BBA
GGS Indraprastha University
BCOM 304: Indirect Taxes

L-5, T-0, Credits:05

Objectives:
To provide basis knowledge and equip students with application of Principles and provisions of Service Tax, VAT, Central Excise and Customs Laws.

Unit I **lecture:-25**

Service Tax: Concept & General Principles, Charge of Service tax and Determination of Place of Provision of Service, Negative List of Services, Declared Services, Principles of Interpretation of bundled services, Exemptions & Abatements, Valuation of Taxable Services, Basic Procedure & Penalties.

Unit II **lectures:-10**

State Level VAT: Concept & General Principles, Calculation of VAT Liability, Input Tax CreditSmall Dealers & Composition Scheme, VAT Procedures

Unit III **lectures:-20**

Central Excise Duty: Central Excise Act 1994 in brief –Goods, Excisable Manufacture& Manufacturer, Valuation& CENVAT, Basic Procedures, Export, SSI, Job Work

Unit IV **lectures:-15**

Customs Duty: Basic Concepts of Customs Act 1962 ,Territorial Waters, High Seas Types of Custom Duties-Basic ,Countervailing & Anti Dumping Duty, Safeguard Duty Valuation , Customs Procedures ,Import & Export Procedures,Baggage,Exemptions

UNIT-1

Service Tax

History

Dr. Raja Chelliah Committee on tax reforms recommended the introduction of service tax. Service tax had been first levied at a rate of five per cent flat from 1 July 1994 till 13 May 2003, at the rate of eight percent flat w.e.f 1 plus an education cess of 2% thereon w.e.f 10 September 2004 on the services provided by service providers. The rate of service tax was enhanced to 12% by Finance Act, 2006 w.e.f 18.4.2006. Finance Act, 2007 has imposed a new secondary and higher education cess of one percent on the service tax w.e.f 11.5.2007, increasing the total education cess to three percent and a total levy of 12.36 percent. The revenue from the service tax to the Government of India have shown a steady rise since its inception in 1994. The tax collections have grown substantially since 1994-95 i.e. from □410 crore (US$62 million) in 1994-95 to □132518 crore (US$20 billion) in 2012-13. The total number of Taxable services also increased from 3 in 1994 to 119 in 2012. However, from 1 July 2012 the concept of taxation on services was changed from a 'Selected service approach' to a 'Negative List regime'. This changed the taxation system of services from tax on some Selected services to tax being levied on the every service other than services mentioned in Negative list.

Concept : It is a tax which is payable on services provided by the service provider. Just like Excise duty is payable on goods which are manufactured, similarly Service Tax is payable on Services provided.This Tax is payable by the provider of Service to the Govt. of India. However, the Service Provider can collect this Tax from the Consumer of Service (also referred to as Recipient of Service) and deposit the same with the Govt.

New Service Tax Rate @ 14.5%

Budget 2015 Update: Finance Minister while presenting the Budget 2015 has increased the Service Tax Rate from 12.36% to flat 14%. This new rate of Service Tax @ 14% is applicable from 1st June 2015.

Moreover from 15th Nov 2015, Swachh Bharat Cess @ 0.5% would also be applicable.(Notification No. 21/2015) Therefore the effective rate of Service Tax would now be 14.5% with effect from 15th Nov 2015.

Case Study

Let's understand via simple case, If a Chartered Accountant, provides services in the capacity of auditor to ABC Ltd. and the audit fees is Rs. 1,00,000 then the service tax chargeable will be 14.5% on Rs. 1,00,000 i.e. INR 14,000. Hence, the total billing to be done by CA to ABC Ltd will be INR 1, 14,500.

The segregation of Value of Service Provided (i.e. Rs. 1, 00,000) and the Tax payable thereon (i.e. Rs. 14,500) shall be separately showing on the Invoice.

In case, no tax is separately charged in Invoice or the service receiver makes partial payment then the service tax shall be proportionately taken to be amount as on the gross amount received by the service provider for the taxable service provided or to be provided by him.

Charge of Service Tax

.**1**As on 1st May, 2011, 119 services are **taxable services** in India. These taxable services are specified in Section 65(105) of the Finance Act,1994. Section 64 of the Finance Act, 1994, extends the levy of service tax to the whole of India, except the State of Jammu & Kashmir.

Generally, the liability to pay service tax has been placed on the **'service provider'. However, in respect of the taxable services notified under Sec.68(2) of the Finance Act,1994, the service tax shall be paid by such person and in such manner as may be prescribed at the rate specified in Sec.66 of the Act and all the provisions of Chapter-V shall apply to such person as if he is the person liable for paying the service tax.**

The following services have been notified under Sec.68 (2) of Finance Act,1994:

A. the services,-

(i) in relation to telecommunication service;

(ii) in relation to general insurance business;

(iii) in relation to insurance auxiliary service by an insurance agent; and

(iv) in relation to transport of goods by road in a goods carriage, where the consignor or Consignee of Goods :-

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any company established by or under the Companies Act, 1956 (1 of 1956);

(c) any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(e) any co-operative society established by or under any law;

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or

(g) Anybody corporate established, or a partnership firm registered, by or under any

(v) In relation to Business Auxiliary Service of distribution of mutual fund by a mutual fund distributer or an agent, as the case may be;

(vi) in relation to sponsorship service provided to any body corporate or firm located in India;

1. Any taxable service provided or to be provided from a country other than India and received in India, under Sec.66a of the Finance Act, 1994.

Sec. 68(2) of Finance Act, 1994, Notification 36/2004-S.T. dated 31.12.2004 as amended)

In the following situations, the liability to pay service tax is as follows:

1. in relation to **[telecommunication service]**

(a) the Director General of Posts and Telegraphs,

(b) the Chairman-cum-Managing Director, Mahanagar Telephone Nigam Ltd, Delhi, a Company registered under the Companies Act

(c) Any other person who has been granted a license by the Central Government.

1. in relation to general insurance business, the insurer or re-insurer, as the case may be, providing such service;
2. in relation to insurance auxiliary service by an insurance agent, any person carrying on the general insurance business [or the life insurance business, as the case may be,] in India;
3. in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service;
4. In relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is- any factory, any company, any corporation, any registered society, any co- operative society, any registered dealer of excisable goods , any body corporate or a partnership firm;
5. in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case be, the mutual fund or asset management company, as the case may be, receiving such services;
6. in relation to sponsorship service provided to any body corporate or firm located in India, the body corporate or, as the case may be the firm who receives such sponsorship service;

(Rule 2(d) of Service Tax Rules, 1994)

1.2 From 01.06.2007 to 23.02.2009, the Service tax was payable @ **12%** of the **'gross amount'** plus 2% Education Cess on service tax plus 1% Secondary Higher Education Cess on service tax i.e totaling to 12.36% (in specific cases partial deductions are allowed, refer section 67 of the Finance Act) charged by the service provider for providing such taxable service. From 24.02.2009, vide Notification No.8/2009-ST dated 24.02.2009 the rate of service tax is 10% on gross value of the taxable service plus 2% Education Cess on the service tax amount and 1% Secondary Higher Education Cess on the service tax amount.

Example: Suppose the value of taxable service is Rs.100. Service tax @10% will be Rs.10 and Education Cess @2% of the Service Tax will be Rs.0.20 and Secondary & Higher Education Cess @1% of the service tax will be 0.10.

1.3 The Table below shows the category of services which are taxable with the date of introduction of such service. The table also shows the 'accounting heads' for each category service, for the purpose of payment of service tax.

Determination of Place of provision of Service

Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days

from the date on which the service tax under section 66 of the Finance Act, 1994(32 of 1994) is levied:

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement. *(Refer section 69 of Finance Act, 1994 & Rule 4 of the Service Tax Rules,1994)*

Also, the following two categories of persons have been identified as 'Special Category of Persons' under The Service Tax (Registration of Special Category of Persons) Rules, 2005:

1. Input Service Distributor;
2. Any provider of taxable service whose 'aggregate value of taxable service' ('aggregate value' has been defined in Rule 2(b) of The Service Tax (Registration of Special Category of Persons) Rules, 2005) in a financial year exceeds nine lakh rupees.

'Input service distributor' as defined under Rule 2 (m) of CENVAT Rules, 2004 means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

In case a service recipient is liable to pay service tax, as detailed at para 1.1 above, he also has to obtain registration.

2.2 The service tax is administered by the Central Excise Department. The government website www.exciseandservicetax.nic.in gives the details of the jurisdictional offices of the Central Excise Department, State-wise, District-wise as well as Commissionerate-wise.

2.3 Total 67 Central Excise & Service Tax Commissionerates, 7 exclusive Service Tax Commissionerates and 5 Large Taxpayer Units administer Service tax collection in India.

2.4 Following are the 7 Service tax Commissionerates:

1. Mumbai-I
2. Mumbai-II
3. Delhi
4. Chennai
5. Kolkata
6. Bangalore
7. Ahmedabad

2.5 There are 5 Large Taxpayer Units (LTUs) as listed below:

1. Bangalore,

2. Chennai,

3. Mumbai,

4. Delhi and

5. Kolkata

3. Procedure for Registration

3.1 Fill the Form ST-1 in duplicate. (Form ST-1 is available on the departmental website Enclose photocopy of PAN card, proof of address to be registered and copy of constitution partner ship deed etc. of the firm, if any.

3.2 Copy of PAN card is necessary as a PAN based code (**S**ervice **T**ax **C**ode) is allotted to every assessee.

3.3 These forms are required to be submitted to the jurisdictional Central Excise office (in case of seven Service Tax Commissionerates, to the jurisdictional Division office). There are separate service tax commissionerates in Mumbai, Chennai, Delhi , Kolkata, Bangalore and Ahmedabad as mentioned in the previous chapter).

3.4 A person liable to pay service tax should file an application for registration within **thirty days** from the date on which the service tax on particular taxable service comes into effect or within thirty days from the commencement of his activity.

(Refer Rule 4 (1) of Service Tax Rules, 1994)

3.5 Where a person, liable for paying service tax on a taxable service,

(i) provides such service from more than one premises or offices; or

(ii) receives such service in more than one premises or offices; or,

1. is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

2. and has centralized billing system or centralized accounting system in respect of such service, and such centralized billing or centralized accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralized billing or centralized accounting systems are located.

3.5.1 The registration under sub-rule 2 of Rule 4 of the Service Tax Rules,1994, shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralized billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralized billing or centralized accounting systems, prior to the 2nd day of November, 2006.

3.6 A **single registration** is sufficient even when an assessee is providing more than one taxable services. However, he has to mention all the services being provided by him in the application for registration and the field office shall make suitable entries/endorsements in the registration certificate.

(Refer Rule 4 (4) of Service Tax Rules, 1994)

3.7 An assessee should get the registration certificate (registration number) within **7 days** from the date of submission of form S.T.1, under normal circumstances.

(Refer Rule 4 (5) of Service Tax Rules, 1994)

3.8 A fresh registration is required to be obtained in case of transfer of business to another person.

(Refer Rule 4 (6) of Service Tax Rules, 1994)

3.9 Any registered assessee when ceases to provide the taxable service shall surrender the registration certificate immediately.

(Refer Rule 4 (7) of Service Tax Rules, 1994)

3.10 In case a registered assessee starts providing any new service from the same premises, he need not apply for a fresh registration. He can simply fill in the Form S.T.1 for necessary amendments he desires to make in his existing information. The new form may be submitted to the jurisdictional Superintendent for necessary endorsement of the new service category in his Registration certificate.

NEGATIVE LIST OF SERVICES

Negative list of Services implies two things:

- Firstly, it is a list of services which will not besubject to service tax.
- Secondly, other than services mentioned in thenegative list, all other services will be taxable whichfall in the definition of the service.

PURPOSE OF BRINGING NEGATIVE LIST

In the parliament, while presenting the union budget2011, the then Finance Minister proposed that:

"Many experts have argued that, it is desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an Approach will be very conductive for a nationwide GST.

CONCEPT OF NEGATIVE LIST

After the incorporation of negative list concept, it will be clear that: The services that are included in the negative list will not be taxable. They are outside the purview o of levy of service tax itself. All the other services that are not mentioned in then negative list are leviable to the service tax.

NEGATIVE LIST OF SERVICES-

There are 17 services which are mentioned in thenegative list, viz.,some are explained here :-

1. Services provided by Government or Localauthority excluding the following services to the Extent they are not covered elsewhere

2. Services provided by the Department of Posts by way ofspeed post, express parcel post, life insurance and agencyservices carried out on payment of commission on nongovernment business;

3 Service in relation to aircraft or vessel inside or outsidethe precincts of a port or an Airport. Transport of goods or passengers.Support services, other than above, provided to business Entities

4. Services provided by Reserve Bank ofIndiaAll services provided by the Reserve Bank of India is in the negative list. Services providedto the Reserve Bank of India are not in the Negative list and would be taxable unlessotherwise covered in any other entry in the

Negative list.

5. Services by a Foreign Diplomatic MissionLocated in India any service that is provided by a diplomaticmission of any country located in India is in thenegative list. This entry does not cover services, if any, provided by any office or establishmentof an international organization.

6. Some Services relating to agriculture. & So on.

Declared Services

Declared Services are defined under section 65 B (22) of the Finance Act , 1994 to mean any activity carried by any person for another person for consideration and declared as such under section 66 E.

A service to come under the category of declared services, it has to satisfy two basic conditions conjunctively:

a. it must be an activity by one person to another for consideration

b. it must be specified(i.e. declared) under Sec. 66E

In accordance with clause (44) of the newly inserted Sec. 65B of the Finance Act,1994 effective from July 1,2012, the term 'service' means any activity for consideration carried out by a person for another and includes a declared service. Thus, whenever any activity is carried out in the taxable territory for a consideration by one person for another then such activity is taxable service.

The following nine activities have been specified in Sec.66E and these activities when carried out by a person for another for consideration would amount to provision of service:

i. renting of immovable property;

ii. construction of a complex, building, civil structure or a part thereof

iii. temporary transfer or permitting the use or enjoyment of any intellectual property right;

iv. Services in relation to information technology software;

v. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

vi. transfer of goods by without transfer of right to use such goods;

vii. activities in relation to delivery of goods on hire purchase or any system of payment by installments;

viii. service portion in the execution of a works contract;

ix. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

Principles & Interpretation of Bundled Services:

Principles for interpretation of specified descriptions of services:

The principle to interpret description of service are contained in Section 66F of Finance Act, 1994 introduced w.e.f. 01.07.2012

1. Exemption to Service does not mean exemption to services for providing that service:

Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service. For example – If construction of a Government Building is exempt (main service), architect or labour supplier providing service to builder/contractor for such contract will not be able to avail that exemption.

2. Specific description prevails over general description:

Where a service is capable of differential treatment for any purpose on its description, the most specific description shall be preferred over a more general description. For example – A hotel rents out a conference room for an official conference where lunch is also served. It can be classified as 'Mandap keeper' or 'Convention Service'. Between these two entries, 'Convention Service' is more specific as it covers an only convention which is like official function. 'Mandap Keeper' is general description as it includes official, social as well as business functions. The services provided by a real estate agent are in the nature of intermediary services relating to immovable property. As per the Place of Provision of Service Rule, 2012, the place of provision of services provided in relation to immovable property is the location of the immovable property. However in terms of the rule 5 pertaining to 126 services provided by an intermediary the place of provision of service is where the intermediary is located. Since Rule 5 provides a specific description of 'estate agent', the same shall prevail.

3. Service which gives essential character:

'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different. Subject to the provisions of sub section (2), the taxability of a bundled service shall be determined in the following manner, namely:

a) **Naturally Bundled**

If various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character. Example of naturally bundled service is 'package tour', where service provider offers to provide service right from pickup, travel, hotel accommodation, sight seeing, etc.

b) **Not Naturally Bundled:**

If various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of Service Tax. For example – Premises are rented which are partly for residential purposes and partly for manufacturing activity. Thus, it is not service bundled in ordinary course of business. In such case, though residential use is not taxable, commercial use is taxable. Hence, the entire bundle will be treated as renting of commercial property.

Determination of taxability if 'Composite Transactions' wherein element of provision of Service is combined with element of sale of goods:

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

a) Perception of consumer and service receiver

If large number of service receivers of such bundle of services reasonably expects such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

b) Majority of service providers in a particular area of business providing similar bundle of services

For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

c) The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main services and the other services combined with such services are in the nature of incidental or ancillary services which help in better enjoyment of a laundering of 3-4 items clothing free of cost per day. Such service is ancillary services to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

d) Other illustrative indicators, not determined but indicative of bundling of services in ordinary course of business are:

i. There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use,

ii. The elements are normally advertised as a package,

iii. The different elements are not available separately,

No straight jacket formula can be laid down to determine whether a service is a naturally bundled in the ordinarily course of business. Each case has to be individually examined.

Although the negative list approach largely obviates the need for descriptions of services, such descriptions continue to exist in the following areas:

a) In the negative list of services.

b) In the declared list of services.

c) In exemption notifications.

d) In the Place of Provision of Service Rules, 2012

e) In a few other rules and notifications e.g. Cenvat Credit Rules, 2004.

Scope of Section 66F(1):

'Unless otherwise specified, reference to a service (hereinafter referred to as the "main service") shall not include reference to a service which is used for providing the main service'. This rule can be best understood with a few illustrations which are given below –

a. Provision of access to any road or bridge on payment of toll' is a specified entry in the negative list in section 66D of the Act. Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry.

b. Transportation of goods on an inland waterway is a specified entry in the negative list in section 66D of the Act. Services provided by an agent to book such transportation of goods on inland waterways or to facilitate such transportation would not be entitled to the negative list entry.

The rules of interpretation have to be done in very careful manner. Such as in case of **Construction of Roads, Dams, etc**., if one receives part work of the same as sub contract being architect service or earth work which is taxable in their individual nature, one may think it to be exempt as Mega Exemption clause 28(viii) states that **Service by the following person in respective capacities – Sub Contractor provides services by way of Work Contract to another Contractor providing work contract service which are exempt** and these roads and dams are exempt under Mega Exemption Clause 13(1). But, the same is not true as these are **taxable.** The same has been clarified by many circulars and CBEC guidance note whose extract is quoted here:

As per clause (1) of section 66Freference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service ., which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.

It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega

exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants.

Commission agent or a clearing and forwarding agent who sells goods on behalf of another for a commission be included in trading of goods

The services provided by commission agent or a clearing and forwarding agent are **not** in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of section 66F reference to a service does not include reference to a service used for providing such service. Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.

In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement

This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F of the Act. Bundled services have been defined in the said section as provision of one type of service with another type or types of services. If such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. If such services are not bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which attracts the highest liability of service tax.

Collection charges or service charges paid to any toll collecting agency

The negative list entry only covers access to a road or a bridge on payment of toll charges. Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

Boarding Schools

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in aseparate entry of the negative list, the entire bundle would be treated as a negative list service.

Exemptions & Abatements: _

Changes made in Service Tax Abatement Provisions with effect from 01/04/2015

1. Transport of goods/ passengers by rail – Hitherto, service tax was payable on 30% of the value of services of rail transport of goods and passengers (with or without accompanied belongings) without any condition. Now, the abatement shall be available subject to the condition that Cenvat credit on inputs, capital goods and input services, used for providing the taxable services has not been taken under CCR, 2004.

2. Goods Transport Agency- Abatement on "Transportation of goods by Goods Transport Agency" was 75% which has now been reduced to 70%.

3. Services provided in relation to chit- Abatement on "Services provided in relation to chit" has been withdrawn.

4. Transport of goods in a vessel– Abatement on "Transportation of goods in a vessel" was 60% which has now been increased to 70%.

5. Transport of passengers by Air– Hitherto, an abatement of 60% was provided on taxable services of transport of passengers by air (with or without accompanied belongings). The said abatement continues for economy class travel and in case of other than economy class the abatement has been reduced to 40%.

Valuation of Taxable Services

Statutory Provision – S. 67

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section,—

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

1. Service tax chargeable with reference to its value

S. 67 as substituted , does not speak about its 'value of taxable service' but uses the expression ' service tax chargeable on any taxable service with reference to its value'

2. Consideration may be monetary

S. 65 B (33) of the Act , defines ' money ' means legal tender , cheque , promissory notes, full of exchange , letter of credit, draft, pay order, travelers cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value.

3. Tax is payable on the value of taxable service and not on entire value of contract.

It should be carefully noted that S.67[1][i] of the Act uses the world 'such service' and not 'the service' . Such means having the particular quality or character specified; representing or referring to object as already particularized in terms which are not mentioned.

As per Webster dictionary " such " mean 'of kind specified or understood'

The charge should be for taxable service provided or to be provided. Thus, if any other amount is charged which is not for taxable service provided or to be provided, service tax will not be payable on such charge.

Amount of mess charges collected from student has no nexus with coaching activity.

Aditya college of competitive examination v. CCE [Banglore CESTAT]

Agra Steel Corporation V. CCE [New Delhi- CESTAT]

4. Consideration may be non monetary

In this situation , clause (ii) of section 67(1) of the Act, provides that the value shall be such amount in money as , with the addition of service tax charged, is equivalent to the consideration .

Example : Supply of goods or service in return for provision of services- A agrees to provide a tax opinion in return of second hand car from B.

5. Gross amount charged to include service tax payable

Sub section 2 of Section 67 provides that where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of services tax payable, the value of such taxable services shall be such amount, as with the addition of tax payable, is equal to the gross amount charged.

CCE v Advantage media consultants [2008] CESTAT – KOL.

Municipal Corporation of Delhi v CST[2010] CESTAT New Delhi.

6. Tax is payable as soon as the advance is received

Sub section 3 of S. 67 provides that the gross amount charged for the taxable service shall include any amount received towards the taxable services before, during or after the provision of such services. Thus the service tax shall be payable on receipt of advances.

7. Meaning of Consideration need to be understood

As per S. 65B(44) of the Act,

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.— For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 3.— For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

Consideration is the essential ingredients of the definition of service. In other word if the service is provided free of cost i.e. without consideration then the activity would not fall within the purview of service tax. Accordingly , activities such as donation, gifs and free charities are outside the ambit of service . However, it is important to note that the phrase consideration has not been defined in the Act. Therefore definition of 'consideration' can be adopted from Indian Contract Act,1872.

8. Meaning of 'money' has been omitted from S. 67

Explanation B of S.67 which defines the term 'money' has been deleted w.e.f July 1,2012. However from the same date new definition has been provided by S. 65B (33). Where 'money' means;

Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft , pay order, travelers cheque, money order, postal or electronic remittance or any such similar instruments but shall not include any currency that is held for its numismatic value.

9. Valuation can be only with reference to Valuation Rules

Sub section 4 of section 67 of the Act provides that subject to the provision of section [1][2][3] of Section 67 of the Act, the value shall be determined in such manner as may be prescribed. By virtue of Section 94[2] of the Act, the Service Tax (Determination of Value) Rules , 2006 have been issued.

It is to be note that the Valuation Rules cannot overrule the provisions given in Section 67.

Rule -2A, Valuation for work contract service

Erstwhile rule 2A has been replaced with the New Rule 2A for valuation of works contract service vide notification no. 24/2012 dated 06.06.2012.

Meaning of Work Contract:

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

2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, –

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

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

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

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

2B. Determination of value of service in relation to money changing.-

Subject to the provisions of section 67, the value of taxable service provided for the services so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US$1000 are sold by a customer at the rate of Rupees 45 per US$.

RBI reference rate for US$ is Rupees 45.50 for that day.

The taxable value shall be Rupees 500.

Example II: INR70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is Rupees 69.

The taxable value shall be Rupees 1000.

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI;

2C. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.- Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

S.N.	Description	% of total amount
1	Service portion in an Activity wherein goods , being	40

	food or any other article of human consumption or any drink [whether or not intoxicating] supplied in any manner a part of activity, at a restaurant.	
2.	Service portion in outdoor catering , wherein goods , being food or any other article of human consumption or any drink [whether or not intoxicating] supplied in any manner a part of such outdoor catering	60

Explanation 1.- For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).

Value is not ascertainable – Rule 3

Subject to the provisions of section 67, the value of taxable service, **where such value is not ascertainable**, shall be determined by the service provider in the following manner :-

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

Rule -3[a]

Nat Steel Equipment P Ltd V. Collector of Central Excise 1988[34] ELT8 in Supreme Court stated that the similar does not mean identical but resemblance between two services n order to constitute the services as similar services.

Rule -3[b]

Determining the equivalent money value of consideration. Rule does not devise any method of costing. The Cost Accounting Standard -4 lay down the principal for determination of cost of manufacture of goods for captive consumption.

Rejection of Value by Central Excise Officer – Rule 4

Rule 4(1) – Central excise officer can call for information and documents to satisfy himself that the value as determined by the service provider is correct as per the provision of the Act.

Rule 4(2) & 4(3) empowers the central excise officer to issue show cause for the amount to be fixed for taxable services and provide opportunity to be heard.

Make provision for certain specific inclusion and exclusions of cost – Rule -5

Rule 5(1) lays down the general principal while Rule 5(2) deals with the expenditure incurred by the service provider as a pure agent.

Rule 5 (1) of the Valuation Rule : Where certain expenditure or cost are incurred by service provider while providing the taxable service, all such expenditure or cost shall be treated as consideration for taxable services and shall be included in the value for the purpose of charging of service tax.

Explanation : [inserted vide notification no. 24/2012 dated 6.6.2012] for the removable of doubt it is hereby clarified that for the value of taxable service shall be gross amount paid by the person to whom the telecom service is provided by the telegraph authority.

Reimbursement of out of pocket expenses:

Rule 5(1) makes clear departure from the earlier position in respect of out of pocket expenses (such as travelling, boarding , conveyance and lodging) incurred by the service provider during the course of providing the taxable services. Earlier such expenses were not required to be included in to taxable services.

Illustration : A contract with B for building a house. A, an Architect , during the course of providing the services, incurred expenses such as telephone, travel ticket, hotel accommodation , conveyance etc. to perform his services and charge the same in invoice raised to B. Here weather

the expenses are charged separately or included in the gross fee shall be subject to service tax. Value of the taxable service for charging service tax is what B pays to A.

Pure Agent – Rule 5(2) of the valuation rules provides that expenditure or cost that service provider incurs , as pure agent on behalf of the client, shall be excluded from the value , if service provider fulfill prescribed conditions.

i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

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

Explanation 1. – For the purposes of sub-rule (2), "pure agent" means a person who –

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. – For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

illustration of Pure agents ;

1. Octroi or entry fees paid by C&F agent, CHA or transporter on behalf of owner of goods.
2. Expenses incurred by C&F agent and reimbursed by principal such as freight ,labour, godown charges and loading and unloading charges.
3. Custom duty, dock dues, transport charges paid by CHA on behalf of client.

In view of the above prospective, one must have the following arrangement ;

1. Contractual arrangement : this does not mean in writing as the contract act does not requires that agreement should be in writing. However it is advisable to have simple agreement for the services to be rendered as agent on behalf of the client.
2. Disclosure to Act as agent.
3. Break up of consideration is not relevant.

INTERCONTINENTAL CONSULTANTS AND TECHNORATS PVT. LTD. V U.O.I. & ANR – Delhi High Court – November 30,2012

Above case on Rule 5 has been decided against the revenue. In this writ petition, the petitioner challenges the constitutional validity of **Rule 5 of the Service Tax (Determination of Value) Rules, 2006** to the extent it includes re-imbursement of expenses in the value of taxable services for the purposes of levy of service tax. The petitioner also contends, in the alternative that the said rule is ultra vires of the provisions of **Section 66 and 67 of Chapter V of the Finance Act, 1994.**

Specific inclusions and exclusions – Rule -6

(1) Subject to the provisions of section 67, the value of the taxable services shall include, –

(i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

(ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

(iii) the amount of premium charged by the insurer from the policy holder;

(iv) the commission received by the air travel agent from the airline;

(v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

(vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;

(vii) the commission or any amount received by the rail travel agent from the Railways or the customer;

(viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner

(ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent and.

(x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include –

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(ii) the airfare collected by air travel agent in respect of service provided by him;

(iii) the rail fare collected by rail travel agent in respect of service provided by him; and

(iv) interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable

(v) the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.

(vi) accidental damages due to unforeseen actions not relatable to the provision of service; and

(vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.

Exclusion from value mean zero rated ; Exclusion from service means that the service is neither taxable nor exempt. It means that service tax is payable on these activities as these have been removed from the activities. Accordingly, if there are some accidental damages , then the revenue to such an extent would not be subject to reversal of input tax credit. The situation in case of banking and financial company is quite different as specific provisions have been laid down separately in the CENVAT Rules for credit reversal in case of banking and financial institutes.

Rule -7 has been omitted w.e.f 01.07.

Penalities:

Penalty is generally levied on the assessee for intentional violation of provision of the Act or Rules made there under. It is penal in nature and charged to the assessee in addition to the Interest and Service Tax.

If assessee proves there was a reasonable cause for failure in payment of service tax no penalty should be imposed on him [Section 80, Finance Act 1994]

Section 70 (1) late fee for delay in filing the return

If Half-yearly Service Tax Return (ST-3 / ST-3A) is filed after the due date of return filing then, the assessee is required to deposit late fees depending upon the period of delay. Such late fee can be a maximum of Rs. 20,000/- [Please Refer: Section 70(1), Finance Act, 1994)

However, according to the provisions of Service Tax Rules, 1994 (Rule 7C) some allowance is available to the assessee for if the delay in filing of return is within specified period as shown under. [Please Refer: Rule 7C, Service Tax Rules, 1994]

Delay in Filing of Return After the Due Date	Late Fees
First 15 days	Rs. 500/-
More than 15 days but not more than 30 days	Rs. 1000/-
More than 30 days	1000 + 100 per day beyond 30 days

The Late Fee in any case Cannot Exceed Rs. 20,000/-

Illustration:

Due date is 25th April

What would be the late fees chargeable in case of filing of return of service tax under following situations.

April: 25, 26, May: 10, 11, 25, 26 28 June: 04, 05,

Solution:

Actual Date of Filing	**Particulars**	**Late Fees**
April – 25	On the due date	NIL
April – 26	Within first 15 days (Even if just 1 day after the due date)	500
May – 10	Within first 15 days (15th Day after the due date)	500
May – 11	After 15 days but not more than 30 days (It is 16th Day)	1000
May – 25	After 15 days but not more than 30 days (It is 30th Day)	1000
May – 26	Beyond 30 days (1000 + 100 X 1) as 1 day after 30 day limit	1100
May – 28	Beyond 30 days (1000 + 100 X 3) as 3 days after 30 day limit	1300
June – 04	Beyond 30 days (1000 + 100 X 10) as 10 days after 30 day limit	2000
June – 05	Beyond 30 days (1000 + 100 X 11) as 11 days after 30 day limit	2100
For 220 Days	Beyond 30 days (1000) + (190 Days X 100)	20000
Beyond 220 Days	The Penalties shall not exceed Rs.20000	20000

Section 76: Penalty for Failure to Pay Service Tax:

(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and

interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax :

Provided that where service tax and interest is paid within a period of thirty days of —

i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded;

ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may

Section 77: Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. —

(1) Any person, —

(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;]

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made there under; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made there under; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to [ten thousand rupees] or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to [ten thousand rupees];

(e) who issues invoice in accordance with the provisions of the Act or rules made there under, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to [ten thousand rupees].

2. Any person who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

Section 78: Penalty for failure to pay service tax by reason of fraud, etc.

When service tax has been not 'levied or paid' or has been 'short-levied or short-paid' or 'erroneously refunded', **by any of the below mentioned reason:**

(1) Fraud

(2) Collusion

(3) Wilful Mis-statement

(4) Suppression of facts

(5) Contravention of any of the provisions of this chapter or of the rules made there under with **intent to evade** payment of service tax,

The person, who has been served notice under sub section (1) of section 73 shall, in addition to service tax and interest specified in the notice , be liable to pay penalty which shall be equal to **hundred per cent** of such amount of service tax.

E.g. if the amount of service tax (short paid, not paid, short levied, not levied or erroneously refunded) was Rs. 1,00,000/- then penalty shall be Rs. 1,00,000 and total amount payable shall be Rs. 200000 plus interest.

Relaxation in Penalty Payment:-

Provided further that where service tax and interest is paid within a period of thirty days of —

i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Example:-.

If notice has been served under section 73(1) CEO is of Rs. 100000 on 1.1.2015 and all the three i.e. service tax, interest and penalty has been paid within till 31.01.3015 then in this case penalty shall be 15% i.e. Rs. 15000.

If Service Tax determined u/s 73(2) by Central Excise Officer is Rs. 1,00,000/- on 01-01-2015 and all the three i.e. Service Tax, Interest and Penalty (**Reduced Amount**) is paid within 31.01.0215 then penalty would be Rs. 25,000/-

Penalty Increases/Reduces in further appeal:

Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, the court, then, such reduced or increased service tax shall be taken into account.

Example: If Service Tax liability determined by Central Exercise Officer is Rs. 1,00,000/- then subsequently in appeal made the Service Tax determined by the Commissioner (Appeals) was Rs. 1,50,000/-, in further appeal Appellate Tribunal determined tax liability of Rs. 1,20,000/- then in such case if payment is made within 30 days then amount of penalty would be Rs. 30,000/- (25% of Rs. 1,20,000/- i.e. Service Tax Liability Determined by the Higher Authority in Appeal Hierarchy)

78A. Penalty for offences by director, etc., of company:

Where a company has committed any of the following contraventions, namely:—

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

Section 73D: Publication of information in respect of persons:

If the Central Government is of the opinion that it is necessary in the public interest to publish the name of any person and any other particulars relating to any proceedings, it has power to publish such names and particulars in such manner as conferred by [Service Tax (Publication of Names) Rules,2008]

Publication under this section shall not be made in relation to any penalty until the time for presenting an appeal u/s 85 to the Commissioner (Appeals) or u/s 86 to the Appellate Tribunal, has expired without an appeal having been presented or If the appeal, is presented, has been disposed of by the competent authority.

Section 80: Penalty not to be imposed in certain cases:

If assessee can prove that there was a reasonable cause then penalty shall not be levied u/s 76, u/s 77 or u/s 78. No penalty shall be imposed if there was reasonable cause for the said failure. However, such relaxation is not available in the case of interest, interest is a mandatory provision and it is levied for any delay in payment made by the assessee.

Unit :2

State Level VAT

The value added tax (VAT) in India is a state level multi-point tax on value addition which is collected at different stages of sale with a provision for set-off for tax paid at the previous stage i.e., tax paid on inputs. It is to be levied as a proportion of the value added (i.e. sales minus purchase). VAT system is more transparent, uniform and less prone to tax evasion VAT is a consumption tax because it is borne ultimately by the final consumer.VAT is not a charge on companies. It is charged as a percentage of price, which means that the actual tax burden is visible at each stage in the production and distribution chain.

It is collected fractionally, via a system of deductions whereby taxable persons can deduct from their VAT liability the amount of tax they have paid to other taxable persons on purchases for their business activities. This mechanism ensures that the tax is neutral regardless of how many transactions are involved.

In other words, it is a multi-stage tax, levied only on value added at each stage in the chain of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the chain. The objective is to avoid 'cascading', which can have a snowballing effect on prices. It is assumed that due to cross-checking in a multi-staged tax, tax evasion will be checked, resulting in higher revenues to the government.

Principles/advantages of VAT

- To encourage and result in a better-administered system;
- To eliminate avenues of tax evasion;
- To avoid under valuation at all stages of production and distribution;
- To claim credit on tax paid on inputs at each stage of value addition;
- Do away with cascading effect resulting in non distortion of the business decisions;
- Permits easy and effective targeting of tax rates as a result of which the exports can be zero-rated;

- Ensures better tax compliance by generating a trail of invoices that supports effective audit and
- Enforcement strategies;
- Contribution to fiscal consolidation for the country. As a steady source of revenue, it shall reduce the
- Debt burden in due course;
- To stop the unhealthy tax-rate war and trade diversion among the States, which had adversely affected
- The interests of all the states in the past.

Methods of computation

VAT can be computed by using any of the three methods:

- **Subtraction method:** Under this method, the tax rate is applied to the difference between the value of output and the cost of input;
- **Addition method:** Under this method, value added is computed by adding all the payments that are payable to the factors of production (viz., wages, salaries, interest payments, etc.);
- **Tax credit method:** Under this method, it entails set-off of the tax paid on inputs from tax collected on sales. Indian states have opted for tax credit method.

VAT is a multi-stage tax on goods that is levied across various stages of production and supply with credit given for tax paid at each stage of value addition. VAT is the most progressive way of taxing consumption rather than business.

VAT Procedure & Liability

The VAT is based on the value addition to the goods and the related VAT liability of the dealer is calculated by:

- Deducting input tax credit from tax collected on sales during the payment period.
- This input tax credit is given for both manufacturers and traders for purchase of input/supplies meant for both sales within the state as well as to the other states irrespective of their date of utilization or sale.
- If the tax credit exceeds the tax payable on sales in a month, the excess credit will be carried over to the end of the next financial year.
- If there is any excess unadjusted input tax credit at the end of the second year then the same will be eligible for refund.
- For all exports made out of the country, tax paid within the state will be refunded in full.
- Tax paid on inputs procured from other states through inter-state sale and stock transfer shall not be eligible for credit.
- VAT has been introduced by 30 states / UTs. However, Central Sales Tax will continue to govern inter-state sales and exports.

Rates of tax

- VAT will have four broad type of rates.
- 0% (Exempted) for unprocessed agricultural goods, and goods of social importance.
- 1% for precious and semiprecious metals.
- 4% for inputs used for manufacturing goods, capital goods and other essential items.
- 20% for demerit/luxury goods.
- The rest of the commodities are taxed at a revenue neutral rate of 12.5%.

Concept of VAT and Set-off / Input Tax Credit

- VAT is based on the value addition to the goods.
- VAT is calculated by deducting input tax credit from tax collected on sales during a payment period (say, a month).
- The essence of VAT is in providing set-off for the tax paid earlier, through the input tax credit/rebate.
- To illustrate:

• (a) Input purchased within the month (taxable, say, @ 4%)	• Rs. 1,00,000/-
• (b) Output sold in the month (taxable, say, @10%)	• Rs. 2,00,000/-
• (c) Input tax paid	• Rs. 4,000/-
• (d) Output tax payable	• Rs. 20,000/-
• (e) VAT payable during the month after set-off/input tax credit [(d) – (c)]	• Rs. 16,000/-

- Coverage of Set-Off / Input Tax Credit ("Credit")

- Credit will be given to both manufacturers and traders, for purchase of inputs/supplies meant for all types of sales (local sale, interstate sale, exports, etc).
- (Essentially, the purchases must be for sale or manufacture of goods and the goods may cover other purchases facilitating business.)
- Credit will be available immediately upon purchases and receipt of tax invoice; the utilisation of purchases could be any time.
- (Utilisation of purchases, in other words, is not a precondition for claiming Credit.)
- Even for stock transfer/consignment sale of goods out of the State, input tax paid in excess of 4% will be eligible for credit.
- (The fine print would indicate the basis of valuation of stock transfer as well as the method of its working.)
- Credit on capital goods (except in case of negative list of capital goods agreed upon) will also be available to traders and manufacturers, in a maximum of 36 equal monthly installments.
- (The negative list may contain items like cars, air conditioners, etc. Credit will be available in respect of capital goods purchased on or after April 1, 2005.)

Registration, Small Dealers and Composition Scheme, VAT Procedures

- All existing dealers will be automatically registered under the VAT Act.
- Registration of dealers with gross annual turnover above Rs. 5 lakh will be compulsory.
- A dealer can obtain voluntary registration.
- Small dealers with gross annual turnover not exceeding Rs. 5 lakh (or such limit as may be fixed by the States) will not be liable to pay VAT.
- Small dealers with annual gross turnover not exceeding Rs. 50 lakh liable to pay VAT, will have an option, for a composition scheme, to pay tax at a small percentage of gross turnover, and will not be entitled to Credit.
- (However, it may be advisable for such dealers, selling goods to VAT dealers eligible for input tax credit, voluntary registration, so that the business is not affected. Otherwise, the purchases from such dealers are not eligible for input tax credit in the hands of the VAT dealers.)
- Tax Payer's Identification Number (TIN)
- Each taxpayer will be issued a Tax Payer's Identification Number which will consist of 11 digit numerals throughout the country. First two characters will represent the State Code (as used by the Union Ministry of Home Affairs) and the next nine characters may be different in different States.
- TIN will be, inter alia, useful for:
- a cross-checking, (computerised system of the tax authorities of the State Governments and the authorities of Central Excise and Income Tax will help to compare constantly the tax returns and set-off documents of VAT system of the States and those of Central Excise and Income Tax); and

- putting in place a regulatory frame-work in terms of Taxation Information Exchange System, inter alia, to give a comprehensive picture of inter-State trade of all commodities.
- The crosschecking and compilation of information will:
- help to reduce tax evasion and also lead to significant growth of tax revenue
- protect the interests of tax-complying dealers against the unfair practices of tax-evaders,
- also bring in more equal competition in the sphere of trade and industry.
- Return
- Simplified form of returns will be notified.
- Returns may be filed monthly/quarterly, and
- shall be accompanied by payment challans.
- Every return furnished by dealers will be scrutinised expeditiously.
- Procedure of Self-Assessment of VAT Liability
- The basic simplification is that VAT liability will be self-assessed by the dealers themselves.
- No compulsory assessment at the end of each year.
- If no notice is issued for the audit of the books of account, the dealer will be deemed to have been self-assessed based on the returns.
- Correctness of self-assessment will be checked through a system of Departmental Audit.
- A certain percentage of the dealers will be taken up for audit every year on a scientific basis.
- This Audit Wing will remain delinked from tax collection wing to remove any bias.
- The audit team will conduct its work in a time bound manner and audit will be completed within six months.
- The audit report will be transparently sent to the dealer also.

Unit :3

Central Excise Duty

Excisable Goods:"Duty or Excise duty" means duty of Excise. "**Excisable goods** " means **goods** in respect of which excise duty is imposed by the Parliament, and includes **goods** the subject of an Excise Tariff or Excise Tariff alteration proposed in the Parliament.

Levy & Collection of Duty

- Section 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. -
- (1) There shall be levied and collected in such manner as may be prescribed, -
  (a) a duty of excise to be called the Central Value Added Tax (CENVAT)] on all

excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods excluding goods produced or manufactured in special economic zones specified in the Second Schedule to the Central Excise Tariff Act, 1985

(ii) by a hundred per cent export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1. - Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation2. (i) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.;

(iii) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government.

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed –

(a) for different classes or descriptions of the same excisable goods; or
(b) for excisable goods of the same class or description –

(i) produced or manufactured by different classes of producers or manufacturers; or
(ii) Sold to different class of buyer

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.

- Section 3A. Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods:
- (1) Notwithstanding anything contained in section 3, where the Central government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.
(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,__
(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory; or
(b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and
(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:
Provided that where a factory producing notified goods is in operation only during a part of the year only, the annual production thereof shall be calculated on proportionate basis of annual capacity of production.
- **Provided** further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be redetermined on a proportionate basis having regard to such alteration or modification.
(3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed:
Provided that, where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

(4) The provision of this section shall not apply to goods produced or manufactured, by a hundred per cent export - oriented undertaking and brought to any other place in India.
Explanation 1: For the removal of doubts, it is hereby clarified that for the purposes of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 0f 1986) read with any notification for the time being in force.
Explanation 2: For the purposes of this section the expressions "hundred per cent export - oriented undertaking" shall have the meanings assigned to it in section 3.

- Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -
- (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -
- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.
  Explanation. - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.
- (2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.
  (3) For the purpose of this section,-
- (a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;
- (b) persons shall be deemed to be "related" if -
- (i) they are inter-connected undertakings;
- (ii) they are relatives;
- (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- (iv) they are so associated that they have interest, directly or indirectly, in the business

  Of each other.

- **Explanation.** - In this clause -
- (i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969); and
- (ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);
- (c) "place of removal" means -

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;
- from where such goods are removed;
- (cc) "time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;
- (d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.
- Section 4A. Valuation of excisable goods with reference to retail sale price. -
- (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010) 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 goods, to which the provisions of sub-section (2) shall apply.
  (2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.
  (3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.
  (4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer -
- (a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or
- (b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,
- then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

- **Explanation 1.** - For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:
- **Provided** that in case the provisions of the Act, rules or other law as referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.
- **Explanation2.** - For the purposes of this section, -
- (a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;
- (b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;
- (c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.
- Section 5. Remission of duty on goods found deficient in quantity. -
- (1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause are found to be deficient in quantity.
  (2) Any rules made under d sub-section (1) may, having regard to the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed :
  Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons.
- Section 5A. Power to grant exemption from duty of excise. -
- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:
  Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured -
  (i) in a free trade zone or a special economic zone and brought to any other place in India; or
  (ii) by a hundred per cent export-oriented undertaking and brought to any place in India.
  Explanation. - In this proviso, "free trade zone", "special economic zone" and "hundred per cent export-oriented undertaking" shall have the same meanings as in Explanation 2 to sub-section (1) of section 3.

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), 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 excisable goods from any part of the duty of excise leviable thereon (the duty of excise 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 excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - "Form or method", in relation to a rate of duty of excise means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable :

- (4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1988 (29 of 1988) shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.
- (5) Every notification issued under sub-section (1) or sub-section 2(A) shall, -
- (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;
- (b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).
- (6) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

- **Valuation & CENVAT Credit**

Section 5B. Non-reversal of CENVAT credit. –

- Where an assessee has paid duty of excise on a final product and has been allowed credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification :
- **Provided** that the order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him :
- **Provided** further that the Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product.
- SECTION 6. Registration of certain persons. -
- Any prescribed person who is engaged in-
- (a) the production or manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), or
- (b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall get himself registered with the proper officer in such manner as may be prescribed.
- Section 7. Omitted.
- Section 8. Restriction on possession of excisable goods -
- From such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, no person shall, except as provided by rules made under this Act, have in his possession any goods specified in the Second Schedule in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.
- Section 9. Offences and penalties. -
- (1) Whoever commits any of the following offences, namely: -

- (a)
  - contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;

- (b)
  - evades the payment of any duty payable under this Act;

- (bb)
  - removes any excisable goods in contravention of any of the provisions of this Act or any rules made thereunder or in any way concerns

himself with such removal;

- (bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;

- (bbbb) Contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;

- (c) fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

- (d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section shall be punishable, -
- (i) in the case of an offence relating to any excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine :
- **Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;
- (ii) in any other case, with imprisonment for a term which may extend to three years or with fine or with both.

- (2) If 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 seven years and with fine :
- **Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months.
- (3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-
- (i) the fact that the accused has been convicted for the first time for an offence under this Act;

- (ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods in relation to such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;
- (iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party in the commission of the offence;
- (iv) the age of the accused.
- **Section 9A. Certain offences to be non-cognizable.-**
- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code.
- (2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be prescribed:
- **Provided** that nothing contained in this sub -section shall apply to ---
- (a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a),(b),(bb),(bbb),(bbbb) or (c) of sub -section (1) of section 9;
- (b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act,1985 (61 of 1985);
- (c) a person who has been allowed to compound once in respect of any of the offence under this Chapter for goods of value exceeding rupees one crore;
- (d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005.
- Section 9AA. Offences by companies. -
- (1) Where an offence under this Act has been committed by 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 the 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:
- **Provided** that nothing contained in this sub-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.
- (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 neglect 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.
- **Explanation**. - For the purposes of this section, -

- (a) "company" means anybody corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.
- Section 9B. Power of Court to publish name, place of business, etc., of persons convicted under the Act. -
- (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.
- (2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.
- (3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.
- Section 9C. Presumption of culpable mental state. -
- (1) 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**. - In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.
- (2) For the purposes of this section, 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 9D. Relevancy of statements under certain circumstances. -
- (1) A statement made and signed by a person before any Central Excise Officer of a Gazette rank during the course of any inquiry or proceeding 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, -
- (a) 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 opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
- (2) The provisions of sub-section (1) shall, so far as may be, apply in Act, other than a proceeding before a relation to any proceeding under this Court, as they apply in relation to a proceeding before a Court.
- Section 9E. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.

- (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.
- (2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9.
- Section 10. Power of Courts to order forfeiture.
- - Any Court trying an offence under this Chapter may order the forfeiture to Government of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed, and may also order the forfeiture of any receptacles, packages or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances used in carrying the goods, and any implements or machinery used in the manufacture of the goods.
- Section 11. Recovery of sums due to Government. -
- In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.
- **Provided** that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.
- Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-
- (1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of

the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

- (a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;
- (b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-
- (i) his own ascertainment of such duty; or
- (ii) duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.
- (2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under
- the provisions of this Act or the rules made thereunder.
- (3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).
- (4) Where any duty of excise has not been levied or paid or has been shortlevied or short-paid or erroneously refunded, by the reason of-
- (a) fraud; or
- (b) collusion; or
- (c) any wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,
- by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.
- (5) Where, during the course of any audit, investigation or verification, it is found that any duty has not been levied or paid or short-levied or short-paid or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.
- (6) Any person chargeable with duty under sub-section (5), may, before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with

the interest payable thereon under section 11AA and penalty equal to one per cent of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of twenty-five per cent of the duty, and inform the Central Excise Officer of such payment in writing.

- 7) The Central Excise Officer, on receipt of information under sub-section (6) shall-
- (i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be concluded where it is found by the Central Excise Officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid;
- (ii) proceed for recovery of such amount if found to be short-paid in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information.
- (8) In computing the period of one year referred to in clause (a) of subsection (1) or five years referred to in sub-section (4) or sub-section (5), the period during which there was any stay by an order of the court or Tribunal in respect of payment of such duty shall be excluded.
- (9) Where any appellate authority or Tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules
- made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1).
- (10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.
- (11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)-
- (a) within six months from the date of notice in respect of cases falling under subsection (1);
- (b) within one year from the date of notice in respect of cases falling under subsection (4) or sub-section (5).
- (12) Where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10), then the amount of penalties and interest under this section shall stand modified accordingly, taking into account the amount of duty of excise so modified.
- (13) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.
- (14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the

amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

- **Explanation**.-For the purposes of this section and section 11AC,-
- (a) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) "relevant date" means,-
- (i) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder;
- (ii) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed on due date, the date on which such return has been filed;
- (iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;
- (iv) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
- (v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;
- (c) "specified records" means records including computerised records maintained by the person chargeable with the duty in accordance with any law for the time being in force.'.
- Section 11AA. Interest on delayed payment of duty. -
- (1) Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified in sub-section (2), whether such payment is made voluntarily or after determination of the amount of duty under section 11A.
- (2) Interest, at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid in terms of section 11A after the due date by the person liable to pay duty and such interest shall be calculated from the date on which such duty becomes due up to the date of actual payment of the amount due.
- (3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-
- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B; and
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.
- Section 11AC. Penalty for short-levy or non-levy of duty in certain cases. -
- (1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows :-
- (a) where any duty of excise has not been levied or paid or short-levied or short paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or

suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

- (b) where details of any transaction available in the specified records, reveal that any duty of excise has not been levied or paid or short-levied or short-paid or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent of the duty so determined;
- (c) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (b) is paid within thirty days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the duty so determined;
- (d) where the appellate authority modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11A, then, the amount of penalties and interest payable shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under subsection (10) of section 11A shall also be liable to pay such amount of penalty or interest so modified.
- **Explanation**.-For the removal of doubts, it is hereby declared that in a case where a notice has been served under sub-section (4) of section 11A and subsequent to issue of such notice, the Central Excise Officer is of the opinion that the transactions in respect of which notice was issued have been recorded in specified records and the case falls under sub-section (5), penalty equal to fifty per cent of the duty shall be leviable.
- (2) Where the amount as modified by the appellate authority is more than the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest or penalty is payable under this Act shall be counted from the date of the order of the appellate authority in respect of such increased amount.".
- Section 11B. Claim for refund of duty and interest, if any, paid on such duty -
- (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :
- **Provided** that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the

same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

- **Provided** further that] the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.
- (2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such dutypaid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :
- **Provided** that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise]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 -
- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (e) the duty of excise 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;
- (f) the duty of excise 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 :
- **Provided** further that 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) Notwithstanding anything to the contrary contained in any judgment, Appellate Tribunal or any Court or in any decree, order or direction of the other provision of this Act or the rules 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 seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen 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 or 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 thereunder.

- (5) For the removal of doubts, it is hereby declared that any notification the first proviso to sub-section (2), including any issued under clause (f) of such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.
- [**Explanation.** - For the purposes of this section, -
- (A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (B) "relevant date" means, -
- (a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -
- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or
- (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 despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;
- (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;
- (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;
- (e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;
- (ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;
- (eb) in case where duty of excise is paid provisionally under this Act or the rules made there under, the date of adjustment of duty after the final assessment thereof;
- (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;
- (f) in any other case, the date of payment of duty.
- Section 11BB. Interest on delayed refunds. ---
- If any duty ordered to be refunded under sub-section (2) of section 11B to any 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 five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

- **Provided** that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.
- **Explanation**. - 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 of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.
- Section 11C. Power not to recover duty of excise not levied or short-levied as a result of general practice. -
- (1) Notwithstanding anything contained in this Act, if the Central Government is satisfied -
- (a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and
- (b) that such goods were, or are, liable -
- (i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or
- (ii) to a higher amount of duty of excise than what was, or is practice, being, levied, according to the said
- then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.
- (2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B:
- **Provided** that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.

- Section 11D. Duties of excise collected from the buyer to be deposited with the Central Government. -
- (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.
- (1A) Every person, who has collected any amount in excess of duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.
- (2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1A), as the case may be, and which has not been so paid, the Central Excise Officer may serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
- (3) The Central Excise Officer shall, after considering the on whom the notice is served under representation, if any, made by the person sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.
- (4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (1A) or sub-section (3), as the case may be, shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in sub-section (1) and sub-section (1A).
- (5) Where any surplus is left after the adjustment under sub-section (4), either be credited to the Fund or, as the case the amount of such surplus shall may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.
- Section 11DD. Interest on the amounts collected in excess of the duty. -
- (1) Where an amount has been collected in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods, or from any person or where a person has collected any amount as representing duty of excise on any excisable which are wholly exempt or are chargeable to Nil rate of duty, the person who is liable to pay such amount as determined under sub-section (3) of section 11D, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent, and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought

to have been paid under this Act, but for the provisions contained in sub-section (3) of section 11D, till the date of payment of such amount :

- **Provided** that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B, and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole amount, including the amount already paid.
- (2) The provisions of sub-section (1) shall not apply to cases where the amount had become payable or ought to have been paid before the day on which the Finance Bill, 2003 receives the assent of the President.
- **Explanation** 1. - Where the amount determined under sub-section (3) of section 11D is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under sub-section (1) shall be on such reduced amount.
- **Explanation** 2. - Where the amount determined under sub-section (3) of section 11D is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under sub-section (1) shall be on such increased amount.
- Section 11DDA. Provisional attachment to protect revenue in certain cases -
- (1) Where, during the pendency of any proceedings under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interest of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962 (52 of 1962).
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):
- **Provided** that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :
- **Provided** further that where an application for settlement of case under section 32E is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 32F is made shall be excluded from the period specified in the preceding proviso.
- Section 11E. Liability under Act to be first charge. -
- Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 529A of the Companies Act, 1956, (1 of 1956) the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002,

(54 of 2002) be the first charge on the property of the assessee or the person, as the case may be.

- Section 12. Application of the provisions of [Act No. 52 of 1962] to Central Excise Duties. -
- The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Customs Act, 1962 (52 of 1962), relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3 and section 3A.

Excise &SSI (Small Scale Industries)

Eligibility For SSI Concession :-Unit whose turnover was less that Rs 4 crores in previous year are entitled to full exemption upto Rs 150 lakhs in current financial year. SSI unit can avail Cenvat credit on inputs and input services only after it starts paying duty. However, Cenvat credit of capital goods can be availed even if these were received during period of exemption.

SSI unit manufacturing goods with other's brand name not eligible for exemption

Goods manufactured by an SSI unit with brand name of others are not eligible for SSI concession, unless goods are manufactured in a rural area. However, SSI exemption will be available to packing material even if it bears brand name of other person.

Mode of calculation of limit of Rs 150 lakhs/Rs 400 lakhs

While calculating limit of Rs 400/150 lakhs – (a) Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture and traded goods is to be excluded (b) Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included (c) Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of Rs 400 lakhs, but excluded for limit of Rs 150 lakhs.

Procedural relaxations

SSI units eligible for SSI concession are required to pay duty on quarterly basis and file quarterly return even if they do not avail the SSI exemption

Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit

If two SSI units are genuinely independent, they are eligible for SSI exemption, even if some or even most partners/directors are common. Financial control, flow back of profits and unity of interest are the major tests to determine whether turnover of two units is required to be clubbed.

Excise & Job Work

A large number of industries are dependent on outside support for completing their manufacturing activities. The activity undertaken by small industries to complete the process on raw material/semi-finished goods as desired by principal manufacturer is known as "Job Work". The industries depends on outsiders support for many things like testing, processing on raw material etc., for completing/semi completing the manufacturing process.
The small/medium industries who undertake the work of job work should be aware of the provisions under central excise and service tax applicable to them. Even principal manufacturer should be aware of the provisions applicable for job work not only for the purpose of enabling him to plan his processes in order to optimize the benefits available under the Central Excise Act, 1944 but would also enable him to cut costs on his manufacturing. Most of the big manufacturers in fact make very good use of this concept and assign processes to more than one vendor which enables them to cut down on manufacturing costs.

MEANING OF JOB WORK

Job work is defined in

Notification No. 214/86 dated 25.03.1986

Explanation I. - For the purposes of this notification, the expression "job work" means processing or working upon of raw materials or semi-finished goods supplied to the job worker/

so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.

Rule 2(n) of the Cenvat Credit Rules, 2004

"job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

JOB WORK AND MANUFACTURE (UNDER CENTRAL EXCISE)

Since excise duty is on 'manufacture', duty liability arises only when the goods are manufactured during job work. The test as to whether the process amounts to manufacture or not would be determined as per section 2(f) of Central Excise Act, 1944 which is relevant defines manufacture as including any process incidental or ancillary to the completion of the manufactured product….. Various decision of the Supreme Court have arrived at a conclusion that where the product undergoes a change whereby a new article having a distinctive name, character or use emerges or not from the said process in manufacture (Honorable Supreme Court in Delhi Cloth and General Mills Co. Ltd Vs UOI (1962(10) LCX 0001))

If the process undertaken by the job worker amounts to manufacture as per the definition or decided case laws, the job worker would be liable to pay duty of excise on the goods so manufactured unless the principal manufacturer who has supplied him the goods for job work, furnishes a declaration under Notification 214/86 dated 25.03.1986 which exempts goods manufactured by a job worker from duty of excise provided the said goods after job work are returned to the principal or cleared for export or cleared for home consumption on payment of duty of excise. Where the goods are returned to the principal, the principal should either clear it on payment of duty or use it in his manufacturing process which should result in a dutiable product being manufactured.

The declaration as stated above should be given to the Assistant Commissioner of Central Excise who has jurisdiction over the factory of the job worker.

If the principal manufacturer sending the goods for job work activity is a SSI unit, availing the benefit of exemption, the benefit of notification 214/86 cannot be claimed by the job workers, as the person sending the raw materials would not be paying duty of excise on the final products. For these purposes, Notifications 83/94 and 84/94 have been issued. The said notification provides exemption to job worker from payment of duty of excise in such cases.

Unit :4

Customs Duty

Concept:

1. Short title, extent and commencement
(1) This Act may be called the Customs Act, 1962.

1[(2) It extends to the whole of India.]

(3) It shall come into force on such date2 as the Central Government may, by notification in the Official Gazette, appoint.

2. **Definitions**
In this Act, unless the context otherwise requires-

3[(1) "**adjudicating authority**" means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal;

(1A) "**aircraft**" has the same meaning as in the Aircraft Act, 1934 (22 of 1934);

(1B) "**Appellate Tribunal**" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129;]

(2)"**assessment**" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

(3)"**baggage**" includes unaccompanied baggage but does not include motor vehicles;

(4)"**bill of entry**" means a bill of entry referred to in section 46;

(5)"**bill of export**" means a bill of export referred to in section 50;

(6)"**Board"** means the 4[Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)];

(7)"**coastal goods**" means goods, other than imported goods, transported in a vessel from one port in India to another;

5[(7A) "**Commissioner (Appeals**) "means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4;]

(8)"**Commissioner of Customs**" , except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;

(9)"**conveyance**" includes a vessel, an aircraft and a vehicle;

(10)"**customs airport**" means any airport appointed under clause (a) of section 7 to be a customs airport;

(11)"**customs area**" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities;

(12)"**customs port"** means any port appointed under clause (a) of section 7 to be a customs port 6[and includes a place appointed under clause (aa) of that section to be an inland container depot];

(13)"**customs station**" means any customs port, customs airport or land customs station;

(14)"**dutiable goods**" means any goods which are chargeable to duty and on which duty has not been paid:

(15)"**duty"** means a duty of customs leviable under this Act;

(16**)"entry**" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84;

(17)"**examination**", in relation to any goods, includes measurement and weighment thereof;

(18)"**export**", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(19)"**export goods**" .means any goods which are to be taken out of India to a place outside India;

(20)"**exporter",** in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;

(21)"f**oreign-going vessel or aircraft"** means any vessel or aircraft for the time being engaged in the carriage of goods or 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;

7[(21A) "**Fund"** means the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944 (1 of 1944);]

(22) "goods" includes-

(a)**vessels, aircraft and vehicles;**

(b)stores;

(c)**baggage;**

(d)currency and negotiable instruments; and

(e)any other kind of movable property;

(23) "**import",** with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24)"import manifest" or "import report" means the manifest or report required to be delivered under section 30;

(25)"**imported goods**" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

(26)"**importer"**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;

(27)"**India**" includes the territorial waters of India;

(28)"**Indian customs waters/Territorial Water** " means the 8[waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive
Economic Zone and other Maritime Zones Act, 1976 (80 of 1976)] and includes any bay, gulf, harbour, creek, or tidal river;

(29)"**land customs station**" means any place appointed under clause (b) of section 7 to be a land customs station;

(30)"**market pric**e", in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;

(31)"person-in-charge" means-

(a)in relation to a vessel, the master of the vessel;

(b)in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c)in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d)in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

(32) "prescribed" means prescribed by regulations made under this Act;

(33) "**prohibited goods**" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(34) "**proper officer**", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the 5[Commissioner of Customs;]

(35)"regulations" means the regulations made by the Board under any provision of this Act;

(36)"rules" means the rules made by the Central Government under any provision of this Act;

(37)"shipping bill" means a shipping bill referred to in section 50;

(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;

(39)"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;
(40)"tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;

(41)"value", means relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of section 14;

(42)"vehicle" means conveyance of any kind used on land and includes a railway vehicle;

(43)"warehouse" means a public warehouse appointed under section 57 or private ware house licensed under section 58;

(44)"warehoused goods" means goods deposited in a warehouse;

(45)"warehousing station "means a place declared as a warehousing station under section 9.

High Sea: The **Convention on the High Seas**is an international treaty created to codify the rules of international law relating to the high seas, otherwise known as waters. The treaty was one of four treaties created at the United Nations Conference on the Law of the Sea (UNCLOS I). The treaty was signed 29 April 1958 and entered into force 30 September 1962. As of 2013, the treaty had been ratified by 63 states. The terms **international waters** or **trans-boundary waters** apply where any of the following types of bodies of water (or their drainage basins) transcend international boundaries: oceans, large marine ecosystems, enclosed or semi-enclosed regional seas and estuaries, rivers, lakes, groundwater systems (aquifers), and wetlands

Oceans, seas, and waters outside of national jurisdiction are also referred to as the **high seas** or, in Latin, *mare liberum* (meaning *free sea*).

Ships sailing the high seas are generally under the jurisdiction of the flag state (if there is one);however, when a ship is involved in certain criminal acts, such as piracy, any nation can exercise jurisdiction under the doctrine of universal jurisdiction. International waters can be contrasted with internal waters, territorial waters and exclusive economic zones.

APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC.

7. Appointment of customs ports, airports, etc.

The Central Government may, by notification in the Official Gazette, appoint-

(a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

6[(aa) the places which alone shall be inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods;]

(b)the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods.

(c)the routes by which alone goods or any class of goods specified in the notification may pass by land or inland waters into or out of India, or to or from any land customs station from or to any land frontier;

(d)the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

8. Power to approve landing places and specify limits of customs area

The 5[Commissioner of Customs] may-

(a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;

(b) specify the limits of any customs area.

9. Power to declare places to be warehousing stations

The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

10. Appointment of boarding stations

The 5[Commissioner of Customs] may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

PROHIBITIONS ON IMPORTATION AND EXPORTATION OF GOODS

11. Power to prohibit importation or exportation of goods

(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:-

(a) the maintenance of the security of India;

(b)the maintenance of public order and standards of decency or morality;

(c)the prevention of smuggling;

(d)the prevention of shortage of goods of any description;

(e)the conservation of foreign exchange and the safeguarding of balance of payments;

(f)the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;

(g)the prevention of surplus of any agricultural product or the product of fisheries;

(h)the maintenance of standards for the classification, grading or marketing of goods in international trade;

(i)the establishment of any industry;

(j)the prevention of serious injury to domestic production of goods of any description;

(k)the protection of human, animal or plant life or health;

(1) the protection of national treasures of artistic, historic or archaeological value;

(m)the conservation of exhaustible natural resources;

(n)the protection of patents, trademarks and copyrights;

(o)the prevention of deceptive practices;

(p)the carrying on of foreign trade in any goods by the State, or by a corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India.

(q)the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

(r)the implementation of any treaty, agreement or convention with any country;

(s)the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;

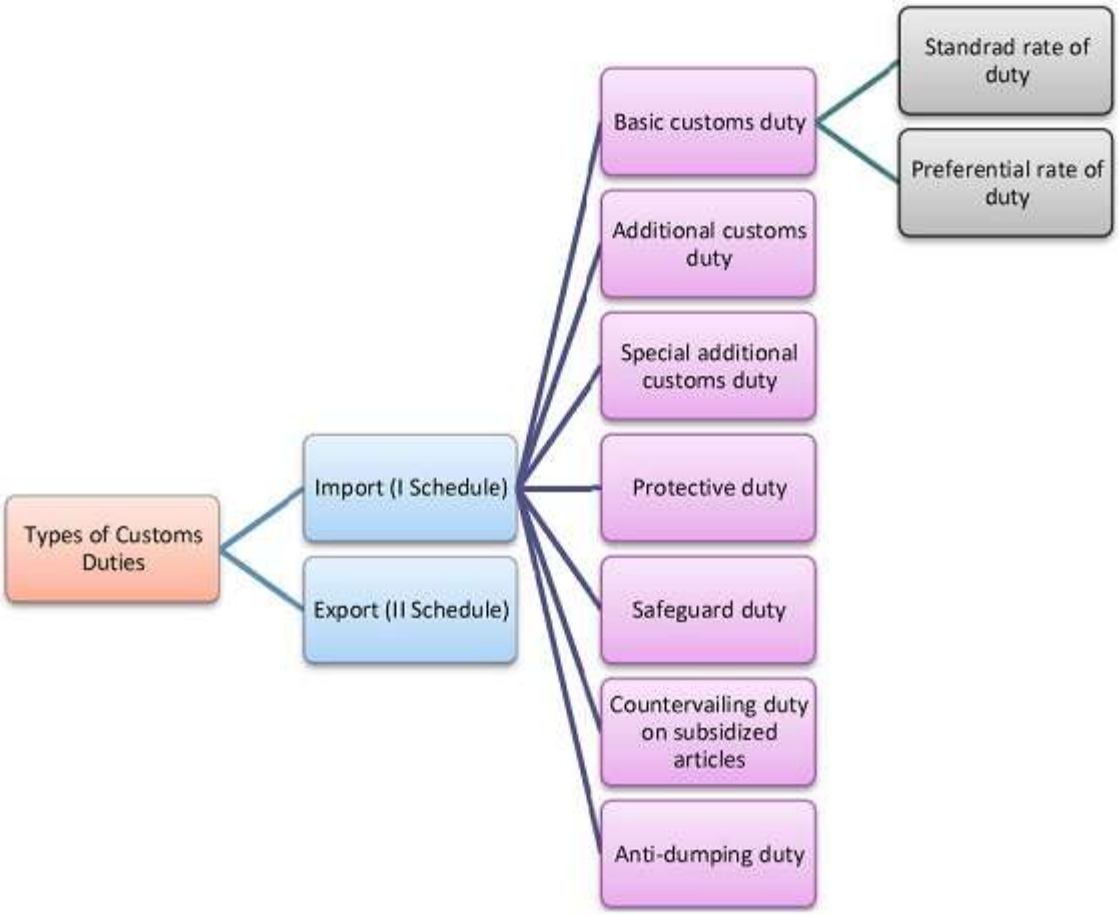
(t)the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

(u)the prevention of the contravention of any law for the time being in force; and

(v)any other purpose conducive to the interests of the general public.

Types of Customs Duties

Various duties under Customs can be levied on almost all imports whereas only few goods are subject to export duty. Let us understand different types of duties under Customs Law for the purpose of import of goods.



Let us study each of the above in detail:

Basic Customs Duty

Goods imported into India are chargeable to basic customs duty (BCD) under Customs Act, 1962. The rates of BCD are indicated in I Schedule (for Imports) of Customs Tariff Act, 1975. Education cess (EC) @2% and secondary & higher education cess (SHEC) @1% are applicable extra.

Generally, BCD is levied at standard rate of duty but if certain conditions are satisfied (below), the importer can avail the benefit of preferential rate of duty on imported goods.

Conditions for availing the benefit of preferential rate of duty:

1. Specific claim for preferential rate must be made by the importer,
2. Import must be from preferential area as notified by the Central Government,
3. The goods should be produced/manufactured in such preferential area.

For more details on preferential rate of duty.

Additional Duty of Customs or Countervailing Duty (CVD)

As per section 3(1) of Customs Tariff Act, any article imported into India is liable to duty (in addition to BCD) equal to excise duty for the time being leviable on a like article if produced/manufactured (or could be or capable of being produced/manufactured) in India.

If goods manufactured in India are exempt from excise duty, then there is no CVD – CCE Vs J K Synthetics (2000) (SC).

CVD cannot be levied, if exemption from central excise duty is based on goods manufactured by SSI units or goods manufactured without aid of power – CC Vs Malwa Industries (2009) 235 ELT 214 (SC). If the importer is the manufacturer availing benefit of SSI exemption under notification 8/2003 under Central Excise, thereby not paying excise duty on final product manufactured. Such manufacturer is not liable to pay CVD on imports, even if not liable to pay any duty under Central Excise Act, 1944.

If imported goods are used by the importer in the same factory or factory belonging to the importer, then no CVD attracted on such imported goods – CC Vs Malwa Industries (2009) 235 ELT 214 (SC).

If imported goods attract excise duty in India as per section 4A of Central Excise Act, then CVD will be calculated on MRP basis only.

Safeguard Duty

As per section 8B(1) of Customs Tariff Act, safeguard duty is imposed for protecting the interests of any domestic industry in India and it is product specific. CG can impose provisional safeguard duty, pending final determination up to 200 days. Effective from 6th August 2014, if imported goods are cleared in Domestic Tariff Area (DTA) then safeguard duty is payable. No CVD, EC & SHEC are applicable.

Countervailing Duty on Subsidized Articles

As per section 9 of Customs Tariff Act, it is levied on articles which are imported by getting subsidies from other country. No CVD, EC & SHEC are applicable.

Anti-dumping Duty

As per section 9A of Customs Tariff Act, it is imposed on imports of a particular country. It is country specific. Dumping exists when a product is exported from one country to another at a price which is less than its normal value prevailing in the exporting country. The difference between the normal value and the export price is the dumping margin based on which anti dumping duty is imposed. No CVD, EC & SHEC are applicable.

Illustrations

Illustration 1 (**computation of customs duty on import):**

The following information is furnished by X on 8th June 2015 in respect of machinery imported from USA:

Assessable Value: Rs.11,00,000

Basic Customs duty: 7.5%

Excise duty chargeable on similar goods in India as per tariff rate: 12.5%

Additional duty of customs u/s 3(5) of CTA: 4%

Calculate the total customs duty payable by X.

Solution 1:

Particulars	Amount in Rs.	Amount in Rs.	Remarks/Working

Assessable value	11,00,000		
Add: BCD @7.5%	82,500	82,500	
Add: NCCD	–		Not applicable
Subtotal	11,82,500		
Add: CVD @12.5%	1,47,813	1,47,813	11,82,500 x 12.5%
Add: EC & SHEC	–		Not applicable w.e.f 1/3/15
Subtotal	13,30,313		
Add: EC & SHEC @3%	6,909	6,909	2,30,413 x 3%
Subtotal	13,37,222		
Add: Special CVD @4%	53,489	53,489	13,37,222 x 4%
Value of imported goods	13,90,711		
Value of total customs duty		2,90,711	

SECTION 12. 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 (51 of 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.

SECTION 13. Duty on pilfered goods. - If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviableon such goods except where such goods are restored to the importer after pilferage.

SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 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 :

Provided that 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 licence 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:

Provided further that 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 :

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) 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.

Explanation. - For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

SECTION 15. Date for determination of rate of duty and tariff 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 under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(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 or the arrival of the aircraft 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.

(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.

SECTION 16. Date for determination of rate of duty and tariff valuation of export goods.-
(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -

(2)The provisions of this section shall not apply to baggage and goods exported by post.

SECTION 17. Assessment of duty. –

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) 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) Where any re-assessment done under sub-section (4) is contrary to the self-assessment 25 done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Explanation.- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 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) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,-

(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 proper officer 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 and the duty provisionally assessed.";

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer 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 and if the amount so paid falls short of, or is in excess of the duty finally assessed, 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 proper officer 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) 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 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject the 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 un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and 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.

SECTION 19. Determination of duty where goods consist of articles liable to different rates of duty.-

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, if they are liable to duty at the same rate, be chargeable to duty at that rate, and 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):

Provided that, -

(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.

SECTION 20. Re-importation of goods. - 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.

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.

SECTION 22. Abatement of duty on damaged or deteriorated goods. - (1) Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner 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 wilfulact, 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 wilful act, negligence or default of the owner, his employee oragent,such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) 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) For the purposes of this section, 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.

SECTION 23. Remission of duty on lost, destroyed or abandoned goods.-

(1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs 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 of Customs or Deputy Commissioner of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

Provided that 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.

SECTION 24. Power to make rules for denaturing or mutilation of goods. –

The Central Government 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 or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Exemptions:-

SECTION 25. Power to grant exemption from duty. - (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official

Gazette, exempt generally either absolutely or subject to such conditions (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) If the Central Government 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) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), 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.

Explanation. - "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) or sub-section (2A) shall, -

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

(6) 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.

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 re-sale;

(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) 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) 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) 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) the importer does not claim drawback under any other provisions of this Act; and

(d) (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 under section 47:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months:

Provided further that 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) 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 under section 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 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) 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 27. Claim for refund of duty. –

(1) 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:

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

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.

(1A) 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:-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof.". or in case of re-assessment, from the date of such re-assessment.

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or 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 :

Provided that the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or 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 -

(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;

(f) 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 :

Provided further that 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) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal , 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 seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen 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 or 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 thereunder.

(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 Central Government at any time by notification in the Official Gazette.

SECTION 27A. Interest on delayed refunds. –

If any duty ordered to be refunded under sub-section (2) of section 27 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 five percent and not exceeding thirty percent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the

Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation. - 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 of Customs or Deputy Commissioner of Customs under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.

SECTION 28. Recovery of duties not levied or short-levied or erroneously refunded. –

(1) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the

amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to twenty-five per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the

manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice in respect of cases falling under sub-section (4).

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation.- For the purposes of this section, "relevant date" means,-

(a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.".

SECTION 28A. Power not to recover duties not levied or short-levied as a result of general practice. -

Notwithstanding anything contained in this Act, if the Central Government is satisfied - (1)

(a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and

(b) that such goods were, or are, liable -

(i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.

SECTION 28AA. Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28,shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2),whether such payment is made voluntarily or after determination of the duty under that section.

(3) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(4) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.".

SECTION 28B. Duties collected from the buyer to be deposited with the Central Government.-

Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder, every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government. (1)

1A) Every person who has collected any amount in excess of the duty assessed or determined or paid on any goods or has collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1A), as the case may be, and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount, as specified in the notice to the credit of the Central Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (1A) or sub-section (3) as the case may be, shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in sub-section (1) or sub-section (1A).

(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount.

SECTION 28BA. Provisional attachment to protect revenue in certain cases. - (1) Where, during the pendency of any proceeding under section 28 or section 28B, the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142.

Bonafide Baggage & Exemptions:

The expression "baggage" has not been defined in the Customs Act, 1962; but it is included in the definition of "goods" under sub-section (22) of Section 2 of the Customs Act, 1962. As per sub-section (3) of Section 2 of the Customs Act, 1962 "Baggage" includes unaccompanied baggage but does not include "motor vehicles". As such, all types of motor vehicles are excluded from the definition of baggage.

Section 79 of the Customs Act, 1962 exempt bona fide baggage from duty. Sub-section (1)(b) of Section 79 of the Customs Act provides import of free of duty articles in the baggage of a passenger in respect of which the proper officer of Customs is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir, subject to the provisions contained in the Baggage Rules.

As per Foreign Trade Policy, bona fide household goods and personal effects are allowed to be imported as part of passenger baggage as per the limits, terms and conditions prescribed in the Baggage Rules.

As such, the expression "baggage" is distinguished from "bona fide baggage". The expression "baggage" is a comprehensive one which includes "bona fide baggage" (which is restrictive in nature) specified in the Baggage Rules, 1998 and under Section 79 of the Customs Act, 1962 and Foreign Trade Policy

as mentioned above.

In this context, Central Board of Excise & Customs in the Ministry of Finance (Department of Revenue), Government of India has instructed that the import of goods in commercial quantities is not admissible within the purview of the Baggage Rules, even on payment of duty when brought by passengers.

In short, only bona fide baggage is allowed to be imported.

Prohibited/restricted goods and goods in commercial quantity are not allowed to be imported as Baggage.

Text Books :

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3 .Singhania, Vinod k.,(2012) , Element of Service Tax, Taxman Publications Pvt. Ltd. Delhi
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