for making finished goods on 30.07.2017. What are the tax implications, in the following cases if GST @ 18% is levied:
B & Co. sends the goods back to X Ltd within one year of being sent.
B & Co. sells the goods directly to the customer in behalf of X Ltd. Make suitable assumptions as r e q u i r e d .

Answer

SN	Particulars	Tax implications
1	On supply of goods to B & Co	No GST payable by A Ltd. ALTD can avail ITC. If goods does not return back within one year GST payable by A Ltd with interest
2	B & Co. sells the goods directly to the customer in behalf of X Ltd	No tax liability on job worker B & Co., GST payable by A Ltd at applicable rate of GST. Assumed B & Co is additional place of business of A Ltd.,
3	B& Co sends the finished goods back to A Ltd	there is no tax liability on returning of goods back to the principal i.e. A Ltd within a period of one year

APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT]

The following provisions of CGST Act apply to IGST Act also-

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;

(ix) payment of tax;

(x) tax deduction at source [TDS rate under IGST – 2%];

(xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];

(xii) assessment;

(xiii) refunds;

(xiv) audit;

(xv) inspection, search, seizure and arrest;

(xvi) demands and recovery;

(xvii) liability to pay in certain cases;

(xviii) advance ruling;

(xix) appeals and revision;

(xx) presumption as to documents;

(xxi) offences and penalties;

(xxii) job work;

(xxiii) electronic commerce;

(xxiv) transitional provisions; and

(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty

Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties

Anti-profiteering Sec 171

As per section 171(1) **:** Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient /Consumer by way of commensurate reduction in prices.

Example on reduction in rate

Particulars	Service tax regime	GST regime
Taxable value	100	100
ST rate 15%	15	
GST rate 5%		5%
Total Invoice value	115	105
The Benefit of Rs.10 (115-105) should passed on to recipient by way of reduction in price		

Example on benefit of ITC

Particulars	Service tax regime	GST regime
Output tax liability	25	25
Less ITC ST/GST paid	12	12
Less ITC on VAT paid	NIL	5
Net output tax liability	13	8
The Benefit of Rs.5 (13-8) should passed on to recipient by way of reduction in price		

National Anti-Profiteering Authority [Section 171(2)]

National Anti-Profiteering Authority is being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him

Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to constitution of such authority, duties of the authority, orders of the authority etc.

The National Anti-Profiteering Authority shall be a five-member committee consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under earlier laws.

Duties & Powers of National Anti-Profiteering Authority -Section 171(3):

It shall be the duty of the authority-

- to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- to identify the taxpayer who has not passed on the benefit
- to order for reduction in prices/ return to the recipient, an amount equivalent to the amount not passed along with interest @18%
- imposition of penalty/cancellation of registration
- to furnish a performance report to the GST Council by the 10^{th} of the month succeeding each quarter

Authority for Advance Ruling (AAR)and Appellate Authority for Advance Ruling (AAAR)

Advance Ruling: Sec 95 (a): means a decision provided by the Authority or the Appellate Authority in relation to the supply of goods or services both being undertaken or proposed to be undertaken by the applicant;
Appellate Authority for Advance ruling (AAR/ Appellate Authority for Advance Ruling AAAR constituted under state/ UT is deemed to be AAR under CGST Act.

Applicant Sec 95(C) → 4 copies, Fees → Application To AAR- sec 98 → AAR → Officer of applicant jurisdiction

Any person registered or desirous of obtaining registration under this Act; [Section 95(c)].

1.Determination of liability to Pay GST on goods/services
2. Determination of time and Valuation of Goods (place of supply cannot be determined by AAR)
3.Classification of goods/services
4.Applicability of E/N issued
6.Admissibility of input tax Credit
7.whether applicant is required to be registered

AAR may send copy of appl. And called records records should be returned as soon as possible

Order of Authority for Advance Ruling

Amendment of order by RECTIFICATION OF MISTAKES [SECTION 102]

- AAR and AAAR to amend their order within a period of 6 months from the date of the order.
- The mistake may be noticed on its own or may be brought to its notice by the applicant or the concerned or the jurisdictional officer.
- If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed

Acceptance/ Rejection order

Final order

90 days

Appl: Shall not be allowed if Applicant

- Question is pending before Provisions of ACT
- Question already Decided by Provisions of ACT

Rejection Order:

- Order should be speaking order. Opportunity to registered person before rejection

Examine matter, Opportunity to applicant being heard. Copy to Officer and, Applicant

Sec 103 :Order of AAR/AAAR -Binding on
1. Applicant
2.Jurisdictional Officer ie state of applicant.
Binding Till : Law changes

Order is VOID (ab-initio) if subsequently found that it has been obtained by Fraud // Misrepresentation
In such cases it is treated Never made application to AAR
Sec 104

APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) sec 99/Sec 110/Sec 101

- Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act
- If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue
- If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question
- If the applicant / Concerned Officer of registered person jurisdiction is aggrieved with the finding of the AAR an appeal will be filed with AAAR
- The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.
- The said authority can either confirm or modify the ruling appealed against.
- The copy of order of appellate authority should be communicated to applicant and officer

PENALTIES UNDER GST

Sec 122(1) Offences with Penalty Rs. 10,000/- or Tax amount/Refund amount/Input tax credit whichever is higher

1. Supply of any goods/services without issue of any invoice / issue of an incorrect or false invoice
2. Issue of any invoice or bill without supply of goods / services in violation of the provisions of this Act or the rules made thereunder;
3. Collects any amount as tax/ Collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months
4. (Fails to deduct/collect the tax as per provisions of Act or less deduction/collection of tax/ fails to pay such tax
5. Takes or utilizes input tax credit without actual receipt of goods / services either fully or partially, in contravention of the provisions of this Act or as per rules
6. Fraudulently obtains refund of tax under this Act;
7. Takes or distributes input tax credit in contravention of section 20, or as per rules
8. Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
9. Is liable to be registered under this Act but fails to obtain registration;
10. Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
11. Obstructs or prevents any officer in discharge of his duties under this Act;
12. Transports any taxable goods without the cover of documents as may be specified in this behalf;
13. Suppresses his turnover leading to evasion of tax under this Act;
14. Fails to keep, maintain or retain books of account and other documents as per the Act/Rules
15. Fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings under this Act;
16. Supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
17. Issues any invoice or document by using the registration number of another registered person;
18. Tampers with, or destroys any material evidence or document;
19. Disposes off or tampers with any goods that have been detained, seized, or attached under this Act

Penalty u/s 122(2)

SN	Nature of Violation	Penalty normal cases	Penalty normal cases
1	who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded	Rs.10,000/-; or 10% of the tax Whichever is higher	Rs.10,000/-; or 100% of the tax Whichever is higher
2	where the input tax credit has been wrongly availed or utilized		

Sec 122(3) Offences with Penalty Rs. 25,000/- on a person

- Aids or abets (Encourage or help) any of the offences specified in Sec 122(1)
- acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act/rules;
- Receives any goods/services which he knows or reason to believe in contravention of Act/ rules
- fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- fails to issue invoice as per provisions/rules or fails to account for an invoice in his books of account,

PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]

- Where a person who is required to furnish information return under section 150, has not furnished the same within the time specified, the Commissioner or an officer authorized by him serve notice and in requiring him to furnish the information return within a period not exceeding 90 days from the date of service of notice.
- If the said person still fails to furnish the return within the period specified in notice issued, the penalty will be levied Rs. 100 per day or Rs. 5000 Whichever is higher.

FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

- Commissioner has got power by notification direct that statistic may be collected relating to any matter in connection with the Act. The commissioner or any person authorised by him may call the concerned persons to furnish information or return (sec 151)
- If any person required to furnish any information or return under section 151, fails to furnish without a reasonable cause/ willfully furnishes false information or return
- Penalty Rs. 100 per day or Rs. 25,000/ whichever is higher

GENERAL PENALTY [SECTION 125]

Any person, who contravenes any of the provisions of this Act/Rules for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to Rs. 25,000/-

GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126)

- Penalty shall be imposed on any person only by giving him an opportunity of being heard i.e. Issue of SCN and proper hearing in the matter
- The officer should specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty is levied
- No penalty shall be imposed by any officer under this Act for –
    - Minor breaches of tax regulations,
    - Procedural requirements of the law,
    - Any omission or mistake in documentation which is easily rectifiable

POWER TO WAIVE PENALTY OR FEE OR BOTH [SECTION 128]

The Government may, by notification, waive in part or full, any penalty referred to in section 122/123 and 125 o or any late fee referred to in section 47 (for delay in filing of return) for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

PUNISHMENTS FOR CERTAIN OFFENCES CRIMINAL PENALTIES) [SECTION 132]

The following are the major offences under the Act which warrant institution of criminal proceedings and prosecution.

According to the provisions of Section 132(1), whoever commits any of the following offences, namely: —

supplies any goods or services or both without issue of any invoice, in violation of the provisions /RULES with the intention to evade tax;

a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act/Rules leading to wrongful availment or utilisation of input tax credit or refund of tax;
c) avails input tax credit using such invoice or bill referred to in clause (b);
d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes

any false information with an intention to evade payment of tax due under this Act;

g) obstructs or prevents any officer in the discharge of his duties under this Act;
h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
j) tampers with or destroys any material evidence or documents;
k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section

shall be punishable with the previous sanction of Commissioner, as under

Section	Amount of tax involved	Quantum of Punishment	Cognizable/ Non cognizable
132(1)(i)	> Rs. 500 lakhs	Upto 5 years with fine	Cognizable (Non bailable)
132(1)(ii)	> Rs.200 lakhs ≤ Rs. 500 lakhs	Upto 3 years with fine	Non cognizable (Bailable)
132(1)(iii)	> Rs. 100 lakhs ≤ Rs. 200 lakhs	Upto 1 years with fine	Non cognizable (Bailable)
132(1)(iv)	Offence specified in clauses (f),(g) or (j) of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non cognizable (Bailable)

Second and subsequent offence:

Section 132(2) of the CGST Act, 2017 where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

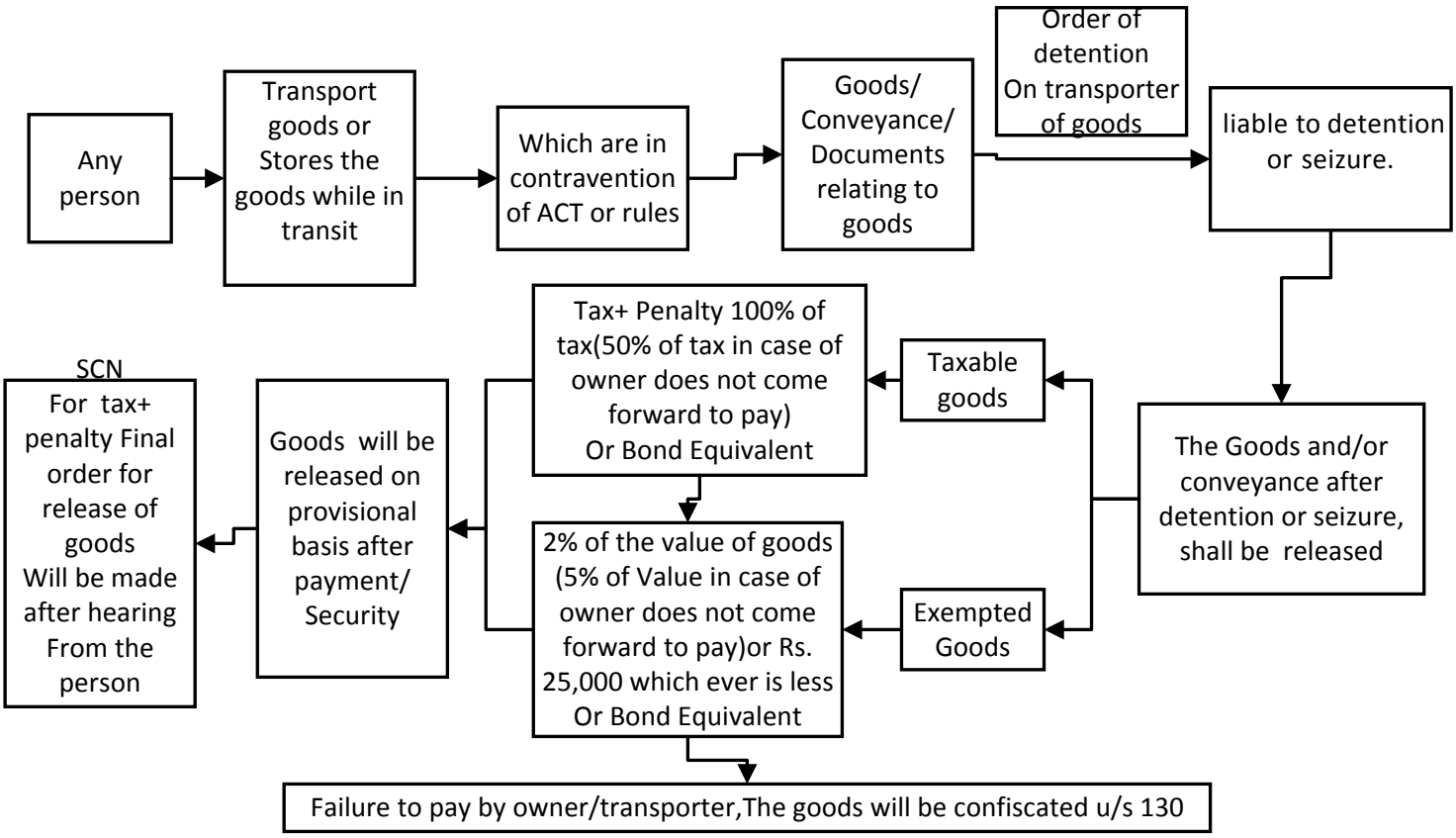
Minimum imprisonment is 6 months:

Section 132(3) of the CGST Act, 2017 the imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

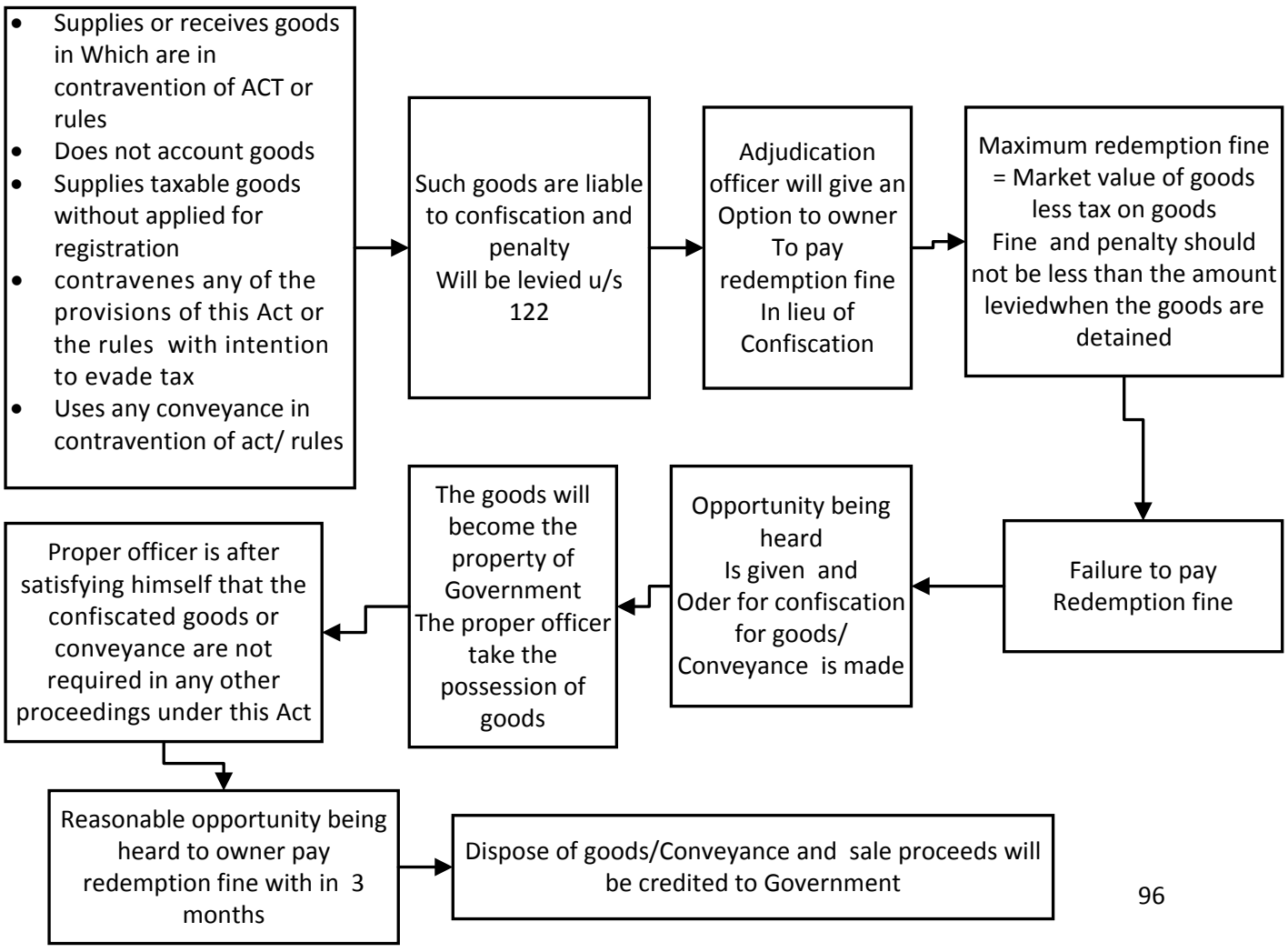
Meaning of 'Tax' for the purpose of Section 132

The term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, IGST Act or the UTGST Act and cess levied under the Goods and Services Tax (Compensation to States) Act. [Explanation to Section 132 of CGST Act]

DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION129)
Over riding provision of all other sections



CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]
Over riding provision of all other sections



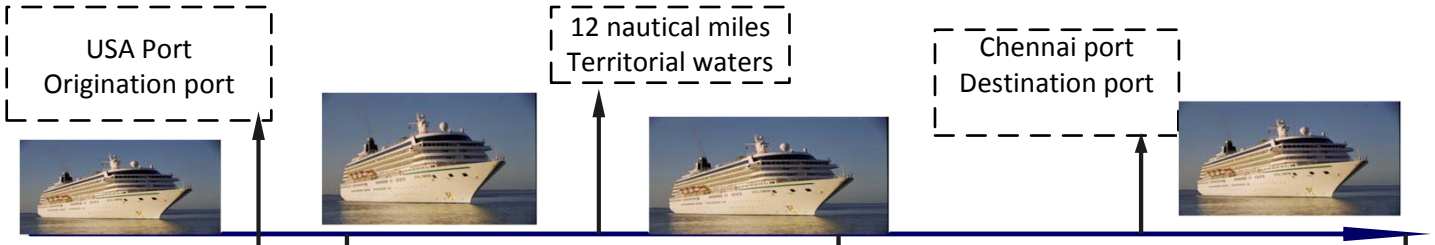
Customs Duty liability Sec 12

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



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 comsuption.

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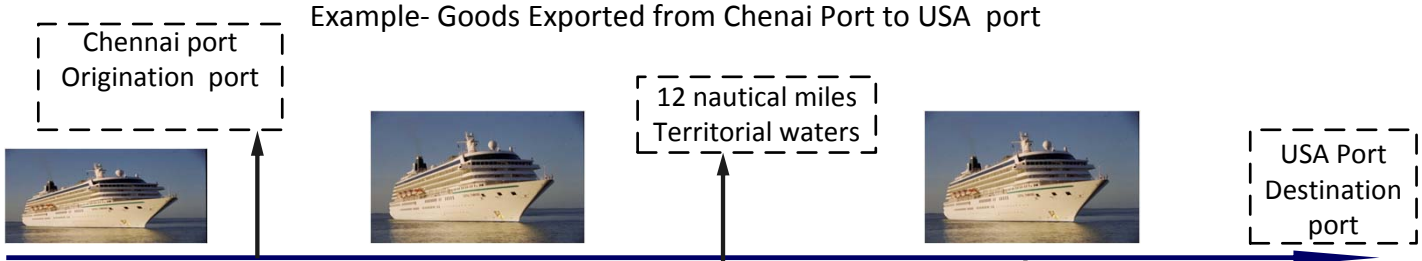
Taxable event for Export goods

Example- Goods Exported from Chenai Port to USA 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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DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

Re-importation of goods produced/manufactured in India [Section 20]

Goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, However, the following concessions are available in this regard:

Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback, rebate etc *Notification no. 94/96 Cus. dated 16.12.1996*

SN	**Description of goods exported**	**Amount of import duty payable if re-imported**
1	Goods exported under claim for duty drawback, rebate of excise duty, bond without payment of duty, etc	Amount of incentive availed of at the time of export
2	Goods exported for repairs abroad	Duty payable on fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways
Conditions to claim concession		
1	The time limit for re-importation is 3 years. This is extendable to 5 years.	
2	The exported goods and the re-imported goods must be the same.	
3	In case of Goods exported for repairs abroad the ownership of the goods should also not have changed.	

Example for SN 2

A machine was originally imported from Japan at Rs. 500 lakhs in July, 2017 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 2017 and re-imported without any re- manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been ` 9 lakh. Actual insurance and freight charges (to and fro) were Rs.3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Answer

Value of goods re-imported after exports [`Rs 9 lakh (including cost of materials) + Rs.3 lakh]	12,00,000
Add: Basic customs duty @ 10% **(A)**	1,20,000
Add: Education Cess @ 3% (A) - **(B)**	3,600
Value for computing integrated tax under section 3(7) of CTA 1975	13,23,600
Integrated tax @ 12% (` 13,23,600 x 12%) - **(C)**	1,58,832
Total Customs duty and integrated tax payable [(A) +(B)+(C)]	**2,82,432**

Exported goods re imported

Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process Notification No. 158/1995, dated 14.11.1995

SN	Goods manufactured in India and re- imported for	Time-limit for re-importation from the date of exportation
1	Repairs or for reconditioning	3 years (In case of export to Nepal -10 years)
2	Reprocessing/ Refining/Re-making/similar process	1 year
Conditions to be satisfied		
1	Goods must be re-exported within 6 months (extended to 1 year) of the date of re- importation.	
2	The AC/DC of Customs is satisfied as regards identity of the goods	
3	The importer at the time of importation executes a bond	

Goods derelict, wreck etc. [Section 21]

The concept of 'goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India.

This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

SN	Term	Meaning
1	**Derelict**	This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
2	**Jetsam**	This refers to goods jettisoned from the vessel to save her from sinking
3	**Flotsam**	Jettisoned goods which continue floating in the sea are called flotsam
4	**Wreck**	This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck

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

Distinguish between Jetsam and Flotsam

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

Exemptions/Remissions/Abatement of duty

Exemption of duty on pilfered goods - Section 13

The term 'pilfer' means, "to steal, especially in small quantities; petty theft". Pilfer does not include loss of total package. If any imported goods are pilfered after unloading, before the proper officer has made an order for clearance for home consumption or deposit in a warehouse; the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage. There is no remedy if goods are pilfered after the order for clearance is made but before the goods are actually cleared.

Other points:

- If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable
- Section 13 deals only with pilferage. It does not deal with loss/destruction of goods.
- In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible - *Bharat Earth Movers* 2001 (129) ELT 580 (Mad).

Remission of duty on lost destroyed or abandoned goods - Section 23

- If AC/DC satisfied that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, remission will be granted.
- The remission of duty is permissible only in the case of total loss of goods, the loss is forever and beyond recovery.
- The loss is generally due to natural causes like fire, flood, etc.
- In case duty has already been paid, refund can be obtained after getting the remission orders.
- Remission will be available even the goods lost/destroyed in goods in warehouse before clearance of home consumption.

Relinquishment of title of goods by Importer

- Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit into a warehouse.
- Even if goods are warehoused, the owner of warehoused goods can relinquish the title of goods any time before order for home clearance is made.
- 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

- The goods are in much deteriorated condition and it is not worthwhile to pay duty.
- The assessment of duty is done on much higher side than expected.
- 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.

Distinction between section 13 - pilferage and section 23 - remission on damaged goods

Section 13	Section 23(1)
Section 13 deals with pilferage.	Section 23(1) deals with loss or destruction of goods, except pilferage.
No duty is payable at all under Section 13, but duty becomes liable if goods are restored.	Duty is payable under section 23(1), but it is remitted by Assistant Commissioner of Customs. Thus, unless remitted, duty has to be paid under section 23(1).
Importer does not have to prove pilferage.	Burden of proof is on importer to prove loss or destruction.
Pilferage should be before order for clearance is made.	Loss or destruction can be any time before clearance.
Loss must be only due to pilferage.	Loss or destruction may be due to fire, accident etc. but not pilferage; e.g. loss by leakage is covered under section 23.
Under Section 13, duty is normally not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.	Under section 23(1), if duty is paid, then refund can be obtained only if remission is granted by Customs Authorities. Thus, remission under section 23(1) is at the discretion of Custom Authorities. [Of course, the discretion has to be exercised judiciously].
Section 13 is not applicable for warehoused goods.	Section 23(1) is applicable for warehoused goods also [as goods transferred to warehouse are not 'cleared for home consumption'].

Abatement of duty on damaged goods - Section 22

Meaning of damage

- The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.

Meaning of deterioration

- Deterioration is reduction in quality of goods due to natural causes

Reduction in duty, if goods are damaged or deteriorated

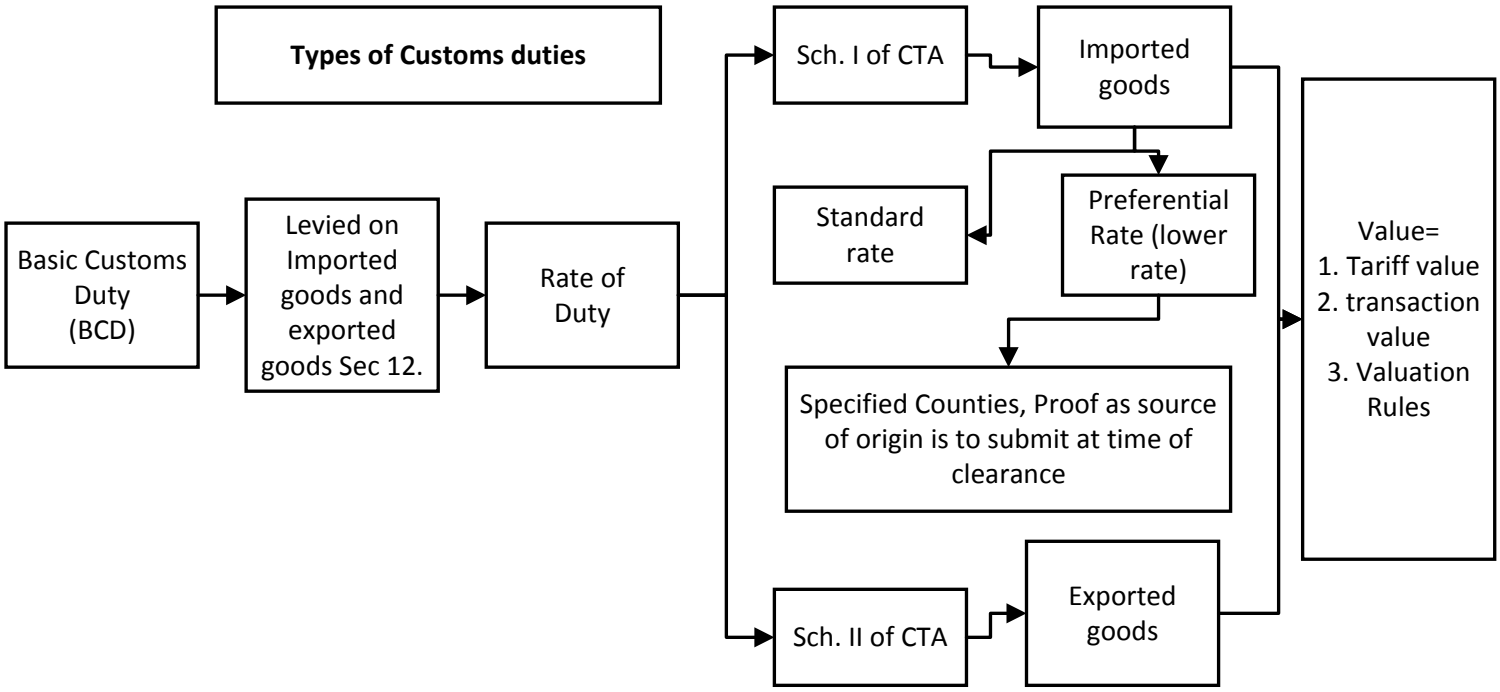
Reduction in duty will be allowed, if goods are damaged or deteriorated in any of the following cases:

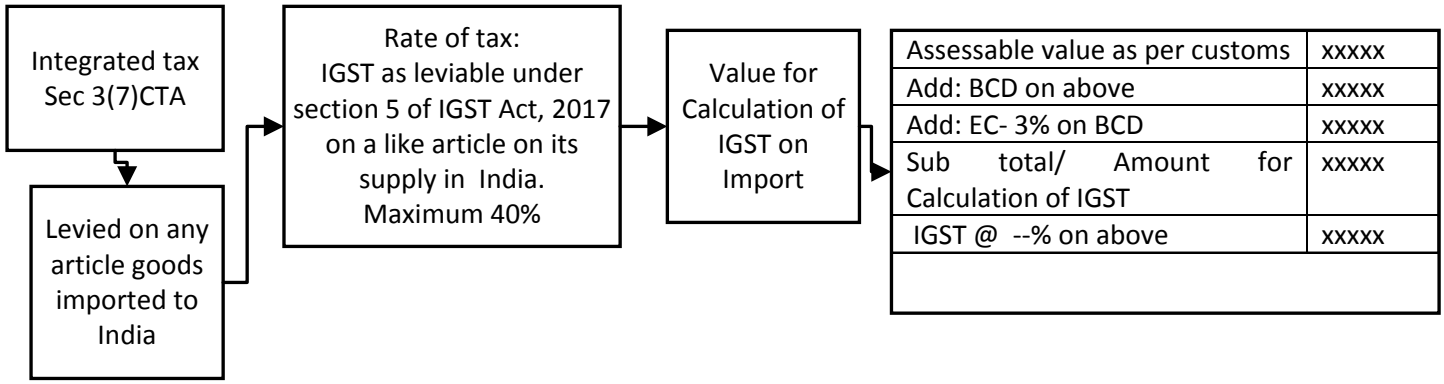
- Damaged before or during unloading in India
- Damaged by accident after unloading but before examination of goods for assessment by Customs Officer
- Damaged by accident in warehouse before clearance of goods
- The accident is not due to willful act, negligence or default of importer, his employee or agent
- The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration
- Amount of duty chargeable after abatement can be explained with help of an example. If the value of goods is Rs. 1,00,000 and rate of duty is 10% and after damage the value is Rs. 70,000, then duty payable is Rs. 7,000, i.e., 10% on Rs. 70,000. Rs. 30,000 i.e., the proportionate abatement is 30% (30,000/1,00,000)

- AC may decide the value of damaged goods, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.
- Willful negligence on the part of the assessee is not permissible for abatement, as held in *Super Chemical Corporation vs. CC* 2003 (156) ELT 248 (Tri-Chen).
- The remission of duty under section 22 could not be granted if the claim thereof has not been made before the Assessing Authority. Held in *Udayani Ship Breakers Ltd*. 2006 (195) ELT 3 (SC).

Denaturing or mutilation of goods - Section 24

- An importer can request the Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.
- If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, than denaturing or mutilation of such goods is useful.
- After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.
- For example, Ethyl Alcohol, which is not denatured, attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty.

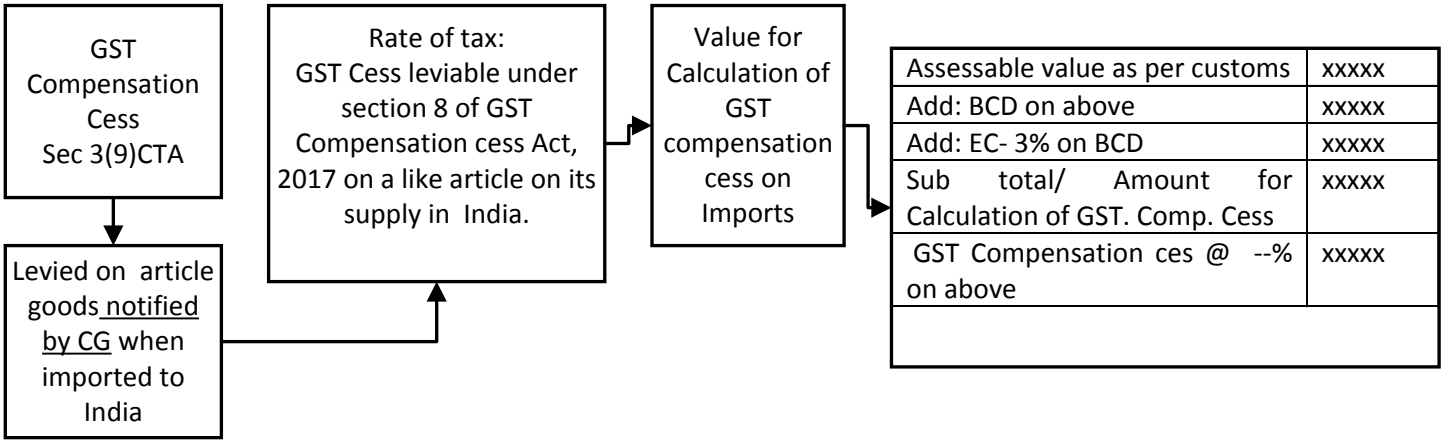




Assessable value as per customs	xxxxx
Add: BCD on above	xxxxx
Add: EC- 3% on BCD	xxxxx
Sub total/ Amount for Calculation of IGST	xxxxx
IGST @ --% on above	xxxxx

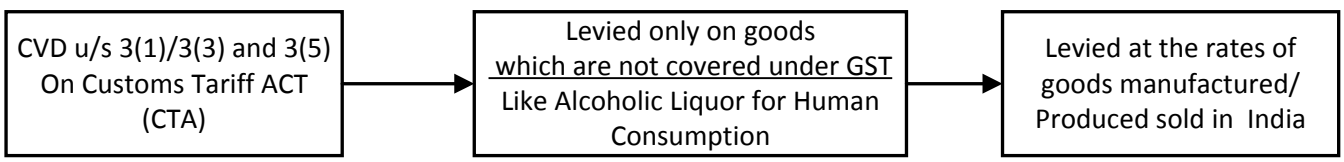
Clarification regarding leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof vide *Circular No. 33/2017 Cusdated 01.08.2017*

All inter-State transactions are subject to IGST. High sea sales of imported goods are akin to intere state sales. high sea sale shall form part of the value on which IGST is collected at the time of clearance.



Assessable value as per customs	xxxxx
Add: BCD on above	xxxxx
Add: EC- 3% on BCD	xxxxx
Sub total/ Amount for Calculation of GST. Comp. Cess	xxxxx
GST Compensation ces @ --% on above	xxxxx

GST Compensation cess is compensation paid to Government on intra and inter state supply of goods due to loss of revenue on Implementation of GST The duty or tax or cess chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.



Protective Duties

Safeguard duty [Section 8B of the Customs Tariff Act]		
1	Circumstances for Impose	Any article is imported into India in increased quantities;
		Such increased importation is causing or threatening to cause serious injury to domestic industry
2	Amount of duty	Equal to Injury margin (IM), IM= Fair SP in domestic market- landed cost of goods in India i.e., AV + Customs duties
3	Exemption from SG duty	Developing County sharing <= 3% Share of Total Imports to India from that country
		More than one Developing County sharing each <=3% & All countries together <= 9% Share of Total Imports to India from that country
		Goods imported by 100% EOU/SEZ if not cleared to DTA
4	Period of duty	Up to 4 years, Extension by CG Max another 6 years
5	Provisional duty	Pending determination of final duty, CG can impose Provisional amount of duty
		Provisional duty in force for maximum 200 days
		Upon final determination of duty, if CG is of opinion , there is no injury to domestic industry, the duty collected will be refunded
	Example	X Ltd imported a chemical from a developing country value about Rs. 50 crores. Whether SG can be imposed. (1) if imports from developing country is (a) 3000 crores (b) Rs. 100 crores
	Answer	(1) Percentage of Imports = 50/3000= 1.67% No SG duty
		(2) Percentage of Imports = 50/100 =50% = SG duty payable.
6	Duty on 100% EOU/unit in a SEZ	Section 8B(2A) of CTA , 1975, provides for levy of safeguard duty on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared as was leviable when it was imported into India

Countervailing duty on subsidized articles [Section 9 of the Customs Tariff Act]		
1	Circumstances for Impose	Any country or territory, directly or indirectly, pays subsidy for exportation of goods to India. Such subsidy relates to export performance.
		The importation may direct from country or indirect through other country
		The article may be in the same condition or change by manufacture
2	Amount of duty	Up to the amount Equal to subsidy paid
4	Period of duty	Up to 5 years + Extension another 5 years
5	Provisional duty	Same as safe guard duty under sec 8B

Anti-dumping duty [Section 9A of the Customs Tariff Act]	
Circumstances for Impose	When a large manufacturer from abroad may export goods to India at very low prices compared to the prevailing prices in his domestic market.
	Such dumping may be with intention to cripple the domestic industry or to dispose of their excess stock
	Indian industry which produces —like articles when compared to the allegedly dumped imported goods.
Amount of duty	dumping margin or injury margin, whichever is lower
	Dumping margin means - Normal value in the exporting market- Export price
	injury margin means - fair selling price of domestic industry – landed cost of imported goods.
Period of duty	Up to 5 years + Extension another 5 years
Provisional duty	Same as safe guard duty under sec 8B
Other points	The Central Government will make rules and notify the articles liable for duty
	The Central Government will determine and ascertain the margin of dumping from time to time after carrying out necessary inquiry
	If importer proves he pays duty more than the margin , he is entitled to refund of duty

Example:

An importer imported article from People's Republic of China. Assessable Value as per customs is Rs. 8,88,800/-Total customs duty payable including education cess other than anti-dumping duty is Rs. 2,74,639/- The anti-dumping duty will be equal to the difference between amount calculated @ US $ 27.97 per kg and 'landed value' of goods. Compute anti-dumping liability.

Solution

Computation of landed value

Assessable Value Under Customs Act,	Rs.	8,88,800.00
Add: All Duties of Customs	Rs.	2,74,639.00
Landed Value as per Anti-Dumping Notification	Rs.	11,63,439.00

Computation of anti-dumping duty

Rate of article as per Anti-Dumping Notification (US $ 27.97 per kg)	US $	27,970
Value @ Rs. 44 = 1 US $	Rs.	12,30,680.00
Less:		
Landed Value as per Anti-Dumping Notification	Rs.	11,63,439.00
Anti-Dumping Duty payable	Rs.	67,241.00

No levy under section 9 or section 9A in certain cases [Section 9B of the Customs Tariff Act)	
1	No article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

2	These duties shall not be levied on imports from member country of WTO or from a country with whom the GOI has a most favoured nation agreement. This duties can be levied only if import of article threatens to material injury to established industry.
3	The provisional countervailing and anti-dumping duties shall not be levied on any article imported from specified countries unless preliminary findings injury to domestic industry.

Common points for duties from Sec 8B protective duty to Anti-dumping duty u/s 9A	
1	All the duties will be levied through notification by Central Government in Official Gazette
2	Education cess or higher secondary education cess is not payable on these duties.
3	This duties are not applicable to 100% EOU or SEZ unless specifically mentioned in the notification
4	The Act, rules and regulations made under the Customs Act with regard to, demand, refund, assessment, interest, penalty, offences and appeals will also be applicable to these duties

Note:

- Basic customs duty, all other duties are attracted only on imported goods.
- Basic customs duty is only applicable for export goods.

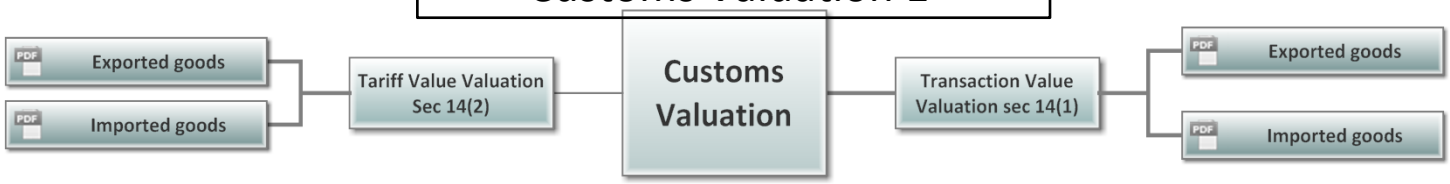
Section 5 - Levy of a lower rate of duty under a trade agreement

- If Government of India enters into a trade agreement with Government of a foreign country or territory, duty is levied at a rate lower than rate of first schedule for import of goods/ articles which are the produce or manufacture of such foreign country or territory.
- The owner is required to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the appropriate lower rate under such agreement.
- If any question arises whether any trade agreement applies to any country or territory, or whether it has ceased to apply to India or any foreign country or territory, it shall be referred to the Central Government for decision, and the decision of the Central Government shall be final and shall not be liable to be questioned in any court of law.

Section 8 - Emergency power of Central Government to increase or levy export duties

- Where, in respect of any article, whether included in the Second Schedule or not, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.
- The duty will be valid till the date prescribed in the notification.
- The duty can be rescinded, reduced or increased by a notification.
- Such notification should also be placed before Parliament for approval in the next session.

Customs Valuation 1-



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

"Transaction value" Valuation Imported goods

Transaction value of imported goods read with Valuation rules

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*

Work out problems from RTP May 2018 on Valuation. Duty calculation

Cost and services to add Rule 10(2) Notification 91/2017-26.09.2017

(Cost of Transport;

- Actual amount. If not ascertainable 20% of FOB, In case of Air, Actual restricted to 20% of FOB
- Transit Insurance; Actual amount, if Not ascertainable 1.125% of FOB
- **(c)**~~Landing Charges- flat 1% of CIF~~ . loading and handling charges incurred at the load port) shall now be includible in the transaction value. (Transport and insurance up to place of import)
- ship demurrage charges on charted vessels, lighterage or barge charges.

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

- Charges for Construction, Erection, Assembly, Maintenance or Technical assistance, Undertaken after importation
- The cost of transport after importation
- Duties and taxes in India
- Interest on Delayed Payments
- costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport, etc.) within India will be excluded,
- goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment s 107

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

identical goods :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

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

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

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

Deductive Value method Rule 7

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

AV=Deductive value

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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)

1.They are

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

2.Both of them

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

ONE OF THEM

- Control the other

3.Any person

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

Explanation:

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

Customs Valuation 3

"Transaction value" Valuation Export goods

Transaction value of Export goods

- : Transaction value =Price of goods sold at the time and place of Exportation (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

<u>PASSENGER AND CREW ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION. [SECTION 30A</u>]

- PIC Before arravial of Vessel, air Carft, Vehicle should file passenger and crew arrival manifest <u>AND</u> the passenger name record information in such form as may be prescribed
- Failure with out sufficient cause Penalty 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 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 Electronic filing with integrated declaration / ware house to home consumption latter
- BOE can be file after filing of IGM/IR before the end of next following day of arrival of conveyance excluding holidays. Charges will be levied for late filing. 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
- Importer pay duty on the day of presentation of BOE in case of self assessment or with in 1 working day in other cases. CG got power to allow deferred payment of duty to any class of importers.

Time limit to pay duty and deferred payment of duty [SECTION 47]

The importer shall pay the import duty—

- on the date of presentation of the bill of entry in the case of self- assessment; or
- within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment;

MANDATORY ELECTRONIC PAYMENT OF DUTY

- The Central Government has notified that Importers registered under Accredited Clients Programme, Importers paying customs duty of Rs. 1 lakh or more per bill of entry has to make mandatory electronic payment.

Deferred payment of duty

- Central Government may permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules
- Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).
- Directorate General of Performance Management under CBEC makes an order, which is popularly known as "pass out of customs charge order" the bill of entry (duplicate) copy is produced to the custodian who delivers the goods to the importer.
- An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Due dates of deferred payment of duty

SN	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1	1st day to 15th day of any month	16th day of that month
2	16th day till the last day of any month other than March	1st day
3	16th day till the 31st day of March,	31st March

- The Importer fails to pay the duty either in full or in part within the time so specified, shall pay interest on the duty not paid or short-paid @ 15% p.a. till the date of its payment.
- Electronic payment of duty: The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.
- Deferred payment not to apply in certain cases: If there in default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.
- The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.
- The benefit of deferred payment of duty is also applicable when duty is payable in case of exports.

PASSENGER AND CREW DEPARTURE/ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION

SN	Particulars	Imports Sec 30A	Exports Sec 41A
1	Who should file	Person in charge or specified Person	Person in charge or specified Person
2	When to file	Before arrival of vessel/air craft Upon arrival in case of Vehicle	Within such time prescribed (before leaving the conveyance)
3	Failure to deliver without a proper sufficient cause	Penalty Rs. 50,000	Penalty Rs. 50,000

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 for sensitive goods like animals, perishable goods and hazardous goods.
- Arms and ammunition can be sold only with the permission of CG.

Sec 37: Power to Board Conveyance

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

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

Any document may be demanded from PIC --- Questions may also be asked by the Proper officer

Relinquishment of title of goods by Importer

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

Reasons for relinquishment

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

Import procedures -3

Coastal goods

- Coastal goods mean goods transported from one port in India to another port in India. For example, transport between Chennai and Mumbai
- Coastal goods do not include imported goods.
- No export or import is involved, but control is necessary to ensure that coastal goods are not illegally diverted for export. Coastal goods can leave only after obtaining written order from the Customs Officer.

***Entry for coastal goods* [*Section 92*]**

- The Consignor should submit prescribed for bill of coastal goods to Customs Officer.
- Every such consignor, while presenting a bill of coastal goods shall, at the foot thereof, makes and subscribes to a declaration as to the truth of the contents of such bill.

***Coastal goods not to be loaded until bill relating thereto is passed* [*Section 93*]**

- Master of vessel will load these only after 'bill of coastal goods' is passed.

***Master of a coasting vessel to carry an advice book* [*Section 95*]**

- Master of Vessel will carry an 'Advice Book' where the Customs Officer will make entries.
- This 'Advice Book' has to be presented for inspection of Customs Officers, if called for, after loading the vessel.

***No coasting vessel to leave without written order* [*Section 97*]**

- The master of a vessel which is carrying coastal goods shall not to depart from such a port until a written order to that effect has been given by the Proper Officer.

No such written order shall be given until:

- The master of the vessel has answered the questions put to him under section 38;
- All charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by guarantee;
- The master of the vessel has satisfied the Proper Officer that no penalty is leviable or the payment of any penalty has been secured by guarantee or deposit of such amount as the proper officer may direct.

***Unloading of coastal goods* [*Section 96*]**

- Unloading of coastal goods should be done only at Customs Port or the coastal port appointed by CBEC under section 7 of Customs Act.
- On arrival, all bills relating to goods which are to be unloaded will be delivered to the Customs Officer.
- Unloading can be done only after obtaining permission from the Customs Officer.
- Customs Officer can inspect the goods and questions and ask for documents relating to goods.
- Goods will be unloaded at an approved place under supervision of the Customs Officer.

***Clearance of coastal goods at destination* [*Section 94*]**

- The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him.
- He shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the Proper Officer of that port all bills relating to the goods which are to be unloaded at that port.

- Where any coastal goods are unloaded at any port, the Proper Officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

Application of certain provisions of this Act to coastal goods, etc.Sec 98

(1) Sections 33, 34 and 36 shall, so far as may be, apply to coastal goods as they apply to imported goods or export goods

***Power to relax* [*Section 98A*]**

- If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions as may be specified in the notification, coastal goods or vessels carrying coastal goods from all or any of the provisions of this Chapter.

Vessels carrying exclusively coastal goods exempted from the provisions of sections 92, 93, 94, 95, 97 and 98(1) of the Customs Act, 1962 Notification No. 56/2016 Cus (NT) dated 27.04.2016

Import and export through courier

- Import/export through courier is permitted only through specified cities Mumbai, Delhi, Calcutta, Chennai, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum and land customs station.
- Courier Agency should register with the Commissioner of customs and should be financially viable.
- Courier Agency should execute a bond/security, if any.
- Registration can be cancelled for misconduct or failure to comply with regulations.
- Agency should advise the client about rules and regulations.
- Agency should disclose all the information to the Assessing Officer.
- It is not necessary that the goods should carry by the Courier Agency itself. The person-in-charge can carry the goods.
- Some goods like animals, pets, maps perishables, chemicals, depicting boundaries etc. should not be imported/exported.
- Weight of each packet in courier should not exceed 70 kg.
- All goods should be classified into documents, free gifts, samples and dutiable goods.
- The Authorized Courier also has to file 'Courier Bill of Entry'/Courier Shipping bill in a prescribed form.
- The courier bags should be kept separately and shall be dealt with only as per directions of the Commissioner of Customs.
- Dutiable goods should be packed separately with appropriate labels.
- These goods must be accompanied by a declaration by the sender with respect to the contents of the package and its value.
- Samples upto `Rs. 50000 in respect of exports and ` Rs.10000 for imports and free gifts upto `Rs. 25000 in respect of exports and ` 10000 for imports per consignment is allowed.
- Import/export of jewellery/diamond, each consignment should not exceed Rs. 25 lakh.
- Authorized Courier has to submit a declaration in the prescribed form.
- If imported goods are not cleared within 30 days, these will be disposed of.
- Goods brought in customs area must be exported within 7 days.
- If not exported within 7 days, these will be disposed of. The period can be extended by Assistant Commissioner in deserving cases.

Import and export through post

- Separate provisions are given for import/export through post.
- Label and declaration are the entry for purpose of postal articles. (section 82)
- Filing of separate Bill of Entry or Shipping Bill is not necessary for import/export.
- Regulations for import/export by post – section 84
- Board makes regulations for procedures for examination and assessment of duty and transit/transhipment of goods imported by post.

Accordingly, CBEC has made rules as follows:

- The parcel bill/letter mail bill will show details like Serial number assigned by office of posting, name of office of posting, Destination, weight, local number, contents as ascertained by Customs; Declared value in foreign currency, rupee value, rate of duty, amount of duty and remarks;

- Postal parcels will be allowed to pass from port/airport to Foreign Parcel Department of Post Offices without payment of customs duty;
- Postmaster will hand over the packets to the Principal Appraiser;
- The mailbag will be opened and scrutinized by the Postmaster under supervision of the Principal Postal Appraiser of Customs;
- Customs Appraiser will mark the parcels that are required to be detained as
  - necessary particulars are not available or
  - misdeclaration or under-valuation is suspected or
  - goods are prohibited for import;
- Other parcels will be assessed without opening on the basis of details given in the parcel bill or despatch notes;
- The duty will be assessed and will be entered on parcel bill;
- These will be audited and returned to the Postmaster;
- The Postmaster will hand over the parcel to the addressee only after collecting the customs duty;
- Customs duty collected by the postal department will be periodically credited to Customs department.

***Boat Notes/Restrictions on goods being water-borne* [*Section 35*]**

- There are certain customs ports where the ships cannot come to the shore for unloading or loading. In these places the cargo is ferried from the ships anchored at mid-sea to the port in boats, otherwise known as lighter.
- Sometimes if a vessel has to unload only a small cargo, it may not spend time in having berth in the port.
- In some cases not all ships arriving in the port get a berth. They have to wait for some time before they get allotment of berth. At times the ships have tight itinerary. In such cases the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship in boats.
- If the small cargo is to be sent to shore, it may be loaded in a small boat and sent to shore.
- Such small boat must be accompanied by a 'Boat Note'.
- Boat Notes Regulations provide that Customs Officer will issue such Boat Notes.
- It will be maintained in duplicate and should be serially numbered.
- Boat Note should be in a prescribed form.
- Loading in to a small boat from a ship should be done only when such a small boat is carrying a boat note.

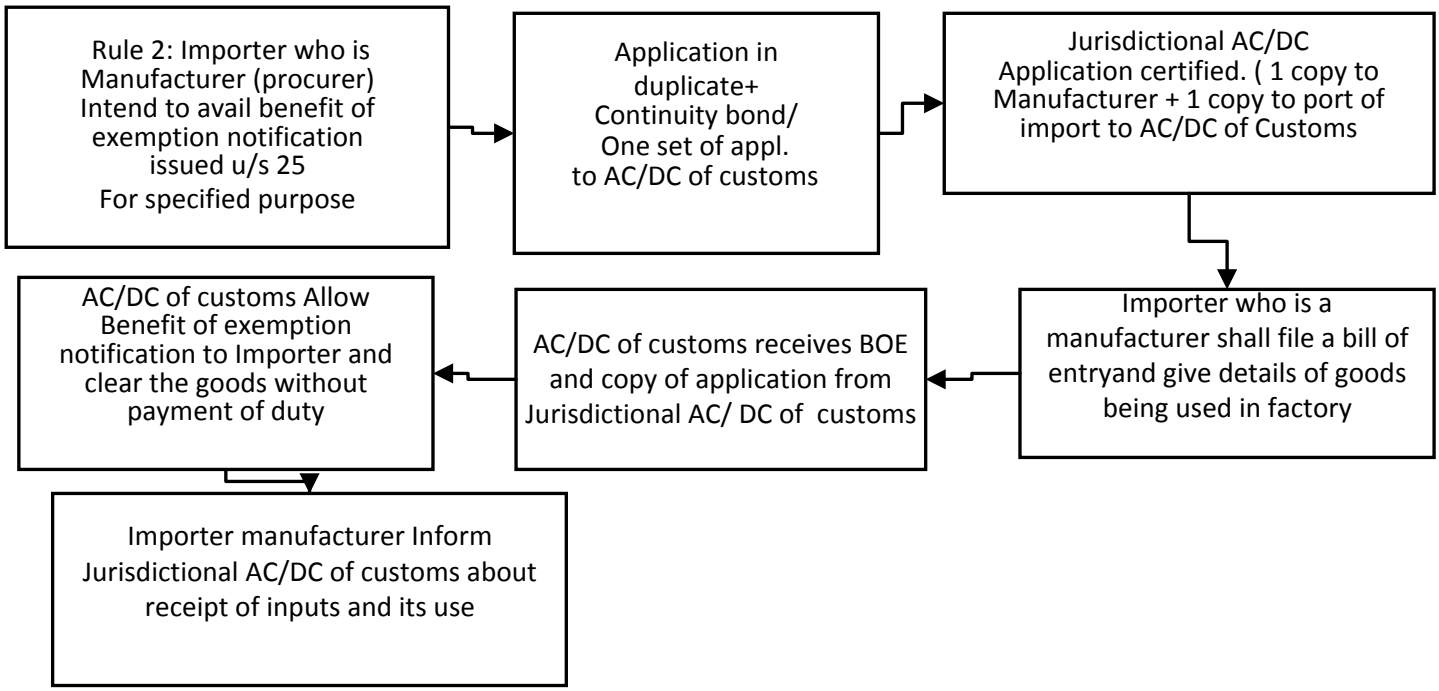
- Unloading from a small boat to a ship for export should not require a boat note, when a small boat is carrying shipping bill. Otherwise a boat note is required.
- Board may, by notification, relax these conditions to any class of goods.

Boat Note is also required for transhipment of cargo, i.e. transfer from one ship to another or for re-shipment

Import procedures -4

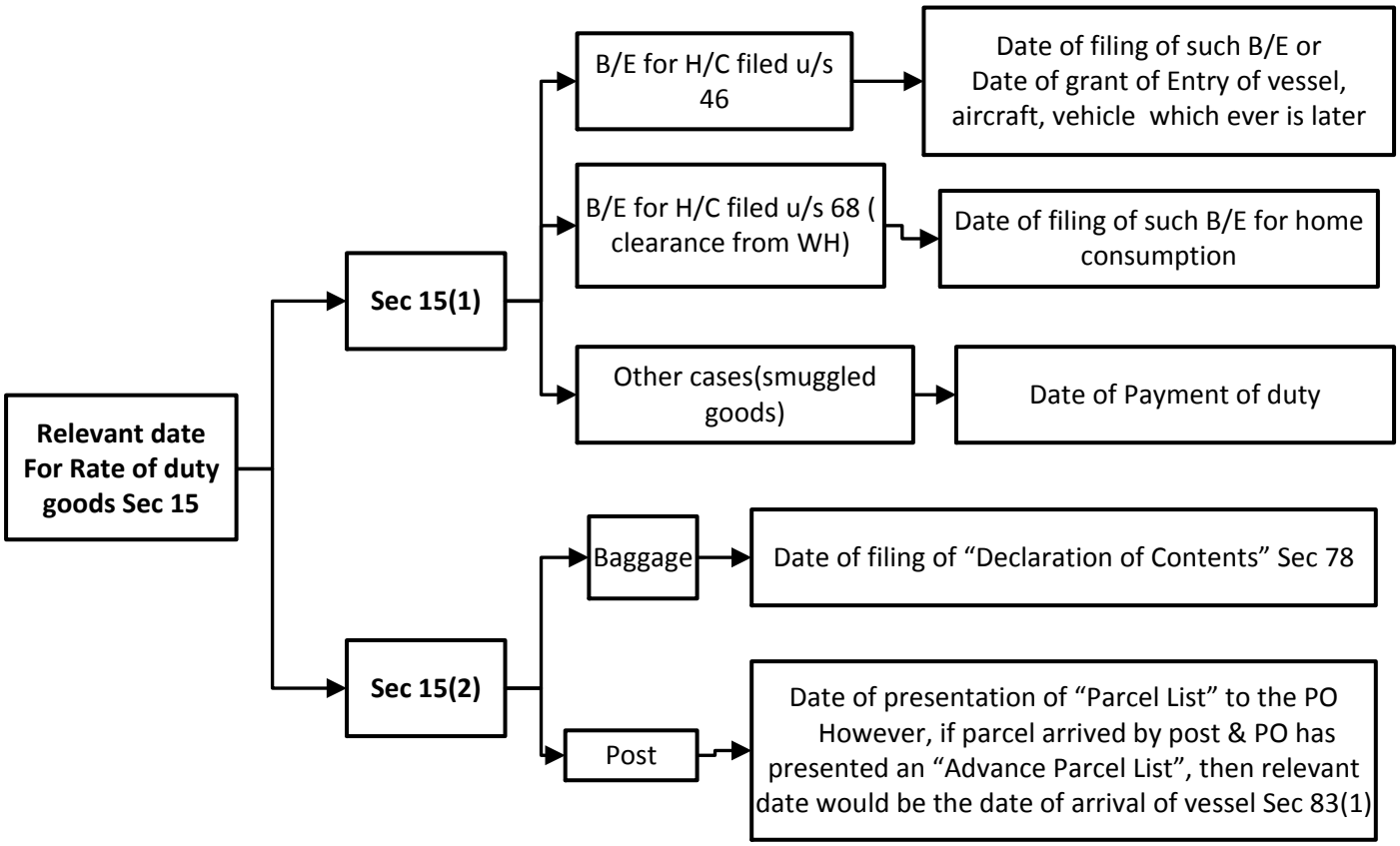
Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2017
Notification No. 68/2017 Cus (NT) 30.06.2017 /Circular No. 25/2017 Cus dated 30.06.2017

These rules will apply to an importer, being a manufacturer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 granting exemption of duty to **imported goods used for the manufacture of any goods or provision of output service. The new rule has been introduced due to implementation of GST from 01.07.2017**.

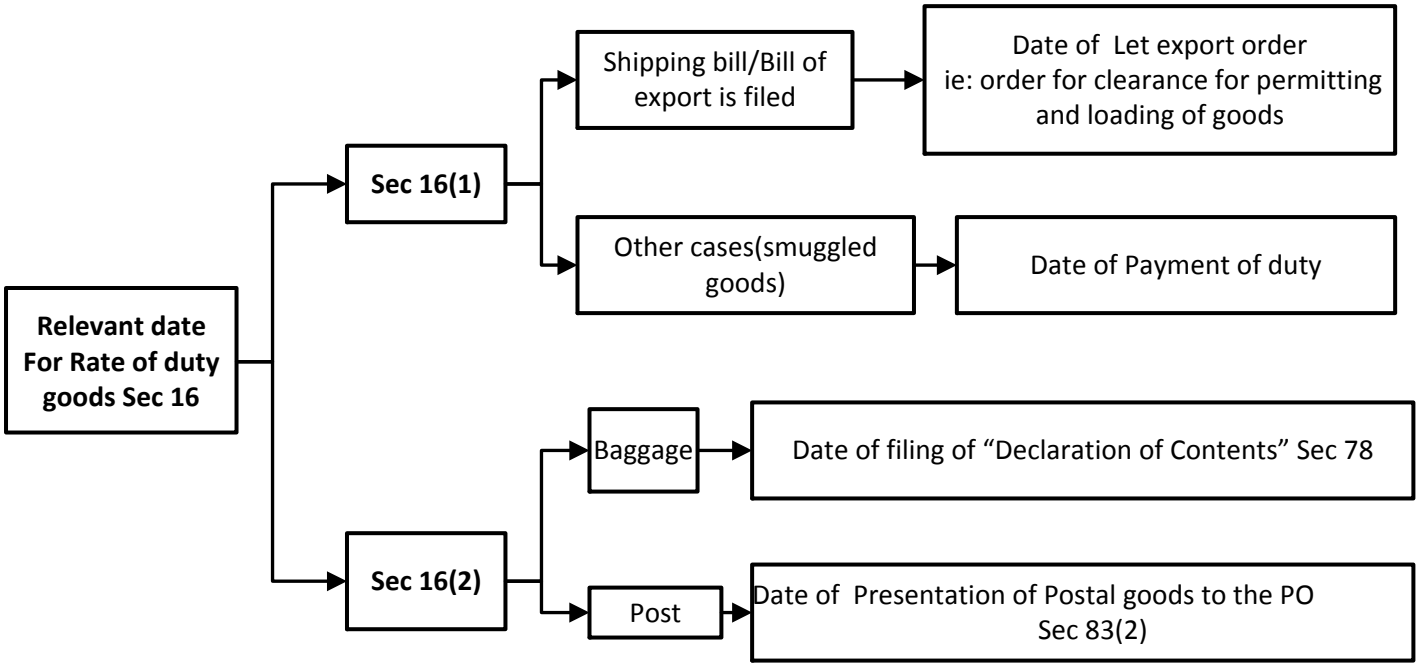


	Procedure summary
1	The manufacturer importer has to has to make an application giving details of
	Name address Registration No
	Decryptions of inputs, quantity required, nature of process in the factory
	Details of exemption notification proposed to be availed
2	Application to be made in 3 copies 2 sets to jurisdictional AC/DC of Customs and one set to AC/DC of customs port
3	Importer has to execute continuity bond with surety declaring duty interest will be paid
4	Jurisdictional AC/DC counter sign the copy and forward one copy of information to AC/DC of customs
5	Importer should file BOE and give details of factory where the goods are being used.
6	AC/DC of customs will allow the benefit of notification to importer
7	Importer has to inform about the receipt of goods with 2 days. He should maintain records and file quarterly return.
8	The imported goods should be used as per the conditions of notification, failure, bond will be invoked. Duty payable along with interest from the date of importation
9	**Re export or clearance of unutilized or defective goods**
	Can be re-exported with the Permission of Jurisdictional AC/DC of Customs within 3 months from the date of import. The FOB should not be less than the value of goods at the time of import
	Clear with the Permission of Jurisdictional AC/DC of Customs within 3 months from the date of importation on payment of duty along with interest from the date of importation

Relevant date for Imported Goods



Relevant date for Export Goods



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.

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

USA Port → Mumbai Port → Gujarat Port

- Goods are mentioned in IMF that intend for transit
- No separate documentation is required

- No Unloading of Goods
- No import duty payable this port
- Goods are not prohibited goods and there is no illegal import
- Goods can transit to other port

- Unloading of Goods and clearance is made.
- 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

- Goods are mentioned in IMF that intend for transit
- No separate documentation is required

- No Unloading of Goods and no clearance.
- Goods are not prohibited goods and there is no illegal import
- No import duty payable at this port
- Goods can transit to other port

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

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

- Goods are mentioned in IMF that intend for transhipment

- 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

- 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

- Goods are mentioned in IMF that intend for transhipment

- 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

- 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

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")

WAREHOUSING OF IMPORTED GOODS

Sec 2(43):- Warehouse means:

- A Public Warehouse as appointed u/s 57; or
- A private warehouse as licensed u/s 58 or
- a special warehouse licensed under section 58A

Public Warehouse sec 57 → Appointed by Principal commissioner/commissioner of customs

Private Warehouse sec 58 → licensed by–Principal commissioner of Customs sec 58(1)

special warehouse licensed section 58A → **Special warehouse which would remain under physical control of proper office Sec 58A**

Principal commissioner/commissioner of customs subject to conditions license Special warehouse, wherein dutiable goods may be deposited.

- The Board will notify the class of goods which will be deposited in the special warehouse.
- Ware house locked by the proper officer
- No person will enter the warehouse or remove any goods therefrom without the permission of the proper office

Goods can be stored in the special warehouse are Precious metals/ Supplies as to stores to vessels air crafts/ supplies to Duty free shops/ Supplies to foreign privileged persons as per regulation

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.

License for all warehouses (Public, Private or special warehouses) cancelled Sec 58 B

Principal commissioner/commissioner of customs may cancel License

- In case of contravention of Act/Rules (Opportunity of Being Heard will be given)
- Pending enquiry License may be suspended, during the period goods not to be allowed to deposit
- Goods already deposited will remain in the warehouse.
- Such suspension of operations will be in addition to any other action that may be taken against the licensee and the goods
- Once the license is cancelled, the warehoused goods will be removed from such warehouse within 7 days from the date order. Proper officer may extend time

WAREHOUSING Procedure

Bill of entry For Warehousing sec 46 To filed by Importer

Ware Housing Bond Sec 59

- a bond in a sum equal to thrice the amount of the dutY + Prescribed Security.)
- New bond form was notified till the removal of goods from warehouse
- 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 Bond under sec 59, pass warehousing order. Then the responsibility lies on importer and warehouse keeper for self removal procedure

New Ware housing licensing, removal and custody Regulations are also notified by notification No 67 to 72/2016 dated 14.05.2016. This are purely for practical purposes

Warehouse goods will be under control of Warehouse Keeper Sec 73 A

All warehoused goods will remain in the custody of warehouse keeper of public, Private and Special warehouse

- The custody will be till the goods removed from warehouse for home consumption/export or to other warehouse.
- The responsibilities of the warehouse keeper (licensee) who has custody of the warehoused goods will be such as may be prescribed like maintenance of records etc
- Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties and any other action

Warehousing period and Interest Sec 61

S No	Class of goods	Time which will remain in warehouse
1	Goods for use in any 100% EOU/ EHTP/ STP/ Goods where manufacture or other operations are permitted under section 65	
	Capital goods	Till the clearance of such goods from warehouse
	Other goods	Till the consumption or clearance of such goods
2	Goods other than 1. above	Till the expiry of 1 year from the date of order of depositing goods in warehouse u/s 60
		Extension of time:
		Principal Commissioner/ Commissioner not more than 1 year at a time. The extension may be reduced based on the shelf life of the goods
3	Interest on warehousing Period	
	Goods of S.No .1	NIL
	Goods of S No 2	Rate- 15% Per annum
		Amount for interest- Duty amount
		Period – Above 90 days till the date of payment of duty
		In case of extension of ware housing period, there is no need to pay interest prior to allow extension period. ***[Circular No. 23/2016 Cus dated 01.06.2016]***

However, if no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal [Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.)].

Owners right in case of warehouse goods sec 64

- Inspection of Goods
- Deal with containers to prevent loss damage, deteriorated goods
- Sorting of goods
- Showing them for sale:

Manufacturing operations in case of warehouse goods by owner sec 65

- With the sanction of the Principal Commissioner/Commissioner *the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods*
- Conditions: bond, maintaining accounts, if necessary PO may order of special audit

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

CANCELLATION AND RETURN OF THE WAREHOUSING BOND Sec 73

Where whole of the warehoused goods have been cleared, transferred or duly accounted + All AMOUNTS thereon have been paid

- ❖ PO shall cancel Bond (discharged in full)
- ❖ If the importer demands such cancelled bond – it shall be deliver to him

Ware house without Warehousing

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

- ❖ 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
- ❖ 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)
- ❖ 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).

STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE OR REMOVAL [SECTION 49]

Where the AC/DC of Customs is satisfied on the application of the importer that—

- ❖ the goods cannot be cleared within a reasonable time in the case of imported goods, whether dutiable or not, entered for home consumption.
- ❖ the goods cannot be removed for deposit in a warehouse within a reasonable time in the case of any imported dutiable goods, entered for warehousing.

then in such cases, goods can be stored in a public warehouse for a period not exceeding 30 days.

Such goods deposited under public warehouse will not be covered under Chapter IX of the Act. However, the Principal Commissioner/Commissioner of Customs may extend such period of storage for further 30 days at a time.

Removal of goods From Warehouse Sec 67 to 72

Removal of goods From Warehouse

- Transfer to Another W H sec 67
  - Permission of proper officer
  - Specific bond is notified
  - One bond can be use used for full period till removal of goods from warehouse
  - Goods should duly arrive to another Ware house
- Clearance For H C sec 68
  - B/E for H C (Green Color) has been filed
  - Import Duty + Interest + penalties have been paid
  - 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-
- Clearance For Export Sec 69
  - Shipping Bill / Bill of Export has been filed
  - Export Duty (if any) + Interest + penalties have been paid
  - Clearance order has been issued by PO

  Goods likely to smuggled back- refer **
- Sec 71 Removal of goods for the purpose other than Sec 67, 68 and 69

Clearance For Samples from ware house is not allowed

Known as Improper Removal of goods

Se 72

- Where the ware house goods not removed from WH after the expiry of period which they are permitted to store

- The proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable in respect of such goods
- If the owner fails to pay, the proper officer after giving notice, may cause such goods to be detained and sold, such sufficient portion of his goods, if any, in the warehouse,

- Goods removed for home consumption from WH/ Goods Exported from WH not duly accounted to the satisfaction of PO

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 interest, penalty,)
- 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 69(2)

In case of clearance of goods for export from warehouse

In case of Goods likely to be smuggled back into India – CG may *by Notification in official gazette* direct that:

- ❖ shall not be exported to any place outside India without payment of duty or
- ❖ may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

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

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/Cash deposit for differential duty 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

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

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

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

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

Benefits

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

Examples

Power projects
Irrigation projects
Industrial plant
Mining project

Demand and adjudication -1

Demand (Recovery) of customs Duty- Sec 28 of C A

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Excise Duty

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

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

Show cause notice (SCN)

- Contents, Manner of Issue
  - Date, Name and address of Assessee., Amount payable along with calculation, CEO sign, Serving through post, notice board of Assessee/ Dept.
- Time limit
  - 28 1(a)- Normal Period 2 years from relevant date FA 2016
  - 28(4) Extended Period- 5 years from relevant date

Extended period applicable
1.Fraud, collusion, willful misstatement, suppression of facts, ,Violation of excise law with intention to evade duty,

For computation of 2 y or 5 y , period of stay by court, tribunal to be excluded- 28 (8)

No SCN

Assessee voluntarily Pays before issue of SCN

Normal cases

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

Relevant date

- Non-levy or non payment or short- levy or short-payment of duty or non-charging of interest - Date on which the proper officer makes an order for the clearance of goods
- Provisional assessment- Date of adjustment to final duty
- Erroneous refund- Date of refund
- interest is to be recovered. - the date of payment of duty to which such interest relates.
- Other case- Date of payment of duty

1. the Provisions of 28 for demand and recovery of duty is also applicable for demand and recovery of interest
2. Interest is payable whether the adjudication order shown interest separately or not- Sec 11 A (14)

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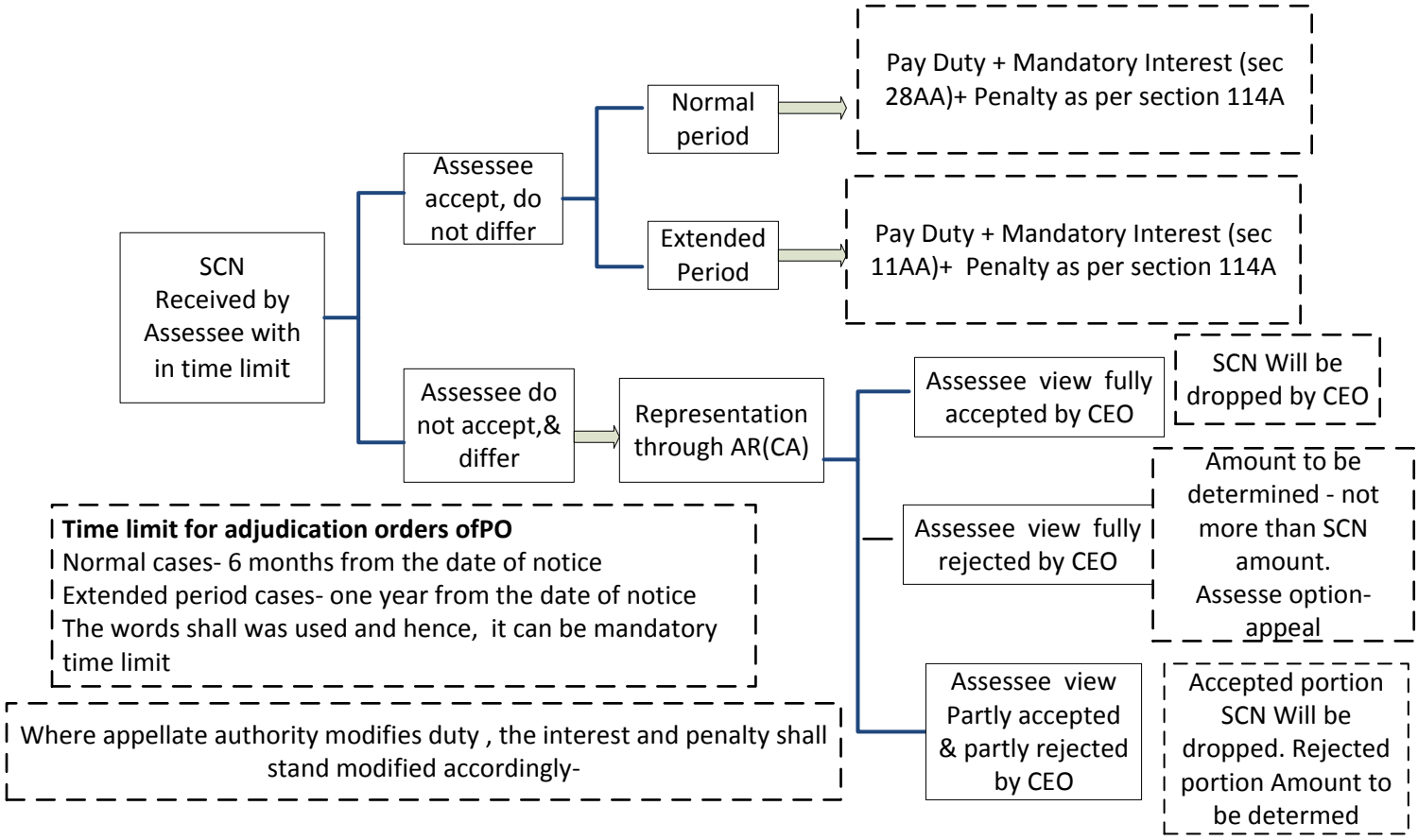
SCN issued after lapse of time limit, it is invalid.
In case of extended period, it is on the part of department to prove fraud, collusion etc., on the part of assessee.

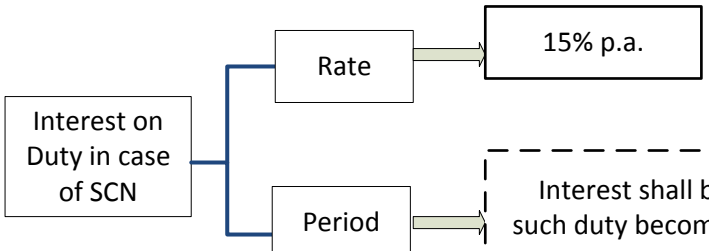
Demand and adjudication -2

Adjudication orders of PO- Sec 28(8)(9) of C A



1. If SCN amount was increased in appeal, Interest on increased amount is payable from date of order-
2. Demand and issue of SCN is not applicable when the duty liability is shown in periodical returns. such duty is recovered .

Mandatory Interest in case of Recovery of Duty- Sec 28 AA



Interest shall be calculated from the first day of the month on which such duty becomes due up to the date of actual payment of the amount due.

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Demand and adjudication -3

Recovery of Duty-- sec 142 of Customs AcT	
When assesse fails to pay duty/tax /any sum under act or rules or amount due as per Settlement commission order. It is recovered by any of the modes as below	
1	Set off against refund due
2	Attachment of goods belonging to assessee
3	As arrears of land revenue by issuing certificate to district revenue collector (sale of property of assesse)
4	Recovery from surety/ sale of securities in case of security bond
5	Attachment of movable and immovable properties with the permission of PC of CE
6	Recovery from debtor of assesse(garnishee order) /successor in case of sale of business
7	Recovery from partner in case of firm/ Legal heir in case of death of assessee

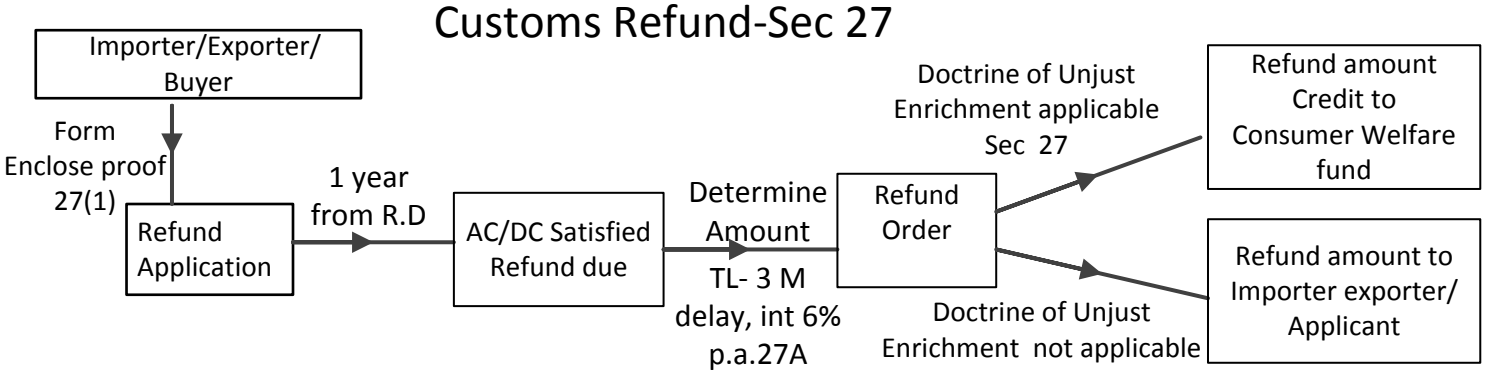
Power not to recover duty of excise not levied or short Levied -- sec28 A of Customs Act	
Duties not recovered by order of CG in the following cases	
1	Misinterpretation or wrong understanding of law both by CEO and assessee
2	Such wrong understanding was occurred in assessment resulting into short levy of duty
3	Wrong understanding was because of bona fide mistake on either side
4	Such mistake should not be because of collusion/fraud cases
If assesse pays duty in spite of CG order he is entitled to refund subject to doctrine of unjust enrichment	

Duties of excise collected from the buyer to be deposited with the Central Government – Sec 28B of the Customs Act	
1	Every person liable to pay duty shall pay excess collected duty than assessed/ determined to credit of CG. (for example duty collected of nil duty goods/exempted goods/ collected at higher rate)
2	Such payment is made notwithstanding of order of Court or Tribunal.
3	If assessee does not pay SCN will be issued and after representation it is recovered along with interest for delay @15% p.a from 1st day of month of succeeding month of due date.(Sec 11DD)/Sec 73 C of FA 1994

Provisional attachment of property in certain cases - 28 BA of Customs Act	
CEO/Proper officer can provisionally attach the property of assessee to protect the interest of revenue and if it is necessary to do so.	
1	Order was made when SCN was issued for recovery of duty
2	Order was made with the previous approval of the Principal commissioner by order in writing.
3	Attachment order will be in force for a period of 6 months from the date of order.
4	PCC of CE has got power to extend time as he thinks fit. Total extension period will be maximum 2 years

Liability under the Central Excise Act will be first charge - Sec 142A of Customs Act.	
The liability under the Central Excise Act, /customs Act/FA 1994 such as duty/tax interest penalty and other sum has first charge on the defaulters. The charge will be in the following order	
1	Companies Act
2	Recovery of Debt due to Banks and Financial Institutions Act
3	Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act
4	Central Excise Act and Rules/Customs Act and Rules/Finance Act 1994 and ST Rules

Customs Refund-Sec 27



Relevant Date:

- **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
- In Case of Exemption u/s 25 -Date of exemption order
- In Case of Provisional Assessment-Date of final adjustment of duty
- In case of Buyer Date of Purchase of goods
- In case of Order of court/Appellate authority-Date of order
- In any other case-Date of payment of duty

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

- It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer
- 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)

- if the importer has not passed on the incidence of such duty and interest to any other person;
- if imports were made by an individual for his personal use;
- if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
- if amount relates to drawback of duty payable under section 74 and 75;
- if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
- if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—
  - such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
  - the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

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

The threshold limits for the arrest and prosecution was given in the circular 28/2015 dated 23/10/2015

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.

OBLIGATION TO FURNISH INFORMATION [SECTION 108A]

Any specified person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts which is considered relevant, shall furnish such information to the proper officer in such manner as may be prescribed by rules .

Further, where the proper officer considers that the information furnished is defective, he may intimate the defect to the person who has furnished such information.

The opportunity of rectifying the defect shall be given within a period of 7 days from the date of such intimation or within such further period which may be allowed by the proper officer on an application made in this behalf.

In case the defect is not rectified within the said period of 7 days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall be applicable.

Where a person who is required to furnish information has not furnished the same within the specified time, the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding 30 days from the date of service of the notice .

PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 108B]

If the person who is required to furnish information under section 108A fails to do so within the period specified in the notice, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which such failure continues.

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

Duty Drawback

Duty draw back means refund of customs duty, and excise duty paid on non GST goods/ on inputs, 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, IGST and GST Compensation CESS Notification No 57/2017 dt 29.06.2017
- Drawback u/s 75 → Duty paid imported inputs/ Local inputs/ Used in manufacture of Final product. Exporter eligible of refund of customs duty, excise duty on Non GST goods

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 purchases	→ Excise duty paid on goods other than GST Goods	
~~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

No Duty draw Back on IGST paid on Imports u/s 75 drawback

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

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Duty Drawback 2 (details)

Draw back u/s 74 comparison

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

DBK 74 (2) Rates

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%	2nd year	100% -(16%+ 3% per quarter of part of quarter)
3	> 6 months<= 9 months	75%	3rd Year	100% -(28%+ 2.5% per quarter of part of quarter)
4	> 9 months<= 12 months	70%	4th 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 1% of FOB/Rs. 1000 WEL ❖ Extention of time further 6 months by Com.,/Principal Com., 2% of FOB/Rs. 2000 WEL ❖ 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 NON GST goods 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, 2017 *Notification No. 88/ 2017 Cus (NT) dated 21.09.2017* Effective from 01.10.2017

Rule 3	❖ Drawback will be paid based on the percentage of FOB as per All Industry Rates notified by the CBEC. By considering the following ❖ Fixed considering <u>average quantity and value of each class of inputs</u> imported or manufactured in India. ❖ Average amount of duties paid imported material indigenous material/ waste produced in manufacture/Service tax paid on input service is considered. ❖ These rates are fixed for broad categories of products. The rates include drawback on packing materials. ❖ any other information which the Central Government may consider relevant or useful for the purpose **No drawback in certain cases:** (i) Packing materials for export of tea, except tea chests. (ii) Goods manufactured out of duty free materials. (iii) Jute batching oil used in manufacture jute yarn, twine etc. (iv) Packing material used for jute yarn, fabrics etc.
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. Ie Where no amount or rate of drawback has been determined in respect of any goods, ❖ The manufacturer has to submit an application with all the details to Principal Commissioner of Customs of exporter jurisdiction. ❖ Such application must be made within 3 months from the date of applicability of amount or rate

	❖ The exporter can also make an application for provisional drawback, pending determination of final rate. He has to execute bond not exceeding full amount of drawback. ❖ The final draw back amount is adjusted against provisional amount released. The excess if any paid shall be refunded by exporter.
Rule 7)	**Special brand rate: Cases where amount or rate of drawback determined is low** ❖ 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 3 months from relevant date of applicability of amount to principal commissioner/Commissioner of Customs of his jurisdiction ❖ The conditions of eligibility are that the fixed All Industry Rate should be less than 80% of the duties paid by him. ❖ The manufacturer can also file an application for provisional drawback as per Rule 6
Rule 8]:	❖ **Cases where no amount or rate of drawback is to be determined:** ❖ No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or ❖ not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government
Rule 9	The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product.
Rule 10	Any officer of the CG Authorised in this behalf by an AC/DC, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer. For the purpose of ❖ determining the class or description of materials or components used in manufacture ❖ verifying the correctness or otherwise of any information/ drawback ❖ obtaining any other information considered useful by PC/C of customs
Rule 11	**Access to manufactory:** **Officer of CG Authorised by AC/DC of customs** as the case may be, considers it necessary, inspect the premises of factory, manufacturing process so as to enable materials or components used for the manufacture of such goods, entitlement of the goods for drawback or for a particular amount or rate of drawback
Rule 12	**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 13 & 14	**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

	❖ Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed ❖ If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, shall be returned to the claimant with a deficiency memo by PC of C of customs ❖ Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed
Rule 15	**Payment of drawback and interest** The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount 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 16	**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 17]	**Repayment of erroneous or excess payment of drawback and interest** It shall be repaid upon demand by the PO./recovered u/s 142
[Rule 18]:	**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 @ 6% 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 @ 15% 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	**Relevant Date for determination of AV & RoD** ❖ Relevant Date = Date of filing of Declaration of its contents ❖ All dutiable Articles when imported as Baggage 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 and goods imported through courier
Sec 79	**Bonafide Baggage Exempt from Customs Duty** Subject to LIMITS & CONDITIONS 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.

Appeals under Customs

Appeals to Commissioner appeals sec 128 & 128 A

Adjudication Order passed by any PO below the rank of CCE

Assessee aggrieved

Form CA1 Signed + Fee

60 + 30 days (condone)

Appeal to Commissioner(C of Cus)

Condition

Mandatory Pre-deposit of duty Sec 129E

Notice to parties By Com. &Hearing the case

Powers of Commissioner

Demand Order u/s 28 Confiscation, Penalty Order by JC, AC/DC

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

Additional Grounds may be heard/Producing additional evidence

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 128 A

No power to remand back case to PO

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**

Admission by CCE on his own: -- He can admit additional evidences whenever he deems necessary

When can assessee appeal for admission of additional evidences : 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

C of Cus .Appeals admit additional evidence by records in writing for reasons

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

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Appeals under Customs- 2

Appeals to Tribunal sec 129A,129B and 129 C

Adjudication Order passed by C of cus appeal/ Cof Cus/PCC

Form CA3, Fees & mandatory pre-deposit of duty or penalty 7.5%/ 10%

Assessee aggrieved

3 months + (condone)

Appeal to CESTAT

Dept(Commity of com.) aggrieved

CA 5- 30 days+ condone

Adjudication Order passed by CCE Appeals

Demand Order u/s 28 A Confiscation, Penalty Order

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: CA-4- within 45 days + condone from receipt of notice

Adjudication Order passed by C of cus Appeals other than below

Powers of CESTAT

hearing

Sufficient cause at any stage of proceedings Grant of Adjournments during hearing (Max. 3to party)

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

Duty drawback
Baggage
Short landing of goods

Revision Application to C G Sec 129DD

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

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-

Remand back case to PO

Confirming

Annuling

Modifying

Increasing the liability of assessee

decreasing the liability of assessee

Order for Fresh assessment considering additional evidence if any

SCN with in time limit is mandatory

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

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

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 customs(Commt. of CC of Customs) /Commissioners of customs (Commt., of C of Customs)

CBEC Constitute committee consists of two CC of Customs or Commissioner of Customs

Appeal by Commt. of C of Customs

- 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.
- The power of review of order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as an adjudicating authority vests with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice. Sec 129A(2)

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

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

<table>
<tr><th>Stage of appeal</th><th>Appellate Authority</th><th>Mandatory Quantum of pre-deposit of duty demanded</th></tr>
<tr><td>First appeal</td><td></td><td></td></tr>
<tr><td>(a) Order of PO Below the rank of Commissioner</td><td>Commissioner Appeals</td><td rowspan="2">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 114A 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</td></tr>
<tr><td>(b) Order of Commissioner</td><td>CESTAT</td></tr>
<tr><td>Second appeal</td><td></td><td rowspan="2">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</td></tr>
<tr><td>Order of Commissioner Appeals</td><td>CESTAT</td></tr>
</table>

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

CBEC vide Circular No. 993/17/2014-CX dated 05.1.2015 has clarified that mandatory pre-deposit would be payable in cases of demand of drawback when the appeal is filed before Commissioner (Appeals)

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.

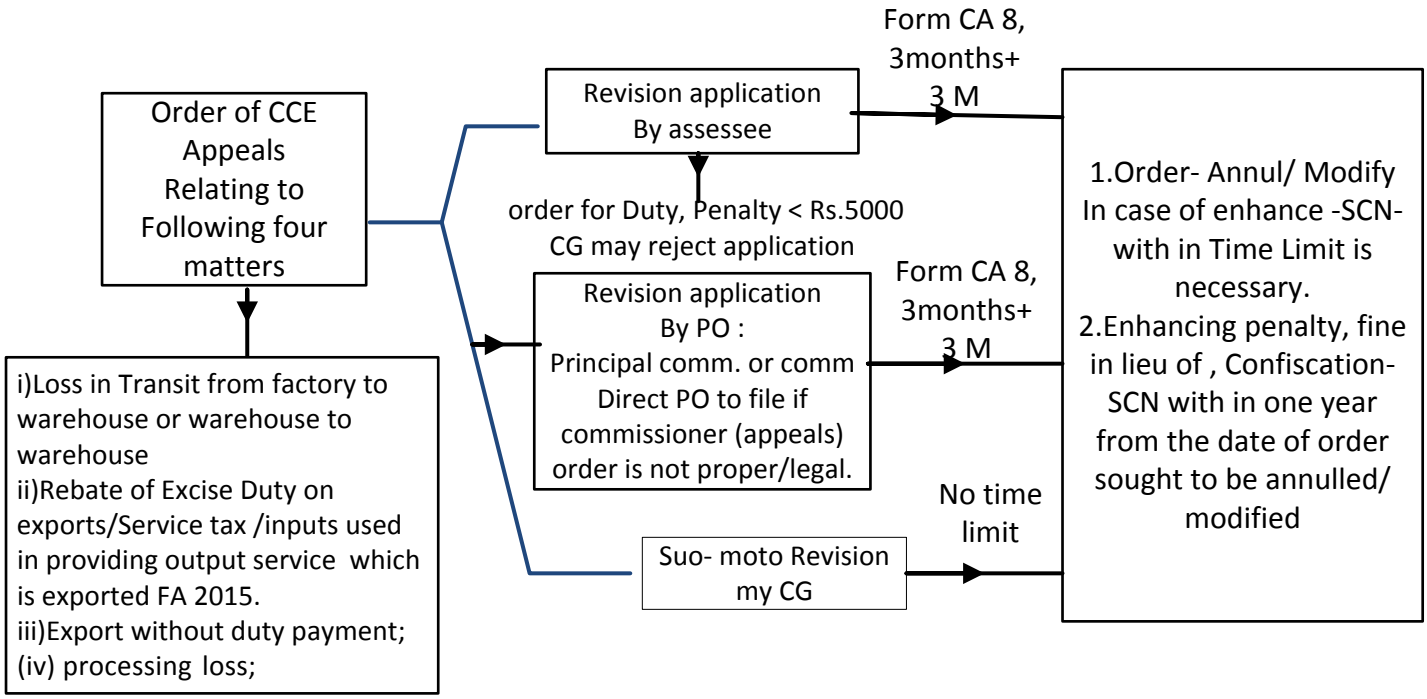
Refund of Pre-Deposit

- Refund of pre-deposit is not refund of duty and hence the same will not be governed by provisions of section of 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.

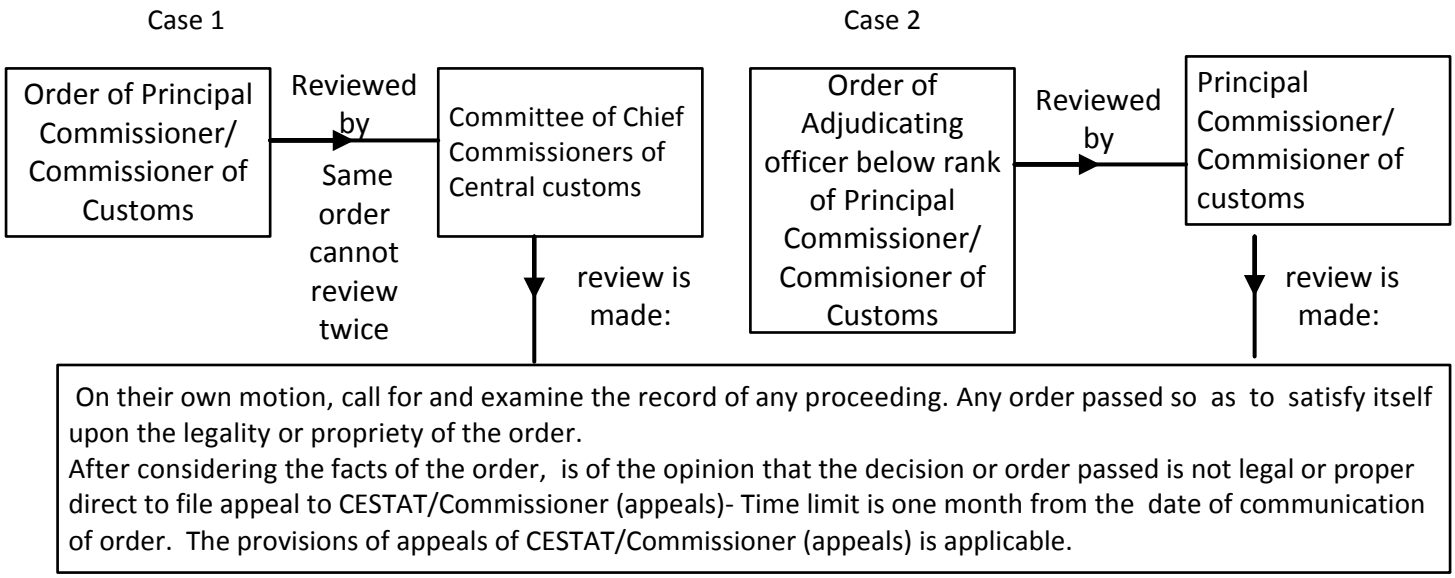
Interest on delayed refund of amount deposited Payment of interest on the refund of such pre-deposit from the date of its payment to the date of refund. Also, the rate of interest would be 6% p.a.

  - 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

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



Review by Committee of Chief Commissioners and Principal Commissioner/ Commissioner [Section 129D]



If there is any difference of opinion among the Committee of Chief Commissioners of Customs, 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 customs 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

Appeal to High court Sec 130 to 130D

Order of Appellate Tribunal

- Substantial Question of law (Other than rate of duty, valuation) Assesse or principal commissioner/ Commissioner of Customs can file
  - 180 days + Condone
  - Appeal to HC
- Regarding Rate of duty or tax / Valuation (It include determination of taxability
  - Appeal to SC-

Procedure

- 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-

- 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 taxability

- The provisions of the Code of Civil Procedure, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130E as they apply in the case of appeals from decrees of a High Court
- The costs of the appeal shall be in the discretion of the Supreme Court. Further, where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court

Customs- Settlement Commission Sec 127 A to 127 N

Assessee Sec 127A

Form SC C1

Fees

Application to SC

Conditions Sec 127B

Settlement Commission Accepts appl

Report called From C of Cus, 7 days

Commissioner of customs

CCE reports in One month

Failure to report, by C oc cus, presumed he has no objections in such case , SC accepts Application

Importer/ Exporter, any other person may in respect of a case

- Applicant has filed Bill of Entry / Shipping Bill
- SCN has been received (i.e, proceedings stands pending);
- Admitted additional duty liability > Rs 3 lacs
- Admitted additional duty is paid along with int.
- Proceedings **shall not** be pending before CESTAT or HC or SC.
- When the matter is not referred back in appeal revision or otherwise for further adjudication
- Question involved **shall not** be related to "Classification of Goods"

Books of Accounts // Other Documents have been seized ----- Settlement Application shall be made only after expiry of 180 days from the date of seizure.

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Notice to Assessee with in 7 days of appl. Why application should be allowed

Once application made cannot be withdrawn

Order of Settlement Commision

With in 14 days of Notice to Assessee

90 Days + 3 months Delay proceeding abate

Order -conclusive matters can't be reopened in any other proceedings (like appeal etc)

Acceptance order

Rejection Order

Settlement Order

Condition

Condition

Opportunity through AR

Admitted additional duty paid along with int. at time of appl. (submit proof).

Speaking order. Opportunity to assessee before rejection

Amount- Duty+int etc (not less than what offered).
Manner of payment- (lumpsum or installment)
Other incidental matter

Order On

Matters covered by the application/ not covered by the application, as per the report of the commissioner.

Order Shall also provide that --- SETTLEMENT WILL BE VOID (ab-initio) if subsequently found that it has been obtained by Fraud // Misrepresentation

Consequence

Matter of order will revise and allowed to proceeds byPO

No Power 1. to waive interest, 2.Criminal prosecution commenced before application, 3.extension of time for payment as per order

Powers of SC

SC has All Powers of PO /Judicial powers

Immunity from penalty, fine

Sent back case to PO

Order for Provisional attachment property in the interest of revenue
Order cease if due amount is paid.

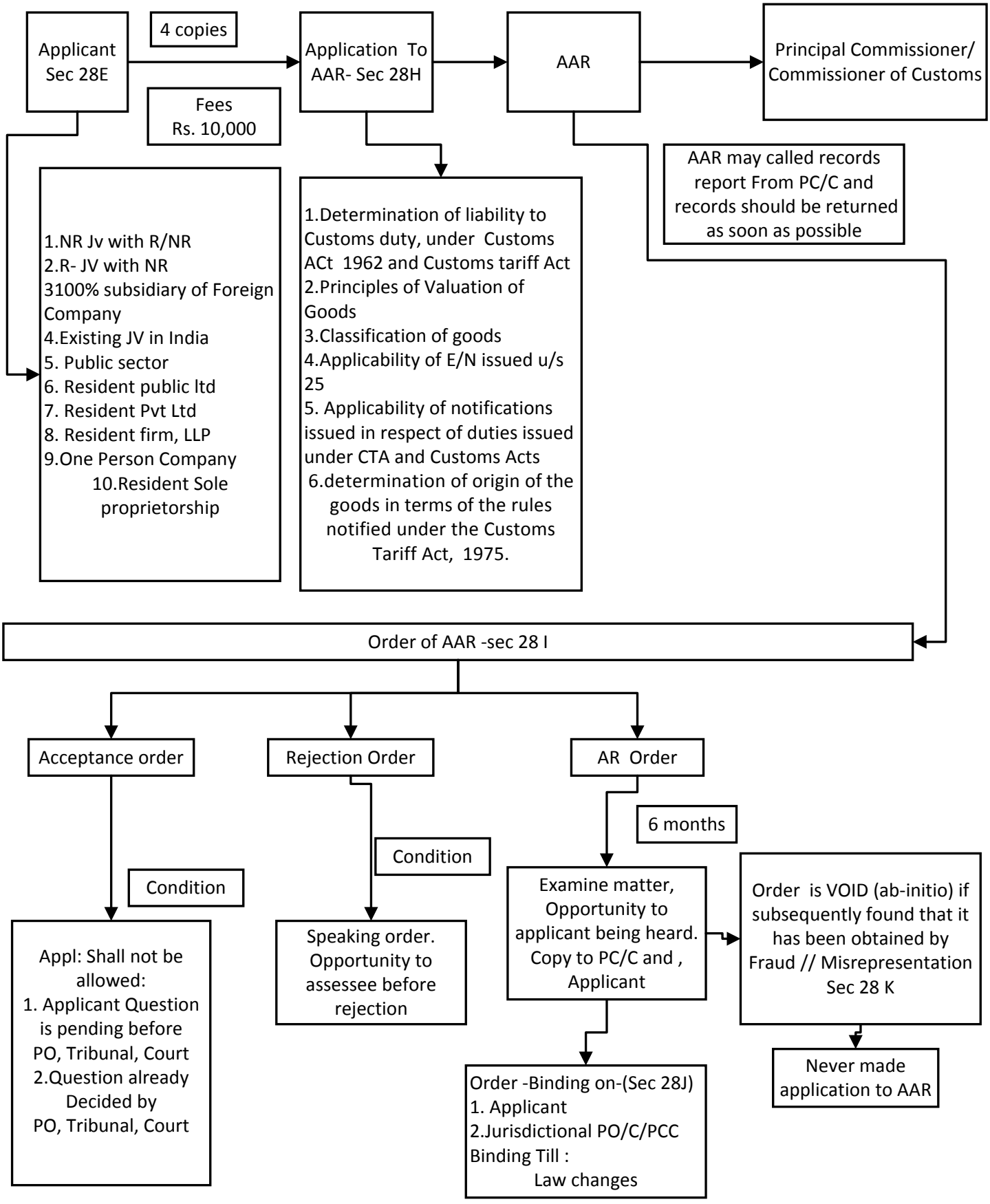
Order for imposition of penalty for Concealment of duty liability.

All Penalties and fine under customs law

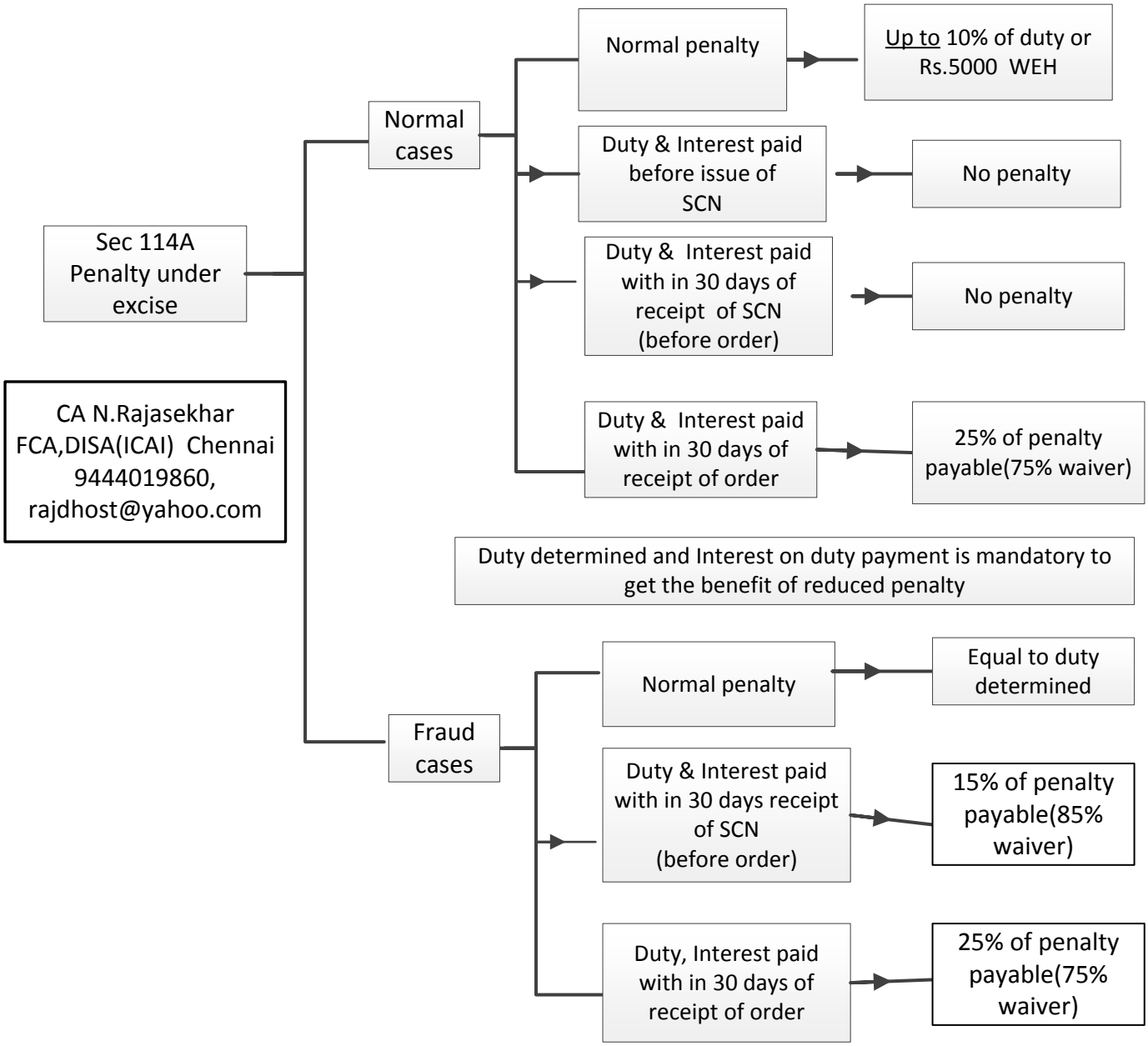
If assessee not coperated

SC has power to amend the order to rectify mistakes apparent on the records with in the 3 months from the date of passing or its order. Amendment can me on its own, or application made ny P C/C og customs or applicant. Any amendment enhancing liability , reducing refund, opportunity should be given to applicant

Customs- Authority for Advance Ruling- Sec 28 E to 28M



Customs MandatoryPenalty Under sec 114A



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- If duty interest and penalty paid by person as per the above sec 114A the proceedings deemed to be have concluded.
- If any penalty notice issued on other persons also, If the persons pays the penalty the co notices are not required to pay penalty

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 Rs. 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 `Rs.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 `Rs.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 Rs.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`Rs.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.