

Let's study SMART

SUMART

CA | CS | CMA final
May/Nov 25 & Onwards

Indirect Tax Laws



Vol. 2

CA Ramesh Soni

CHARTMASTER's

SUM-ART - Vol 2

(A **Summary** book with **ART**)

on

INDIRECT TAX LAWS

For

CA | CS | CMA Final

May & Nov 2025 onwards

CA RAMESH SONI

www.rameshsoni.com

First Edition: Dec 2024

Price: Rs 1000/- [2 volumes]



CHARTMASTER'S SUM-ART

On Indirect Tax Laws

For CA | CS | CMA

© with Author

Laws stated in this book is amended upto 31st October, 2024

Every effort has been made to avoid errors or omissions in this publication. In spite of this, errors may creep in. Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of. It is notified that the users will be responsible for any damage or loss of action to any one, of any kind, in any manner, there from. It is suggested that to avoid any doubt, the reader should cross-check all the facts, law and contents of the material on web with original Government publications or notifications.

No part of this publication may be reproduced, distributed, transmitted or copied in any form or by any means, including photocopying, recording, or other electronic or mechanical methods or reproduced on any disc, tape, perforate media or other information storage device, without the prior written permission of the author. Breach of this condition is liable for legal action.

All disputes are subject to Bangalore jurisdiction only.

This publication is for private circulation only.

CHARTMASTER's GST

Sl No.	Particulars	Page No.
20.	Assessment	20.1 - 20.5
21.	Audit	21.1 - 21.3
22.	Inspection, Search, Seizure and Arrest	22.1 - 22.9
23.	Demands and Recovery	23.1 - 23.15
24.	Appeals and Revision	24.1 - 24.21
25.	Liability to Pay in Certain Cases	25.1 - 25.6
26.	Offences and Penalties	26.1 - 26.17
27.	Place of Supply	27.1 - 27.23
28.	Imports under GST	28.1 - 28.7
29.	Exports under GST	29.1 - 29.16
30.	Refunds	30.1 - 30.41
31.	Miscellaneous Provisions	31.1 - 31.15
32.	Ethics under GST	32.1 - 32.13

CHARTMASTER's Customs & FTP

Sl No.	Particulars	Page No.
1.	Levy and Exemption from Custom duty	1.1 - 1.19
2.	Importation, Exportation and Transportation of goods	2.1 - 2.22
3.	Classification of Goods	3.1 - 3.10
4.	Valuation under Customs	4.1 - 4.27
5.	Types of Duties	5.1 - 5.28
6.	Baggage, Post or Courier & Stores	6.1 - 6.16
7.	Assessment and Audit	7.1 - 7.11
8.	Refund	8.1 - 8.7
9.	Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022	9.1 - 9.8
10.	Warehousing	10.1 - 10.12
11.	Foreign Trade Policy	11.1 - 11.31

Definition

Assessment means

- determination of tax liability under this Act and includes
- self-assessment,
- re-assessment,
- provisional assessment,
- summary assessment and
- best judgment assessment;

Section 59: Self-Assessment

Every registered person

- shall **self-assess the taxes** payable under this Act and
- **furnish a return** for each tax period as specified under section 39.

Section 60: Provisional Assessment

(1) If TP is unable to determine **VOS/rate**,

- he may request PO for payment of tax on a provisional basis and
- the PO shall pass an order, within a period of **90 days** from the date of receipt of request.

(2) Payment of tax on provisional basis may be allowed,

- on execution of bond in **GST ASMT-05** and **with such surety or security** as deemed fit by the PO,
- binding the taxable person for payment of differential tax finalisation.

(3) Final assessment order shall be passed within

- **6 months from date of communication of the order**,
- after considering such information as may be required for finalizing the assessment:
Proviso: the period of 6 months, may be extended
- by the **JC/Additional Commissioner** for a further period not exceeding **six months** and
- by the **Commissioner** for such further period not **exceeding four years**.

(4) The RP shall be liable to pay interest on any tax payable on the supply of g/s/b under provisional assessment but not paid on the due date,

- at the rate specified under section 50(1), (@18%)
- from the **first day after due date of payment of tax till date of actual payment**,
- whether such amount is paid before or after the issuance of order for final assessment.

- (5) Where the RP is entitled to a refund after final assessment order, interest shall be paid on such refund as provided in section 56.

Rule 98: Provisional Assessment

- (1) RP shall submit an application in GST ASMT-01 with supporting documents.
- (2) PO shall issues a notice in GST ASMT-02 for additional information & RP shall reply in GST ASMT-03.
- (3) PO shall issues an order in GST ASMT-04 for provisional tax payment, specifying bond and security not exceeding 25% of the amount covered under the bond.
- (4) RP executes a bond in GST ASMT-05 with a bank guarantee.
- (5) PO issues a notice in GST ASMT-06 for information & records required for final assessment; then issues GST ASMT-07 for final assessment, specifying amount payable/refundable.
- (6) RP files GST ASMT-08 for release of security.
- (7) PO shall release the security, after ensuring that the applicant has paid the amount and issues an order in GST ASMT-09 within 7 working days.

Section 61: Scrutiny of returns

- (1) PO to scrutinize return of RP to verify correctness & inform RP of discrepancies and seek explanation

The PO may scrutinize the return & related particulars furnished by the RP

- to verify the correctness of the return and
- inform him of the discrepancies noticed, if any,
- in such manner (ASMT 10) as may be prescribed and seek his explanation thereto.

Rule 99: Scrutiny of returns

- PO shall issue a notice to the said person in FORM GST ASMT-10
- RP may accept the discrepancy & pay the tax, interest & any other amount and inform the same/furnish an explanation for the discrepancy in FORM GST ASMT-11 to PO.

- (2) Explanation found acceptable, RP to be informed and no further action

In case the explanation is found acceptable,

- The RP shall be informed accordingly and
- no further action shall be taken in this regard.

Rule 99: Scrutiny of returns

If explanation by RP/ information submitted found acceptable, PO shall inform in ASMT-12.

(3) No Explanation/unsatisfactory explanation within 30 days, PO initiate action

In case no satisfactory explanation is furnished

- within a period of 30 days of being informed by PO or further period permitted or
- where RP, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted,
- the PO may initiate appropriate action including those under
 - section 65(Audit by Tax Authorities) or
 - section 66(special audit) or
 - section 67(inspection, search & seizure), or
 - proceed to determine the tax and other dues under section 73(non-fraud cases) or 74(fraud cases).

Section 62: Assessment of non-filers of returns**(1) RP - Fails to furnish return - even after notice, PO to do Best judgment and issue order where a RP fails to furnish the return u/s 39/ 45 (i.e. monthly return or annual return),**

- even after the service of a notice under section 46 (GSTR 3A),
- PO may proceed to assess the tax liability of the said person to the best of his judgement
- taking into account all the relevant material which is available/he has gathered and
- issue an assessment order (GST ASMT - 13) within a period of five years
- from the date specified u/s 44 for furnishing of annual return for the FY to which tax not paid relates.

(2) RP furnishes valid return within in 60 days: Assessment order deemed to be withdrawn

Where the RP furnishes a valid return within 60 days of the service of the assessment order,

- the assessment order shall be deemed to have been withdrawn
- but the liability for payment of interest u/s 50(1) or late fee u/s 47 shall continue.

Proviso:

- If RP fails to furnish a valid return within 60 days, he may furnish within an additional period 60 days.
- An additional late fee of ₹100 per day applies for the delay beyond the initial 60 days.
- If a valid return is furnished within extended period, assessment order shall be deemed withdrawn.
- However, the liability to pay interest u/s 50(1) and late fee u/s 47 shall continue.

Rule 100: Assessment in certain cases.

Assessment order shall be issued in GST ASMT-13 & a summary shall be uploaded electronically in GST DRC-07.

Section 63: Assessment of unregistered persons

Where a taxable person

- fails to obtain registration even though liable to do so or
- whose registration has been cancelled under section 29(2) but who was liable to pay tax,
- the PO may proceed to assess the tax liability of to the best of his judgment and
- issue an assessment order in ASMT - 15 within a period of five years from due date u/s 44
- for furnishing of the annual return for the financial year to which the tax not paid relates:

Proviso: no such assessment order shall be passed without giving an opportunity of being heard.

Rule 100: Assessment in certain cases.

- The PO shall issue a notice to a taxable person u/s 63 in GST ASMT-14
- containing the grounds on which assessment is proposed to be made on best judgment basis
- and after allowing a time of 15 days to such person to furnish his reply, if any,
- pass an order in GST ASMT-15 & summary shall be uploaded electronically in GST DRC-07

Section 64: Summary assessment in certain special cases

(1) PO to assess tax liability of person to protect interest of revenue & pass assessment order

The PO may,

- on any evidence showing a tax liability of a person coming to his notice,
- with the previous permission of Additional Commissioner or Joint Commissioner,
- proceed to assess the tax liability of such person
- to protect the interest of revenue and issue an assessment order (Form GST ASMT - 16),
- if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Proviso: where the taxable person

- to whom liability pertains is not ascertainable and such liability pertains to supply of goods,
- person in charge of such goods shall be deemed taxable person liable to be assessed &
- liable to pay tax and any other amount due under this section.

(2) Withdrawal of Erroneous order on applicable by TP/own motion

- On an application made by taxable person within 30 days from date of receipt of order or
- on his own motion,
- if the Additional/Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Rule 100: Assessment in certain cases.

- Summary assessment order in ASMT-16 and a summary shall be uploaded in DRC-07.
- Taxable person may file an application for withdrawal of assessment order in GST ASMT-17.
- The order of withdrawal/rejection of the application shall be issued in GST ASMT-18.

Example: When goods are under transportation or are stored in 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 TP and will be assessed to tax.

Standard Operating Procedure to be followed in case of non-filers of returns

- Preferably, a system generated message to all RPs 3 days before the due date.
- Immediately after due date: a system generated mail/ message would be sent to all the defaulters, the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.
- 5 days after the due date, a notice in GSTR-3A requiring RP to furnish return in 15 days.
- If the return is not filed, the PO may do Best Judgement assessment u/s 62 & issue order in ASMT 13, and also upload summary in GST DRC 07.
- For assessment, the PO may take into account: Details in GSTR-1, GSTR-2A, e-way bill information, any other information available from any other source including inspection.
- Assessment order deemed withdrawn: If the defaulter furnishes a valid return within 60 days of the service of assessment order u/s 62, or else PO may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Section 2(13): Audit

Audit means

- the **examination of records**, returns and other documents maintained/furnished by the RP under this Act/rules made thereunder/under any other law for the time being in force,
- to **verify correctness of turnover declared, taxes paid, refund claimed and ITC availed**, and
- to **assess his compliance** with the provisions of this Act or the rules made thereunder;

Section 65: Audit by tax authorities

- (1) The Commissioner/any officer authorised by him, by way of a general or a specific order,
- may undertake audit of any RP
 - for such period, at such frequency and in such manner as may be prescribed.

Rule 101: Period of audit shall **be a financial year or part thereof or multiples** thereof.

- (2) The officers may conduct **audit at the place of business of RP or in their office**.

- (3) **Advance notice** to RP of at least **15 working days** in GST ADT-01 (Rule 101).

- (4) The audit shall be **completed within a 3 months** from the date of commencement of the audit:
Proviso: Commissioner may, for the reasons to be recorded in writing, extend the period by **a further period not exceeding six months**.

Explanation— Commencement of audit shall mean the date on which

- the records and other documents, called for, are made available by the RP or
- the actual institution of audit at the place of business, **whichever is later**.

- (5) **Rights of officer**

During the course of audit, the authorised officer may require the registered person, —

- to **afford him necessary facility** to verify books of account/other documents as he may require;
- to **furnish such information as he may require** and **render assistance** for timely completion of the audit.

- (6) On conclusion of audit, PO shall, within 30 days, inform RP, about the findings, his rights and obligations and the reasons for such findings in GST ADT-02 (Rule 101).

- (7) Where the audit conducted results in detection of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised, PO may initiate action under section 73 or 74.

Section 66: Special Audit

(1) Issue of direction by PO to get audit from CA/CA

If at **any stage of scrutiny, inquiry, investigation** or any other proceedings before him,

- any officer not below the rank of Assistant Commissioner,
- having regard to **the nature & complexity** of the case and the interest of revenue,
- is of the opinion that the **value has not been correctly declared/the credit availed is not within the normal limits**,
- he may, with the **prior approval of the Commissioner**, **direct** such RP by a communication in writing (in FORM GST ADT-03)
- to **get his records** including books of account **examined and audited** by a ca or a cost accountant as may be nominated by the Commissioner.

(2) CA to submit audit report to AC within 90 days with extension of 90 days (if any)

The chartered accountant or cost accountant so nominated shall,

- within the period of **90 days**, submit a report of such audit duly signed & certified to the said Assistant Commissioner.

Proviso: Assistant Commissioner may,

- on an application made by RP or the CA/cost accountant/for any material and sufficient reason,
- extend the said period by a further period of **ninety days**.

(3) Direction to get audit can be issued notwithstanding **RP accounts already audited**.(4) The **RP shall be given an opportunity of being heard** in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him.(5) The **expenses** of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, **shall be determined & paid by the Commissioner**.

(6) Where special audit conducted results in detection of tax not paid/short paid/ erroneously refunded, or ITC wrongly availed/utilised, the PO may initiate action under section 73/74.

Note: On conclusion of the special audit, the RP shall be informed of the findings of the special audit in FORM GST ADT-04 (rule 102).

Rule 101: Audit

- (1) The period of audit to be conducted under sub-section (1) of section 65 shall be a FY or part thereof or multiples thereof.
- (2) Where it is decided to undertake the audit of a RP in accordance with the provisions of section 65, the PO shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.
- (3) The proper officer authorised to conduct audit of the records and the books of account of the RP shall, with the assistance of the team of officers and officials accompanying him, verify
 - the documents on the basis of which the books of account are maintained and
 - the returns and
 - statements furnished under the provisions of the Act and the rules made thereunder,
 - the correctness of the turnover,
 - exemptions and deductions claimed,
 - the rate of tax applied in respect of the supply of goods or services or both,
 - the input tax credit availed and utilised, refund claimed, and
 - other relevant issues and record the observations in his audit notes.
- (4) The proper officer may
 - inform the registered person of the discrepancies noticed, if any, as observed in the audit and
 - the said person may file his reply and
 - the proper officer shall finalize the findings of the audit after due consideration of the reply furnished.
- (5) On conclusion of the audit,
 - the proper officer shall inform the findings of audit to the registered person
 - in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

Rule 102: Special Audit

- (1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the RP to get his records audited by a CA/a cost accountant specified in the said direction.
- (2) On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

Inspection, Search, Seizure and Arrest

Inspection: Inspection means closely examining, it enables officer to access the business premises of a taxable person/ transporter/ owner of warehouse or operator of godown.

Search: Search is an action of a government official to go and examine carefully a place to find something concealed or discover evidence of a crime.

Seizure: Seizure is an act of taking over something by force which is found in search, can be an evidence or illegal items but ownership does not get transferred to government, goods are under government control or government lock.

Arrest: denotes the taking into custody of a person under some lawful command or authority.

Section 67: Power of inspection, search and seizure

(1) Who can order for carrying out "Inspection" and under what circumstances?

Where the PO, not below the rank of Joint Commissioner, has reasons to believe that—

(a) a taxable person has

- suppressed any transaction relating to supply or the stock of goods in hand, or
- has claimed ITC in excess of his entitlement under this Act or
- has indulged in contravention of any of the provisions of this Act/ rules to evade tax under this Act; or

(b) any person

- engaged in business of transporting /an owner/operator of a warehouse/a godown/any other place
- is keeping goods which have escaped payment of tax or
- has kept his accounts/goods in such a manner as is likely to cause evasion of tax, he (PO) may authorize (GST-INS-01) in writing any other officer of central tax to inspect
 - any places of business of the taxable person or
 - the persons engaged in the business of transporting goods or
 - the owner or the operator of warehouse or godown or any other place.

(2) Who can order for Search and Seizure under the provisions of CGST Act?

Where the PO, not below the rank of Joint Commissioner,

- either pursuant to an inspection carried out/otherwise, has reasons to believe that
- any goods liable to confiscation or
- any documents/books/things (DBT), which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place,

he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Proviso: If not practicable to seize any such goods, the PO/any officer authorized by him,

- may serve on the owner or the custodian of the goods an order (GST INS 03) that
- he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Note: Order of prohibition: FORM GST INS-03

Proviso:

- the documents or books or things so seized shall be retained by such officer only for
- so long as may be necessary for examination & for any inquiry/proceedings under this Act.

Note: Rule 139: Where any goods, documents, books or things are liable for seizure the PO or an authorised officer shall make an order of seizure in FORM GST INS-02.

(3) Documents, books, or things not relied upon for issuing a notice must be returned to the person **within 30 days** of the notice.

(4) What are the powers of the proper officer during the search?

The officer authorised under sub-section (2) shall

- have the power to seal or break open the door of any premises or
- to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) Whether the person from whose custody any documents are seized, entitled to get copies thereof?

The person from whose custody any documents are seized under sub-section (2) shall

- be entitled to make copies thereof or
- take extracts therefrom in the presence of an authorised officer
- at such place and time as such officer may indicate in this behalf
- except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) Can the seized goods be provisionally released?

The goods so seized shall be released, on a provisional basis,

- upon execution of a bond (In GST INS 04) and furnishing of a security (bank guarantee equivalent to the amount of applicable tax, interest and penalty payable),

- in such manner and of such quantum, respectively, as may be prescribed or
- on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized and no notice in respect thereof is given within **six months** of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Proviso: 6 months may, be extended by PO for a further period not exceeding 6 months.

(8) What is the procedure in respect of seized goods and things?

The Government may, having regard to

- the perishable or hazardous nature of any goods,
- depreciation in the value of the goods with the passage of time,
- constraints of storage space for the goods or
- any other relevant considerations,

by notification, specify the goods/class of goods which shall, as soon as may be after its seizure, be disposed of by the proper officer in such manner as may be prescribed

Rule - 141: Procedure in respect of seized goods.

(1) if TP pays

- The market price of such goods/things or
- Tax, interest and penalty that is or may become payable, whichever is lower,
- such goods/things shall be released by an order in GST INS-05, on proof of payment.

(2) Where taxable person fails to pay the amount, the PO may dispose of such goods/things & amount realized shall be adjusted against tax, interest, penalty/other amount payable.

Perishable goods/Hazardous goods: Notified goods

- Salt and hygroscopic substances
- Newspapers and periodicals
- Re-fills for ball-point pens
- Cells, batteries and rechargeable batteries
- Petroleum Products
- Fireworks, etc.

(9) Where any goods, being goods specified under sub-section (8),

- have been seized by a PO, or any officer authorised by him,
- he shall prepare an inventory of such goods in such manner as may be prescribed.

Note: rule 139: The officer seizing the goods, documents, books or things shall

- prepare an inventory of such goods or documents/books/things containing, inter alia, description, quantity/unit, make, mark/model, where applicable, and
- get it signed by the person from whom such goods/documents/books/things are seized.

(10) Code of Criminal Procedure, 1973, provisions shall be applicable to search & seizure

(11) Does the PO has power to seize the accounts, registers or documents produced before him?

Where PO has reasons to believe that person has evaded/is attempting to evade payment of any tax,

- he may, for reasons to be recorded in writing,
- seize the accounts, registers or documents of such person produced before him and
- shall grant a receipt for the same, and
- shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) Write a note on power of commissioner/authorised office to act as fake customer

Commissioner/an officer authorised by him may cause purchase of any goods/services/ both

- by any person authorised by him
- from the business premises of any taxable person,
- to check the issue of tax invoices or bills of supply by such taxable person,
- and on return of goods so purchased by such officer,
- such taxable person/any person in charge of the business premises shall refund the amount so paid towards goods after cancelling any tax invoice/bill of supply issued.

What are the basic requirements to be observed during search operations?

- **Valid Search Warrant:** Search should be carried out with a valid search warrant issued by PO.
- **Lady Officer:** A lady officer should accompany the search team for residence searches.
- **Identify Officers:** Officers must show their identity cards to the person in charge before starting the search.
- **Execute Warrant:** The search warrant should be shown and signed by the person in charge and at least two witnesses before starting the search.
- **Independent Witnesses:** The search should be conducted in the presence of at least two local independent witnesses.
- **Personal Search:** Officers and witnesses must offer themselves for personal search before and after the search proceedings.
- **Prepare Panchnama/Mahazar:** Document the search proceedings, including all recovered and seized items, and have it signed by witnesses and the person in charge and also by the officer(s) duly authorized for conducting the search.

- **Return Warrant:** The executed search warrant should be returned to the issuing officer with a report on the search outcome. Names of participating officers may also be written on the reverse of the search warrant.
- **Maintain Records:** The issuing authority must keep a record of search warrants issued and returned.
- A copy of the Panchnama/Mahazar and its annexure should be given to the person in charge of the premises.

What is a Search Warrant and what are its contents?

Search Warrant:

- The written authority to conduct search is generally called search warrant.
- The competent authority to issue search warrant is Joint Commissioner or above.
- Search warrant must indicate the existence of a reasonable belief leading to the search.

Search Warrant should contain the following details:

- the violation under the Act,
- the premise to be searched,
- the name and designation of the person authorized for search,
- the name of the issuing officer with full designation along with his round seal,
- date and place of issue,
- serial number of the search warrant,
- period of validity i.e., a day or two days etc.

What are the safeguards provided in GST Act(s) in respect of Search or Seizure?

Certain safeguards are provided in section 67 in respect of the power of search/seizure. These are as follows:

- Seized goods/documents should **not be retained beyond necessary** for their examination;
- The person from whom documents are seized can take **photocopies**.
- **Return of Goods:** If no notice is issued **within six months**, seized goods must be returned, extendable by another six months on justified grounds.
- An inventory of seized goods shall be made by the seizing officer;
- Specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure.
- Provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply. However, instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST.

Section 68: Inspection of goods in movement (Covered in E-way bill)

- Inspection can be done of the conveyance, carrying a **consignment of value > Rs. 50,000**
- The driver has **to produce E- way Bill & Invoice/BOS** for verification & allow inspection.
- Inspection during transit can be done even without authorization of JC.

Section 69: Power to arrest (Read with section 132) (Table)

(1) When can the proper officer authorize 'arrest' of any person under CGST / SGST Act?

Where the Commissioner has reasons to believe that a person has committed any offence specified in

- clause (a) or [supplies any g/s/b without issue of any invoice, with intention to evade tax;]
- clause (b) or [issues any invoice/bill without supply of g/s/b in violation of the provisions of this Act]
- clause (c) or [Avails ITC using such invoice/bill/fraudulently avails ITC without invoice/bill]
- clause (d) or [Tax collected but not deposited to govt > 3 months from due date]

of section 132(1) which is punishable under 132(1) clause (i) or (ii), or Section 132 (2), he may, by order, authorise any officer of central tax to arrest such person.

- Section 132(1) (i): Where tax evaded/ITC wrongly availed or utilised/refund wrongly taken exceeds Rs. 5 crores; imprisonment for a term which upto five years and with fine;
- 132(1)(ii): Where tax evaded/ITC wrongly availed/utilised/refund wrongly taken exceeds Rs. 2 crores upto 5 crores; imprisonment for a term which upto three years and with fine;
- Section 132(2): Where any person convicted of an offence u/s 132 is again convicted of an offence, then, he shall be punishable for with imprisonment upto 5 years and with fine.

(2) What is the treatment to person arrested in case of cognizable offence

Where a person is arrested for an offence specified u/s 132(5), the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

Section 132(5): The offences specified in section 132(1)(a)/(b)/(c)/(d) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

All Other offences shall be Non-cognizable & bailable.

(3) Safeguards for a person who is placed under arrest u/s 69

- where a person is arrested for a cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

- in the case of a non-cognizable and bailable offence, the deputy or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.
- All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Cognizable & Non bailable + Non-cognizable & bailable

- Cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and start investigation with/without authority of court.
- Non-bailable offence means an offence in which accused person shall not be automatically entitled to be released on bail, however court may release them on suitable bail.
- Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant.
- Bailable offence is an offence in which the accused shall be offered to be released on suitable bail by police or court.

What are the guidelines for Arrest?

Power to arrest has to be exercised after careful consideration of facts of the case which may include:

- to ensure proper investigation of the offence;
- to prevent such person from absconding;
- master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc;
- master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc.;
- where the intent to evade duty is evident and element of mens rea/guilty mind is palpable;
- prevention of the possibility of tampering with evidence;
- intimidating or influencing witnesses; and
- large amounts of evasion of tax.

Section 70: Power to summon person to give evidence and produce documents

(1) PO shall have power to summon any person

The PO under this Act shall have power to summon any person

- whose attendance he considers necessary either to give evidence or
- to produce a document or any other thing in any inquiry in the same manner,

- as provided in the case of a civil court under the provisions of the Code of Civil Procedure.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of the Indian Penal Code.

Discuss the duties/responsibilities of the person to whom summons has been issued

- A person who is issued summons is legally bound to attend either in person or by an authorized representative and
- he is bound to state the truth before the officer who has issued the summons upon any subject which is the subject matter of examination and
- to produce such documents and other things as may be required.

What are the consequences of non-appearance to summons?

- The proceeding before the official who issued the summons is deemed a judicial proceeding.
- Failure to appear when summoned without reasonable justification can lead to prosecution under section 174 of the IPC.
- Avoiding service of summons can lead to prosecution under section 172 of the IPC.
- Failure to produce required documents or electronic records can lead to prosecution under section 175 of the IPC.
- Giving false evidence can lead to prosecution under section 193 of the IPC.
- Not appearing before a CGST/SGST officer who issued the summons can result in a penalty of up to ₹25,000 under section 122(3)(d) of the Act.

What are the guidelines for issuance of summons?

CBIC guidelines for issuing summons:

- Summons to be issued as a last resort for uncooperative assessee; not for summoning top management initially.
- Language of the summons should be polite and non-stressful.
- Summons by superintendents, should be after obtaining prior written permission from an officer of Assistant Commissioner/higher; reasons for issuing must be recorded in writing.
- If prior written permission isn't possible, oral/telephonic permission should be obtained and documented at the earliest opportunity.
- Officers issuing summons must submit a report or record the proceedings and submit to the authorizing officer.
- Senior management officials (CEO, CFO, General Managers) should not be issued summons initially unless involved in decisions leading to revenue loss.

What are the precautions to be observed while issuing summons?

- Only issue summons if necessary for an ongoing inquiry.
- Avoid issuing summons repeatedly; minimize number of appearances for recording statements.
- Respect the time of appearance given in summons; avoid long waits unless strategically necessary.
- Prefer recording statements during office hours, but exceptions can be made based on case.

Section 71: Access to business premises

(1) Who and under what situation shall access to business premises be allowed u/s 71?

Any officer under this Act, authorised by the PO not below the rank of Joint Commissioner,

- shall have access to any place of business of a RP
- to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place,
- **for the purposes of carrying out** any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) List the records which are to be produced during access to business premises?

Every person in charge of place shall, on demand, make available to the officer authorised or the audit party deputed by the PO/cost accountant/chartered accountant nominated u/s 66—

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
- (vi) any other relevant record,

for the scrutiny by the officer/audit party/the chartered accountant/cost accountant

- within a period not exceeding 15 working days from the day when such demand is made, or
- such further period as may be allowed.

Section 72: Officers to assist proper officers

Are there any classes of officers who are required to assist CGST/SGST officers?

All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

Section 73: Determination of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilized for any reason other than fraud/any willful misstatement/suppression of facts

- (1) Where it appears to the PO that
 - any tax has not been paid/short paid/erroneously refunded/ ITC has been wrongly availed or utilized
 - **for reason other than** fraud/any willful-misstatement/suppression of facts to evade tax,
 - he shall serve notice on the person chargeable with tax requiring him to show cause as to
 - why he should not pay the amount specified in the notice along with interest u/s 50 and
 - **a penalty leviable under the provisions of this Act or the rules** made thereunder.
- (2) PO shall issue show cause notice at least **3 months prior** to the time limit for issuance of demand order (**i.e. 3 years**).
- (3) The PO may issue **statement (DRC 02) for periods not covered** in the initial notice.
- (4) The service of **statement, shall be deemed to be service of SCN**, subject to the condition that the grounds relied upon are the same as are mentioned in the earlier notice.
- (5) **Person chargeable may, prior to service of SCN/statement, make payment** of tax along with interest u/s 50 (as ascertained himself/by PO) & interest & inform the PO using DRC 03
- (6) **No SCN** to be served, if tax, interest & penalty paid in full.
- (7) In case of **any short fall, PO shall proceed to issue SCN** w.r.t. such short fall amount
- (8) No penalty & all proceedings deemed concluded, in case of payment of tax and interest is made within **30 days**
- (9) PO after considering representation, shall issue a demand order determining tax, interest and **a penalty equivalent to 10% of tax or 10,000 rupees, whichever is higher**.
- (10) The PO shall issue the **demand order within 3 years** from the due date of annual return for the FY to which the tax relates to or 3 years from date of erroneous refund.
- (11) Penalty 10% or 10,000 shall be payable if self-assessed tax/amount collected as tax, unpaid within 30 days from due date of payment of such tax.

Clarification on levy of penalty under section 73 in case of delayed filing of return

Issue: Whether penalty in accordance with section 73 (11) should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

Clarification:

- As per section 73(11), a penalty is applicable if the self-assessed tax or collected tax is not paid within 30 days from the due date.
- A show cause notice (SCN) is issued under section 73(1) for non-payment, short payment, erroneous refund, or wrongful input tax credit.
- **Section 73(11) can only be invoked when section 73 is applicable.**
- Generally, **section 73 is not invoked for delayed filing of FORM GSTR-3B** because the tax, along with interest, has already been paid after the due date.
- Therefore, **the penalty under section 73(11) is not applicable** in such cases.
- However, a general penalty under section 125 may be imposed for late payment of tax, following due process.

Section 74: Determination of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilized by reason of fraud/any willful-misstatement/suppression of facts

(1) Where it appears to the PO that

- any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilized
- **by reason of fraud**, or any willful-misstatement or suppression of facts to evade tax,
- he shall serve notice on the person chargeable with tax requiring him to show cause as to
- why he should not pay the amount specified in the notice along with interest u/s 50 and
- **a penalty equivalent to the tax** specified in the notice.

(2) PO shall issue show cause notice at least **6 months prior** to the time limit for issuance of demand order (**i.e. 5 years**).

(3) The PO may issue **statement (DRC 02) for periods not covered** in the initial notice

(4) The service of **statement**, shall be deemed to be service of **SCN** u/s 73(1), subject to the condition that the grounds relied upon are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of SCN, pay tax with interest & **a penalty equal to 15% of such tax** on his own ascertainment/ as ascertained by PO and inform the proper officer in writing of such payment.

(6) **No SCN** to be served, if tax, interest & penalty paid in full

(7) In case of any **short fall**, **PO shall proceed to issue SCN** for the short fall

(8) If the person makes payment of tax with interest, post issuance of SCN within **30 days**, **penalty to be paid 25% of tax**, all proceedings shall be deemed to be concluded.

(9) If **no payment after SCN**, PO shall, after taking representation, **determine** the tax, interest & penalty due and issue an order.

(10) The PO shall issue the demand order within **5 years** from the due date of annual return for the FY to which the tax relates to or **5 years** from date of erroneous refund.

(11) If person post issuance of demand pays the tax with interest and a penalty equal to **50% of such tax within 30 days of communication** of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. — For the purposes of section 73 and 74, —

(i) All proceedings in respect of the said notice shall not include proceedings u/s 132 (imprisonment proceedings shall not be concluded on payment of tax, interest & penalty);

(ii) Where the notice under the same proceedings is issued to the main person & some other persons, and such proceedings against the main person have concluded u/s 73 or 74, the proceedings against all persons liable to pay penalty u/s 122 & 125 are deemed concluded.

Explanation 2. — Suppression" shall mean

- non-declaration of facts/information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act/ rules, or
- failure to furnish any information on being asked for, in writing, by the proper officer.

Crux of time limits under Section 73 and Section 74:

Particulars		Normal Case	Fraud case
Serving of SCN		At least 3 months before DO	At least 6 months before DO
Demand Order		3 years from DD of AR	5 years from DD of AR
Penalty (if Tax + interest paid)	before SCN	No Penalty	15% of tax amount
	within 30 days of SCN	No penalty	25% of tax amount
	within 30 days of order	10% of tax/10,000 whichever is higher	50% of tax

Monetary limits prescribed for issuance of SCNs by different level of officers

Monetary limits of tax (including cess) not paid/ short paid/ erroneously refunded/ ITC of CGST wrongly availed/utilized for issuance of SCNs and passing of orders u/s 73 and 74 of CGST Act:

CGST Officer	Monetary limit of		
	CGST	IGST	CGST and IGST
Superintendent	≤ Rs 10 lakh	≤ Rs 20 lakh	≤ Rs 20 lakh
Deputy or Assistant Commissioner	> Rs 10 lakh ≤ Rs 1 crore	> Rs 20 lakh ≤ Rs 2 crore	> Rs 20 lakh ≤ Rs 2 crore
Additional or Joint Commissioner	Above Rs 1 crore without any limit	Above Rs 2 crores without any limit	Above Rs 2 crores without any limit

Section 75: General Provisions relating to determination of tax

- (1) Where service of notice/issuance of order is stayed by an order of a court/Appellate Tribunal, such **stay period shall be excluded** in computing 3 years u/s 73 or 5 years u/s 74.
- (2) Where Appellate Authority, Appellate Tribunal, or court finds that **notice u/s 74(1) is not sustainable**: because fraud, willful misstatement, or suppression of facts to evade tax cannot be proven, the PO shall determine tax payable as if the notice were issued u/s 73(1).
- (3) Where the order is to be issued based on the direction of an Appellate Authority, Appellate Tribunal, or court, it shall be issued within **2 years from the date that direction is communicated**.
- (4) **An opportunity of hearing** shall be granted, if a request is received in writing from the person chargeable with tax/penalty, or where any adverse decision is contemplated against such person.
- (5) **Adjournment**: The PO shall, if sufficient cause is shown, **grant time and adjourn** the hearing:
Proviso: Maximum 3 adjournments to a person during the proceedings.
- (6) **Speaking order**: PO, in his order, shall set out the relevant facts and the basis of his decision.
- (7) Demand order should be in conformity with SCN: Tax, interest and penalty demanded shall not exceed amount specified in the notice & no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where AA/AT/Court modifies tax, then interest & penalty modifies accordingly.

(9) Interest shall be payable even if not specified in the demand order.

(10) If no order within 3/5 years, proceedings under section 73/74 deemed concluded.

(11) Wait period shall be excluded from 3/5 years: An issue on which the AA/the AT/the HC has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the AT/the HC/the SC against such decision of the AA/the AT/ the HC is pending, the period spent between

- the date of the decision of the AA and that of the AT or
- the date of decision of the AT and that of the HC or
- the date of the decision of the HC and that of the SC

shall be excluded in computing the period of 3years/5 years, where proceedings are initiated by way of issue of a show cause notice.

(12) Direct recovery in case of non-payment of self-assessed tax: Where any amount of self-assessed tax in accordance with a return furnished u/s 39 remains unpaid, either wholly or partly, or interest payable on such tax remains unpaid, same shall be recovered u/s 79.

Explanation. - Self-assessed tax shall include tax payable in respect of details of outward supplies furnished u/s 37, but not included in the return furnished u/s 39.

(13) No penalty under other provision: If penalty is imposed u/s 73/74.

Analysis of Section 75(12): Instruction has been issued which provides that in case of mis-match between GSTR-1 and GSTR-3B,

- the PO may first send a communication to the RP to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.
- Recovery proceedings u/s 79 will be initiated by the PO only when the said person either
 - (i) fails to reply to the proper officer, or
 - (ii) fails to make the payment within the prescribed time or
 - (iii) fails to explain the reasons for such amount short paid/not paid.

Clarification with regard to applicability of section 75(2) of CGST act, & its effect on limitation

Issue: In some of the cases where SCN has been issued by the PO to a notice under section 74(1), the appellate authority/appellate tribunal/court concludes that the said notice is not sustainable

u/s 74(1) and directs the PO to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued u/s 73(1), What would be the time period for re-determination?

Clarification: The time limit for re-determination is as specified in under section 75(3) of the said Act, i.e. within a period of **2 years** from the date of communication of the said direction.

Issue: How the amount payable by the noticee, deeming the notice to have been issued under section 73(1), shall be re-computed/re-determined by the PO as per provisions of section 75(2)?

Clarification:

- The demand would have to be re-determined keeping in consideration the provisions of section 73(2), read with section 73(10) of CGST Act i.e. within 2 years & 9 months.
- In cases where the PO has to re-determine the tax, interest and penalty payable deeming the notice to have been issued u/s 73(1) in terms of section 75(2), the same can be re-determined for so much amount of tax short paid or not paid, or ITC wrongly availed/utilized or that of erroneous refund, in respect of which SCN was issued within the time limit i.e. 2 years & 9 months.
- In case, where the SCN under section 74(1) was issued beyond a period of 2 years and 9 months and the appellate authority concludes that the notice is not sustainable under section 74(1) thereby deeming the notice to have been issued under section 73(1), the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73.
- Where the show cause notice under section 74(1) was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per section 73(2) for one FY but after the expiry of the said due date for the other FYs, then the amount payable in terms of section 73 shall be re-determined only in respect of that FY for which SCN was issued before the expiry of the time period as specified in sub-section (2) of section 73.

Section 76: Tax collected but not paid to Government

- (1) Every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government,
 - shall forthwith pay the said amount to the Government,
 - irrespective of whether the supplies are taxable or not.
- (2) PO may **serve a notice (SCN)** why the said amount, should not be paid by him to the Govt and why a penalty equivalent to the amount should not be imposed on him.

- (3) PO shall, after considering the representation, if any, determine the amount due from such person and thereupon such person shall pay the amount so determined.
- (4) The person shall in addition to paying the amount also be liable to pay interest u/s 50 from date such amount was collected by him to the date such amount is paid by him to Government.
- (5) An opportunity of hearing shall be granted where a requested in writing from the person.
- (6) PO shall issue an **order within one year** from the date of issue of the notice.
- (7) In case of stay by court/Appellate Tribunal, period of stay shall be excluded in computing the period of one year.
- (8) Speaking order: order, shall set out the relevant facts and the basis of his decision.
- (9) The amount paid to the Govt shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).
- (10) Where any surplus is left after the adjustment, it shall either be credited to Consumer welfare fund or refunded to the person who has borne the incidence of such amount.
- (11) The person who has borne the incidence of the amount, may apply for the refund u/s 54.

Section 77: Tax wrongfully collected and paid to CG or SG

- (1) A RP who paid CGST & SGST/UTGST on an intra-State supply that is later considered an inter-State supply will get a refund of the taxes paid, following prescribed conditions.
- (2) A RP who paid IGST on an inter-State supply that is later considered an intra-State supply won't have to pay interest on the central and state or Union territory tax payable.

Section 19 of the IGST Act: Tax wrongfully collected and paid to CG/SG

- (1) A RP who has paid IGST on an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid.
- (2) A RP who has paid CGST and SGST/UTGST on an intra-State supply, but which is subsequently held to be an inter-State, shall not be required to pay any interest on amount of IGST payable.

Clarification on refund of tax specified u/s 77 of CGST Act & section 19 of the IGST Act

It is clarified that the term "subsequently held" in said sections covers both the cases

- Where the supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or
- where the supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding,
- Accordingly, refund claim u/s 77 can be claimed by the taxpayer in both the situations, provided the taxpayer pays the required amount of tax in the correct head.

Rule 142: Notice and order for demand of amounts payable under the Act

(1) The proper officer shall serve, along with the

- (a) Notice issued under section 52/73/74/76/122/123/124/125/127/129/130, a summary thereof electronically in FORM GST DRC-01,
- (b) statement u/s 73(3) or 74(3), a summary thereof electronically in GST DRC-02.

(1A) PO may before SCN communicate details of tax, interest & penalty in Part A of DRC 01A

(2) Before SCN/statement the person pays tax, interest, penalty, whether ascertained on his own or by PO, ~~he shall inform PO in DRC 03 & PO shall issue acknowledgement, accepting the payment made in DRC 04~~ he shall inform the PO of such payment in GST DRC-03 and an acknowledgement, in GST DRC-04 shall be made available to the person through the common portal electronically.

(2A) If person makes partial payment/desires to file submissions against proposed liability, he may use Part B of DRC 01A, and thereafter the PO may issue an intimation in Part-C of GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person

(2B) Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or 73 or 74 or 76 or 122 or 123 or 124 or 125 or 127 or 129 or 130, has been paid by the said person through an intimation in GST DRC-03 under sub-rule (2), instead of crediting the said amount in the e-liability register in GST PMT -01 against the debit entry created for the said demand, the said person may file an application in GST DRC-03A electronically on the common portal, and the amount so paid and intimated through GST DRC-03 shall be credited in E-Liability Register in GST PMT -01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through GST DRC-03:

Proviso: where an order in GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in GST DRC-03, an application in GST DRC-03A cannot be filed by the said person in respect of the said payment.

(3) Where person makes payment of the amount u/s 73(8)/74(8) within 30 days or of the amount referred in 129(1) **within 7 days of SCN** before issuance of order u/s 129(3), inform officer in DRC 03 & PO shall issue an intimation in DRC 05 concluding all proceedings of the SCN.

(4) Representation u/s 73(9)/74(9) or reply u/s 76(3) shall be furnished in GST DRC 06

(5) Summary of order issued under section 52/62/63/64/73/74/75/76/122/123/124/125/127/129/130 shall be uploaded electronically in GST DRC-07, specifying tax, interest and penalty.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) If a rectification of the order is done u/s 161/where an order uploaded on system has been withdrawn, a summary of rectification order or withdrawal order shall be uploaded in DRC-08

Section 78: Initiation of recovery proceedings

- Amount payable pursuant to order, shall be paid within 3 m of order, failing recovery proceedings shall be initiated.
- **Proviso:** Period of 3 months can be reduced by PO, in interest of revenue

Section 79: Recovery of tax

Section 79(1): Modes of recovery of dues

Where any amount payable by a person to the Govt & is not paid, the PO shall proceed to recover the amount by one or more of the following modes, namely: —

(a) Recovery by adjusting against refunds due to the person:

PO may deduct/may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the PO or such other specified officer;

Rule 143: Recovery by deduction from any money owed

PO may require a specified officer to deduct amount from any money owing to such defaulter.

Explanation. — Specified officer shall mean any officer of the CG/SG/UT/LA, or of a Board/ Corporation/a company owned/controlled, wholly/partly, by the CG/a SG/a UT govt/a LA.

(b) Recovery by detention & selling of goods belonging to such person

PO may recover/may require specified officer to recover amount so payable by detaining & selling any goods belonging to such person, under the control of PO/specified officer;

Rule 144: Recovery by sale of goods under the control of proper officer

- PO prepares an inventory, estimates market value & sells enough goods to recover the amount payable plus administrative expenses.
- Goods are sold via auction or e-auction, with notice issued in GST DRC-10.
- Auction date must be at least 15 days from notice issuance; perishable/hazardous goods may be sold immediately.
- PO may require pre-bid deposits, refundable to unsuccessful bidders.
- Successful bidders get a notice to pay within 15 days, after which they receive the goods and a GST DRC-12 certificate.
- Auction is canceled if the defaulter pays the amount before the notice is issued.
- Re-auction occurs if no bid is received or the auction is deemed non-competitive.

(c) Garnishee proceedings - Recovery from other person from whom any amount is due/may become due to such person**Rule 145 - Recovery from third party:**

- Notice to 3rd person in FORM GST DRC-13 to deposit amount in notice
- When he makes the payment, PO Shall issue a certificate in FORM GST DRC-14 clearly indicating the details of the liability so discharged.

(d) Distrain any movable/immovable property and detain till amount paid

PO may seize and hold movable or immovable property of a person until the owed amount is paid. If the amount or related costs remain unpaid for 30 days, the PO may sell the property to cover the payable amount and costs, and any surplus will be returned to the person.

(e) Recovery through district collector

PO may make a certificate in DRC-18 specifying the amount due and send it to the district's Collector or an authorized officer. The Collector/officer will then recover specified amount from the person as if it were an arrear of land revenue.

(f) Recovery by way of application to Magistrate

PO may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

Section 79(2): Recovery through realization of bond

Where the terms of any bond/other instrument executed provide that any amount due under such instrument may be recovered, the amount may, be recovered.

Section 79(3): SGST officer empowered to recover CGST dues & later on credit to CG

PO of ST or UTT, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of ST/UTT and credit the amount so recovered to the account of the Government.

Section 79(4): During recovery if part amount is collected, then it shall be shared pro-rata

Where the amount recovered is less than the amount due to the CG and SG, the amount to be credited to the account of the respective Govts shall be in proportion to the amount due to each such Government.

Explanation. — Recovery can be made from distinct person.

Section 142B: Intimation of certain amounts liable to be recovered u/s 79 of the Act.-

(1) Where, in accordance with section 75 read with rule 88C, or otherwise,

- any amount has become recoverable under section 79 & the same has remained unpaid,
- PO shall intimate, details of the said amount in **GST DRC-01D**, directing the person in default to pay the said amount, along with applicable interest, **within 7 days &**
- the said amount **shall be posted in Part-II of E - Liability Register in GST PMT-01.**

(2) The intimation shall be treated as the notice for recovery.

(3) Where the amount remains unpaid after the specified period, the PO will recover the amount using the provisions of rules 143, 144, 145, 146, 147, 155, 156, 157, or 160.

Section 80: Payment of tax and other amount in instalments

- On an application (in DRC - 20) filed by a TP, Commissioner may, extend time for payment or allow payment of any amount due **except self-assessed liability** in any return,
 - in **monthly instalments not exceeding 24**, subject to payment of interest u/s 50.
- **Proviso:** in case of default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable immediately and shall, without any further notice being served on the person, be liable for recovery.

Rule 158: Payment of tax and other amounts in instalments

- (1) **Application:** GST DRC- 20, seeking extension of time/ allowing payment in instalments, the Commissioner shall call for a report from jurisdictional officer about financial ability of TP.
- (2) Upon consideration request and the report of the JO: issue an order in GST DRC- 21 allowing TP further time/to pay in monthly instalments, not exceeding 24.
- (3) The facility referred to in sub-rule (2) shall not be allowed where—
 - (a) TP has already defaulted on payment of any amount for which the recovery process is on;
 - (b) TP has not been allowed to make payment in instalments in the PFY under the Act
 - (c) Amount for which instalment facility is sought **is less than twenty-five thousand rupees.**

Section 81: Transfer of property to be void in certain cases

- Where a person, **after any amount has become due** from him,
- **creates a charge on or parts** with the property belonging to him or in his possession
- by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties
- in favour of any other person **with the intention of defrauding the Government revenue,**
- such **charge or transfer shall be void** as against any claim in respect of any tax or any other sum payable by the said person:

Proviso: Charge/transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Section 82: Tax to be first charge on property

Save as otherwise provided in the **Insolvency and Bankruptcy Code, 2016,**

- any amount payable by a taxable person or
- any other person on account of tax, interest or penalty
- which he is liable to pay to the Government
- shall **be a first charge on the property of such taxable person or such person.**

Section 83: Provisional attachment to protect revenue in certain cases

- (1) Where, after the initiation of any proceeding under
 - Chapter XII, (Assessment)
 - Chapter XIV (Inspection, search Seizure & Arrest) or
 - Chapter XV (Demand & Recovery),

the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person/any person specified in section 122(1A), in such manner as may be prescribed.

(2) Period of validity of provisional attachment order shall be **maximum 1 year**.

Rule 159: Provisional attachment of property (summary)

- Commissioner orders property attachment in DRC-22 & sends a copy to the relevant authority.
- Encumbrance is removed either upon the Commissioner's written instruction or **after one year**, whichever is earlier.
- Perishable/hazardous property is released upon payment of its market value or due amount, whichever is lower.
- If payment is not made, Commissioner may sell the property, adjusting the proceeds against dues.
- Objections to attachment can be filed in FORM GST DRC-22A; the Commissioner may release the property after a hearing.
- Property is no longer liable for attachment, Commissioner releases it by issuing GST DRC-23.

Section 84: Continuation and validation of certain recovery proceedings

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, is served upon any taxable person/any other person and any appeal or revision application is filed or any other proceeding is initiated in respect of such Government dues, then—

- (a) where such Govt dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Govt dues are enhanced and any recovery proceedings in relation to such Govt dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;
- (b) where such Govt dues are reduced in such appeal, revision or in other proceedings—
- (i) Not necessary for the Commissioner to serve upon the TP a fresh notice of demand;
 - (ii) Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
 - (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision/other proceedings may be continued in relation to the

amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Rule 161: Continuation of certain recovery proceedings

Intimation/notice for reduction/enhancement of any demand u/s 84 shall be issued in DRC- 25.

Special Procedure for Corporate debtors undergoing Insolvency Resolution Process.

- **Triggering CIRP:** When an entity defaults on a threshold amount, the Corporate Insolvency Resolution Process (CIRP) begins, transferring management to an interim resolution professional (IRP) or resolution professional (RP).
- **Role of IRP/RP:** The IRP/RP manages the entity as a going concern, ensuring compliance with all laws until insolvency proceedings conclude and an order is passed by the National Company Law Tribunal (NCLT).
- **Special Procedure under CGST Act:** Corporate debtors undergoing CIRP must register anew in each state or union territory where previously registered, within 30 days of IRP/RP appointment.
- Those who have not defaulted on furnishing statements (GSTR-1) and returns are exempt from separate registration from the IRP/RP appointment date.
- **Single Registration Requirement:** New registration by IRP/RP is needed only once; changes in IRP/RP are treated as changes in the authorized signatory, not as distinct persons.
- **Compliance:** IRP/RP must furnish returns, make tax payments, and comply with GST law during the CIRP period.

Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under IBC[Circular No. 187/19/2022]

Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 with respect to demand for recovery against such corporate debtor under CGST Act, 2017 as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC.

Clarification:

As per section 84, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

Crux: CIRP proceedings are covered under other proceedings u/s 84

Introduction

- Taxpayers and departments may have differing opinions on tax orders, leading to the need for appeal channels.
- India has adopted a dual model of GST i.e.; every supply GST will be leviable to both CGST and SGST. So, does this mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both authorities for exercising his right of appeal? The answer is NO.
- Proper officers (PO) of one Act (e.g., CGST) also act as POs for SGST for the same transaction, issuing orders for both CGST and SGST/UTGST components.
- Also, if any order is passed by the PO of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

Adjudicating authority - Section 2(4)

Adjudicating authority means any authority, appointed or authorised to pass any order or decision under this Act, but does not include (they are not adjudicating authority)

- the Central Board of Indirect Taxes and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority,
- the Appellate Tribunal and
- the Authority referred to in section 171(2) (Competition Commission of India);

Section 107: Appeals to Appellate Authority

(1) Person aggrieved by any decision/order may appeal to Appellate authority within 3 months from the date decision or order is communicated to such person.

(2) Departmental appeal to appellate authority within 6 months

- Commissioner may, on his own motion/upon request from Commissioner of state tax/UT tax,
- call for and examine the record of any proceedings,
- for satisfying himself as to the legality/propriety of the said decision/order and
- may, by order, direct any officer subordinate to apply to Appellate Authority **within 6 months**
- from the date of communication of the said decision/order.

Rule 109A: Appointment of Appellate Authority.

Person aggrieved/An officer directed u/s 107(2) to appeal against any decision/order passed under this Act/SGST/UTGST Act may appeal to—

- (a) Commissioner (Appeals) where such decision/order is passed by the Additional/Joint Commissioner;
- (b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy/Assistant Commissioner/the Superintendent, within six months from the date of communication of the said decision or order.

(3) Application on direction of commissioner be dealt by Appellate authority as if appeal against decision of adjudicating authority

(4) Condonation of delay in filing, further 1 month may be allowed by Appellate Authority

(5) Appeal shall be in prescribed form

Every appeal shall be in such form and shall be verified in such manner as may be prescribed.

Form: GST APL 01/APL 03, Manner: Rule 108 & 109

(6) Pre-deposit before filing an appeal: Pay admitted dues in full & 10% of disputed dues

No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee & penalty, as admitted by him; and

(b) a sum equal to **10% of the remaining amount** of tax in dispute arising from the said order, subject to a **maximum of 25 crore rupees**, in relation to which the appeal has been filed.

Proviso: no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to 25% of the penalty has been paid by the appellant.

(7) If Pre-deposit of 10% of disputed liability is paid, recovery proceedings for balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) Adjournment - maximum 3 times to each party

The Appellate Authority may, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Proviso: no such adjournment shall be granted more than three times to a party during appeal.

(10) AA while hearing, may allow appellant to raise additional grounds, if it is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(11) Appellate authority shall not refer case back to adjudicating authority

The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Proviso:

- (1) OBH to be granted in case of order enhancing fees/penalty/fine: an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:
- (2) Enhancement of liability after SCN and DO (as per sec 73/74): where the Appellate Authority is of the opinion that any tax has not been paid/short-paid/erroneously refunded, or where ITC has been wrongly availed/utilised, no order requiring the appellant to pay such tax/ITC shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73/74.

(12) Order of Appellate authority shall be in writing**(13) Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:**

Proviso: stay period shall be excluded in computing the period of one year.

(14) Communication of order on disposal: Copy to appellant, respondent, the adj. authority**(15) Order copy to be sent to jurisdictional commissioner of State tax/Commissioner of UT tax/an authority designated by him in this behalf.****(16) Every order passed under this section shall, subject to further appeal/revision, be final and binding on the parties.**

Rule 108 & 109. Appeal to the Appellate Authority.-

- (1) An appeal to Appellate Authority shall be filed in APL-01/APL 03(by department), along with the relevant documents, electronically & a provisional acknowledgement shall be issued to the appellant immediately.

Proviso: Manual filing of appeal in GST APL-01/03, along with the relevant documents, only if-

- (i) the Commissioner has so notified, or
 - (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,
- and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in GST APL-01 shall be signed.

(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in GST APL-02 by Appellate Authority/an officer authorised by him and the date of issue of the provisional acknowledgment shall be the date of filing of appeal:

Proviso: where decision/order appealed against is not uploaded on the common portal,

- If self-certified copy of the said decision or order is submitted within 7 days from the date of filing of APL-01/03: a final acknowledgment, indicating appeal number, shall be issued in APL-02 and date of issue of provisional acknowledgment is considered as date of filing of appeal.
- If self-certified copy of the decision/order is not submitted within 7 days from the date of filing of GST APL-01: date of submission of such copy is considered as the date of filing of appeal.

Explanation. - Appeal shall be treated as filed only when the final acknowledgement, is issued.

Section 108: Powers of Revisional Authority

(1) RA may revise order passed by sub-ordinate officer, if order pre-judicial to interest of revenue

the Revisional Authority may,

- on his own motion/upon information received/on request from Commissioner of ST/UTT,
- call for and examine the record of any proceedings, and
- if he considers that any decision/order passed under this Act/SGST/UTGST Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal/improper/has not taken into account certain material facts, whether available at the time of issuance order/not or in consequence of an observation by the C&AG of India,
- he may, stay the operation of such decision or order for such period as he deems fit and
- after giving an opportunity of being heard & making further inquiry,
- pass order, as he thinks just & proper, enhancing/modifying/annulling the decision/order

(2) Revisional authority shall not revise any of the following order

The Revisional Authority shall not exercise any power under sub-section (1), if—

- (a) the order has been subject to an appeal under section 107/112/117/118; or
- (b) the period specified of 6 months to appeal has not yet expired or three years have expired after the passing of the decision or order sought to be revised; or
- (c) the order has already been taken for revision under this section at an earlier stage; or
- (d) the order has been passed in exercise of the powers under sub-section (1):

Proviso: Revisional Authority may pass an order on any point which has not been raised and decided in an appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years referred to in clause (b) of that sub-section, whichever is later.

(3) Revisional order be final and binding and but subject to further appeal

(4) Wait time and stay period shall be excluded

If the said decision or order involves an issue on which the AT/HC has given its decision in some other proceedings and an appeal to the HC/SC against such decision of the AT/HC is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Time limit for passing revisionary order excluding period of stay by order of a court or Appellate Tribunal.

Notification no. 05/2020-CT, dt. 13-01-2020 seeks to appoint Revisional Authority

Order Passed by	Revisionary Authority
Additional/Joint Commissioner of Central Tax	Principal or Commissioner of CT
Deputy/Asst.Commissioner/Superintendent	Additional/Joint Commissioner of CT

Rule 109B: Notice to person and order of Revisional authority in case of revision

(1) If order likely to adversely affect person, revisional authority shall SCN in RVN-01 & shall give him a reasonable opportunity of being heard.

(2) RA along with its order issue summary order in GST APL-04 indication final demand confirmed.

Rule 109C. Withdrawal of Appeal.

The appellant may, at any time before issuance of show cause notice or order, whichever is earlier, file an application for withdrawal by filing an application in GST APL-01/03W:

Proviso: where the final acknowledgment in GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and shall be decided by the appellate authority within seven days of filing of such application:

Proviso: any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit i.e. 3 months/6 months.

Crux: Appellant may at any time before issuance of SCN/order (whichever is earlier), file an application for withdrawal of appeal by filing an application in FORM GST APL-01/03W.

Section 109: Constitution of Appellate Tribunal and Benches thereof

(1) Govt RC by notification shall constitute GSTAT

The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the GST Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority, or for conducting an examination or adjudicating the cases referred to in sub-section (2) of section 171, if so notified under the said section.

(2) Power of AT shall be exercisable by Principal Bench and the State Benches

The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).

(3) Principal Bench shall be situated at New Delhi presided over by president, a JM & 2 TM

The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State).

(4) Govt RC shall constitute state bench having having 2JM, 2 TM

On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).

- (5) Principal bench shall have jurisdiction to hear cases where one of the issues relates to POS
The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:
Proviso: the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.
Proviso: the matters referred to in section 171(2) shall be examined or adjudicated only by the Principal Bench:
Proviso: the Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.
- (6) The President shall, by order distribute the business among benches
Subject to the provisions of sub-section (5), the President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.
- (7) The Senior most judicial member within the state benches shall act as Vice-President
The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.
- (8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member
- (9) Manner of dealing with difference in opinion
If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—
- (a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
- (b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench, and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) Transfer of members from one branch to another

The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:

Proviso: a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Section 110: President and members of AT, their qualification, appointment, conditions of service, etc. (ICAI study material does not incorporate this section)

Section 111: Procedure before Appellate Tribunal

(1) AT bound by the procedure laid down in the Code of Civil Procedure, it shall have power to regulate its own procedure

The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

(2) Powers of AT

The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: —

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 & 124 of the Indian Evidence Act, requisitioning any public record/document/a copy of such record/document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

(3) Order of the AT may be enforced in the same manner as if it were a decree made by a court in a suit

Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the AT to send for execution of its orders to the court within the local limits of whose jurisdiction, —

(a) in the case of an order against a company, the reg. office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the AT shall be deemed to be judicial proceedings within the meaning of sections 193 & 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 112: Appeals to Appellate Tribunal

(1) Person aggrieved may appeal within 3 months

Any person aggrieved by an order passed against him under section 107/108 of this Act or the SGST/UTGST act may appeal to the AT against such order within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal:

(2) AT may refuse appeal involving amount up to Rs 50,000

The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) Departmental appeal to AT within 6 months

The Commissioner may,

- on his own motion, or upon request from the Commissioner of State Tax or Commissioner of UT tax,
- call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the SGST/UTGST act
- for the purpose of satisfying himself as to the legality or propriety of the said order and
- may, by order, direct any officer subordinate to him to apply to the AT **within six months**
- from the date on which the said order has been passed; or
- for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Dealing with Appeal

Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the AT as if it were an appeal made against the order u/s 107(11) or 108(1) and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) Memorandum of Cross Objection to be filed within 45 days or receipt of notice

On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) Condonation of Delay in filing by 3 months and Cross objection by 45 days

The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) or permit the filing of a memorandum of cross-objections within 45 days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) Appeal in form (GST APL-05) with fees

An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

- The fees for filing of appeal or restoration of appeal shall be Rs. 1,000 for every Rs. 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed Rs. 25,000 and a minimum of Rs. 5,000.
- Fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be Rs. 5,000.
- There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

(8) Pre-deposit - 100% of admitted amount, 20% of disputed liability and the balance amount shall be deemed to be stayed

No appeal shall be filed under sub-section (1), unless the appellant has paid—

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to **20% of the remaining amount of tax in dispute**, in addition to the amount paid under sub-section (6) of section 107, arising from the said order subject to a maximum of **50 crore rupees**, in relation to which the appeal has been filed.

(9) After pre-deposit, recovery proceeding shall be stayed

Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Fees

Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application,
shall be accompanied by such fees as may be prescribed.

Rule 110: Appeal to the Appellate Tribunal

(1) Appeal to AT shall be filed with relevant docs in GST APL 05

An appeal to the Appellate Tribunal u/s 112(1) shall be filed in GST APL-05, along with the relevant documents, electronically & provisional acknowledgement shall be issued immediately:

Proviso: an appeal to the AT may be filed manually in GST APL-05, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections in GST APL 06

A memorandum of cross-objections to the AT u/s 112(6), if any, shall be filed electronically in GST APL-06:

Proviso: memorandum of cross-objections may be filed manually in GST APL-06, only if the Registrar allows the same by issuing a special or general order .

(3) The appeal & memorandum of cross-objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Proviso: where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of GST APL-05 and a final acknowledgement, indicating appeal number, shall be issued in GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Proviso: where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of GST APL-05, a final acknowledgement, indicating appeal number, shall be issued in GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

- (5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees and a minimum of five thousand rupees:

Provided that the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be five thousand rupees. (6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

Rule 111: Application to the Appellate Tribunal

- (1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately:

Proviso: an application to the Appellate Authority may be filed manually in GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

- (2) A memorandum of cross-objections to the Appellate Tribunal if any, shall be filed electronically in GST APL-06:

Proviso: the memorandum of cross-objections may be filed manually in GST APL-06, only if the Registrar allows the same by issuing a special or general order.

(3) The appeal & the memorandum of cross objections shall be signed in manner specified.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Proviso: where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of GST APL-07 and a final acknowledgment, indicating appeal number shall be issued in Form GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Proviso: where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-07, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation 1.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Explanation 2.—For the purposes of rule 110 and 111, 'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar.

Rule 112: Production of additional evidence before the Appellate Authority or the Appellate Tribunal

(1) Additional evidence (other than the evidence produced before adj. authority) not allowed to be produced

The appellant shall not be allowed to produce before the Appellate Authority/the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely: —

(a) where the adjudicating authority or, as the case may be, the Appellate 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 the adjudicating authority or, as the case may be, the Appellate Authority; or
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
- (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) Reason for admission to be recorded by AA/AT in writing if additional evidence admitted
No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity—

- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

Section 113: Orders of Appellate Tribunal

(1) AT may pass order confirming, modifying or annulling the decision/order or remand case back to RA/ Original adjudicating authority

The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) Max adjournment 3 times to each party

The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Proviso: no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) AT empowered to rectification of mistakes apparent on the face of record

The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) Order by AT within 1 year (as far as possible) from date of filing

The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) Communication of order to Appellate authority/RA/Original adjudicating authority

The AT shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the UT tax.

(6) Order is final

Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Section 113A: Withdrawal of appeal or application filled before the Appellate Tribunal

- The appellant may, at any time before the issuance of the order, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, by filing an application in Form GST APL-05/07W.
- Where the final acknowledgment in GST APL-02 has been issued, the withdrawal of the said appeal or the application, would be subject to the approval of the Appellate Tribunal within 15 days of filing of such application.

- Any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in A or B above.

Rule 113: Order of Appellate Authority or Appellate Tribunal

- (1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in GST APL-04 clearly indicating the final amount of demand confirmed.
- (2) The jurisdictional officer shall issue a statement in GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

Section 115: Interest on refund of amount paid for admission of appeal

Where an amount paid by the appellant u/s 107(6) or 112(8) [pre-deposit] is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal,

- interest at the rate specified under section 56 shall be payable in respect of such refund
- from the date of payment of the amount till the date of refund of such amount.

Section 116: Appearance by authorised representative.

- (1) Any person who is entitled or required to appear before an office/Appellate Authority/Appellate Tribunal in connection with any proceedings may, appear by an authorised representative.
- (2) "Authorised representative" shall mean a person authorised by the person
 - (a) his **relative or regular employee**; or
 - (b) an **advocate** who is entitled to practice in any court in India,
 - (c) any **CA/CWA/CS**, who holds a certificate of practice
 - (d) a retired officer of the **Commercial Tax Department**, had worked in a post not below the rank than that of a **Group-B Gazetted officer for a period of not less than two years**;
 - (e) **GST Practitioner**
- (3) Not qualified as Authorised representative

No Person:

 - (a) who has been **dismissed or removed from Government service**; or
 - (b) who is **convicted of an offence** under **CGST/SGST/IGST/UTGST/Under existing laws/** under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both

- (c) who is **found guilty of misconduct** by the prescribed authority;
- (d) who has been **adjudged as an insolvent**, shall be qualified to represent any person under sub-section (1)—
- (i) for all times in case of persons referred to in clauses (a), (b) and (c); and
 - (ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).
- (4) Any person who has been disqualified under SGST Act/the UTGST Act deemed disqualified under CGST Act.

Section 117: Appeal to High Court

- (1) Any person **aggrieved by any order passed by the State Benches of AT** may file an appeal to High Court & HC may admit, if it is satisfied that case involves a **substantial question of law**.
- (2) **Appeal within 180 days**
 An appeal shall be filed **within 180 days** from the date on which the order appealed against is received by the aggrieved person & it shall be in such form, verified in such manner as prescribed:
 Proviso: the High Court may entertain an appeal after 180 days if it is satisfied that there was sufficient cause for not filing.
- (3) **HC to admit an appeal when it involves substantial question of law and formulate the question**
 Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
 Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
- (4) **HC to decide and deliver judgement containing grounds**
 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.
- (5) **HC may determine any issue that has not been determined/wrongly determined by AT**
 The High Court may determine any issue which—
 (a) has not been determined by the State Benches; or

(b) has been wrongly determined by the State Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) HC Appeal to be heard by bench of not less than 2 judges and decision on majority

Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) In case of difference in opinion, point shall be referred to other judge(s) & they shall decide on majority

Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) The effect to judgment of HC shall be given on the basis of a certified copy

Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) CPC provisions relating to appeals to HC shall apply to appeals under this section

Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the HC shall, as far as may be, apply in the case of appeals under this section.

Rule 114: Appeal to the High Court

(1) An appeal to the High Court under section 117(1) shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule 26.

Section 118: Appeal to Supreme Court

An appeal shall lie to the Supreme Court—

(a) from any order passed by the **Principal bench of the Appellate Tribunal**; or

(b) from **any judgment or order passed by the High Court in an appeal** made in any case which, the High Court certifies to be a fit one for appeal to the Supreme Court.

Rule 115: Demand confirmed by the Court

The jurisdictional officer shall issue a statement in GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

Section 119: Sums due to be paid notwithstanding appeal, etc.

Notwithstanding that an appeal has been preferred to the High Court/the Supreme Court,

- sums due to the Govt as a result of an order passed by the Principal bench of AT or
- an order passed by the State Benches or of AT or
- an order passed by the High Court, as the case may be,
- shall be payable in accordance with the order so passed.

Section 120: Appeal not to be filed in certain cases.

(1) The Board may, on the recommendations of the Council, issue orders/instructions/directions fixing such monetary limits, for regulating the filing of appeal/application by the officer.

(2) Where, in pursuance of orders/instructions/directions issued, the officer has not filed an appeal/application against any decision/order passed,

- it shall not preclude such him from filing appeal/application in any other case involving the same or similar issues or questions of law.

(3) No person, being a party in appeal/application shall contend that the officer of central tax has agreed/consented to the decision on the disputed issue by not filing an appeal/ application.

(4) The Appellate Tribunal/court hearing such appeal/application shall have regard to the circumstances under which appeal/application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

Clarification regarding monetary limits for filing appeals or applications or Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court

Following monetary limits have been fixed for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:-

Appellate Forum	Monetary Limit (amount involved in Rs.)
GSTAT	20 Lakhs
High Court	1 crore

Appellate Forum	Monetary Limit (amount involved in Rs.)
Supreme Court	2 crores

Amount to be considered for applying the monetary limit for filing appeal has been explained in the below table in relation to the category of disputes:--

SN	Dispute pertains to demand of	Amount to be considered for applying the monetary limit for filing appeal
1	Tax (with or without penalty and/or interest) only	Aggregate of the amount of tax in dispute (including CGST, SGST/ UTGST, IGST and Compensation Cess)
2	Interest only	Amount of interest
3	penalty only	Amount of penalty
4	late fee only	Amount of late fee
5	Interest, penalty and/or late fee (without involving any disputed tax amount)	Aggregate of amount of interest, penalty and late fee
6	Erroneous refund	Amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)

Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.

In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

Exclusions - Monetary limits specified above shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

- i. Where any provision GST law has been held to be ultra vires to the Constitution of India; or
- ii. Where any rules or regulations made under GST law have been held to be ultra vires the parent Act; or
- iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the GST law or the Rules made there under; or
- iv. Where the matter is related to -
 - a. Valuation of goods/services; or
 - b. Classification of goods/services; or
 - c. Refunds; or
 - d. Place of Supply; or

- e. Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/ circular/order/instruction etc.; or
- v. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
- vi. Any other case or class of cases, where it is necessary to contest in the interest of justice or revenue.

Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

Section 121: Non-appealable decisions and orders.

No appeal shall lie against any decision taken/order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely: —

- (a) an order of the Commissioner or other authority empowered to direct **transfer of proceedings from one officer to another officer**; or
- (b) **an order pertaining to the seizure/retention of books of account, register & other documents**; or
- (c) an order **sanctioning prosecution** under this Act; or
- (d) an order passed under section 80 (**instalment/deferred payment**).

Section 85: Liability in case of transfer of business

- (1) Transferor & Transferee jointly liable to pay tax, interest, penalty up to date of transfer
Where a taxable person, liable to pay tax under CGST Act,
- transfers his business in whole or in part,
 - by sale, gift, lease, leave and license, hire or in any other manner whatsoever,
 - the taxable person and the person to whom the business is so transferred
 - shall, jointly and severally, be liable wholly or to the extent of such transfer,
 - to pay the tax, interest/any penalty due from taxable person up to the time of such transfer,
 - whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter
- (2) Transferee liable to pay tax, interest, penalty from the date of such transfer
Where the transferee of a business
- carries on such business either in his own name or in some other name,
 - he shall be liable to pay tax on the supply of goods or services or both
 - effected by him with effect from the date of such transfer.
- Further, if he is a RP under this Act, he shall apply within the prescribed time for amendment of his certificate of registration

Clarified that the transferee/ successor shall be liable to pay any tax, interest or any penalty due from the transferor in case of transfer of business due to death of sole proprietor.

Section 86: Liability of agent and principal

Where

- an agent supplies or receives any taxable goods on behalf of his principal,
- such agent and his principal shall, jointly and severally, be liable
- to pay the tax payable on such goods under this act.

Section 87: Liability in case of amalgamation or merger of companies

- (1) In case of Amalgamation/merger: Supply during order effective date till date of order to be included in TO
- When two or more companies are amalgamated or merged
- in pursuance of an order of court or of Tribunal or otherwise and
 - the order is to take effect from a date earlier to the date of the order and

- any two/more of such companies have supplied/received any goods/services/both to or from each other
- during the period commencing on the date from which the order takes effect till the date of the order,
- then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and
- they shall be liable to pay tax accordingly.

(2) Companies shall be treated as distinct Cos up to date of order

The said two/more companies shall be treated as distinct companies for the period up to the date of the said order.

The registration certificates of the said companies shall be cancelled with effect from the date of the said order

Section 88: Liability in case of company in liquidation

(1) Liquidator of a company to intimate Commissioner of his appointment, within 30 days:

When any company is being wound up whether under the orders of a court/Tribunal/otherwise, every person appointed as receiver of any assets of a company (liquidator), shall within 30 days after his appointment, give intimation of his appointment to the Commissioner.

(2) Commissioner shall notify liquidator within 3m of receipt of intimation - dues payable

The Commissioner shall,

- after making such inquiry or calling for such information as he may deem fit,
- notify the liquidator within 3 months from the date on which he receives intimation of the appointment of the liquidator,
- the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company

(3) Director of a pvt co. to be jointly & severally liable for payment of unrecovered dues

When any private company is wound up and

- any tax, interest or penalty determined under CGST Act on the company for any period,
- whether before or in the course of or after its liquidation, cannot be recovered,
- then every person who was a director of such company at any time during the period for which the tax was due shall,
- jointly and severally, be liable for the payment of such tax, interest or penalty.

- However, director shall not be so liable if he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company

Rule 160: Recovery from company in liquidation

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

Section 89: Liability of directors of private company

- (1) Director of a private co. to be jointly & severally liable for the payment of unrecovered tax, interest or penalty

Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered,

- then, every person who was a director of the private company during such period shall, **jointly and severally**, be liable for the payment of such tax, interest or penalty
- unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

- (2) If private co gets converted into a public co, Director will not be liable for any tax/interest/penalty

Where a private company is converted into a public company and

- the tax, interest or penalty in respect of any supply of goods or services or both
- for any period during which such company was a private company cannot be recovered before such conversion,
- then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company
- in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Proviso: nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

Section 90: Liability of partners of firm to pay tax.

Firm & Partners of the firm jointly & severally liable to pay any dues of the firm:

Where any firm is liable to pay any tax, interest or penalty under this Act,

- the firm and each of the partners of the firm shall, jointly and severally,
- be liable for such payment.

Proviso: Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement:

where any partner retires from the firm,

- he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and
- such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement
- whether determined or not, on that date.

Proviso: if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

Section 91: Liability of guardians, trustees, etc.

Where

- the business in respect of which any tax, interest or penalty is payable under this Act
- is carried on by any guardian/trustee/agent of a minor/other incapacitated person
- on behalf of and for the benefit of such minor or other incapacitated person,
- the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent.

Tax, interest or penalty shall be levied and recoverable in like manner and to the same extent as

- it would be determined and recoverable from any such minor or other incapacitated person,
- as if he were a major/capacitated person & as if he were conducting the business himself and
- all the provisions of this Act or the rules made thereunder shall apply accordingly.

Section 92: Liability of Court of Wards, etc.

Where the estate or any portion of the estate of a taxable person owning a business

- in respect of which any tax, interest or penalty is payable under this Act
- is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court,
- the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager.

Tax, interest or penalty shall be levied and recoverable in like manner and to the same extent as it would be determined and be recoverable from the TP as if he were conducting the business himself and all the provisions of this Act or the rules made thereunder shall apply accordingly.

Section 93: Special provisions regarding liability to pay tax, interest or penalty in certain cases

(1) On death of a person, legal rep. liable to pay tax, interest or penalty:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under CGST Act, dies, then:

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) On partition of HUF or AOP: each member/group of members shall, jointly and severally, be liable

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under CGST Act, is a Hindu Undivided Family (HUF) or an association of persons (AOP) and property of the HUF or AOP is partitioned amongst the various members or groups of members, then, each member/group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under said Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) On dissolution of a firm: every person who was a partner shall, jointly & severally, be liable

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under CGST Act, is a firm, and such firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under said Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

- (4) On termination of guardianship or trust: the ward/the beneficiary shall be liable to pay Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act, —
- is the guardian of a ward on whose behalf the business is carried on by the guardian;
 - or is a trustee who carries on the business under a trust for a beneficiary,
- then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person up to the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

Section 94: Liability in other cases

(1) Discontinuation of business by a firm/AOP/HUF

Where a taxable person is a firm/AOP/HUF and such firm, association or family has discontinued business —

- the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and
- every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Change in the constitution of the firm or AOP

Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) Dissolution of firm/AOP or partition of HUF

The provisions of section 94(1) shall, so far as may be, apply where the taxable person, being a firm/AOP is dissolved or where the taxable person, being an HUF, has affected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Section 20 of IGST act: Application of provisions of Central Goods and Services Tax Act.

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration... till section 174

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provisos:

1. in the case of TDS, deductor shall deduct tax @ 2% from payment made or credited to supplier;
2. in the case of TCS, the operator shall collect tax at such rate not exceeding 2%, as may be notified (currently 0.5%).
3. the value of a supply shall include any taxes, duties, cesses, fees and charges levied other than this Act, and GST (Compensation to States) Act, if charged separately by the supplier;
4. in cases where the penalty is leviable under the CGST Act and the SGST Act or the UTGST Act, the penalty leviable under this Act shall be the **sum total of the said penalties**;
5. where the appeal is to be filed before the Appellate Authority/Appellate Tribunal, the maximum amount payable shall be Rs. 50 crores and 100 crores respectively.

Section - 122: Penalty for certain offences

(1) Circumstances for levy of penalty on a TP

Where a taxable person who—

- (i) **supply without invoice**: supplies any g/s/b without issue of any invoice/issues an incorrect/false invoice with regard to any supply;
- (ii) **Bogus invoice**: issues any invoice/bill without supply of g/s/b in violation of the provisions of this Act/the rules (Bogus invoice)
- (iii) **collects any amount as tax** but fails to pay the same to the Govt beyond a period of 3 months from the date on which such payment becomes due;
- (iv) **collects any tax in contravention** of the provisions of this Act but fails to pay the same to the Govt beyond a period of three months from the date on which such payment becomes due;

- (v) fails to deduct the tax u/s 51, or deducts less than required or where he fails to pay to the Government, the amount deducted as tax;
- (vi) fails to collect tax u/s 52, or collects less than amount required to be collected or where he fails to pay to the Government the amount collected as tax u/s 52;
- (vii) takes or utilizes ITC without actual receipt of goods/services/both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (viii) fraudulently obtains refund of tax under this Act;
- (ix) takes or distributes ITC in contravention of section 20, /the rules made thereunder;
- (x) falsifies/substitutes financial records/produces fake accounts/documents/furnishes any false information/return with an intention to evade payment of tax due;
- (xi) fails to obtain registration in spite of being liable to be registered under this Act but;
- (xii) furnishes any false information either while applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain/retain books of account & other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information/documents called for by an officer or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which are liable to confiscation under this Act;
- (xix) issues any invoice or document by using the registration number of another RP;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of

- 10,000 rupees or
 - an amount equivalent to the tax evaded or
 - the tax not deducted u/s 51/short deducted/deducted but not paid to the Government or
 - tax not collected u/s 52/short collected/collected but not paid to the Government or
 - ITC availed of or passed on or distributed irregularly, or
 - the refund claimed fraudulently,
- whichever is higher.

- (1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted,
- shall be liable to a penalty of
 - an amount equivalent to the tax evaded or ITC availed of or passed on.

(1B) Circumstances for levy of penalty on a ECO

Any electronic commerce operator who—

- (i) allows a supply of goods/services/both through it by an URP other than a person exempted from registration by a notification issued under this Act to make such supply;
 - (ii) allows an inter-State supply of g/s/b through it by a person who is not eligible to make such inter-State supply; or
 - (iii) fails to furnish correct details in the statement to be furnished u/s 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration,
- shall be liable to pay a penalty of
- ten thousand rupees, or
 - an amount equivalent to the amount of tax involved had such supply been made by a RP other than a person paying tax under section 10,
- whichever is higher.

(2) Circumstances for levy of penalty on a RP

Any RP who supplies any goods/services/both on which any tax has not been paid/short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized:

- (a) for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax,
 - shall be liable to a penalty of
 - ten thousand rupees or
 - 10% of the tax due from such person,
 whichever is higher;
- (b) for reason of fraud or any willful misstatement or suppression of facts to evade tax,
 - shall be liable to a penalty equal to
 - ten thousand rupees or
 - the tax due from such person,
 whichever is higher.

(3) Circumstances for levy of penalty on Any person

Any person who—

- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
- (b) 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;
- (c) 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;

- (d) 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;
- (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Section - 123: Penalty for failure to furnish information return

If a person who is required to furnish an information return u/s 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof,

- the PO may direct that such person shall be liable to pay
- a penalty of Rs. 100 for each day of period during which the failure to furnish such return continues:

Proviso: the penalty imposed under this section shall not exceed five thousand rupees.

Note: Section 150: Obligation to furnish information return.

Crux: Penalty Rs 100 per day, max Rs 5000

Section - 124: Fine for failure to furnish statistics

If any person required to furnish any information or return under section 151, —

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) willfully furnishes or causes to furnish any information or return which he knows to be false,
- he shall be punishable with a fine which may extend to ten thousand rupees and
 - in case of a continuing offence to
 - a further fine which may extend to
 - ◆ 100 rupees for each day after the first day during which the offence continues
 - ◆ subject to a maximum limit of twenty-five thousand rupees.

Crux: Fine up to Rs 10,000 and in case of continuing default further fine Rs 100 per day, subject to maximum Rs 25,000.

Section - 125: General penalty up to Rs 25,000

Any person, who contravenes any of the provisions of this Act/any rules made thereunder

- for which no penalty is separately provided for in this Act,
- shall be liable to a penalty which may extend to twenty-five thousand rupees.

Section - 126: General disciplines related to penalty

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation. — For the purpose of this sub-section, —

a. a breach shall be considered a 'minor breach' if the amount of tax involved is < Rs. 5,000;

b. an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) Penalty imposed shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) Speaking order: Officer shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the PO may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) Section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

Section - 127: Power to impose penalty in certain cases

Where the PO is of the view that a person is liable to a penalty & the same is not covered under any proceedings u/s 62/63/64/73/74/129/130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Section - 128: Power to waive penalty or fee or both

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

Author's Comment: Govt may waive penalty in the following cases

Sec - 122: Penalty for certain offences

Sec - 123: Penalty for failure to furnish information return

Sec - 125: Residuary penalty

Section - 129: Detention, seizure and release of goods and conveyances in transit

(1) Where

- any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder,
- all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —

(a) on payment of penalty equal to 200% of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to 2% of the value of goods or Rs. 25,000, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to 50% of the value of the goods or 200% of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to 5% of the value of goods or Rs. 25,000, whichever is less, where the owner of the goods does not come forward for payment of such penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form (GST INS 04) and manner as may be prescribed: (rule 140)

Proviso: no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) ...(Omitted)

(3) The PO detaining/seizing goods/conveyance shall issue a notice within 7 days of such detention/seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty.

Rule 142(3):

- Where person makes payment of the amount referred in 129(1) within 7 days of SCN before issuance of order u/s 129(3), inform officer in DRC 03 & PO shall issue order DRC 05 concluding all proceedings
- Where the person concerned makes payment of the amount referred to in section 129(1) within 7 days of the notice issued u/s 129(3) but before the issuance of order

under the said sub-section (3), he shall intimate the PO of such payment in DRC-03 and the PO shall issue an order in DRC-05 concluding the proceedings in respect of the said Notice.

(4) No penalty without giving the person concerned an opportunity of being heard.

(5) On payment, all proceedings in respect of the notice shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty within 15 days from the date of receipt of the copy of the order, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed (rule 154), to recover the penalty payable:

Proviso: the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Proviso: where the detained/seized goods are perishable/hazardous in nature/are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by PO.

Rule 154: Disposal of proceeds of sale of goods/conveyance and movable/immovable property

(1) Appropriation of amount recovered

The amounts so realised from the sale of goods/conveyance for recovery of penalty payable u/s 129(3) shall, -

- (a) first, be appropriated against the administrative cost of the recovery process;
- (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable u/s 129, as the case may be;
- (c) next, be appropriated against any other amount due from the defaulter under the Act or the IGST/UTGST/SGST Act, 2017 and the rules made thereunder; and
- (d) the balance, if any, shall be credited to the e cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) Where it is not possible to pay the balance of sale proceeds, as per clause (d), to the person concerned within a period of 6 months from the date of sale of such goods/conveyance or such further period as the PO may allow, balance of sale proceeds shall be deposited with the Fund (consumer welfare fund);

Circular on 'owner of the goods' for the purposes of section 129(1) of the CGST Act

Issue: Who will be considered as the owner of the goods for the purposes of section 129(1) of the CGST Act?

Clarification:

- If the invoice or any other specified document is accompanying the consignment, then either the consignor or the consignee should be deemed to be the owner.
- If the invoice or any other specified document is not accompanying the consignment, then in such cases, the PO should determine who should be declared as the owner of goods.

Section - 130: Confiscation of goods or conveyances and levy of penalty

(1) When can Confiscation be carried out?

Where any person—

- supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - does not account for any goods on which he is liable to pay tax under this Act; or
 - supplies any goods liable to tax under this Act without having applied for registration; or
 - contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,
- then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Officer to grant option of payment of fine in lieu of confiscation

Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Proviso:

- such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon;
- aggregate of such fine and penalty leviable shall not be less than the penalty equal to hundred per cent. of the tax payable on such goods
- where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) After Fine, owner additionally liable to tax, penalty or other charges payable

Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods/conveyance/the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty & charges payable in respect of such goods/conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The PO adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such PO, shall assist him in taking and holding such possession.

(7) Confiscated goods/conveyance to be disposed off after giving 3 months to pay fine

The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Rule 144A: Recovery of penalty by sale of goods or conveyance detained or seized in transit.

(1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty u/s 129(1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the PO shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:

Proviso: where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC 10 clearly indicating the goods or conveyance to be sold and the purpose of sale:

Proviso: where the person transporting said goods or the owner of such goods pays the amount of penalty U/S 129(1), including any expenses incurred in safe custody & handling of

such goods/conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the po shall cancel the process of auction and release such goods or conveyance.

- (3) The last day for submission of bid or the date of auction shall not be earlier than **fifteen days from the date of issue of the notice** referred to in sub-rule (2):

Proviso: where the detained or seized goods are **perishable or hazardous** in nature or are likely to depreciate in value with passage of time, **the said period of fifteen days may be reduced by the proper officer.**

- (4) The PO may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

- (5) The PO shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction:

Proviso: where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- (6) On payment of the full bid amount, the PO shall transfer the possession and ownership of the said goods/conveyance to the successful bidder and issue a certificate in GST DRC-12.

- (7) The PO shall cancel the process & proceed for re-auction where no bid is received/the auction is considered to be non-competitive due to lack of adequate participation/due to low bids.

- (8) Where an appeal has been filed by the person under the provisions of subsection (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

Proviso: sub-rule shall not be applicable to goods of perishable or hazardous nature.

Section - 131: Confiscation or penalty not to interfere with other punishments

No confiscation made/penalty imposed under the provisions of this Act/the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act/under any other law for the time being in force.

Section - 132: Punishment for certain offences

(1) Various offences attracting imprisonment

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: —

- (a) supplies any g/s/b without issue of any invoice, with the intention to evade tax;
- (b) issues any invoice/bill without supply of g/s/b in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment/utilisation of ITC or refund of tax;
- (c) avails ITC using such invoice/bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
- (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 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) ... omitted
- (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) ... omitted
- (k) ... omitted
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to **five years and with fine**;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to **three years and with fine**;

(iii) in the case of an offence specified in clause (b), where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to **one year and with fine**;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f), he shall be punishable with imprisonment for a term which may extend to **six months or with fine or with both**.

(2) In case of repetitive offences, Imprisonment upto 5 years

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**.

(3) Imprisonment shall not be for less than 6 months

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**.

(4) All offences except those mentioned in Sec 132(5) shall be non-Cognizable & bailable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) Offences - Cognizable and Non-Bailable

The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Section - 133: Liability of officers and certain other persons

(1) Where any person engaged in connection with the collection of statistics u/s 151/compilation or computerization thereof/if any officer of central tax having access to information specified u/s 150(1), or if any person engaged in connection with the provision of service on the common portal or the agent of common portal,

- willfully discloses any information or the contents of any return furnished under this Act or rules made thereunder

- otherwise, than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,
- he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any person—

- who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
- who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Section - 134: Cognizance of offences

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

Section - 135: Presumption of culpable mental state

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation— for the purposes of this section, —

- the expression "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section - 136: Relevancy of statements under certain circumstances

A statement made and signed by a person on appearance in response to any summons issued u/s 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,

- when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be

obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

- (b) **when the person who made the statement is examined as a witness in the case before the court** and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Section - 137: Offences by companies

- (1) Person-in-charge of and responsible for the conduct of the business of the company: deemed guilty

Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (3) In case of partnership Firm/LLP/HUF/Trust: The partner/Karta/Managing trustee deemed guilty

Where an offence under this Act has been committed by a taxable person being a partnership firm/a LLP/a HUF/a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

- (4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation— for the purposes of this section, —

- (i) "company" means a body corporate and includes a firm or other association of individuals; and
(ii) "director", in relation to a firm, means a partner in the firm.

Author's comment: Sec 137 is based on 'Principle of Vicarious Liability'

Vicarious Liability meaning: A person is answerable for his own acts but in certain cases, he is liable for the acts of other and these are the cases of Vicarious Liability. Example: Liability of owner of car in case of accident by the driver. Sec 137 makes person in control of conduct of company Vicarious liable for offences committed by company.

Section - 138: Compounding of offences

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, to the CG or the SG, as the case may be, of such compounding amount in such manner as may be **prescribed**:

Proviso: No compounding in the following cases

- a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;
- a person who has been accused of committing an offence under section 132(1)(b);
- a person who has been convicted for an offence under this Act by a court;
- any other class of persons or offences as may be prescribed:

Proviso: any compounding allowed under this section shall not affect the proceedings, if any, instituted under any other law:

Proviso: compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) **Compounding Fees:** Minimum amount not being less than 25% of the tax involved and the maximum amount not being more than 100% of the tax involved.

(3) **On payment of compounding amount, no further proceedings** shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Rule 162: Procedure for compounding of offences

(1) An applicant may, either **before or after the institution of prosecution**, make an application u/s 138(1) in GST CPD-01 to the Commissioner for compounding of an offence.

(2) Commissioner **shall call for a report** from the concerned officer for information

(3) Commissioner - **may issue order** in CPD 02 indicating compounding amount and **grant immunity** from prosecution/reject application **within 90 days of receipt of application**

(3A) The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below:-

Sl No.	Offence	Compounding amount - when amount exceeds 5 cr	Compounding amount - when amount exceeds 2 cr
1	Offence specified in section 132(1)(a)(c)(d)(e)	Up to 75% of the amount involved subject to minimum of 50% of such amount.	Up to 60% of the amount involved subject to minimum of 40% of such amount.
2	Offence specified in section 132(1)(f)(h)(i)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
3	Attempt to commit the offences/abets the commission of offences mentioned in 132(1) (a), (c) to (f) & (h) and (i).	Amount equivalent to 25% of such amount involved.	Amount equivalent to 25% of such amount involved.

Proviso: where the offence committed by the person falls under more than one category specified in Table above, the compounding amount, shall be determined for the offence for which higher compounding amount has been prescribed.

(4) **An opportunity of being heard** shall be provided & grounds of such rejection shall be recorded.

(5) Application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) Applicant shall **pay compounding amount & furnish proof of payment within 30 days.**

(7) Failure to pay **compounding amount within 30 days, the order shall be vitiated and be void.**

(8) Immunity granted may, be withdrawn if Commissioner is satisfied that person had, in the course of proceedings, concealed any material particulars/had given false evidence

Clarification on various issues relating to applicability of demand & penalty provisions under the CGST act, 2017 in respect of transactions involving fake invoices

Issue: In case where a RP "A" has issued tax invoice to another RP "B" without any underlying supply of goods/services/both, whether such transaction will be covered as "supply" under section 7 and whether any demand & recovery can be made from 'A' in respect of the said transaction u/s 73/74 of CGST Act. Also, whether any penal action can be taken against RP 'A' in such cases.

Clarification: Situation: "A" has issued tax invoice to "B" a RP without supply.

- Issue of fake invoice without supply, does not amount to supply
- No demand & recovery/penal action is required to be made against 'A' u/s 73/74.
- But 'A' shall be liable for penalty u/s 122(1) (ii) for issuing fake tax invoices.
- Penalty: Higher of: Rs. 10,000/ITC passed on. (Under CGST act).

Issue: A RP "A" has issued tax invoice to another RP "B" without any underlying supply of goods/services/both. 'B' avails ITC on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods/services/both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand & recovery of the said ITC, along with penal action, u/s 73/74 or any other provisions of the CGST Act.

Clarification: Situation: 'A' issues fake invoice to 'B' and B avails the ITC & uses it to pay OTL on real supply,

- 'B' has contravened provisions of sec 16(2)(b), he shall be liable for the demand & recovery of the ITC & penal action, u/s 74 (i.e. Tax, Interest & Penalty us/ 74).
- But no penalty under any other section (including section 122).

Issue: A RP 'A' has issued tax invoice to another RP 'B' without any underlying supply of goods/services/both. 'B' avails ITC on the basis of the said tax invoice & further passes on the said ITC to another RP 'C' by issuing invoices without underlying supply. Whether 'B' will be liable for demand and recovery and penal action, u/s 73/74 or any other provisions of the CGST Act.

Clarification: Situation: 'A' issued fake invoice to 'B', 'B' further issued fake invoice to 'C' Against 'A':

- Since no supply, No demand & recovery u/s 73/74.
- Penalty u/s 122(1)(ii): Rs. 10,000/ITC passed on

Against 'B':

- No demand & recovery u/s 73/74.
- Penalty u/s 122(1)(ii): issues invoice without supply: Higher of: 10,000/ITC passed on &
- Penalty 122(1)(vii): takes or utilizes ITC without actual receipt: Higher of Rs. 10,000/ITC availed.

Introduction

- The POS provisions determine the place where the tax should go.
- The POS & the location of the supplier are the two determinants to ascertain the nature of supply i.e., whether a supply is intra-State or inter- State.

Section 10 of IGST act: POS of goods other than supply of goods imported into, or exported from India

Section	Nature of transaction	Place of Supply
10(1)(a)	Where the supply involves movement of goods, whether by the supplier or by the recipient or by any other person.	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
10(1)(b)	Where the goods are delivered by the supplier to a recipient/any other person on the direction of a third person, whether acting as an agent/otherwise, before/during movement of goods, either by way of transfer of documents of title to the goods or otherwise. [Bill to Ship to]	Deemed that third person has received the goods; and POS: the principal place of business of such person.
10(1)(c)	Where the supply does not involve movement of goods, whether by the supplier or the recipient.	Location of such goods at the time of the delivery to the recipient.
10(1)(ca)	where the supply of goods is made to a URP, the place of supply shall, notwithstanding anything contrary contained in clause (a) or (c), [Cases where an URP purchases goods over the counter (OTC) in one State and transports to another State]	If address recorded in invoice: Location as per the address recorded in the invoice. If address recorded in invoice: the location of the supplier. Explanation: Recording of the name of the State of the said person shall be deemed to be the recording of address;
10(1)(d)	Where goods are assembled/ installed at site.	Place of such installation or assembly.
10(1)(e)	Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	Location at which such goods are taken on board.

Clarification on the provisions Section 10(1)(CA) of the IGST Act, 2017 relating to place of supply of goods to unregistered persons-Reg.

Place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods

Issue: Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?

Clarification: The place of supply of goods in accordance with the provisions of section 10(1)(ca) of the IGST Act, 2017 shall be the address of delivery of goods recorded on the invoice i.e. State Y in the present case **where the delivery address is located.**

Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

Section 11 of IGST Act: Place of supply of goods imported into, or exported from India

Section	Nature of transaction	Place of Supply
11(a)	Goods imported into India	Location of the importer
11(b)	Goods exported from India	Location outside India

Section 12 of IGST Act: POS of services where location of supplier & recipient is in India

Section 12(1): Section 12 is applicable only if LOS and LOR is in India

Section 12(2): General Rule of POS (also known as residuary rule)

The POS of services, except the services specified in sub-sections (3) to (14), —

a. **made to a registered person** shall be the location of such person;

b. **made to unregistered person** shall be, —

(i) where the address on record exists: the location of the recipient; and

(ii) in other cases: the location of the supplier of services.

Address on record means address of the recipient as available in the records of the supplier.

Section 12(3): Services in relation to an immovable property/boat/ vessel

The POS of services, —

- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers & other related experts/estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
- (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
- (c) by way of accommodation in any immovable property for organizing any marriage/reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
- (d) any services ancillary to the services referred to in clauses (a), (b) and (c),
shall be the location/intended location of the immovable property or boat or vessel.

Proviso: if immovable property/boat/vessel is located/intended to be located outside India, the POS shall be the location of the recipient.

Explanation. — Where the IMP/boat/vessel is located in more than one State/UT,

- the supply of services shall be treated as made in each of the respective States/UTs,
- in proportion to the value for services separately collected or
- determined in terms of the contract/agreement entered into in this regard or,
- in the absence of such contract/agreement, on such other basis as may be prescribed [Rule 4].

Rule 4: Computation of value of services where immovable property is located in more than one State and where the location of supplier and recipient is in India

- (i) in case of services provided by way of lodging accommodation:
 - the supply of services shall be treated as made in each of the respective States/UTs,
 - in proportion to the number of nights stayed in such property;
- (ii) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organizing any marriage or reception etc.,
 - the supply of services shall be treated as made in each of the respective States or UTs,
 - in proportion to the area of the immovable property lying in each State or UT;
- (iii) in case of services provided by way of lodging accommodation by a house boat/any other vessel,
 - the supply of services shall be treated as made in each of the respective States or UTs,

- in proportion to the time spent by the boat or vessel in each such State or UT,
- which shall be determined on the basis of a declaration made by the service provider.

Clarification on POS in case of supply of services in respect of advertising sector

Issue: What will be the POS of services provided by a vendor supplying space or supplying rights to use the space on the hoarding/ structure to the advertising company?

Clarification: It is grant of rights to use an immovable property, hence Section 12(3) shall apply & POS shall be location where such hoarding/ structure is located.

Issue: An advertising company hires a vendor to display ads on hoardings or billboards. The vendor arranges and possesses the structures while displaying the ads, raising the question of the place of supply for these services.

Clarification: Where the vendor is responsible for display of advertisement, he is providing advertisement services to advertisement Co. then POS shall be as per section 12(2) of IGST Act.

Section 12(4): Performance Based Services

The POS of

- R - restaurant and catering services,
- C - cosmetic and plastic surgery
- B - beauty treatment,
- F - fitness,
- P - personal grooming,
- H - health service including

shall be the location where the services are actually performed.

Section 12(5): Training and performance appraisal services

The POS of services in relation to training and performance appraisal to, —

(a) a RP, shall be the location of such person;

(b) a URP, shall be the location where the services are actually performed.

Section 12(6): Services by way of admission to events/amusement park/other places

The POS of services provided by way of admission to a event/amusement park/any other place & services ancillary thereto, shall be

- the **place where the event** is actually held or where the park or such other place is located.

Section 12(7): Organization of events & related ancillary services

The POS of services related to organizing events (cultural, artistic, sporting, scientific, educational, entertainment, etc.) or ancillary services/assigning of sponsorship to such events is determined as follows:

- For a RP: the **location of the person**.
- For an URP: **the location where the event is held**, or if outside India, **the recipient's location**.

Explanation: If an event is held in multiple States or UTs and a consolidated amount is charged,

- the POS is distributed among the States/UTs based
- on the value of services collected or as per the contract/agreement, or other prescribed basis (rule 5) if no contract exists.

Rule 5: Computation of value of services where event is organized in more than one State and where the location of supplier and the recipient is in India

For services related to organizing events (cultural, artistic, sporting, etc.) or ancillary services provided **to unregistered persons**, where the event occurs in multiple States/UTs in India and a consolidated amount is charged,

- the supply is considered to be in each respective State/UT.
- If there is no contract to separately determine the value of services in each State/UT, the value will be determined using generally accepted accounting principles (**GAAP**).

Section 12(8): Transportation of goods including mails

The POS of services by way of transportation of goods, including by mail or courier to, —

- a RP, shall be **the location of such person**;
- a URP, shall be **the location at which such goods are handed over** for their transportation:

Section 12(9): Passenger transportation service

The POS of passenger transportation service to, —

- a RP, shall be the **location of such person**;
- a URP, shall be **place where the passenger embarks on the conveyance** for a continuous journey:

Proviso: When the right to passage is issued for future use without knowing the embarkation point at issuance, the POS is determined as per residual rule i.e. 12(2).

Explanation: Return journey shall be treated as a separate journey.

Section 2(3) of IGST act 2017: Continuous journey

Continuous journey means a journey

- for which a single/more than one ticket/invoice is issued at the same time, either by a single supplier of service/through an agent acting on behalf of more than one supplier of service, &
- which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation: Stopover means a place where a passenger can disembark either to transfer to another conveyance/break his journey for a certain period in order to resume it at a later point of time;

Section 12(10): Service supplied on board a conveyance

Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle

- Location of the first scheduled point of departure of that conveyance for the journey.

Section 12(11): Telecommunication services

The Place of Supply (POS) for telecommunication services, including data transfer, broadcasting, cable, and direct-to-home TV services, is determined as follows:

(i) For fixed services (e.g., telecommunication lines, leased circuits, cable/dish antenna): location of installation.

(ii) For post-paid mobile and internet services: billing address of the recipient.

(iii) For pre-paid mobile, internet, and DTH services:

- Through an agent or reseller: address of the agent or reseller.
- Directly to the final subscriber: location where pre-payment is received or vouchers are sold.

(iv) For other cases: recipient's address in supplier's records; if unavailable, supplier's location.

Proviso:

- If the recipient's address is unavailable, POS: the supplier's location.
- For pre-paid services availed via electronic payment, POS: the recipient's recorded address.

Explanation: For leased circuits installed in multiple States/UTs with a consolidated charge, the POS is

- distributed among the States/UTs based on the value of services collected or
- as specified in the contract or agreement.

- If no such contract exists, on such other basis as may be prescribed.

Rule 6: Computation of value of services where leased circuit is installed in more than one State and where the location of supplier and the recipient is in India

For services related to a leased circuit installed across multiple States/UTs, with a consolidated charge,

- the supply is attributed to each respective State/UT.
- If there is no contract for determining the value separately, the value is based on the number of points in the circuit.
- Points are defined as the start and end of the circuit, and any intermediate points that provide circuit benefits.
- The supply is proportionally distributed based on the number of points in each State/UT.

Section 12(12): Financial and stock broking services

The Place of Supply (POS) for banking, financial, and stock broking services is

- the recipient's location as recorded by the service supplier.

Proviso: If the recipient's location is not recorded, POS: supplier's location.

Section 12(13): Insurance services

The POS of insurance services shall, —

- to a RP, be the location of such person;
- to an URP, be location of the recipient of services on the records of the supplier of services.

Section 12(14): Advertisement service to the Government

The POS of advertisement services to the CG/SG, a statutory body or a LA meant for the States or UTs identified in the contract or agreement

- shall be taken as being in each of such States or UTs and
- the value of such supplies specific to each State or UT shall be in proportion to
 - the amount attributable to services provided by way of dissemination (act of spreading something) in the respective States/UTs as may be determined in terms of the contract/agreement entered into in this regard or,
 - in the absence of such contract/agreement, on such other basis as may be prescribed.

Rule 3: Manner for determination of proportion of value attributable to different States/UTS, in absence of agreement:

The proportion of value attributable to different States/UTs,

- in the case of supply of advertisement services to the CG, a SG, a statutory body or a LA, u/s 12(14) of the IGST Act, 2017,
- in the absence of any contract between the supplier of service and recipient of services,
- shall be determined in the following manner namely: —

Sl No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/run/played/disseminated
1	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/UT.
2	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, Tshirts, etc.	Amount payable for the distribution of a specific number of such material in each State/Union territory
3	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory.
4	Advertisements on Trains	Amount attributable to each State/UT calculated in the ratio of length of the railway track in each of such State/UT, for that train
5	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/UT for the advertisements on bills pertaining to consumers having billing addresses in each of such State/UT.
6	Advertisements on railway tickets	Amount attributable to each State/UT calculated in the ratio of number of Railway Stations in each of such State/UT.
7	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/UT.

Sl No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/run/played/disseminated
8	Advertisement on television channels	Amount attributable to each State/UT calculated basis the viewership of such channel in each of such State/UT which shall be derived as under: (a) Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council. (b) Figures for the last week of a given quarter is used for calculating viewership for the succeeding quarter. (c) Where the channel viewership figures relate to a region comprising of more than one State/UT, the viewership figures for a State/ UT of that region, is calculated in ratio of the populations of that State/UT, as determined in the latest Census. (d) (d) The ratio of the viewership figures for each State/UT so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State/UT.
9	Advertisements in cinema halls	Amount payable to a cinema hall/screens in a multiplex in each State/ UT.
10	Advertisements on internet (It is deemed that such service is provided all over India)	Amount attributable to each State/UT calculated basis the internet subscribers in each of such State/UT which shall be derived in the following manner: (a) Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI). (b) Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year. (c) Where the internet subscriber figures relate to a region comprising of more than one State/UT, the subscriber figures for a State/UT of that region shall be calculated in the ratio of the populations of that State/UT, as determined in the latest census. (d) The ratio of the subscriber figures for each State or UT so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or UT.

Sl No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/run/played/disseminated
11	Advertisements through SMS	Amount attributable to each State/UT calculated on the basis of the telecom subscribers in each of such State/ UT. (a) Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter. (b) Where such figures relate to a telecom circle comprising of more than one State/UT, the subscriber figures for that State/UT shall be calculated in the ratio of the populations of that State/UT, as determined in the latest census.

Section 13 of IGST act: Place of supply of services where location of Supplier or location of recipient is outside India

Section 13(1): Applicable only if LOS or LOR is outside India

The provisions of this section shall apply to determine the POS of services where the location of the supplier of services or the location of the recipient of services is outside India.

Section 13(2): General Rule of POS (also known as residuary rule)

The POS of services except the services specified in sub-sections (3) to (13) shall be

- the **location of the recipient of services**:

Proviso: where the location of recipient of services is not available in the ordinary course of business, the POS shall be the **location of the supplier of services**.

Place of supply in case of supply of service of transportation of goods, including through mail and courier where either supplier/recipient is outside India

Issue: Section 13(9) of IGST act has been omitted vide finance act 2023, After the said amendment, doubts have been raised as to whether the **POS in case of service of transportation of goods, including through mail and courier**, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.

Clarification:

The place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.

Section 13(3): Performance Based services: Services supplied in respect of goods/ services supplied to individual

The POS of the following services shall be the location where the services are actually performed, namely: —

- (a) Services supplied in respect of goods which are required to be made physically available
- by the recipient of services to the supplier of services, or
 - to a person acting on behalf of the supplier of services in order to provide the services:

Proviso: when such services are provided from a remote location by way of electronic means,

- the POS shall be the location where goods are situated at the time of supply of services

Proviso: nothing contained in this clause shall apply

- in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and
- are exported after such repairs or treatment/process without being put to any use in India,
- other than that, which is required for such repairs or treatment or process;

- (b) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

Section 13(4): The POS of services supplied directly in relation to an immovable property

The POS of services supplied directly in relation to an immovable property,

- including services supplied in this regard by experts and estate agents,
- supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,
- grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work,

- including that of architects or interior decorators,
shall be **the place where the immovable property is located or intended to be located.**

Section 13(5): The POS of services supplied by way of admission to or organization of an event (including ancillary services)

The POS of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be

- the place where the event is actually held.**

Section 13(6): Supplied at multiple locations (including one location in TT)

Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory,

- its POS shall be the location in the taxable territory.**

Section 13(7): Supplied in more than 1 state/UT

Where the services referred to in sub-section (3)/(4)/(5) are supplied in more than one State/UT,

- the POS of such services **shall be taken as being in each of the respective States/UTs** and
- the value of such supplies specific to each State/UT shall be **in proportion to**
- the **value for services separately collected/determined in terms of the contract/agreement** entered into in this regard or,
- in the absence of such contract or agreement, on such other basis as may be prescribed.

Rule 7: Computation of value of services where the service is performed in more than one State and where the location of supplier or the recipient is outside India

The supply of services attributable to different States or UTs, under sub-section (7) of section 13 of the said Act,

- in the case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services, or
- in the case of services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and

- where such services are supplied in more than one State or UT, shall be taken as
 - o being in each of the respective States or UTs, and
 - o the proportion of value attributable to each such State and UT in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or UT, as the case maybe, shall be determined in the following manner, namely: -
- (i) in the case of services supplied on the same goods,
 - by equally dividing the value of the service in each of the States & UTs where the service is performed;
- (ii) in the case of services supplied on different goods,
 - by taking the ratio of invoice value of goods in each of the States & UTs, on which service is performed, as the ratio of the value of the service performed in each State or UT;
- (iii) in the case of services supplied to individuals,
 - by applying the generally accepted accounting principles.

Rule 8: Computation of value of services where immovable property is located in more than one State and where the location of supplier or the recipient is outside India

The proportion of value attributable to different States/UTs, u/s 13(7),

- in the case of supply of services directly in relation to an immovable property, including services supplied in this regard by experts and estate agents,
- supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work, including that of architects or interior decorators,
- where the location of the supplier of services or the location of the recipient of services is outside India, and
- where such services are supplied in more than one State/UT,
- in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State/UT, as the case maybe, shall be
- determined by applying the provisions of rule 4, mutatis mutandis.

Rule 9: Computation of value of services where event is held in more than one State and where the location of supplier or the recipient is outside India

The proportion of value attributable to different States/UTs, u/s 13(7),

- in the case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation,
- where the location of the supplier of services/the location of the recipient of services is outside India, and
- where such services are provided in more than one State/UT,
- in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State/UT, as the case maybe, shall be
- determined by applying the provisions of rule 5, mutatis mutandis

Section 13(8): For Specified Services only

The POS of the following services shall be **the location of the supplier of services**, namely:

- services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- intermediary services;
- services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors-reg

Banks enter into custodial agreements with the FPIs for the provision of the custodial services. The main activity carried out by banks as a custodian is maintaining the account of the securities held by the FPIs. Custodial services to FPIs involve keeping their investments safe and handling transactions, like buying and selling stocks. This makes it easier for FPIs to invest in another country without worrying about the regulatory requirements.

Issue: Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined?

Clarification: It is important to note that section 13(8)(a) covers a situation where services are supplied by banking company or a financial institution or a non-banking company to account holders.

However, custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder.

Crux: Thus, the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder'. Therefore, the said services are not covered under section 13(8)(a) and the place of supply of custodial services will not be determined under section 13(8)(a). Therefore, the place of supply of such services is to be determined under the default provision i.e., section 13(2)

Section 2(12) of IGST act: Intermediary

Intermediary means

- a broker, an agent or any other person, by whatever name called,
- who arranges or facilitates the supply of goods/services/both, or securities, between two or more persons,
- but does not include a person who supplies such goods/services/both/securities on his own account.

Clarification on doubts related to scope of "Intermediary" [Circular No. 159/15/2021 GST]

The circular clarifies that the concept of intermediary services requires following basic prerequisites:

- (a) **Minimum of three parties:** By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

- (i) **Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services:

- (1) Main supply, between the two principals, which can be a supply of goods or services or securities;
- (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals.

This ancillary supply is the supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal-to-principal basis to another person cannot be considered as supplier of intermediary service.

- (ii) Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of "intermediary" itself provides that "intermediary service provider means a broker, an agent or any other person, by whatever name called....".
- This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes".
- The use of the expression "arranges or facilitates" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.
- (iii) Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary "does not include a person who supplies such goods or services or both or securities on his own account".
- Use of word "such" in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary.
- It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of "intermediary".
- (iv) Sub-contracting for a service is not an intermediary service: The supplier of main service may outsource the supply of the main service, either fully or partly, to one or more sub-contractors.
- Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.
- Example:** 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, annual maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'.
- Though 'C' is dealing with the customer of 'A', but 'C' is providing the main supply of annual maintenance service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of annual maintenance service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' will not be considered as an intermediary.
- (v) The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

Section 13(10): Service of Transportation of Passengers

The POS in respect of passenger transportation services shall be

- the **place where the passenger embarks on the conveyance** for a continuous journey.

Section 13(11): Service provided on Board of conveyance

The POS provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be

- **the first scheduled point of departure** of that conveyance for the journey.

Section 13(12): Online information and database access or retrieval services (OIDAR)

The POS of OIDAR services shall be the **location of the recipient** of services.

Section 13(13): CG empowered to notify "Place of effective use and enjoyment of service" as POS for any service

In order to **prevent double taxation or non-taxation** of the supply of a service, or for the uniform application of rules,

- the Govt shall have the power to notify any description of services or circumstances in which
- the **POS shall be the place of effective use and enjoyment of a service.**

POS in case of supply of maintenance, repair or overhaul service in respect of ships and other vessels [Notification No. 03/2021- Integrated Tax dt. 02.06.21]

Service: Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engine and other components or parts supplied to a person for use in the course or furtherance of business.

POS: The place of supply of services shall be the **location of the recipient of service.**

Notification: POS of research and development services related to pharmaceutical sector

POS in case of services of R&D relating to pharmaceutical sector is the location of the recipient.

Condition:

- Services are provided as per the contract between the service provider located in taxable territory and service recipient located in non-taxable territory.
- Supply fulfils all conditions specified in definition of export of services.

POS for B2B MRO services to the location of the recipient. [NNo. 02/2020- IT dt 26.03.20]

Services: Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.

POS of services: shall be the location of the recipient of service.

Clarification regarding Cargo handling services & Cutting and polishing diamonds

Issue: Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

Whether the POS for such services would be determined in terms of the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, or the same shall be determined in terms of the provisions contained in section 12(3) of the IGST Act?

Clarification: It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the POS of such services will be determined as per the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

Issue: What would be the POS in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

Clarification: POS in relation to cutting and polishing activity on diamonds temporarily imported shall be determined using section 13(2) i.e., residuary category.

POS = Location of recipient which is outside India.

Section 13(3) is not applicable since goods are temporarily imported for treatment or process without being put to any use in India.

Clarification regarding determination of POS in case of software/ design services related to Electronics Semi-conductor & Design Manufacturing (ESDM) industry

Issue: Determining the Place of Supply (POS) for software/design services provided by Indian suppliers to foreign recipients using sample hardware kits from the recipients.

Clarification: POS in case of supply of software/design services by a supplier (in TT) to a service recipient (in NTT) by using the sample hardware kits provided by the service recipient

- Software development & design for integrated circuits electronically along with testing of software on sample prototype hardware is a composite supply.
- Software development & design for integrated circuits is the Principal supply
- Testing of software on sample prototype hardware is an ancillary supply
- Since it is a composite supply, it shall be treated as supply of principal supply i.e., software development & Design for circuits.
- POS shall be the location of the service recipient as per section 13(2) of the IGST Act.
- Provisions of section 13(3)(a) of IGST Act do not apply separately for determining the POS for ancillary supply in such cases.

Clarification on supply of satellite launch services by ANTRIX Corporation Ltd/New Space India Limited (NSIL):

Issue: Taxability of satellite launch services by ANTRIX Corporation Limited/NSIL for both international and domestic customers.

Clarification:

International Customers: POS is the recipient's location (outside India) as per section 13(2) of the IGST Act, 2017. If it meets section 2(6) of the IGST Act, it's considered an export of service and zero-rated under section 16.

Domestic Customers: The POS is governed by section 12(8) of the IGST Act and is taxable under the CGST, UTGST, or IGST Act. However, from 16.10.2020, Entry no. 19C exempts GST on satellite launch services by ISRO, ANTRIX, or NSIL.

Clarification in respect of advertising services provided to foreign clients-reg.

A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client.

In this regard, following has been clarified:

Issue 1 - Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13)?

Clarification: The advertising agency, in this case, enters into two agreements:

I. With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.

II. With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

Thus, the agreement, in the instant case, is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the media company and the foreign client. Thus, the advertising company is not acting as an agent but is providing the services to the client on its own account.

In view of above, it is clarified that in the present scenario, the advertising company does not fulfil the criteria of "intermediary" under section 2(13).

Issue-2 Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "recipient" of the services being supplied by the advertising company under section 2(93) of the CGST Act, 2017?

Clarification: As per section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.

In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India.

Further, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India can also not be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client.

Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per section 2(93) of the CGST Act, 2017.

Issue-3 Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)?

Clarification: In the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with the supplier of advertising services. Therefore, the provisions of section 13(3)(a) [discussed earlier] cannot be made applicable for determination of place of supply of advertising services. Further, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services.

Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) [discussed earlier].

In view of the above discussion, the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. section 13(2), i.e. the location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per section 13(2), and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6).

Issue 4: Place of supply in cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client.

Clarification: In cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client.

The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

Consequently, in such cases, the advertising company is an "intermediary" in accordance with section 2(13) of the CGST Act, 2017, [as elucidated in Circular No. 159/15/2021GST discussed above in respect of the said services of facilitating the foreign client] and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b), i.e. the location of the supplier, i.e. the location of the advertising company.

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India

Data Hosting Service Providers (DHSPs) in India offer storage space and technical infrastructure to hold data for foreign Cloud Computing Service Providers (CCSPs). These CCSPs rely on Indian data centers to securely store and manage large amounts of information. This allows them to serve their clients without having their own physical storage in India. Under this business model,

1. A contract is entered into between CCSPs and DHSPs wherein CCSPs will use the data centres of DHSPs for hosting cloud computing services.

DATA HOSTING SERVICES

2. DHSP either: owns premises for data centre or operates data centre on leased premises.
3. It independently:
 - procures infrastructure and human resource, and
 - handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. (even in case where some hardware is provided by CCSPs),
 - handles operations like infrastructure monitoring, IT management and equipment maintenance, etc.
 to provide the said supply of data hosting services to CCSPs.
4. There is no contact between DHSP and the end users/consumers/subscribers of the foreign CCSP.
5. DHSP provides data hosting services to the CCSPs:
 - on a web platform through computing and networking equipment
 - for the purpose of:
 - collecting,
 - storing,
 - processing,
 - distributing or
 - allowing access to
 large amounts of data.
6. Data hosting services are:
 - not passive supply of a service directly in respect of immovable property,
 - comprehensive services related to data hosting which involves the supply of various services by DHSP like :
 - operating data center,
 - ensuring uninterrupted power supplies,
 - backup generators, network connectivity, backup facility,

- firewall services

- monitoring and surveillance service

for ensuring continuous operations of the servers and related hardware, etc.

which are essential for CCSP to provide cloud computing services to end users/ customer/ subscribers.

CLOUD COMPUTING SERVICES

7. CCSP provides cloud-based applications and software services to various end users/ customers/ subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc.

8. The end users/ customers/ subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers.

CLARIFICATION: With regard to data hosting services, it is observed that:

(a) DHSP provides data hosting services to the CCSP on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between CCSPs and their end users/consumers.

(b) Data hosting services provided by DHSP to the said CCSPs cannot be considered in relation to the goods "made available" by the said CCSPs to the DHSP in India.

(c) Data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises.

In terms of the above discussion, it is inferred and clarified that the place of supply in such cases needs to be determined according to the default provision under section 13(2), i.e. the location of the recipient of the services.

Thus, where the CCSP receiving the data hosting services are located outside India, the place of supply will be considered to be outside India. Accordingly, supply of data hosting services being provided by a DHSP located in India to an overseas CCSP can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6).

Introduction

The various things that are to be discussed under this chapter are:

- Import of Goods and
- Import of Services

Section 2(4) of IGST act: Customs frontiers of India means the limits of a customs area as defined in section 2 of the Customs Act, 1962.

Customs area means

- the area of a customs station or a warehouse and
- includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].

Customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station [Section 2(13) of the Customs Act, 1962].

Imports of goods under GST

Import of goods means bringing goods into India from a place outside India.

Article 269A of the constitution: Import of goods or services is treated as inter-State supplies and hence subject to IGST.

Section 7(2) of the IGST Act: Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

Proviso to section 5(1) of the IGST Act: IGST on goods imported into India shall be

- levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975
- on the value as determined under the said Act (valuation u/s 14)
- at the point when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962.

Section 3(7) of custom tariff act deals with levy of IGST

Value for the purpose of levy of IGST is dealt with by section 3(8) of customs tariff act

Value for levying IGST on imported goods:

Value determined under section 14 of the Customs Act, 1962

+ Basic customs duty

+ any other sum leviable under any law for the time being in force as customs duties excluding IGST & GST Compensation Cess.

Further, Supply of warehoused goods to any person before clearance for home consumption is neither a supply of goods nor a supply of services in terms of paragraph 8(a) of Schedule III to the CGST Act. Here, warehoused goods have the same meaning as assigned to it in the Customs Act, 1962.

Further, value of such in-bond sales is included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption.

Value for levying IGST in case of supply of warehoused goods:

(a) Transaction value (Sale value) OR

(b) Value determined at the time of filing into bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess

Whichever is higher

Taxability of High Sea Sale

- High sea sales are considered inter-State trade but not subject to IGST as the supply occurs before filing the bill of entry. IGST is levied during the filing of the bill of entry.
- Goods supplied by endorsement of title documents before clearance for home consumption are not treated as supply of goods/services as per Schedule III, para 8(b) of CGST Act.
- Value of high sea sales is not included in the value of exempt supply for ITC reversal purposes under CGST Rules under rules 42 & 43 of CGST Rules [Explanation to sec 17(3) of CGST Act].
- As per section 14 of the Customs Act, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e., at the time of filing of bill of entry.
- Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and

IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

- Circular clarifies that the last buyer must provide a complete chain of documents to link the first contracted price with the last transaction for customs duty and IGST assessment.

Third country shipments

- Merchant trading/Third country shipments/triangular trade is a common practice in international trade whereby goods move from one country to another without touching India; only invoicing is done by the RP in India.
- Schedule III to CGST Act provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales.
- Further, value of such third country shipments is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 & 43 of CGST Rules [Explanation to sec 17(3) of CGST Act]

Taxability of goods imported by SEZ - Exempt from IGST vide notification under customs

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable u/s 3(7) of the Customs Tariff Act.

Taxability of goods imported by EOU

- Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty.
- EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess).
- However, exemption from IGST & GST compensation cess will be subject to fulfilment of conditions.

Import as baggage

- Passenger baggage is exempted from IGST as well as GST Compensation Cess.
- The basic customs duty at the rate of **35%** and the **applicable social welfare surcharge** is leviable on the value which is in excess of the duty-free allowances provided under the Baggage Rules, 2016.

Import of services - 2(11) of IGST act

Import of services means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Location of supplier	Location of recipient	Place of supply	Import of service?
USA	Bangalore	Bangalore	Yes
USA	Bangalore	Delhi	Yes
USA	Bangalore	Dubai	No
Dubai	Bangalore	USA	No

As per section 7(1)(b) of the CGST Act: Import of services for a consideration whether or not in the course or furtherance of business, is considered as a supply. Business test is not required to be fulfilled for import of service (made for consideration) to be treated as supply.

Section 7 of the CGST Act read with para 4 of Schedule I to the CGST Act: Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Section		From	Business test	Consideration	Supply
7(1)(b)	Import of services	Any person	Not required	Yes required	Yes
7(1)(c) - Para 4 - Schedule I	Import of services	Related person/ own establishment	Yes required	Not required	Yes

Section 7(4) of the IGST Act: Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Person liable to pay : Section 5(3) of the IGST Act:

- In case of importation of service, the recipient of imported service who is located in India (other than non-taxable online recipient of OIDAR service) is the person who has to pay IGST on the service under reverse charge.
- In case of importation of OIDAR services by a non-taxable online recipient, supplier of OIDAR services is liable to pay IGST (discussed below).

Registration requirement and Input tax credit in case of Import of goods and service

Registration for importer of goods

- RCM is not applicable in case of Import of goods.

- Importers are also not required compulsory registration under section 24 of the CGST Act
- Importer is registered under GST: Quote GSTIN number in the bill of entry for the purpose of payment of IGST and ITC can be availed on the basis of bill of entry.
- Importer is not registered under GST: Quote PAN on the bill of entry.

Registration in case of import of exempted goods

- In terms of **section 23** of the CGST Act, persons engaged exclusively in the supply of goods (import and export) that is either not liable to tax or is wholly exempt from tax under the CGST or IGST Acts are not required to obtain registration.
- In such cases, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice [Instruction No. 10/2017 Cus dated 06.07.2017].

Registration for importer of services

Compulsory registration u/s 24 if liable to pay GST under reverse charge.

Input tax credit:

ITC of IGST paid on imported goods

- The definition of "input tax" includes IGST charged on import of goods, hence, ITC of IGST paid at the time of import is available subject to the conditions & restrictions u/s 16 & 17.
- Such ITC can be utilized by the RP for payment of taxes on his outward supplies.
- GST Compensation Cess paid on import of goods is also available as ITC.
- The ITC of GST Compensation Cess, can only be used for payment of GST Compensation Cess.
- ITC of basic customs duty & social welfare surcharge paid on imported goods is not available.

ITC of IGST paid on importation of services

- IGST paid on importation of services is available as ITC, subject to u/s 16 and 17.

OIDAR - Section 2(17) of IGST act

OIDAR services means services

- whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and
- includes electronic services such as, —
 - (i) advertising on the internet;
 - (ii) providing cloud services;
 - (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming, excluding the online money gaming;
- (viii) such other person or class of persons as may be notified by the Government on the recommendations of the Council

POS in case of OIDAR Services

Section 13(12): The POS of OIDAR services shall be the **location of the recipient of services**.

Section 14 of IGST act: Special provision for payment of tax by a supplier of OIDAR services

(1) Supplier in NTT and Recipient in TT, OIDAR supplier shall be liable to pay IGST

On supply of **OIDAR services** by

- any person located in an NTT and received by a NTOR,
- the supplier of services located in an NTT shall be the person liable for **paying integrated tax on such supply of services**:

Importation of OIDAR services by a business entity

- Supplier of OIDAR service is located outside India and
- Recipient is located in India
- Place of supply would be India and
- the transaction would be amenable to tax under **RCM if the recipient is other than NTOR**.

Importation of OIDAR services by non-taxable online recipient (NTOR)

NTOR means any URP receiving OIDAR services located in taxable territory.

Explanation.— **URP includes a person registered as TDS deductor**;

Section 14(1) of IGST act: On supply of OIDAR services by any person located in a NTT and received by a NTOR, supplier of services located in a NTT shall be the person liable for paying IGST.

Proviso to section 14(1): Supply of OIDAR services through Intermediary

In the case of supply of OIDAR services by any person located in a NTT and received by a NTOR,

- an intermediary located in the NTT, who arranges or facilitates the supply of such services,

- shall be deemed to be the recipient of such services from the supplier of services in NTT and supplying such services to the NTOR
- **except** when such intermediary satisfies the following conditions, namely: —
 - (a) The invoice clearly identifies the service and its supplier in NTT.
 - (b) The intermediary neither charges the customer nor handles payments.
 - (c) The intermediary does not authorize delivery.
 - (d) The supplier, not the intermediary, sets the terms and conditions of the supply.

Section 14(2): The supplier of OIDAR services shall, for payment of IGST, take a single registration under the Simplified Registration Scheme to be notified by Govt:

Proviso:

1. any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:
2. if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Rule 14: Grant of registration to a person supplying OIDAR services from outside India

- (1) Submit an application, in **FORM GST REG-10**,
- (2) Granted of registration, in **FORM GST REG-06**.

Return for OIDAR: **GSTR-5A** on monthly basis by **20th of Next month**.

Annual Return: **OIDAR not be required to furnish an annual return**

Section 14A inserted in the IGST act: Special provision for specified actionable claims supplied by a person located outside taxable territory

- (1) **A supplier of online money gaming (OMG)** not located in the taxable territory, shall in respect of the supply to a person in taxable territory, be liable **to pay integrated tax** on such supply.
- (2) The supplier of **OMG** shall obtain **a single registration** under Simplified Registration Scheme:
- (3) In case of failure to comply with provisions by the supplier: any information generated, transmitted, received/hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be **blocked for access by the public**.

Exports under GST

- **Exports Principle:** Taxes should not be exported to make exports competitive.
- **Zero-Rating:** Exports to destinations outside India and supplies to SEZ are zero-rated, meaning GST is relieved either at input or final product stage by way of refund.
- **SEZ Supplies:** Supply to SEZ unit/Developer is treated at par with physical exports.
- **Merchant Exporters:** Supplies made for export through merchant exporters are taxed at 0.1% with ITC benefit.
- **Deemed Exports:** Supplies from Domestic Tariff Area (DTA) to EOU/EHTP/STP/BTP Units are considered 'deemed exports' and enjoy some benefits of actual exports.

Statutory provisions

Section 7(5) of the IGST Act: Interstate supply

Supply of goods or services or both, -

- when the supplier is located in India and the place of supply is outside India;
 - to or by a Special Economic Zone developer or a Special Economic Zone unit; or
 - in the taxable territory, not being an intra-State supply & not covered elsewhere,
- shall be treated to be a supply in the course of inter-State trade/commerce.

Section 16: Zero rated supply

(1)	Zero rated supply (ZRS) means export and supply to SEZ
	ZRS means any of the following supplies of goods or services or both, namely: (a) export of goods or services or both; or (b) supply of goods or services or both for authorised operations to a SEZ developer/unit.
(2)	ITC may be availed for making ZRS, even if such supply is an exempt supply
	Subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
(3)	ZRS under bond/LUT and don't pay IGST
	A registered person making zero rated supply shall be eligible to claim refund of unutilised ITC on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that

- the registered person making ZRS of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest u/s 50 of the CGST Act
- within **30 days** after the expiry of the time limit prescribed under the FEMA, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) ZRS on IGST payment

The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by **notification**, specify-

- (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
- (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Notification: Following goods/services/suppliers have been notified under Section 16(4):

- (i) Class of goods or services which may be exported on payment of IGST & Claim refund of IGST: all goods/services (except specified goods - list of goods not required for exams); and
 - (ii) Class of persons who may make supply of goods or services (except specified goods) to such Developer or a unit in SEZ for authorised operations on payment of IGST & claim refund of IGST paid: all suppliers to a Developer or a unit in SEZ undertaking authorised operations.
- Specified goods: Tobacco, Pan masala containing tobacco, essential oil of peppermint, etc.

Circular No. 01/ 2017 CC dated 26.07.2017 has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence,

- (i) exporters can claim refund of GST Compensation Cess paid on goods exported by him, or
- (ii) GST Compensation Cess will not be charged on goods exported under bond or LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Services imported by SEZ unit exempt from IGST [NNo. 18/2017 -IT(R) dt. 05.07.17]

Exempts services imported by a unit/a developer in the SEZ for authorised operations, from the whole of the IGST leviable thereon u/s 5 of the IGST Act.

Difference between Exempt supplies & zero-rated supplies

Exempted Supplies	Zero rated supplies
Exempt supply means supply which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services to SEZ unit/SEZ developer.

Exempted Supplies	Zero rated supplies
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed.	No tax on the outward supplies; Input supplies also to be tax free
Credit of input tax needs to be reversed, if taken. No ITC on the exempted supplies.	ITC may be availed for making ZRS, even if such supply is an exempt supply. ITC allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on RCM basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building & supply of warehoused goods.	Value of zero-rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods/services/both that are not liable to tax/wholly exempt from tax under the CGST/IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued

Export of goods

Export of goods means taking goods out of India to a place outside India [Section 2(5)].

Physical exports: Export of goods requires taking the goods from India to a place outside India. India is defined as extending to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline. This is far beyond the normal definition of India, which only includes its territorial waters, which in turn extend 12 miles from the baseline. Given the extended meaning of India, export would require that the goods must travel beyond 200 miles from the baseline in order to qualify as having been exported.

Deemed exports: Deemed exports means such supplies of goods as may be notified u/s 147;

Section 147: Deemed Exports

The Government may, on the recommendations of the Council,

- notify certain supplies of goods as deemed exports,
- where goods supplied do not leave India, and
- payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Notification No. 48/2017-CT: Notified supplies of goods, deemed exports, namely:

SN	Description of supply
1	Supply of goods by a registered person against Advance Authorisation Proviso: Goods so supplied, when exports have already been made after availing ITC on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated/fully exempted goods) and a certificate to this effect from a CA is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply; Proviso: No such certificate shall be required if ITC has not been availed on inputs used in manufacture of export goods.
2	Supply of capital goods by a RP against Export Promotion Capital Goods Authorization
3	Supply of goods by a registered person to Export Oriented Unit
4	Supply of gold by a bank or PSU specified in the Notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorization.

Notified Evidence to be produced by supplier of Deemed Export for claiming refund

1. Acknowledgement by the jurisdictional Tax officer of the AA/EPCG holder, that the said deemed export supplies have been received by the said AA/EPCG holder, EOU: a copy of the tax invoice, duly signed by the recipient EOU that said deemed export supplies have been received by it.
2. An undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him.
3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

Taxability of deemed exports

- **Deemed Exports:** Unlike regular exports, deemed exports are not zero-rated by default.
- **Tax Payment:** Supplies for deemed exports are subject to tax and cannot be supplied under a Bond/LUT.
- **Refund Eligibility:** Refund of tax paid on deemed export supplies is admissible to either the supplier or the recipient.

Merchant Exporter

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. **Merchant exporter** means a person engaged in trading activity and exporting or intending to export goods [As defined under Foreign Trade Policy 2023].

There is no specific provision in GST law for export through third parties, commonly known as merchant exports. However, a low rate of GST of 0.1% on supplies for export through third parties has been provided by way of exemption notifications. [This is expressed as 0.1% IGST on inter-State supplies or 0.05% CGST plus 0.05% SGST on intra-State supplies].

Circular No. 125/44/2019 GST has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act. However, it may be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of IGST.

Circular No. 08/08/2017 has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

Notification Nos. 41/2017 IT(R) and 40/2017 CT(R) both dated 23.10.2017

The merchant exporter can avail the benefit of low rate of GST (0.1%) if following conditions (specified in the said notifications) are fulfilled-

- (a) the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice;
- (b) the registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;
- (c) the registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export;
- (d) the registered recipient shall be registered with an Export Promotion Council;
- (e) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- (f) the registered recipient shall move the said goods from place of registered supplier -

- (i) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
 - (ii) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- Registered principal place of business or registered additional place of business are deemed to be a registered warehouse [Circular No. 42/2017 Cus dated 07.11.2017].
- (g) if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
 - (h) in case of situation referred to in condition (g), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
 - (i) after goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed, to the registered supplier as well as jurisdictional tax officer of such supplier.

Export of services

Supply of service qualifies to be an 'export of service' if it fulfills the following conditions:

- (a) the service is supplied from India to a recipient located outside India,
- (b) the place of supply of the service is outside India,
- (c) the consideration for the service is received in freely convertible foreign exchange or in INR wherever permitted by the RBI, and
- (d) the transaction is between separate entities, i.e., not merely between two establishments of an entity

However, NN. 9/2017 IT(R) dated 28.06.2017 exempts the services provided by an Indian establishment to its foreign establishment from IGST if the place of supply is outside India.

Export under bond/LUT without paying IGST

In this scenario IGST is not paid instead bond is executed and the exporter claims a refund of the ITC on Inputs and Input services.

Rule 96A: Export of goods or services under bond or Letter of Undertaking

(1) RP, prior to export furnish bond/a LUT in RFD-11 to the JC

Any RP availing the option to supply goods/services for export without payment of IT shall furnish, **prior to export**,

- a bond or a LUT in FORM **GST RFD-11** to the jurisdictional Commissioner,
- binding himself to pay the tax due along with the interest specified u/s 50(1) within a period of:

(a) **15 days after the expiry of 3 months, or such further period** as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) **15 days after the expiry of 1 year, or the period as allowed under the FEMA including any extension of such period as permitted by the RBI, whichever is later, from the date of issue of the invoice for export, or such further period as may be allowed by the Commissioner, if the payment of such services is not received by the exporter in convertible foreign exchange/in INR, wherever permitted by the RBI.**

(2) Details of export invoices in form GSTR-1/1A be transmitted to customs system for cross verification that goods have been exported

The details of the export invoices contained in FORM GSTR-1, **as amended in FORM GSTR-1A if any**, furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system:

Proviso: If the date for furnishing GSTR-1 details is extended under section 37 of the Act, the supplier must furnish export information in Table 6A of GSTR-1 after filing GSTR-3B. This information will be transmitted electronically to Customs.

Proviso: the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

(3) If Exporter fails to export goods within time, bond/LUT shall be withdrawn & recovery

Where the goods are not exported within the time specified in sub-rule (1) & the RP fails to pay the amount mentioned in the said sub-rule,

- the export as allowed under bond or LUT shall be withdrawn forthwith and
- the said amount shall be recovered from the RP in accordance with section 79.

(4) The facility to export under bond/LUT shall be restored when RP pays due

The export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions & safeguards under which a LUT may be furnished in place of a bond.

Notification No. 37/2017 CT: All RPs who intend to supply goods or services for export without payment of IGST shall be eligible to furnish a LUT in place of a bond except those who have been prosecuted for any offence CGST Act/IGST Act/any of the existing laws in force in a case where the amount of **tax evaded exceeds Rs. 250 lakhs**;

(6) The provisions of sub-rule (1) shall apply, mutatis mutandis, in respect of ZRS of goods/services /both to a SEZ developer or a SEZ unit without payment of integrated tax.

Clarification on furnishing of bond/LUT for export without payment of tax:

(a) Validity of LUT:

- Valid for the financial year it is tendered.
- If goods are not exported within the specified time and payment is not made, LUT facility is withdrawn and can be restored upon payment.
- During withdrawal, exports must be on payment of IGST/under bond with a bank guarantee.

(b) Form for bond/LUT:

- The LUT shall be furnished on the letter head of the RP, in duplicate
- The bond, shall be furnished on non-judicial stamp paper of value as applicable in the State

(c) Documents for LUT: No document needs to be physically submitted to jurisdictional office.

(d) Acceptance of LUT/bond:

- An LUT shall be deemed accepted once acknowledgement bearing the Application Reference Number (ARN), is generated online.
- If it is discovered that exporter was ineligible to furnish an LUT, exporter's LUT will be rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio.

(e) Bank guarantee: Bond required for those prosecuted for cases over Rs 250 lakh, with a 15% bank guarantee of the bond amount.

(f) Clarification regarding running bond:

- The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export.

- The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount.

(g) Sealing by officers: Till mandatory self-sealing is operational, container sealing to be supervised by a central excise officer.

(h) Realization of export proceeds in Indian Rupee:

All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal/Bhutan". Further, section 2(6) of the IGST Act, 2017 allows realization of export proceeds of services in INR, wherever allowed by the RBI.

(i) Jurisdictional officer: LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the PPOB of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A

Issue: whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized ITC on account of export but also refund of the IGST and interest so paid in compliance of the provisions of rule 96A(1).

Clarification: It has been clarified vide Circular No. 125/44/2019 GST dated 18.11.2019 that exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of 3 months, payment of IGST first and claiming refund at a subsequent date should not be insisted upon.

In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services. Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized ITC in terms of section 54(3), if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the IGST so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of rule 96A(1). It is further being clarified that no refund of the interest paid in compliance of rule 96A(1) shall be admissible.

Export by paying IGST

Section 54(1) r/w Rule 96: Refund of IGST paid on goods/services exported out of India.

In case where the exporter of goods or services or both opts to pay IGST at the time of export and claim refund of the IGST thereof, provisions relating to refund of IGST are as follows:

Rule 96: Refund of integrated tax paid on goods or services exported out of India

(1) Application for refund claim:

The shipping bill filed by the exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when: —

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest; or an export manifest or an export report covering the number and the date of shipping bills/bills of export; and

(b) the applicant has furnished a valid return in FORM GSTR-3B:

Proviso: if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in GSTR-1, **as amended in GSTR-1A if any**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;

(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B; **Proviso: the exporter of goods may file an application electronically in GST RFD-01 through the common portal for refund of additional integrated tax paid on account of upward revision in price of goods subsequent to export of such goods, and on which the amount of integrated tax paid at the time of export of such goods has**

already been refunded in accordance with provisions of sub-rule (3) of this rule, and such application shall be dealt with in accordance with the provisions of rule 89.

- (2) Details of export invoices furnished in GSTR 1/1A shall be transmitted electronically by the common portal to ICEGATE

The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1, as amended in FORM GSTR-1A if any, shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India:

- (3) Processing of refund claim

Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3B, from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

- (4) Withholding of refund of IGST

The claim for refund shall be withheld where, -

- (a) a request has been received from the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of section 54(10)/(11); or
- (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962; or
- (c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

- (5) ... (omitted)

- (5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common

portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5C) The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.

(6) ... (omitted)

(7) ... (omitted)

(8) For notified class of goods, Refund of IGST to govt of Bhutan and not to exporter
The CG may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

(9) Refund of IGST paid on services: file RFD 01 & dealt with in accordance with rule 89
The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

~~(10) The persons claiming refund of IGST paid on exports of goods/services should not have—~~
~~(a) received supplies on which the benefit of the Govt of India, Ministry of Finance~~
~~• NNo. 48/2017 CT, dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or~~
~~• Notification No. 40/2017 Central Tax (Rate), or~~
~~• NNo. 41/2017 Integrated Tax (R), dated the 23rd October, 2017, has been availed;~~
~~or~~

~~(b) availed the benefit under notification No. 78/2017 Customs, or notification No. 79/2017 Customs, dated the 13th October, 2017, except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.~~

Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

Person claiming refund of IGST paid on export of goods/ services should not have:

- (i) received supplies on which the benefit of deemed exports has been availed or benefit of supply of goods to merchant exporters at the concessional rate of 0.1% has been availed, or
- (ii) availed the benefit of exemption from IGST and Compensation Cess, for goods imported by EOU or for goods imported under Advance Authorisation (AA)/ EPCG.

Rule 96B: Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.

Refund of Unutilized ITC:

If refund of unutilized ITC or IGST on export of goods is given but sale proceeds are not realized within the allowed period under FEMA, 1999:

- The recipient must return the refunded amount with interest within 30 days of the expiry of the period.
- If not, the refunded amount will be recovered under sections 73 or 74 of the Act along with interest under section 50.

Proviso: If RBI writes off the requirement for realization of sale proceeds, the refund will not be recovered.

Realization of Sale Proceeds:

- If sale proceeds are realized after the refund is recovered and evidence is provided within 3 months from the realization date:
- The recovered amount will be refunded to the applicant to the extent of the realized sale proceeds.

Supplies to an SEZ unit or SEZ developer

- **Zero-Rated Supply to SEZ:** Supply to an SEZ unit/developer is zero-rated, but not all supplies qualify.

- Eligibility for Refund: Refund of unutilized ITC or tax paid is only available if supplies are received by SEZ unit/developer for authorized operations.
- Endorsement: Endorsement by the specified officer of the Zone is required to confirm receipt for authorized operations.
- Authorized Operations: Event management, hotel, accommodation services, consumables, etc. received for authorized operations (as endorsed) are eligible for zero-rated supply benefits.

Transactions with EOUs

No Zero Rating for EOUs: Supplies to EOUs are not zero-rated and are taxable like any other taxable supplies under the GST regime.

Zero Rating for Exports: EOUs are eligible for zero rating to the extent of their exports, like any other exporter.

Deemed Exports: Supplies to EOUs are treated as deemed exports.

Refund Eligibility: Refund of tax paid on deemed exports is admissible to either the supplier or the recipient.

Circular: Sub-contracting of services by an exporter of services to another person located outside India

Issue: In case of an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

Clarification:

The following two supplies are taking place: -

- a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value;
- b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services.

Supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India.

Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid.

Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located

outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

- a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and
- b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

Illustration:

- **Order and Outsourcing:** ABC Ltd. India receives a \$500,000 order from a US client and outsources 40% to XYZ Ltd. Mexico.
- **Exporter of Services:** ABC Ltd. India exports the entire service value if it raises the invoice for the full amount.
- **Import of Services:** Services provided by XYZ Ltd. Mexico are considered an import by ABC Ltd. India, which must pay IGST on reverse charge and can claim ITC.
- **Consideration and Export Benefit:** Even if only 60% of the consideration is received in India and the rest is paid directly to XYZ Ltd. Mexico, 100% of the total contract value is considered export if:
 - IGST on import of services is paid.
 - RBI permits retention of a portion of the consideration outside India.
- **Export Benefit:** Export benefit is available for the total realization of convertible foreign exchange by both ABC Ltd. India and XYZ Ltd. Mexico.

Supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would qualify as 'export of services' [Circular No. 161/17/2021 GST dated 20.09.2021]

Issue: whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will qualify as export of services under section 2(6) of the IGST Act.

Clarification:

- A company incorporated in India and a body corporate incorporated by or under laws of a country outside India, which is also referred to as foreign company under the Companies Act, are separate persons under the CGST Act, and thus are separate legal entities.
- Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".
- Therefore, supply of services by a subsidiary/sister concern of a foreign company, which is incorporated in India to the establishments of the said foreign company located outside India

(incorporated outside India), would not be treated as supply between merely establishments of distinct persons.

- Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017.
- Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under section 2(6) of IGST Act.

Clarification regarding admissibility of export remittances received in Special Rupee Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services.

When the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of section 2(6) of the IGST Act, 2017.

Introduction

- Timely refund mechanism is essential in tax administration to facilitate trade by releasing blocked funds for working capital, expansion, and modernization.
- GST law provisions aim to streamline and standardize refund procedures under the GST regime.
- There is a standardized form for making refund claims.
- The claim and sanctioning procedure is primarily online and time-bound.
- The new procedure is a significant improvement over the previous, time-consuming and cumbersome processes.
- Refund provisions are more transparent compared to the earlier indirect tax regime.

Meaning of Refund [Explanation 1 to section 54 of the CGST Act]

Refund includes

- refund of tax paid on zero-rated supplies of goods/services/both/on inputs/input services used in making such zero-rated supplies, or
- refund of tax on the supply of goods regarded as deemed exports, or
- refund of unutilised input tax credit as provided under section 54(3).

Section 54: Refund of Tax

Section 54(1): Application for refund within 2 years from relevant date

Any person claiming refund of any tax & interest, if any, paid on such tax/any other amount paid by him,

- may make an application before the expiry of two years from the relevant date
- In such form (GST RFD-01) and
- manner as may be prescribed. (Rule 89)

Proviso: For refund of balance in ECL balance, separate refund application is not required

A RP, claiming refund of any balance in the E cash ledger in accordance with the provisions of section 49(6), may claim such refund in such form and manner as may be prescribed (rule 89).

Rule 89: Application for refund of tax, interest, penalty, fees or any other amount

(1) Refund application in GST RFD-01 (except in case of IGST on exports - shipping bill)

Any person, except the persons covered under notification issued u/s 55(UIN holders), claiming refund of any balance in the e-cash ledger in accordance with section 49(6) or any

tax, interest, penalty, fees or any other amount paid by him, **except** refund of integrated tax paid on goods exported out of India,

- may file, subject to aadhaar authentication(rule 10B), an application electronically in GST RFD-01 through the common portal

Proviso: Refund claim w.r.t supplies to SEZ unit/Developer

Supplies to a SEZ unit/developer, the application for refund shall be filed by the—

- supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;
- supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Proviso: Refund claim with respect to Deemed Exports

In respect of supplies regarded as deemed exports, **the application may be filed by, —**

- the recipient** of deemed export supplies; **or**
- the supplier** of deemed export supplies in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund:

Proviso: Refund to CTP/NRTP, after adjusting tax payable, shall be only after he has filed last return.

(1A)Any person, claiming refund u/s 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may,

- before expiry of **2 years** from the date of payment of **correct** tax on inter-State supply,
- file an application electronically in GST RFD-01 through the common portal:

(1B)Any person, claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of integrated tax paid at the time of export of such goods has already been sanctioned as per rule 96, may file an application for such refund of additional integrated tax paid, electronically in GST RFD-01 through the common portal, subject to the provisions of rule 10B, before the expiry of 2 years from the relevant date as per clause (a) of Explanation (2) of section 54:

Proviso: the said application for refund can, in cases where the relevant date as per section 54(2)(a) of the Act was before the date on which this sub-rule comes into force, be filed before the expiry of two years from the date on which this sub-rule comes into force;

Section 54(2): Refund to UIN holders

A specialized agency of UNO/any Multilateral Financial Institution & Organisation notified under UN Act, 1947, Consulate/Embassy of foreign countries/any other class of persons, as notified u/s 55,

- entitled to a refund of tax paid by it on **inward supplies** of g/s/b, may
- Application: in GST RFD -10** and manner as may be prescribed, (rule 95)
- before expiry of 2 years from the last day of the quarter in which such supply was received.

Section 55: Refund in certain cases

The Government may, on the recommendations of the Council, by notification, specify

- any specialized agency of the UNO or any Notified MFIO,
- Consulate or Embassy of foreign countries and
- any other person or class of persons as may be **specified**.

who shall, subject to such conditions and restrictions as may be prescribed, (rule 95) be entitled to claim a refund of taxes paid on the notified supplies of goods/services/both received by them.

Notification: Specified person - Canteen Stores Department, under the Ministry of Defence, as a person who shall be entitled to claim a refund of 50%, of the applicable CGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply to the Unit Run Canteens/to authorized customers of the CSD.

Notification no. 16/2017-Central tax (R): The Central Government hereby specifies, —

- United Nations or a specified international organisation; and
- Foreign diplomatic mission/consular post in India/diplomatic agents/career consular officers posted therein.

Circular: Specialized agencies shall be entitled to claim refund of IGST paid on goods imported (on the principle of parity).

Rule 95: Refund of tax to certain persons

- Any person eligible to claim a refund of tax paid on inward supplies as per notification u/s 55
 - must apply in GST RFD-10 every quarter, electronically,
 - with a statement of inward supplies in GSTR-11.

- Acknowledgement for the receipt of the refund application shall be issued in GST RFD-02.

(3) Conditions for Refund:

- (a) the inward supplies were received from a RP against a tax invoice;
- (b) Applicant's name and GSTIN or UIN must be mentioned in the tax invoice.
- (c) Other specified conditions or restrictions must be satisfied.

Proviso: If UIN is not mentioned in the tax invoice, a copy attested by the applicant's authorized representative must be submitted with the refund application.

(4) Provisions of rule 92 apply to the sanction and payment of refunds.

(5) Provisions of any treaty or international agreement to which India is a party prevail if inconsistent with this Chapter.

Rule 95B: Refund of tax paid on inward supplies of goods received by Canteen Stores Department (CSD)

(1) Notwithstanding anything contained in rule 95, a CSD under the Ministry of Defence, which is eligible to claim the refund of 50% of the applicable central tax paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorised customers of the CSD as per notification issued u/s 55, shall apply for refund in GST RFD-10A once in every quarter, electronically on the common portal.

(2) Such application for refund of tax paid on inward supplies of goods filed in GST RFD-10A shall be dealt in a manner similar to that of application for refund filed in GST RFD-01 in accordance with the provisions of rule 89.

(3) The refund of tax paid by the applicant shall be available, if -

- (a) the inward supplies of goods were received from a RP against a tax invoice and details of such supplies have been furnished by the said RP in his details of outward supply in GSTR-1 and the said supplier has furnished his return in GSTR-3B for the concerned tax period;
- (b) name and GSTIN of the applicant is mentioned in the tax invoice; and
- (c) goods have been received by CSD for the purpose of subsequent supply to the Unit Run Canteens of the CSD or to the authorised customers of the CSD.

Section 54 (3): Refund of unutilized ITC

A RP may claim refund of any unutilized ITC at the end of any tax period:

Refund of ITC allowed only in 2 situations:

- (i) ZRS: zero-rated supplies made without payment of tax;
- (ii) Inverted tax structure: where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated/fully exempt supplies), except supplies of g/s/b as may be notified by the Govt on the recommendations of the Council.

Proviso: no refund of unutilized ITC in case goods exported are subjected to export duty

Proviso: No refund if supplier avails DBK w.r.t CGST/Claims refund of IGST paid on such supplies.

Circular No. 160/16/2021-GST dated 20.09.21

Issue: Whether the second proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.

Clarification:

- Restriction applies only to goods subject to export duty, i.e., where export duty is paid at the time of export.
- Goods, which are
 - o NIL rated under Customs Tariff Act/fully exempted by notification/ not covered under Second Schedule to the Customs Tariff Act, 1975,
 - o would not be covered by the restriction imposed under 2nd proviso to section 54(3).

Circular No. 125/44/2019 - GST

Issue: The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax.

Clarification: It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess.

In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of CT/ST/UTT/IT/compensation cess under the said provision.

Rule 89(3): Refund claim for ITC, refund to be debited to his e-credit ledger

Where the application relates to refund of ITC, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

Author's comment:

1. Refund application submitted: Amount debited to electronic credit ledger
2. Refund passed: Refund order passed and amount credit to Bank account.
3. If refund is rejected: ITC shall be re-credited to e-credit ledger (subject to appeal).

Rule 89(4): Refund claim in case of ZRSs

In the case of ZRS of g/s/b without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST act, refund of ITC shall be granted as per the following formula—

Refund Amount (maximum amount admissible)

$$= \frac{(\text{Turnover of ZRS of goods} + \text{Turnover of ZRS of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where:

- (A) Refund amount means the maximum refund that is admissible;
- (B) Net ITC: ITC on Input and Input services during relevant period ~~other than ITC for which refund claimed under 89(4A)/(4B)/both.~~
- (C) TO of ZRS of goods

Particulars		Amount
Value of ZRS of goods made during the relevant period without payment of tax under bond/LUT	xxx	
or		
the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,	xxx	
Whichever is less		xxx
~~Less: the turnover of supplies in respect of which refund is claimed under sub-rule (4A)/(4B)/Both~~		~~xxx~~
Turnover of ZRS of goods		XXX

Crux: The term 'Turnover of ZRS of goods' used in the above formula has been redefined to restrict the same to 1.5 times the value of like goods domestically supplied by the same /similarly placed supplier/as declared by the supplier.

Hence now Value of ZRS of goods made under LUT/Bond shall be taken as:

- Actual Value as per Invoice
- 1.5 times the value of like goods domestically supplied by same/similarly placed supplier

Illustration:

SN	Value as per Invoice (a)	value of like goods domestically supplied (b)	1.5 times the value of like goods domestically supplied (c)	TO of ZRS of goods for purpose of refund formula Lower of (a) or (c)
1	5,00,000	4,00,000	6,00,000	5,00,000
2	20,00,000	10,00,000	15,00,000	15,00,000
3	20,00,000	14,00,000	21,00,000	20,00,000

(D) TO of ZRD of services means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely: —

Particulars	Amount
The aggregate of the payments received during the relevant period for ZRS of services	xxx
Add: ZRS of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period	xxx
Less: Advances received for ZRS of services for which the supply of services has not been completed during the relevant period	xxx
TO of ZRS of services	XXX

(E) Adjusted Total Turnover means the sum total of the value of-

(a) the turnover in a State/a UT, as defined u/s 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding

(i) the value of exempt supplies other than zero-rated supplies; ~~and~~

(ii) ~~the turnover of supplies in respect of which refund is claimed under sub rule (4A) or sub rule (4B) or both, if any,~~

during the relevant period.

Particulars	Amount
The TO in a State/UT, excluding the turnover of services	xxx
Add: TO of ZRS of services made without payment of tax under bond/LUT & Non-ZRS of services,	xxx
Less: the value of exempt supplies other than zero-rated supplies	xxx
~~Less: the TO of supplies in respect of which refund is claimed under sub rule (4A)/(4B)/both~~	
Adjusted Total Turnover	XXX

(F) Relevant period means the period for which the claim has been filed.

Explanation.- For the purposes of this sub-rule, the value of goods exported out of India shall be taken as -

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or
- (ii) the value declared in tax invoice or bill of supply, whichever is less.

Clarification: While calculating "Adjusted Total Turnover", the value of goods exported out of India to be included will be same as being determined as per the above Explanation.

Circular: Manner of calculation of Adjusted Total Turnover under Rule 89(4) of CGST Rules

Doubts have been raised as to whether the restriction on turnover of ZRS of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of ZRS of goods" vide NNo. 16/2020-CT dated 23.03.20, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

Rule 89(4) prescribes the formula for computing the refund of unutilised ITC payable on account of ZRSs made without payment of tax. The formula prescribed under Rule 89 (4) is as under:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Adjusted Total Turnover has been defined in Rule 89(4)(E) as under:

Adjusted Total Turnover means the sum total of the value of-

- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
 - (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding -
 - (i) the value of exempt supplies other than zero-rated supplies; and
 - ~~(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,~~
- during the relevant period.

Turnover in State or turnover in Union territory means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods/services/both made from the State/UT by the said TP but excludes central tax, State tax, UT tax, integrated tax and cess

From the examination of the above provisions,

- it is noticed that Adjusted Total Turnover includes Turnover in a State/UT.
- As per Sec 2(112), Turnover in a State/UT includes turnover/ value of export/ ZRSs of goods.
- The definition of Turnover of ZRS of goods has been amended vide NN No.16/2020-CT dated 23.03.20, as detailed above.
- In view of the above, it can be stated that the same value of zero-rated/export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a UT", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89.
- Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST Rules, 2017.
- Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ ZRS of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule. The same can explained by the following illustration where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier

Illustration: Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market & overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = Rs. 270

Outward Supply	Value per Unit	No of units Supplied	Turnover	Turnover as per amended definition
Local (Quantity 5)	200	5	1000	1000
Export (Quantity 5)	350	5	1750	1500 (1.5*5*200)
Total			2750	2500

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750]

Net ITC = Rs. 270

Refund Amount= Rs. 1500 * 270 = Rs. 162

2500

Thus, the admissible refund amount in the instant case is Rs. 162.

~~Rule 89(4A): Omitted~~

~~Rule 89(4B): Omitted~~

Rule 89(5): Refund claim by person having inverted tax structure: refundable ITC to be computed as follows:

Refund Amount (maximum amount admissible)

$$= \frac{(\text{Turnover of inverted rated supply of goods and services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

less: tax payable on such inverted rated supply of goods and services x (Net ITC/ITC available on input/input services).

Explanation: — For the purposes of this sub-rule, the expressions—

- (a) Net ITC shall mean input tax credit availed on **inputs** during the relevant period ~~other than the ITC availed for which refund is claimed under sub-rule (4A) or (4B) or both~~; and
- (b) Adjusted Total turnover and relevant period shall have the same meaning as sub-rule (4).

Section 54(4): The application shall be accompanied by — Documents and other evidence

The application shall be accompanied by:

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

- (b) Documents to proof no unjust enrichment

such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Refund claim < Rs 2 lakhs - Self declaration, CA certificate in other cases

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

Rule 89(2): Documentary evidence to obtain refund

(a) Refund of GST paid under protest

the reference number of the order and a copy of the order passed by the PO or an appellate authority or AT or court resulting in such refund or reference number of the payment of the amount specified in section 107(6) and sub-section (8) of section 112 claimed as refund;

(b) Refund is on account of Export of goods except in case of electricity

a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices;

Author's comment: It is important to note that realization of convertible foreign exchange or INR wherever permitted by RBI is one of the conditions for export of services whereas in case of export of goods, realization of consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRC's are not required here.

However, in case of non-realization of consideration in terms of FEMA, the exporter may be called upon to repay the refund claimed by him [Rule 96B].

(ba) Refund is on account of Export of electricity

a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit.

(bb) In a case where the refund is on account of upward revision in price of such goods subsequent to exports;

a statement containing the number and date of export invoices along with copy of such invoices, the number and date of shipping bills or bills of export along with copy of such shipping bills or bills of export, the number and date of Bank Realisation Certificate or foreign inward remittance certificate in respect of such shipping bills or bills of export along with copy of such Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, the details of refund already sanctioned under sub-rule (3) of rule 96, the number and date of relevant supplementary invoices or debit notes issued subsequent to the upward revision in prices along with copy of such supplementary invoices or debit notes, the details of payment of additional amount of integrated tax, in respect of which such refund is claimed, along with proof of payment of such additional

amount of integrated tax and interest paid thereon, the number and date of foreign inward remittance certificate issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received in respect of upward revision in price of exports along with copy of such foreign inward remittance certificate, along with a certificate issued by a practicing chartered accountant or a cost accountant to the effect that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to exports and copy of contractor other documents, as applicable, indicating requirement for the revision in price of exported goods and the price revision thereof.

(bc) In a case where the refund is on account of upward revision in price of such goods subsequent to exports

a reconciliation statement, reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of Bank Realisation Certificate /foreign inward remittance certificate issued by Authorised Dealer-I Bank.

(c) Refund is on account of the Export of services

a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates.

Circular No. 37/11/2018-GST dated 15.03.2018

It is important to note that realization of convertible foreign exchange or INR wherever permitted by RBI is one of the conditions for export of services whereas in case of export of goods, realization of consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here.

(d) Refund on account of supply of goods to SEZ unit /SEZ developer

a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1);

(e) Refund on account of supply of services made to a SEZ unit/SEZ developer

a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005;

(f) In a case where the refund is on account of supply of goods/services/both made to a SEZ unit or a SEZ developer

a declaration to the effect that tax has not been collected from the SEZ unit or the SEZ developer;

(g) Refund on account of Deemed exports

a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf;

Notification No. 49/2017 CT dated 18.10.2017

Statement containing the number and date of invoices along with an:

- (1) acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA/EPCG Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient EOU that said deemed export supplies have been received by it.
- (2) undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him.
- (3) undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund

(h) Refund claim pertains to unutilized ITC due to Inverted tax structure

a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized ITC u/s 54(3) where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated/fully exempt supplies;

(i) Refund arises on finalization of provisional assessment

The reference number of the final assessment order and a copy of the said order i;

(j) Refund due to wrong classification of supply

A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) Refund on account of excess payment of tax

A statement showing the details of the amount of claim on account of excess payment of tax and interest, if any, or any other amount paid;

(ka) Where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by

the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof.

(kb) Where refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.

(l) For all the above cases Declaration

a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Proviso: Declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) CA certificate

a Certificate in Annexure 2 of GST RFD-01 issued by a chartered accountant/a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed **exceeds Rs 2 lakhs**.

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Explanation. — For the purposes of this rule—

(d) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(e) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

Section 54(5): PO satisfied, He shall pass refund order and amount to be credited to consumer welfare fund

If, on receipt of any such application, the PO is satisfied that the whole or part of the amount claimed as refund is refundable,

- he may make an order accordingly and
- The amount so determined shall be credited to the Fund referred to in section 57.

Author's comment: Refund will be generally transferred to consumer welfare fund due to the doctrine of unjust enrichment.

Rule 92: Order sanctioning refund

(1) Upon examination of application, PO is satisfied, he shall make refund order in RFD 06

Where, upon examination of the application, the PO is satisfied that a refund u/s 54(5) is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis u/s 54(6), amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

(1A) Refund shall be issued based on the mode of payment

Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the PO is satisfied that a refund u/s 54(5) of the Act is due and payable to the applicant, he shall make an order in RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue GST PMT-03 re-crediting the said amount as ITC in electronic credit ledger.

Crux: Refund to be granted both in cash & credit, based on original mode of payment.

- PO shall make a refund order in GST RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, and
- for the balance the PO shall issue GST PMT-03 re-crediting the said amount as ITC in electronic credit ledger.

(2) Withholding of refund

Where the PO or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10) or as the case may be 54(11), he shall pass an order in Part A of GST RFD-07 informing him the reasons for withholding of such refund.

Proviso: where the PO/the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of FORM GST RFD-07.

(3) Issue of SCN and rejection of refund claim

Where the PO is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible/is not payable to the applicant, he shall issue a notice in GST RFD-08 to the applicant, requiring him to furnish a reply in GST RFD-09 within a period of 15 days of the receipt of such notice and after considering the reply, make an order in GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Proviso: no application for refund shall be rejected without giving the applicant an **opportunity of being heard**.

(4) Amount refundable & is payable to applicant; PO shall refund order in RFD 06 & payment order RFD 05 & the amount shall be credited to bank a/c of applicant

Where the PO is satisfied that the amount refundable under sub-rule (1)/(1A)/(2) is payable to the applicant u/s 54(8), he shall make an order in GST RFD-06 and issue a payment order in GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.

Proviso: the order issued in GST RFD-06 shall not be required to be revalidated by the PO

Proviso: the payment order in GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same FY in which the said payment order was issued.

(4A) The CG shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).**(5) Amount refundable & not payable to applicant, PO shall refund order in RFD 06 & payment order RFD 05 & the amount shall be credited to CWF**

Where the PO is satisfied that the amount refundable under sub-rule (1)/(1A)/(2) is not payable to the applicant u/s 54(8), he shall make an order in GST RFD-06 and issue a payment order in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

Section 54(6): Provisional grant of 90% immediately within 7 days of issue of acknowledgement in GST RFD 02 only to Zero-rated supplier

Notwithstanding anything contained in sub-section (5), the PO may,

- in the case of any claim for refund on account of ZRS of goods/services/both made by RPs, other than such category of RPs as may be notified by the Govt on the recommendations of the Council,
- refund on a provisional basis, ninety per cent of the total amount so claimed, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and
- Thereafter make an order under sub- section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

Rule 91: Grant of provisional refund

(1) No Provisional refund, if person has been prosecuted for any offence for immediately preceeding 5 years for tax evaded > 2.5 crores

The provisional refund in accordance with section 54(6) shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds Rs 250 lakhs.

(2) If PO satisfied, Provisional refund order-in GST RFD 04

The PO, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of section 54(6), shall make an order in GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement under rule 90(1)/(2).

Proviso: the order issued in GST RFD-04 shall not be required to be revalidated by the PO.

(3) Issue of payment order in RFD-05

The PO shall issue a payment order in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the

applicant mentioned in his registration particulars and as specified in the application for refund.

Proviso: the payment order in GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same FY in which the said payment order was issued.

- (4) The CG shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).

Section 54(7): Refund order shall be passed within 60 days of receipt of application

The PO shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

Rule 90: Acknowledgement

- (1) Application for refund from e-cash ledger, acknowledgement to applicant in RFD-02

Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in section 54(7) shall be counted from such date of filing.

- (2) Application for refund, other than claim for refund from electronic cash ledger

The application for refund, other than claim for refund from e cash ledger, shall be forwarded to the PO who shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rules (2), (3) & (4) of rule 89, an acknowledgement in GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in section 54(7) shall be counted from such date of filing.

- (3) Deficiencies if any shall be communicated to the applicant in FORM GST RFD-03

Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 (deficiency memo) through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Proviso: the time period, from the date of filing of the refund claim in GST RFD-01 till the date of communication of the deficiencies in GST RFD-03 by the PO, shall be excluded from the period of two years as specified under section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

(4) Communication of deficiency under SGST, deemed communication under CGST

Where deficiencies have been communicated in GST RFD-03 under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

(5) Applicant may withdraw refund application by filing GST RFD 01W

The applicant may, at any time before issuance of provisional refund sanction order in GST RFD-04 or final refund sanction order in GST RFD-06 or payment order in GST RFD-05 or refund withhold order in GST RFD-07 or notice in GST RFD-08, in respect of any refund application filed in GST RFD-01, withdraw the said application for refund by filing an application in GST RFD-01W.

(6) On withdrawal any amount debited in e-cash or credit shall be re-credited

On submission of application for withdrawal of refund in GST RFD-01W, any amount debited by the applicant from e-credit ledger e-cash ledger, as the case may be, while filing application for refund in GST RFD-01, shall be credited back to the ledger from which such debit was made.

Section 54(8): Unjust enrichment

Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) refund of tax paid on export of g/s/b or on inputs or input services used in making such export;
- (b) refund of unutilized ITC under sub-section (3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77; (wrong determination of POS: Intra as inter/vice versa)
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Section 54(8A): The Government may disburse the refund of the State tax in such manner as may be prescribed.

Section 54(9): No refund shall be made to applicant except in accordance with sub-section (8).

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, **no refund shall be made except in accordance with the provisions of sub-section (8).**

Section 54(10): PO may withhold refund in certain cases

Where any refund is due to a RP who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

- (a) withhold payment of refund due until the said person has furnished the return/paid the tax, interest or penalty, as the case may be;
- (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act/under the existing law.

Explanation— For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

Section 54(11): Commissioner may withhold refund

Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and

- the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings
- on account of malfeasance or fraud committed,
- he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

Rule 92: Refund withheld order in Part B of GST RFD-07

- (2) Where the PO or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54 (10)/(11), as the case may be, he shall pass an order in Part A of GST RFD-07 informing him the reasons for withholding of such refund.

Rule 93: Credit of the amount of rejected refund claim

- (1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Explanation - For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the PO that he shall not file an appeal.

Section 54(12): On refund of amount withheld under 54(11), interest @ 6%

Where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding 6% as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund. [Interest @ 6% p.a. has been notified vide NN. 13/2017-CT dt. 28-6-17]

Section 54(13): Refund to CTP/NRTP shall be only when he furnished all returns u/s 39

Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person u/s 27(2), shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required u/s 39.

Section 54(14): No refund below Rs 1,000

No refund under section 54(5)/54(6) shall be paid to an applicant, if the amount is < Rs 1,000.

Explanation. — for the purposes of this section, —

(1) "refund" includes refund of tax paid on ZRS of g/s/b or on I/IS used in making such ZRS, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized ITC as provided under sub-section (3).

(2) "relevant date" means—

	Situation	Relevant date
(a)	in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs/IS used in such goods, —	

	Situation	Relevant date
	(i) if the goods are exported by sea or air,	the date on which the ship/aircraft, leaves India;
	(ii) if the goods are exported by land,	the date on which such goods pass the frontier; or
	(iii) if the goods are exported by post,	the date of dispatch of goods by the Post Office concerned to a place outside India;
(b)	in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods,	the date on which the return relating to such deemed exports is furnished; irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. As the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier
(ba)	in case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs/input services used in such supplies,	the due date for furnishing of return under section 39 in respect of such supplies;
(c)	in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services,	the date of (i) receipt of payment in convertible foreign exchange or in INR wherever permitted by the RBI, where the supply of services had been completed prior to the receipt of such payment; or (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
(d)	in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate	the date of communication of such judgment, decree, order or direction;

	Situation	Relevant date
	Authority, Appellate Tribunal or any court,	
(e)	in the case of refund of unutilized ITC under clause (ii) of the first proviso to sub-section (3),	the due date for furnishing of return u/s 39 for the period in which such claim for refund arises;
(f)	in the case where tax is paid provisionally under this Act or the rules made thereunder,	the date of adjustment of tax after the final assessment thereof;
(g)	in the case of a person, other than the supplier,	the date of receipt of goods or services or both by such person; and
(h)	in any other case,	the date of payment of tax.

Section 54(15)

Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.

Section 56: Interest on delayed refunds.

Refund not granted within 60 days from date of receipt of application, interest @ 6% p.a.

If any tax ordered to be refunded u/s 54(5) to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section,

- interest at such rate not exceeding 6% as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund
- for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.

Provided that

- where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and
- the same is not refunded within sixty days from the date of receipt of application filed consequent to such order,
- interest at such rate not exceeding 9% as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund.

Explanation— For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the PO under section 54(5), the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

Rule 94: Order sanctioning interest on delayed refunds

(1) Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in FORM GST RFD-05, specifying therein

- the amount of refund which is delayed,
- the period of delay for which interest is payable and
- the amount of interest payable, and
- such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

(2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-

- (i) furnish a reply in FORM GST RFD-09, or
- (ii) submit additional documents or reply; and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.

Crux: The period of delay beyond 60 days for which interest is payable shall not include:

- (i) Any period beyond 15 days of receipt of notice in RFD 08, which the applicant takes to reply in GST RFD 09 or submit additional documents or reply.
- (ii) Any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited.

Section 57: Consumer Welfare Fund.

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, —

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and

(c) such other monies received by it,
in such manner as may be prescribed.

Section 2(51): Fund means the Consumer Welfare Fund established under section 57;

Section 58: Utilization of Fund.

(1) Sums credited shall be used for welfare of Consumers

All sums credited to the Fund shall be utilized by the Government for the welfare of the consumers in such manner as may be prescribed.

(2) Govt/authority shall maintain proper & separate accounts & records

The Govt or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.

Rule 97: Consumer Welfare Fund.

(1) All amount of GST and investment income transferred to CWF

All amounts of duty/central tax/integrated tax/Union territory tax/cess and income from investment along with other monies specified in sub-section (2) of section 12C of the Central Excise Act, 1944, section 57 of the CGST, 2017 r/w section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund:

Provided that an amount equivalent to 50% of the amount of IT determined under sub-section (5) of section 54 of the CGST, 2017, read with section 20 of the IGST Act, 2017, shall be deposited in the Fund:

Provided further that an amount equivalent to 50% of the amount of cess determined u/s 54(5) r/w sec 11 of the GST (Compensation to States) Act, 17 shall be deposited in the Fund.

(2) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the PO, appellate authority or court, the same shall be paid from the Fund.

(3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(4) The Govt shall, by an order, constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the

Committee shall make recommendations for proper utilization of the money credited to the Fund for welfare of the consumers.

(5) Meeting of Committee

- (a) The Committee shall meet as and when necessary, generally four times in a year;
- (b) the Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;
- (c) the meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;
- (d) the meeting of the Committee shall be called, after giving at least ten days' notice in writing to every member;
- (e) the notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;
- (f) no proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

(6) The Committee shall have powers—

- (a) to require any applicant to get registered with any authority as the CG may specify;
- (b) to require any applicant to produce before it, or before a duly authorized officer of the CG or the SG, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- (c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorized officer of the Central Government or the State Government, as the case may be;
- (d) to get the accounts of the applicants audited, for ensuring proper utilization of the grant;
- (e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;
- (f) to recover any sum due from any applicant in accordance with the provisions of the Act;
- (g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilization of the grant;
- (h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- (i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be mis-utilised;

- (j) to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;
- (k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
- (l) to make guidelines for the management, and administration of the Fund.

(7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

(7A) The Committee shall make available to the Board 50% of the amount credited to the Fund each year, for publicity or consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than Rs 25 crore per annum.

(8) The Committee shall make recommendations: —

- (a) for making available grants to any applicant;
- (b) for investment of the money available in the Fund;
- (c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;
- (d) for making available grants for any other purpose recommended by the Central Consumer protection Council (as may be considered appropriate by the Committee);

Section 15 of IGST act: Refund of integrated tax paid on supply of goods to tourist leaving India.

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions & safeguards as may be prescribed.

Explanation— For the purposes of this section, the term "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Author: No rule prescribed for refund to tourists.

Circulars

Clarification on bunching of refund claims across FYs [Circular No.135/05/2020 GST]

It has been clarified that while filing the refund claim, an applicant may, at his option, file a refund claim for a tax period/by clubbing successive tax periods. Earlier, there was a restriction on bunching of refund claims across FYs; now the said restriction has also been relaxed.

For instance, a RP opting to file Form GSTR-1 on quarterly basis can apply for refund on a quarterly basis or clubbing successive quarters and these quarters may spread across different FYs. Thus, he can file refund claim for quarters: Jan-Mar, Apr-Jun and July-Sep, while filing the refund claim.

Circular no 125/44/2019 - GST dt. 18.11.19 (Only the ones covered by ICAI are included)

Interest on delayed refund if amount not credited to applicant within 60 days

- It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant.
- Therefore, interest will be calculated starting from the date immediately after the expiry of 60 days from the date of receipt of application till the date amount is credited to the bank account.
- Accordingly, all tax authorities are advised to issue the final sanction order in GST RFD-06 and the payment order in GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

Refund of ITC u/s 54(3) restricted to the extent of credit reflected in Form GSTR-2B (amended)

Issue: In wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the GSTR-2B of the applicant.

Clarification: The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2B of the applicant.

Circular No. 139/09/2020: Clarified that the treatment of refund of such ITC relating to imports, ISD invoices and RCM supplies will continue to be same as it was before.

Determination of refundable amount in case of refund of unutilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure

In case of refund of unutilized ITC on account of (i)/(ii)/(iii) the common portal calculates the refundable amount as the least of the following amounts:

- a) The maximum refund amount as per the formula in rule 89(4)/(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e., Central tax + State/UT/UT tax + Integrated tax]
- b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in GSTR-3B for the said period has been filed; and
- c) The balance in the e credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the three amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- a) Integrated tax, to the extent of balance available;
- b) Central tax and State tax/UT tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular E credit ledger (say, Central tax), the differential amount is to be debited from the other E credit ledger (i.e., State tax/UT tax, in this case).

The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications.

Crux of point no. 37:

Refundable amount as the least of the following amounts:

- (a) As per formula in rule 89(4)/ 89(5)
- (b) Balance in E. credit ledger at the end of the tax period for which the refund claim is being filed after the return in FORM GSTR-3B.
- (c) The balance in the E credit ledger of the applicant at the time of filing refund application.

After calculation of the above least amount, debit in E. credit ledger in following order:

1. IGST use fully,
2. CGST and SGST/UTGST equally to the extent of balance
3. In the event of a shortfall in the balance available in a particular e credit ledger (say, CT), the differential amount is to be debited from the other electronic credit ledger (ST/UTT).

Clarification on calculation of refund amount for claims of refund of accumulated ITC on account of inverted tax structure

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted tax structure.

There have been instances where while processing the refund of unutilized ITC on account of inverted tax structure, some of the tax authorities denied the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

- a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.
- b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with the help of following example:
 - (i) Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST).
 - (ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.
 - (iii) Further assume that the applicant supplies the output Y having value of Rs. 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be Rs. 3,000/-. Since the applicant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.
 - (iv) If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net

ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).

(v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

Meaning of the term "inputs"

Issue: It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the applicant.

Clarification: It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted u/s 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate [Circular No.135/05/2020 - GST dated 31.03.20]

Issue: It has been brought to the notice of the Board that some of the applicants are seeking refund of unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods. This can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. It is being claimed that accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

Clarification: It may be noted that refund of accumulated ITC in terms of section 54(3)(ii) of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs

being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of section 54(3)(ii) of the CGST Act. It is hereby clarified that refund of accumulated ITC u/s 54(3)(ii) of the CGST Act would not be applicable in cases where the input and the output supplies are the same.

Refund of accumulated ITC on account of inverted duty structure allowed in cases where rate of tax on outward supply is less than the rate of tax on inputs (same goods) at the same point of time. [Circular No. 173/05/2022 GST dated 06.07.2022]

Circular No. 135/05/2020 GST dated 31.03.2020, issued earlier, had clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply are same.

However, the intent of said clarification was not to cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification.

Therefore, it is clarified that in such cases, refund of accumulated ITC on account of inverted duty structure would be allowed in cases where accumulation of ITC is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

The amended clarification is as follows:

It may be noted that refund of accumulated ITC is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to section 54(3).

There may, however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3), other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.

Crux: Cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs at the same point of time, the credit accumulated on account of the same is admissible for refund.

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws [Circular No. 137/07/2020-GST dt. 13.04.20]

Issue 1: An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Clarification: In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

Crux:

- Issue a credit note as per section 34, declare in the month of issue & tax liability shall be adjusted. No need to file a separate refund claim.
- However, if no output liability, RP may file refund application - GST RFD 01.

Issue 2: An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?

Clarification: In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax"

Crux:

- Issue a "refund voucher" in terms of section 31(3)(e) of the CGST Act
- RP may file refund application - GST RFD 01 for refund of GST paid on such advances.

Issue 3: Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Clarification: In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of CGST Act. There is no need to file a separate refund claim in such a case.

However, in cases where there is no output liability against which a credit note can be adjusted, RPs may proceed to file a claim under "Excess payment of tax, if any" through GST RFD-01.

Crux:

- Issue a credit note as per section 34, declare in the month of issue & tax liability shall be adjusted. No need to file a separate refund claim.
- However, if no output liability, RP may file refund application - GST RFD 01.

Clarification in respect of refund claim by recipient of Deemed Export Supply [Circular No. 147/03//2021-GST dated 12.03.21]

Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.

Circular No. 125/44/2019 (Para 41) - GST dt. 18/11/19 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a deemed export supply to the recipient or the supplier of deemed export supplies. The said proviso is reproduced as under:

"Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of ITC on such supplies & furnishes an undertaking to the effect that the supplier may claim the refund"

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim.

Clarification on certain refund related issue [CBIC-20021/4/2021-GST dt. 17.11.21]

Sl No.	Issue	Clarification
1	Whether the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in e-cash ledger?	No, the provisions of sub section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger Crux: No time period for filing refund claim with respect to balance in e-cash ledger.
2	Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?	No, furnishing of certification/ declaration under Rule 89(2) (l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases. Crux: In case of refund of excess balance in electronic cash ledger, neither a declaration by the applicant nor a certificate by a Chartered Accountant/ Cost Accountant is required to be furnished.
3	Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balance in cash ledger?	The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilize the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in e-credit ledger or through debiting electronic cash ledger, as per his choice and availability of balance in the said ledgers.

Sl No.	Issue	Clarification
		Any amount, which remains unutilized in e-cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act. Crux: TDS/TCS deposited in electronic cash ledger can be refunded as excess balance in cash ledger
4	Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?	Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: "(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;" On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier. Crux: The relevant date for purpose of filing of refund claim for refund of tax paid on deemed export supplies would be the date of filing of return, related to such supplies, by the supplier.

Circular No. 172/04/2022-GST dt. 06.07.22

Issue: Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.

Clarification: The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.

Crux: ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17.

Issue: Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules 2017.

Clarification:

The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

Crux: ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4)/ rule 89(5).

Manner of filing an application for refund by URPs [Circular No. 188/20/22 GST]

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building,

etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service u/s 34 of the CGST Act may already have got expired by that time.

In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note u/s 34 of the CGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/ building or on termination of long-term insurance policy.

It would be pertinent to mention that section 54(1) already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of section 54(8)(e), in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

In order to enable such unregistered person to file application for refund, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'.

Further, rule 89(2) has been amended and statement 8 has been inserted in GST RFD-01 vide Notification No. 26/2022-Central Tax dated 26.12.2022 to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

In such case, following documentary evidences are required:

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement

along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated

Moreover, it has been provided that a certificate by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax even if the amount of refund claimed exceeds Rs. 2 lakhs.

In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the following:

Filing of refund application

The unregistered person, who wants to file an application for refund u/s 54(1), in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long term insurance policy has been terminated,

- shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN).
- While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered.
- Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of
- rule 10B.
- Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed.
- The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.
- The application for refund shall be filed in FORM GST RFD-01 on the common portal under the category 'Refund for unregistered person'.
- The applicant shall upload statement 8 (in pdf format) and all the requisite documents as per the provisions of rule 89(2).
- The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed.

- Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application.
- The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

Where the time period for issuance of credit note u/s 34 has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

Relevant date for filing of refund:

As per section 54(1), time period of 2 years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example-construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation u/s 54(2) of the CGST Act, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

Minimum refund amount: no refund shall be claimed if the amount is less than one thousand rupees.

Section 54(14) provides that no refund under sub-section (5)/(6) shall be paid to an applicant, if amount

is less than Rs. 1000. Therefore, no refund shall be claimed if the amount is less than Rs. 1000.

The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

Crux: Documentary evidences required for claiming refund by unregistered person

In a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

- (ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof.
- (kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.
- Chartered Accountant/Cost Accountant certificate: not required to be furnished.
- Relevant date: date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant i.e. relevant date.

Section 145: Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

What are the documents and evidence deemed to be documents and evidence for the purpose of proceedings?

The following shall be deemed as documents

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
- (d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder.

Section 149: Goods and services tax compliance rating

How shall the GST compliance rating score be determined?

- Every RP may be assigned a GST compliance rating score by the Government based on his record of compliance with the provisions of this Act.
- The GST compliance rating score may be determined on the basis of such parameters as may be prescribed.
- The GST compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

Section 151: Power to collect statistics

When shall the power to collect statistics be exercised under GST laws?

- The Commissioner or an officer authorised by him may,
- by an order, direct any person to furnish information relating to any matter dealt with
- in connection with this Act, within such time, form and manner, as may be specified therein.

Section 153: Taking assistance from an expert

Who & When & at what stage can take assistance?

- Any officer not below the rank of Assistant Commissioner may,
- having regard to the nature and complexity of the case and the interest of revenue,

- take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

Section 158: Disclosure of information by a public servant

Information/ documents to be treated as confidential [Section 158(1)]

- (i) all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or
- (ii) all particulars contained in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or
- (iii) all particulars contained in any record of any proceedings under the Act.

What are the circumstances when information collected by GST officers can be disclosed?

- (a) For prosecution
- (b) For carrying out the objects of the Act
- (c) For service of notice or recovery of demand
- (d) For furnishing information to Court in a proceeding where Government is a party
- (e) For audit of tax receipts or refunds
- (f) For inquiry into the conduct of GST officer
- (g) For enabling levy/realisation of any tax or duty
- (h) By lawful exercise of powers
- (i) For inquiry into a charge of misconduct by any professional
- (j) For data entry on automated system
- (k) For any other law
- (l) In public interest

Section 158A: Consent based sharing of information furnished by taxable person

(1) The following details furnished by a RP may, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to conditions as may be prescribed, namely:—

- (a) particulars furnished in application for registration u/s 25 or in return filed u/s 39 or 44;
- (b) particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished u/s 37 & the particulars uploaded for generation of E-way bill;
- (c) such other details as may be prescribed.

(2) The consent shall be obtained, of—

- (a) the supplier, in respect of details furnished under clauses (a), (b) & (c) of sub-section (1);
- &

(b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient,
in such form and manner as may be prescribed.

(3) No action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Rule 163: Consent based sharing of information.-

(1) Where a registered person opts to share the information furnished in—

- (a) FORM GST REG-01 as amended from time to time;
- (b) return in FORM GSTR-3B for certain tax periods;
- (c) FORM GSTR-1, as amended in FORM GSTR-1A if any, for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time, with a system referred to in sub-section (1) of section 158A ("requesting system"), the requesting system shall obtain the consent of the said RP for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

(2) The RP shall give his consent for sharing of information under clause (c) of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system—

- (a) the consent of the said registered person, and
- (b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

Which are the systems notified for consent based sharing of Information u/s 158A?

Systems notified

- "Account Aggregator" as the systems with which information may be shared by the common portal based on consent under Section 158A of the Central Goods and Services Tax Act, 2017
- "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent u/s 158A(2) of the CGST Act, 2017.

Explanation:

- "Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI.
- "Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the RBI as part of its "Statement on Developmental and Regulatory Policies" and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

Section 159: Publication of information in respect of persons in certain cases

When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.

- (1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation: In the case of firm, company/other AOPs, the names of the partners of the firm, directors, managing agents, secretaries and treasurers/managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

Some important questions:

1. What type of information can be published?

Answer: The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person

2. Who can publish such information?

Answer: Commissioner, or any other officer authorised by him in this behalf

3. What is the manner of publication of information?

Answer: The information shall be published in such manner as the Commissioner/authorised officer thinks fit.

4. When can the information be published?

Answer: Such information shall be published if Commissioner/any other officer authorised by him in this behalf is of the opinion that it is necessary/expedient in public interest to do so.

5. Is there any additional information which can be published?

Answer: In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be may also be published, if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it.

6. What is the limitation on publication of information relating to penalty?

Answer:

No publication under this section shall be made in relation to any penalty imposed under the Act:

- until the time for presenting an appeal to the Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or
- the appeal, if presented, has been disposed of.

Section 160: Assessment proceedings, etc., not to be invalid on certain grounds

Sometimes, proceedings are challenged for their validity merely for reasons of mistakes etc. This provision aims at saving the proceedings from such challenges.

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication

Some important questions

1. Which proceedings are covered under this provision?

Answer: The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered: assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings.

2. On which grounds, will such proceedings be not held as invalid?

Answer: Such proceedings shall not be held invalid for mere reason of: Mistake, Defect or Omission, if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.

3. When will the service of any notice, order, or communication be not called in question?

Answer: The service of any notice, order or communication shall not be called in question if:

- the notice, order or communication has already been acted upon by the person to whom it is issued or
- where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.

Section 161: Rectification of errors apparent on the face of record

- any authority, who has passed/issued any decision/order/notice/certificate/any other document,
- may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document,
- either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the SGST Act or an officer appointed under the UTGST Act or by the affected person
- within a period of **three months** from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Proviso: no such rectification shall be done after a period of **six months** from the date of issue of such decision or order or notice or certificate or any other document:

Proviso: the said period of **six months shall not apply** in such cases where the rectification is purely in the nature of correction of a clerical/arithmetical error, arising from any accidental slip or omission:

Proviso: where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

Some important questions:

1. Which documents are covered under section 161?

Answer: Decision, Order, Any notice, Certificate, Any other document.

2. Who can rectify the errors apparent on the face of record?

Answer: Any authority who has passed or issued any decision/order/notice/certificate/any other document may rectify any error which is apparent on the face of record in such documents.

3. What type of mistakes or errors can be rectified?

Answer: Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.

4. When does the Authority rectify the mistakes/errors?

Answer: The authority may rectify the mistake/error:

- suo moto
- when such error or mistake is brought to its notice by a GST officer
- when such error/mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision/order/notice/certificate or any other document, as the case may be.

5. What is the time limit for rectification?

Answer: No rectification can be made after a period of six months from the date of issue of such decision /order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.

6. What type of precautions should be taken at the time of rectification?

Answer: Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

Section 168A: Power of Government to extend time limit in special circumstances

(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue notification under sub-section(1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation. — For the purpose of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.'

Crux: 168A provides power to the govt. to extend time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed/complied with due to force majeure.

Section 169: Service of notice in certain circumstances

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:

- (a) **by giving or tendering it directly or by a messenger including a courier** to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) **by registered post or speed post or courier with acknowledgement due**, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) **by sending a communication to his e-mail address** provided at the time of registration or as amended from time to time; or
- (d) **by making it available on the common portal**; or
- (e) **by publication in a newspaper circulating in the locality in which the TP/the person to whom it is issued is last known to have resided, carried on business/personally worked for gain**; or
- (f) **if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known POB/residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.**

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered/published/a copy thereof is affixed in the manner provided in sub-section (1).

- (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Section 170: Rounding off of tax, etc.

- Amount contains part of a rupee consisting of paise, and such part is fifty paise or more:
Increase to one rupee
- Amount contains part of a rupee consisting of paise, and such part is less than fifty paise:
Ignore such part

Section 171: Anti-profiteering measure

- (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 by way of commensurate reduction in prices.

- (2) The CG may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any RP/the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

- (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

- (3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation. For the purposes of this section, the expression profiteered shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of g/s/b or the benefit of ITC to the recipient by way of commensurate reduction in the price of the g/s/b.

Notification Seeks to empower the Competition Commission of India to handle anti-profiteering cases under CGST Act, 2017 with effect from 01.12.2022.

Work of NAA had been shifted to Competition Commission of India from 01.12.2022 as per the decision of the GST Council in its 45th meeting.

Notification No. 19/2024 & 18/2024- Central Tax

With effect from, 01.04.2025, CCI shall not accept any request for examination and
With effect from 01.04.2024, CG empowers the Principal Bench of the Appellate Tribunal, to examine whether ITCs 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 or services or both supplied by that registered person.

Rule 127: Functions of the Authority

The authority shall discharge the following functions, namely:-

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
 - (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;
 - (c) imposition of penalty as specified in the Act; and
 - (d) cancellation of registration under the Act.
- (iv) to furnish a performance report to the Council by the tenth day of the close of each quarter.

Rule 128: Examination of application by the Standing Committee and Screening Committee

- (1) The Standing Committee shall, within a period of 2 months from the date of the receipt of a written application/within such extended period not exceeding a further period of one month

for reasons to be recorded in writing as may be allowed by the Authority, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC has not been passed on to the recipient by way of commensurate reduction in prices.

- (2) All applications from interested parties on issues of local nature or those forwarded by the Standing Committee shall first be examined by the State level Screening Committee and the Screening committee shall within two months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority, the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action

Author's comment: Screening of applications by Standing/Screening committee shall be done within a period of 2 months, the said period of 2 months can now be extended by a further period of 1 month.

Rule 129: Initiation and conduct of proceedings

- (1) Standing Committee is satisfied that there is a prima facie evidence to show profiteering, refer matter to DGAP

Where the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

- (2) DGAP Shall investigate and collect evidence of profiteering

The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

- (3) DGAP shall before initiation of the investigation, issue a notice to interested parties

The Director General of Anti-profiteering shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:

- (a) the description of the goods/services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) Issue of notice to persons as deemed fit for enquiry

The Director General of Anti-profiteering may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) Making evidence of one party available to another

The Director General of Anti-profiteering shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6) DGAP to complete investigation within 6 months, further extended by 3 months

The Director General of Anti-profiteering shall complete the investigation within a period of six months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

Author's comment: Earlier, DGAP had to complete the investigation within a period of 3 months of the receipt of the reference from the Standing Committee. Now the said period of 3 months has been extended to 6 months.

Rule 132: Power to summon persons to give evidence and produce documents

- (1) The Authority, Director General of Anti-profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
- (2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Rule 133: Order of the Authority

- (1) Authority to decide as to profiteering within 3 months from the date of the receipt of report

The Authority shall, within a period of Six months from the date of the receipt of the report from the Director General of Anti-profiteering determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

- (2) **An opportunity of hearing shall be granted** to the interested parties by the Authority where any request is received in writing from such interested parties.

(2A) Authority may seek clarification from DGAP on report submitted by it

The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted rule 129(6) during the process of determination under sub-rule (1).

(3) Order of Authority

Where the Authority determines that a RP has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order—

(a) **reduction in prices;**

(b) **return to the recipient, an amount equivalent to the amount not passed** on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) **the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest at the rate of 18%** from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted u/s 57 and the remaining 50% of the amount in the Fund constituted u/s 57 of the GGST Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) **imposition of penalty** as specified under the Act; and

(e) **cancellation of registration under the Act.**

Explanation. — For the purpose of this sub-rule, the expression, "concerned State" means the State or Union Territory in respect of which the Authority passes an order.

(4) If Authority is of the opinion that further investigation/inquiry is required, it may refer matter to DGAP

(5) If Authority has reason to believe that there has been contravention w.r.t other goods/services, it may direct DGAP to investigate/inquire w.r.t. such other g/s/b

Crux:

1. Time limit for passing the order by the Authority increased from 3 months to 6 months
2. Authority may seek clarification from DGAP on his report
3. Profiteered amount to be deposited in Consumer Welfare Fund along with interest @ 18% p.a.
4. Upon receipt of report of DGAP, Authority has reason to believe that there has been a contravention of section 171 in respect of goods/services/both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit of 6 months, direct the DGAP to cause investigation or inquiry with regard to such other goods or services or both. Such investigation or enquiry shall be deemed to be a new investigation or enquiry.

Section 20 of the IGST Act: Application of provisions of CGST Act

Subject to the provisions of this act & rules made thereunder, provisions of CGST act relating to,

(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;
(xi) collection of tax at source;	(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 incl. the provisions relating to the imposition of interest & penalty,	

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Proviso:

1. in the case of TDS, the rate of 2% from the payment made or credited to the supplier:
2. in the case of TCS, such rate not exceeding 2%, as may be notified, of the net value of taxable supplies:
3. the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the GST (Compensation to States) Act, if charged separately by the supplier:
4. the penalty leviable under this Act shall be the sum total of penalties under CGST & SGST:
5. where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be Rs 50 crore and 100 crores respectively.

Section 3: Officers under this Act (CGST act)

Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely: -

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of CT,
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

Section 6: Authorization of officers of State tax or UTT as PO in certain circumstances (CGST act)

- Officers appointed under the SGST/UTGST act authorized to act as officers under CGST act also.
- If a PO under CGST act issues an order, he shall also issue an order under SGST/UTGST act and intimate the SGST/UTGST officer.
- If a PO under SGST/UTGST initiates proceedings on a matter, no proceedings shall be initiated by PO under CGST act.
- If any order is passed by PO under CGST, then rectification, appeal or revision shall not lie with the officer under SGST/UTGST act.

Meaning of Ethics

- **Ethics:** Moral principles guiding behavior and decision-making.
- Ethics help in distinguishing right from wrong and determine what is morally acceptable.
- Ethics are crucial for the effective functioning of any taxation system, including GST in India.
- **Ethical Conduct:**
 - Increases regulatory compliance
 - Reduces tax evasion
 - Increases government revenue
- Government Revenue are ultimately used for public welfare and development projects.
- Ethics create a fair, transparent, and trustworthy environment leading to economic growth by reducing uncertainty.
- **Unethical Practices:** Examples include issuing fake invoices and wrongful ITC claims.
- **Impact:** Undermines tax revenue and creates unfair conditions for honest taxpayers.
- Ethical behavior helps reduce tax-related disputes and litigations.

Role of Chartered Accountant (CA) in ensuring ethics under GST

- The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as Code of Ethics - laid down by the ICAI.
- Every Chartered Accountant has to abide by this code of ethics.
- The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.
- A CA in practice is deemed to be guilty of professional misconduct under the Chartered Accountant Act, 1949, if he:
 - does not exercise due diligence/is grossly negligent in conduct of his professional duties.
 - fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.
- Further, a CA needs to follow ethical conduct while discharging his professional duties namely,
 - compliance functions, furnishing certifications/reports & advisory roles,
 - by adhering to a set of principles & practices that promote integrity, transparency, and compliance.
 - In case of any violation in performing compliance, certifications/reporting and advisory functions, he shall be liable to penalty & prosecution (in some cases) under GST law.
- Chartered Accountants play a crucial role in ensuring GST compliance namely,
 - assisting in the process of obtaining registration,
 - structuring transactions & conditions in agreements for making /receiving supply,
 - optimizing tax positions,

- ensuring GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, and timely filing of periodic returns.
- CAs role in bookkeeping:
 - Maintenance of accurate and detailed records of all GST-related transactions including invoices, receipts, and other relevant documents.
 - Meticulous record-keeping is a legal requirement as well as an ethical duty of the CA.
- CAs role to act as a tax advisor to their clients: must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.
- CAs role in representing their client: They can also appear on behalf of his client before a GST officer, Appellate Authority/Appellate Tribunal in connection with any proceedings.
- CAs role in providing certifications:
 - Provide certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.
 - They primarily aim at curbing the unethical practices and preventing the leakage of revenue.
 - Every CA to exercise utmost care & due diligence while granting these certifications.
 - Ethical Compliance: Adhere to the Code of Ethics by ICAI, and follow the standards of SQC-1 and other relevant requirements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:

Certifications/reports to be furnished by a CA required under the GST law

1. Certification of amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status/coming into tax-paying status [Section 18(1) read with rule 40]

The credit is available in the following manner:

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on day immediately preceding
Section 18(1)(a)	Person has applied for registration within 30 days from date of he becomes liable and granted.	Inputs held in stock & inputs contained in semi-finished/finished goods held in stock	the date from which he becomes liable to pay tax
18(1)(b)	Person who obtains Voluntary registration	Inputs held in stock & inputs contained in semi-	the date of registration

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on day immediately preceeding
		finished/finished goods held in stock	
18(1)(c)	Registered person switches from composition to regular scheme	Inputs held in stock & inputs contained in semi-finished/finished goods held in stock & capital goods	the date from which he becomes liable to pay tax under regular scheme
18(1)(d)	Registered person whose exempt supplies become taxable supplies	Inputs held in stock & inputs contained in semi-finished/finished goods held in stock relating to such exempt supply & capital goods exclusively used for exempt supply	the date from which such supply becomes taxable

- The RP has to make an electronic declaration in Form ITC-01 on the common portal,
- The declaration is to be filed within 30 days from the date when RP becomes eligible.
- If the claim of ITC exceeds Rs. 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant or Cost Accountant.
- A Chartered Accountant role:
 - o Examine books of accounts and other relevant documents/records.
 - o Provide reasonable assurance that amounts declared in GST ITC-01 are accurate.

2. Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]

- In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the e-credit ledger of RP can be transferred to the new entity, if there is a specific provision for transfer of liabilities.
- The RP should furnish the details of change in constitution in ITC - 02 on the common portal.
- Practicing Chartered Accountant or Cost Accountant should certify that the change in constitution has been done with a specific provision for transfer of liabilities.
- A Chartered Accountant role:
 - o examine the books of accounts and other relevant documents/records of the taxpayer and

- to provide a reasonable assurance that transfer of business has been done with a specific provision for the transfer of liabilities.

3. Certification that in case of refund claim exceeding Rs. 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]

- A certificate in Annexure 2 of Form GST RFD-01 is to be issued by a Chartered accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds Rs. 2 lakh.
- Chartered Accountant role:
 - Meticulous examination of the books of accounts and other relevant documents/records
 - Providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

4. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from taxpaying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

- Reversal of ITC:
 - Section 29(5): Required on cancellation of registration.
 - Section 18(4): Required when switching to composition levy or when supplies become wholly exempt.
- ITC reversal:
 - on inputs should be on the basis of corresponding invoices on which credit had been availed on such inputs.
 - If invoices are not available, reversal on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration.
 - If prevailing market value is taken, it need to be duly certified by a practicing Chartered Accountant or Cost Accountant.
- Chartered Accountant role:
 - Meticulous examination of the books of accounts and other relevant documents / records
 - Providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices are not available.

5. Audit report under section 66

- A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest.

- This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases.
- He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited.
- He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information.
- He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.
- Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

CASE STUDIES

- Case Studies are used to highlight ethical considerations for Chartered Accountants when issuing GST certificates/reports and giving GST-related advice.
- Purpose is to encourage students to act ethically in GST-related functions and avoid unethical practices.
- Implications: Discuss the significant consequences under GST law for unethical practices.
- Students should refer to demands and recovery, offences, penalties, and prosecution under GST law for consequences.
- Professional Misconduct: Chartered Accountants may be deemed guilty of misconduct under clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

Case Study 1

Facts of the case

M/s L and Co., a partnership firm with two partners - Mr. X and Mr. Y, is registered under GST in Kolkata, West Bengal. It is engaged in supplying the materials used for construction related activity. Mr. X and Mr. Y are friends and each of them also have their own separate sole proprietorship firms engaged in supplying construction material; these firms are registered under GST. Mr. A (not a CA) is the tax consultant of the firm - M/s L and Co.

Mr. X gets an offer from a customer - M/s W Pvt. Ltd., (hereinafter referred to as WPL) - to issue some supply related bills to meet the budget allocated to WPL by Mr. X gets an offer from a customer - M/s W Pvt. Ltd., (hereinafter referred to as WPL) - to issue some supply related bills to meet the budget allocated to WPL by their management in relation to civil works. Mr. X shall earn a commission of 20% of the value of supply charged in the supply bills accepted by WPL. Mr. X agrees to share 50% of his earnings with Mr. Y for undertaking the above project. M/s L and Co. needs a bank loan for expanding its business operations and the supply bills issued to WPL will inflate the turnover of M/s L and Co. Mr. X and Mr. Y sought advice from their tax consultant Mr. A as to how to execute the above project for the supply bills to be issued to WPL. Based on the guidance provided by Mr. A, it is executed as follows:

- M/s L and Co. shall issue supply related bills for steel, jelly stone and cement for Rs. 280 lakh to Mr. X wherein the delivery site shall be of WPL (Bill to Ship to Model).
- Mr. X shall avail and utilise the input tax credit (ITC) on the bill of Rs. 280 lakh and shall separately enter into a contract with WPL for supply of steel, jelly stone and cement (to be used for construction of foundation of Plant and Machinery) for Rs. 280 lakh. Further, Mr. X, in his individual capacity, shall issue labour work related bills for Rs. 40 lakh for the assembly and erection work relating to construction of foundation of Plant and Machinery undertaken at the site of WPL, without actually providing any service. WPL will avail and utilise the ITC on the bills of Rs. 280 lakh and Rs. 40 lakh used for underlying supply of goods.
- All inventory registers are updated duly by M/s L and Co. without any actual movement/supply of the material and some e-way bills are also generated on behalf of Mr. X for the supplies made to the work site of WPL.

Mr. A assures Mr. X and Mr. Y that:

- Inventory registers are up to date for material movement.
- Compliances pertaining to e-way bill have been taken care of.
- Money shall be duly realised as per the bills issued.

Mr. X approached his friend - Mr. P, a practicing Chartered Accountant, for seeking his help in above arrangement. However, Mr. P makes Mr. X conversant with the following GST implications that may arise in above arrangement:

GST implications

1. **Issue of invoice by M/s L and Co. to Mr. X:** Since there has only been an issuance of tax invoice by the registered person - M/s L and Co. - to registered person 'Mr. X' without the underlying supply of steel, jelly stone and cement, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by M/s L and Co. to Mr. X in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against M/s L and Co. for the said transaction, and accordingly, no demand and recovery is required to be made against M/s L and Co. under the provisions of section 74 in respect of the same. The registered person - M/s L and Co. - shall, however, be liable for penal action

under section 122(1)(ii) for issuing tax invoices without actual supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii).

2. **Issue of invoice by Mr. X to WPL:** The registered person - Mr. X has availed and utilized fraudulent ITC on the basis of the tax invoice issued in contravention of the provisions of section 16(2)(b), without receiving the supply of steel, jelly stone and cement. Further, there was no supply of steel, jelly stone and cement and labour work related services by Mr. X to WPL. Thus, in respect of the said transactions, no tax was required to be paid. In these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by Mr. X in such case or tax liability in respect of the said outward transaction by Mr. X to WPL is required to be made from Mr. X under the provisions of section 74. However, in such cases, Mr. X shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

WPL will be liable for the demand and recovery of the ITC availed and utilised by it, along with penal action under section 74 along with applicable interest under provisions of section 50, for taking/ utilizing ITC without actual receipt of steel, jelly stone and cement and without receiving the assembly and erection services, used for underlying supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

3. **GST implications on Mr. A:** Mr. A who advised for designing the above business practice shall also be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence is also punishable with imprisonment subject to specified conditions.

Mr. P apprised Mr. X that if any Chartered Accountant advises Mr. X on above arrangement, then he will also be punishable with penalty in terms of the provisions of 122(3) for aiding/abetting the offences specified above and may also be punishable with imprisonment subject to specified conditions. Further, he may also be held guilty of professional misconduct.

Case Study 2

Facts of the case

Doodle LLC is an entity registered in Germany and is engaged in providing online services across multiple countries including India. The service offerings include certain services which are

covered within the purview of online information and database access or retrieval services i.e. OIDAR services liable to GST in India. Since Doodle LLC does not have any place of business in India, it appointed one of its employee - Mr. X (not a CA) as its authorized representative for all the purposes in India which includes undertaking GST compliances and also as an authorized signatory for any other regulatory compliances in India. Mr. X is a partner in XYZ & Associates LLP. Post appointment of Mr. X, following chain of events unfolded:

1. Mr. X, being an authorized representative of Doodle LLC, made an application for registration as an OIDAR service provider in India and undertook other GST compliances. Subsequently, Mr. X started filing the monthly GST returns and made payment of applicable GST in India on behalf of Doodle LLC. In lieu of such services, Mr. X was being remunerated a fixed sum on monthly basis as professional fee. The appointment of Mr. X was in his personal capacity and not a professional service contract with his partnership firm - XYZ & Associates LLP. However, for recovery of amount of fixed monthly remuneration from Doodle LLC, the invoices as 'export of services' were issued by Mr. X in the name of his partnership firm. The corresponding refund benefit was claimed by the partnership firm of Mr. X for input tax credit against such export of service invoices.
2. Doodle LLC appointed influencers in India to promote its services in India. The tax invoices of such influencers were received by Mr. X in name of XYZ & Associates LLP and input tax credit was availed by the partnership firm for such services. Said ITC was utilised for further supply of services. However, the actual service recipient in such case was Doodle LLC.
3. Subsequently, Doodle LLC was required to submit certain affidavits and accounting records before the office of the Enforcement Directorate. Being an authorized representative/signatory of Doodle LLC, Mr. X approached Mr. P, a practicing Chartered Accountant, to prepare the affidavits and accounting records which included critical financial information and data of Doodle LLC. He elaborated the entire arrangement among Doodle LLC, Mr. X and XYZ & Associates LLP to Mr. P. He further requested Mr. P to certify and attest such records, which would be prepared and compiled by Mr. P in capacity of a practicing Chartered Accountant for submission before Enforcement Directorate.

Mr. P apprised Mr. X of the following GST implications:

1. **Incorrect issuance of invoice for export of services and claim of refund of input tax credit on the basis of such export of service related invoice**

Mr. X was appointed as authorized representative and signatory of Doodle LLC in his personal capacity to undertake the compliances enumerated under the GST law in India. However, the consideration for such services was received at the behest of invoices issued in the name of his partnership firm. Further, such invoices were issued as 'export of service' invoices and corresponding refund of input tax credit was claimed by the firm of Mr. X. This act of Mr. X along with his firm is punishable as follows:

- Since Mr. X supplied services to Doodle LLC without any invoice, he shall also be liable for the demand and recovery of tax on said supply, along with penal action under section 74. Even if the contention is made that invoice was issued for such services by the firm of Mr. X, the same shall be treated as an incorrect invoice or false invoice as both, Mr. X and XYZ & Associates LLP are separate persons as per GST Law.
- Since both, Mr. X and XYZ & Associates LLP are different persons, the invoice issued by the firm shall be construed as issuance of invoice without supply of services viz. an offence punishable under section 122(1)(ii).
- Incorrect refund was claimed by XYZ & Associates LLP for input tax credit on the basis of incorrect invoice for export of services to Doodle LLC. This is an offence under section 122(1)(viii).
- All the above offences may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

2. Availment of input tax credit without actual receipt of services

XYZ & Associates LLP received invoices from the influencers who were actually providing services to Doodle LLC. Further, the input tax credit related to such invoices was availed by XYZ & Associates LLP in contravention of the provisions of section 16. Accordingly, the input tax credit availed and utilised by XYZ & Associates LLP for further supply of services is incorrect. Thus, XYZ & Associates LLP will be liable for the demand and recovery of the said ITC, along with penal action under section 74 along with interest under section 50 as the actual service recipient was Doodle LLC and not XYZ & Associates LLP. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. GST implications on Mr. X

Mr. X was fully involved in wrongdoings in terms of the business transactions of Doodle LLC in India. Further, he was the authorized representative and signatory of Doodle LLC in India. Mr. X is liable to penalty under section 122(1A) and section 122(3) since he is involved in aiding and abetting the offences committed hereunder at his instance and has also derived monetary benefits from such practices. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant takes up the assignment offered by Mr. X and also attests/certifies the Doodle LLC's accounting records that would be prepared by him, for submission before the Enforcement Directorate in India, he may be held guilty of professional misconduct.

Case Study 3

Facts of the Case:

ABC & Associates LLP (ABC), a firm of Chartered Accountants, was empanelled with the Commissioner of GST for appointment as Special Auditor under section 66. X Ltd., a registered person under GST, was selected by the Office of the Commissioner for special audit under section 66 for a financial year on account of irregularities noticed during scrutiny of returns. ABC was nominated by the Office of the Commissioner for special audit of X Ltd. Assume that the following events unfolded in relation to the appointment and audit procedure:

1. The appointment of special auditor was based on the undertaking furnished by the firm that the partners of the firm/any of their relatives are not directly/indirectly related to the auditee. However, while submitting declaration in relation to such appointment, if ABC fails to disclose the fact that spouse of one of the partners of ABC is working under full time employment as a Head of Tax Department of auditee i.e. X Ltd., what will be its implications?
2. Material discrepancies in the valuation of stock transfer to related parties by the auditee were noticed by ABC. If ABC fails to disclose these material discrepancies in the audit report submitted to the Office of Commissioner, what will be its implications?
3. The ITC claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for ITC as per section 18. However, if ABC fails to exercise the due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings, what will be its implications?
4. ABC receives a consideration of Rs. 5 lakh from X Ltd. in the name of special audit conducted.

Following GST implications may arise in the above cases:

1. **False undertaking submitted before the Office of Commissioner GST and the audit engagement undertaken on the basis of such undertaking**

The essential terms of the appointment as special auditor included that the partners or any of the relatives of the partners are not directly or indirectly linked to X Ltd. i.e. the auditee. If the spouse of one of the partners of ABC is working as Head of Tax Department of the auditee. Non-disclosure of said fact in the undertaking and other engagement documents and accepting such engagement tantamount to submission of false undertaking by a Chartered Accountant firm to the Government Authorities. Further, a question may be raised about the independence of the audit team considering the fact that spouse of one of the partners of the firm is holding a key position in X Ltd. i.e. the auditee.

2. **Non-reporting of material discrepancies noticed during the audit procedure and reliance upon incorrect certificates and information**

ABC audit team did not exercise due diligence to ascertain that the input tax credit availed by X Ltd. is not in compliance with the GST provisions. Instead, ABC relied on the certificate issued by its own associate firm which justified the incorrect input tax credit claim by X Ltd. In such a scenario both ABC and the associate firm, which issued the certificate to justify the input tax credit claim, were aiding and abetting X Ltd. in wrongful availment of credit, which is an offence punishable with penalty under 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions. Further, ABC as well as its associate firm may be held guilty of professional misconduct.

3. Receiving consideration for special audit from the auditee

The consideration for special audit under section 66 is payable by the Office of Commissioner and cannot be directly recovered from the auditee. In the present case the receipt of Rs. 5 lakh from the X Ltd., i.e. the auditee by ABC is an offence under GST provisions. The same is liable to penalty under general penalty under section 125 apart from other penal provisions under the GST Law. Further, this will also have an impact on the independence of the auditor - ABC.

Case Study 4

Facts of the Case:

A Ltd. is engaged in the business of manufacturing cotton yarn, wherein cotton is the principal raw material in the manufacturing process. The price of cotton varies depending upon the market conditions and is dependent on various external factors. Mr. X (not a CA) is tax consultant of A Ltd. Mr. X advises A Ltd. on GST compliances.

In order to meet expansion related expenditure, A Ltd. sought a term loan and working capital loan from banks. As per the bank, the turnover and profitability criteria of A Ltd. were not meeting the benchmarks of bank for sanction of any loan facility. Accordingly, following actions were undertaken by Mr. X being the tax consultant of A Ltd.:

1. A separate entity i.e. B Ltd. was incorporated and the Directors of A Ltd. Were appointed as Directors in B Ltd. This ensured that the control of B Ltd. remains with the Directors of A Ltd. Further, B Ltd. obtained GST registration as a manufacturer of yarn wherein Mr. X assisted B Ltd. in obtaining such GST registration. Mr. X obtained registration providing fake documents for registration.
2. Subsequently, A Ltd. started issuing tax invoices for supply of yarn to B Ltd. However, there was no actual movement of goods by A Ltd. to B Ltd. The tax invoices were issued and the same were reported in the GST returns by A Ltd. Further, B Ltd. availed the ITC of all such tax invoices reported by A Ltd. The finished goods related to such tax invoices were sold in the local market by A Ltd. in cash without charging any GST & without issuance of tax invoice.

3. B Ltd. issued tax invoices for provision of certain services to A Ltd. in form of testing of cotton, repairs and maintenance of machinery installed at A Ltd. apart from other services. However, no such services were actually provided by B Ltd. to A Ltd. The input tax credit appearing in the books of B Ltd. (which was availed on the basis of fake yarn invoices) was utilized by B Ltd. at the time of discharging GST liability in relation to the alleged tax invoices issued against provision of services to A Ltd.
4. Further, B Ltd. issued tax invoices for sale of yarn (allegedly purchased from A Ltd.) to other group entities to ensure that the stock of yarn becomes zero in the books of accounts at the year end. The tax invoices were issued at a rate lowered by 90% of the actual tax invoice received from A Ltd. Contending that the quality of yarn had deteriorated during the storage.
5. Mr. X was aware of the aforesaid actions of A Ltd. and B Ltd. Further, the GST returns were filed by Mr. X for both the companies.
6. A Ltd. approached Mr. P, a practicing Chartered Accountant to issue relevant certificates to the bank certifying the turnover of A Ltd. and B Ltd. as genuine turnover to ensure that the required loan amount is sanctioned to A Ltd. A Ltd. elaborated the entire arrangement made by it with regard to B Ltd.

Mr. P apprised A Ltd. of the following GST implications that may arise in the given case:

GST implications

1. GST registration of B Ltd. sought on the basis of fake documents

As per section 122(1)(xii), furnishing of false information with regard to registration particulars is an offence liable to penalty under GST Law. Thus, B Ltd is liable to penalty under section 122(1)(xii).

2. Issuance of tax invoice without actual supply of goods or services

Following instances happened wherein there was no actual supply of goods or services, however, tax invoice was issued:

- Fake issuance of tax invoice for supply of yarn by A Ltd. to B Ltd. (Para 2)
- Fake issuance of tax invoice for supply of services by B Ltd. to A Ltd. (Para 3)
- Fake issuance of tax invoice for supply of goods by B Ltd to group entities (Para 4)

The aforesaid actions are liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods and services. This offence may also be punishable with imprisonment and fine u/s 132(1) depending on the amount of default involved and subject to specified conditions.

3. Fraudulent input tax credit availment

B Ltd. availed fraudulent input tax credit of the goods (yarn) which were not at all received by B Ltd. and the same was used in discharge of the tax liability related to invoices issued without any underlying supply of goods or services.

B Ltd. has availed and utilized fraudulent ITC on the basis of the said tax invoice, in contravention of the provisions of section 16(2)(b), without receiving the supply of goods and accordingly. In this case, there was no supply of by B Ltd. to A Ltd. in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by B Ltd. in such case or tax liability in respect of the said outward transaction by B Ltd. to A Ltd. is required to be made from B Ltd. under the provisions of section 74. However, in such cases, B Ltd. shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

4. Incorrect information in GST returns and falsification of books of accounts

The GST returns filed by A Ltd. and B Ltd. were not backed by correct information in terms of supply of goods and services. Knowing that there was no supply of goods or services and input tax credit is not available, the returns were filed by both the companies. The books of accounts and financial records were also falsified in terms of information related to sales and inventory. This act of furnishing incorrect information in GST return and falsifying financial records is an offence under section 122(1)(x). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

5. GST implications on Mr. X

Mr. X, being a consultant of A Ltd., had adequate knowledge of the fraud and wilful misrepresentation of the facts in terms of maintaining the financial records and submission of information in GST returns. In fact, Mr. X himself was filing the GST returns and was aware of the fake invoices and ineligible input tax credit availment by the companies. Mr. X shall be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant undertakes the assignment of issuing relevant certificates to the bank thereby certifying the turnover of A Ltd. and B Ltd., he may be held guilty of professional misconduct. Further, he shall also be liable to a penalty in terms of the provisions of 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

Meaning

Custom duty is an indirect tax which is imposed on imports & Exports into and from India.

Elaborate the meaning and historical background of "customs"

- The term 'customs' derives its colour & essence from the term 'custom', which means a habitual practice.
- In the Earlier times it was customary for a trader who brings the goods to a particular kingdom to offer gifts to the king for allowing him to sell his goods in that kingdom.
- During those days, the gifts given by the dealer to the king was nothing but a customary practice. In the modern times, these gifts are collected by the Government in the form of Customs Duty from the importer who imports the goods from a country outside India and from an exporter who exports the goods to a country outside India.

Provisions of Constitution of India

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of states. The matters are listed in the seventh schedule to the Constitution. The seventh schedule is classified into three lists as follows: List I, II and III.

List I [referred as Union List]

This list enumerates the matters in respect of which the Parliament has an exclusive right to make laws. Entry 83 of Union List has given the power to CG to levy duties of Customs including export duties.

The Customs law consists of:

1. The Customs Act:

Passed by the Parliament in 1962, replaced the erstwhile Sea Customs Act.

The Customs Act, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924.

2. The Customs Tariff Act:

Passed in the year 1975 to replace Indian Tariff Act, 1934. It provides rates of custom duty.

- First schedule: Rates of import duty
- Second schedule: Rates of export duty

3. Rules:

Section 156 of the Customs act: General power to make rules.

The Central Government may make rules consistent with this Act generally to carry out the purposes of this Act. They are in consistency with the act.

Examples: Customs Valuation Rules, Baggage Rules, 2016, Customs Drawback Rules, etc.

4. Regulations (Directive/process)

Section 157: General power to make regulations.

The Board (CBIC) may make regulations consistent with this Act and the rules, generally to carry out the purposes of this Act.

Examples: Customs Audit Regulations, 2018, Boat Notes Regulations, 1976, etc.

Common portal: CBIC hereby notified the common portal accessible through uniform resource locator (URL) <https://www.icegate.gov.in> as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the customs Act.

Section 1 of Customs Act 1962: Short title, extent and commencement

(1) This Act may be called the Customs Act, 1962

(2) It extends to the whole of India and save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

(3) It shall come into force on such date (1-2-1963) as the Central Government may, by notification in the Official Gazette, appoint.

Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and collection:

- Levy:** the goods, the point & circumstances under which the customs duty becomes leviable.
- Assessment:** the procedure of quantifying the amount of liability.
- Collection:** the final stage is where the duty is actually collected subject to exemption.

Charging section [Section 12 of Customs Act 1962 - Dutiable goods.]

1. Except as otherwise provided in this Act, or any other law for the time being in force,

- duties of customs shall be levied
- at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force,
- on goods imported into, or exported from, India.

2. The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Note:

- Hence, government goods shall be treated at par with non-Governmental goods for the purposes of levy of customs duty.
- But imports by Ministry of Defense, Coastal Guard etc. are fully exempt from duty by a specific notification.

Steps to charging custom duty

- Duties of customs shall be levied on goods. However, this levy is subject to other sections
- Taxable event - Import of goods into India/export of goods from India
- Duties of customs shall be levied at Rate: As per custom tariff act 1975
- Value as per section 14.

Except as otherwise provided in this Act, or any other law for the time being in force

Custom duty shall be levied on goods imported into/exported from India. However, this levy is subject to other sections in Act.

For Example:

Section 13 - no duty on pilfered goods

Section 22 - reduced duty on damaged goods

Section 23 - remission of duty on destroyed goods.

Section 25 - Power to grant Exemption, etc.

Goods: Section 2(22) of Customs act 1962

Goods includes -

- Vessels, aircrafts and vehicles;
- Stores;
- Baggage;
- Currency and negotiable instruments; and
- Any other kind of movable property;

Vessel (by sea), aircraft (by air) and vehicle (by land)

(Jalyan Udyog (Bombay High Court))

- Vessel, aircraft & vehicle carrying goods/passengers as conveyance, are not goods, shall not be liable to duty.
- But if they are not used as conveyance and permanently imported, liable to duty.

Conveyance includes a vessel, an aircraft and a vehicle;

Vehicle means conveyance of any kind used on land and includes a railway vehicle.

Stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;

Example:

- Goods intended to be consumed by passengers and crew on board
- Goods necessary for the maintenance of vessel or aircraft during journey.
- Stock of fuel (diesel, air turbine fuel, etc.) and essential spare parts.

Baggage includes unaccompanied baggage but does not include motor vehicles;

Currency and negotiable instruments: It has been included in the definition of goods, in order to make people declare the same.

Any other kind of movable property: Example: TV, mobile, iPad, liquor, watches, etc.

Case Law: Drawings, designs, manuals & technical material are goods liable to duty

Associated Cement Companies Ltd. v CC 2001 (128) ELT 21 (SC)

- Apex Court observed that though technical advice/information technology are intangible assets, but the moment they are put on a media, whether paper/cassettes/diskettes/any other thing, they become movable and are thus, goods.
- Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.
- Therefore, the stand taken by the RST Ltd. is not correct in law.

India [Section 2(27)]

- India includes the territorial waters of India.
- The term India is an inclusive definition and includes not only the land mass of India but also territorial waters of India.
- The territorial waters extend to 12 nautical miles (NM) into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters. (1 NM = 1.853 Kms)
- As per Maritime Zones Act, 1976, The various maritime zones and limits have been defined:
- Territorial waters - 12 nautical miles (22 kms) from the nearest point of the appropriate baseline. India extends up to the TWI & to the seabed and subsoil underlying, and the air space over, such waters.

- **Significance of TWI:** To determine the taxable event i.e., imports & Exports. Import commences when goods enter TWI and Export is complete when they cross TWI.
- **The continental shelf** - the seabed and subsoil of the submarine areas that extend beyond the limit of its TWI up to a distance of 200 nautical miles from the baseline.
- **The exclusive economic zone** is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline.
- **Significance of EEZ:** In this zone, coastal State has exclusive rights to exploit it for economic purpose like constructing artificial islands for oil exploration, power generation and so on.
- **High Seas:** An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

Author's comment: The CG is empowered by Maritime zones act, to extend the applicability of customs act and customs tariff act to designated areas in continental shelf and also EEZ. The CG has extended the applicability of customs act to notified areas in continental shelf and also EEZ for the limited purpose of exploration of mineral oil, petroleum or natural gas. Hence these areas form part of India for the purpose of levy of customs. Hence, if goods are produced or manufactured within such area and brought into the landmass of India, it shall not be leviable to custom duty and Vice versa.

Indian customs waters [Section 2(28)] - ICW

Indian customs waters means the waters extending into the sea up to the limit of EEZ u/s 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbor, creek or tidal river.

Bay: a broad inlet of the sea where the land curves inwards,

Gulf: a deep inlet of the sea almost surrounded by land, with a narrow mouth,

Harbor: a place on the coast where ships may moor in shelter.

Significance of Indian customs waters (up to 200 NM)

- (i) Power to arrest person
- (ii) Power to stop and search vessel and person
- (iii) Power of Confiscation of vessel and goods

Author's comment:

- Earlier the ICW extended up to contiguous zone of India i.e., only up to 24 nautical miles, however finance act 2018 has made ICW extended up to EEZ i.e., 200 NM.
- If the PO of customs has reason to believe that any vessel in ICWs is being used in the smuggling of any goods, he may at any time stop any such vessel, search the vessel and person and confiscate goods & vessel.

Import: Section 2(23)

Imports means bringing into India from a place outside India

Section 12 makes it clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

The main test for determining the taxable event is the happening of the event on which the charge is affixed.

(a) In case of goods cleared for home consumption

The Supreme Court observed that Import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

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

(b) In case of goods cleared for warehousing

In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country.

Kiran Spinning Mills v. Collector of Customs 1999

Case law: Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)

In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

Facts of the Case: The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Point of Dispute: The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India.

Decision: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty. Hence, **Import Duty is levied on actual quantity of goods received in India.**

Caselaw: Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)

Goods imported for consumption on oil rigs to attract import duty

Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/

Exclusive Economic Zones of India, are deemed to be a part of Indian Territory. Therefore, the supply of **imported spares or goods or equipments to the rigs by a ship will attract import duty.**

Export: Section 2(18)

Export means taking out of India to a place outside India.

Hence, Export happens once the goods cross the TWI.

Note: For an activity to be treated as exports, there is **no stipulation/ condition as to realization of sale proceeds in convertible foreign exchange.**

Case law: In case of UOI vs Rajindra Dyeing & Printing mills Ltd 2005

The Supreme Court held, that when the vessel sank within the TWI, no export is said to have happened. Hence, export is complete only if ship leaves the TWI.

Case law: In case of CC v. Sun Industries 1988 (35) ELT (241)

The Supreme Court held that the expression "taking out of India to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outside India". The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place.

Hence concluded that, the fact that the ship was brought back to India because of the damages in the ship does not, in our opinion, affect the position and there was export of goods.

Remission, abatement and Exemptions

Section 13: Duty on Pilfered goods

If any imported goods are pilfered

- after the unloading thereof and
- before the PO has made an order for clearance for home consumption/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.

Notes on Pilferage:

- Pilferage means the action of stealing things of little value.
- No duty is payable on pilfered goods except where such goods are restored to the importer.
- If pilferage notice post payment of duty i.e., at the time of removing, refund can be claimed.
- Section 13 does not apply for the warehoused goods.
- The idea behind this section is that when the goods are not under the control of the importer, he should not be required to pay duty on such goods.
- In such case since the goods are in the custody of custodian, he is made liable to pay the custom duty on pilfered goods.

(a) Conditions to be satisfied for exemption from duty

- The imported goods should have been pilfered.
- The pilferage should have occurred after the goods are unloaded, but before the PO makes the order of clearance for home consumption or for deposit into warehouse.
- The pilfered goods should not have been restored back to the importer

(b) Circumstances in which pilferage can be claimed

- there should be evidence of tampering with the packages;
- there should be blank space for the missing articles in the package; and
- the missing articles should be unit articles [and not part articles]

(c) Pilferage noticed at the time of removal of goods by the importer

As in such the circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

(d) Following points merit consideration

1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.
2. Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
3. Section 13 would not apply if pilferage took place prior to the unloading of goods.
4. Section 13 applies to the goods which are under the custody of the custodian under section 45. The goods, even though held by the custodian appointed by the Collector, are held by him for the purposes of customs formalities. Any pilferage noticed during the period is on the account of the Customs formalities. Section 13 and section 45 are independent provisions. In other words, whether duty is paid/ payable by the custodian or not, remission cannot be denied to the importer by the Department.

Section 23: Remission of duty on lost, destroyed or abandoned goods

(1) Remission of duty on goods lost or destroyed before clearance:

Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the AC/DC that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner/Deputy Commissioner shall remit the duty on such goods.

Note:

1. Burden of proof is on importer to prove loss or destruction under section 23
2. Loss or destruction may be due to fire, accident etc., but not pilferage

(2) Right to relinquish the title to the goods in case of abandonment of goods:

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption or an order for permitting the deposit of goods in a warehouse has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

Proviso: the 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.

Importer may relinquish his title to the goods in the following cases [Section 23(2)]:

- (i) Imported goods may not be according to the specifications;
- (ii) Goods may have been damaged/deteriorated during voyage & as such may not be useful.
- (iii) There might have been breach of contract & therefore, the importer may be unwilling to take delivery of the goods.

Section 22: Abatement of duty on damaged or deteriorated goods

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.

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

(1) Damaged goods shall be chargeable to duty after satisfaction of the AC/DC as per Sec 22(2)

Where it is shown to the satisfaction of the AC/DC of Customs -

- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
- (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any willful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent, such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) Import duty shall be abated proportionately as decline in market price of the goods

The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) The value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner: -

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods

Summary of Abatement of Duty

Abatement of duty on Goods	Damaged	Deteriorated
Before/During Unloading	Abatement Available	Abatement Available
after unloading but before their examination u/s 17	Abatement Available	Abatement Unavailable
Warehoused goods before their clearance for Home consumption	Abatement Available	Abatement Unavailable

Amount of duty chargeable after abatement

= $\frac{\text{Duty on goods before damage / deterioration} \times \text{Value of damaged/deteriorated goods}}{\text{Value of goods before damage / deterioration}}$

Valuation of the damaged or deteriorated goods

The value shall be:

(a) Value ascertained by the proper officer or

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

Section 24: Power to make rules for denaturing or mutilation of goods

The CG may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured/mutilated, they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured/mutilated form.

Mutilation means to damage something severely, especially by violently removing a part

Example: A machine imported as scrap, can be mutilated at port, so as to be treated as import of scrap and chargeable to duty at the rate of scrap.

Denaturing means take away or alter the natural qualities of.

Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

Example: Ethyl Alcohol which is not denatured attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty. Assuming un denatured ethyl alcohol is imported, certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

Section 20 of CA 1962: Re-importation of goods produced/manufactured in India

If goods are imported into India after exportation therefrom,

- Such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

Note: It implies that goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are otherwise imported.

Notification No. 45/2017 Cus. dated 30.06.2017

In exercise of the powers u/s 25(1) of the Customs Act, the CG, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act and specified in column (2) of the Table below when re- imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the, integrated tax , compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.

The following notifications have provided certain concessions in this regard:

(1) Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback, rebate etc.

SN	Description of goods exported	Amount of import duty payable if re-imported
1	Goods exported - (i) under claim for drawback (ii) under claim for refund of IGST paid on export goods (iii) under bond without payment of integrated tax (iv) under duty exemption scheme (DEEC/ Advance Authorisation/ DFIA or Export Promotion Capital Goods Scheme (EPCG) (v) under claim for RoDTEP (vi) under claim for RoSCTL	Amount of incentive availed of at the time of export subject to specified conditions. In case of point (iv) amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
2	Goods other than falling in (1) above, exported for repairs abroad (First imported, then Exported for repair, then re-imported)	Duty of customs (Basic Customs duty, IGST and GST compensation cess) 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.
3	Goods other than falling under S. No. 1 & 2 above	Nil

Conditions to be satisfied for claiming the above two concession/exemptions: -

- Time-limit for re-importation is 5 years. This is extendable for a period up to 2 years.
- In case of goods exported under DEEC/AA/DFIA/EPCG/Duty Entitlement Passbook Scheme/ any scheme of Chapter 4 of Foreign Trade Policy 2023 (i.e. RODTEP/ROSCTL), such time limit is 1 year, extended further for upto 1 year.
- Exported goods and the re-imported goods must be the same.
- The ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by a 100% EOU or a unit in a free trade zone.

- re-imported goods had been exported from a public/private warehouse.
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944m(tobacco products and petroleum products).

Explanation: On recommendation of the GST council, it is clarified that goods mentioned in SI no. 2 are leviable to IGST and cess under the CTA besides the CD as specified in the said first schedule.

Exemption to re-import of goods & parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process (First Indian manufactured goods exported, then re-imported for repair and then re-exported.)

Sl No.	Goods manufactured in India and re- imported for	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1	Goods manufactured in India and re-imported for Repairs/ reconditioning other than the specified goods	3 years In case of export to Nepal & Bhutan, such time-limit is 10 years .	(a) Re-exported: within 6 months from the date of re-importation (or further extended period of 1 year by commissioner)
2	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clause (a) to (c) above	1 year	(b) Same goods to be re-exported: The Assistant/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importers at the time of importation executes a bond.
3	Specified goods manufactured in India and re-imported into India for repairs or for reconditioning	7 years (10 years in case of Nepal and Bhutan)	(a) Goods must be re-exported within one year of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods.

Sl No.	Goods manufactured in India and re- imported for	Time-limit for re- importation from the date of exportation	Other conditions to be satisfied
			(c) The importer at the time of importation executes a bond.

Reference: NNo.158/95 Cus. dt. 14.11.95 as amended vide NNo. 60/2018 Cus dt. 11.09.18

Some of the examples of specified goods are automatic data processing machines and units thereof; magnetic or optical readers, automatic bank note dispensers, static converters, audio-frequency electric amplifiers, telephone sets, projectors, colour TVs, electro-cardiographs, hearing aids. **These examples are only for the sake of knowledge of the students and are not expected from the students in examination.**

Note: In point 2 above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of AC/DC of Customs.

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

Note: Any loss notice during reprocessing, refining or re-making shall be exempt from the whole the customs duties subject to the satisfaction of the Assistant or Deputy Commissioner.

Clarification regarding applicability of NNo. 45/2017 Cus dt. 30.06.17 on goods which were exported earlier for exhibition purpose/consignment basis [Circular No. 21/2019 Cus]

- **Exemption:** Notification No. 45/2017 Customs dt. 30 June 2017 provides exemptions from customs duty, integrated tax, and compensation cess on certain exported goods.
- **Clarification by CBIC:** Goods exported for exhibition or consignment (without payment) don't count as a supply, so no IGST is needed when taking them out of India. No LUT/bond filing required.
- **No IGST on Re-import:** No IGST required on re-import of such goods under residuary entry 13 of the notification if re-import happens within six months.
- **Applicability:** Applies to exports to related or distinct persons for exhibitions or consignment. If goods are returned without acceptance, they are covered under the exemption.

Section 21: Goods derelict, wreck, etc.

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.

Meaning of the various terms

Derelict: This refers to any cargo, vessel, etc. abandoned in the sea which has no hope of recovery.

Jetsam: This refers to goods jettisoned which means thrown away from the vessel into the sea to save the vessel from sinking.

Flotsam: Some Jettisoned goods sink into the sea whereas others float in the sea. Hence, Jettisoned goods which continue floating in the sea are called flotsam.

Wreck: This refers to cargo or vessel or any property which are cast ashore (reach the sea shore) by tides after ship wreck.

Section 25: Power to grant exemption from duty

(1) CG is satisfied in Public interest, may by notification grant exemption generally/absolutely: General

If the CG 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 (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) CG may grant exemption by special order under exceptional circumstances: Special

If the CG is satisfied that

- it is necessary in the public interest so to do,
- it may, by special order in each case,
- exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(2A) Power to insert explanation:

The CG may,

- insert an explanation in such notification/order, by notification in the Official Gazette,
- at any time within one year of issue of the notification,
- 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.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or

method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

(4) Notification effective from date of issue in OZ

Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the CG for publication in the Official Gazette.

(4A) Validity period set for conditional exemption for exemption where the validity period is not specified in the notification.

Where any exemption is granted subject to any condition under sub-section (1), such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Provided that in respect of any such exemption in force as on the date on which the Finance Bill, 2021 receives the assent of the President, the said period of two years shall be reckoned from the 1st day February, 2021.

Example:

Notification	Notification issued date	Date after 2 years	Notification valid till
New notification (i.e., issued after to Finance bill 2021 receiving president assent.)	01.05.2021	01.05.23	31.03.24
Old Notification (i.e., issued prior to Finance bill 2021 receiving president assent.)	01.01.2020 - but 2 years to be calculated from 01.02.21	01.02.2023	31.03.23

Note:

- If the validity period is specified in the notification, then it shall be valid till the date specified.
- If exemption notification is withdrawn before 31st day of March falling immediately after two years from the date of such grant, then it shall be till the date of such withdrawn.

(6) Exemption from duty if amount of duty leviable is equal to, or less than Rs 100

Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

Effective date of notifications

Section 25 of the Act provides that the date of effect of the notification will be the date of its issue for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.

The provision is made as there may be delay of one or two days in publishing in Gazette e.g., if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November.

The following issues need to be kept in mind in case of general exemption.

(i) Where the exemption notification does not mention the date of its effect, the notification comes into effect from the date of its issue by the CG for publication in the Official Gazette.

(ii) Where the exemption is through a special order, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The beneficiary can claim refund for the period reckoned from the date of its issue.

(iii) Sub-section 2A empowers the Government to issue clarifications to the notifications within one year from the issue of the notification and such clarifications will have retrospective effect.

Rationale for grant of Exemption

The power for grant of exemption vests with the CG subject to the overall control of the Parliament. The Government on a rational basis may discretely use this power and the exemptions may be based on any of the following factors:

(a) Moral grounds, where the duty should not be levied at all. Some of the instances, which may be given, are;

(i) Where the goods do not reach the Indian soil at all.

(ii) Where the goods have reached the Indian soil but are not available for consumption.

(iii) Where the goods get damaged or deteriorated in transit.

(b) Discretionary provision, where the exemption is used for controlling the economy and industrial growth of the country.

Significant Case laws:

Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP) [maintained by SC]

Are the clearance of goods from DTA to SEZ chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

The High Court, on the basis of the following observations, inferred that clearance of goods from DTA to SEZ is not liable to export duty either under the SEZ Act, 2005/under the Customs Act:

- A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication.
- With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.
- Since both the SEZ unit and the DTA unit are located within the territorial waters of India, section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the SEZ

BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC)

Whether the importer could claim the benefit of an exemption notification in respect of the entire lot of the inputs imported including those that were damaged in transit?

The Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage. Therefore, an importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Commissioner of Customs v. Tullow India Operations Ltd. (2005)

Customs department rejected the importer's claim for exemption owing to non-compliance of a condition not within the power and control of the importer and depends upon the acts of public functionaries?

Supreme Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come. The importer cannot be blamed for the lapse by the authorities.

Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A044 (SC)

Hanil Era Textile Ltd. a 100% EOU imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area. Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods. Do you think the demand of the Customs Department is valid in law?

The Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
- (ii) such power generated has been used for manufacturing goods for export, and
- (iii) only the surplus power has been sold, as power cannot be stored.

Introduction

Customs Duty is on import & export of goods. Import may take place in any of the following modes:

- By Sea
- By Air
- By Land
- By Post
- By Passengers as their Baggage
- Ship stores considered to be imported and charged to customs duty

Customs area means the area of a customs station/a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station;

Customs port means any port appointed under clause (a) of section 7 to be a customs port, and includes a place appointed by CBIC to be an inland container depot

Customs airport means any airport appointed under clause (a) of section 7 to be a customs airport and includes a place appointed to be an air freight station;

Land Custom Station means any place appointed by CBIC to be land Custom station

Entry: in relation to goods means an entry made in

- A bill of entry,
- Shipping bill or
- Bill of export and

Includes the entry made under the regulations made under section 84.

Inland Container depot

- It is the custom station appointed by CBIC
- Basically, created for loading and unloading of Exported and Imported Goods
- Facilities for processing of bill of entry and clearance of goods are made available at ICD

Air Freight Station

- AFS are created to avoid congestion at main airport & minimizing handling operation at airport
- All Export and Import cargo clearance including custom related activities like clearance and payment of duties can be done at AFS.

IMPORT PROCEDURE

Section 29: Arrival of vessels and aircrafts in India

(1) Arrival only at custom port/airport

The Person in charge (PIC) of a vessel/an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land—

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft; at any place other than a customs port or a customs airport, as the case may be unless permitted by the Board.

Author's comment: Any contravention of this provisions will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally imports goods into India. So, entry (or attempt to enter) goods originating from outside India into any place not notified as a customs station is barred.

(2) Exemption: If compelled by accident, stress of weather or other unavoidable cause

Any vessel/aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft—

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and

(c) shall comply with any directions given by any such officer with respect to any such goods, and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft:

Proviso: nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Section 30: Delivery of arrival manifest/Import manifest/ Import report.

(1) PIC to deliver AM/IM prior to arrival, & IR in case of vehicle, within 12 hours post arrival

The person-in-charge of—

(i) a vessel; or

(ii) an aircraft; or

(iii) a vehicle,

- carrying imported goods/export goods or any other person as may be specified by the CG,
- in the case of a vessel/an aircraft, deliver to the PO an arrival manifest/import manifest by presenting electronically **prior to the arrival of the vessel/the aircraft**, as the case may be, and
- in the case of a vehicle, an **import report within 12 hours after its arrival** in the customs station,
- in such form & manner as may be prescribed and
- if the arrival manifest/import manifest/the import report/any part thereof, is not delivered to the PO within the time specified and if the PO is satisfied that there was no sufficient cause for such delay,
- the PIC/any other person referred to in this sub-section, who caused such delay, shall be liable to **a penalty not exceeding Rs 50,000**

Proviso: The Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.

(2) Declaration as to the truth of content in IM/AM/IR

The person delivering the arrival manifest/import manifest/import report shall at the foot thereof make and subscribe to **a declaration as to the truth of its contents**.

(3) Amendment of AR/IM/IR may be allowed by PO

If the PO is satisfied that the arrival manifest/import manifest/import report is in any way incorrect/incomplete & that there was no fraudulent intention, he may permit it to be amended or supplemented.

Time limit for delivery of IGM/IR:

In case of	Import Document	Time limit for presentation	Mode
Vessel	Import Manifest	Any time prior to the arrival of the vessel	Electronic filing
aircraft	Import Manifest	Any time prior to the arrival of the aircraft	Electronic filing
Vehicle	Import Report	Within 12 hours after arrival in the customs station	Manual filing

Penalty for Not Filing IGM on time is Rs 50,000

- **Belated filing of IGM:** Import manifest/Report filed belatedly may also be accepted by the proper officer on valid justified grounds.

- **Amendment to IGM:** If the PO is satisfied that the arrival manifest/import manifest/import report is in any way incorrect or incomplete and there is no fraudulent intention, he may permit it to be amended or supplemented.

Section 30A: Passenger and Crew arrival manifest & Passenger name record information

(1) PIC shall deliver to PO, Passenger & crew arrival manifest before arrival

The PIC of a conveyance that enters India from any place outside India/any other person as may be specified, shall deliver to the PO—

- The passenger & crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and
- The passenger name record information of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Non-delivery, penalty up to Rs 50,000

Where the passenger & crew arrival manifest or the passenger name record information/any part thereof is not delivered to the PO within the prescribed time and if the PO is satisfied that there was no sufficient cause for such delay, the PIC or the other specified person shall be liable to such **penalty, not exceeding Rs 50,000**, as may be prescribed.

Passenger name record information [Section 2(30B)]: means the records prepared by an operator of any aircraft or vessel or vehicle or his authorized agent for each journey booked by or on behalf of any passenger.

Section 31: Imported goods not to be unloaded from vessel until Entry Inwards granted

- (1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.
- (2) No order under sub-section (1) shall be given until an arrival manifest/import manifest has been delivered/the PO is satisfied that there was sufficient cause for not delivering it.
- (3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods. (In these cases, entry inwards are not required).

Note: Entry inwards is a term used to denote colloquially that the ship's entry papers like arrival report, manifest etc. have been received and they have been found to be in order.

Date of entry inward is the date on which the vessel found a berthing place for discharge of cargo.

Section 32: Imported goods not to be unloaded unless mention in Import Manifest/Import report

No imported goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report shall, except with the permission of the PO, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

Section 33: Loading and unloading of goods at approved places only

Except with the permission of the PO, **no imported goods shall be unloaded, & no export goods shall be loaded, at any place other than a place approved** under clause (a) of section 8 for the unloading/loading of such goods.

Section 34: Goods not to be loaded/unloaded except under the supervision of the customs officer

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the PO:

Proviso: The Board may, by notification in the Official Gazette, give general permission and the PO may in any particular case give special permission, for any goods/class of goods to be unloaded/loaded without the supervision of the PO.

Section 35: Restrictions on Goods being water-borne

No imported goods shall be water-borne for being landed from any vessel, and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form:

Proviso: The Board may, by notification in the Official Gazette, give general permission, and the PO may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

At present this exemption is in operation in

- Chennai Port - for both imports and exports
- Kolkata Port - for exports only.

Note: Certain customs ports like Mangalore, Puducherry, Tuticorin where the ships cannot come to the shore for unloading or loading and hence the cargos are ferried from the ships parked in the sea to the port in boats (lighters). Also, in bigger ports like Chennai, Cochin, Kolkata, Mumbai etc. not all ships arriving in the port get a berth. Therefore, they wait until they get allotment of berth. In such cases where the ships have busy schedule and they need to unload the goods as fast as possible, the import cargo is transported from the ship to the shore and the export cargo is taken from the shore to the ship in boats.

Section 36: The goods cannot be loaded and unloaded on Sundays or other holidays

No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday/on any holiday observed by the Customs Department/on any other day after the working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any:

Provided that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

Section 42: No conveyance to leave without written order

The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Procedure for Clearance of Imported Goods

The procedures for clearance of imported goods are contained in Section 45 to 49 of the Customs Act. These procedures are not applicable to Baggage & Goods imported or to be exported by post.

Section 45: Restrictions on custody and Removal of Imported goods

This section requires that until the imported goods are cleared for home consumption or are warehoused or are exported for transshipment, they shall remain in the custody of Custodian

(1) Imported goods after unloading till clearance shall remain in the custody of Custodian

Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Principal Commissioner of Customs/Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped in accordance with the provisions of Chapter VIII.

(2) Responsibility of Custodian of goods:

The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force, —

- (a) Shall keep a record of such goods and send a copy thereof to the proper officer;
- (b) Shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

(3) Liability of the Custodians: Custodian liable to pay duty on pilfered goods

Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or, as the case may be, an import report to the PO u/s 30 for the arrival of the conveyance in which the said goods were carried.

Section 46: Filing of Import Bill of entry

Bill of Entry is just a document to be filed by an importer for clearance of goods, either for home consumption or for warehousing. Importer of any goods to make an application electronically to the PO for clearance of the goods.

(1) Importer to file BOE for clearance of goods from custom port

The importer of any goods, other than goods intended for transit or transshipment,

- shall make entry thereof by presenting electronically on the customs automated system
- to the PO a BOE for home consumption or warehousing
- in such form and manner as may be prescribed.

Note: BOE shall not be required in case of transit and transshipment

There are three types of Bills of Entries prescribed for these three different purposes.

Form I (White) - for home consumption.

Form II (Yellow) - for warehousing (into bond).

Form III (Green) - for ex-bond clearance for home consumption (ex-bond).

Proviso: Manual filing may be allowed if not feasible to make entry electronically

The Principal Commissioner/Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

Note: Manual submission of BOE is allowable in cases where electronic submission is not feasible.

Proviso: Examination of goods by Importer and deposit in warehouse pending clearance
If the importer makes and subscribes to a declaration before the PO, to the effect that he is unable for want of full information to furnish all the particulars of the goods required, the PO may, pending the production of such information, permit him, previous to the entry thereof
(a) to examine the goods in the presence of an officer of customs, or
(b) to deposit the goods in a public warehouse appointed without warehousing the same.

(2) BOE shall include goods mentioned in bill of lading/any receipt given by carrier
a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

Bill of Lading:

The Bill of Lading

- Is given by the carrier of the goods is the importer's document of title to the goods.
- Covers all the goods imported with full description.
- The importer is required to declare in the Bill of Entry amongst other things
 - the particulars of packages,
 - the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and
 - the correct value of the goods for the determining the amount of duty.

(3) BOE should be filed before the end of next day post arrival of aircraft/vessel/carriage
The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

Author's comment: Warehousing without Warehousing

If for any reason the importer is unable to furnish details regarding goods, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49. This is also called warehousing without warehousing. Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods.

Proviso: the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival: a bill of entry may be presented at any time not exceeding thirty days prior to the

expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Proviso: where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

Author's Explanation: BOE shall be presented before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

Example:

Vehicle arrives on	Holiday	BOE to be filed by
16.08.2021	15.08.2021	15.08.2021

Note: Hence now BOE to be filed in advance, so that custom clearance happens early.

(4) Declaration by importer as to the truth of content of BOE and other details

The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) Duties and obligation of importer

The importer who presents a bill of entry shall ensure the following, namely: —

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If PO is satisfied, he may permit substitution of a BOE

If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

When Bill of Entry is filed electronically, it is in four copies:

- (a) Original, meant for the customs authorities for assessment and collection of duty;
- (b) Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- (c) Triplicate, as a copy for record for the importer; and

(d) Quadruplicate, as a copy to be presented to the bank/RBI for the purposes of making remittance for the imported goods.

Assessment of duty on the imported goods (discussed later)

Section 47: Clearance of goods for home consumption

(1) PO is satisfied goods are not prohibited, and duty paid, he may order home clearance

Where the proper officer is satisfied that

- The goods entered for home consumption are not prohibited and
- The appropriate import duty and any charges payable thereon has been paid, he can make an order permitting clearance of the goods for home consumption

Proviso: Electronic clearance order through CAS

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the CG may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) Time limit for payment of import duty:

The importer shall pay the import duty—

- (a) on the date of presentation of the BOE - in the case of self- assessment; or
- (b) within one day (excluding holidays) from the date on which the BOE is returned to him by the PO for payment of duty - in the case of assessment, reassessment or provisional assessment; or
- (c) in the case of deferred payment, from such due date as may be specified by rules made in this behalf,
 - and if he fails to pay the duty within the time so specified,
 - he shall pay interest on the duty not paid/short-paid till the date of its payment,
 - at such rate, not less than ten per cent but not exceeding thirty-six per cent per annum,
 - as may be fixed by the Central Government, by notification in the Official Gazette

Note: At present rate notified is 15%

Proviso: The Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Proviso: if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Deferred Payment of Import Duty Rules, 16 read with Circular

Rule 1: Short title and commencement.

- (1) These rules may be called the Deferred Payment of Import Duty Rules, 2016.
- (2) They shall come into force on the 16th day of November, 2016.

Rule 2: Definitions.

- (1) In these rules, unless the context otherwise requires, -
 - (a) "Act" means the Customs Act, 1962 (52 of 1962);
 - (b) "due date" means the date specified in rule 5 of these rules;
 - (c) "eligible importer" means any class of importers notified under proviso to sub section (1) of section 47 of the Act.

Notification No. 135/2016-Customs (N.T.)

In exercise of the powers conferred by proviso to section 47(1) of the Customs Act, 1962, the CG permits the following class of importers to make deferred payment of import duty:

- (a) Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)
- (b) Authorised Public Undertaking. (Notification No.78/2020-Customs (N.T.) dt. 19.08.20)

Explanation: For the purpose of this notification: -

- (i) AEO means Authorised Economic Operator
- (ii) Authorised Public Undertaking means Authorised Public Undertaking, approved by the Directorate of International Customs under the CBIC.

Note: It is expected that the extension of this facility to the Authorised Public Undertakings shall expedite the Customs clearance of their imported goods at the Ports/Airports/ICDs.

Rule 3: Application

These rules shall apply to eligible importer who have been notified u/s 47(1) of the Act.

Rule 4: Payment of duty.

The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in sub-section (2) of section 47 of the Act, namely: -

S. No.	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.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March,	31 st March

Proviso: where CG considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.

Rule 5: Manner of payment.

The eligible importer shall pay the duty electronically.

Provided that the AC/DC of Customs, as the case may be, for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.

Rule 6: Deferred payment not to apply in certain cases.

An eligible importer who fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment.

Proviso: the facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.

Proviso: the eligible importer shall be permitted to make the deferred payment if he has -

- (i) Paid the duty for a bill of entry within due date in terms of rule 4; and
- (ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day(excluding holidays).

Mandatory Electronic payment of duty

The CG has notified the following classes of importers who have to pay customs duty electronically, namely:

- (i) Importers registered under Accredited Clients Programme

(ii) Importers paying customs duty of Rs 10,000 or more per bill of entry

The importer desirous to make use of the e-payment facility first needs to have an internet account with a designated bank. The Board has set up a dedicated payment gateway called, 'ICEGATE'.

If the importer is registered on this Web site, it can easily use the e-payment facility with the current log-in facility. Those that are un-registered can also use the Web site as an 'unregistered user'.

Integrated Declaration under Indian Customs Single Window Project

- CBIC has implemented 'Indian Customs Single Window Project' to facilitate trade.
- Under project, the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs
- The required permission, if any, from Partner Government Agencies such as Animal/Plant Quarantine, Drug Controller, Food Safety & Standards Authority of India, Textile Committee etc. is obtained online without the importer/exporter having to separately approach these agencies.
- This is possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window thus provides the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.
- CBIC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.
- The Customs Broker or Importer has to submit the "Integrated Declaration" electronically to a single-entry point, i.e., the Customs Gateway (ICEGATE). Separate application forms required by different Participating Government Agencies (PGAs) have been dispensed with.
- The Integrated Declaration is applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies continues to apply.
- Apart from incorporating such forms, the Integrated Declaration also includes different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter head.
- Upon filing of the Integrated Declaration, the bill of entry automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs.

Section 51A: Payment of duty, interest, Penalty, etc.

- (1) Duty, interest, penalty, fee or any other sum payable to be deposited into e-cash ledger
Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorized mode of payment shall, subject to prescribed conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in the prescribed manner.
- (2) ECL may be used for making payment of duty, interest, fees, penalty or any other sum
The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in the prescribed manner and conditions and prescribed time limit.
- (3) Refund can be claimed of balance in ECL
The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in the prescribed manner.
- (4) CBIC can exempt deposits by specified class of persons w.r.t. specified categories of goods
Board is empowered to exempt the deposits made by specified class of persons or with respect to specified categories of goods, from all or any of the provisions of this section if it is necessary or expedient so to do.

No. 47/2022-Customs (N.T.) dated 31.05.22

In exercise of the powers conferred by sub-section (4) of section 51A of the Customs Act, 1962, the CBIC on being satisfied that it is necessary and expedient so to do, hereby exempts the deposits pertaining to all classes of persons and all categories of goods, from the provisions of the said section 51A.

This notification shall come into force with effect from the 1st June, 2022 and shall be effective upto the 31st March, 2023.

Specified deposits exempted from provisions of electronic cash ledger [Section 51A]

In terms of Section 51A (4) of the Customs Act, 1962, CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable.

Accordingly, CBIC has specified certain deposits which are exempted from provisions of payment through electronic cash ledger: -

- (i) with respect to goods imported or exported in customs stations where customs automated system is not in place;
- (ii) with respect to goods imported or exported in International Courier Terminals;
- (iii) with respect to accompanied baggage;
- (iv) other than those used for making electronic payment of, -
 - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
 - (b) IGST;
 - (c) GST Compensation Cess;
 - (d) Interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

Section 51B: Ledger for duty credit

- (1) The CG may, by notification in the Official Gazette, specify the manner in which it shall issue duty credit, —
 - (a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
 - (b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein
- (2) The duty credit issued under sub-section (1) shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed.
- (3) The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

Additional notes: Duty Credit Ledger will enable credit in lieu of duty remission to be given in respect of exports or other such benefit in electronic form for its usage, transfer, etc. For instance, reward scrips issued under MEIS Scheme that are usable against payment of customs duties, can be credited to this ledger for usage or transfer. Duty Credit Ledger is a step in the right direction to streamline the processes of avilment of export benefits by removing the physical interface and also usher transparency by avoiding fraudulent claims. Also, the move is in line with the earlier reforms under the Customs Law in the form of introduction of the e cash ledger, phasing out of physical MEIS, etc.

Crux:

- Remission of any duty/tax/levy chargeable on material used in manufacturing of goods that are exported or Other financial benefit shall be credited in an electronic duty credit ledger maintained in the customs automated system.
- Duty credit can be used towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975

Section 48: Procedure in case of goods not cleared, warehoused/transshipped within 30 days after unloading

If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transshipped within 30 days from the date of the unloading thereof at a customs station or within such further time as the PO may allow or if the title to any imported goods is relinquished,

- such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof:

Provided that—

- Animals, perishable goods & hazardous goods, may, with the permission of the PO, be sold at any time;
- Arms & ammunition may be sold at such time and place and in such manner as the CG may direct.

CBIC has clarified vide Circular No. 49/2018-Cus dated 03.12.2018 that after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the customs Act, 1962 read with Un-Cleared Goods (Bill of entry) regulations, 1972 (Regulation 2 & 3).

- The PO of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of BOE & after assessment inform the amount of duty payable to the concerned custodian.
- The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

Section 49: Storage of Imported goods in warehouse pending clearance or removal

Where the Asst. C/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 .

(b) 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.

Warehousing period allowed is 30 days, Principal Commissioner or commissioner can further extend by 30 days.

Note: Warehousing without warehousing is allowed in 3 cases:

1. Section 46: when importer unable to complete BOE
2. Section 49: Importer not clearing goods within 30 days
3. Section 85: warehousing of stores

Import procedure (At a glance)

- Arrival: Vessels/aircraft must land/call at designated customs ports/airports unless permitted otherwise by CBIC.
- Import Manifest: Person-in-charge (PIC) submits import manifest electronically before arrival or within 12 hours post arrival for vehicles.
- Entry Inwards: Proper officer grants Entry Inwards; unloading permitted only after this grant.
- Unloading: Goods unloaded if listed in the import manifest, at approved places, under supervision, and during working hours.
- Custody: Unloaded goods stay with Custodian until cleared; Custodian liable for pilfered goods.
- Bill of Entry: Importer files Bill of Entry electronically for clearance—home consumption, warehousing, or transshipment.
- Filing Timing: Bill of Entry filed before end of day after arrival of vessel/aircraft/vehicle.
- Self-Assessment: Importer self-assesses duty, subject to Customs verification and possible reassessment.
- Duty Payment: Deferred payment if goods stored in warehouse; immediate payment if cleared for home consumption.
- Duty Deadline: Importer must pay duty within prescribed time, or pay interest for delay.
- Clearance: Goods to be cleared within 30 days of unloading for home consumption, warehousing, or transshipment.

Export Procedure

Section 39: Export goods not to be loaded on vessel until entry-outwards granted

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry outwards to such vessel.

Section 50: Entry of goods for Exportation (filing of shipping bill by Exporter)

(1) Filing of shipping bill (air/sea) or Bill of export (land)

The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the PO in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as may be prescribed

Proviso: Manually filing may be permitted

The Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

(2) Declaration by exporter as to truth of content

The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) Duty and obligation of exporter to ensure accuracy and authenticity of docs

The exporter who presents a shipping bill/bill of export under this section shall ensure the following, namely:

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Section 51: Clearance of goods for exportation - Let Export order (LEO)

(1) After examination, PO shall grant Let Export Order or Let Ship Order

Where the PO is satisfied that any goods entered for export are not prohibited goods & the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the PO may make an order permitting clearance and loading of the goods for exportation:

Proviso: Clearance order may be made electronically: Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Proviso: Deferred Payment facility: The CG may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) Failure to pay export duty shall attract interest at notified rates

Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Section 40: Export goods not to be loaded unless duly passed by proper office

The person-in-charge of a conveyance shall not permit the loading at a customs station—

- (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the PO, has been handed over to him by the exporter;
- (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

Section 41: Delivery of departure manifest or export manifest or export report.

- (1) The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver the departure manifest or export manifest by presenting electronically, allow the same to be delivered in any other manner.

- (2) The person delivering the departure manifest or export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.
- (3) If the proper officer is satisfied that the departure manifest or export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

Section 41A: Passenger and Crew departure manifest & passenger name record information

- (1) The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the CG, shall deliver to the proper officer—
 - (i) the passenger and crew departure manifest; and
 - (ii) The passenger name record information of departing passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.
- (2) Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the PIC or the other specified person shall be liable to such penalty, not exceeding Rs 50,000, as may be prescribed.

Section 42: No conveyance to leave without written order

- (1) The PIC of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.
- (2) No such order shall be given until, —
 - (a) the PIC of the conveyance has answered the questions put to him under section 38; (Section 38. Power to require production of documents and ask questions)
 - (b) the provisions of section 41 have been complied with
 - (c) the shipping bills/bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;
 - (d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the PIC thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
 - (e) the PIC of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
 - (f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, —
 - (i) such goods have been unloaded, or
 - (ii) where the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of

the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

Export procedure (At a glance)

- Shipping Bill/Bill of Export: Exporter files electronically to customs.
- Let Export Order: Proper officer clears goods for export if they're not prohibited and duty, if any, is paid.
- Entry Outwards: Vessel must get permission from customs before loading export goods.
- Loading Goods: Requires permission and proper documentation; "Entry Outwards" is mandatory for vessels.
- Export Manifest: Person-in-charge submits export manifest/report electronically before departure.
- Departure Permission: Conveyance cannot leave without written order from proper officer.

Transit and Transshipment

A conveyance/vessel may reach a port but may not unload the goods at that port. It may halt at the port for any other purpose such as repairs, replenishment of supplies, refueling etc. Once the purpose is over, it may start sailing to the destination port. In this case two ports are involved: -

- the halting port (known as transit port) and
- The destination port (called as port of clearance).

Such a phenomenon of temporary stay at a port other than a destination port is called transit. In transit; the goods remain in the same vessel and consequently reach the port of clearance. In transshipment, however, the vessel after reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the first vessel, carries the goods to the destination port.

Section 52: Provisions of this chapter shall not apply to (a) Baggage (b) Goods imported by post and (c) Stores

Section 53: Transit of certain goods without payment of duty

Subject to the provisions of section 11, where any goods imported in a conveyance and mentioned in the arrival manifest/import manifest/the import report, as the case may be, as for transit in the same conveyance to any place outside India/to any customs station, the PO may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

Section 54: Transhipment of certain goods without payment of duty.

(3) Bill of transhipment to be presented to the PO

Where any goods imported into a customs station are intended for transhipment, a bill of transhipment shall be presented to the PO in such form and manner as may be prescribed.

Proviso: where the goods are being transhipped under an international treaty/bilateral agreement between the GOI & Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in such form and manner as may be prescribed.

(4) Transhipment goods as mentioned in IGM to be allowed without payment of ID to be shipped outside India

Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transhipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

(5) Transhipment goods as mentioned in IGM to be allowed without payment of ID to be shipped within India upon satisfaction by PO

Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transhipment—

(a) to any major port as defined in the Indian Ports Act, 1908, or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transhipment to such customs station,

the PO may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transhipment is allowed.

Section 55: Liability of duty on goods transited u/s 53 or transshipped under section 54

Where any goods are allowed to be transited under section 53 or transshipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

Introduction

- Classification of goods means locating the imported/exported goods in the schedule to the CTA to find out correct HSN code.
- Need for classification: To ascertain the rate of custom duty which goods are subject to.
- Goods are classified under Customs Tariff Act, 1975 based on the Harmonised System of Nomenclature (HSN), which is an Eight-digit code for unique for each tariff item.
- The Harmonized Commodity Description and Coding System (HS) of tariff nomenclature generally referred to as "Harmonized System of Nomenclature" is an internationally standardized system of names & numbers for classifying traded products developed and maintained by World Customs Organization, an independent inter-governmental organization.

The Customs Tariff Act, 1975

Schedules to Tariff

- First schedule: Deals with import tariff, showing import duties leviable.
- Second schedule: Deals with export tariff, showing export duties leviable.

Rules of interpretation and explanatory notes

Along the lines of HSN, the customs tariff has a set of Rules of Interpretation of the First Schedule i.e., Import tariff schedule and General Explanatory notes.

- (i) Rules of interpretation: - Six rules
- (ii) General explanatory notes: - Three notes

First Schedule of the Customs Tariff

The First Schedule comprises of 98 chapters grouped under 21 sections.

- (i) **Sections:** A group of Chapters representing a particular class of goods.
- (ii) **Chapters:** Each section is divided into various chapters & sub-chapters. Each chapter contains goods of one class.
- (iii) **Chapter notes:** They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.
- (iv) **Heading:** Each chapter and sub-chapter is further divided into various headings.
- (v) **Sub-heading:** Each heading is further divided into various sub- headings.

Sections

- Sections 1 to 21: All chapters are divided into sections

Some Examples of SECTIONS:

SECTION I. LIVE ANIMALS, ANIMAL PRODUCTS

SECTION XI. TEXTILE & TEXTILE ARTICLES

SECTION XVII. VEHICLES; AIRCRAFT; VESSELS & ASSOCIATED TRANSPORT EQUIPMENT

SECTION XIX. ARMS AND AMMUNITION; PARTS AND ACCESSORIES THEREOF

For example:

SECTION I. LIVE ANIMALS, ANIMAL PRODUCTS

Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 3	Fish and crustaceans, molluscs and other aquatic invertebrates
Chapter 4	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included
Chapter 5	Products of animal origin, not elsewhere specified or included.

Chapter 1: Live animals

Section I

Chapter

I

THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975

SECTION I

LIVE ANIMALS; ANIMAL PRODUCTS

Notes:

1. Any reference in this Section to a particular genus or species of an animal, except where the context otherwise requires, includes a reference to the young of that genus or species.
2. Except where the context otherwise requires, throughout this Schedule, any reference to "dried" products also covers products which have been dehydrated, evaporated or freeze-dried.

CHAPTER 1

Live animals

Notes:

This Chapter covers all live animals except:

- (a) fish & crustaceans, molluscs and other aquatic invertebrates, of heading 0301, 0306, 0307 or 0308;
- (b) cultures of micro-organisms and other products of heading 3002; and
- (c) animals of heading 9508.

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
0101	LIVE HORSES, ASSES, MULES AND HINNIES			
	- Horses:			
0101 21 00	-- Pure-bred breeding animals:	U	30%	-
0101 29	-- Other:			
0101 29 10	--- Horses for polo	U	30%	-
0101 29 90	--- Other	U	30%	-
0102	LIVE BOVINE ANIMALS			
	- Cattle			
0102 21	-- Pure-bred breeding animals:			
0102 21 10	--- Bulls	U	30%	-
0102 21 20	--- Cows	U	30%	-
0102 29	-- Other:			
0102 29 10	--- Bulls	u	30%	-

The schedule to Customs Tariff Act, 1975 contains five columns –

1. Tariff Item
2. Description of goods
3. Unit
4. Standard Rate of Duty
5. Rate of duty for Preferential Area.

Rate of duty for Preferential Area means Government of India may charge lower customs duty than that of standard rate of duty for some specified goods if imported from friendly countries like Myanmar, Bangladesh, Mauritius, Seychelles, Nepal, Tonga etc.

General explanatory notes

There are three general explanatory notes included in the First Schedule. They are-

(a) **Relevance of one dash ["-"], two dash ["--"] Three dash ["---"] four dash ["----"]**

Where in column (2) of this Schedule,

- the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading.
- Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-".

- where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--"

(b) Meaning of abbreviation "%" in relation to the rate of duty

The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962, the duty being equal to such percentage of the value as is indicated in that column.

(c) Standard rate of duty applicable if no preferential rate specified

In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

Note: If goods not covered by schedule, rate shall be NIL

Additional Notes:

In this Schedule, —

(1)

(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight-digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.

The General Rules for the Interpretation of Import Tariff

Classification of goods in the tariff shall be governed by the following principles/rules:

Rule 1 - Titles of Sections, Chapters & sub-chapters are given for ease of reference only

The titles of sections, chapters and sub-chapters are provided for ease of reference only;

- for legal purposes, classification shall be determined according to

- the terms of the headings and
 - any relative section or chapter notes and
 - provided such headings or notes do not otherwise require, according to the following rules:
- Notes: The above rule lays down the following propositions: -
- (a) The titles of sections, chapters do not have any legal force.
 - (b) Terms of headings read with relative section or chapter notes are legally relevant for the purpose of classification.
 - (c) If there is ambiguity or confusion in classification of the goods then the classification is not final and other rules of interpretation needs to be applied.

Rule 2(a) Classification of Incomplete/Unfinished, Unassembled/dis-assembled articles.

- Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article.
- It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled.

Summary: Complete or incomplete, CKD/SKD goods classified under the heading of complete/finished goods.

Examples:

- (a) Railway coaches removed without seats would still be railway coaches.
- (b) A car without seats would still be classified as car.
- (c) Motor Car not fitted with wheels/tyres will be classified under the heading of Motor Vehicle
- (d) Passenger Aircraft not fitted with seats will still be a passenger Aircraft.
- (e) Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines. Because CKD or SKD is only for convenience of transport.
- (f) Un-assembled cycle will be classified as cycle only.

Author's comment: This rule is not applicable if goods require complicated process to make final product. Only goods requiring minor adjustments would be construed as having the essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc., cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.

Rule 2(b) - Classification of Mixtures/Combinations of Material/Substance with Other Materials/Substances

- Any reference in a heading to a material or substance shall be taken to include
 - a reference to mixtures or combinations of that material or substance with other materials or substances.
- Any reference to goods of a given material or substance shall be taken to include
 - a reference to goods consisting wholly or partly of such material or substance.
- The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

Examples

- (a) The term coffee will include coffee mixed with chicory also
- (b) Natural rubber will cover a mixture of natural and synthetic rubber.
- (c) Milk to which vitamins or minerals have been added.
- (d) A pack of cornflakes which also contains a small number of nuts and raisins.

Note: Mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if upon initial consideration are potentially classifiable under two or more headings, they must be classified according to the principles of GRI 3.

Example: A stain-less steel travel mug with a plastic handle

- would be classifiable in heading 7323 as a table, kitchen or other household article of steel despite the plastic handle (as it retains the character of a table, kitchen or another household article of steel as mentioned in heading 7323).
- If a travel mug, however, contained relatively equal amounts of stainless steel and plastic (e.g., the outside or outer surface of the mug is made of plastic and the inside or inner surface (lining) of the mug is made of stainless steel), then the travel mug would be potentially classifiable under two headings: heading 3924 as tableware, kitchenware or other household article of plastic and heading 7323 as a table, kitchen or other household article of steel.
- A travel mug consisting of relatively equal amounts of stainless steel and plastic does not have the character of a table, kitchen or other household article of steel as mentioned in heading 7323.) In this situation, pursuant to GRI 2(b), resort would need to be made to GRI 3 for classification of the product.

Rule 3 - Classification in case goods are classifiable under two or more headings:

When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be done as follows:

Rule 3(a) – Specific over general

The heading which provides the most specific description shall be preferred to headings providing a more general description.

Example:

- Product Television: General heading - electronics, specific - Television
- Product: Leather mobile cover: General: Leather item, Specific - Mobile accessories
- Product Steel spoon: Steel spoon is classified in Spoons and not in Steel Household
- Product: Seats for motor vehicles: Classified in Seats for motor vehicles and not in Parts and accessories of the motor vehicles.
- However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Relevant case law: Electric shaving machine was classifiable under following two headings:

- Shavers and hair clippers with self-contained electric motors
- Electro-mechanical domestic appliances with self- contained electric motor

The said product in the above instance would be classifiable under Shaver as it is more specific.

Rule 3(b) – Essential character test is to be applied:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.

Example:

- Product: Software loaded into a laptop can be classified as laptop and considered as one unit. Applying essential character test, it is classifiable under laptop.
- Product: Printer with Photocopier and fax: Classifiable as Multipurpose Printer
- Product: Books with CD: Classifiable as Books
- Product: Liquor-filled chocolates: Classifiable in Chocolate & other food preparations containing cocoa.

Rule 3(c) – Latter the better: Choose the heading which occurs last in numerical order

When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Relevant case law: - Mahindra and Mahindra v. CCE 1999 (109) E.L.T. 739 (Tribunal)

When the goods cleared by assessee were equally classifiable under the following two headings:
 Heading No. 87.03: Motor cars and other vehicles principally designed for transport of persons.
 Heading No. 87.04: Motor vehicles meant for transport of goods.

It was held that heading 87.04 occurs last and as both the headings equally merit classification, goods shall be classified under 87.04 applying the interpretative Rule 3(c).

Rule 4 - Akin Rule (Goods that resemble the most)

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

Example: Product: Plastic films used to filter or remove the glare of the sun light, pasted on car glass windows, window panes etc.

Classification: These goods do not find a specific entry in the tariff schedule. However, heading 39253000 covers Builder's wares of plastic not elsewhere specified - shutters, blinds & similar articles & parts thereof. Even though the product in question is not a builder's ware, they are most akin to plastic blinds & hence it can be classified under 39253000 heading.

Rule 5: Packing material/container

In addition to the foregoing provisions, following rules shall apply in respect of goods referred to therein (This rule is applicable for packing material/container)

(a) Classification of cases/containers used for packaging of goods: Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers shall be classified with a specific article or a set of articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

Conditions to be fulfilled: -

- These cases/containers are specially shaped/fitted to contain a specific article or a set of articles.
- These cases/containers are suitable for long term use & presented with the articles for which they are intended.

Example: Violin with a case would be classified as Violin, Gumball with toy packaging.

(b) Classification of packing materials and packing containers: Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods, if they are of a kind normally used for packing such goods. However,

this provision does not apply when such packing material/packing containers are clearly suitable for repetitive use.

Note: Exceptions to rule 5:

(a) Durable containers capable of repetitive use should be classified separately.

Example: Gas cylinders are meant for repetitive use and therefore cannot be classifiable along with gas.

(b) When packing material itself gives the essential character as a whole.

Example: Men's T shirts individually sealed in a polybag then packed in cardboard boxes. In this situation, Men's T shirts with the cardboard box are entirely classified as shirts.

Rule 6: Classification of goods in the sub-headings of a heading

For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

As per Rule 6, the provisions of Rule 1 to Rule 5 shall apply as it is (mutatis mutandis) for the purpose of determination of sub-headings.

On the understanding that only sub headings at the same level are comparable

This means to say that if one heading contains 4-5 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading should not be compared with the sub-heading of another heading.

Project Imports

Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit. In a project several different items are required, each of which is importable at different rates of customs duties. Hence, it becomes very complicated to make assessment for such project imports. Therefore, one consolidated rate of customs duty has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent Supreme Court judgement.

The items eligible for project import are specified in Heading 9801 of the CTA, 1975.

- All items of machinery, instruments, apparatus and appliances, auxiliary equipment

(including those required for Research and development purposes, testing and quality control),

- as well as components or raw materials for the manufacture of the aforesaid items and their components required for initial setting up of a unit or for substantial expansion of the same.
- And spare parts, other raw material and consumables stores essential for the maintenance of the plant or project can be imported up to 10% of the value of goods.

Few of the eligible projects are: Industrial Plants, Irrigation Projects, Power Projects, Mining Projects, and Projects for Oil or Mineral Exploration and other projects as may be notified by the CG.

Author's comment:

1. If a single machinery is imported for a project, then the benefit of project import is not applicable.
2. Imports can be for settling up new project/Substantial expansion of an existing project: means an expansion which will increase installed capacity by at least 25%.
3. Projects notified by government: Metro rail project, mono rail project, etc.
4. Heading - 98.01 provides for concessional rate of duty for project imports (IGST @ 18%)

Market/Trade parlance theory

- If a product is not defined in the Schedules and Section Notes and Chapter Notes of the Customs Tariff Act, 1975, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it i.e., in its commercial sense.
- Hence if statutory definition of a word is not provided, its understanding in common parlance shall be used for classification. Common understanding in trade by dealers and consumers.

Examples:

1. M/s Connaught Plaza restaurant Ltd: In accordance with common parlance, Soft serve served in MC Donald's is classified as ice-cream and not other dairy products.
2. Baidynath Ayurved Bhawan Ltd: Applying trade parlance the SC held Dabur Dant Manjan lal (DML) as tooth paste since its is used routinely for dental hygiene and even if the product DML has some therapeutic or medicinal properties it is not ayurvedic medicine.

Introduction

Concept of Value – Section 2(41) of Customs Act, 1962

Value, in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

Custom duties on import/export are charged in either of two manners:

- (a) Specific duty: Based on quantity of the goods
- (b) Ad Valorem: Percentage based on Value of Goods

Ex-Factory Price: It is the price of the goods as comes out of the factory. It includes cost of production and manufacturer's margin of profit.

F.A.S (Free Alongside): It is the cost at which the export goods are delivered alongside the ship, ready for shipment. F.A.S. = ex-factory + local freight + local taxes.

F.O.B. (Free on Board): Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. F.O.B. = FAS + loading charges + export duty cess.

C.I.F. (Cost Insurance Freight): It is the cost at which the goods are delivered at the Indian port. C.I.F. = FOB + Insurance + Freight.

Bill of Lading:

A negotiable document given by the carriers of the cargo giving particulars of:

- (a) Port of shipment
- (b) No. of packages covered by the consignment
- (c) Marks and numbers on the page
- (d) Name of the vessel in which the goods have been dispatched
- (e) Name of the consignee of the goods,
- (f) Whether the freight has been pre- paid or is to be collected at the destination.

Note: It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods.

Boat/Lighterage Charge: Sometimes the vessel is unable to get a berth alongside the quay in the harbor. The goods are then transported from the ship to the shore by boats / lighters. The charges paid therefore are called Boat / Lighterage charges.

Section 14: Valuation of goods

(1) Assessable value is transaction value subject to fulfillment of conditions:

For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be

the transaction value of such goods, that is to say,

- the price actually paid or payable for the goods
- when sold
- for export to India for delivery at the time and place of importation, or as the case may be,
- for export from India for delivery at the time and place of exportation,
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale

subject to such other conditions as may be specified in the rules made in this behalf:

- Customs Valuation (Determination of Price of imported Goods) Rules, 2007
- Customs Valuation (Determination of Value of Export Goods) Rules, 2007

Author's comment:

- Price paid /payable is transaction value subject to adjustment as per rules.
- It should be a sale transaction
- Place of importation means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse; i.e., Custom port/airport/land custom station in India.
- Place of Exportation means the foreign port/airport/land custom station, where goods are exported to.
- Buyer and Seller Unrelated
- Price is the sole consideration

Additions to be made to TV

Proviso:

- such transaction value in the case of imported goods shall include, in addition to the price as aforesaid,
 - any amount paid or payable for costs and services, including
 - commissions and brokerage, engineering, design work, royalties and license fees,
 - costs of transportation to the place of importation,
 - insurance, loading, unloading and handling charges
 to the extent and in the manner specified in the rules made in this behalf.

When TV cannot be AV, Apply valuation rules

Proviso: the rules made in this behalf may provide for:

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when
 - there is no sale, or
 - the buyer and the seller are related, or
 - price is not the sole consideration for the sale or
 - in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:
- (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

Note: Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 have been notified in this regards. [Given at the end of the chapter]

Proviso: such price shall be calculated with reference to the rate of exchange as in force on the date on which a BOE is presented u/s 46, or a shipping bill of export, as the case may be, is presented under section 50.

Note:

1. CBIC notifies the ROE periodically once in 15 days & rates are different for import & exports
2. In case of imports the rate applicable is of date of presentation of BOE u/s 46
3. In case of exports the date of presentation of shipping bill/bill of export u/s 50

(2) For some notified good, AV= tariff value fixed by Board

Notwithstanding anything contained in sub-section (1),

- if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette,
- fix tariff values for any class of imported goods or export goods,
- having regard to the trend of value of such or like goods, and
- where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Notified goods: Gold, silver, etc.

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 1: Short title, commencement and application

- (1) These rules may be called the Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007.
- (2) They shall come into force on the 10th day of October, 2007.
- (3) They shall apply to imported goods.

Rule 2: Definitions

- (1) In these rules, unless the context otherwise requires, -
 - (a) computed value means the value of imported goods determined in accordance with rule 8.
 - (b) deductive value means the value determined in accordance with rule 7.
 - (c) goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular
 - (d) Identical goods means imported goods -
 - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
 - (ii) produced in the country in which the goods being valued were produced; and
 - (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,
but shall not include
 - imported goods
 - where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;
 - (da) Place of importation means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;
 - (e) Produced includes grown, manufactured and mined
 - (f) Similar goods means imported goods -
 - (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially

interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

- (ii) produced in the same country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(g) Transaction value means the value referred to in section 14(1) of the Customs Act, 1962;

(2) Related person: Persons shall be deemed to be "related" only if -

- (i) they are officers or directors of one another's businesses;
- (ii) they are legally recognized partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Note: Sole agent are related only if they fall any of the criteria laid in sub-rule (i) to (vii).

Interpretative notes: In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Rule 3: Determination of the method of valuation

(1) TV shall be taken as AV after making adjustments as per rule 10

Subject to rule 12,

- the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

Interpretative notes: It is the total payment made/to be made by the buyer to or for the benefit of the seller for the imported goods.

- The payment need not necessarily take the form of a transfer of money, it may be made by way of letters of credit or negotiable instruments.
- Payment may be made directly or indirectly.
- An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities carried out post import, not includible in TV

The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid/payable for the imported goods:

- Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- The cost of transport after importation;
- Duties and taxes in India.

Dividends from buyer to seller not to be included in custom valuation

The price actually paid/payable refers to the price for the imported goods. Thus, the flow of dividends/other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

(2) TV is acceptable: subject to fulfilment of 4 conditions

Value of imported goods under sub-rule (1) shall be accepted:

Provided that:

- there are no restrictions as to the disposition/use of the goods by the buyer other than restrictions which -
 - are imposed or required by law or by the public authorities in India; or
 - limit the geographical area in which the goods may be resold; or
 - do not substantially affect the value of the goods;

Interpretative (Int.) Notes: An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

Int. notes: If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes.

Some examples of this include-

(a) Condition to buy other goods along: The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities

Example: If u buy 1 product u have to buy other product along with it.

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

Example: Give at lower price and take at lower price condition.

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

Example: Import semi-finished, make them finished then export back some finished goods as consideration for imported goods, so price paid or payable for semi-finished unavailable at the time of importation.

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

Author's comment:

Subsequent sale proceeds ascertainable: Complete price payable ascertainable: Add to Assessable value

Subsequent sale proceeds unascertainable: Complete price payable unascertainable: Valuation rules to be applied.

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) Related party transactions-TV is acceptable in 2 situations

(a) Where the relationship did not influence the price.

Note: Where the PO has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer.

For example, the PO of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination/information that the relationship did not influence the price.

(b) Whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods;

Proviso: in applying the values used for comparison, due account shall be taken of

- demonstrated difference in commercial levels, quantity levels,
- adjustments in accordance with the provisions of rule 10 and
- cost incurred by the seller in sales in which he and the buyer are not related;

(c) Substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If TV not acceptable here, then other valuation rules

If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Case Law: Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 (SC)

Statement of Facts: The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2011 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

(CA FINAL MAY 2013)

Decision: No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.

Rule 4: Transaction value of identical goods

(1) If TV of imported goods unacceptable, use TV of identical goods

(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

TV is not value assessed provisionally

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) TV if identical goods at same commercial level and in same quantity

In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) If different levels then adjustments

Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) TV to be adjusted for freight and insurance

Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport

(3) If multiple TVs available, lowest shall be selected

In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Interpretative Notes:

1. In applying rule 4, the PO of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:
 - (a) a sale at the same commercial level but in different quantities; or
 - (b) a sale at a different commercial level but in substantially the same quantities; or
 - (c) a sale at a different commercial level and in different quantities.
2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
 - (a) quantity factors only;
 - (b) commercial level factors only; or
 - (c) both commercial level and quantity factors
3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(l)(b) and (c) and rule 4(2) which has already been accepted under rule 3.

Steps for Applying rule 4:

1. Find out Identical goods which are imported at or about same time
2. Those Identical goods whose value has been accepted under Rule 3.
3. Adjustment for commercial level or to the quantity or both (if any required)
4. Adjustment for Freight and Insurance (if any required)
5. If multiple TVs available, lowest shall be selected.

Rule 5: Transaction value of similar goods

(1) If TV of identical goods unacceptable, use TV of similar imported goods

Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) Other principles same as rule 4

The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Interpretative Notes:

1. In applying rule 5, the PO of customs shall, wherever possible, use a sale of similar goods at the same commercial level & in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.
2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.

Rule 6: Determination of value where value cannot be determined under rules 3, 4 and 5

If the value of imported goods cannot be determined under rule 3, 4 & 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Proviso: at the request of the importer, & with the approval of the PO, the order of application of rules 7 and 8 shall be reversed.

Rule 7: Deductive value

(1) In this method first collect Indian sale price of similar/identical goods, then deduct general expenses, transport & insurance cost, custom duties & taxes payable in India

Subject to the provisions of rule 3,

- if the goods being valued or identical or similar imported goods are sold in India,
- in the condition as imported at or about the time at which the declaration for determination of value is presented,
- the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions:
 - (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class/kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within India;
 - (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If imported goods/identical goods not sold at/about same time, value shall be based on unit price at the earliest date after importation but before expiry of 90 days

If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued,

- the value of imported goods shall, subject otherwise to the provisions of sub-rule (1),
- be based on the unit price at which the imported goods or identical or similar imported goods are sold in India,
- at the earliest date after importation but before the expiry of 90 days after such importation.

(3) Deduction of value additions (processing charges) if any done in India

(a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Example: Goods are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 -10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

Another example, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

Another example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90

15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total Quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

Rule 8: Computed value

Addition of cost-plus profit to arrive at the AV

Subject to the provisions of rule 3,

the value of imported goods shall be based on a computed value, which shall consist of the sum of:

- the cost/value of materials and fabrication or other processing employed in producing the imported goods;
- an amount for profit & general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- The cost or value of all other expenses under sub-rule (2) of rule 10.

Interpretative Notes:

- In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer
- The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.

3. The cost/value referred to in rule 8(a) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer.
4. The "amount for profit and general expenses" referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer

Rule 9: Residual method

- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

- (2) No value shall be determined under the provisions of this rule on the basis of -
 - (i) the selling price in India of the goods produced in India;
 - (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
 - (iii) the price of the goods on the domestic market of the country of exportation;
 - (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
 - (v) the price of the goods for the export to a country other than India;
 - (vi) minimum customs values; or
 - (vii) Arbitrary or fictitious values.

The residuary method can be considered if valuation is not possible by any other method.

Interpretative Notes:

The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

Some examples of reasonable flexibility are as follows:

- (a) Identical goods. - The requirement that the
 - identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted;

- identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation;
- customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

(b) Similar goods. - The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) Deductive method. - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

Rule 10: Cost and services to be adjusted in TV

(1) In determining the TV, there shall be added to the price actually paid or payable for the imported goods, -

Addition to TV

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely: -

- (i) Commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour/materials;

Interpretative notes:

the term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Author's comment:

- Whenever question is silent about buying or selling commission, always add it.
- Commission can be in INR/foreign currency
- Commission can be payable in India or abroad
- Buying commission not to be added. Buying commission is the commission paid by the importer to his agent representing him abroad.
- Containers - Returnable - not to be added, but not returnable- added to cost

(b) Additions by apportionment

The value, apportioned as appropriate, of the following goods and services

- where supplied directly or indirectly by the buyer free of charge or at reduced cost
- for use in connection with the production and sale for export of imported goods,
- to the extent that such value has not been included in the price actually paid or payable, namely: -
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

Interpretative notes:

1. There are two factors involved in the apportionment of the elements specified in rule 10(I)(b)(ii) to the imported goods

- the value of the element itself (value of the goods) and
- the way in which that value is to be apportioned to the imported goods.

The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element,

- if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost.
- If the element was produced by the importer or by a person related to him, its value would be the cost of producing it.
- If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

Once a value has been determined for the element it is necessary to apportion that value to the imported goods.

Various possibilities exist.

- the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time.
- the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment.
- he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production.

Illustration: An importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10000 units. By the time of arrival of the first shipment of 1000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

Interpretative Notes: Amount not to be added to price paid/payable:

- Charges for the right to reproduce: The royalties and licence fees referred to in rule 10(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added.
- Payments made by the buyer for the right to distribute/resell imported goods: Payments made by the buyer for the right to distribute/resell the imported goods shall not be added, if such payments are not a condition of the sale for export to the country of importation of the imported goods.

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

Note: Dividend payments by importing company to foreign company are not called as proceeds of subsequent resale and hence not to be added.

(e) All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation. - Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) Cost of transportation and Insurance

For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include -

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation:

Proviso: COT Unavailable:

where the cost referred to in clause (a) is not ascertainable,

- such cost shall be 20% of the free on-board value of the goods:

Proviso: When combined FOB (FOB + COI is ascertainable)

where FOB value of the goods is not ascertainable but the sum of FOB value of the goods & the cost referred to in clause (b) is ascertainable,

- the cost referred to in clause (a) shall be 20% of such sum:

Proviso: COI Unavailable:

Where the cost referred to in clause (b) is not ascertainable,

- such cost shall be 1.125% of free on-board value of the goods:

Proviso: When combined FOB (FOB + COT is ascertainable)

Where the free on-board value of the goods is not ascertainable but the sum of free on-board value of the goods and the cost referred to in clause (a) is ascertainable,

- the cost referred to in clause (b) shall be 1.125% of such sum:

Proviso: Air transportation: maximum addition for COT 20% of FOB

In the case of goods imported by air, where the cost referred to in clause (a) is ascertainable,

- such cost shall not exceed 20% of free on-board value of the goods:

Proviso: Transshipment cost to be excluded in case of import by air/sea

In the case of 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 shall be excluded.

Note: Any transshipment whether Port to port, port to ICD, Port to CFS, Airport to Airport not includible in TV

Explanation: COT shall include ship demurrage charges/ lighterage or barge charges

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

Circular 39/2017-Customs dated 26.09.2017

Treatment of the loading, unloading and handling charges

The Hon'ble Supreme Court had ruled in the case of *M/s Wipro Ltd. Vs Assistant Collector of Customs-2015* dated 16/04/2015 that

- the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods.

The phrase "loading, unloading and handling charges" appearing in the amended Rule 10 (2) (a) is to be understood in context of Article 8(2) of the WTO Agreement which reads as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

Interpretative notes: Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of rule 3.

As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

Rule 11: Declaration by the importer

(1) Declaration & statement, information or document/invoice to be furnished

The importer or his agent shall furnish -

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
- (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) In case of wrong declaration, information & docs, confiscation, penalty & prosecution: The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12: Rejection of declared value

(1) PO has power to reject declared value if he doubts truth or accuracy

When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) Grounds for doubting shall be intimated at request of an importer and OBH to be provided

At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that: -

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

Valuation of goods cleared from a 100% EOU to a depot from where the sale to DTA is effected through consignment agents:

Circular No. 933/23/2010 CX dated 16.08.2010 clarifies that the value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

Determination of assessable value in case of sale of warehoused goods before being cleared for home consumption [Circular No.11/2010 dated 03.06.2010]

Issue: Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Clarification: Section 14 of the Customs Act provides that the value of the imported goods is the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a sale for export to India. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

Sec 15: Date for determination of rate of duty and tariff for valuation of imported goods

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under section 46,

- on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse u/s 68,

- on the date on which a BOE for home consumption in respect of such goods is presented

(c) in the case of any other goods,

- on the date of payment of duty

Provided that

- if a bill of entry has been presented before the date of entry inwards of the vessel/the arrival of the aircraft/the vehicle by which the goods are imported,
- the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

Relevant case laws: Section 15 has generated a lot of interest in terms of case law development. In *Bharat Surfacants Pvt. Ltd. v. UOI* 1989 (43) ELT 189, the Supreme Court held that the rate of duty and tariff valuation would be done on the date of final entry of the ship. In this case, a ship entered Bombay and made prior entry on 04.07.1981 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.07.1981 and was granted final entry on 04.08.1981 when the duty rate had been revised to 15%. The Supreme Court held that the rate applicable would be 15% only since the formality of entry inward could be done only on 04.08.1981.

It would also be important to note that date of contract is not relevant and only the date of importation is relevant as per the decision of the Supreme Court in *Rajkumar Knitting Mills P. Ltd. vs CC* 1998 (98) ELT 292.

It is also relevant to note that Section 15 deals with only the rate of duty and tariff valuation and not the valuation under Section 14.

Sec 16: Date for determination of rate of duty and tariff for valuation of exported goods.

(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -

- (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;
- (b) in the case of any other goods, on the date of payment of duty.
- (2) The provisions of this section shall not apply to baggage and goods exported by post.

Section 19: Special Provisions for classification of sets of articles & accessories

Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows: -

(a) Articles liable to duty with reference to quantity

- shall be chargeable to that duty;

(b) Articles liable to duty with reference to value shall,

1. if they are liable to duty at the same rate, be chargeable to duty at that rate, and
2. if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) Articles not liable to duty

- shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b).

However, -

- (a) Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- (b) If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

As per the Accessories (Conditions) Rules, 1963

Accessories of and spare parts and maintenance or repairing implements for, any article, when imported along with that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade:

- (i) such accessories, parts and implements are compulsorily supplied along with that article; and
- (ii) no separate charge is made for such supply, their price being included in the price of the article.

Author's comment:

Accessories, parts and implements: API

Case 1: If API are compulsorily supplied along & no separate charge is made (single price is charged), main article and accessories shall be chargeable at the same rate of duty as that article.

This is like composite supply.

Case 2: If Accessories are compulsorily supplied along & but separate charge is made, main article and accessories, shall be chargeable at their individual rates.

Case 3: If Accessories are optionally supplied along and but single price is charged, main article and accessories, shall be chargeable at highest rate.

This is like mixed supply,

Case 4: If Accessories are optionally supplied along and separate price is charged or importer able to furnish separate rates, main article and accessories shall be chargeable at their respective rates.

Example: Shaving Kit has been imported into India, Rate of duty as applicable to shaving kit is not present in custom tariff. it consists of multiple articles. Total Value of Shaving Kit is Rs 500.

Articles	Case 1	Case 2	Case 3	Case 4	Case 5
	Duty	Rate	Rate	Rate	Rate
Shaving Cream	Rs 10 p.u.	10%	10%	10%	10%
Brush	Rs 20 p.u.	10%	20%	10%	20%
Razor	Rs 30 p.u.	10%	30%	10%	30%
Shaving lotion	Rs 40 p.u.	10%	40%	Nil	Nil
Working note	10+20+30+40	500 × 10%	500 × 40%	500 × 10%	500 × 30%
Duty payable	Rs 100	Rs. 50	200	50	150

p.u. = Per unit

Notes:

Case 1: Articles liable to duty with reference to Quantity: Chargeable to that duty.

Case 2: Articles are liable to duty with reference to value, and liable at the same rate, be chargeable to duty at that rate.

Case 3: Articles are liable to duty with reference to value, and liable at different rates, be chargeable to duty at the highest rate.

Case 4: Articles not liable to duty, shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable.

Case 5: Articles not liable to duty, shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable.

Case 6: Shaving Kit has been imported into India, it consists of multiple articles. Importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the separate value.

Articles	Value	Rate of duty	Working	Import duty
Shaving Cream	100	10%	$100 \times 10\%$	10
Brush	200	20%	$200 \times 20\%$	20
Razor	100	30%	$100 \times 30\%$	30
Shaving lotion	100	Nil	$100 \times 0\%$	0
Total Value	500		Total duty	60

Note: If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Case 7: Shaving Kit has been imported into India, it consists of multiple articles.

Articles	Value/ Quantity	Rate of duty	Working	Import duty
Shaving Cream	100	Rs 10 per unit	1×10	10
Brush		20%		
Razor		30%		
Shaving lotion		40%		
Total Value	500		$(500-100) \times 40\%$	160
Total Duty				170

Relevant Case Law:

CC Vs M/s Denso Kirloskar Industries Pvt Ltd

Consideration paid for the technical know-how - the technical information which was to be provided by the Japanese company to the respondent was for the manufacture of the contract products by the respondent herein, naturally, after the setting up of the plant. This cost is, thus, incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods. The matter is squarely covered by the judgment of the Court in the case of 'Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Limited ' 2015 (319) ELT 202 (SC).

Mangalore Refineries and Petrochemicals Ltd Vs CC 2015

Quantity or Price - Duty is payable on the quantity received in India, not the quantity exported from another country.

It is clear that the levy of customs duty under Section 12 is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation is only complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

Gira Enterprises v. CCus. 2014

Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Facts of the Case: The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per erstwhile rule 5 [now rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007] and demanded the differential duty along with penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

The appellant contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printout which formed the basis of such demand had not been supplied to them. Resultantly, the appellant had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

Supreme Court's Observations: Supreme Court observed that since Revenue did not supply the copy of computer printout, which formed the basis of the conclusion that the appellants under-

valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions. Supreme Court's Decision: The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

Note: This case establishes the principle that the onus to prove that identical goods have been imported at a price higher than the value of the goods declared by the importer, lies with the Department.

Basic custom duty [Levied under Section 12 of the Customs act 1962]

Charging section: The duties of customs shall be levied

- at such **rates as may be specified under the Customs Tariff Act, 1975** or any other law for the time being in force
- on goods imported into or exported from India.

THE CUSTOMS TARIFF ACT, 1975 (CTA)

An Act to consolidate and amend the law relating to Customs Duties.

Section 1: Short title, extent and commencement.

Section 2 of the Customs Tariff Act 1975: Duties specified in the Schedules to be levied

The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules.

First schedule: provides rate of Import duty

Second schedule: provides rate of Export duty

There are two types of rates specified in first schedule:

Standard rate: Generally, the rate of duty specified in column (4) is applicable.

Preferential rate: If the goods are imported from the areas notified by the CG to be preferential areas, then the rate of duty under column (5) will be applicable. Preferential area means any country/territory which the CG may, by notification in the Official Gazette, declare to be such area.

Section 4: Levy of duty where standard rate and preferential rate are specified.

Conditions to be fulfilled to make the imported goods eligible for preferential rate of duty:

- (a) The owner of the article claims at the time of importation claims that it is chargeable with a preferential rate of duty.
- (b) The Owner also claim that the goods are produced or manufactured in such preferential area.
- (c) The origin of the goods shall be determined in accordance with the rules made u/s 4(2) of the CTA 1975.
- (d) The area should be notified u/s 4(3) of the Customs Tariff Act to be a preferential area by CG by notification in the Official Gazette.

If the importer fails to discharge the above duties, the goods shall be liable to standard rate of duty.

Section 3 of Customs tariff act: Levy of additional duty equal to Excise duty, Sales tax, local taxes and other charges

Section 3(1): Additional duty to compensate excise duty

Presently CVD 3(1) is leviable on

- Alcoholic Liquor for Human Consumption (AL for HC)
 - Petro products (HPMAN),
 - Tobacco and tobacco products
- If like article produced/manufactured in India: Imported article shall be liable to ED as leviable on such like article.
 - If ED on like article is leviable at percentage of value, additional duty shall also be on value of imported goods.
 - If like article not produced/manufactured in India: Imported article shall be liable to ED as the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.
 - In case of AL for HC imported into India: Rate of additional duty to be specified by CG.
 - If goods manufactured in India are exempt from excise duty, then there is no Additional Duty of Customs.

Section 3(2): Assessable value for 3(1)

The additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of —

- (i) the value of the imported article determined under section 14(1) or the tariff value of such article fixed under 14(2) of that section, as the case may be; and
- (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include —
 - (a) the duty referred to in sub-sections (1), (3), (5), (7) and (9);
 - (b) the safeguard duty referred to in sections 8B;
 - (c) the countervailing duty referred to in section 9; and
 - (d) the anti-dumping duty referred to in section 9A;

Proviso: In case of an article imported into India:

- (a) in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and
- (b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is—
- the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944 (1 of 1944),
- the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article under sub-section (2) of section 4A of that Act;

Explanation: Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

Proviso: in the case of an article imported into India, where the CG has fixed a tariff value for the like article produced or manufactured in India u/s 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value.

Summary of section 3(1)

Object of CVD	To counter balance the impact of ED suffered by domestic products
Levied on	Tobacco and tobacco products, 5 petro products - HPMAN, AL for HC
AV for CVD 3(1)	- If declaration of RSP (MRP) is mandatory on article in India: $AV = RSP (MRP) \text{ of the imported article less abatement notified.}$ If Imported article has more than one RSP: $AV = \text{Highest RSP}$ - If Tariff value is fixed under excise act: $AV = \text{Tariff value}$ - In all other case: Valuation as per sec 14(1)/ (2) + BCD.

Assessable value for computing CVD 3(1)

Particulars	Amount
Value u/s 14(1)/ (2) i.e., transaction value/tariff value	XXX
+ Basic custom duty	XX
+ Protective Duty u/s 6 of CTA	XX
Total	XXX
+ CVD 3(1)	XXX
	XXX

Section 3(5): Special CVD counterbalancing VAT/Sales tax

- Purpose: To balance sales tax, VAT, local tax, or other charges on imported goods.
- Condition: Levied if the Central Government (CG) deems it necessary in the public interest.
- Rate: Additional duty up to 4% of the imported article's value, as notified in the Official Gazette.
- Explanation: Covers sales tax, VAT, local tax, or charges on a similar article's sale, purchase, or transportation in India. If such taxes are levied at different rates, the highest rate applies.

Notification No. 53/2017- Customs

In exercise of the powers conferred by section 3(5) of the CTA, 1975, the CG, on being satisfied that it is necessary in the public interest so to do, hereby directs that all goods of the description specified below, shall be liable to an additional duty of customs at the rate of 4% ad valorem.

- Petroleum Crude
- Motor spirit commonly known as petrol
- High speed diesel (HSD)
- Aviation Turbine Fuel
- Liquified natural gas and Natural Gas.

Section 3(6): Assessable value for levy of 3(5): Also known as Special Additional duty

For the purpose of calculating under sub-section (5), the additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in sub-section (2), or section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of —

- the value of the imported article determined u/s 14(1)/ (2) of the Customs Act, as the case may be; and
- any duty of customs chargeable on that article u/s 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include —
 - the duty referred to in sub-sections (5), (7) and (9);
 - the safeguard duty referred to in sections 8B and 8C;
 - the countervailing duty referred to in section 9; and
 - the anti-dumping duty referred to in section 9A.

Computation of Assessable value

Particulars	Amount
Value u/s 14(1)/ (2)	XXX
BCD	XX

Particulars	Amount
Protective Duty u/s 6 of CTA	XX
Total A-	XXX
CVD 3(1)	XX
Total B-	XXX
SWS @ 10% on BCD + Protective duty + CVD 3(1)	XX
Total C	XXX
CVD 3(5) on total C	XXX

Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum 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 Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

Section 3(7): Levy of IGST on imports

Any article which is imported into India shall, in addition,

- be liable to integrated tax at such rate,
- not exceeding 40%, as is leviable u/s 5 of the IGST, 2017 on a like article on its supply in India,
- on the value of the imported article as determined under sub-section (8)/(8A), as the case may be.

Section 3(8) Value for calculating IGST

For the purposes of calculating the IGST under sub-section (7) on any imported article where such tax is leviable at any percentage of its value,

the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

- (a) the value of the imported article determined under 14(1)/14(2), as the case may be; and
- (b) any duty of customs chargeable on that article u/s 12 of the Customs Act 1962, and
 - any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs,
 - but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section of the CTA, 1975 or the GST compensation cess referred to in section 3(9) of the CTA, 1975.

Author's notes: Following tax/cess would not be included while computing AV for computation of IGST & GST compensation cess:

- Integrated tax [Section 3(7)]
- Goods and Services Tax compensation cess [Sections 3(9)]

Computation of Assessable value for IGST/GST Compensation Cess

Particulars		Amount
Value u/s 14		XXX
Add: BCD		XX
Protective Duty u/s 6 of CTA		XX
Total	A	XXX
Add: CVD 3(1)		XX
Total	B	XXX
Add: SWS @ 10% on BCD + 3(1)		XX
Total	C	XXX
CVD 3(5) on C		XX
Total	D	XXX
All other duties		
Safeguard duty		XX
Anti-dumping duty		XX
Assessable Value u/s 3(8)/3(10)	E	XXX
IGST u/s 3(7) on E		XX
GST compensation cess u/s 3(9) on E		XX
		XXX

Note: IGST is applicable on all goods except AL for HC & 5 petroleum products - HPMAN.

Section (8A): Higher of value as per 3(8) or TV

Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption/export under the said Act, the value of such goods for the purpose of calculating the integrated tax under subsection (7) shall be,

(a) where the whole of the goods are sold,

- the value determined under sub-section (8) or
- the transaction value of such goods, whichever is higher; or

(b) where any part of the goods are sold,

- the proportionate value of such goods as determined under sub-section (8) or
- the transaction value of such goods, whichever is higher:

Proviso: Multiple times sold in warehouse: take the last TV

where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export,

- the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Proviso: For unsold goods, assessable Value u/s 3(8)

In respect of warehoused goods which remain unsold,

- the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

Explanation: For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

Section 3(9): Levy of GST compensation cess

Any article which is imported into India shall, in addition,

- be liable to the GST compensation cess at such rate, as is leviable u/s 8 of GST (Compensation to States) Cess Act, 2017 on a like article on its supply in India,
- on the value of the imported article as determined under sub-section (10)/(10A), as the case may be.

Section 3(10): Value for levy of compensation cess

For the purposes of calculating the GST compensation cess under sub-section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

(a) the value of the imported article determined 14(1)/14(2),

(b) any duty of customs chargeable on that article u/s 12 of the Customs Act, 1962, and

- any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs,
- but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9). (IGST and Compensation cess)

Section 3(10A): Computation of AV = Higher of value as per 3(10) or transaction value

Where the goods deposited in a warehouse under the provisions of the CA, 1962 are sold to any person before clearance for HC/export under the said Act, the value of such goods for the purpose of calculating the GST compensation cess under sub-section (9) shall be, —

(a) where the whole of the goods is sold,

- the value determined under sub-section (10) or
- the transaction value of such goods,

whichever is higher; or

(b) where any part of the goods is sold,

- the proportionate value of such goods as determined under sub-section (10) or
- the transaction value of such goods,

whichever is higher:

Proviso: Multiple times sold in warehouse: take the last TV

where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last of such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Proviso: For unsold goods, assessable Value u/s 3(10)

In respect of warehoused goods which remain unsold, the value/the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (10).

Explanation— For the purposes of this sub-section, the expression “transaction value”, in relation to warehoused goods, means the amount paid/payable as consideration for the sale of such goods.

Section 3(11) of the Customs Tariff Act

The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

Section 3(12) of the Customs Tariff Act

The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall,

as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.

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

(1) Lower rate of duty shall be levied under a trade agreement subject to fulfilment of conditions:

Whereunder a trade agreement between the Government of India and the Government of a foreign country or territory, duty at a rate lower than that specified in the First Schedule is to be charged on

- articles which are the produce or manufacture of such foreign country or territory,
- the CG may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of such foreign country or territory and
- for requiring the owner 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.

(2) In case of any confusion relating to applicability: CG decision shall be final

If any question arises whether any trade agreement applies to any country/territory, or whether it has ceased to apply to India or any foreign country or territory,

- it shall be referred to the CG for decision and the decision of the CG shall be final and shall not be liable to be questioned in any court of law.

Section 6 & 7: Power of CG to levy protective duty in certain cases - omitted

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

(1) Where CG is satisfied w.r.t any article that export duty should be increased/levied, the CG may by notification direct an amendment to be made in second schedule to provide for levy/increase in Export duty

Where in respect of any article, whether included in the Second Schedule or not, the CG is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied, 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.

(2) Provisions of 7(3) & (4) shall apply Mutatis Mutandis

The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7.

Section 8A. Emergency power of Central Government to increase import duties

(1) Where CG is satisfied w.r.t any article that import duty should be increased, the CG may by notification direct an amendment to be made in first schedule to provide for increase in Import duty

Where in respect of any article included in the First Schedule, the CG is satisfied that

- the import duty leviable thereon u/s 12 of the Customs Act, 1962 should be increased and
 - that circumstances exist which render it necessary to take immediate action,
- it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Provided that the CG shall not issue any notification under this subsection for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

(2) Provisions of 7(3) & (4) shall apply Mutatis Mutandis

The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7.

Exam Question: Write a note on Emergency power of CG to increase import duties.

Section 8B. Power of Central Government to impose apply safeguard measures

(1) Circumstances for levy of safeguard measures

If the CG, after conducting such enquiry as it deems fit, is satisfied that

- any article is imported into India in such increased quantities and
- under such conditions so as to cause or threatening to cause serious injury to domestic industry, then,
- it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.

Ways that increased imports can cause serious injury to domestic Industry

- Imports of goods into India are in excess to the essential quantities as per the Demand. Large imports of particular goods entering into Indian market, higher than required to bridge the gap between demand and supply of subject goods, forces Domestic companies to reduce their prices resulting in price suppression and depression.
- Due to the increased imports, share of domestic Industry for that product will decline, resulting significant decline in sales and capacity utilization for the product and ultimately resulting in lower profits.
- This will also result in increase in inventories of subject goods produced by domestic industry.

(2) The safeguard measures referred to in sub-section (1) shall include

- imposition of safeguard duty,
- application of tariff-rate quota or
- such other measure, as the Central Government may consider appropriate,
- to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:

Provided that

- no such measure shall be applied on an article originating from a developing country
- so long as the share of imports of that article from that country does not exceed 3% or
- where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three per cent. import share taken together, does not exceed nine per cent. of the total imports of that article into India:

Summary: Exemption from levy of safeguard duty

Article is from developing country:

No such measures shall be imposed on an article

- originating from a developing country
- so long as the share of imports of that article from that country does not exceed 3% or

Article is originating from more than one developing country:

Where the article is originating from more than one developing countries, then,

- so long as the aggregate of the imports from developing Countries each with less than three percent import share
- taken together does not exceed 9% of the total imports of that article into India:

Provided further that the CG may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country

or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

Author's comments: Whenever the import of a particular item increases in India, the domestic industries make an application to Directorate General of Safeguards (DGS), who conducts an inquiry and if he understands that there is an increase in import of such article which is causing injury to domestic Industries, he shall issue a notification imposing safeguard duty. Hence now on the import of such article from any country shall be leviable to safeguard duty, but some countries are exempted as provided in proviso above.

Note: Developing country means a country notified by the CG in the Official Gazette.

Examples: When Article originating from A developing Country

Example 1: Calculators imported into India from

Country	Developing/ Other country	Share of import	Author's Comment	Exempted from Safeguard Duty
Thailand	Developing country	60%	Developing country but share of imports exceeds 3%	Not Exempted
China	Developed Country	37%	Not a developing country	Not Exempted
Singapore	Developed Country	3%	Not a developing country	Not Exempted

Example 2: Calculators imported into India from:

Country	Developing/ Other country	Share of import	Author's Comment	Exempted from Safeguard Duty
Thailand	Developed Country	60%	Not a developing country	Not Exempted
China	Developed Country	37%	Not a developing country	Not Exempted
Singapore	Developing Country	3%	Developing country and share of imports upto 3%	Exempted

Examples: When Article originating from more than one developing Country

Example 3: Calculators imported into India from

Country	Developing/ Other country	Share of import	Author's Comment	Exempted from Safeguard Duty
China	Developed Country	60%	Not a developing country	Not Exempted
Russia	Developed Country	35%	Not a developing country	Not Exempted
UK	Developed Country	2.5%	Not a developing country	Not Exempted

Singapore	Developing Country	2.5%	Developing country with Share of Import < 3% and aggregate does not exceed 9%	Exempted
Thailand	Developing country	1%		Exempted

Example 4: Calculators imported into India from

Country	Developing/ Other country	Share of import	Author's Comment	Exempted from Safeguard Duty
China	Developed Country	60%	Not a developing country	Not Exempted
Russia	Developed Country	35%	Not a developing country	Not Exempted
UK	Developed Country	2.5%	Not a developing country	Not Exempted
Singapore	Developing country	3%	Developing but share 3% and Above	Not Exempted
Thailand	Developing country	2.5%	Developing country with Share of Import < 3% and aggregate upto 9%	Exempted
Bhutan	Developing country	2%		Exempted
Nepal	Developing country	2.5%		Exempted

Example 5: Calculators imported into India from

Country	Developing/ Other country	Share of import	Author's Comment	Exempted from Safeguard Duty
China	Developed Country	60%	Not a developing country	Not Exempted
Russia	Developed Country	35%	Not a developing country	Not Exempted
UK	Developed Country	2.5%	Not a developing country	Not Exempted
Singapore	Developing country	10%	Developing but share 3% and Above	Not Exempted
Thailand	Developing country	2.5%	Developing country with Share of Import < 3% and aggregate exceeds 9%	Not Exempted
Bhutan	Developing country	2%		Not Exempted
Nepal	Developing country	2.5%		Not Exempted
Sri Lanka	Developing country	2.5%		Not Exempted

(3) Where tariff-rate quota is used as a safeguard measure, the CG shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

(4) The CG may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

(5) Provisional Imposition of safeguard duty

The CG may, pending the determination under sub-section (1), impose a provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

Proviso: Refund of duty if CG of opinion that no injury caused

where, on final determination, the CG is of the opinion that increased imports have not caused/threatened to cause serious injury to a domestic industry, it shall refund the duty so collected:

Proviso: Maximum duration of provisional imposition: 200 days

the provisional safeguard duty shall not remain in force for more than 200 days from the date on which it was applied.

(6) Safeguard duty not to be apply on goods imported by 100% EOU/SEZ unless made specifically applicable/article cleared into DTA

Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a SEZ unless,-

- (i) it is specifically made applicable in such notification or to such undertaking or unit;
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation. - For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944

(7) The safeguard duty imposed 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.

(8) Maximum period of imposition 4 years

The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such application:

Proviso: Extension of period

If the CG is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

Proviso: Safeguard measures can be applied for maximum 10 years

In no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

(9) Applicability of all machinery provisions of the Customs Act, 1962:

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(10) Power to make rules relating to safeguard duty by CG

The CG may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for -

- (i) the manner in which articles liable for safeguard measures may be identified;
- (ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;
- (iii) the manner of assessment and collection of safeguard duty;
- (iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;
- (v) the manner of implementing tariff-rate quota as a safeguard measure;
- (vi) any other safeguard measure and the manner of its application.

(11) Definitions:

For the purposes of this section, -

- (a) "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section;
- (b) "domestic industry" means the producers -
 - (i) as a whole of the like article or a directly competitive article in India; or
 - (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;
- (c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;
- (d) "threat of serious injury" means a clear and imminent danger of serious injury.

(12) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the

expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Author's Comments:

The CG appoints Director General (Safeguard), Duties of DG (safeguard)

- to investigate the existence of "serious injury" or "threat of serious injury"
- to identify the article liable for safeguard measures;
- to submit his findings, provisional or otherwise to the CG as to the "serious injury"
- to recommend: the amount of duty which if levied would be adequate to remove the injury or threat of injury to the domestic industry.
- to review the need for continuance of safeguard duty.

Section 9: Countervailing duty on subsidized articles

(1) When a country pays subsidy upon exportation of any article into India, CG may impose CVD

Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then,

- upon the importation of any such article into India,
- whether the same is imported directly from the country of manufacture, production or otherwise, and
- whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise,

the CG may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Author's comment: Maximum amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid

Explanation. : For the purposes of this section, a subsidy shall be deemed to exist if -

- (a) there is financial contribution by a Government, or any public body in the exporting or producing country or territory, that is, where -
 - (i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

- (ii) Govt revenue that is otherwise due is foregone or not collected (including fiscal incentives);
- (iii) a Govt provides goods or services other than general infrastructure or purchases goods;
- (iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or
- (b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

(1A) Anti-circumvention measure in respect of countervailing duty:

Where the CG, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty-imposed u/ss (1) has taken place, by either of the following ways: -

- by altering the description or name or composition of the article on which such duty has been imposed
- by import of such article in an unassembled or disassembled form
- by changing the country of its origin or export or
- in any other manner, whereby the countervailing duty so imposed is rendered ineffective, it may extend the countervailing duty to such other article also from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

(1B) Absorption of countervailing duty:

Where the CG, on such inquiry as it considers necessary, is of the opinion that absorption of countervailing duty imposed under sub-section (1) has taken place whereby the countervailing duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation. - For the purposes of this sub-section, "absorption of countervailing duty" is said to have taken place, —

- (a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules.

(2) Provisional imposition: pending the determination

The CG may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -

- (a) the CG shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and
- (b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced

(2A) Non-applicability of countervailing duty

Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any countervailing duty imposed under sub-section (2) shall not apply to article imported by a 100% EOU or a unit in a SEZ, unless, —

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

(3) Conditions for Levy of CVD

Subject to any rules made by the CG, by notification in the Official Gazette, the CVD under sub-section (1) or (2) shall not be levied unless it is determined that -

- (a) the subsidy relates to export performance;
- (b) the subsidy relates to the use of domestic goods over imported goods in the export article; or
- (c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles;

(4) CG by notification impose CVD retrospectively from a date prior to the date of imposition but not beyond ninety days from date of notification

If the CG, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the CG may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(5) CVD chargeable is in addition to other duties under the act

The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(6) CVD shall cease to have effect on expiry of 5 years from date of imposition

The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition

Proviso: CG on review, may extend period of imposition for a further period upto 5 yrs

if the CG, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period upto 5 years and such further period shall commence from the date of order of such extension:

Proviso: If duty is under review on expiry, it shall continue for further period of 1 year

where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

Proviso: if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.

(7) The amount of any such subsidy as referred to in sub-section (1)/(2) shall, from time to time, be ascertained and determined by the CG, after such inquiry as it may consider necessary and the CG may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

(7A) Applicability of all provisions of Customs Act, 1962:

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

Section 9A. Anti- dumping duty on dumped articles. —

(1) CG may impose Anti-Dumping is when article is exported to India at less than its normal value

- Where any article is exported by an exporter/producer
- from any country/territory (the exporting country or territory) to India
- at less than its normal value, then,
- upon the importation of such article into India,
- the CG may, by notification in the Official Gazette,
- impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation: For the purposes of this section, -

(a) Margin of dumping, means the difference between its export price and its normal value;

(b) Export price, means the price of the article exported from the exporting country or territory.

In cases where there is no export price/the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party,

- the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or
- If the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) Normal value, in relation to an article, means -

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6)

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or

such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

Points to be noted:

Dumping exists when a product is exported from one country to another country at an export price which is less than its normal value prevailing in the exporting country. Anti-Dumping duty serves as a measure to negate and control the situation arising out of dumping.

Under the General Agreement on Tariffs and Trade (GATT) provisions, antidumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the antidumping duty to the lower of the two i.e., dumping margin and the injury margin.

Hence, Anti-dumping duty is:

(i) Margin of dumping or

(ii) Injury margin

whichever is lower.

Margin of Dumping: Normal Value - Export price

Injury margin: Fair selling Price - landed value of dumped imports.

Normal Value:

❖ If like article sold in Exporting country: Price at which the goods under complaint are sold, in the ordinary course of trade, in the domestic market of the exporting country.

❖ If no sales/low sales of like article in domestic market of Exporting country:

- Export price of article to third country or
- Cost of production + reasonable (administrative, selling & general cost) + Profit

Export price:

If Available & reliable: the price of the article exported from the exporting country or

If Unavailable/ unreliable:

- Constructed export price: price at which the imported articles are first resold to an independent buyer
- If the article is not resold to an independent buyer/not resold in the condition as imported: on such reasonable basis as may be determined in accordance with the rules.

Note:

- Dumping is a function of two variables, namely Normal Value and Export Price, which must be compared at the same level of trade i.e., at the ex-factory level.
 - Margin of dumping is generally expressed as a percentage of the export price.
- Injury margin: Fair selling Price – landed value of dumped imports.

Fair Selling Price (FSP) [Non-Injurious Price]:

FSP is that level of price,

- which the industry is, expected to have charged
- under normal circumstances in the Indian market during the period defined.

In other words, it is the fair selling price of a product for the domestic industry.

Landed Value: is taken as the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

Landed Value = (CIF + BCD + SWS)

(1A) Anti-circumvention measure in respect of countervailing duty:

Where the CG, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty-imposed u/ss (1) has taken place, by either of the following ways: -

- by altering the description or name or composition of the article on which such duty has been imposed
- by import of such article in an unassembled or disassembled form
- by changing the country of its origin or export or
- in any other manner,

whereby the countervailing duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Author comment: Sub section (1A) is inserted u/s 9 to empower the CG to levy CVD in circumstances of circumvention of countervailing duty imposed.

(1B) Absorption of Anti-dumping duty

Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation. - For the purposes of this sub-section, absorption of anti-dumping duty" is said to have taken place, -

- (a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules.;

(2) Provisional Imposition of duty pending determination of normal Value & margin of dumping & refund incase provisional duty exceeds the margin.

The CG may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined: -

- (a) the CG shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and
- (b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(2A) Non-applicability of anti-dumping duty

Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a SEZ, unless, —

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

(3) Retrospective imposition of duty provisionally, but not beyond 90 days from date of notification u/ss (2)

If the CG, in respect of the dumped article under inquiry, is of the opinion that:

- (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and
- (ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other

circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied,

the CG may, by notification in the Official Gazette,

levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) ADD is in addition to other duties

The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) ADD shall be effective for a period of 5 years from Imposition

The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Proviso: CG on review, may extend period of imposition for a further period upto 5 yrs
if the CG, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period upto 5 years and such further period shall commence from the date of order of such extension:

Proviso: If duty is under review on expiry, it shall continue for further period of 1 year
where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

Proviso: if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.

(6) Margin of dumping shall be ascertained & determined by CG from time to time.

The margin of dumping as referred to in sub-section (1) or (2) shall,

- from time to time, be ascertained and determined by the CG,
- after such inquiry as it may consider necessary and
- the CG may, by notification in the Official Gazette, make rules for the purposes of this section, and

- without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and
- for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and
- for the assessment and collection of such anti-dumping duty.

(6A) Margin of Dumping shall be determined on basis of records/info provided by Exporter/producer

The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:

Proviso: If exporter fails to provide records/info, MOD on basis of facts available

where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

(8) All provisions of Customs Act, 1962 shall apply:

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

Section 9AA. Refund of anti-dumping duty in certain cases.

(1) Refund of duty, if importer proves to CG that ADD paid is in excess of the actual dumping margin

Where upon determination by an officer authorized in this behalf by the CG under clause (ii) of sub-section (2),

- an importer proves to the satisfaction of the CG that
- he has paid anti-dumping duty-imposed u/s 9A (1) on any article, in excess of the actual margin of dumping in relation to such article,
- the CG shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and
- such importer shall be entitled to refund of such excess duty

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

Case Law: Refund of excess anti-dumping duty paid is subject to provisions of unjust enrichment - Automotive tyre Manufacturers Association v. Designated Authority 2011.

(2) Rules for refund of excess ADD, rules to be made by CG

the CG may, by notification in the Official Gazette, make rules to-

- (i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);
- (ii) authorise the officer of the CG who shall dispose of such application on behalf of the CG within the time specified in such rules; and
- (iii) provide the manner in which the excess duty referred to in sub-section (1) shall be -
 - (A) determined by the officer referred to in clause (ii); and
 - (B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination.

Section 9B: No Levy u/s 9 or 9A in certain cases

(1) Notwithstanding anything contained in section 9 or section 9A, -

- (a) No article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.
- (b) the CG shall not levy any countervailing duty or anti-dumping duty:
 - (i) under section 9/9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;
 - (ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favored nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and
 - (iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary finding has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also

been made that a duty is necessary to prevent injury being caused during the investigation:

Proviso: nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

(c) the Central Government may not levy -

(i) any countervailing duty u/s 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The CG may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

Section 9C: Appeal

- An Appeal Shall lie with AT against an order in respect of ADD, CVD on subsidized articles and order imposing safeguard duty.
- Appeal within 90 days of the date of order under appeal, AT may condone delay on sufficient cause being shown.
- Appeal shall be accompanied by a fee of Rs 15,000
- AT shall pass order, after providing OBH to the parties.

Social welfare surcharge (SWS) on Imported goods

(1) SWS levied on goods specified in first schedule of CTA, it levied to fulfil the commitment of the Govt to provide and finance education, health and social security

(2) CG may utilize such sums of money of the SWS as it may consider necessary.

(3) Calculation of SWS

The Social Welfare Surcharge levied under sub-section (1),

- shall be calculated @ 10%
- on the aggregate of duties, taxes and cesses which are levied and collected by the CG in the Ministry of Finance (Department of Revenue) u/s 12 of the Customs Act, 1962 and
- any sum chargeable on the goods specified in sub-section (1) (imported goods) under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs,
- but not including—
 - (a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
 - (b) the countervailing duty referred to in section 9 of the Customs Tariff Act;
 - (c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;
 - (d) the Social Welfare Surcharge on imported goods levied under sub-section (1).

(4) SWS is in addition to other duties

SWS leviable on IGST & compensation cess has been exempted [NNo. 13/2018-Cus dt. 02.02.18].

Relevant case law: UOI Vs M/s Adani Power Ltd 2016 (SC)

When no customs duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Sec 51 of the SEZ act.

Agriculture Infrastructure and Development Cess (AIDC) on Import of Certain Items

- **AIDC Purpose:** Levied on specified imported goods to fund agricultural infrastructure and development expenses.
- **Calculation Basis:** Value of goods for AIDC calculation follows the same method as customs duty under Section 14 of the Customs Act, 1962.
- **Additional Duty:** AIDC is charged in addition to any other customs duties.
- **Application of Customs Act Provisions:** Customs act provisions, including those for assessment, refunds, exemptions, interest, & penalties, apply to AIDC as they do for other customs duties.

Note: Examples of goods on which AIDC has been imposed have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

Baggage [Section 2(3)]

Baggage includes

- unaccompanied baggage
- but does not include motor vehicles;

Baggage is a comprehensive term which means the luggage of a passenger accompanied or unaccompanied and 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.

Section 77: Declaration by owner of baggage.

Under this section the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as Baggage Declaration Form.

Write a short note on declaration by owner of 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 it in a form known as Baggage Declaration Form. It is Prescribed format, issued by CBIC, which is to be filled and submitted by all passengers arriving in India and have anything to declare or carrying dutiable or prohibited goods. Generally, provided by airlines to passengers carrying dutiable goods and that they should fill it up on board flights so that they do not have to stand in queue after deboarding.

Green and Red Channel

Green Channel means if a person does not have any dutiable goods, he can go through green channel without undergoing any check along with baggage.

Red Channel means if carrying dutiable goods, he should pass through red channel and should submit the declaration and his baggage can be inspected by the customs authorities.

Section 78: Determination of rate of duty and tariff valuation in respect of baggage.

Relevant date for determination of duty & Value in baggage is the date of making declaration

The rate of duty and tariff valuation, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.

Rate of Duty (Basic custom duty): The Custom Tariff Act, 1975:

Chapter 98

Project imports; laboratory chemicals; passengers' baggage,
personal importations by air or post; ship stores

Notes: Headings 9803 and 9804 are taken not to apply to:

(a) motor vehicles;

(b) alcoholic drinks;

(c) goods imported through courier service.

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
98 03 00 00	All dutiable articles, imported by a passenger or member of a crew in his baggage	Kg.	100%	-

Partial Exemption from BCD: (Notification 26/2016: Customs dated 31.03.2016, effective from 01.04.2016 read with corrigendum dated 02.04.2016)

In exercise of the powers conferred by section 25(1) of the Customs Act, 1962, the CG, being satisfied that it is necessary in the public interest so to do, hereby exempts articles falling under Heading 9803 of the First Schedule to the Customs Tariff Act, 1975 specified in column (1) of the Table hereto annexed, when imported into India by a passenger or a member of a crew as baggage, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (2) of the said Table:

Description of Articles	Rate
(1)	(2)
Any article the value of which exceeds the duty-free allowance admissible to such passenger or member under the Baggage Rules, 2016.	35% ad valorem
On the unaccompanied baggage.	35% ad valorem

Explanation. - Where the value of any one article exceeds the duty-free allowance admissible to such passenger or member, the amount of duty shall be calculated only on the value in excess of the duty-free allowance so admissible to the extent not availed of by such passenger or member for clearing any other article of baggage, if any.

Exemption shall not be applicable to the following items and on courier imports - i.e. rate of duty @ 35% would not apply to the following:

(i) Fire arms

(ii) Cartridges of fire arms exceeding 50

(iii) Cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules

(iv) Goods imported through a courier service.

Note: In addition to the duty of 35% or 100%, SWS @ 10% is applicable from 2nd February 2018 instead of Education cess of 3%

Hence,

- if Baggage declaration filed before 02.02.18: $35\% + (3\% \times 35\%) = 36.05\%$
- if Baggage declaration filed on/after 02.02.18: $35\% + (10\% \times 35\%) = 38.50\%$

Exemption on Passenger Baggage from IGST

(NNo. 183/86-Cus. dt. 01.03.86. as amended by NNo.48/96, 43/17)

In exercise of the powers conferred by section 25(1) of the Customs Act, 1962, the CG being satisfied that it is necessary in the public interest so to do, hereby exempts

- all goods falling under heading No.98.03 of the First Schedule to the Customs Tariff Act, 1975, when imported into India by a passenger or a member of the crew as baggage,
- from the whole of the integrated tax under sub-section (7) of section 3 of the said Customs Tariff Act.

Notification no. 02/2017 of CT(R)/IT(R) - Provides Exemption from GST on Passenger Baggage.

Exemption provide to one laptop

(Notification No. 11/2004 - Customs dated 08.01.2004 effective 09.01.2004)

In exercise of the powers conferred by section 25(1) of the Customs Act, 1962, the CG, being satisfied that it is necessary in the public interest so to do,

- hereby exempts one laptop computer (notebook computer) falling under tariff item 98030000 of the First Schedule to the Customs Tariff Act, 1975
- when imported into India by a passenger of the age of 18 years/above (other than member of crew)
- from whole of the duty of Customs leviable thereon under the First Schedule to the said CTA.

Crux:

- BCD on Baggage is 100%, however exemption is provided & duty is 35% Ad valorem.
- 100% BCD is applicable on baggage consisting of Fire arms, Cartridges of fire arms > 50, Cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty, goods imported through a courier service.
- SWS is applicable @ 10% from 02.02.2018 & hence effective rate of duty is 38.05%

- Passenger Baggage are exempted from IGST as well as compensation Cess.
- CG has exempted 1 laptop when imported by a passenger $\geq$ 18 years from the BCD.

Section 79: Bona fide Baggage exempted from duty.

(1) The Proper officer (PO) may allow bona fide baggage to pass free of duty

The PO may, subject to any rules made under sub-section (2), pass free of duty:

(a) any article in the baggage of a passenger or a member of the crew

- in respect of which the said officer is satisfied that it has been in his use
- for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger

- in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; Provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

(2) the CG may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify -

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);
- (b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);
- (c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3) Different rules may be made under sub-section (2) for different classes of persons.

Summary:

1. PO may subject to rules, allow bona fide baggage to pass duty free:

- An article in baggage of passenger/crew member which has been in use for minimum period - (personal effects allowed to be cleared duty free)
- An article in baggage of passenger which is for the use of the passenger/his family or is a bona fide gift or souvenir - (article for self-use/family/gift/souvenir allowed within limit as per rules)

2. In exercise of the powers conferred by section 79(2), the CG hereby makes the following rules, namely: Baggage Rules, 2016 (explained below).

Section 80: Temporary detention of baggage

Where the baggage of a passenger contains

- any article which is dutiable or the import of which is prohibited and
- in respect of which a true declaration has been made under section 77,
- the PO may, at the request of the passenger, detain such article
- for the purpose of being returned to him on his leaving India and
- if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India
- or as cargo consigned in his name.

Author's comment:

Section applicable with respect to

- dutiable goods (goods which are chargeable to duty & can be cleared on payment of duty) or
- Prohibited goods (goods the import of which is prohibited, hence cannot be cleared).

Exam Question: Write a note on/Explain temporary detention of baggage u/s 80.

Section 81: Regulations in respect of baggage.

The Board may make regulations, -

- (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 the transit or transshipment of baggage from one customs station to another or to a place outside India.

Just for Knowledge:

Regulations made on this behalf:

- Customs Baggage Declaration Regulations, 2013
 - These regulations shall apply to baggage including any package comprised therein of the passengers coming to India.
 - Method of Declaration of Baggage: All passengers who come to India shall declare their accompanied baggage in Form I. (Baggage declaration form)
- Baggage (Transit to Customs Stations) Regulations, 1967.

Baggage rule 2016

Short title and commencement.

These rules may be called the Baggage Rules, 2016 & they shall come in force from 01.04.2016

Definitions

- (i) "Annexure" means Annexure appended to these rules;
- (ii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;
- (iii) "infant" means a child not more than two years of age;
- (iv) "resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- (v) "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;
- (vi) "personal effects" means things required for satisfying daily necessities but does not include jewellery.

Passenger arriving from countries other than Nepal, Bhutan or Myanmar-

An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant

arriving from any country other than Nepal, Bhutan or Myanmar,

shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of Rs 50000 if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure- I, upto the value of Rs 15,000 if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.

Explanation- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

Passenger arriving from Nepal, Bhutan or Myanmar-

An Indian resident/a foreigner residing in India/a tourist, not being an infant arriving from Nepal/ Bhutan/Myanmar, shall be allowed clearance free of duty articles in his bonafide baggage, that is to say

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure -I up to the value of Rs 15000 if these are carried on the person or in the accompanied baggage of the passenger:

Proviso: where the passenger is an infant, only used personal effects shall be allowed duty free:

Proviso: where the passenger is arriving by land, only used personal effects shall be allowed duty free.

Explanation- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

Annexure I (See rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 grams.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

The rate on 1, 2 and 3 shall be 110% and not 38.50%

Jewellery

A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of

- twenty grams with a value cap of Rs 50,000 if brought by a gentleman passenger, or
- forty grams with a value cap of Rs 1,00,000 if brought by a lady passenger.

Transfer of residence

- (1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.
- (2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

Appendix

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From three months upto six months	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	-
From six months upto one year	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 1 lakh rupees.	Indian passenger	
Minimum stay of 1 year during preceeding 2 years.	Personal and household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure	The Indian passenger should not have availed this concession in the preceding 3 years.	-

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
	III upto an aggregate value of 2 lakh rupees.		
Minimum stay of two years or more.	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of 5 lakh rupees.	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence;	(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by DC/AC 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.
		(ii) Total stay in India on short visit during the two preceding years should not exceed 6 months; and	(b) For condition (ii), the PC/C of Customs may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in the preceding 3 years.	No relaxation

Annexure II (See rule 6)

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 any such Video camera with one or more of the following goods, namely: -
 - (a) television receiver;
 - (b) sound recording or reproducing apparatus;

(c) video reproducing apparatus.

7. Cinematographic films of 35mm and above.

8. Gold or Silver, in any form, other than ornaments.

Annexure III (See rule 6)

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.

Currency

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

Provisions regarding unaccompanied baggage

(1) These rules shall apply to unaccompanied baggage except where they have been specifically excluded:

Provided that the said 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 DC/AC of Customs may allow:

Provided further that the said unaccompanied baggage may land in India upto two months before the arrival of the passenger or within such period, not exceeding one year, as the DC/AC of Customs 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.

Application of these rules to members of the crew

(1) On termination from Job: Baggage rules applicable to crew member as if he/she is a passenger
These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) On duty: Crew members allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for self/family use upto Rs 1,500
Notwithstanding anything contained in sub-rule (1), a member of crew of a vessel or an aircraft other than those referred to in sub-rule (1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of one thousand and five hundred rupees.

Import or Export of goods by Post or Courier (Section 83-84)

Section 83: Rate of duty & tariff valuation in respect of goods imported/exported by post or courier

(1) Relevant date for determining rate of duty & tariff value for Imports by post/courier
The rate of duty and tariff value, if any, applicable to any goods imported by post/courier shall be:

- the rate and valuation in force on the date on which the postal authorities or the authorised courier
- present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon:

Proviso: if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.

(2) Relevant date for determining the rate of duty for Exports

The rate of duty & tariff value, if any, applicable to any goods exported by post/courier shall be

- the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorised courier for exportation.

Summary:

In case of Import by Post/Courier: Relevant date is

Later of:

- Date of presentation by postal authorities/authorised courier, a list of goods to PO or
- Date of Arrival of the vessel

In case of Export by Post/Courier: Relevant date is

Date on which the exporter delivers such goods to the postal authorities/authorised courier for exportation.

Section 84: Regulations regarding goods imported or to be exported by post or courier

The Board may make regulations providing for—

- (a) the form & manner in which an entry may be made in respect of goods imported/to be exported by post/courier;
- (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;
- (c) the transit or transshipment of goods imported by post or courier, from one customs station to another or to a place outside India.

Procedure for Import and Export of Goods by Post

In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported

- (i) on which there is a duty; and
- (ii) which are subject to prohibition or restriction under the Customs Act or any other law for the time being in force.

The customs have no concern over other goods or other mail.

Provisions under Indian Post Office Act

The Indian Post Office Act, 1898, contains certain provisions to facilitate this control. The first of these is section 24 of the Indian Post Office Act, which reads as under:

Power to deal with postal articles containing goods contraband or liable to duty [Section 24 of the Indian Post Office Act]

Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force, or anything is liable to duty, writing to the addressee, initiating him to attend, either in person, or by an agent, within a specified time at a post office, and shall in the presence of the addressee, or his agent, or if the addressee or his agent fails to attend as aforesaid, then in his absence open and examine the postal article.

It therefore, follows that

- (1) The post office authority has a right and duty to open and examine a postal article.
- (2) The right can be exercised only if he has a reasonable suspicion that the goods contained in the postal article are-(a) liable to duty of customs, or (b) subject to a prohibition under any law in force.
- (3) Before opening and examining the postal article he should issue a notice in writing to the addressee asking him to be present at an appointed time and place for the opening of the postal article.
- (4) The addressee can be present either in person or by an agent; and if the addressee or his agent does not turn up at the appointed time and place, the postal authorities are entitled to open and examine the postal article in his absence.

Delivery to customs authority [Section 24A of the Indian Post Office Act]

The power enabling the postal authorities to deliver such articles to the Customs authorities is enshrined in section 24A of the Indian Post Office Act. The relevant provisions read as follows:

The CG may, by a general or special order, empower any officer of the post office, specified in such order, to deliver any postal article, received from beyond the limits of India and suspected to contain anything liable to duty, to such customs authority as may be specified in the said order and such customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act [now Customs Act, 1962] or any other law for the time being in force.

Thus, once the postal authorities have found some postal article to contain dutiable or prohibited goods, that authority should deliver the postal article in question to the customs authority for necessary action.

Stores (Section 85-90)

As per Section 2(38) "stores" means

- goods for use in a vessel or aircraft and
- includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;

Note: Stores covers items like food, drink, medicines, life-saving equipment like oxygen and life boats, articles/equipment used for entertainment, in addition to fuel, spare parts & other equipment.

"Store list" in the prescribed format is required to be filed as part of the import manifest as well as export manifest / import report or export report.

Section 2(21): Foreign-going vessel or aircraft

As per Section 2(21) "foreign-going vessel or aircraft" means

- any vessel or aircraft for the time being engaged in the carriage of goods/passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes—
 - (i) any naval vessel of a foreign Government taking part in any naval exercises;
 - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

Section 85: Stores may be allowed to be warehoused without assessment to duty

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty under this Chapter, the proper officer may permit the goods to be warehoused without the goods being assessed to duty.

Section 86: Transit and transhipment of stores

- (1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.
- (2) Any stores imported in a vessel or aircraft may, with the permission of the PO, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87/90.

Section 87: Imported stores may be consumed on board a foreign-going vessel or aircraft

Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

Author's comment: This covers the situation between the first Indian port/airport of arrival to the final Indian port/airport of departure to a destination outside India.

In other words, no duty is leviable as long as the vessel/aircraft is a foreign going vessel/aircraft. However, if the vessel/aircraft ceases to be so and converts to a total run/local flight, duty will be chargeable on the stores on board.

As a result of these two specific provisions of law, it follows that in other cases normal law of levy and assessment to import duty would apply. Thus, in the case of:

- (i) vessels/aircraft arriving in India and terminating their voyage at the port of arrival:
- (ii) vessel/aircraft arriving in India and subsequently converting into coastal voyage/run or domestic flight import duty would be chargeable on the unconsumed stores brought by the vessel/aircraft/conveyance at the point of its entry into India. The stores list in the arrival manifest or import manifest forms the basic document for determination of duty liability.

Section 88: Application of section 69 and Chapter X to stores.

The provisions of section 69 and Chapter X shall apply to stores (other than those to which section 90 applies) as they apply to other goods, subject to the modifications that—

- (a) for the words "exported to any place outside India" or the word "exported", wherever they occur, the words "taken on board any foreign-going vessel or aircraft as stores" shall be substituted;
- (b) in the case of drawback on fuel and lubricating oil taken on board any foreign-going aircraft as stores, section 74(1) shall have effect as if for the words "ninety-eight per cent", the words "the whole" were substituted.

Author's comment: This section provides that the provisions of Section 69 and chapter X (which contains the provisions for drawback of duty) shall apply to stores other than those covered by section 90. Thus, it follows that,

- (i) Section 69 allows warehoused goods to be exported without payment of import duty. By virtue of section 88, this benefit is available to warehoused goods if they are taken on board any foreign going vessel or aircraft as stores.
- (ii) Further, as per section 74, where duty paid imported goods are exported within two years then subject to certain conditions, such duty shall be repaid as drawback. By virtue of section 88, this benefit has been made available to imported stores.

In case of imported stores, which have been re-exported after the import duties for the same have been paid, the original import duty paid is eligible as drawback. For stores like fuel and lubricants oil taken on board any foreign going aircraft the whole of the import duty paid is eligible as drawback as against 98% eligible for other imported goods.

Imported goods can be exported without clearing it for home consumption on payment of duty from the warehouse under Section 69.

Section 89: Stores to be free of export duty

Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.

Section 90: Concessions in respect of imported stores for the Navy

Following are the special provisions in relation to supply of stores to Naval vessels:

- (1) Imported stores specified in sub-section (3) may without payment of duty be consumed on board a ship of the Indian Navy.
- (2) The provisions of section 69 and Chapter X shall apply to stores specified in sub-section (3), as they apply to other goods, subject to the modifications that—
 - (a) for the words "exported to any place outside India" or the word "exported" wherever they occur, the word "taken on board a ship of the Indian Navy" shall be substituted;
 - (b) for the words "ninety-eight per cent." in sub-section (1) of section 74, the words "the whole" shall be substituted.
- (3) The stores referred to in sub-sections (1) and (2) are the following: —
 - (a) stores for the use of ship of the Indian Navy;
 - (b) stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service.

Definitions

Assessment means determination of

- the dutiability of any goods and
 - the amount of duty, tax, cess or any other sum so payable, if any,
- under this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to—
- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act (CTA);
 - (b) the value of such goods as determined in accordance with the provisions of this Act and the CTA;
 - (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act/CTA/under any other law for the time being in force;
 - (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
 - (e) the origin of such goods determined in accordance with the provisions of the CTA/rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
 - (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,
- and includes
- provisional assessment,
 - self-assessment,
 - re-assessment &
 - any assessment in which the duty assessed is nil;

Section 17: Assessment of duty.

(1) Importer/Exporter self-assess duty

An importer entering any imported goods under section 46, or an exporter entering any export goods u/s 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) PO may verify the self-assessment, and examine/test goods

The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) PO may require importer/exporter to produce additional documents and information

For the purposes of verification under sub-section (2), the PO may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods/export goods, as the case may be, can be ascertained and thereupon, the importer, exporter/such other person shall produce such document or furnish such information.

(4) Re-assessment of duty by PO if self-assessment incorrect

Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) PO to pass a speaking order on re-assessment within 15 days of re-assessment of BOE/Shipping bill

Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods u/s 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 18: Provisional assessment of duty.

(1) Provisional assessment by PO (reasons)

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 & 50, —

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
 (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,
 the PO may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as other case may be, and the duty provisionally assessed.

(1A) Furnishing of additional documents or information to PO for final assessment within time limit prescribed

Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the PO for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the PO shall finalize the provisional assessment within such time and in such manner, as may be prescribed.

(2) On final assessment the importer/exporter to pay deficient amount/refund shall be given
 When the duty leviable on such goods is assessed finally or re-assessed by the PO in accordance with the provisions of this Act, then—

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the PO may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) Interest payable on final assessment @ 15% from the first day of the month in which the duty is provisionally assessed till the date of payment thereof

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof

(4) If amount not refunded within 3 months from the date of assessment of duty finally or re-assessment of duty, interest @ 6%

Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) Unjust enrichment not applicable

The amount of duty refundable under sub-section (2) & the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

Further, CBIC has issued following guidelines for provisional assessment vide Circular No. 38/2016 Cus. dated 22.08.2016:

Wherever, duty is to be assessed provisionally, the importer shall:

- (a) execute a bond in the prescribed form, for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and
- (b) furnish prescribed amount of security for the payment of the duty deficiency. No sureties shall be obtained. The security to be obtained shall be in the form of a bank guarantee or a cash deposit, as convenient to the importer.

Customs (Finalisation of Provisional Assessment) Regulations, 2018

The significant provisions contained in said regulations are discussed as under:

Time-limit and manner for submission of documents or information by importer/ exporter for the purpose of finalisation of provisional assessment

(a) Reasons for Provisional Assessment:

- (i) the necessary documents have not been produced or information has not been furnished
- (ii) the PO requires the importer or the exporter to produce any additional documents or information,

Such information or documents would be made available by the importer /exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer.

(b) The proper officer would inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced within 15 days from the date of such order of provisional assessment. If the document/information is not made available within 15 days, this period may, for reasons recorded in writing, be further extended by proper officer for 3 months on his own or at the request of the importer or the exporter.

(c) The Additional Commissioner/Joint Commissioner of Customs, may further extend the time period referred for another 3 months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within prescribed time limit.

(d) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.

(e) All the requisite information/ documents need to be submitted in one instance by importer/ exporter and importer/exporter themselves or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

(f) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

Time-limit for finalisation of provisional assessment

The proper officer will finalize the provisional assessment within 2 months of receipt of:

(a) an intimation from the importer or the exporter/his authorised representative or Customs Broker or

(b) a chemical/other test report, where the provisional assessment was ordered for that reason; or

(c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed, the proper officer shall proceed to finalize the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

(d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalize the provisional assessment within the period of 2 months.

(e) This regulation would not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

Manner of finalisation of provisional assessment

(a) The provisional assessment will be finalized as per the provisions of section 18 of the Act. However, if the amount so paid at the time of provisional assessment or after adjustment under section 18(2)(a) of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall will be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter, However, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods would pay the shortfall in terms of the provisions of section 18.

(b) The Bond executed at the time of provisional assessment with security, if any, will be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

(c) Where the final assessment is contrary to the provisional assessment, the proper officer will pass a speaking order following principles of natural justice.

(d) Where the final assessment confirms the provisional assessment, the proper officer will finalize the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.

(e) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer will finalize the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

Penalty

If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to Rs 50,000.

Introduction of Faceless Assessment

Trade facilitation is a key enabler for simplification of procedures and reduction of barriers to the trade. In India, CBIC has been at the forefront of taking initiatives aimed at catalysing economic development through transparency, harmonization, predictability and automation in trade. The aim has been to reduce time and cost for the EXIM community. This would help them become more competitive in the international arena.

In line with this momentum, CBIC has implemented next generation reforms through Turant Customs, strongly enabled by technology. Turant Customs is a mega reform for the ease of doing business.

This flagship initiative stands on the pillars of - Faceless, Contactless and Paperless Customs. This reform will help India take a substantial leap forward towards faster and cheaper Customs clearance of imported goods.

A key enabler in Turant Customs is Faceless Assessment. It has been rolled out in phases and covered the entire country by 31st October 2020. This would enable uniform, anonymous Customs assessments and reduce interface between the Trade and Customs officers.

Faceless Assessment, a component of the Turant Customs programme, is a path breaking initiative aimed at introducing anonymity and uniformity in Customs assessments pan India.

Journey towards Faceless Assessment

Decades ago, goods imported into India were assessed for Customs duty at the border by jurisdictional Customs officers on the basis of physical documents. Subsequent introduction of computers led to automation of assessment. This was followed by a robust digital risk management system (RMS) for Customs clearance with minimal checks, while interdicting risk-prone cargo for assessment and examination. In 2012, the Customs Act 1962, was amended to introduce self-assessment by importers/ exporters themselves. While digitization helped in streamlining of procedures, yet disparities in assessment prevailed due to interpretation issues. Customs officials recognised a dire need to provide uniformity and certainty in assessment practices. It was also clear that anonymity in assessment and load balancing of import documents that are required to be assessed would bring about more efficiency and help improve the speed of Customs clearances across India. This was the trigger for the conceptualization and development of Faceless Assessment.

What is Faceless Assessment?

Faceless Assessment is a major Customs Reforms where a Bill of Entry that is identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import in the Customs Automated System. It separates the assessment process from the physical location of Port of Import, using a technology platform.

Faceless Assessment (also referred to as virtual assessment or anonymized assessment) uses a technology platform to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ensure an objective, free, fair and just assessment.

From an importer's perspective, there will be no changes to the process of filing a Bill of entry. He will continue to file his documentation including bill of entry and supporting documents on the ICEGATE portal.

Key objectives of Faceless Assessment:

- (i) Anonymity in assessment for reduced physical interface between trade and Customs
- (ii) Speedier Customs clearances through efficient utilisation of manpower
- (iii) Greater uniformity of assessment across locations
- (iv) Promoting sector specific and functional specialization in assessment

Section 99A: Audit

PO may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

Explanation. — For the purposes of this section, "auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

Salient feature of this audit procedure are as follows:

- (i) Auditee is to preserve records for conduct of this audit for a period of five years
- (ii) Risk based assessment will identify persons to be audited
- (iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit
- (iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable

- (v) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs
- (vi) Contravention of these Regulations attracts penalty of Rs 50,000

Types of Audit - Transaction based audit (TBA) & Premise based audit (PBA)

Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed.

- TBA (audit of transactions): Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).
- PBA (audit at the premises): The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.

Selection criteria for audit:

Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.

Executive Commissionerates to assist Audit Commissionerates

The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit. The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures. [Circular No. 02/2019-Cus dated 08.01.2019].

Custom Audit Regulations, 2018

1. Short title and commencement. -

(1) These regulations may be called the Customs Audit Regulations, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - In these regulations, unless the context otherwise requires, -

(a) "Act" means the Customs Act, 1962 (52 of 1962);

- (b) "audit" includes examination or verification of declaration, record, entry, document, import or export licence, authorisation, scrip, certificate, permission etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, draw of samples;
- (c) "auditee" means a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods;
- (d) "audit report" includes the audit findings in the report prepared after the audit containing details about objections raised by the proper officer and explanation given by the auditee, if any;
- (e) "books of account" includes ledgers, day-books, cash books, account-books, other accounts related record whether kept in written or printed form or stored electronically;
- (f) "electronic records" means data or record stored in any form and manner relevant for the purpose of Audit under section 99A of the Act;
- (g) "premises" includes the registered office, branch office, warehouse, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.
- (h) Words and expressions used and not defined herein but defined in the Act, shall have the same meaning respectively, assigned to them in the Act.
3. Auditee to preserve and make available relevant documents. -
- (1) The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made there under or any other law for the time being in force, maintained for a minimum period of five years in relation to imported goods or export goods or dutiable goods.
- (2) The auditee shall render assistance to the proper officer and his team of officers in the discharge of their official duty and shall in no case refuse or obstruct the proper officer or his team of officers in discharge of their official duty.
4. Selection for Audit. - The selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria.

5. Manner of conducting audit. -

- (1) The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee.
- (2) The proper officer may, where considered necessary, request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit.
- (3) The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit at the premises of the auditee.
- (4) The proper officer may, where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.
- (5) The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.
- (6) Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums, due, if any, in part or in full and the proper officer shall record the same in the audit report.
- (7) Where the proper office has asked the auditee to furnish information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.
- (8) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date of starting of the audit.

Provided that the jurisdictional Commissioner of Customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

6. Assistance of professionals. - (1) If the PO, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like CA, Cost Accountant, an expert in the field of computer sciences or information technology etc., may do so, with the previous approval of the Principal Commissioner/Commissioner of Customs.

7. Penalty. - Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand Indian rupees.

Introduction

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods. This may happen for various reasons, like error or lack of information. In such cases, refund of excess amount of duty paid can be claimed. Refund of any excess interest paid by the importer/exporter can also be claimed.

Section 27: Claim for refund of duty

(1) Refund application to the AC/DC before expiry of 1 year from the date of payment

Any person claiming refund of any duty or interest—

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, **before the expiry of one year, from the date of payment of such duty or interest:**

Proviso: the limitation of 1 year shall not apply where any duty or interest has been paid under protest where **the amount of refund claimed is less than rupees one hundred, the same shall not be refunded**

Explanation. — For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

Application for refund to be filed within one year:

- A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest [Sec 27(1)].
- A claim by another person, from whom duty was collected, must be made before expiry of one year from the date of purchase of the goods [Explanation to Sec 27(1)].

(1A) Application to be accompanied by documentary evidence

The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely:

	Event	Relevant date
(a)	Exemption of duty by a special order issued u/s 25(2)	Date of such order
(b)	Refund of duty arising as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction
(c)	Provisional payment of duty u/s 18	Date of adjustment of duty after the final assessment, or in case of re- assessment, from the date of such re- assessment [Sec 27(1B) (c)].

(2) Doctrine of unjust enrichment

If, on receipt of any such application, the Assistant Commissioner/Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Proviso: the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner/Deputy Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- the duty and interest, if any, paid on such duty paid by the importer or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- the export duty as specified in section 26;
- drawback of duty payable under sections 74 and 75;
- the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify;
- the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—

- (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
- (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment:

Proviso: no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) No refund shall be made except as provided in sub-section (2)

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, the National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within 7 days of its re-assembly, and the CG shall seek the approval of Parliament to the notification by a resolution moved within a period of 15 days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification/directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the CG at any time by notification in the Official Gazette.

Section 27A: Interest on delayed refunds @ 6% if not refunded within 3 months

If any duty ordered to be refunded u/s section 27(2) to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below 5% and not exceeding 30% per annum as is for the time being fixed by the CG, by notification in the Official Gazette, on such duty from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty:

Currently, the rate of interest is 6% vide NNo. 75/2003-Cus (NT) dated 12.09.2003

For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund. In other words, in cases where no refund claim has been made, if a refund results from an order passed by the appellate authorities mentioned above or by a court of law, refund is to be paid within 3 months of the order, and interest will be payable after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

Section 26: Refund of export duty in certain cases.

Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if—

- (a) the goods are returned to such person otherwise than by way of resale;
- (b) the goods are re-imported within one year from the date of exportation; and
- (c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

Section 26A: Refund of import duty in certain cases

- (1) When goods imported and cleared after paying import Duty found defective or not in conformity with the order placed

Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if—

- (a) Goods are defective/not as per specifications

the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) Goods identified as imported goods by AC/DC

the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) No drawback claimed

the importer does not claim drawback under any other provisions of this Act; and

(d) Importer exports the goods/relinquishes title to goods/destroys/renders them commercially valueless

(i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,

in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption u/s 47:

Proviso: the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner/Commissioner of Customs for a period not exceeding 3 months:

Proviso: nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(2) Application for refund to be made within 6 months

An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed.

Explanation. —For the purposes of this sub-section, "relevant date" means, —

(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation u/s 51;

(b) in cases where the title to the goods is relinquished, the date of such relinquishment;

(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(3) No refund in certain cases

No refund under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(4) CBIC to impose additional conditions

The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.

Section 28C: Price of goods to indicate the amount of duty paid thereon.

Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

Section 28D: Presumption that incidence of duty has been passed on to the buyer.

Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be **deemed to have passed on the full incidence** of such duty to the buyer of such goods.

Refund claim cannot be a substitute for Appeal

The Customs Act has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within one year from the date of payment of duty or clearance of goods or such other event as specified in section 27. However, a refund claim cannot be a substitute for an appeal.

In the case of Priya Blue Industries Limited, 2004 (172) ELT 145 (SC), duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty. In this matter the Supreme Court ruled that, "Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed u/s 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order." In view of the above ruling of the Supreme Court, refund claims based on challenge to an order of assessment are liable to be rejected.

Case law: Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.)

Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?

Facts of the Case: The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they

paid large amount of customs duty. After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.

High Court's Observations and Decision: The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Govt could not have claimed or appropriated any part of this as duty or interest. Therefore, there was no question of refund of any duty by the Govt. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay u/s 72 of the Indian Contract Act, 1872.

A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or *cesti qui trust**. When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it.

The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.

Notes:

(i) The principle enunciated in this case is that law of limitation under Customs Act is applicable to duty or interest paid under that Act. However, any sum paid to the exchequer by mistake is not duty or excess duty but is simply money paid to the account of Government. Therefore, limitation of one year applicable to refunds of customs duty will not apply to refunds of amount paid to the Government by mistake. The High Court elaborated that under the Limitation Act, 1963, money paid by mistake can be recovered up to three years from the time the plaintiff discovers the mistake or could have discovered the same with reasonable diligence.

(ii) A *cestui que trust* is a person for whose benefit a trust is created; a beneficiary. Although legal title of the trust is vested in the trustee, the *cestui que trust* is the beneficiary who is entitled to all benefits from a trust.

Chapter 9: Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

Rule 1: Short title and commencement

- (1) These rules may be called the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.
- (2) They shall come into force on the 09th September 2022.

Rule 2: Application

- (1) These rules shall apply where -
 - a. a notification provides for the observance of these rules;
 - b. an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use

Rule 3: Definition

- (1) In these rules, unless the context otherwise requires, -
 - a. "Act" means the Customs Act, 1962 (52 of 1962);
 - b. "capital goods" means goods, the value of which is capitalized in the books of account of the importer;
 - c. "customs automated system" means the Indian Customs Electronic Data Interchange System;
 - d. "date of import" means the date of the order made by the proper officer under section 47, permitting clearance of the goods;
 - e. "Form" means a form annexed to these rules;
 - f. "information" means the information provided by the importer who intends to avail the benefit of a notification;
 - g. "job work" means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones and the term "job worker" shall be construed accordingly;
 - h. "jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or Appraiser exercising jurisdiction over -
 - a. the premises where either the goods imported shall be put to use for manufacture or for rendering output services;
 - b. the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;

Chapter 9: Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

- i. "manufacture" means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly;
- j. "notification" includes any notification issued under sub-section (1) of section 25 and section 11 of the Act;
- k. "Output service" means supply of service excluding after-sales service, utilizing imported goods.
- l. "Section" means a section of the Act.
- m. "Specified end use" means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term "end use recipient" shall be construed accordingly.

(2) Words and expressions used in these rules and not defined but defined in the Act shall have the same meanings as assigned to them in the said Act.

Rule 4: Information to give prior information

- (1) The importer shall provide one-time prior information on the common portal, in Form IGCR-1 containing the following particulars, namely: —
- i. the name and address of the importer and his job worker, if any;
 - ii. the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;
 - iii. the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
 - iv. particulars of the notification applicable on such import;
 - v. nature of output service rendered utilizing the goods imported;
 - vi. particulars of premises intended to be used in case of unit transfer;
 - vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and
 - viii. The intended ports of import.

(2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information :Provided that such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1

(3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such **surety or security as deemed appropriate** by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the

Chapter 9: Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay-

- a. in case of a notification that provides a duty exemption, the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest, at the rate fixed by notification issued under section 28AA, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay ;
- b. in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.

Rule 5: Procedure to be followed

- (1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.
- (2) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
- (3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

Rule 6: Importer to maintain records.

- (1) The importer shall maintain an account so as to clearly indicate -
 - i. quantity and value of goods imported;
 - ii. quantity and date of receipt of the goods imported in the relevant premises;
 - iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
 - iv. quantity of goods sent for job work and the nature of job work carried out;
 - v. quantity of goods received after job work;
 - vi. quantity of goods re-exported, if any, under rule 10; and
 - vii. quantity remaining in stock, according to bills of entry,

and shall produce the said account as and when required by the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service:

Provided that in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the Form IGCR-2.

(2) The importer shall submit a monthly statement on the common portal in the Form IGCR-3 by the tenth day of the following month;

Provided that the importer may submit details of goods consumed in the Form IGCR-3A at any point of time, for immediate re credit of the bond which shall become a part of the monthly statement of the subsequent month.

Rule 7: Procedure for allowing imported goods for job work

(1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in sub-rule (2) of Rule 6.

(2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an electronic-way bill, as specified in the Central Goods and Services Tax Act, 2017 (12 of 2017), mentioning the description and quantity of the goods.

(3) The maximum period for which the goods can be sent to the job worker shall be six months from the date of invoice or electronic way bill referred to in sub-rule (2).

(4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.

(5) The job worker shall,-

- i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

Chapter 9: Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

- iii. after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

Rule 8: Procedure for allowing imported goods for unit transfer.

- (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an electronic-way bill, as specified in the Central Goods and Services Tax Act, 2017 (12 of 2017), mentioning the description and quantity of the goods.
- (3) The importer shall in relation to transfer of goods to another unit,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

Rule 9: Procedure for supplying imported goods to the end use recipient.

- (1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the Central Goods and Services Tax Act, 2017 (12 of 2017), mentioning the description and quantity of the goods.
- (3) In case of supply for replenishment or Export against supply, the end use recipient shall,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. produce the relevant details to the importer for fulfilment of the benefit under the notification;

Rule 10: Re-export or clearance of unutilised or defective goods.

(1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely -

- (i) within the period specified in the notification;
- (ii) within six months from the date of import, where the time period is not specified in the notification:

Provided that, the said period of six months can be further extended by the jurisdictional Commissioner for a period not exceeding three months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

(2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the monthly statement by providing the details of necessary export documents:

Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

(4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued u/s 28AA, on the depreciated value allowed in straight line method as under —

(i)	for every quarter in the first year	@ 4%;
(ii)	for every quarter in the second year	@ 3%;
(iii)	for every quarter in the third year	@ 3%;
(iv)	for every quarter in the fourth and fifth year	@ 2.5%;
(v)	and thereafter for every quarter	@ 2%.

Chapter 9: Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

Explanation. -

(1) For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.

(2) The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.

(5) The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

Rule 11: Recovery of duty in certain case.

(1) **In the event of any failure on the part of the importer to comply with the conditions** mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under -

a. in case of a notification that provides a duty exemption, equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;

b. in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.

(2) Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

Chapter 9: Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

Rule 12. Penalty

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a penalty to an extent of the amount specified under clause (ii) of sub-section (2) of section 158 without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

Rule 13:

References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuance to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof or to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and any corresponding provisions thereof shall be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

Introduction

The concept of warehousing is a trade practice involving trade-off between
 (a) the economics of importation and
 (b) the quantitative requirement of the importer at any given point of time.

Warehousing is resorted to when the importer does not want to clear the goods immediately:

- due to lack of storage facilities or
- in case of arrival of shipment much earlier than planned or
- in case of working capital issues.

An importer who intends to get his goods warehoused files an Into-bond Bill of Entry [Bill of entry for Warehousing], which is assessed to customs duty at the port of import. Importer is required to execute a bond to cover the risk to customs duty, interest, penalty etc. Once the bond is executed, the assessing officer at the port of import permits the goods to be deposited without payment of duty in a warehouse.

Warehouse: means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A.

Warehoused goods: means goods deposited in a warehouse

Types of warehouses

Section 57: Licensing of public warehouses:

The Principal Commissioner of Customs/Commissioner of Customs may, licence a public warehouse
 - wherein dutiable goods may be deposited.

Section 58: Licensing of private warehouses:

The Principal Commissioner/Commissioner of Customs may, licence a private warehouse
 - wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Section 58A: Licensing of special warehouses:

The Principal Commissioner/Commissioner of Customs may, licence a special warehouse
 - wherein dutiable goods may be deposited and
 - such warehouse shall be caused to be locked by PO and

- no person shall enter the warehouse/remove any goods therefrom without the permission of the PO.

Notes:

- **Private and Public Warehouses:** Not under physical customs lock, but under record-based controls. Private Warehouses store dutiable goods imported only by the licensee. Public Warehouses can store goods from any importer.
- **Special Warehouses:** Under physical control and customs lock by a proper officer. Only specified dutiable goods by CBIC are stored here.
- **Goods for Special Warehouses:** Include gold, silver, other precious metals, goods for Duty Free Shops, stores for vessels/aircraft, and supplies to foreign privileged persons.

Section 58B: Cancellation of license

(1) Cancellation on contravention of provisions

Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs **may cancel the licence** granted under section 57 or section 58 or section 58A:

Proviso: before any licence is cancelled, the licensee shall be given a **reasonable opportunity of being heard**.

(2) Suspension pending enquiry

The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, **suspend operation of the warehouse during the pendency of an enquiry under sub-section (1)**.

(3) No new goods to be deposited during suspension, old goods to remain

Where the operation of a warehouse is suspended under sub-section (2), **no goods shall be deposited in such warehouse during the period of suspension**:

Proviso: the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

(4) Post cancellation, old goods shall be removed within 7 days from date of such cancellation

Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, **within seven days** from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be

removed from such warehouse to another warehouse or be cleared for home consumption or export:

Proviso: the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

Section 59: Warehousing bond.

(1) Bond = equal to thrice the amount of the duty assessed on such goods (Consignment bond)

The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself—

- a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
- b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and
- c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) General Bond

For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) In-addition to bond security to be furnished as prescribed

The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed.

(4) Bond shall remain in force on transfer of the goods to another warehouse

Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

(5) In case of transfer of goods, transferee shall execute a bond and furnish security

Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).

Section 60: Permission for removal of goods for deposit in warehouse. [Also known as warehousing order]

- (1) When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse.

E-clearance order based on risk evaluation criteria- Customs automated system

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

- (2) Where an order is made under sub-section (1), the goods shall be deposited in a warehouse in such manner as may be prescribed.

Section 61: Period for which goods may remain warehoused

The period for which imported goods may be kept in a warehouse without payment of duty is called warehousing period. Such period may be extended to a limited extent, with interest on the duty thus deferred.

- (1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed, —

(a) in the case of capital goods intended for use in any 100% EOU or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, **till their clearance from the warehouse;**

(b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, **till their consumption or clearance from the warehouse; and**

(c) in the case of any other goods, **till the expiry of one year** from the date on which the proper officer has made an order under sub-section (1) of section 60:

Extension of period further by not more than one year at a time

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

Proviso: where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

(2) Interest on warehoused goods

Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, **for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods :**

Proviso: if the Board considers it necessary so to do, in the public interest, it may, -

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
- (c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

Section Summary: Time period for which different class of goods may be warehoused

Sl No.	Class of goods	Time for which the goods may remain warehoused
1	Goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted u/s 65	
	(i) Capital goods	Till the clearance of such goods from warehouse
	(ii) Other goods	Till the consumption or clearance of such goods from warehouse
2	Goods other than 1 above	Till the expiry of 1 year from the date of order permitting deposit of goods in warehouse

Provisions relating to interest payable on goods which remain warehoused

Sl No.	Class of goods	Provisions relating to interest payable	
1	Capital goods and other goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted under section 65	No interest is payable	
2	Goods other than 1. Above	Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60 is made.	
		Rate of Interest	15%
		Amount on which interest is payable	Duty payable at the time of clearance of the goods
		Period for which interest is payable	From the expiry of the 90 days till the date of payment of duty on the warehoused goods.

Notes:

- If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal⁵.
- Goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 72. The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e., the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty.
- Section 15(1)(b) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 68

Section 64: Owner's right to deal with warehoused goods.

The owner of any warehoused goods may, after warehousing the same, —

- inspect the goods;
- deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- sort the goods; or
- show the goods for sale.

Section 65: Manufacture and other operations in relation to goods in a warehouse.

(1) With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to the provisions of section 65A and¹ such conditions as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply: -

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Section 66: Power to exempt imported materials used in the manufacture of goods in warehouse.

If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the *Official Gazette*, exempt the imported materials from the whole or part of the excess rate of duty.

Section 67, 68 & 69: Removal of goods from the warehouse

The warehoused goods can be removed from the warehouse for any of the following 3 reasons:

- transfer from one warehouse to another [Section 67]; or
- clearance for home consumption [Section 68]; or
- clearance for export [Section 69].

¹ Effective 01.04.2023

Section 67: Removal of goods from one warehouse to another

The owner of any warehoused goods may, **with the permission of the proper officer, remove them from one warehouse to another**, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Section 68: Clearance of warehoused goods for home consumption

Any warehoused goods may be cleared from the warehouse for home consumption, if -

- (a) **a bill of entry** for home consumption in respect of such goods has been presented in the prescribed form;
- (b) **the import duty, interest, fine and penalties** payable in respect of such goods have been paid; and
- (c) **an order for clearance** of such goods for home consumption has been made by the PO:

E-clearance order

Provided that the order referred to in clause (c) may also be made electronically through the **customs automated system** on the basis of risk evaluation through appropriate selection criteria:

Relinquishment of title, exemption from duty, but penalty payable

Provided further that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon

No relinquishment if offence committed

Provided also that the owner of any such warehoused 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.

The essential ingredients of section 68 are:

- An ex-bond bill of entry should be presented to the proper officer.
- After assessment of the ex-bond bill of entry the duty determined should be paid.
- Along with the import duty, the penalty, if any, imposed or levied on the warehoused goods should also be paid.
- Once the proper officer is satisfied that all the amounts payable by the owner of the goods including duty, interest, any penalty or fine payable on the warehoused goods, have been paid, he may permit removal of the goods from the warehouse and pass a suitable order for clearance.

Section 69: Clearance of warehoused goods for export

(1) Any warehoused goods may be exported to a place outside India without payment of import duty if –

- (a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;
- (b) the export duty, fine and penalties payable in respect of such goods have been paid; and
- (c) an order for clearance of such goods for export has been made by the proper officer.

E-clearance order

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria

Precautionary measures to avoid smuggling

Notwithstanding anything contained in sub-section (1), if the CG is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods 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.

Main ingredients of section 69

- Warehoused goods may be exported out of India.
- No Import duty will be levied on the goods thus exported if the procedure prescribed is followed.
- A shipping bill/bill of export/label or declaration in the prescribed form should be presented in respect of the warehoused goods sought to be cleared for export.
- The export duty, fine and penalties payable, if any, on such goods on export should be assessed and paid. Only payment of import duty otherwise leviable on such warehoused goods is waived.
- The proper officer of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled. After satisfying himself about this aspect as well as payment of all duties, fine and penalties payable, he will make an order for clearance of warehoused goods for export from the bonded warehouse. Order for clearance of warehoused goods for export may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
- In case Government of India is of the opinion that goods of any specified description are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that such goods:

- ◆ 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.

Section 70 Allowance in case of volatile goods

(1) When any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may remit the duty on such deficiency.

(2) This section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette, specify.

Example of Volatile goods: Petroleum products like aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks, subjected to atmospheric pressure have a tendency to evaporate during long period of storage. Similarly, wine, spirit and beer, are imported under over proof conditions, in wooden casks stored in bonded warehouses; they are volatile in nature and there is considerable evaporation loss during storage.

Resultantly, there is generally a difference between the bonded quantity and the quantity at the time of removal from the warehouse. This loss is due to natural causes and neither the importer nor the warehouse keeper is at fault. Thus, neither the importer nor the warehouse keeper can be asked to bear the duty burden of this loss. This position has been recognised and duty on the deficiency has been remitted under section 70.

When any warehoused goods notified under this section, are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency. Goods are notified under this section having regard to volatility of the goods and manner of their storage.

Remission under section 23 and section 70 - A Distinction: Section 23 is a general provision applicable to cases where goods are lost before clearance for home consumption is made. Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the Central Government under that section. Therefore, granting remission for loss during transit between two warehouses does not render section 70 redundant

Section 71: Goods not to be taken out of warehouse except as provided by this Act

No warehoused goods shall be taken out of a warehouse except

- on clearance for home consumption or
- export, or
- for removal to another warehouse, or
- as otherwise provided by this Act.

Section 72: Goods improperly removed from warehouse, etc.

(1) In case of improper removal PO shall raise demand (circumstances under which goods are considered to have been removed improperly from a warehouse)

In any of the following cases, that is to say, -

(a) where any warehoused goods are removed from a warehouse in contravention of section 71;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(c) Deleted

(d) where any goods in respect of which a bond has been executed u/s 59 and which have not been cleared for home consumption or export or are not duly accounted for to the satisfaction of the proper officer, the PO 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.

(2) Demand not paid, PO to proceed to sell the goods

If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.

Section 73: Cancellation and return of warehousing bond

When the whole of the goods covered by any bond executed u/s 59 have been cleared for home consumption or exported or transferred or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the PO shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

Section 73A: Custody and removal of warehoused goods

- (1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
- (2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.
- (3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

Introduction

In the era of globalization, international trade has become the lifeline of any economy. Today, international trade has begun to play a significant part in the Indian economy reflecting its increasing integration in globalisation.

International trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government which specifies policy for exports and imports viz., foreign trade. Its primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity.

Legislation

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.

The Foreign Trade Policy, 2023 is notified by the Central Government, in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 [FTDR Act], with effect from 01.04.2023.

The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT (D&R) Act. The FT (D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto.

As per the provisions of the Act, the Central Government: -

- (i) may make provisions for facilitating and controlling foreign trade;
- (ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;
- (iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;
- (iv) is also authorised to appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export import policy.

Foreign Trade Policy 2023

The New Foreign Trade Policy, which was announced on 31.03.2023, it shall come into effect from 01.04.2023.

Salient features of FTP

- Export-Import of goods and services is generally free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- Export and import goods are broadly categorized as - (a) Free (b) Restricted (c) Prohibited.
- Some goods are 'free' for import and export but can be imported/exported only through State Trading Enterprises (STE).
- There are restrictions on exports and imports for various strategic, health, defence, environment, and other reasons. If the goods are restricted for import/export but not prohibited, the Government can give a permission/license for specific reasons.
- Exports are promoted through various promotional schemes.
- Goods and services to be exported but, not the taxes. Hence, any indirect taxes on exports are either exempted or refunded on both outputs and inputs, through application of various schemes in the form of Duty Exemption / Duty Refund (Drawbacks and Rebates), as the case may be.
- Capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU/SEZ.
- In certain specified cases imports get duty exemption/concession/remission for certain special purposes. In such cases, to enable domestic suppliers to compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

Administration of the FTP

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India.

DGFT issues authorization (earlier called as license) for import/export. 'Authorization' means a permission in terms of the FT (D&R) Act to import or export. It also grants Importer Exporter Code (IEC) Number to importers and exporters.

Decision of DGFT is final and binding in respect of interpretation of any provision of foreign trade policy, classification of any item in ITC (HS), content scope or issue of any authorization issued under the FTP.

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures.

Other important authorities dealing with FTP are:

- (1) **Central Board of Indirect Taxes and Customs (CBIC):** CBIC comes under Ministry of Finance and its two Departments namely, Customs and GST facilitate in implementing the provisions of the FTP.
Customs Department is responsible for clearance of export and import goods after their valuation and examination. Customs authorities follow the policy formed by the DGFT while clearing the imported and export goods.
Since there is Goods and Services Tax on almost all the goods and services (except petroleum products, tobacco products and alcoholic liquor), Central GST authorities need to be involved for all matters of exports, where goods have to be cleared with/without payment of GST.
- (2) **Reserve Bank of India (RBI):** RBI is the nodal bank in the country which formulates the policies related to management of money, including payments and receipts of foreign exchange. It also monitors the receipt and payments for exports and imports
- (3) **State GST Departments:** To avoid dual control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.

Contents of Foreign trade policy

The contents of the FTP 2023 are as follows:

- (i) **Foreign Trade Policy 2023:** having 11 Chapters giving basic policy. Notified by the CG on 31.03.2023. The policy is effective from 01.04.2023
- (ii) **Handbook of Procedures 2023:** containing 11 chapters, covering procedural aspects of policy. It is amended from time to time as per requirements. Also, it contains Appendices and Aayat Niryat Forms (AANF) containing various appendices and forms relating to the procedural aspects provided under the policy and procedures.
- (iii) **ITC (HS) Classification of Exports and Import Items:** The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding [ITC (HS)]. ITC-HS Coding was adopted in India for import-export operations. Indian custom uses eight-digit ITC-HS Codes to suit the national trade requirements.

ITC-HS codes are divided into two schedules.
 - Schedule I - Import Policy - ITC (HS) describe the rules and guidelines related to import policies whereas Schedule II- Export Policy - ITC (HS) describe the rules and regulation related to export policies.
 - Presently, most of the goods can be imported without any authorization.

- Schedule II contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free.
 - SCOMET LIST is also provided
- Any changes or formulation or addition of new codes in ITC-HS Codes are carried out by DGFT (Directorate General of Foreign Trade).

Scope of FTP

The FTP covers the policies and regulations with respect to the following matters:

- (i) Chapter 1 - Legal framework and trade facilitation
- (ii) Chapter 2 - General Provisions Regarding Imports and Exports
- (iii) Chapter 3 - Developing Districts as Export Hubs
- (iv) Chapter 4 - Duty Exemption / Remission Schemes
- (v) Chapter 5 - Export Promotion Capital Goods (EPCG) Scheme
- (vi) Chapter 6 - Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs)
- (vii) Chapter 7 - Deemed Exports
- (viii) Chapter 8 - Quality Complaints and Trade Disputes
- (ix) Chapter 9 - Promoting Cross Border Trade in Digital Economy
- (x) Chapter 10 - SCOMET: Special Chemicals, Organisms, Materials, Equipment and Technologies
- (xi) Chapter 11 - Definitions

Chapter 1 - Legal framework and trade facilitation

Legal Framework

- Legal Basis of Foreign Trade Policy: The Foreign Trade Policy (FTP) 2023 is notified by CG, in exercise of powers conferred u/s 5 of the Foreign Trade (Development & Regulation) Act, 1992.
- Duration of FTP: The FTP 2023 shall come into force with effect from 1st April, 2023 and shall continue to be in operation unless otherwise specified or amended.
- Amendment to FTP: CG, in exercise of powers conferred by Section 3 & 5 of FT (D&R) Act, 1992, reserves the right to make any amendment to the FTP, by means of notification, in public interest.
- Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (ANF): DGFT may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for

purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP.

- Specific provision to prevail over the general: Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision.

Trade facilitation & Ease of doing business

Since India ratified the World Trade Organization's Trade Facilitation Agreement (TFA), there's a special focus on implementing the international trade facilitation measures. DGFT, in consultation with Export Promotion Councils and Trade and Industry bodies, dedicatedly functions as a facilitator of exports and imports. National Committee on Trade Facilitation (NCTF) has been constituted to facilitate coordination and implementation of the TFA provisions.

National Trade Facilitation Action Plan aims to achieve:

- Improvement in Ease of Doing Business through reduction in transaction cost and time
- Reduction in cargo release time
- A paperless regulatory environment □ A transparent and predictable legal regime
- Improved investment climate through better infrastructure

In view of the same, following trade facilitation measures are provided under FTP:

- Free passage will be provided to export consignment and there will not be any seizure of export related stock except in exceptional cases.
- Single window system to facilitate export of perishable agricultural produce.
- DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs.
- DGFT online customer portal (<https://dgft.gov.in>) provides information relating to export and import including Acts, rules, policy and procedures.
- Online facilities for e-RCMC/RC related processes, e-Certificate of Origin (e- CoO) and Quality Control and Trade Disputes (QCTD) are also available on said common digital platform.
- DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes.
- A dedicated 24 X 7 Helpdesk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to FTP.
- A large number of Trade Facilitation measures have been taken by Customs Department.

Authorised Economic Operator (AEO) Programme

Under AEO programme of Indian Customs, a business entity engaged in international trade is granted AEO status if it is approved by Customs as compliant with supply chain security standards. Such entities are considered as trusted trade partner of Indian customs.

AEO status holders get extensive benefits including preferential customs treatment in terms of reduced examination and faster processing and clearance of cargo, deferred payment of duty, direct port delivery/entry, enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries, greater facilitation and selfcertification. AEO programme is based on WCO's SAFE Framework of Standards (FoS).

Towns of Export Excellence (TEE)

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE.

They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

Status Holder Certification

Status Holders are exporter firms recognised as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. They are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance.

An applicant shall be categorized as status holder upon achieving the threshold export performance in the current and preceding three financial years, as indicated below:

Status Category	Export Performance Threshold In USD Million
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

Points which merit consideration while computing export performance for grant of status:

- The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US\$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.
- For granting status, an export performance would be necessary in all the three preceding FYs.
- Export performance is not transferrable among IEC holders.
- Exports made on re-export basis shall not be counted for recognition.

- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- For calculating export performance for grant of One Star Export House Status category,
 - exports by IEC holders under Micro and Small Enterprises,
 - manufacturing units having ISO/BIS certification,
 - units located in Northeastern States including Sikkim and Union Territories of Jammu, Kashmir and Ladakh and export of fruits and vegetables shall be granted double weightage once in any of these categories.

Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

- (a) Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
- (b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee; Special scheme in respect of Input Output Norms to be notified by DGFT from time to time, for specified status holder
- (c) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP;
- (d) Exemption from compulsory negotiation of documents through banks. Remittance / receipts, however, would be received through banking channels;
- (e) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
- (f) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- (g) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL)/Letter of Intent (LOI)) as originating from India with a view to qualify for preferential treatment under specified agreements.
- (h) Status holders shall be entitled to export freely exportable items⁹ on free of cost basis for export promotion subject to a specified annual limit.
- (i) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Chapter 2: General Provisions Regarding Imports and Exports

Objectives: The general provisions governing import and export of goods and services are dealt with in this chapter.

Policy regarding import /Exports of goods: Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports.

Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports:

- (a) The information regarding status of the goods being free/restricted/prohibited/traded through STE, for import / export is available in the ITC(HS), i.e. import/export policies for all goods are indicated against each item as per its ITC(HS). In addition to this status under the FTP, import or export may be subject to restrictions or conditions under any other law.
- (b) ITC (HS) is a compilation of codes for all merchandise/goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.
- (c) ITC (HS) is aligned at 6-digit level with international Harmonized System goods nomenclature maintained by World Customs Organization (<http://www.wcoomd.org>). However, India maintains national Harmonized System of goods at 8-digit level notified under First Schedule of the Customs Tariff Act, 1975.
- (d) The import/export policies for all goods are indicated against each item as per its ITC (HS). Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule II of ITC (HS) lays down the Export Policy regime.
- (e) Except where it is clearly specified, Schedule 1 of ITC (HS), Import Policy is for new goods and not for Second Hand goods.

State Trading Enterprises:

ITC(HS) specifies against certain goods that they can be imported/exported only through 'State Trading Enterprises' notified by DGFT. State Trading Enterprises (STEs) are governmental/nongovernmental enterprises, including marketing boards, which deal with goods for export and /or import. However, DGFT has the discretion to issue authorisation to other entities to import or export goods that are notified for exclusive trading through STEs. Some of the STEs are Food Corporation of India, Oil and Natural Gas Corporation Ltd, National Fertilizers Limited, Indian Rare Earth Ltd., National Dairy Development Board, National Agricultural Cooperative Marketing Federation of India (NAFED), State Cooperative Marketing Federation, etc.

Importer-Exporter Code (IEC)

An IEC is a 10-character alpha-numeric number allotted to an entity (firm/company/LLP etc.) and is mandatory for undertaking any export/import activities. With a view to maintain the unique

identity of an entity, consequent upon introduction / implementation of GST, IEC shall be same as Permanent Account Number(PAN) and shall be separately issued by DGFT based on an online application.

(a) No export or import of goods shall be made by any person without obtaining an IEC unless specifically exempted. For export of services or technology, IEC shall be necessary on the date of rendering services for availing benefits under the Foreign Trade Policy.

(b) Exempt categories and corresponding permanent IECs are given Handbook of Procedures.

(c) Application process for IEC and updation in IEC is completely online and IEC can be generated by the applicant as per the procedure detailed in the Handbook of Procedures.

(d) An IEC holder has to ensure that details in its IEC is updated electronically every year, during the April- June period. In cases where there are no changes in IEC details same also needs to be confirmed online.

(e) An IEC shall be de-activated, if it is not updated within the prescribed period. An IEC so de-activated may be activated, on its successful updation. This would however be without prejudice to any other action taken for violation of any other provisions of the FTP.

(f) An IEC may also be flagged for scrutiny. IEC holder(s) are required to ensure that any risks flagged by the system are timely addressed; failing which the IEC shall be de-activated.

Mandatory documents for export/ import of goods from/into India:

(a) Mandatory documents required for export of goods from India:

1. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List (as per CBIC Circulars issued under the Customs Act, 1962)
3. Shipping Bill/Bill of Export/ Postal Bill of Export

(b) Mandatory documents required for import of goods into India

1. Bill of Lading/ Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
2. Commercial Invoice cum Packing List (Separate Commercial Invoice and Packing List would also be accepted.)
3. Bill of Entry

(c) In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

PROVISIONS RELATING TO IMPORT OF GOODS

Actual User Condition: Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, Actual User alone may import such good(s) unless Actual User condition is specifically dispensed with by DGFT.

Import of specific categories of goods

(a) **Samples**: Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation. Duty free import of samples upto Rs. 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification as amended.

(b) **Gifts**: Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited. Exceptions are 'rakhi' and life-saving medicines. Gifts, however, can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto Rs. 100, no duty will be collected on the same.

(c) **Re-import of repaired goods**: Capital goods, equipment, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and reimported without an Authorisation.

(d) **Goods used in projects abroad**: Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

(e) **Prototypes**: New / second hand prototypes / second hand samples may be imported without an Authorisation on the following conditions:

- The importer is an Actual User (industrial)
- He is engaged in production of, or having industrial license / letter of intent for research in an item for which prototype is sought for product development/research, as the case may be,
- The importer files a self-declaration to that effect, to the satisfaction of Customs authorities.

(f) **Metallic waste & scrap**: Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(g) Import Policy for Second Hand Goods:

Sl.No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
I. Capital Goods			
	(i) Air Conditioners; (ii) Diesel generating sets (iii) Desktop Computers; (iv) Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops;	Restricted for import	Importable against Authorisation and fulfilment of specified conditions, if any
	(v) All electronics and IT Goods notified under the Electronics and IT Goods	Restricted for import	
	(vi) Used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA	Restricted for import	
	Refurbished / re-conditioned spares of Capital goods, for which a Chartered Engineer certifies existence of 80% residual life	Free for import	
	All other second-hand capital goods {other than those listed above}	Free for import	
III.	Other than capital goods Imported for the purpose of repair/refurbishing / re-conditioning or re-engineering	Freely importable	Subject to specified condition
II.	Other than capital goods Remaining goods	Restricted	Importable against Authorisation

Note on import of used IT assets from SEZ to DTA: Import policy of used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA, subject to fulfilment of specified conditions, has been notified in the FTP. The said import is restricted and requires authorization.

Import of items under Advance Authorisation/EOU/SEZ enabled without compliance to mandatory Quality Control Orders (QCO)

Quality Control Orders (QCOs) are regulatory mandates issued by the Indian government to ensure that products meet specific quality standards. These orders, typically issued by the Bureau of Indian Standards (BIS) under the BIS Act, 2016, apply to a wide range of products to protect consumer safety, health, and environment. Domestic manufacturers as well as importers need to ensure that products covered by QCOs must not be manufactured/imported without compliance with specific standards.

Enabling provisions have been incorporated in FTP for exempting inputs imported by Advance Authorisation holders, EOUs and SEZ from mandatory Quality Control Orders (QCOs). However, import of inputs under Advance Authorisation/EOU/SEZ without compliance to the mandatory QCOs, shall be subjected to the following conditions:

(i) **For Advance Authorisation:**

- (a) **Import of inputs under the Advance authorization without compliance to the mandatory QCOs shall be with pre import condition.** Such inputs shall be utilised in the manufacturing of the export product (making normal allowance for wastage) and shall be exported under the same authorization. Unutilized imports shall not be transferred to DTA, even after regularization of default in fulfilment of export obligation. It shall be destroyed in the presence of jurisdictional GST/Customs authorities or may be re-exported. In addition, such unutilised imports shall be liable to payment of effective duty along with interest to customs authorities and specified composition fee to DGFT.
- (b) Said Exemption shall be specifically endorsed in the advance authorization, upon the request of the authorization holder.
- (c) The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports for Advance Authorisation Holders.
- (d) Import of Inputs without compliance to the mandatory QCOs under DFIA scheme is not allowed.

(ii) **For EOUs**

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to EOU on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed. An undertaking to that effect will be submitted to the Customs authorities by the EOU at the time of importation and a copy of the same shall also be submitted to the Development Commissioner concerned. The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports.

(iii) **For SEZ**

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to SEZ on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed. An undertaking to that effect will be submitted to the concerned Development Commissioner of the SEZ by the SEZ Unit at the time of importation. The exemption from QCO will be available for physical exports only.

Above exemption shall be applicable only for the list of notified Ministries/Departments whose notifications on mandatory QCOs are exempted by the DGFT for goods to be utilised/consumed in manufacture of export products.

Merchant trading carried out within one specific foreign country permitted

Earlier, merchanting trade of shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary was allowed, subject to RBI guidelines, except for goods in the CITES and SCOMET lists.

Now, merchanting trade carried out within one specific foreign country is also permitted, subject to RBI guidelines, except for goods in the CITES and SCOMET lists.

Notes: CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.

Provisions relating to Export goods

Free exports: All goods may be exported without any restriction except to the extent that such export is regulated by ITC (HS) or any other provision of FTP or any other law for the time being in force. DGFT may however, specify through a public notice such terms and conditions according to which any goods, not included in ITC (HS), may be exported without an Authorization.

Benefits for Supporting Manufacturers: Supporting manufacturer is one who manufactures goods/products or any part/ accessories/ components of a good/ product for a merchant exporter/manufacturer exporter under a specific Authorisation. For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in tax invoice / shipping bill / bill of export/ airway bill.

Third Party Exports: Third party exports is allowed under FTP. Third-party exports means exports made by an exporter/manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate names of both manufacturer exporter/manufacturer and thirdparty exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.

Export of samples: Exports of trade and technical samples of goods of freely importable items are allowed without any limit.

Export of gifts: Goods including edible items, of value not exceeding Rs. 5,00,000 in a licensing year (1st April-31st March), may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an authorisation.

Export of passenger baggage: Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage. Authorisation will be required for restricted items. Samples of freely exportable items may be exported as part of passenger baggage without an authorisation.

Import for Export:

- Goods that are freely importable as well as freely exportable can be imported and then exported in same or substantially the same form, without any authorisation.
- Goods including capital goods (both new and second hand) can be imported under customs bond and then cleared for export against freely convertible foreign currency provided they are freely exportable. This includes goods that are 'restricted' for import.
- Capital goods that are freely importable and freely exportable can be imported for export upon execution of LUT/BG with the customs authorities.
- Notwithstanding the above, goods of other than Indian origin that are 'restricted' for export (other than 'prohibited' or SCOMET items) but 'free' for import can be imported for exports in same or substantially the same form. Such goods shall be kept in bonded warehouse and reexported from there subject to provisions of section 69 of the Customs Act, 1962.
- Goods that are imported against payment in freely convertible foreign currency can be exported only against payment in freely convertible foreign currency, unless otherwise notified.

Denomination of export contracts: Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency¹³. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.

Non-realisation of export proceeds: If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/ incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such nonrealization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.

Export Promotion Councils: Export Promotion Councils (EPCs) are organizations of exporters, set up to promote and develop Indian exports. Each Council is responsible for promotion of a

particular group of products/ projects/services. EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC). RCMC is required to be furnished by any person, applying for an Authorisation to import/ export under the FTP (except 'Restricted' items) or applying for any other benefit or concession under FTP.

Chapter 3: Developing Districts as Export Hubs

Every district has products and services which are being exported, and can be further promoted, along with new products/ services, to increase production, grow exports, generate economic activity and achieve the goal of Atma Nirbhar Bharat, Vocal for local and Make in India. Products/services (GI products, agricultural clusters, toy clusters etc.) with export potential in each District have to be identified and institutional mechanism in the form of District Export Promotion Committees (DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the districts. A District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared and implemented. DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

Chapter 4: Duty Exemption / Remission Schemes

The Duty Exemption and Remission Schemes are the most important schemes in the Foreign Trade Policy as they are most widely utilized.

Objective

Duty exemption and remission schemes enable duty free import of inputs for export production, including replenishment of inputs or duty remission.

Duty Exemption & Remission Schemes

- (a) Duty exemption schemes: The Duty Exemption schemes consist of the following:
 1. Advance Authorization (which will include Advance Authorisation for Annual Requirement).
 2. Duty Free Import Authorization Scheme (DFIA)
- (b) Duty remission schemes: Duty Drawback (DBK) Scheme, administered by Department of Revenue.
- (c) Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles. (Not applicable for Exam)

(d) Schemes for Remission of Duties and Taxes on Exported Products (RoDTEP) notified by Department of Commerce and administered by Department of Revenue.

(a) Advance Authorization Scheme

Items which can be imported duty free against advance authorization:

- Input that is physically incorporated in export product (making normal allowance for wastage).
- Fuel, oil, catalyst which is consumed / utilized in the process of production of export product.

Eligible Applicant / Export

- Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

Eligible Supply

- (a) Advance Authorization can be issued either to a manufacturer exporter/merchant exporter tied to supporting manufacturer(s).
- (b) Such Authorization can also be issued for:
- (i) Physical export (including export to SEZ)
 - (ii) Intermediate supply; and/or
 - (iii) Supplies made to specified categories of deemed exports (refer chapter 7 below).
 - (iv) Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied.

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);
- (ii) On the basis of self-declaration where no SION/Adhoc norms have been notified / published;
- (iii) Applicant-specific prior fixation of norm by the Norms Committee;
- (iv) On the basis of Self Ratification Scheme, if no SION/valid Adhoc Norms for an export product.

Self-Ratification Scheme

Where there is no SION/valid Adhoc Norms for an export product or where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self declaration and self ratification basis.

The expression "additional inputs" refers not to additionality in terms of quantity/value of an input specified in a norm, but to another additional input. Say, if the inputs specified in the norm are X1 and X2 only, then input Y would represent an additional input.

RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. Application under this scheme shall be made along with a Certificate from Chartered Engineer in the prescribed format.

Eligibility to opt for this scheme

An exporter (manufacturer or merchant), who holds AEO Certificate under Common Accreditation Programme of CBIC is eligible to opt for this scheme.

A status holder who is a manufacturer cum actual user and holds valid 2-star or above status and who has already submitted its application for grant of AEO on CBIC's AEO portal is also eligible to apply for this scheme subject to the specified conditions.

However, DGFT may deny authorisation under this scheme to two star and above status holder based on its risk management principles. The scheme is not available for the specified export products as well as specified inputs.

Pre-import condition

Imported inputs are subject to pre import condition and they should be physically incorporated in the export product (making normal allowance for wastage). In case of local procurement under invalidation/ARO, the inputs shall be procured prior to manufacture of export item and shall be physically incorporated in the export product.

Validity Period for Import

Validity Period of an advance authorization in two situations is as follows:

- Validity period of Advance Authorisation shall be 12 months from the date of issue of Authorisation. This means that import under the authorisation must be made within this period. Re-validation for another period of 12 months can be allowed once only. Application for re-validation can be made online.
- Validity of Advance Authorisation for supplies under deemed exports shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is later.

Advance Authorisation for Annual Requirement and Eligibility Condition

Advance Authorization can be issued for annual requirement also.

- Advance Authorisation for Annual Requirement shall only be issued for items notified in SION. And it shall not be available in case of adhoc norms under Self-Declared Authorisations where SION does not exist.

- Advance Authorisation for Annual Requirement shall also not be available in respect of SION where input is notified.
- Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
- Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or Rs 1 Crore, whichever is higher.

Items which can be imported duty free against advance authorization:

- Inputs, which are physically incorporated in export product (making normal allowance for wastage).
- Fuel, oil, catalysts which are consumed/utilised to obtain export product.
- Mandatory spares which are required to be exported/supplied with resultant product permitted up to **10% of CIF value of Authorization.**

However, items reserved for imports by STEs cannot be imported against advance authorization.

Value addition (VA): will be calculated as follows (except for gem and jewellery sector)-

$$VA = [(A-B) \times 100]/B$$

A = FOB value of export realised/FOR value of supply received.

B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed.

Advance Authorisation shall also be available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input shall be added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

Minimum Value Addition:

- (i) Minimum value addition required to be achieved under Advance Authorisation is 15%.
- (ii) However, in case of specified products (petroleum products etc), value addition could be less than 15%.

Import of Mandatory Spares

Spares that are required to be supplied with the export product can be imported duty-free under the advance authorisation up to a value of 10% of the CIF value of the authorisation.

Validity:

Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation. Validity of Advance Authorisation for deemed export supplies shall be co-terminus

with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is later.

Duty Exemption:

Imports under Advance Authorisation are exempted from payment of

- Basic Customs Duty,
- Additional Customs Duty,
- Education Cess,
- Anti- dumping Duty,
- Countervailing Duty,
- Safeguard Duty,
- Transition Product Specific Safeguard Duty,

wherever applicable.

However, specified deemed exports are not exempted from payment of applicable anti-dumping duty, countervailing duty, safeguard duty and transition product specific safeguard duty, if any.

Note: Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess.

Actual User Condition for Advance Authorisation:

Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

Free of Cost Supply by Foreign Buyer

Advance Authorisation is also available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input is added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

Export Obligation Period and its Extension

"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

The Export Obligation Period (EOP) of Advance Authorisations issued for such items shall be 90 days from the date of clearance of import consignment and no extension in EOP shall be allowed.

Such import shall be subject to actual user condition and no transfer of imported raw material, for any purpose, including job work, shall be permitted.

Admissibility of Drawback

Duty drawback as per rate determined and fixed by Customs authority is available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation.

Audit/Special audit

Concerned Norms Committee may conduct audit of the manufacturer. Concerned Norms Committee may also initiate special audit, considering the nature and complexity of the case and revenue of government, if he is of the opinion at any stage of scrutiny/enquiry/investigation that the norms have not been claimed correctly or the excess benefit has been availed. Special audit can be conducted even if the manufacturer has already been audited before.

Common provisions applicable to Advance authorisation and DFIA schemes

Accounting of Input

- Where SION permits use of either (a) a generic input or (b) alternative input, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill. At the time of discharge of export obligation (issue of EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill together with quantity.
- The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed exports.

Importability / Exportability of items that are Prohibited/ Restricted/ STE

Prohibited items

No export/import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited. Export of a prohibited item may be allowed under Advance Authorisation provided it is separately so notified, subject to the conditions given therein.

STE

- Items reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA. However, those items can be procured from STEs against ARO or Invalidation letter.
- Items reserved for export by STE can be exported under Advance Authorisation / DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.

Restricted items

- Import of restricted items shall be allowed under Advance Authorisation/DFIA unless specifically disallowed.
- Export of restricted / SCOMET items however, shall be subject to all conditionalities or requirements of export authorisation or permission.

Domestic Sourcing of Inputs

Holder of an Advance Authorisation / Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise/EOU/EHTP/BTP/ STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter.

Validity of Advance Release Order / Invalidation Letter shall be co- terminous with validity of Authorisation.

Currency for Realisation of Export Proceeds.

Export proceeds shall be realized in freely convertible currency or in Indian Rupees, except otherwise specified. Provisions regarding realisation and nonrealisation of export proceeds are already discussed in general provisions regarding imports and exports.

Re-import of exported goods under Duty Exemption/ Remission Scheme

Goods exported under advance authorisation/ duty free import authorisation may be re-imported in same or substantially same form subject to the specified conditions.

Duty free Import Authorization scheme

Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. However, these Authorizations shall be issued only for products for which Standard Input and Output Norms (SION) have been notified.

- Duty Free Import Authorisation is issued to allow duty free import of inputs as well as of oil and catalyst which is consumed/ utilised in the process of production of export product.
- Import of Tyre under DFIA scheme is not allowed

Duties Exempted:

- Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).
- Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

Eligibility:

- Duty Free Import Authorisation shall be issued on post export basis for products for which SION have been notified.
- Application is to be filed with concerned Regional Authority before starting export under DFIA.
- Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.

No DFIA for inputs with 'Actual User' condition

No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.

Minimum value addition:

Minimum value addition required to be achieved under DFIA is 20%, except for physical exports for which payments are not received in freely convertible currency.

Validity & Transferability of DFIA:

- Applicant shall file online application to Regional Authority concerned before starting export under DFIA.
- Export shall be completed within 12 months from the date of online filing of application and generation of file number.
- The applicant shall file an online application to RA concerned before starting exports under DFIA.
- After completion of exports and realization of export proceeds, request for issuance of transferable DFIA may be made to concerned RA within a period of:
 - (a) 12 months from the date of export or
 - (b) 6 months (or additional time allowed by RBI for realization) from the date of realization of export proceeds,
 Whichever is later.
- Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue.
- Exports proceeds shall be realized in freely convertible currency except otherwise specified.

Value addition (VA): will be calculated as follows (except for gem and jewellery sector)-

$$VA = [(A-B) \times 100]/B$$

A = FOB value of export realised/FOR value of supply received.

B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed.

If some items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Developers/ Co- developers, irrespective of currency of realization, would also be covered.

Duty remission schemes

Duty Drawback Scheme

- Various schemes like EOU, SEZ, DFIA, Advance Authorisation, manufacture under bond etc. are available to obtain inputs without payment of customs duty or obtain refund of duty paid on inputs.
- Suppliers who are unable to avail any of these schemes can avail 'duty drawback'. Here, the customs duty paid on inputs is given back to the exporter of finished product by way of 'duty drawback'. Section 75 of Customs Act, 1962 provide for drawback on materials used in manufacture or processing of export product.
- It may be noted that duty drawback under section 75 is granted when imported materials are used in the manufacture of goods which are then exported, while duty drawback under section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable.
- As per rule 2(a) of the Customs and Central Excise Duties Drawback Rules, 2017, drawback in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST and Compensation Cess, chargeable on any imported materials or excisable materials used in the manufacture of such goods.
- It is important to note that the duty drawback is only of customs duty. There is no duty drawback in respect of GST.

Remission of Duties and Taxes on Exported Products (RoDTEP)

RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters. The Remission of duties & taxes on exported Product (RoDTEP) scheme aims to refund such duties and taxes on exported products, as are otherwise not being refunded under other provisions of law.

The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

Objective of the Scheme: The objective of the scheme is to refund, currently un-refunded:

- (i) Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and
- (ii) Such indirect duties/taxes/levies in respect of distribution of exported products.

Salient features of the scheme:

- Rebate amount is issued in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the CBIC.
- Such duty credit shall be used only to pay basic customs duty on imported goods.
- The duty credit scrips are freely transferable, i.e. credits can be transferred to other importers.
- The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

Reward under the scheme

Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified.

Sale proceeds

Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.

Ineligible supplies/ items/ categories under RoDTEP

Following shall not be taken into account for calculation of entitlement under the scheme:

- Export of imported goods in same or substantially the same form
- Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India
- Export products which are subject to minimum export price or export duty
- Products which are restricted/prohibited for export under FTP
- Deemed Exports
- Supplies of products manufactured by DTA units to SEZ/FTWZ units.
- Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
- Products manufactured or exported availing the benefit of Notification No. 32/1997 Cus. dated 01.04.1997²⁰ (job work and re-export of goods supplied by the foreign supplier)
- Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports

- Goods which have been taken into use after manufacture.

Chapter 5: Export Promotion capital goods scheme (EPCG)

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods (except specified goods) for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfill the export obligation.

Eligible exporters:

Following are eligible for EPCG scheme:

- Manufacturer exporters with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Capital goods for the purpose of the EPCG scheme shall include: i.e. Eligible capital goods:

- Capital Goods including capital goods in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, molds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge

Applicability of IGST and compensation cess

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess .

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided, input tax credit is not availed.

Restricted import/export

Import of items which are restricted for import shall be permitted under EPCG Scheme only after requisite approval. Similarly, if the goods proposed to be exported under EPCG Authorisation are restricted for export, the EPCG Authorisation shall be issued only after requisite approval for issuance of Export Authorisation.

Actual User Condition: Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed and Export Obligation Discharge Certificate (EODC) is granted. After export obligation is completed, capital goods can be sold or transferred.

Validity: Authorisation shall be valid for import for 24 months from the date of issue of Authorisation.

Eligible exporters:

Following are eligible for EPCG scheme:

- Manufacturer exporters with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer either through Invalidation letter or through Advance Release Order. Such domestic manufacturer shall be eligible for deemed export benefits. Such domestic sourcing shall also be permitted from EOUs.

Export obligation consists of average export obligation and specific export obligation:

Specific export obligation (Specific EO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

Note: In case of direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.

Average export obligation (Average EO) under EPCG scheme is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

Block-wise fulfilment of Export Obligation: The Authorisation holder under the EPCG scheme shall, while maintaining the average export obligation, fulfill the specific export obligation over the prescribed block period in the following proportions:

Period from the date of issue of Authorisation	Minimum Export Obligation to be fulfilled
Block of 1 st to 4 th year	50%
Block of 5 th & 6 th year	Balance EO

Conditions applicable to the fulfilment of the Export Obligation (EO):

- EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.
- For export of goods, EPCG Authorisation holder may export either directly or through third party(ies).
- In case of indigenous sourcing of capital goods,
Specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.
There shall be no change in average EO imposed, if any.
- Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.
- Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.
- EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.
- Both physical exports as well as specified deemed exports shall also be counted towards fulfilment of export obligation.

Calculation of Export Obligation

In case of direct imports, EO shall be reckoned with reference to actual duty /Taxes/Cess saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duty /Taxes/Cess saved on FOR value.

Incentives for early fulfillment of export obligation:

With a view to accelerating exports, in cases where Authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorisation redeemed by RA concerned.

Chapter 6: Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs)

EOU, EHTP, STP and BTP stands for Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP). Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under these schemes for manufacture of goods, including repair, re-making, reconditioning, re- engineering, rendering of services, development of

software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture.

Trading units are not covered under these schemes.

Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

EOU/EHTP/STP/BTP units may export all kinds of goods and services except items that are prohibited in ITC (HS)22. An EOU / EHTP/ STP/ BTP unit may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India, all types of goods, required for its activities, without payment of basic customs duty, additional duty (leviable u/s 3 of the Customs Tariff Act), IGST and compensation cess. However, procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. Units can also import goods including capital goods required for approved activity on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.

State Trading regime shall not apply to EOU manufacturing units except for specified products.

Supplies from DTA to EOU/EHTP/STP/BTP units for use in their manufacture for exports will be eligible for "benefits under deemed exports". DTA supplier shall be eligible for relevant entitlements under deemed exports provisions of FTP, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to specified conditions and documentations.

Other Entitlements:

Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises. Export proceeds will be realized within 9 months. Units will be allowed to retain 100% of its export earnings in the EEFC (Exchange Earners' Foreign Currency) account. Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA subject to fulfilment of specified conditions. 100% FDI investment permitted through automatic route similar to SEZ units.

Net foreign Exchange Earnings

EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner. Moreover, certain sector specific provisions have also been laid down where a higher value addition and other conditions are given. NFE Earnings shall be calculated cumulatively in blocks of 5 years (extendible in specified cases), starting from commencement of production.

Applications & Approvals/Letter of Permission/ Letter of Intent and Legal Undertaking

Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be.

Investment Criteria

Only projects having a minimum investment of Rs. 1 crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP/STP/BTP, and EOUs in handicrafts/agriculture/floriculture/aquaculture/animal husbandry/information technology, services, brass hardware and handmade jewellery sectors. BoA may allow establishment of EOUs with a lower investment criteria.

Inter Unit Transfer

Transfer of manufactured goods/capital goods from one EOU/ EHTP/STP/BTP unit to another EOU / EHTP/ STP/ BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities as per the specified procedure. Goods supplied by one unit to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

Exit from the Scheme

With approval of DC/Designated officer of EHTP/ STP/BTP, an EOU/EHTP/STP/BTP unit may opt out of scheme. Such exit shall be subject to payment of applicable excise and customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

Conversion

Existing DTA units may also apply for conversion into an EOU / EHTP / STP/ BTP unit. Existing EHTP / STP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will avail exemptions in duties and taxes as applicable.

Chapter 7: Deemed Exports

The objective of deemed exports is to provide a level-playing field to domestic manufacturers and to promote make in India, in certain specified cases i.e. to ensure that the domestic suppliers are not in disadvantageous position vis-à-vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers at par with foreign suppliers.

Deemed Exports for the purpose of this FTP:

It refers to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in FTP shall be regarded as "Deemed Exports" provided goods are manufactured in India.

Deemed Exports for the purpose of GST:

It would include only the supplies notified under section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification. We will restrict our discussion to 'Deemed exports for the purpose for FTP' in this chapter.

Deemed exports broadly cover three areas.

- a) Supplies to domestic entities who can import their requirements duty free/at reduced rates of duty.
- b) Supplies to projects/ purposes that involve international competitive bidding.
- c) Supplies to infrastructure projects of national importance.

Categories of supplies considered as Deemed exports

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against AA/Advance Authorisation for Annual Requirement/ DFIA	Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty, under International Competitive Bidding.
Supply of goods to units located in EOU/ STP/BTP/EHTP	Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, provided supply is made against International Competitive Bidding.
Supply of capital goods against EPCG authorisation	• Supply of goods to mega power projects. • Supply to goods to UN or international organisation for their official use or supplied to projects financed by them. • Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

Benefits of Deemed Exports

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

- a. Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA
- b. Deemed Export Drawback.
- c. Refund of terminal excise duty for excisable goods.

Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate on such goods and supply is eligible under that category of deemed exports.

Common conditions for deemed export benefits

- (i) Supplies shall be made directly to entities listed in the point (I) above. Third party supply shall not be eligible for benefits/exemption.
- (ii) In all cases, supplies shall be made directly to the designated Projects/Agencies/Units/ Advance Authorisation/ EPCG Authorisation holder. Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.
- (iii) Supply of domestically manufactured goods by an Indian Sub-contractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export benefit provided name of sub-contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract. In such cases payment shall be made directly to sub-contractor by the Project Authority.