



மனோன்மணியம் சுந்தரனார் பல்கலைக்கழகம்  
**Manonmaniam Sundaranar University**

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**DIRECTORATE OF DISTANCE**

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**CONTINUING EDUCATION**

# **BUSINESS TAXATION**

**III B. COM (VI SEMESTER) UNDER CBCS**

**PART III- MAJORELECTIVE - II**

## **Unit – I - Indirect Tax Introduction**

The taxes collected by the Indian Government can be categorized into Direct and Indirect Taxes. Direct Taxes are broadly the taxes which are levied on the Income, revenue or profits earned by an individual or firm, for instance, Income tax, Surcharge, and Gift Tax. These are implemented and governed by the Central Board of Direct Taxes (CBDT).

Indirect tax is a type of tax that is passed on to another individual or entity. Indirect taxes are generally levied on a manufacturer or supplier who then passes that tax to the final consumer. Examples of indirect taxes include sales tax, entertainment tax, excise duty, etc. These are levied on the sellers of goods or the providers of service, where it is passed on to the end consumer in the form of service tax, excise duty, entertainment tax, custom duty etc. One of the common examples of an indirect tax is the excise tax imposed on alcohol.

An indirect tax is collected by one entity in the supply chain, such as a manufacturer or retailer, and paid to the government; however, the tax is passed onto the consumer by the manufacturer or retailer as part of the purchase price of a good or service. The consumer is ultimately paying the tax by paying more for the product.

Examples of Indirect Tax.

### **Customs Duty**

- When commodities are transferred across international boundaries, customs duty is applied as a tariff or tax.
- Its goal is to safeguard the country's economy.
- Various sorts of duties are imposed under customs rules, including Basic Duty, Countervailing Duty, Protective Duty, Anti-Dumping Duty, and Export Duty.
- Import duties are used not just to generate revenue for the government, but also to regulate commerce.
- In India, import duties are calculated on an ad valorem basis.

## **Sales Tax**

- In India, a sales tax is a type of tax levied by the government on the sale or purchase of a certain commodity within the country.
- Sales tax is levied by both the central and state governments.
- It has now been replaced by IGST.

## **Excise Duty**

- Excise duty is a commodities tax in the proper sense because it is collected on the manufacturing of products in India rather than the sale of the product.
- Except for alcoholic drinks and narcotics, the central government imposes an explicit excise levy.
- It has now been replaced by CGST.

## **Service Tax**

- In India, a service tax is levied on all services rendered.
- In 1994-95, a service tax was imposed on three services: telephone services, general insurance, and stockbroking.
- Every year since then, the service net has widened by adding more and more services. We now have a 'negative list' exclusion criterion, where some services are excluded from the tax net.
- In India, the current rate of service tax was 15% before it was replaced by the Goods and Services Tax.

## **Value Added Tax**

- The VAT is constructed in such a way that it eliminates distortions.
- As a result, all states and union territories in India have implemented VAT (except UTs of Andaman Nicobar and Lakshadweep).
- The tax is imposed on a variety of commodities sold in the state, and the amount is set by the state.

- State VAT, which was in effect until July 1, 2017, had replaced the previous Sales Tax of States.
- It has now been replaced by SGST.

### **Dividend Distribution Tax**

- A dividend is a payment made by a corporation to its stockholders from the company's profits in a given year. Dividends are income in the hands of shareholders, and they should ideally be subject to income tax.
- Dividend distribution tax is a tax levied by the Indian government on Indian corporations based on the amount of dividends paid to shareholders.
- DDT was first introduced in 1997, and it was regulated under Section 115 O of the Income Tax Act.
- The Finance Minister eliminated the Dividend Distribution Tax in Budget 2020.
- The burden of dividend taxation has now been shifted from corporations to individuals.

### **GST**

- GST (Goods and Services Tax) is a national indirect tax applied on the manufacture, sale, and consumption of goods and services.
- It has supplanted all indirect taxes levied by the central and state governments on goods and services.

### **Direct vs Indirect Taxes**

Difference between Direct and Indirect Taxes

<b>Parameter</b>	<b>Direct Tax</b>	<b>Indirect Tax</b>
Meaning	Levied directly on the individuals or corporations.	Levied on one entity but is passed on to the final consumer.
Incidence	The incidence and impact of the direct tax fall on the same person.	The incidence and impact of the tax fall on different persons.
Nature	Progressive	Regressive
Administrative Cost	Higher	Lower

Tax Evasion	Possible	Not possible
Examples	Income Tax, Wealth Tax, Corporation Tax.	Excise duty, VAT, Entertainment Tax, Customs Duty, GST

### **Advantages of Indirect Tax**

- Everyone is able to contribute: Unlike Income Tax, which is paid by those in particular income groups but not others, Indirect Taxes are paid by everyone who buys a product. People who are not working in India, such as tourists and people from lower socio-economic groups, must pay it because they will purchase goods in some way.
- Indirect Taxes are convenient: When it comes to collecting indirect taxes, they are incredibly convenient. Taxes might be extremely low, and customers do not feel pressured while paying such modest sums. Moreover, they are a price of the cost of goods sold, hence, convenient to pay.
- They are unavoidable: Because indirect taxes are included in the price of the product, they cannot be avoided. As a result, anyone who purchases the commodity will be subject to the tax.
- They cover a wide range: Heavy taxation on any one feature of a service or item will be obvious to the consumer and will be a significant hardship. In this case, indirect taxes can be advantageous because they are spread out over a larger number of products and are paid in lower amounts.

### **Disadvantages of Indirect Taxes**

- Indirect taxes have the potential to be regressive: Because both the rich and the poor pay the same indirect tax, it can be considered unjust to the poor. Anyone who makes a purchase is subject to indirect tax, and while the wealthy may afford to pay it, the poor will be charged the same amount. As a result, indirect taxes may be considered regressive.

- They are inflationary in effect: Sellers may not always be able to compute and collect the exact fraction of tax that applies to all of the goods they sell. As a result, they purposefully charge more than the tax amount in order to ensure that every buyer pays the indirect tax. However, this has a cumulative effect on rising commodity prices.
- They do not raise civic consciousness: Indirect taxes do not raise civic awareness because millions are not even aware that they're paying a tax because it is hidden in the price.

### **Understanding an Indirect Tax**

Indirect taxes are defined by contrasting them with direct taxes. Indirect taxes can be defined as taxation on an individual or entity, which is ultimately paid for by another person. The body that collects the tax will then remit it to the government. But in the case of direct taxes, the person immediately paying the tax is the person that the government is seeking to tax.

Excise duties on fuel, liquor, and cigarettes are all considered examples of indirect taxes. By contrast, income tax is the clearest example of a direct tax, since the person earning the income is the one immediately paying the tax. Admission fees to a national park are another clear example of direct taxation. Some indirect taxes are also referred to as consumption taxes, such as a value-added tax (VAT).

### **Regressive Nature of an Indirect Tax**

Indirect taxes are commonly used and imposed by the government in order to generate revenue. They are essentially fees that are levied equally upon taxpayers, no matter their income, so rich or poor, everyone has to pay them.

But many consider them to be regressive taxes as they can bear a heavy burden on people with lower incomes who end up paying the same amount of tax as those who make a higher income.

For example, the import duty on a television from Japan will be the same amount, no matter the income of the consumer purchasing the television. And because this levy has nothing to do with a person's income, that means someone who earns \$25,000 a year will have to pay the

same duty on the same television as someone who earns \$150,000; clearly, a bigger burden on the former.

There are also concerns that indirect taxes can be used to further a particular government policy by taxing certain industries and not others. For this reason, some economists argue that indirect taxes lead to an inefficient marketplace and alter market prices from their equilibrium price.

### **Common Indirect Taxes**

The most common example of an indirect tax is import duties. The duty is paid by the importer of a good at the time it enters the country. If the importer goes on to resell the good to a consumer, the cost of the duty, in effect, is hidden in the price that the consumer pays. The consumer is likely to be unaware of this, but they will nonetheless be indirectly paying the import duty.

Essentially, any taxes or fees imposed by the government at the manufacturing or production level is an indirect tax. In recent years, many countries have imposed fees on carbon emissions to manufacturers. These are indirect taxes since their costs are passed along to consumers. Sales taxes can be direct or indirect. If they are imposed only on the final supply to a consumer, they are direct. If they are imposed as value-added taxes (VATs) along the production process, then they are indirect.

## **UNIT – II – GST Introduction**

### **Introduction - Goods and Services Tax (GST)**

The goods and services tax (GST) is a value-added tax (VAT) levied on most goods and services sold for domestic consumption. The GST is paid by consumers, but it is remitted to the government by the businesses selling the goods and services.

Critics point out, however, that the GST may disproportionately burden people whose self-reported incomes are in the lowest and middle income brackets, making it a regressive tax. These critics argue that GST can therefore exacerbate income inequality and contribute to social and economic disparities. In order to address these concerns, some countries have introduced GST exemptions or reduced GST rates on essential goods and services, such as food and healthcare. Others have implemented GST credits or rebates to help offset the impact of GST on lower-income households. Goods and services tax should not be confused with the generation-skipping trust, also abbreviated GST (and its related taxation, GSTT).

### **Understanding the Goods and Services Tax (GST)**

The goods and services tax (GST) is an indirect federal sales tax that is applied to the cost of certain goods and services. The business adds the GST to the price of the product, and a customer who buys the product pays the sales price inclusive of the GST. The GST portion is collected by the business or seller and forwarded to the government. It is also referred to as Value-Added Tax (VAT) in some countries.

Most countries with a GST have a single unified GST system, which means that a single tax rate is applied throughout the country. A country with a unified GST platform merges central taxes (e.g., sales tax, excise duty tax, and service tax) with state-level taxes (e.g., entertainment tax, entry tax, transfer tax, sin tax, and luxury tax) and collects them as one single tax. These countries tax virtually everything at a single rate.



## **Dual Goods and Services Tax Structures**

Only a handful of countries, such as Canada and Brazil, have a dual GST structure.<sup>4</sup> Compared to a unified GST economy where tax is collected by the federal government and then distributed to the states, in a dual system, the federal GST is applied in addition to the state sales tax. In Canada, for example, the federal government levies a 5% tax and some provinces/states also levy a provincial state tax (PST), which varies from 8% to 10%.<sup>56</sup> In this case, a consumer's receipt will clearly have the GST and PST rate that was applied to their purchase value.

More recently, the GST and PST have been combined in some provinces into a single tax known as the Harmonized Sales Tax (HST). Prince Edward Island was the first to adopt the HST in 2013, combining its federal and provincial sales taxes into a single tax. Since then, several other provinces have followed suit, including New Brunswick, Newfoundland and Labrador, Nova Scotia, and Ontario.

## **Critiques of the GST**

A GST is generally considered to be a regressive tax, meaning that it takes a relatively larger percentage of income from lower-income households compared to higher-income households. This is because GST is levied uniformly on the consumption of goods and services, rather than on income or wealth.

Lower-income households tend to spend a larger proportion of their income on consumables, such as food and household goods, which are subject to GST. As a result, GST can disproportionately burden lower-income households.

Because of this, some countries with GST are discussing possible adjustments that might make the tax more progressive, which takes a larger percentage from higher-income earners.

### **Example: India's Adoption of the GST**

India established a dual GST structure in 2017, which was the biggest reform in the country's tax structure in decades.

The main objective of incorporating the GST was to eliminate tax on tax, or double taxation, which cascades from the manufacturing level to the consumption level.

For example, a manufacturer that makes notebooks obtains the raw materials for, say, Rs. 10, which includes a 10% tax. This means that they pay Rs. 1 in tax for Rs. 9 worth of materials. In the process of manufacturing the notebook, the manufacturer adds value to the original materials of Rs. 5, for a total value of  $\text{Rs. } 10 + \text{Rs. } 5 = \text{Rs. } 15$ . The 10% tax due on the finished good will be Rs. 1.50. Under a GST system, the previous tax paid can be applied against this additional tax to bring the effective tax rate to  $\text{Rs. } 1.50 - \text{Rs. } 1.00 = \text{Rs. } 0.50$ .

In turn, the wholesaler purchases the notebook for Rs. 15 and sells it to the retailer at a Rs. 2.50 markup value for Rs. 17.50. The 10% tax on the gross value of the good will be Rs. 1.75, which the wholesaler can apply against the tax on the original cost price from the manufacturer (i.e., Rs. 15). The wholesaler's effective tax rate will, thus, be  $\text{Rs. } 1.75 - \text{Rs. } 1.50 = \text{Rs. } 0.25$ .

Similarly, if the retailer's margin is Rs. 1.50, his effective tax rate will be  $(10\% \times \text{Rs. } 19) - \text{Rs. } 1.75 = \text{Rs. } 0.15$ . Total tax that cascades from manufacturer to retailer will be  $\text{Rs. } 1 + \text{Rs. } 0.50 + \text{Rs. } 0.25 + \text{Rs. } 0.15 = \text{Rs. } 1.90$ .

India has, since launching the GST on July 1, 2017, implemented the following tax rates:<sup>12</sup>

- A 0% tax rate applied to certain foods, books, newspapers, homespun cotton cloth, and hotel services.
- A rate of 0.25% applied to cut and semi-polished stones.
- A 5% tax on household necessities such as sugar, spices, tea, and coffee.
- A 12% tax on computers and processed food.
- An 18% tax on hair oil, toothpaste, soap, and industrial intermediaries.
- The final bracket, taxing goods at 28%, applies to luxury products, including refrigerators, ceramic tiles, cigarettes, cars, and motorcycles.

The previous system, with no GST, implies that tax is paid on the value of goods and margin at every stage of the production process. This would translate to a higher amount of total

taxes paid, which is carried down to the end consumer in the form of higher costs for goods and services. The implementation of the GST system in India is, therefore, a measure that is used to reduce inflation in the long run, as prices for goods will be lower.

#### Goods and Services Tax vs. Generation-Skipping Transfer Tax

The goods and services tax (GST) should not be confused with the generation-skipping transfer tax (GSTT Tax), and they are not at all related to one another.

The former is a sort of VAT tax added to the purchase of goods or services. Meanwhile, the generation skipping transfer tax (GST Tax) is a flat 40% federal tax on the transfer of inheritances from one's estate to a beneficiary who is at least 37½ years younger than the donor. The GST Tax prevents wealthy individuals from avoiding estate taxes through naming younger beneficiaries (e.g., grandchildren).

#### **Who Has to Pay GST?**

In general, goods and services tax (GST) is paid by the consumers or buyers of goods or services. Some products, such as from the agricultural or healthcare sectors, may be exempt from GST depending on the jurisdiction.

#### **How Is GST Calculated?**

The goods and services tax (GST) is computed by simply multiplying the price of a good or service by the GST tax rate. For instance, if the GST is 5%, a \$1.00 candy bar would cost \$1.05.

#### **What Are the Benefits of the GST?**

The GST can be beneficial as it simplifies taxation, reducing several different taxes into one straightforward system. It also is thought to cut down on tax avoidance among businesses and reduces corruption.

## **Are VAT and GST the Same?**

Value-added tax (VAT) and goods and services tax (GST) are similar taxes that are levied on the sale of goods and services. Both VAT and GST are also indirect taxes, which means that they are collected by businesses and then passed on to the government as part of the price of the goods or services.

However, there are some key differences between the two. VAT is primarily used in European countries and is collected at each stage of the production and distribution process, while GST is used in countries around the world and is collected only at the final point of sale to the consumer. VAT is generally applied to a wider range of goods and services than GST, and the rate of VAT and GST can vary depending on the type of goods or services being sold and the country in which they are sold.

## **The Bottom Line**

The goods and services tax (GST) is a type of tax levied on most goods and services sold for domestic consumption in many countries. It is paid by consumers and remitted to the government by the businesses selling the goods and services. Some countries have introduced GST exemptions or reduced GST rates on essential goods and services or have implemented GST credits or rebates to help offset the impact of GST on lower-income households. The GST is often a single rate tax applied throughout a country and is preferred by governments because it simplifies the taxation system and reduces tax avoidance. In dual GST systems, such as those in Canada and Brazil, the federal GST is applied in addition to a state sales tax. The GST has been identified by critics as regressive and can potentially place a relatively higher burden on lower-income households.

Introduction of GST would be a significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate their effects of cascading and pave the way for a common national market. For the consumers, the biggest gain would be in terms of a

reduction in the overall tax burden on goods, which is currently estimated at 25%-30%. Introduction of GST would also make our products competitive in the domestic and international markets. Studies show that this would instantly spur economic growth. There may also be revenue gain for the Centre and the States due to widening of tax base, increase in trade volumes and improved tax compliance. Last but not the least, this tax, because of its transparent character, would be easier to administer.

### **Genesis**

The idea of moving towards the GST was first mooted in the Budget for 2006-07. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representation of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the Empowered Committee released its First Discussion Paper on the GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

### **Salient Features of GST**

The salient features of GST are as under:

- (i) The GST would be applicable on the supply of goods or services as against the present concept of tax on the manufacture and sale of goods or provision of services. It would be a destination based consumption tax.
- (ii) It would be a dual GST with the Centre and States simultaneously levying it on a common tax base. The GST to be levied by the Centre on intra- State supply of goods and / or services would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST).
- (iii) The GST would apply to all goods other than alcoholic liquor for human consumption

and five petroleum products, viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel. It would apply to all services barring a few to be specified.

- (iv) Tobacco and tobacco products would be subject to GST. In addition, the Centre could levy Central Excise duty on these products.
- (v) The GST would replace the following taxes currently levied and collected by the Centre:
  - a. Central Excise duty
  - b. Duties of Excise (Medicinal and Toilet Preparations)
  - c. Additional Duties of Excise (Goods of Special Importance)
  - d. Additional Duties of Excise (Textiles and Textile Products)
  - e. Additional Duties of Customs (commonly known as CVD)
  - f. Special Additional Duty of Customs (SAD)
  - g. Service Tax
- (vi) State taxes that would be subsumed under the GST are:
  - a. State VAT
  - b. Central Sales Tax
  - c. Luxury Tax
  - d. Entry Tax in lieu of octroi
  - e. Entertainment Tax (not levied by the local bodies)
  - f. Taxes on advertisements
  - g. Purchase Tax
  - h. Taxes on lotteries, betting and gambling
  - i. State cesses and surcharges insofar as they relate to supply of goods and

services

- (vii) An Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Accounts would be settled periodically between the Centre and the States to ensure that the SGST portion of IGST is transferred to the Destination State where the goods or services are eventually consumed.
- (viii) Tax payers shall be allowed to take credit of taxes paid on inputs (input tax credit) and utilize the same for payment of output tax. However, no input tax credit on account of CGST shall be utilized towards payment of SGST and vice versa. The credit of IGST would be permitted to be utilized for payment of IGST, CGST and SGST in that order.
- (ix) HSN (Harmonised System of Nomenclature) code shall be used for classifying the goods under the GST regime. Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores shall use 2 digit code and the taxpayers whose turnover is Rs. 5 crores and above shall use 4 digit code.
- (x) Exports shall be treated as zero-rated supply. No tax is payable on export goods but credit of the input tax related to the supply shall be admissible to exporters.
- (xi) Import of goods and services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties.
- (xii) The laws, regulations and procedures for levy and collection of CGST and SGST would be harmonized to the extent possible.

### **GST and Centre-State Financial Relations**

Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter- a State sale, the Centre has the power to levy a tax (the Central

Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that is empowered to levy service tax.

Introduction of the GST would require amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The assignment of simultaneous jurisdiction to the Centre and the States for the levy of GST would require a unique institutional mechanism that would ensure that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needs to have Constitutional force.

### **Amendment of the Constitution and Other Legislative Requirements**

#### *(a) Constitution (One Hundred and Twenty Second) Amendment Bill, 2014*

To address all these and other issues, a Constitution Amendment Bill was introduced in the Lok Sabha and the Bill (122<sup>nd</sup> Amendment Bill) has since been passed by the Lok Sabha (May, 2015). The Bill is currently under consideration of the Rajya Sabha. The salient features of the Bill are as under:

- (i) The GST shall be levied on all goods and services except alcoholic liquor for human consumption.
- (ii) The tax shall be levied as dual GST separately by the Union and the States.
- (iii) Parliament will have power to make laws with respect to GST imposed by the Union (CGST) and the State Legislatures will have power to make laws with respect to GST imposed by the States (SGST).
- (iv) Parliament will have exclusive power to make laws with respect to GST where the supply of goods and/or services takes place in the course of inter-State trade or commerce (IGST).
- (v) The Government of India (GoI) will have exclusive power to levy and collect GST on inter-State trade or commerce. This tax shall be apportioned between the Union and States on the recommendations of the GST Council by Parliament by law.



(vi) Petroleum & petroleum products would be subject to GST. [However, it has been decided that these products would be kept out of the purview of GST in the initial years of implementation]. In the case of tobacco and tobacco products, the Centre alone would have the power to levy excise duty in addition to the GST.

(vii) Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council shall not be subsumed under GST.

(viii) Parliament may, by law, provide for compensation to States for revenue loss arising out of the implementation of the GST, based on the recommendations of the GST Council. Such compensation would be for a period of 5 years.

(ix) A GST Council would be constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to recommend on

(a) The taxes, cesses and surcharges to be subsumed under GST;

(b) the goods and services that may be subjected to or exempted from the GST;

(c) the date from which the specified petroleum products would be subject to GST;

(d) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;

(e) the threshold limit of turnover below which the goods and services may be exempted from GST;

(f) the rates including floor rates with bands of GST;

(g) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster; and

(h) special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarkhand.

The mechanism of GST Council would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as among States. It is being specifically provided that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

The GST Council may decide about the modalities to resolve disputes arising out of its recommendation. The Constitution Amendment Bill is expected to be passed by the RajyaSabha in the ensuing monsoon session of Parliament. After ratification of the amendment bill by 50% of State legislatures and receipt of assent by the President, the process of enactment would be complete.

*(b) Other Legislative Requirements*

Suitable legislation for the levy of GST (Central GST Bill, Integrated GST Bill and State GST Bills) drawing powers from the Constitution can be introduced in Parliament or the State Legislatures only after the enactment of the Constitution Amendment Bill. Unlike the Constitutional Amendment which requires 2/3<sup>rd</sup> majority, the GST Bills would need to be passed by a simple majority. Obviously, the levy of the tax can commence only after the GST law has been enacted by the respective legislatures. Also, unlike the State VAT, the date of commencement of this levy would need to be synchronized across the Centre and the States. This is because the IGST model cannot function effectively unless the Centre and all the States participate simultaneously.

**(a) Model GST Law**

The Model GST Law, jointly drafted by the tax officials of the Centre and States, has been

placed on the website of the Ministry of Finance for suggestions/comments. The model CGST/SGST legislation contains 162 sections spread over 25 Chapters and 4 Schedules. The draft sets out the provisions of taxable event, taxable person, time of supply, valuation of supply and input tax credit. The draft also deals with the various administrative and procedural aspects of levy, such as, registration, filing of returns, assessment, payment of tax, maintenance of accounts, refunds, audit, demands and recovery, inspection, search, seizure and arrest, offences and penalties, prosecution, appeals and revision, advance ruling and transitional provisions.

Under the GST regime, tax is payable by the taxable person on the supply of goods and/or services. Liability to pay tax arises when the taxable person crosses the threshold exemption, i.e. Rs.10 lakhs. The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter-State supply of goods and/or services. Intra-State supply of goods and/or services refers to those transactions where the location of the supplier and the place of supply are in the same State. Inter-State supply of goods and/or services refers to those transactions where the location of the supplier and the place of supply are in different States. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.

The draft IGST law contains 33 sections divided into 11 Chapters. The draft, inter alia, sets out the rules for determination of the place of supply of goods. Where the supply involves movement of goods, the place of supply shall be the location of goods at the time at which the movement of goods terminates for delivery to the recipient. Where the supply does not involve movement of goods, the place of supply shall be the location of such goods at the time of delivery to the recipient. Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Where the goods are supplied on board a conveyance the place of supply shall be the location at which such goods are taken on board.

The draft also sets out in detail the rules for determination of the place of supply of services. As per the draft, the place of supply of services (other than some specified exceptions) made to a registered person shall be the location of such person and that made to a person other than a registered person shall be the location of the recipient where the address on record exists. In other cases, i.e. where the address on record is not available, the place of supply shall be the location of the supplier of service. The draft law has also set out rules for determining the place of supply of certain services like immovable property, restaurant and catering, training and performance appraisal, admission to a cultural, scientific or educational event, organization of a fair, exhibition etc., transportation of goods, passengers, telecommunications, banking, insurance and financial services.

The draft IGST law deals with cross utilization of IGST credit. It has been provided that on utilization of IGST credit for payment of CGST, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to CGST account. Likewise, on utilization of IGST credit for payment of SGST, the Central Government shall transfer an amount equal to the credit so utilized from the IGST account to SGST account. The draft provides for apportionment of tax collected under this Act and settlement of funds. It has also been provided that certain provisions of the CGST Act such as registration, valuation, time of supply, exemption, ITC, audit, assessment, demands, adjudication, refund, search, seizure and arrest, prosecution, appeals, shall apply *mutatis mutandis* to this Act.

The Model Law has been drafted keeping in view certain policy objectives, such as, clarity in tax laws, tax laws which are easy to administer, tax laws which are non-adversarial and tax payer-friendly, and which improves “ease of doing business”. An attempt has been made to provide a fair dispute resolution mechanism for tax payers under GST. The highlights of the Model Law are as under:

*Minimal interface*

The physical interface between the tax payer and the tax authorities would be minimal under GST. Certain important provisions in this regard are:

(i) Registration will be granted on line and shall be deemed to have been granted if no deficiency is communicated to the applicant within 3 common working days.

(ii) Taxable person shall himself assess the taxes payable (self-assessment) and credit it to the account of the Government.

(iii) Payment of tax shall be made electronically through internet banking. Smaller taxpayers shall be allowed to use the systems generated challan and pay tax at the bank counter.

(iv) The tax payer shall furnish the details of sales and purchases electronically without any physical interface with the tax authorities.

(v) Tax payers shall file, electronically, monthly returns of sales and purchases, ITC availed, tax payable, tax paid and other prescribed particulars. Composition tax payers shall file, electronically, quarterly returns. Omission/incorrect particulars can be self-rectified before the filing of annual return.

(vi) Matching, reversal and reclaim of input tax credit shall be done electronically on the GSTN portal without any tax payer contact. [This would prevent, *inter alia*, input tax credit being taken on the basis of fake invoices or twice on the same invoice.]

(vii) Tax payers shall be allowed to keep and maintain accounts and other records in electronic form.

### ***Input tax credit***

The provisions of input tax credit have been prone to litigation. The Model GST law provides an elaborate mechanism for availment and utilization of ITC and seeks to impart clarity so as to minimize disputes. The important provisions of the law are:

- (i) Tax payer is allowed to take credit of taxes paid on inputs (input tax credit), as self-assessed, in his return.
- (ii) Taxpayer can take credit of taxes paid on all goods and services, other than a few in the negative list, and utilize the same for payment of output tax.
- (iii) Credit of taxes paid on inputs shall be allowed where the inputs are used for business purposes or making taxable supplies.
- (iv) Full input tax credit shall be allowed on capital goods on its receipt as against the current Central Government practice of staggering the credit in two equal instalments.
- (v) Unutilized input tax credit can be carried forward.
- (vi) The facility of distribution of input tax credit amongst group companies has been provided for.

### ***Refund***

Refund provisions have been simplified and made more taxpayer friendly. Some of the important provisions of the Model GST law are:

- (i) Time limit for claiming refund has been increased from one year to two years.
- (ii) Refund claim along with documentary evidence is to be filed online without any physical interface and the tax refund will be directly credited to the nominated bank account of the applicant.
- (iii) Refund shall be granted within 90 days from the date of receipt of application. Interest is payable if refund is not sanctioned within the stipulated period of 90 days.
- (iv) If the refund claim is less than Rs. 5 lakhs, there is no need for the claimant to furnish any documentary evidence that he has not passed on the incidence of tax to any other person. Only a self-certification to this effect would suffice.

(v) Refund of input tax credit shall be allowed in case of exports or where the credit accumulation is on account of inverted duty structure (i.e. where the tax rate on output is higher than that on inputs).

(vi) In case of refund claim on account of exports, 80% of the claim shall be paid immediately on a provisional basis without verification of documentary evidence.

### *Demands*

Keeping in mind complaints of long delays in issuance of adjudication orders, a new concept of sunset clause for tax disputes has been introduced. The important provisions in this regard are:

(i) Adjudication order shall be issued within 3 years of filing of annual return in normal cases.

(ii) The time limit is 5 years (of filing of annual return) in fraud/suppression cases.

(iii) There are no separate time lines for issue of SCN and adjudication order, as at present under Central Laws.

(iv) Provisions for settlement of cases have been made available to taxpayers at every stage, right from audit/investigation to the stage of passing of adjudication order and even thereafter.

(v) Penalty is minimal if the tax short paid / non-paid is deposited along with interest at the stage of audit/investigation.

(vi) The officer shall in his order set out the relevant facts and the basis of his decision.

(vii) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice.

(viii) No demand shall be confirmed on grounds other than the grounds specified in the notice.

## ***Audit***

The manner of conducting audit has been a sore point with the taxpayers. In the Model GST law, certain disciplines have been brought in, as enumerated below, to streamline the process of audit.

It is not necessary that in all cases the tax authorities would have to visit the place of business of the taxpayer for conducting audit. The audit can even be conducted at the office of the tax authorities.

- (i) Tax payer shall be informed sufficiently in advance, not less than 15 working days, prior to the conduct of audit.
- (ii) The audit shall be carried out in a transparent manner and completed generally within a period of 3 months from the date of commencement of audit.
- (iii) On conclusion of audit, the proper officer shall without delay notify the taxable person of the findings, the taxable person's rights and obligations and reasons for the findings.

## ***Penalty disciplines***

Another area of dissatisfaction of the taxpayers has been the propensity of the tax authorities to impose disproportionately high penalties for breaches of law which may not be that serious. In order to address this concern, certain general disciplines, as mentioned below, have been incorporated in the Model GST Law.

- (i) No substantial penalties shall be imposed for minor breaches of tax regulations or procedural requirements.
- (ii) No penalty shall be imposed in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence.
- (iii) Penalty shall be commensurate with the degree and severity of the breach.



(iv) No penalty shall be imposed without issue of Show Cause Notice and without giving personal hearing.

(v) Reasoning is to be given in the order, specifying the nature of the breach and the applicable laws or procedure.

(vi) In case of voluntary disclosure of breach, the tax authorities may consider this fact as a potential mitigating factor when establishing a penalty for that person.

#### *Alternate dispute resolution mechanism*

The various modes of dispute resolution like advance ruling and Settlement Commission have been continued under GST law.

(i) Advance ruling can be sought in respect of more subjects than allowed at present. The subjects are: classification of goods/or services, method of valuation, rate of tax, admissibility of input tax credit, liability to pay tax, liability to take registration and whether a particular transaction amounts to a supply under GST law.

(ii) The facility of appeal, which is not there under the Central law, has been provided in the Model GST Law. The applicants, if aggrieved by the advance ruling, would henceforth get the opportunity to file an appeal before the Appellate Authority for revision of the ruling.

(iii) The provision of Settlement Commission has been included in IGST Law only.

#### *Transitional provisions*

In the Model GST law, elaborate transitional provisions have been made to enable smooth migration of tax payers from the present regime to GST. The important provisions in this regard are:

(i) The existing taxpayers shall be issued a certificate of registration valid for 6 months. Upon

furnishing of prescribed information, registration shall be granted on a final basis.

(ii) The amount of Cenvat credit / VAT carried forward in a return shall be allowed to be taken as input tax credit subject to certain conditions. Un-availed Cenvat credit on capital goods, not carried forward in a return, shall also be allowed to be taken as ITC subject to certain conditions.

(iii) Credit of eligible duties and taxes in respect of inputs held in stock shall be allowed to a registered taxable person subject to fulfilment of certain conditions.

(iv) Credit of eligible duties and taxes in respect of inputs held in stock shall be allowed to a taxable person switching over from the composition scheme to the normal scheme.

(v) No tax is payable on the goods removed/despached earlier but returned to the place of business after the introduction of GST. This is subject to the condition that the goods are returned within a period of 6 months after the introduction of GST.

(vi) Likewise, no tax shall be payable on the inputs, semi-finished goods and finished goods removed/despached earlier for job work or for carrying out certain processes and returned to the place of business after the introduction of GST. This is subject to the condition that the inputs / goods are returned within a period of 6 months after the introduction of GST.

(vii) Pending refund claims shall be disposed of in accordance with the provisions of earlier law and the amount of refund shall be paid to the claimant in cash, subject to certain conditions.

(viii) Pending claim of Cenvat credit /input tax credit shall be disposed of in accordance with the provisions of earlier law and the amount of refund shall be paid to the claimant in cash, subject to certain conditions.

(ix) No tax shall be payable on the supply of goods and /or services made before the

introduction of GST where a part of consideration for the said supply is received on or after the introduction of GST, but the full duty or tax payable on such supply has already been paid under the earlier law.

(x) No tax shall be payable on the goods sent on approval basis before the introduction of GST but are rejected and returned to the seller on or after the introduction of GST if such goods are returned within 6 months from the introduction of GST.

#### *Other provisions of Model GST Law*

The Model Law contains several other provisions which are taxpayer friendly and are meant for facilitating trade. The provisions worth mentioning here are:

(i) Valuation of goods shall be done on the basis of transaction value i.e. the invoice price, which is the current practice under the Central Excise and Customs Laws.

(ii) Tax payments for all months shall be made in the succeeding month. Tax dues of March are thus to be paid in April and not March, as at present in the Central Government. Composition taxpayers filing quarterly returns and thereby paying tax on a quarterly basis will be required to pay tax in the monthsucceeding the quarter-end.

(iii) Taxpayers are allowed to issue supplementary or revised invoice in respect of a supply made earlier.

(iv) Taxpayers are allowed to file the details of sales and purchases, and the various returns through Tax Return Preparers.

(v) The facility of provisional assessment to tax payers in cases where he is unable to determine the value or rate of tax has been allowed.

(vi) New modes of payment of tax are being introduced, viz. through credit and debit cards, National Electronic Fund Transfer (NEFT) and Real Time Gross Settlement (RTGS).

(vii) The Commissioner has been empowered to grant extension of time for payment of certain tax dues or allow payment of such amount in monthly instalments to the tax payer.

(viii) The facility of job work has been continued under the GST regime.

(ix) E-Commerce companies shall collect tax at source in relation to any supplies made through their online platforms at the rate notified by the Government. This would eliminate the issues around the levy of entry tax on e-commerce transactions.

(x) Exports shall be treated as zero rated supply. No tax is payable on exports but credit of the input tax related to that supply is admissible.

(xi) Provision has been made for the Government to provide remission of tax on supplies which are found to be deficient in quantity due to any natural causes.

(xii) A separate schedule (schedule II) has been provided to clarify certain types of supply as either supply of goods or of services. For example, supply of intangibles, works contract supplies, lease transactions and restaurant supplies are categorised as supply of services. Hopefully, this would put an end to the prevailing confusion on their tax treatment.

## **(b) GST Rules and Regulations**

2. Preparation of GST Rules and Regulations is another major area of work which needs to be completed well in advance before the implementation of GST. This is to be jointly drafted by the officials of the Central Government and State Governments. The CBEC has set up a Working Group for this purpose.

## **(c) IT preparedness**

Putting in place a robust IT network is an absolute must for implementation of GST. A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST. The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax

payers and other stakeholders for implementation of GST. The functions of the GSTN would, *inter alia*, include: (i) facilitating registration; (ii) forwarding the returns to Central and State authorities; (iii) computation and settlement of IGST; (iv) matching of tax payment details with banking network; (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information; (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/reports. The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers. Further, the GSTN is developing back-end modules like assessment, audit, refund, appeal etc. for 19 States and UTs (Model II States). The CBEC and Model I States (15 States) are themselves developing their GST back-end systems. Integration of GST front- end system with back-end systems will have to be completed and tested well in advance for making the transition smooth.

#### (e) Training and Workshops

A detailed calendar has since been drawn up for training the Central and State Government officers and staff on GST law, regulations and procedure. Some 10 officers from the Central Government and 15 officers from the State Governments have been identified as Source Trainers who would be training a pool of some 300 Master Trainers of the Central Government/State Governments who, in turn, would be training some 1600 Trainers drawn from the Central Government and State Governments. The Trainers would then train some 70,000 Central/State Government tax officials at the field level. Presentations and training materials are being prepared for this purpose. Training courses would be held at the various locations of the country.

Training of trade and industry on GST law and procedure is equally important. It has been decided to hold seminars/workshops in 50 cities spread across the country to prepare the trade and industry on GST law, rules, regulations and procedure. Sectorial seminars/workshops for specific sectors such as IT, E-commerce, telecommunications and financial services are proposed to be organised at New Delhi, Bangalore and Mumbai. Further, the GSTN would be imparting training to the officials and trade & industry on GST IT systems. Creating consumer awareness about the benefits of GST is also part of the work plan to be completed before the introduction of GST.

The target date for introduction of GST is 1<sup>st</sup> April 2017. Introduction of this transformational tax reform is expected to broaden the tax base, increase tax compliance and reduce economic distortions caused by inter-State variations in taxes. GST will boost economic activity and will benefit everyone. It will streamline the tax administration, avoid harassment of the business and result in higher revenue collection for the Centre and States. Compliance costs for the industry will go down.

### **Input Tax Credit under GST - Conditions To Claim**

‘Input Tax Credit’ or ‘ITC’ means the Goods and Services Tax (GST) paid by a taxable person on any purchase of goods and/or services that are used or will be used for business.

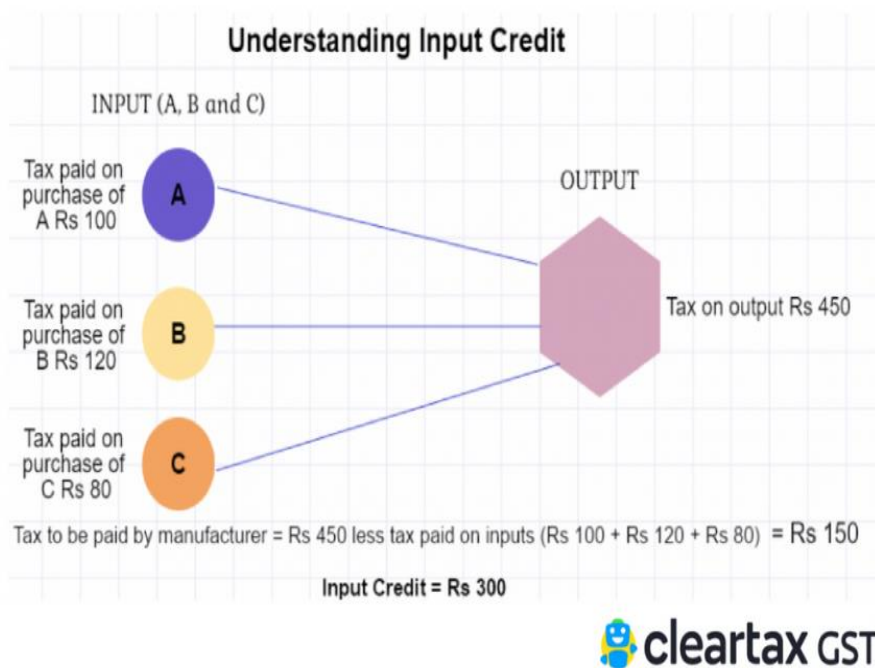
ITC value can be reduced from the GST payable on the sales by the taxable person only after fulfilling some conditions. These conditions given under the GST law are more or less in line with the pre-GST regime, except for a few additional ones such as GSTR-2B. These rules are direct and maybe stringent in nature.

## What is input tax credit?

Input credit means at the time of paying tax on output, you can reduce the tax you have already paid on inputs and pay the balance amount.

When you buy a product/service from a registered dealer you pay taxes on the purchase. On selling, you collect the tax. You adjust the taxes paid at the time of purchase with the amount of output tax (tax on sales) and balance liability of tax (tax on sales minus tax on purchase) has to be paid to the government. This mechanism is called utilization of input tax credit.

For example- you are a manufacturer: a. Tax payable on output (FINAL PRODUCT) is Rs 450 b. Tax paid on input (PURCHASES) is Rs 300 c. You can claim INPUT CREDIT of Rs 300 and you only need to deposit Rs 150 in taxes.



## Who can claim ITC?

ITC can be claimed by a person registered under GST only if he fulfils ALL the conditions as prescribed.

- a. The dealer should be in possession of tax invoice
- b. The said goods/services have been received
- c. Returns have been filed.
- d. The tax charged has been paid to the government by the supplier.
- e. When goods are received in installments ITC can be claimed only when the last lot is received.
- f. No ITC will be allowed if depreciation has been claimed on tax component of a capital good

*A person registered under composition scheme in GST cannot claim ITC.*

### What can be claimed as ITC?

ITC can be claimed only for business purposes. ITC will not be available for goods or services exclusively used for: a. Personal use b. Exempt supplies c. Supplies for which ITC is specifically not available

How to claim ITC?

#### 4. Eligible ITC

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5
<b>(A) ITC Available (whether in full or part)</b>				
(1) Import of goods				
(2) Import of services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC				
<b>(B) ITC Reversed</b>				
(1) As per rules 42 & 43 of CGST Rules				
(2) Others				
<b>(C) Net ITC Available (A) – (B)</b>				
<b>(D) Ineligible ITC</b>				
(1) As per section 17(5)				
(2) Others				



## ITC for Capital Goods

ITC is available for capital goods under GST.

However, ITC is not available for-

- i. Capital Goods used exclusively for making exempted goods
- ii. Capital Goods used exclusively for non-business (personal) purposes

*Note: No ITC will be allowed if depreciation has been claimed on tax component of capital goods.*

## ITC on Job Work

A principal manufacturer may send goods for further processing to a job worker. For example, a shoe manufacturing company sends half-made shoes (upper part) to job workers who will fit the soles. In such a situation the principal manufacturer will be allowed to take credit of tax paid on the purchase of such goods sent on job work.

ITC will be allowed when goods are sent to job worker in both the cases:

- From principal's place of business
- Directly from the place of supply of the supplier of such goods

However, to enjoy ITC, the goods sent must be received back by the principal within 1 year (3 years for capital goods).

## ITC Provided by Input Service Distributor (ISD)

An input service distributor (ISD) can be the head office (mostly) or a branch office or registered office of the registered person under GST. ISD collects the input tax credit on all the purchases made and distribute it to all the recipients (branches) under different heads like CGST, SGST/UTGST, IGST or cess.

## ITC on Transfer of Business

This applies in cases of amalgamations/mergers/transfer of business. The transferor will have available ITC which will be passed to the transferee at the time of transfer of business.

## What is Input GST?

Input tax credit meaning in GST is that the integrated tax(IGST), central tax(CGST), union territory tax(UTGST) or state tax(SGST) charged on supply of goods or services or both. Tax paid on a reverse charge basis and integrated tax charged on import of goods are also included under Input tax in GST search. GST input tax credit does not include tax paid under composition levy

## What Is Input Tax Credit Under GST With Example?

Input tax credit under GST means that at the time of paying output tax liability on supply of goods and services you can deduct the tax you have already paid on purchases and the remaining amount must be paid as tax to the Government. For example: When you purchase a product or service you pay the tax on purchases and on selling you collect the tax. Now the tax you paid on purchases has to be deducted from the amount of output tax i.e. tax collected on sales and the remaining tax has to be paid to the government this process is known as utilization of Input tax credit in GST in away bill. Now let's understand what is input tax credit practical questions in GST entry with an example: Suppose Mr Amit purchased goods worth Rs. 25000 on which GST is 18% i.e. Rs. 4500 and, MR. Amit sold goods worth Rs.30,000 on which GST payable is 18% i.e. Rs.5,400. Let us understand the Net GST payable and ITC under GST:

Description	in Rs.
Outward GST Payable	5,400
Less: GST paid on purchase	4,500
Net GST Payable	900

From the above input tax credit example, it is clear that input tax credit is the reduced amount of Rs.4,500 which was paid during the purchase of goods by Mr Amit.

Who is eligible to claim input tax credit in GST?

Every registered individual is qualified to take credit of input GST calculator charged on any delivery of goods or services purchased by him that are used or supposed to be used in course of his business based on any of the following documents:

- Tax Invoice issued
- Debit note
- Bill of entry
- Invoice organized concerning reverse charge basis
- Document issued through Input Service Distributor for distribution of input tax credit under GST.

Things to keep in mind while claiming Input Tax Credit under GST:

- The goods or services or both must be used or intended to be used in the course of business.
- One must have a tax invoice/debit note issued by a supplier registered under the GST Act.
- Submit the relevant invoice on the GST online portal.
- The supplier has paid the relevant amount of tax to the government in cash or paid by utilization of ITC.

In case all the above-mentioned conditions are met but the supplier is not able to furnish the invoice in his GSTR-1, then provisional input tax credit can be taken upto 5% of the credits that are eligible and furnished by the supplier in his GSTR-1.

- In case of goods received in instalments, the input tax credit can be taken on receipt of the last installment of goods.
- In case, a person receiving the goods or services or both has not paid the supplier within 180 days from the date of invoice, then an amount equal to input tax credit availed along with the interest will be added to the output liability of the person receiving the goods or

services or both. The said ITC in GST can be reclaimed on payment of the value of supply and tax thereon. However, this condition is not applicable for the supplies which are payable under a reverse charge basis.

- No ITC shall be allowed in case the depreciation has been claimed on the tax component of the cost of plant and machinery and capital goods under the Income Tax Act.
- Input tax credit under GST has to be availed before the due date of filing of return of September of the subsequent year, or providing of annual return, whichever is earlier.
- ITC is available in case of taxable/ zero-rated supplies.
- No ITC is available in case of non-taxable/ exempt/ nil rated supplies
- One must submit declaration in FORM GST ITC-1 within 30 days from the date of becoming eligible for the input tax credit under GST
- According to Rule 5, a declaration must be submitted containing details of stocks and capital goods along with a certificate from a Chartered Accountant or Cost Accountant where credit exceeds Rs. 2,00,000
- After the expiry of one year from the date of tax invoice the supplier cannot claim input tax credit under GST for goods or services or both.

Who is an Input service distributor (ISD) under GST?

An Input Service Distributor (ISD) is a taxpayer that receives invoices for services used by its branches. It distributes the tax paid known as the Input Tax Credit (ITC), to such branches on a proportional basis by issuing ISD invoices. The branches can have different GSTINs but must have the same PAN as that of ISD.

Let's understand with an example. The head office of M/s ABC Limited is located in Bangalore having branches in Chennai, Mumbai and Kolkata. The head office incurred annual software maintenance expense (service received) on behalf of all its branches and received the invoice for the same. Since the software is used by all its branches, the input tax credit of entire services

cannot be claimed in Bangalore. The same has to be distributed to all three locations. Here, the head office at Bangalore is the Input Service Distributor.

Situations where ISD is not applicable

ISD cannot distribute the input tax credit in the following cases:

- Where ITC is paid on inputs and capital goods. For instance, raw materials and machinery purchased.
- ITC cannot be distributed to outsourced manufacturers or service providers.

Purpose of registering as ISD

The concept of ISD is a facility made available to business having a large share of common expenditure and billing or payment is done from a centralized location. The mechanism is meant to simplify the credit taking process for entities and the facility will strengthen the seamless flow of credit under GST.

Conditions to be fulfilled by ISD

- **Registration:** Input Service Distributor has to compulsorily register as “ISD” apart from its registration under GST as a normal taxpayer. Such taxpayer has to specify under serial number 14 of the REG-01 form as an ISD. They shall be able to distribute the credit to the recipients only after this declaration.
- **Invoicing:** ISD can distribute the amount of tax credit to recipients as earlier stated by issuing an ISD invoice.
- **Returns:** Amount of tax credit distributed should not exceed the amount of tax credit available with the ISD as at the end of a relevant month to be filed in GSTR-6 by the 13th\* of succeeding month by ISD. The ISD can get the information of the ITC from the GSTR-2B return.

The recipient of the tax credit can view the tax credit so distributed by ISD in GSTR-6A that is auto-populated from the supplier's return. In turn, the recipient branch can claim the same by declaring it in GSTR-3B. An ISD need not file annual returns in form GSTR-9.

- Restriction in the distribution of Input Tax credit: The credit of tax paid under the reverse charge mechanism is not available for distribution to the recipients. So, the ISD has to utilise such credit only as a normal taxpayer.
- The tax credit available against any specific input services used entirely by one of the recipients can be allocated only to that recipient for utilisation of such credit and not to other recipients.
- The tax credit available against the input services used commonly by more than one recipients of the ISD shall be allocated to those recipients on a proportionate basis in the ratio of the turnover of all such recipients that are operational during the year.
- The tax credit available against the input services used commonly by all the recipients of the ISD shall be allocated to all the recipients on a proportionate basis in the ratio of the turnover of all the recipients that are operational during the year.

## Unit – III – Levy and Collection of GST

### Introduction to CGST, SGST and IGST

Unlike earlier when there were multiple taxes such as Central Excise, Service Tax, State VAT, etc., the GST introduces just one tax with three components- CGST, SGST and IGST. When the supply of goods or services happens within a state called intra-state transactions, then both the CGST and SGST will be collected. Whereas if the supply of goods or services happens between the states called inter-state transactions, then only IGST will be collected. The use of correct GSTIN becomes important to identify the applicability of taxes. Hence, validate with the help of the GST search tool before using the GST number in the sales invoice. It is to be noted that the GST is a destination-based tax, which is received by a State in which the goods are consumed but not by a state in which such goods are manufactured.

Levy and Collection of GST under CGST Act, IGST Act and UTGST Act.

Section 9 of CGST Act/SGST Act and Section 5 of IGST Act are the Charging Sections for the purposes of levy of GST.

CGST and SGST shall be levied on all intra-state supplies of goods and/or services and IGST shall be levied on all inter-state supplies of goods and/or services respectively.

A. Levy and Collection of GST Under CGST Act. (Section 9)

1. Levy of central goods and service tax [Section 9(1)]:

Under CGST Act, central tax called as the central goods and services tax (CGST) shall be levied on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. It shall be levied on the value determined under section 15 and at such rates, not exceeding 20%, as may be notified by the Government on the

recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. [Similar rates have been prescribed under SGST/UTGST]

2. Central tax on petroleum products to be levied from the date to be notified [Section 9(2)]:

The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

3. Tax payable on reverse charge basis [Section 9(3)]:

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both.

Further, all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

4. Tax payable on reverse charge if the supplies are made to a registered person by unregistered person [Section 9(4)]:

The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. [Section 9(4) has been deferred till 30.6.2018]

5. Tax payable on intra-State supplies by the electronic commerce operator on notified services [Section 9(5)]

As per section 2(45) of the CGST Act, 2017, “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Further, “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network.



Thus, Electronic Commerce Operators (ECO), like flipkart, uber, makemy-trip, display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal. The consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer. The price/consideration for the product/service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO), if such services are supplied through it.

Further, all the provisions of this Act shall apply to such electronic commerce operator (ECO) as if he is the supplier liable for paying the tax in relation to the supply of such services.

However, where an electronic commerce operator (ECO) does not have a physical presence in the taxable territory, any person representing such electronic commerce operator (ECO) for any purpose in the taxable territory shall be liable to pay tax.

Where an electronic commerce operator (ECO) does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

the following categories of services supplied through ECO for this purpose—

1. services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
2. services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.

B. Levy and Collection of GST Under IGST Act. (Section 5)

The provisions under section 5 of the IGST Act are similar to section 9 of CGST Act except—

1. the word CGST has been substituted by IGST under IGST Act
2. under IGST Act, tax called integrated tax is to be levied on all interState supplies and on goods imported into India.
3. maximum rate under section 5(1) of the IGST Act is 40% (i.e. 20% CGST + 20% UTGST).

#### C. Levy and Collection of GST Under UTGST Act. (Section 7)

The provisions under section 7 of the UTGST Act are similar to section 9 of CGST Act except—

1. the word CGST has been substituted by the word UTGST under the UTGST Act.
2. under UTGST Act, tax called UT tax is be levied on all intra-State supplies,
3. maximum rate 7(1) of UTGST Act is 20%.

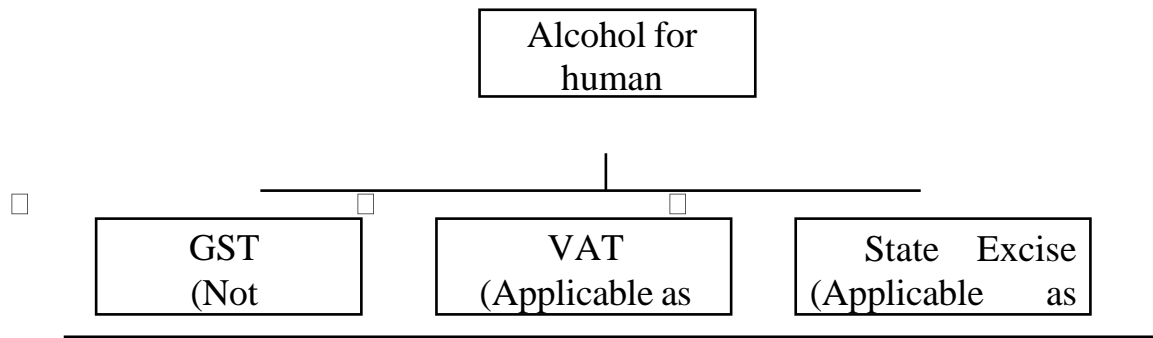
#### Levy and collection

Levy and collection as per CGST Act, 2017

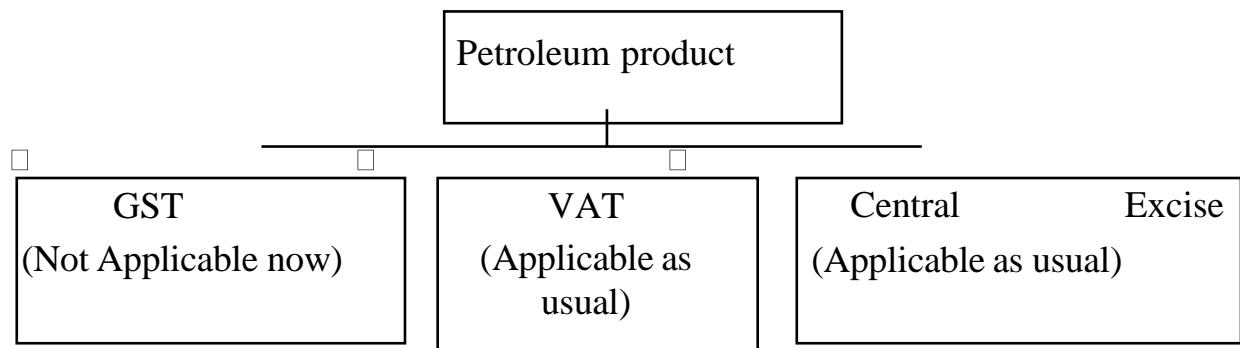
(a) U/s 9(1) of CGST Act, 2017 there shall be levied a tax –

- Called the Central Goods and Services Tax(CGST);
  - On all the intra-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
  - On the value determined u/s 15; and
  - At such a rate (maximum 20%,) as notified by the Central Government on recommendation of GST Council; and
  - Collected in such a manner as may be prescribed; and

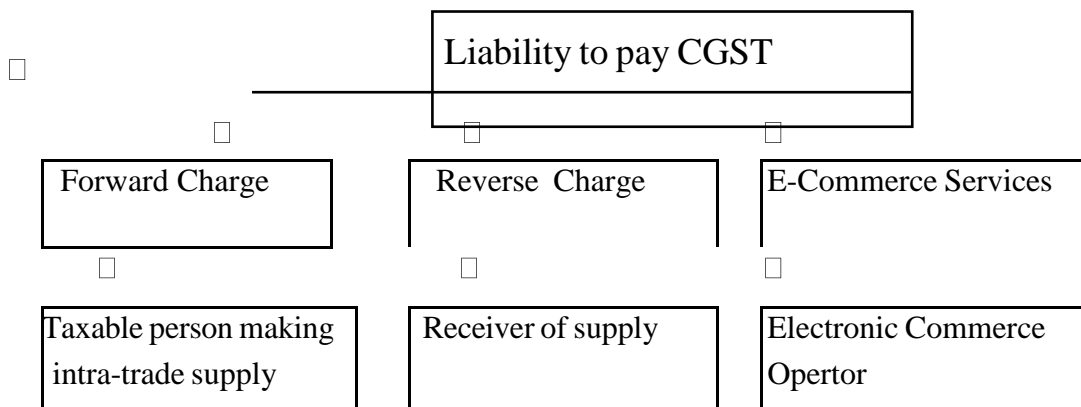
GST on Alcohol for human consumption



GST on Petroleum



Liability to pay CGST



- Shall be paid by the taxable person.

(b) U/s 9(2) of CGST Act 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council-

- Petroleum crude

- High speed diesel
  - Motor spirit (commonly known as petrol)
  - Natural gas
  - Aviation turbine fuel
- (c) U/s 9(3), CGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge)
- (d) U/s 9(4), CGST on taxable supply of goods/ services to registered supplier from unregistered supplier is to be paid on reverse charge basis by the recipient.
- (e) U/s 9(5), E-Commerce operator is liable to pay CGST on notified intra-state supplies.

*Levy and collection as per IGST Act, 2017*

- (f) U/s 5(1) of IGST Act, 2017 there shall be levied a tax –
- Called the Integrated Goods and Services Tax (IGST);
  - On all the inter-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
  - On the value determined u/s 15 of CGST Act, 2017; and
  - At such a rate (maximum 40%,) as notified by the Central Government on recommendation of GST Council; and
  - Collected in such a manner as may be prescribed; and
  - Shall be paid by the taxable person.

Provided further that IGST will be imposed on goods/ services imported into India.

- (g) U/s 5(2) of IGST Act, 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council-

- Petroleum crude
  - High speed diesel
  - Motor spirit (commonly known as petrol)
  - Natural gas
  - Aviation turbine fuel
- (h) U/s 5(3), IGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge).
- (i) U/s 5(4), IGST on taxable inter-state supply of goods/ services to registered supplier from unregistered supplier (agriculturist) is to be paid on reverse charge basis by the recipient.
- (j) U/s 5(5), E-Commerce operator is liable to pay CGST on notified inter-statesupplies.

### **What does supply mean under GST?**

In the GST system, a taxable event is called a Supply. For an event to be considered as a supply by the government, it should have the following characteristics.

- Supply should be of goods or services.
- Supply should be taxable.
- Supply should be made by a taxable person.
- Supply should be made within a taxable territory.
- Supply should be made in exchange for cash or reward (consideration).
- Supply should be made in the course of business or in the interest of growing a business.

## **Supply of goods or services**

When a transaction takes place, if there is a transfer of title of goods, then it is considered as supply of goods. For example, when you buy a pen from a retailer, the ownership of the pen is transferred from the retailer to you, the customer.

When there is a transfer of right in goods without transfer of title, it is considered as supply of service. For example, if you are availing transportation services, then the right of using the service is transferred to you, while the ownership still stays with the transportation company.

## **Supply should be taxable**

Supply of goods or services can either be taxable or tax-exempt. Taxable supplies are goods and services that attract GST. Tax-exempt supplies include supply of goods or services that belong to a specific category mentioned in the GST Act.

- Supply should be made by a taxable person
- A taxable person is defined as a person who is registered under the GST, or is liable to register, or a person who has voluntarily registered.
- Supply between two non-taxable people will not be considered as supply under GST.
- If a person supplies goods or services in different states or has multiple business verticals, then they are required to register separately for each state or vertical. Each of these registered entities will be considered as a taxable person.
- Supply should be made within a taxable territory
- Taxable territory means any place in India except the State of Jammu and Kashmir.
- Supply should be made in exchange for consideration
- Consideration can be defined as a barter of goods or services, or payment made for a supply in money, or in kind. A prepayment or deposit toward a supply is also accepted as a consideration by the government.

According to CGST Act, the following activities that will be treated as supply even if it is made without consideration.

- When a business permanently transfers or disposes its assets for which input tax credits have been availed.
- Supply made between two related or separate persons for business purposes.
- Supply of goods by an agent on behalf of the supplier or supply received by an agent on behalf of a customer.
- When a taxable person imports services from a related person, or from his or her own business outside of India for business purposes.

Supply should be made in the course of business or in the interest of growing a business

GST is applicable only on business transactions. Hence, for a transaction to be considered as supply under GST, it has to be made for business purposes.

If supplies are made for personal purposes, it will not be considered as a supply under GST.

### **What are the three components of supply under GST?**

A supply under GST has three attributes that are used to calculate the tax owed for that transaction: place, value, and time.

- Place of Supply - This component determines whether a transaction is an intra-state supply, an inter-state supply, or an external trade, which determines the type of GST that will be associated with it.
- Value of Supply - This component decides the taxable value of supply made, and thus the amount of tax that needs to be paid for it.
- Time of Supply - This component determines when the associated taxes and GST returns are due.

### **Types of supply under GST**

Under the GST, supply of goods and/or services can be classified into two major categories - Taxable supplies and Non-taxable supplies. These are further classified into different types based on the nature of supply made.

- Taxable Supplies - These refer to supply of goods and/or services that are taxable under GST. Registered taxpayers can claim refunds on tax paid during purchases (in other words, they are eligible for ITC).
  - Regular taxable supplies - Whenever you supply an item or service which attract a GST rate greater than 0% within India, it becomes a regular taxable supply.
  - Nil-rated supplies - Whenever you supply goods which attract 0% GST by default, such supplies are known as nil rated supplies.
  - Zero-rated supplies - Whenever you make exports, supplies to a SEZ unit or deemed exports, the GST associated with the items or services involved becomes 0 even though the same would attract a GST rate greater than 0% when sold within India. Such supplies are deemed as zero rated supplies
- **Non Taxable Supplies**
  - Exempt Supplies - The supply of exempt goods or services do not attract GST even though they are within the purview of GST. That said, the registered taxpayer cannot claim ITC on inputs used for making such supplies.
  - Non-GST supplies - This refers to supply of items which are outside the purview of the GST law.

Note: The following transactions must neither be considered as a supply of goods nor services: Supply of goods from one non-taxable territory to another without entering India. Supply of warehoused goods to a buyer before they pass clearance for home consumption. Supply of goods related to high sea sales. Supplies where there are more than one goods and/or services involved Any supply of goods and/or services made under GST will be classified as either wholly goods or wholly services depending on the primary item or service supplied according to Schedule II of



the GST law. This also applies to those cases where the supply made involves both goods and services. While goods and services can be supplied individually, one can also supply them as a bundle or a set using one of the following methods of supply:

- If the goods and services supplied together are a natural bundle (wherever it makes more sense to provide them together than to sell them individually), then it is known as a composite supply.
- If the goods and services supplied together are not naturally bundled together (they are not interdependent and can also be sold separately), then such a supply is known as mixed supply.

### **GST Registration Online**

GST registration is a process by which a taxpayer gets himself registered under GST. Once a business is successfully registered, a unique registration number is assigned to them known as the Goods and Services Tax Identification Number (GSTIN). This is a 15-digit number assigned by the central government after the taxpayers obtain registration.

### **Who should register for GST?**

All the businesses supplying goods whose turnover exceeds INR 40 lakh in a financial year are required to register as a normal taxable person. However, the threshold limit is INR 10 lakh if you have a business in the north-eastern states, J&K, Himachal Pradesh, and Uttarakhand.

The turnover limit is INR 20 lakh, and in the case of special category states, INR 10 lakh, for the service providers. Also, here is the list of certain businesses for which GST registration is mandatory irrespective of their turnover:

- Casual taxable person / Input Service Distributor (ISD)
- Non-resident taxable person
- Inter-state supplier of goods and services
- Supplier of goods through an e-commerce portal
- Any service provider

- Liable to pay tax under the reverse charge mechanism
- TDS/TCS deductor
- Online data access or retrieval service provider

What are the documents required for GST registration?

Take a look at the list of documents that you will need for registering your business under GST:

- Permanent Account Number (PAN) of the applicant
- Copy of the Aadhaar card
- Proof of business registration or incorporation certificate
- Identity and address proof of promoters/directors with a photograph
- Bank account statement/cancelled cheque
- Authorisation letter/board resolution for authorised signatory
- Digital signature

### **Types of GST registration**

#### 1. Normal taxpayers

Most businesses in India fall under this category.

Businesses whose turnover exceeds Rs 40 lakh in a financial year are required to register as normal taxable people. However, the threshold limit is Rs 10 lakh if you have a business in the north-eastern states, J&K, Himachal Pradesh, and Uttarakhand.

#### 1. Casual taxable individual

Occasional or seasonal businesses need to register their businesses under GST for this category.

Businesses need to make a deposit equal to the GST liability from the occasional operations.

The tenure for registration is 3 months. However, businesses can apply for renewal and extensions.

#### 1. Non-resident taxable individual

Individuals who reside outside India but occasionally supply goods or services as agents, principals, or in other capacities to Indian residents are liable to file for registration under this category.

The business owner must pay a deposit equal to the expected GST liability during the GST active tenure. The normal tenure is 3 months. However, individuals can extend or renew the registration if required.

#### 1. Composition registration

Businesses with an annual turnover of up to Rs 1 crore are eligible for registration under composition scheme. Under this scheme, businesses have to pay a fixed amount of GST irrespective of their actual turnover.

### **Important facts about GST registration**

- Any business that has a turnover of over 20 lakh INR is required to register for GST.
- If you are a supplier of goods to more than one state, you are required to register for GST in all the states you supply goods.
- There is no registration fee for GST.
- Failing to file for GST will result in a fine of 10,00 INR or 10% of the due amount.

## **Unit – IV – Integrated GST**

### **What is Integrated GST?**

Integrated GST or Integrated Goods and Services Tax is one of the four types of GSTs levied by the Central Government on interstate supply of goods and services. The revenue collected under IGST is apportioned equally between the Central and the State Governments (of the state where the goods/services are consumed).

### **Features of IGST**

Some of the key features of IGST (Integrated Goods and Services Tax) are: IGST is applicable when goods/service is transferred from one state to another.

- The tax is collected by the Central Government from the party sending the goods/service.
- The revenue collected as IGST is distributed equally between the Central Government and the government of the state to which the goods/service is supplied (the state of consumption of the goods/service).
- The input tax credit from all four categories of GSTs can be claimed while paying IGST.

## **Different Types of GSTs in India**

The GST Act, 2017 prescribes four types of GSTs, namely CGST (Central Goods and Services Tax), SGST (State Goods and Services Tax), UTGST (Union Territory Goods and Services Tax) and IGST (Integrated Goods and Services Tax). The former three are applicable on the transfer of goods/services within a state or union territory, while IGST is applicable when a goods/service is transferred from a place in one state/UT to another state/UT. The following table clearly illustrates the key differences between the four types of GSTs:

	CGST	SGST	IGST	UTGST
Applicability	Intrastate transfer of goods/services.	Intrastate transfer of goods/services.	Interstate transfer of goods/services.	Intra-UT transfer of goods/services.
Collecting Authority	Central Government	State Government	Central Government	UT Government
Benefitting Authority	Central Government	State Government	Central Government and the State Government of the state receiving the goods/services.	UT Government
Input Tax Claim Permissible	CGST and IGST	SGST and IGST	IGST, CGST and SGST	UTGST and IGST

#### What Makes IGST Different from CST

Under the old taxation regime, before the GST Act came into effect in 2017, Central Sales Tax (CST) was levied on interstate supply of goods and services as per the CST Act, 1956.

Unlike GST, the CST revenue was collected by the State Government of the state of origin of the goods/service. The following table highlights the key differences between IGST and the erstwhile CST:

	<b>IGST (Integrated Goods and Services Tax)</b>
Applicability	Interstate supply of goods/services.
Collecting Authority	Central Government
Benefitting Authority	Revenue is equally divided between the Central and the State Government of the state consuming the goods/service.
Input Tax Claim Permissible	Input tax can be claimed against IGST, CGST or SGST.

### **IGST on Interstate Supply of Goods/Services**

What makes the IGST different from other types of GSTs is that it applies to any movement of goods or services between different states/union territories. Another point to be noted is that IGST is also applicable on transactions associated with SEZs (Special Economic Zones)- import or export of goods/services to/from an SEZ is also considered an interstate transfer.

While IGST is collected by the Union Government, the revenue is shared equally between the Union and the State Government of the state where the goods/service is consumed as GST is a consumption-based tax.

Let us now understand how IGST collection works with the help of an example. Suppose Ashok is a trader in Delhi who transfers a product worth ₹1,000 to another trader Rashmi in Mumbai. Assuming that the product falls in the 18% GST slab, an IGST of ₹180 will be collected by Ashok from Rashmi (the product will cost ₹1180 to Rashmi) which he

will pay to the Central Government. This amount will then be equally divided between the Central Government and the government of Maharashtra, both getting ₹90 each.

Running a business in multiple states is already a costly affair, and if your business falls in the 18% tax bracket, the IGST applicable would further reduce your working capital. A business loan can help you meet your financial needs and responsibilities. If your business is GST-compliant, getting a business loan is much easier. On Bajaj Markets, you can get business loans approved within 2 mins with minimal documentation requirements.

### **Refund of IGST**

IGST is applicable on all interstate transfers of goods and services. However, in certain cases, an individual or a business might be eligible to claim a refund of the GST they paid to the government. One can claim a GST refund in the following two cases:

**Foreign Tourists:** A foreign tourist who stayed in India for a period not exceeding six months can claim a refund of the IGST paid by them on the goods/services purchased from Indian merchants during their stay in the country.

- **Offsetting an Already Paid Tax:** If an individual/business has already paid the applicable IGST under another tax header (either partly or fully), they can claim the refund of the already paid amount. For example, a manufacturer who has already paid IGST on the procurement of raw material can claim a refund of the same amount after paying the GST applicable on the sale of the manufactured goods.

### **DETERMINATION OF NATURE OF SUPPLY**

#### **Inter-State supply**

Nature of Supply and Place of supply are two most important concepts under GST. Determination of Nature of supply is very important to determine whether a supply is inter-state or intra-state. CGST and SGST will be levied on intra-state supply while inter-state supplies will be charged to IGST.



Supply of goods shall be treated as supply in the course of inter-State trade or commerce in the following cases:	
Sub-Section (1)	<p>Subject to provisions of Section 10, where location of supplier and place of supply are in –</p> <ul style="list-style-type: none"> <li>• Two different States</li> <li>• Two different Union Territories</li> <li>• A State and an Union Territory</li> </ul>
Sub-Section (2)	<p>Goods imported into the territory of India, till they cross the Customs frontiers of India.</p> <p>Supply of services shall be treated as supply in the course of inter-State trade or commerce in the following cases:</p>
Sub-Section (3)	<p>Subject to provisions of Section 12, where location of supplier and place of supply are in –</p> <ul style="list-style-type: none"> <li>• Two different States</li> <li>• Two different Union Territories</li> <li>• A State and an Union Territory</li> </ul>
Sub-Section (4)	<p>Services imported into the territory of India.</p>
Sub-Section (5)	<p>Supply of goods or services or both shall be treated as supply in the course of inter-State trade or commerce in the following cases:</p> <ol style="list-style-type: none"> <li>a. When supplier is located in India and place of supply is outside India.</li> <li>b. Supply is to a SEZ Developer or SEZ Unit from Domestic Tariff Area (DTA) or by a SEZ Developer or SEZ Unit to DTA.</li> <li>c. Supply is in the taxable territory, not being an intra-State supply and not covered elsewhere in this section.</li> </ol>

## Section 8

### Intra-State supply

<p>Sub-Section (1)</p>	<p>Subject to the provisions of section 10, supply of goods shall be treated as intra-State supply where -</p> <ul style="list-style-type: none"><li>• the location of the supplier and the place of supply of goods are in the same State or same Union territory</li></ul> <p>But in case of the following, supply of goods shall not be treated as intra-State supply, namely:—</p> <ul style="list-style-type: none"><li>• supply of goods to or by a SEZ developer or a SEZ unit;</li><li>• goods imported into the territory of India till they cross the customs frontiers of India; or</li><li>• supplies made to a tourist referred to in section 15.</li></ul>
<p>Sub-Section (2)</p>	<p>Subject to the provisions of section 12, supply of services shall be treated as intra-State supply where -</p> <ul style="list-style-type: none"><li>• the location of the supplier and the place of supply of services are in the same State or same Union territory</li></ul> <p>But supply of services to or by a SEZ developer or a SEZ unit is not an intra-State supply.</p> <p><i>Explanation 1.—</i></p> <p>For the purposes of this Act, where a person has,—</p> <ol style="list-style-type: none"><li>i. two establishments in two different countries i.e. one in India and other outside India;</li><li>ii. two establishments in two different States or Union Territories; or</li><li>iii. two establishments registered within the same State or Union territories, then such establishments shall be treated as establishments of distinct persons. <i>Explanation 2.—</i></li></ol>

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

## Section 9

### Supplies in territorial waters

Notwithstanding anything contained in this Act,—

- a. where the location of the supplier is in the territorial waters, the location of supplier shall be deemed to be in the coastal

State or Union territory where the nearest point of the appropriate baseline is located; or

- b. where the place of supply is in the territorial waters, the place of supply shall be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Under the Goods and Services Tax ('GST') Law, the taxpayer is liable to pay tax at the time and as per the place of supply. The place of supply is the place of consumption of services. Provisions regarding 'Place of supply' are explained under the IGST Act. 'Place of Supply of Goods under GST' is discussed separately in our article. This article will focus on the place of supply of services in general.

However, there are specific cases/rules for determining the place of supply for services rendered directly in relation to immovable property, transportation of goods, and many more specific services.

### **Importance of Place of Supply**

Determination of place of supply is important for businesses. The reasons for this are listed below:

- Wrong classification of supply between interstate or intra-state and vice-versa may lead to hardship to the taxpayer as per section 19 of IGST Act and section 70 of CGST Act
- Where wrong taxes have been paid on the basis of the wrong classification, a refund will have to be claimed by the taxpayer
- The taxpayer will have to pay the correct tax along with interest for the delay on the basis of revised/correct classification
- Also, correct determination of place of supply will help us in knowing the incidence of tax. As if the place of supply is determined as a place outside India, then tax will not have to be paid on that transaction

### **Determining The Place Of Supply Of Services**

*GST is destination-based tax i.e consumption tax, which means tax will be levied where goods and services are consumed and will accrue to that state.* Under GST, there are three levels of Tax, IGST, CGST & SGST and based on the ‘‘place of supply’’ so determined and the location of the supplier, the respective tax will be levied. IGST is levied where the transaction is inter-state, and CGST & SGST are levied where the transaction is intra-state. For understanding the place of supply for services, the following two concepts are very important namely:

- Location of the recipient of services
- Location of the supplier of services

Let’s understand these two concepts in detail as they will form the base for determining the place of supply in case of the supply of services:

#### Location of the Recipient of Services

S.No	Case	Location of Recipient of Service
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A	where a supply is received at a place of business for which the registration has been obtained	such place of business
B	where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	such fixed establishment
C	where a supply is received at more than one establishment, whether the place of business or fixed establishment	the location of the establishment most directly concerned with the receipt of the supply
D	in absence of such places	the location of the usual place of residence of the recipient;

Location of the provider/supplier of services

S.No	Case	Location of Supplier of Services
A	where a supply is made from a place of business for which the registration has been obtained	the location of such place of business
B	where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere)	the location of such fixed establishment;
C	where a supply is made from more than one establishment, whether the place of business or fixed establishment,	the location of the establishment most directly concerned with the provision of the supply
D	in absence of such places,	the location of the usual place of residence of the supplier;

The transactions in terms of supply of services can be broadly categorized as below:

#### Domestic Transactions

These are the transactions where both the parties i.e the supplier as well as the recipient of service are in India. Domestic transactions can be further categorised as below:

- Inter-State (i.e between two different states)
- Intra-State (i.e within the same state)

**General Rule:** In general, the place of supply for services will be the location of the service recipient (the recipient needs to be a registered person).

In cases, where service is provided to an unregistered person, the place of supply will be the:

- Location of the service recipient (if the address is available on record);
- Otherwise, the location of the service provider

### *International Transactions*

These are the transactions where either the service recipient or the provider is outside India. Transactions in which both the recipient as well as a provider are outside India are not covered here.

**General Rule:** The Place of supply for services treated as international transactions shall be:

- The location of the service recipient
- In the case where the location of the service recipient is not available, the place of supply shall be the location of the supplier.

GST, or the Goods and Services Tax, was first introduced in India on July 1st, 2017. Interstate and intrastate GST are the most important components of GST as it helps one determine whether IGST, CGSST, or SGST is to be paid. Whether a supply is considered interstate or intrastate depends on the location of the supplier and the place of supply. This article presents a comparison between interstate and intrastate GST. It also provides a detailed explanation of interstate and intrastate meanings under GST law.

### **Interstate Meaning in GST**

Interstate supply is where the goods or services provider is in a different state or Union Territory, and the place of supply is in a different state or Union Territory. The supplies involving import,

export, or supply to or from a Special Economic Zone (SEZ) unit or Export-oriented Unit (EOU) are also considered interstate supplies. The Central Government levies integrated GST (IGST) on the interstate supply of goods and services in India.

When goods and services are supplied from one state to another, the IGST is levied by the central government and then distributed to the destination state. The revenue generated from IGST is shared between the central and state governments according to a predetermined formula. This ensures that the tax revenue is shared between the central and state governments and avoids the need for multiple taxes to be paid by businesses operating in different states.

### **Intrastate Meaning in GST**

Intrastate supply is where the supplier of goods or services and the place of supply is within the same state. Intrastate supplies are liable to CGST (Central Goods and Services Tax) and SGST/UTGST (State Goods and Services Tax/Union Territory Goods and Services Tax). They are levied by the Central and State/UT governments, respectively.

The Intra-state GST rate varies depending on the type of good or service being supplied. The vendors need to collect both CGST and SGST from the customers in intrastate transactions.

### **Interstate and Intrastate GST Rate With Examples**

The rates of GST on interstate and intrastate supplies depend on the goods or services being offered. The GST rates in India are divided into four slabs, i.e. 5%, 12%, 18%, and 28%. There are also special rates of GST for certain high-value goods as well as a Nil rate for certain essential goods.

Now that you know the meaning of interstate supplies and intrastate supplies, let us understand how GST is calculated on them with the help of examples.

### Interstate GST Rate Example

A company ABC Ltd is located in Jaipur, Rajasthan, and it supplies mobiles worth Rs.1,00,000 to Mumbai, Maharashtra. This supply will be considered an interstate supply. The goods supplied fall under the GST slab of 18%. IGST, or Integrated GST, is levied by the Central Government, a share of which is paid to the destination state.

IGST Calculation:  $1,00,000 * 18\% = \text{Rs.}18,000$

The dealer will charge Rs.18,000 as IGST. This amount is paid to the Centre and then split in a predetermined ratio between the Centre and the destination state, i.e. Maharashtra.

As an exception, if the goods are supplied from Jaipur, Rajasthan, to a Special Economic Zone (SEZ) unit in Rajasthan, it will also be considered an interstate supply. All the goods and services supplied to or from an SEZ unit are considered interstate supplies.

### Intrastate GST Rate Example

ABC Ltd. is located in Jaipur, Rajasthan supplies mobiles worth Rs. 2,00,000 to another entity located in Udaipur, Rajasthan. The GST is charged at 18%, which is apportioned as 9% CGST and 9% SGST.

CGST/SGST calculation:  $\text{Rs. } 2,00,000 * 18\% = \text{Rs.}36,000$

Here, Rs. 18,000 is CGST and Rs. 18,000 is SGST.

The dealer collects Rs. 36,000. Out of this, Rs. 18,000 is paid as CGST to the Central Government, and Rs.18000 is paid to the Rajasthan Government.

CGST/SGST is levied by both the Central Government and the state government, respectively.

However, the rate of CGST and SGST together sum up to the IGST rate levied. Hence, the total



tax amount remains the same irrespective of whether it is an interstate or intrastate supply. The only difference lies in the levy.

### Difference Between Interstate and Intrastate in GST

Here is a tabular format that highlights the key differences between interstate GST and intrastate GST in India:

Parameters	Interstate Supplies	Intrastate Supplies
Applicable on	Supply of goods and services between different states and Union Territories.	Supply of goods and services within the same state or union territory.
Levied by	Central Government	CGST by the Central Government and SGST/UTGST by the state/Union Territory government
Tax rate	IGST rate is applicable at the rates in force based on the good or service	CGST and SGST rates are applied equally and separately at the applicable rate in force based on the good or service
Destination state	Receives a share of the IGST collected	Receives the full amount of SGST collected
Place of supply	Different state than the location of the supplier	Same state as the location of the supplier

Input Tax Credit	The input tax credit of IGST can be used to set off IGST liability and, thereafter, CGST/SGST liabilities in any order	Once IGST credit has been exhausted fully, CGST credit and SGST credit can be utilised to set off CGST liabilities and SGST liabilities, respectively, and for setting off IGST liabilities. Inter-utilisation between CGST and SGST is not allowed.
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Overall, Interstate GST and Intrastate GST are two different types of GST in India that are applied depending on the location of the supplier and the place of supply. The key difference between the two lies in the levy of the tax.

### Place of Supply of Goods

GST is a destination based tax, i.e., the goods/services will be taxed at the place where they are consumed and not at the origin. So, the state where they are consumed will have the right to collect GST.

Therefore, place of supply is crucial under GST as all the provisions of GST revolve around it. Place of supply of goods under GST defines whether the transaction will be counted as intrastate or interstate, and accordingly, levy of SGST, CGST & IGST will be determined.

Place of supply when there is movement of goods

Supply Type	Place of supply
Involves movement of goods, whether by supplier, or buyer or by any other person	Location of the goods when the movement of goods terminates for delivery to the recipient.

Goods are delivered by the seller to the buyer on the directions of a third party (whether or not an agent), before or during the movement of goods, by the way of transfer of title in goods or the documents or some other way

It is assumed that the third person has received the goods and therefore, the place of supply of the goods will be the principal place of business of the third party.

**Example 1- Intra-state sales** Mr. Raj of Mumbai, Maharashtra sells 10 TV sets to Mr. Vijay of Nagpur, Maharashtra

The place of supply is Nagpur in Maharashtra. Since it is the same state CGST & SGST will be charged.

**Example 2-Inter-State sales** Mr. Raj of Mumbai, Maharashtra sells 30 TV sets to Mr. Vinod of Bangalore, Karnataka

The place of supply is Bangalore in Karnataka. Since it is a different state IGST will be charged.

**Example 3- Deliver to a 3rd party as per instructions** Anand in Lucknow buys goods from Mr. Raj in Mumbai (Maharashtra). The buyer requests the seller to send the goods to Nagpur (Maharashtra)

In this case, it will be assumed that the buyer in Lucknow has received the goods & IGST will be charged. Place of supply: Lucknow (UP) GST: IGST

**Example 4- Receiver takes the goods from the ex-factory.** Mr. Raj of Mumbai, Maharashtra gets an order of 100 TV sets from Sales Heaven Ltd. of Chennai, Tamil Nadu. Sales Heaven mentions that it will arrange its own transportation and take TV sets from Mr. Raj ex-factory

Place of supply: Chennai, Tamil Nadu GST: IGST Although the goods are received ex-factory i.e in Maharashtra by the recipient, the movement of the goods terminates for delivery to the recipient only at Chennai, Tamil Nadu.

Irrespective of whether the supplier or the recipient is actually undertaking the movement of goods, the place of supply is the location of goods where movement of goods terminates for delivery to the recipient which is at Chennai. Hence, IGST is applicable.

Example 5 – E-commerce sale Mr. Raj of Mumbai, Maharashtra orders a mobile from Amazon to be delivered to his mother in Lucknow (UP) as a gift. M/s ABC (online seller registered in Gujarat) processes the order and sends the mobile accordingly and Mr. Raj is billed by Amazon.

Similar to example 3, it will be assumed that the buyer in Mumbai has received the goods & IGST will be charged. Place of supply: Mumbai, Maharashtra GST: IGST

Place of supply – No movement of goods

Supply Type	Place of Supply
No movement of goods, either by the supplier or by the recipient	Location of those goods at the time of delivery to the recipient (at the time of ownership transfer)
Goods are assembled or installed at site	Place of installation or assembly

Example 1- No movement of goods Sales Heaven Ltd. (Chennai) opens a new showroom in Bangalore. It purchases a building for showroom from ABC Realtors (Bangalore) along with pre-installed workstations

Place of supply: Bangalore GST: CGST & SGST There is no movement of goods (work stations), so the place of supply will be the location of such goods at the time of delivery (handing over) to the receiver.

*Note: There is no GST on purchase of building or part thereof. RENT of commercial space attracts GST*

Example 2- Installing goods Strong Iron & Steel Ltd. (Jharkhand) asks M/s SAAS Constructions (West Bengal) to build a blast furnace in their Jharkhand steel plant

Place of supply: Jharkhand GST: CGST & SGST Although M/s SAAS is in West Bengal, the goods (blast furnace) is being installed at site in Jharkhand which will be the place of supply.

*Note: M/s SAAS will have to be registered in Jharkhand to take up this contract. They can opt to register as a casual taxable person which will be valid for 90 days (extendable by 90 days more, on the basis of a reasonable cause).*

Place of supply- Goods supplied on a vessel/conveyance

Supply Type	Place of Supply
Goods are on board of a conveyance or vessel or train or aircraft or a motor vehicle	Location at which such goods are taken on board.

Example 1- Plane Mr. Ajay is travelling from Mumbai to Delhi by air. He purchases coffee and snacks while on the plane. The airline is registered in both Mumbai and Delhi.

Place of supply: Mumbai GST: CGST & SGST The food items were loaded into the plane at Mumbai. So, the place of supply becomes Mumbai.

Example 2- Plane- Business travel Mr. Ajay is travelling from Mumbai to Chennai by air on behalf of his company Ram Gopal and Sons (registered in Bangalore). In the plane he purchases lunch. The airline is registered in Mumbai & Chennai.

Place of supply: Mumbai GST: CGST & SGST The food items were loaded into the plane at Mumbai. So, the place of supply becomes Mumbai. It does not matter where the buyer is registered.

In most cases CGST & SGST is charged because most airlines have a pan-India presence and will be registered in all states.

Example 3- Train Mr. Vinod is travelling to Mumbai via train. The train starts at Delhi and stops at certain stations before Mumbai. Vinod boards the train at Vadodara (Gujarat) and promptly purchases lunch on board. The lunch had been boarded in Delhi.

Place of supply: Delhi GST: CGST & UTGST The food items were loaded into the train at Delhi. So, the place of supply becomes Delhi.

CGST & SGST is charged because Indian railways has a pan-India presence and will be registered in all states. It does not matter where the buyer is registered.

Where the place of supply cannot be determined for any reason, the place of supply shall be determined by the Parliament rules based on the recommendations made by the GST Council.

Place of supply – Imports and exports

The place of supply of goods:

- Imported into India will be the location of the importer.
- Exported from India shall be the location outside India.

Supply Type	Place of Supply	GST
Goods imported into India	Location of the importer	Always IGST is charged for imports
Exported from India	Location outside India	GST on exports are eligible for refund

Also, whenever an Indian entity raises an invoice in foreign currency, it can charge GST in foreign currency. However, you have to show the INR conversion rate and the INR values. Suppose you have raised in US Dollars (USD), then you can charge GST in USD. Also, you have to show the USD to INR conversion ratio and invoice values in INR.

#### Example 1- Import

Ms. Malini imports school bags from China for her shop (registered in Mumbai)

Place of supply: Mumbai

GST: IGST

#### Example 2- Export

Ms. Anita (Kolkata) exports Indian perfumes to UK

Place of supply: UK

GST: Exempted

### **GST eInvoice**

GST eInvoice has been introduced in India to usher in the digital era from conventional paper-based systems. eInvoicing can help businesses achieve tremendous cost savings, efficiency and speed up business operations. eInvoicing will help reduce compliance burden for most businesses by eliminating the requirement for duplication or transfer of the same information from one system to another. With eInvoicing, the invoice information provided to GSTN for generating Invoice Reference Number (IRN) would be used to auto-populate various other systems GST returns, input tax credit reconciliation, eWay bill and GST refunds. Hence, GST eInvoicing will significantly improve the ease of doing business and reduce the compliance burden.

### **eInvoicing Implementation Date**

The proposal for implementing eInvoicing was placed before the 35th GST Council Meeting in June, 2019. The GST Council provided an in-principle launch of a pilot project on voluntary basis for online generation of B2B e-invoices from January 2020.

<b>Timeline</b>	<b>Turnover</b>	<b>Supply Type</b>	<b>Implementation</b>
January, 2021	GST registered entities having an aggregate turnover of more than INR 100 crores.	B2B	Voluntary
April, 2021	GST registered entities having an aggregate turnover of more than INR 50 crores.	B2B	Voluntary
April, 2021 onwards	GST registered entities having an aggregate turnover	B2B	Mandatory

<b>Timeline</b>	<b>Turnover</b>	<b>Supply Type</b>	<b>Implementation</b>
	of more than INR 20 crores.		

The Government has provided exemption to certain classes of persons from implementation of eInvoicing through Notification No.13/2020-Central Tax dated 21st March, 2020. As per the notification, the following entities are exempted from the above implementation timeline:

- An Insurer, Banking Company or Financial Institution including NBFC
- Goods Transport Agency
- Passenger Transport Service
- Admission to exhibition of Cinematograph Films in Multiplex Screens

### **Advantages of GST eInvoice**

GST eInvoicing will completely transform the business process as currently there are no standards defined for invoices. With the implementation of eInvoicing, invoicing would be standardised across the entire GST eco-system. So an eInvoice generated by one software can be read by another software - eliminating the need for data transfer or re-entry. Finally, with eInvoicing will eliminate the process of compilation of invoices at the end of the month and make input tax credit flow seamless.

### **Key Concepts of eInvoicing**

The following are some of the key concepts with respect to GST eInvoicing:

#### **Generating eInvoice**

GST eInvoice is not an invoice generated on the Government Portal, as such a portal can become a choke point in trade. GST eInvoicing is a way process by which the taxpayer will generate a unique Invoice Reference Number (IRN) for each invoice and mention the same on the invoice issued.



## **Invoice Reference Number (IRN)**

Invoice Reference Number is a unique number for each invoice provided by the GST Invoice Registration Portal on successful upload of an eInvoice. Invoice Reference Number must be mentioned on the invoice by the supplier to comply with eInvoicing regulations.

## **eInvoice Format**

There is no specific format for eInvoice that has been provided by the GSTN. There will also be no changes to the invoice that is prepared and printed today. Under eInvoicing, certain data in the GST invoice will be transmitted to the GSTN Invoice Registration Portal (IRP) electronically and a Invoice Reference Number will be generated along with a QR code. The QR code needs to be printed on the invoice generated by the supplier. Hence, suppliers can continue to generate invoices from their billing softwares with a look and feel that suits their requirements and compliant with the GST invoicing rules. The only change will be generation of Invoice Reference Number from the GST Invoice Registration Portal and printing of eInvoice QR code on the invoice.

## **Invoice Registration Portal (IRP)**

Invoice Registration Portal (IRP) or eInvoice Registrar is the platform issuing the Invoice Reference Number. NIC has been proposed as the first IRP. As the number of taxpayers under eInvoicing increases, more IRPs will be added to increase availability, speed and created a distributed architecture.

### **Generating GST eInvoice**

The process of generation of a GST eInvoice can be divided into four phases:

#### **Generation of Invoice**

In the first phase, the seller will generate an invoice in his/her accounting or billing or ERP system. The invoice created must take into consideration the eInvoice standards that have been

published by the GSTN and should contain certain mandatory parameters. The invoice prepared on the software should then be transmitted to the Invoice Registration Portal as a JSON format.

#### Uploading JSON to Invoice Registration Portal

The sellers accounting software through APIs or GSP/ASP or offline tool will be required to transmit the invoice in JSON format to the Invoice Registration Portal. The JSON can be uploaded directly from an accounting software through APIs.

#### Processing of Data by IRP

The IRP will check the JSON invoice received for correctness and ensure that the same invoice from the same supplier is not duplicated. On validation of the JSON invoice, the IRP will add its digital signature on the invoice, assign a IRN (Invoice Reference Number) and a QR code to the JSON file. This digitally signed JSON with IRN is sent back to the seller and will become a valid GST eInvoice for the seller and buyer.

#### Transmission to GSTN & eWay Bill Platform

IRPs will also share the signed eInvoice data with the GSTN system and eWay Bill portal to reduce compliance burden for the taxpayers.

#### Invoice Reference Number (IRN)

Each invoice uploaded by a seller to the Invoice Registration Portal and validated will receive a number called Invoice Reference Number (IRN). IRN is a 64 characters long, unique number in the GST system - irrespective of taxpayer, financial year and document type.

IRN will be issued by the Invoice Registration Portal on uploading of the JSON invoice file. IRN will be generated based on a combination of the supplier GSTIN, document type, document number and year of invoice. Document types are INV for invoice, CRN for credit note, DBN for debit note.

## eInvoice QR Code

The IRP will digitally sign a JSON invoice submitted by the seller and also generate a QR code containing the unique IRN along with other invoice data so that it can be readily verified online. This QR code can be scanned by the buyer or any tax officer using an app to check the validity of invoice issued. The eInvoice QR code will contain the following information:

- GSTIN of supplier
- GSTIN of recipient
- Invoice number as given by supplier
- Invoice date
- Invoice value
- Number of line items
- HSN code of main item (Item with highest value)
- Unique Invoice Reference Number (IRN)

## **GST eInvoice Format**

The GST eInvoice will be similar to the existing GST invoice format. It has been clarified by the GSTN that writing of IRN (64 characters) is not required by the seller. However, the IRN will be included in the QR code provided by the Invoice Registration Portal. The QR code will contain details of the invoice and the IRN. Thus, it is better to make digitally signed QR code as a response which will be proof of registration of invoice and print on invoices issued by a business.

## **Time Limit for Generating eInvoice**

The time limit for generating an eInvoice will be notified by the Government. Without registration of an invoice with Invoice Registration Portal and generation of QR code, it will not be valid. Hence, before the movement of goods or delivery of goods or service or filing of GST returns, eInvoicing must be completed.

## **Cancellation of eInvoice**

An eInvoice once generated can be fully cancelled within 24 hours on the Invoice Registration Portal. After 24 hours, cancellation of eInvoice on the Invoice Registration Portal will not be possible and the same will have to be done on the GST Portal before filing of GST return. Once a GST eInvoice is cancelled, the same invoice number cannot be used again to generate another invoice.

## **Amendment of eInvoice**

Amendments to eInvoice can be done on the GST Portal. All amendments to the eInvoice generated on the Invoice Registration Portal can be done only on the GST Portal. An amended invoice if again sent to IRP as a JSON file will get rejected as the IRN will be duplicate.

## **eWay Bill**

What is an eWay bill?

e-way bill is short for Electronic Way Bill. GST E-way bill is a document used to track goods in transit introduced under the Goods and Service Tax. A taxable person registered under GST involved in the transportation of goods with a value of over Rs.50,000 must possess an E-way bill generated on the GST Portal.

LEDGERS has made E-way bill generation and management very simple for business. The Ledgers E-way bill tool is synced to GST invoices, bills of supply, purchases invoices, and customer or supplier accounts. eWay Bills can be generated seamlessly at the click of a button and shared with the customers or suppliers. The procedure for moving the movements of goods is prescribed in the E-way bill rules. However, it is to be noted that when the GST Act came into being on the 1st of July, the E-way bill implementation was deferred.

### **Who should Generate an eWay Bill?**

The following cases wherein a person having GST registration are causing goods movement should generate an E-way bill.

- eWay Bills generation is done when there is a movement of goods of more than Rs.50,000 value to or from a registered person. The registered person can even generate an E-way bill if the goods' valuation is less than Rs.50,000.
- An unregistered person is also required to generate an E-way bill. When an unregistered person makes a supply to a registered person, the receiver must ensure that all the compliances are complied with.
- A transporter carrying goods via road, air, rail, etc., is required to generate an E-way bill if the supplier has not generated any E-way Bill.

### **Documents required to generate eWay Bills**

What documents are required to generate an E-way bill?

1. Invoice/ Bill of supply/ Challan relevant to the consignment of goods
2. In case of Transport by road- Transporter ID or the vehicle number
3. Transport by rail, air, or ship- Transporter ID, Transport document number, and date.

## **What is the eWay bill format?**

The E-way bill consists of two parts Part A and B. The Part A of the E-way bill collects the details related to consignment, usually the invoice details. Accordingly, the following information needs to be submitted.

- GSTIN of the recipient must be submitted.
- The Pin code of the place where goods are delivered needs to be mentioned.
- The invoice or the challan number against which the goods are supplied must be submitted.
- The value of consignment is to be mentioned.
- HSN code of the goods which are transported should be entered. If the turnover is up to INR 5 crores, the HSN code's first two digits should be mentioned. If the turnover is more than INR 5 crores, a four-digit HSN code is required.
- The reason for transportation should be predefined, and the most appropriate one needs to be selected.
- The transport document number should be indicated. It includes goods receipt number, railway receipt number, airway bill number.

## **How to Generate eWay Bill?**

An E-Way Bill (EWB) is an 'electronic way' bill for movement of goods which can be generated on the E-Way Bill Portal. Any supplier or a transporter transporting goods with a value of more than Rs.50,000 (Single Invoice/bill/delivery challan) in a single vehicle should carry a GST e-way bill as per the GST Council regulations. The supplier or the transporter of the goods must register with GST to obtain GST E-Way bill. This bill shall come into effect from 1st April 2018.

After generating the E-Way bill on the portal using required credentials, the portal generates a unique E-Way Bill Number (EBN) and allocates to the registered supplier, recipient, and the transporter. In this article, we look at the steps to generate a e-way bill on the Government website.

The supplier or the transporter can create the E-way bill through the following ways:

- LEDGERS Software,
- E-Way bill portal
- SMS,
- Android App and through,
- Site-to-Site Integration (through API).

Steps to generate e-Way Bill on the e-Way Bill portal

E-way bill can be generated on the GST E-Way Portal. To use the portal, you will need a GST registration and transporter registration.

Setp 1: Access the E-Way bill generation portal at <https://ewaybill.nic.in/> and enter the login detail to enter the platform.

Setp 2: Click on the “Generate New” option from the E-Way bill- Main menu page to create a new E-Way bill.

e-way Bill Generate Online

Setp 3: A new EWB bill generation form appears. Fill in the details required similar to creating a GST invoice.

Select outward, if you are the supplier and inward, if you are the recipient. Enter details of the supplier and recipient along with GSTIN, wherever applicable.

When a registered GSTIN is entered in the field provided in the form, other details gets pulled into the empty fields. Before proceeding to the next step kindly check the details.

Enter Goods Description

Setp 4: The second half of the page will contain information to be filled as follows:

- Product Name and Description must be completed similar to a tax invoice.
- HSN Code for the Product must be entered. [Click here to find HSN code.](#)
- Quantity and Unit of the goods.
- Value of the products along with Tax rate.
- IGST or CGST Rates applicable. IGST would be applicable for inter-state transport and SGST / CGST for intra-state transport.
- Approximate distance of transport along with Transporter Name and Transporter ID.

This shall determine the validity of the E-Way bill.

Setp 5: Generate E-way bill

After filling all the necessary details, click on the “SUBMIT” button to create the EWB. The Portal shall display the E-Way bill containing the E-Way Bill number and the QR Code that contains all the details in the digital format. The printed copy of the bill should be provided to the transporter who will carry it throughout the trip till it is being handed over to the consignee.

Setp 6: Consolidate E-way Bill Generation



A consolidated EWB can also be created which contains all the details on the transaction and is also easy to create it by providing just the ‘E-Way bill number’ in the required field. Click on “SUBMIT” to generate the consolidated EWB.

An E-Way bill can be updated once it is created. Details on the transporter, consignment, consignor and also the GSTIN of both the parties can be updated in the existing E-Way bill provided the bill is not due on its validity.

eway bill validity

What is the minimum distance required for E-way bill?

The significant amendment made effective vide notification no. 12/2018- Central tax dated 7th March 2018 changes in the validity period of E-way bill. The new validity period provisions of the E-way bill are tabulated here:

<b>Type of Conveyance</b>	<b>Distance</b>	<b>E-way bill</b>
Other than Over dimensional cargo	Less than 100 km	1 day
	For every additional 100 km and thereof	Additional 1 day
For Over dimensional cargo	Up to 20 km	1 day
	For every additional 20 km and thereof	Additional 1 day

The relevant date on which the E-way bill has been generated and the period of validity would be counted from the time at which the E-way bill has been generated, and each day would be counted as the period expiring at midnight of the day immediately following the date of generation of the E-way bill.

'Over Dimensional Cargo' is a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules,1989, made under the Motor Vehicles Act,1988 (59 of 1988).

#### SMS E-Way Bill Generation on Mobile

SMS e-way bill generation is ideal for entities with limited transactions, as it would be prudent to use other methods in case of higher volume.

SMS e-way bill generation facility can also be used by taxpayers in case of emergencies such as during the night or while involved in travelling in a vehicle.

#### Enabling SMS E-Way Bill Generate Facility

Before starting to transact, the taxpayer must first register his/her mobile number on the GST e-way bill portal. The system only enables and responds to mobile number registered on the portal for a particular GSTIN.

Once user selects option 'for SMS' under main option 'Registration', following screen is displayed.

The user must enter the mobile number and complete the OTP to register the mobile number.

In the next screen the mobile number registered with the GSTIN is displayed. The user can use this screen for delinking or changing the mobile number, if required.

#### Step 1: Access to Portal

The taxpayer or the transporter must open the e-way bill portal and log in using his/her credentials.

#### Step 1: Register Mobile Number

Enable the SMS e-way bill facility by following the below shown above. Once validation is complete and the mobile number is registered, you are ready to generate e-way bill using SMS.

#### Cases When E-Way Bill is Exempted or Not Required

When the below-mentioned goods are being transported E-way bill is not required :

- Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers;
- Kerosene oil sold under PDS;
- Postal baggage transported by Department of Posts;
- Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71);
- Jewelry, goldsmiths and silversmiths wares and other articles (Chapter 71);
- Currency;
- Used personal and household effects;
- Coral, unworked (0508) and worked coral (9601)

In case of Transport of goods from customs port, airport, air cargo complex, and land customs station to an inland container depot or a container freight station for clearance by Customs, E-way bill is not required.

When a non-motorized conveyance is transporting goods, E-way bill generation is not required.

When following goods are being transported, the e-way bill is not required to be generated;

- Alcoholic liquor for human consumption
- Petroleum crude

- High-speed diesel
- Motor spirit (commonly known as petrol)
- Natural gas,
- Aviation turbine fuel
- When there is no supply as per provisions in Schedule III of the Act, an E-way bill is not required.

E-way bill is not required to be generated when the goods are being transported—

- Under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex, and land customs station, or one customs station or customs port to another customs station or customs port, or
- Under customs supervision or customs seal;
- Where the goods being transported are transit cargo from or to Nepal or Bhutan;
- Where the goods being transported are exempt from tax under various notifications;
- When Central Government, State Government, or a local authority acting as a consignor undertakes the Transport of goods by rail, no E-way bill is required.
- When goods movement has been caused by defense formation under the Ministry of defense as consignor or consignee, no E-way bill is required.
- No E-way bill is required in case of Transport of empty cargo containers.
- In case goods are being transported for weighing purposes and the distance is not more than 20 Kms from the place of the consignor's business to the weighbridge or vice versa, E-way bill generation is not required. However, the movement of goods must be accompanied by a delivery challan.

- When goods specified in the schedule appended to notification no, 2/2017-Central Tax (Rate) dated 28.06.2017 is being transported, other than de-oiled cake, then in such case, e-way Bill is not required to be generated.

### **What is Zero Rated Supply?**

Under GST, there are supplies which are specifically exempted from tax. When the final product is exempt from tax, tax laws do not allow utilisation of tax credit available on the inputs and input services used in the supply of these exempted products. That means, the entire supply chain is not exempted, and the tax paid on inputs becomes the cost of the supplier. To benefit the taxpayers in these scenarios, the concept of Zero-Rating has been introduced in the GST act. The objective of the government in introducing a category called Zero-Rated Supply was to make both, the input used as well as the output produced tax-free. In this article, we will help you understand what is zero rated supply under GST:

### **Zero-Rated supply in GST?**

Zero-rated supply under GST with example: The 'Zero-Rating concept makes the entire supply chain of a particular supply tax-free. That means, there is no tax either on the inputs/input services used or on the output. This is in contrast with exempted supplies, where only the output is exempted from tax, but tax is levied on the inputs used. As per Section 16(1) of the IGST Act, 2017, Zero-Rated supplies are those supplies (goods or services or both) which are:

- Exported or
- Supplied to a Special Economic Zone (SEZ), Special Economic Zone developer or a Special Economic Zone unit.

by registered dealers. That also means these supplies attract GST of 0%. Now, you understand what is zero rated supply in GST.

#### Refunds And Zero Rated Supplies GST

The zero rated supply under GST law allows taxpayers to:

- Claim refunds for taxes paid on the zero-rated supplies.
- Claim credit of tax paid on inputs/input services used in these supplies
- Claim refund of the unutilised input tax credit when the supplies are exempted, or the supplies are made without payment of tax, but taxes are paid on the inputs or input services used.

A registered person making zero-rated supply under GST can claim a refund under either of the following options:

- He/she can supply goods or services or both under a bond or Letter of Undertaking (LoU) without the payment of integrated tax (IGST) and claim a refund of the unutilised input tax credit
- He/she can supply goods or services or both and claim a refund of the integrated tax (IGST) paid.

That means, the taxpayers have an option not to pay IGST and claim a refund of the unutilised ITC or pay IGST and claim a refund of the same.

#### **Refund Procedures For Export Of Goods**

The regular refund application (GST RFD-01) is not applicable in this case. For export of goods, there is no need of filing a separate refund claim as the shipping bill filed by the exporter is deemed to be an application for refund of integrated tax paid on the goods exported. This application shall be considered to be filed only when:

- The person in charge of the conveyance carrying the export goods files an export manifest or an export report with details of the number and the date of shipping bills or bills of export;

- The applicant has filed GSTR-1 and GSTR-3B appropriately.

Once these documents are filed, the refund will be processed by the department, and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export will be electronically transferred to the bank account of the applicant.

#### Refund Procedures For Supplies To SEZ

To claim refunds for tax paid on supplies made to SEZ, the suppliers will have to file a refund claim in form GST RFD-01 on the common portal. However, in case of service providers, along with the claim form, these documents also have to be attached:

- Statement containing the number and date of invoices and
- Bank Realisation Certificates or Foreign Inward Remittance Certificates.

When a refund is on account of supplies made to SEZ, the DTA supplier will have to file the refund claim. In case supplies are made to an SEZ unit/developer, the refund claim can be filed by the:

- Supplier of goods after all goods are admitted in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- Supplier of services along with evidence regarding the receipt of services for authorised operations as endorsed by the specified officer of the Zone.

The documents that need to be submitted along with the claim form are:

- Statement containing the number and date of invoices along with the proof regarding the endorsement,
- Details of payment made by the recipient to the supplier, along with the proof of payment,

- Declaration that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier.

#### Provisional Refund

Taxpayers making Zero-Rated supplies are entitled to a provisional refund of 90% on the claim. This Provisional refund will be granted within seven (7) days from the date of acknowledgement of the refund claim. The amount will be credited to the claimant's bank account digitally. The order for the provisional refund is issued in Form GST RFD 04 along with the payment advice in the name of the claimant in Form GST RFD 05. However, the provisional refund will not be granted if the person claiming the refund has been prosecuted for any offence under the Act or any law in force (where the amount of tax evaded exceeds INR 2.5 crores), in the preceding five (5) years.



## **Unit – V – Customs Laws in India**

### **Customs Duty**

Goods are imported in or exported from India through sea, air or land. Goods may even come through post parcel or as baggage when passengers travel in and out of the country. The Customs Act was formulated in the year 1962 to prevent the illegal import and export of goods. Moreover, all imported goods are subject to the duty to affording protection to indigenous industries as well as to keep the imports to a minimum in the interests of Indian companies and to secure the exchange rate of the Indian currency. In this article, we look at customs duty in India in detail.

### **Objective of Customs Act and Customs Duty**

The following purposes are the reason why Customs Duty is levied on the import and export of goods in India.

1. To restrict the imports for conserving foreign exchange.
2. To protect the imports and exports of goods for achieving the policy objectives of the Government.
3. To regulate export
4. To co-ordinating legal provisions with other laws dealing with the foreign exchange such as the Foreign Trade Act and the Foreign Exchange Regulation Act.
5. To safeguard domestic trade.
6. To protect the revenue of resources.
7. To protect the industries in India from unfair competition.
8. To prevent the smuggling of goods and activities related to the same.
9. To prevent the dumping of goods.

### **Types of Customs Duty in India**

The different types of duties of customs collected are as follows.

1. Basic Custom Duty
2. Surcharge

3. Additional duty of customs
4. Special Additional duties
5. Other levies like Countervailing duty, Anti-dumping duty, Safeguard duty and so on.

Also, cess duty is leviable of certain goods.

### **Mode of Levy of Customs Duty**

They are three modes of imposing Customs Duty. They are as follows:

#### **Specific Duties**

A Specific Custom Duty is a kind of duty imposed on every unit of a commodity imported or exported. For example, INR 10 on each metre of cloth imported or INR 1,000/- on each TV set imported. In these cases, the value of the commodity is not taken into consideration.

#### **Ad Valorem Duties**

Ad Valorem is the Latin for 'According' to the 'Value' or 'Worth'. Ad Valorem custom duty is a duty imposed on the total value of a commodity imported or exported. For example, 10 per cent of the F.O.B value of cloth imported or 20 per cent of the C.I.F value of TV sets imported. In the case of Ad Valorem custom duty, the physical units of commodity are not taken into consideration. Therefore it is the method of charging duty, tax, or fee according to the value of the goods and services, instead of by a fixed rate, or by the weight or the quantity.

#### **Compound Duties**

Compound custom duty is a combination of specific and Ad Valorem custom duties. In this case, the quantity, as well as the value of the commodity, is taken into consideration while computing tariff.

#### **Exemptions from Customs Duty**

There are a few exemptions from Customs duty, and they are as follows.

- The Central Government can grant exemptions by issuing a notification. Capital goods and spares can be imported under "project imports" at concessional/ Nil rate of customs duty.

- Section 25 of the Customs Act authorises the Central Government to issue notification granting exemption from customs duty partially or wholly on any goods.
- The exemptions may be in respect of primary duty or auxiliary duty.
- General or specific exemptions may be granted. While general exemptions are in respect to the user of goods, specific exemptions are in respect of various products.
- The exemptions are also granted subject to fulfilment of certain conditions.

### **Types of Exemptions**

The following are the types of exemptions from Customs Duty.

1. By notification
2. By particular order on the Adhoc basis
3. General exemptions
4. Exemptions to Oil and Natural Gas Corporations Limited (ONGC)/ Oil India Limited (OIL)
5. Other exemptions

### **“Customs Duty Drawbacks”**

“Drawbacks” about any goods manufactured in India and exported has either of the following meanings.

1. Rebate of duty chargeable.
2. Rebate of duty of excise.
3. A drawback is equal to the Customs duty paid on imported inputs and the Excise duty paid on indigenous inputs.

### **Value of the Customs Act**

Customs Duty is an amount that is payable as a percentage of ‘value’ often called as ‘Assessable Value’ or Customs Value. Sections 14(1) provides the following criteria for deciding ‘value’ for Customs Duty.

1. Price at which such or like goods are ordinarily sold or offered for sale.

2. Price for the delivery at the time and place for importation or exportation.
3. Price should be in the course of International Trade.
4. Seller and buyer have absolutely no interest in the business of each other, or one of them has no interest in the other.
5. Price should be sole considerations for sale or offer for sale.
6. The rate of exchange as appropriate on the date of presentation of Bill of Entry as fixed by CBE&C (Board) by Notification should be considered. This criterion is entirely appropriate for valuing export goods. However, in the case of import goods valuation is required to be done according to valuation rules as stated in Chapter 6 Para 5 of the CBE & C's Customs Manual, 2001.

### **Scope and Coverage of Customs Law**

Customs Law in India is covered under many Acts, rules, regulations and notifications. Some of the essential laws concerning Customs Duty has been mentioned below.

#### **The Customs Act of 1962**

The Customs Act of 1962 is the most crucial Act that provides for the implementation and collection of duty on goods imported and exported in the country. This Act also deals with the Import and Export procedures, Prohibitions on importation and exportation of goods, penalties, offences and much more.

#### **The Customs Tariff Act of 1975**

The Customs Tariff Act of 1975 contains two schedules. Schedule-1 gives the classification and rate of duties for imports. On the other hand, Schedule-2 gave classification and rated of duties for exports. In addition to these two schedules, the Customs Tariff Act makes provisions for duties like additional duty (CVD), special duty, anti-dumping duty and protective duties.

Note: The Customs Act of 1962 regulates the levy of duties of customs while the Customs Tariff Act of 1975 fixes the rates of the taxes.

## **Rules under the Customs Act**

The Section 156 of the Customs Act of 1962 states that the Central Government has been empowered to make regulations that are consistent with the provisions of the Act and to carry out the main purposes of the Act. Multiple rules have been framed under these powers. The principal rules of this Act have been mentioned below.

1. The Customs Valuation Rules of 1988: For the valuation of imported goods for calculating duty payable.
2. The Customs and Central Excise Duties Drawback Rules of 1995: The mode of calculating rules of duty drawback on exports.
3. Re-export of Imported Goods
4. Baggage Rules of 1998: This stated the rules and allowances for bringing in baggage from abroad by Indian and tourists who visited the country. Duty-free baggage allowance carried by an international passenger, when coming to India is INR 50,000/- per individual. Before the 31st of March, 2016, the amount was INR 45,000/-. With effect from the First of April, 2016, all international passengers travelling to India need not file declarations if not carrying dutiable goods as part of the baggage they bring along with them.
5. Customs Rules of 1996: This states the import of goods at a concessional rate of duty for manufacture of excisable goods. It also provides the procedure to be followed when goods are imported into India for export purposes.

## **Regulations under the Customs Act**

Under Section 157 of Customs Act of 1962, the Board has the authority to make rules that are consistent with provisions of the Act to carry out the purposes of the Act. Various regulations have been framed under these powers such as the ones stated below.

1. Project Import Regulations of 1986: Procedures for project imports

## 2. Customs House Agents Licensing Regulations of 1984

### Other Specifics

#### Notifications under the Customs Act

Various sections authorise the Central Government to issue notifications. The main sections have been stated below.

1. Section 25(1): This section is to grant partial or full exemption from the duty, and Section 11 states the prohibition of import or export of goods.
2. Other sections are: A few of the other sections are ones like Section 11B that specifies notified goods and Section 11-I that determines specific goods.

### **CUSTOM ACT, 1962**

#### **1. LEVY OF CUSTOMS DUTY**

Customs Act applies to the whole of India and also to any offence or contravention under the Customs Act committed outside India by any person.

Customs duty is levied on imports into or exports from India vide Section 12 of the Customs Act, 1962 (hereinafter referred to as the 'Customs Act') at the rates prescribed under the Customs Tariff Act, 1975 read with the relevant exemption notification/s.

Import<sup>[[1]]</sup> is defined as '*import, with its grammatical variations and cognate expressions, means bringing into India from a place outside India*'. In the landmark decision of *Kiran Spinning Mills v. C. C. 1999 (113) ELT 753 (SC)*, Hon'ble Supreme Court held that import gets completed only when the goods cross Customs barriers and that is the time when import duty has to be paid.

Export<sup>[[2]]</sup> is defined as '*Export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India*'. Export means taking goods to a place outside India and such place would include high seas as held in case of *Collector of Customs, Calcutta vs. Sun*

*Industries 1988 (35) ELT 241 (SC)*. It would be pertinent to note that export duties are applicable to a handful of commodities.

In general parlance, the term ‘India’ under customs law extends upto territorial waters of India. However, designated areas<sup>[3]</sup> in Continental Shelf and Exclusive Economic Zone are also declared as part of Indian territory for limited purpose. In the case of *Aban Loyd Chiles Offshore Limited and another v. Union of India and Ors. 2008 (227) ELT 24 (SC)*, it was held that Customs Act and Customs Tariff Act are extended to “designated areas” in Continental Shelf and Exclusive Economic Zone. Hence, taking goods from India to such designated areas may not be treated as ‘export’ under Customs Law. Similarly, bring goods from such designated area to India may not be treated as ‘import’ under Customs Law.

## 2. TYPES OF DUTIES

The Customs Tariff Act, 1975 (hereinafter referred to as the ‘Customs Tariff Act’) specifies the rate of customs duty. The various types of customs duties are:

Type of Duty	Applicability
Basic Customs Duty (BCD)	Applicable on all imports except exempted goods
Integrated Goods and Services tax (IGST)	This duty is levied to countervail the effect of GST in India and is leviable at the rate that is applicable on the supply of like article in India as per the provisions of IGST Act, 2017.
Goods and Services Tax Compensation Cess	This duty is levied to countervail the effect of GST Compensation Cess in India and is leviable at the rate as per the provisions of GST (Compensation to States) Cess Act, 2017 on supply of like article in India.

Antidumping / Protective / Safeguard Duty / Countervailing duty/ Special Additional Customs Duty (SAD)	With effect from 01 July 2017, post implementation of GST, Countervailing duty (CVD) and Special Additional Customs Duty (SAD) was made applicable only to those goods which on liable to central excise duty/VAT. These duties <sup>[[4]]</sup> are imposed to protect the interest of domestic industries
Social Welfare Surcharge (SWS)	With an object to provide and finance education, health and social security, SWS is levied @ 10% on import of goods except specified goods which are granted exemption from SWS
Cesses	<ul style="list-style-type: none"> <li>• Road and Infrastructure Cess<sup>[[5]]</sup> is applicable on Petrol &amp; HSD Oil for financing infrastructure projects at the rate of Rs. 18/- per litre.</li> <li>• Health Cess<sup>[[6]]</sup> is applicable at the rate of 5% on specified medical items.</li> <li>• Agriculture and Infrastructure Development Cess (AIDC<sup>[[7]]</sup>) was introduced vide Finance Act, 2021 for the purpose of financing the agriculture infrastructure and other development expenditure. Such cess is applicable on certain specified goods such as apple, chickpeas, lentils, coals, urea, etc.</li> </ul>

An example explaining the structure of customs duties on imports in India is provided hereunder:

Particulars	Denoted	Amount in Rs.
Cost of imported goods	A	100.00



Add: Basic Customs Duty (Assumed @ 7.5%) (7.5% on A)	B	<u>7.50</u>
	C	107.50
Add: Agriculture Infrastructure Development Cess (Assumed @ 7.5%) (7.5% on A)	D	<u>7.50</u>
	E	115.00
Add: Social Welfare Surcharge <sup>[8]</sup> @ 10% [10%*(B+D)]	F	<u>1.50</u>
	G	116.50
Add: IGST (Assumed @ 18%) (18%*G)	H	<u>20.97</u>
	I	137.47
Add: GST Compensation Cess (Assumed @ 15%) (15% on G)	J	<u>17.48</u>
Total cost of imported goods		154.95
Effective Customs Duty (B + D + F + H + J)		54.95
Note: Please note that IGST and GST compensation cess would be available as input tax credit under GST Laws subject to fulfillment of prescribed conditions.		

### 3. CLASSIFICATION OF GOODS UNDER THE CUSTOMS TARIFF ACT

The Customs Tariff Act, 1975 has been aligned to a great extent with Harmonized System of Nomenclature (HSN) developed by the World Customs Organisation (WCO). Section 2 of the Customs Tariff Act provides that the custom duty shall be levied at the rates specified in the schedules to the Customs Tariff Act read with exemption notifications, if any. Therefore, on the basis of classification of a product, the rate of duty is determined. Consequently, this becomes a crucial factor while examining Customs implication on any transaction. Further, in this dynamic World, in view of countless products and business models, classification is an exercise in itself.

With introduction of GST, classification of goods has become all the more important as 4-digit classification as per Customs is adopted for classification under GST. Further, even the classification rules of Customs are adopted for GST purposes.

There are two schedules to Customs Tariff Act viz:

- First Schedule: Rate of BCD on import of goods
- Second Schedule: Rate of customs duty on export of goods.

The first schedule is divided in 21 sections. These sections contain 98 Chapters in all. Each chapter is divided into headings, sub-headings, tariff heading. India has adopted 8-digit classification Scheme which is outlined as follows:

Particulars	Description	Example
Section	Broad category	Textile & Textile Articles
Chapter	Specific description – First 2 Digits	Articles of apparel and clothing accessories, knitted or crocheted
Heading	Next 2 Digits	Men’s or boy’s shirts, knitted or crocheted
Sub-heading	Next 2 Digits	Of Cotton
Tariff heading/item	Next 2 Digits	Shirts, hand crocheted

The interpretation of the Tariff schedule is strictly governed by six "Interpretative Rules" incorporated in First Schedule itself which are explained in brief hereunder:

Rule	Description
1	Titles of Sections, Chapters etc. are only for ease of reference. Legally, classification is governed as per terms of the Heading, Section, Section Notes and Chapter notes

2	<p>(a) Incomplete, unfinished or unassembled article having essential character of the complete, finished or assembled article respectively shall be classified as complete, finished or assembled article</p> <p>(b) Reference to any article in an entry includes mixtures or combinations</p>
3	<p>(a) If goods are <i>prima facie</i> classifiable under 2 or more headings, most <u>specific description</u> shall be preferred <u>over general</u></p> <p>(b) Mixtures, composite goods, goods put up in sets for retail sale which cannot be classified as per Rule 3(a), shall be classified as per the essential character</p> <p>(c) If goods cannot be classified as per Rule 3(a) and Rule 3(b), it shall be classified under the heading which occurs last in numeric order</p>
4	<p>If goods cannot be classified under above Rules, classification needs to be done under heading appropriate to goods which are most <u>akin</u></p>
5	<p>(a) Specially shaped containers for long term use to be classified with the primary article except containers having essential character</p> <p>(b) Subject to Rule 5 (a) above, packing material and packing containers if are normally used for packing such goods, shall be classified along with those goods except if such packing material or container is suitable for repetitive use</p>
6	<p>When more than one entry is available for classification in a heading, sub-headings of same level should be compared</p>

The above rules have to be resorted to understand the manner of classification of any goods in any chapter heading or sub-heading. Further, certain non-statutory principles developed by Courts are trade parlance, dictionary meanings, meanings under other Acts, expert opinions, ISI

specifications, CBIC Circulars, HSN explanatory notes published by World Customs Organization etc.

#### 4. DATE FOR DETERMINING RATE OF DUTY AND VALUATION

Import of goods

The rate of duty and tariff valuation is as applicable on relevant dates<sup>[9]</sup> which is summarized in below mentioned table:

Situations	Relevant Date
Goods cleared directly for home consumption	Date of presentation of bill of entry (BOE)
Goods cleared from warehouse for home consumption	Date of presentation of bill of entry for home consumption (popularly known as 'ex-bond BOE')
Any other case	Date of payment of duty

Notes:

- After arrival of the aircraft, vessel or vehicle at the Customs Station, BOE shall be presented by end of the day (including holidays) preceding the day of such arrival. Importer has an option to file BOE upto 30 days advance from expected date of arrival of aircraft, vessel or vehicle (Section 46 of Customs Act, 1962)
- In case BOE is presented before date of entry inward or arrival of the aircraft, vessel or vehicle; 'relevant date' for the above table shall be deemed to be the date of entry inward or arrival.

## Export of goods

The rate of duty and tariff valuation shall be as applicable on relevant dates<sup>[[10]]</sup> as specified in below mentioned table:

Situations	Relevant Date
Goods entered for export under Shipping Bill/Bill of Export	Date of issuance of 'Let Export Order'
Foreign post office	Date on which exporter delivers such goods to Postal Authorities for exportation
Any other case	Date of payment of duty

Please note: Separate rules are prescribed for baggage and post and above general are not applicable to baggage and post.

### 5. VALUATION OF GOODS

Section 14 of the Customs Act provides that the value of imported goods or exported goods shall be the transaction value i.e. 'price paid or price payable' for the goods sold for delivery at the time of importation or exportation, where the buyer and seller are not related, and the price is the sole consideration for sale. The term 'related person' is defined<sup>[[11]]</sup> as follows:

*For the purpose of these rules, persons shall be deemed to be 'related' only if:*

- *They are officers or directors of one another's businesses;*
- *They are legally recognized partners in business;*
- *They are employer and employee;*

- *Any person directly or indirectly owns controls or holds five percent or more of the outstanding voting stock or shares of both of them;*
- *One of them directly or indirectly controls the other;*
- *Both of them are directly or indirectly controlled by a third person;*
- *Together they directly or indirectly control a third person; or*
- *They are the members of the same family*
- Sole agent or sole distributor or sole concessionaire associated with any person shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Further, the price shall be calculated with reference to the rate of exchange as in force on the date on which BOE for home consumption or Shipping Bill or Bill of Export are presented.

If the value cannot be determined under Section 14 of Customs Act, the importer has to resort to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as 'Import Valuation Rules') or Customs Valuation (Determination of Value of Export Goods) Rules, 2007 (hereinafter referred to as 'Export Valuation Rules') to determine value of goods.

#### A. Import Valuation Rules

In case, the value cannot be determined under Section 14 of the Customs Act, 1962, the value shall be determined on the basis of provisions contained in Customs Valuation (Determination of value of imported goods) Rules, 2007.

Transaction value (TV) in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the

place of importation, insurance, loading, unloading and handling charges as prescribed in the rules:

### Rule 3: Determination of the method of Valuation:

Transaction value shall be accepted provided all the following criteria are met:

- There is no restriction on disposition or use of goods by the buyer, except restriction imposed by any statutory provisions or limiting the geographical area or restriction does not substantially affect the value of the goods
- The sale or price is not subject to some conditions or consideration for which a value cannot be determined
- No part of proceeds of any subsequent re-sale, disposal or use accrues directly or indirectly to the seller unless adjustable under Rule 10
- Buyer and seller are not related.

Where the buyer and seller are related person, the value shall be accepted provided the examination of the circumstances indicate that the relation did not influence the price. The interpretative notes provide that if the price is determined in a manner which is consistent with normal pricing practice of the industry or consistent with the sales to unrelated buyers or price is adequate to ensure recovery of all cost plus profit which is representative of seller's overall profits realized over a representative period of time for same class of goods.

If the value of imported goods cannot be determined under Rule 3, value shall be determined by applying following rules (Rule 4 to 9) sequentially:

### Rule 4: Transaction value of Identical Goods

Transaction value of identical goods:

- imported at or about the same time
- at the same commercial level and same quantity; or
- otherwise appropriate adjustments of value of goods in terms of commercial level and quantity.

#### Rule 5: Transaction value of similar goods

The value of similar goods:

- imported or exported at or about the same time
- at the same commercial level and same quantity; or
- Otherwise appropriate adjustments of value of goods in terms of commercial level and quantity

#### Rule 6: Determination of value when cannot be determined under Rule 3,4 and 5

If value cannot be determined under Rule 3,4 and 5, it has to be determined as per Rule 7 or Rule 8 respectively.

However, at the request of the importer and with the approval of proper officer, order of application of Rules 7 and 8 can be reversed.

#### Rule 7: Deductive Value

The value of imported goods or of identical or similar goods shall be based on the unit price at which imported goods or identical goods or similar goods are sold at or about the same time (if not available then at the earliest date after importation but before 90 days after such importation) in greatest aggregate quantity to unrelated persons, subject to the following deductions:

- Commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind



- Usual cost of transport and insurance and associated costs incurred within India
- The customs duties and other taxes payable in India by reason of importation or sale of the goods

#### Rule 8: Computed Value

The value of imported goods based on a computed value shall be sum of:

- Cost or value of materials and fabrication or other processing employed in producing the imported goods
- Amount of profit and general expenses equal to that usually reflected in sale the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India
- The cost or value of all other expenses under sub-rule (2) of Rule 10

#### Rule 9: Residual Method

If the value cannot be determined based on the above rules, it shall be determined by applying reasonable means consistent with the principles and general provisions of these rules and on the basis of available data.

#### Rule 10: Cost and Services

The adjustments shall be made for the following cost and services:

- Expenses incurred by the buyer, but not included in the value of imported goods, namely:
  - Commissions and brokerage, except buying commissions;
  - Cost of containers;
  - Cost of packing (whether for labour or materials);

- The following goods or services supplied by the buyer free of charge or at reduced price for use in connection with production and sale for export of imported goods namely:
  - Materials, components, parts and similar items incorporated in the imported goods;
  - Tools, dies, moulds and similar items used in the production of the imported goods;
  - Materials consumed in the production of the imported goods;
  - Engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;
- Royalties and license fees related to the imported goods that the buyer is required to pay, as a condition of sale of goods being valued.
- The value of any part of the proceeds of any subsequent resale, disposal or use of imported goods
- All other payments actually made or to be made as a condition of sale of imported goods by buyer to seller or to third party to satisfy obligation of the seller.

The transaction value shall include the following:

- The cost of transport, loading, unloading and handling charges upto the place of importation
- The cost of insurance upto the place of importation

Situations where transportation or insurance cost are not ascertainable:

	FOB value ascertainable	Transportation cost shall be taken as
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Transportation cost		20% of the FOB value of the goods
not ascertainable	FOB value not ascertainable but sum of FOB value of goods and cost of insurance is ascertainable	Transportation cost shall be taken as 20% of sum of FOB value of goods and cost of insurance
Insurance cost	FOB value ascertainable	Insurance cost shall be taken as 1.125% of FOB value of goods
not ascertainable	FOB value not ascertainable but sum of FOB value of goods and cost of insurance is ascertainable	Insurance cost shall be taken as 1.125% of sum of FOB value of goods and cost of insurance

In case of import of goods by air even if the cost is ascertainable, such cost shall not exceed 20% of FOB value of goods

In case goods are imported by sea or air and trans shipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such trans shipment shall be excluded.

#### Rule 11: Valuation declaration

Importer or his agent shall furnish declaration disclosing full and accurate details relating to the value of imported goods; any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer

#### Rule 12: Rejection of declared transaction value

If Customs authorities have reason to doubt the truth or accuracy of the declared value in terms of these Rules, the valuation shall be carried out by other methods

## Rule 13: Interpretative Notes

Interpretative notes to be used for interpretation of these Rules (Schedule providing interpretative notes for interpretation of above Rules above is provided with these Rules)

### B. Special valuation branch

The Special Valuation Branch ("SVB") is a unit of the Indian custom authorities that investigates valuation of goods during imports between related parties. A special relationship between an Indian importer and a foreign supplier may impact the transaction price of the import and thereby affect the customs duty imposed on such transaction. SVB's function is precisely to examine the impact of such relationship on the invoice value of the imported goods.

### C. Export Valuation Rules

In case, the value cannot be determined under Section 14 of the Customs Act, the value shall be determined on the basis of provisions contained in Customs Valuation (Determination of value of export goods) Rules, 2007.

Rules	Description
3	Conditions for acceptance of transaction value (TV): The value of export of goods shall be transaction value subject to Rule 8. Transaction value shall be accepted even where parties in transaction are related persons provided such relationship has not influenced the transaction value. However, where the transaction value has been influenced or price is not sole consideration, the assessable value shall be determined in accordance with Rule 4 to 6 sequentially
4	Determination of export value by comparison: The value of the export goods shall be based on the transaction value of goods of like

	kind and quality exported at or about the same time to other buyers in the same destination country of import or in its absence another destination country of import with adjustment
5	Computed Value: Value shall be computed on the basis of shall include cost of production, charges for design or brand and amount towards profit
6	Best Judged Value/Residual method: In case of failure to determine value as per above Rules, residual method shall be applied using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods
7	Valuation declaration: Exporter shall furnish a declaration relating to the value of export of goods in the manner as prescribed in this behalf
8	Rejection of declared TV: If proper officer has reason to doubt the truth and accuracy of the value declared, best judgment assessment shall be done as laid down in this Rule

## 6. IMPORT PROCEDURE

The goods may be imported in or exported from India through sea, air, land, by post or as a baggage. The procedure may vary depending on the mode of import or export. Normally, import procedures have to be followed by both: the person-in-charge of conveyance as well as the importer.

### A. Procedure for person-in-charge of conveyance

The person-in-charge of a vessel or an aircraft or a vehicle carrying<sup>[[12]]</sup> imported goods or any other notified person shall present electronically to the proper officer an Import Manifest or Import Report within the following time limits:

- in the case of a vessel or an aircraft, prior to arrival of the vessel or the aircraft, and
- in the case of a vehicle, within 12 hours after its arrival in the customs station.

Section 30A of Customs Act provides that person-in-charge of conveyance or any other notified person should deliver to proper officer the following:

- passenger and crew arrival manifest. Such manifest is to be given before arrival for aircrafts and vessels and upon arrival for vehicles.
- Passenger name record information<sup>[[13]]</sup> of arriving passenger.

In case of default, penalty upto Rs. 50,000/- can be levied on the person-in-charge. However, in cases where it is not feasible for the importer to deliver the import manifest electronically, the Principal Commissioner of Customs or Commissioner of Customs may allow the same to be delivered in any other manner.

#### B. Procedure for person-in-charge of conveyance

Earlier, the term 'importer' was defined to include any owner or any person holding himself to be importer. However, the Finance Act, 2017 has amended this definition to include beneficial owner also. Beneficial owner is defined under section 2(3A) of the Customs Act as the person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported. Hence, the beneficial owner will also have to follow the procedure of import. An importer is required to file Bill of Entry to clear the imported goods from Customs Area. The procedure is discussed in the following paras:

- Time period for submission of bill of entry

Bill of entry (BOE) shall be presented before the end of day (including holidays) preceding the day of arrival of the aircraft, vessel or vehicle at the customs station. However, the importer has option to file advanced BOE, 30 days prior to the expected arrival date of the aircraft, vessel or vehicle. (Section 46 of the Customs Act).

The provision further provides for imposition of charges for delay in presentation of bill of entry without sufficient cause.

- Manner of filing of Bill of Entry

The importer is required to submit necessary details like the description of the product, name of the supplier, invoice number, bill of lading number, quantity of goods, classification, rate per unit, PAN and GSTIN of the importer, IGST, Compensation as may be applicable on goods imported, etc. in order to generate the bill of entries in EDI (Electronic Data Interchange system).

The information in the bill of entry would be reconciled with the GST returns. Consequently, the details furnished in Bill of Entry shall be appropriately disclosed in GST returns so as to avail benefit of refund of GST.

- Self-assessment<sup>[14]</sup>

The duties of customs is self-assessed and paid by the importer or exporter of goods. The proper officer may verify such self-assessment made by the assessee and for this purpose, he may examine or test such imported and exported goods and also require assessee to produce documents or information to ascertain duty leviable on such import of export of goods.

If on the basis of this record, the proper Officer is of the opinion that self-assessment is not proper, he may re-assess the goods. In case re-assessment is contrary to self-assessment or there is non-acceptance of such re-assessment by the assessee, proper officer has to pass a speaking

Order of re-assessment within 15 days from the date of re-assessment of bill of entry or shipping bill.

- Payment of duty

Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person using authorised mode of payment shall be credited to the electronic cash ledger <sup>[[15]]</sup> of such person subject to specified conditions.

The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of Customs Act, 1962 or under the Customs Tariff Act, 1975.

The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

Electronic duty credit ledger was implemented vide Finance Act, 2020. Duty credit scrip will be issued in lieu of remission of duty, tax and other financial benefits, subject to certain conditions and restrictions. Duty credit available in duty credit ledger can be used towards payment of duties under Customs Act, 1962 or Customs Tariff Act, 1975. A person can also transfer duty credit to ledger of another person, subject to certain conditions and restrictions.

The customs duty should be discharged in following manner <sup>[[16]]</sup>:

- *on the date of presentation of the bill of entry in the case of self-assessment; or*
- *within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or*
- *in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf.*



Failure to pay duty as specified above can attract interest as per the rate notified by the Government.

- Warehousing

- The Principal Commissioner of Customs or Commissioner of Customs, subject to prescribed conditions, can issue license for public/ private warehouse<sup>[[17]]</sup> including license for EOU/STP/EHTP at the place proposed by the applicant. A separate license under Section 58A of Customs Act may be granted for special warehouse wherein dutiable goods can be deposited. This warehouse shall be locked by proper officer. The entry and removal of any goods shall be with the permission of proper officer.
- The violation of any provisions of the Act, Rules etc. and any condition of the license may lead to cancellation of license.
- The applicant can file an into bond Bill of Entry and store such goods in the warehouse. The bond required to be executed to avail benefit of warehousing provisions should be equivalent to thrice the amount of the duty assessed. The importer is also required to furnish prescribed security along with bond.
- The owner of the warehoused goods can inspect the goods, sort them, show for sale and deal with containers to minimize the loss of goods.
- An owner of the warehoused goods can carry on any manufacturing process or other operations in the warehouse with prior permission of Principal Commissioner of Customs or Commissioner of Customs.
- The time period for warehoused goods will be as follows<sup>[[18]]</sup>:

Sr. No.	Description of goods	Time period
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1.	Goods (incl. capital goods) for use in EOU/ EHTP/ STP or any warehouse wherein manufacture or other operations have been permitted under Section 65 of Customs Act	Till clearance from the warehouse
2.	In case of any other goods	<p>Till expiry of 1 year from date of order<sup>[[19]]</sup> permitting removal of goods from customs station to deposit in a warehouse.</p> <p>The Principal Commissioner/ Commissioner can extend the warehousing period upto 1 year at a time.</p> <p>In case the goods are likely to deteriorate, the period of extended period of 1 year may be suitably reduced.</p>

## 7. ANUFACTURING AND OTHER OPERATIONS IN BONDED WAREHOUSE

The scheme of manufacturing and other operations in warehouse is provided under Chapter IX of Customs Act. There are three types of warehouses recognized under the Customs law:

- **Public Warehouses:** The Principal Commissioner of Customs or Commissioner of Customs is empowered to license a public warehouse wherein imported dutiable goods can be deposited
- **Private Warehouses:** The Principal Commissioner of Customs or Commissioner of Customs can license a private warehouse wherein the dutiable goods imported by or on behalf of the Licensee can be deposited

- **Special Warehouses:** The Principal Commissioner of Customs or Commissioner of Customs can license a special warehouse wherein certain notified dutiable goods can be deposited.

An owner of the warehoused goods can carry on any manufacturing process or other operations in the warehouse with prior permission of Principal Commissioner of Customs or Commissioner of Customs. Government has introduced specific regulations[20] for regulating the manufacturing process in warehouses. The Scheme facilitates import of inputs and capital goods without payment of duty for manufacturing and other operations in the bonded warehouse. On the other hand, it allows deferral of import duty to the extent manufactured goods are cleared in the domestic market. Unlike, the export incentives given under Foreign Trade Policy, in case of Manufacturing under bonded warehouses, there is no requirement for fulfilment of export obligations or actual user condition or value addition. Hence, an importer may opt to avail the benefits under this scheme of Manufacturing and Other Operations in warehouse.

#### *8. AUDIT*

Chapter XIIA is inserted vide Finance Act, 2018 provides for audit. Audit may be carried out for imported goods or export goods or of auditee either in his office or in the premise of the auditee. Further, the definition of ‘auditee’ is introduced which is wide enough to not only the importer and exporter but also includes approved custodian or licensee of warehouse and other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing imported goods or export goods or dutiable goods.

#### *9. ADVANCE RULINGS*

The provisions relating to advance rulings are covered in Chapter VB of the Customs Act. As per Section 28E of Customs Act, advance rulings can be sought by the following persons:

- holding a valid IEC number; or
- exporting any goods to India; or

- with a justifiable cause to the satisfaction of the Authority,

Advance Ruling can be sought on matters regarding classification, valuation of goods, applicability of notifications on rate and duty of customs, determination of origin of goods and other matters as may be notified.

Earlier the Income Tax Advance Ruling was pronouncing the advance ruling for the Customs matter. Now, Customs Authority for Advance Ruling is constituted for disposing the advance rulings relating to Customs law.

An applicant desirous of obtaining an advance ruling may make an application<sup>[21]</sup> in Form CAAR 1 in quadruplicate along with a fee of Rs. 10,000 and stating the question on which the advance ruling is sought.

The order of Advance Ruling remains valid<sup>[22]</sup> till earlier of the following duration:

- period of three years or
- till there is any change in law or facts on basis of which ruling is given

An appeal<sup>[23]</sup> against the order of Advance Ruling may be filed before the High Court within 60 days from the date of communication of order.

## *10. DEMAND, RECOVERY AND REFUND OF DUTY*

### I. Demand:

#### A. When can the department demand duty

Section 28 of Customs Act empowers a proper officer to issue a Show cause notice (SCN) for recovery of duty in cases where duty on goods has:

- not been levied
- not paid
- short levied
- short paid

- erroneously refunded
- interest has not been paid or part paid or refunded erroneously,

B. Time limit to issue SCN

- Bona fide cases* [Section 28(1) of Customs Act]: SCN is required to be issued within two years from the relevant date in cases where demand of duty arises for reasons other than collusion, willful mis-statement or suppression of facts with an intent to evade duty. Proper Officer should hold pre-notice consultation as per the Regulation before issuance of demand notice in such *bona fide*
- Mala fide cases* [Section 28(4) of Customs Act]: The time period to issue SCN is five years from the relevant date in cases where demand duty arises due to collusion, willful misstatement, suppression of facts with an intent to evade duty.

Meaning of “Relevant date”

Cases	Relevant date
Where duty is not levied or not paid or short-levied or short-paid or interest is not charged	Date on which proper officer makes an order for the clearance of goods
Where duty is provisionally assessed under Section 18 of Customs Act	Date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be
Where duty or interest has been erroneously refunded	Date of refund
Any other case	Date of payment of duty or interest

C. The proceedings will be considered to be concluded in the following case

- Demand under Section 28(1) of Customs Act i.e. *bona fide* cases

- a. Proceedings are concluded if a person pays the amount of duty along with interest and informs the proper officer in writing, prior to issuance of SCN.
  - b. In case where SCN has been served, on payment of duty along with interest within 30 days from date of receipt of notice. However, no penalty is payable by Noticee in such cases.
- ii. If SCN is issued under Section 28(4) i.e. *Mala fide* cases If Noticee has paid amount of duty accepted by him along with interest and penalty within 30 days of receipt of notice and informed Proper Officer in writing. In such cases, the quantum of penalty payable is reduced to 15% of amount of duty accepted by him. If Proper Officer is satisfied that the entire amount with interest and 15% penalty is paid, proceedings are deemed to be concluded. However, proceedings for balance amount of duty, if any, will continue.

#### D. Time limit for adjudication

In *bona fide* cases, the adjudication can be completed within 6 months subject to approval from senior officer.

In *mala fide* cases, the adjudication can be completed within 1 year from the date of notice. An extension is available for further 1 year subject to approval from senior officer.

In case, the proper officer fails to determine within such extended period, such proceedings are deemed to have been concluded as if no notice is issued.

## **II. Refunds**

An application for refund must be made in the prescribed form in duplicate within one year from the date of payment of duty or interest. The term 'date of payment of duty or interest' for persons other than an importer shall mean 'the date of purchase of goods' by such person. Further, the period of one year does not apply to cases where the duty or interest has been paid under protest.

Refund is granted where the officer is satisfied that the amount is, in fact, refundable, he shall pass an order sanctioning refund. However, refund of duty is granted to a person only when he is

able to substantiate that the burden of such customs duty levied and paid under Customs Act has not been passed on to any other person (principle of unjust enrichment) and the claimant has complied with all the provisions of Section 27 of the Customs Act. Proviso to Section 27(2) provides exception to the principle of unjust enrichment. In such cases, the amount is refunded to claimant instead of crediting the refund amount to consumer welfare fund in exceptional situations as provided in Customs Law. Such exceptions are export duty, duty drawback, duty paid by individual on import for his personal use, duty paid in excess before order permitting clearance of goods for home consumption is made and same is evident from bill of entry, etc.

**11. INTEREST**

Section 28AA provides for payment of interest for customs duty paid voluntarily or on determination under the provisions of Section 28 of the Customs Act (Non-levy, short levy, non-payment, short payment or erroneous refund of duty/duties). Interest rate under this Section is 15% vide Notification 33/2016-Cus (N.T.) dated 1 March 2016 effective from 1 April 2016.

**12. PENALTIES**

*I. For improper importation of goods*

- i. any person who does or omits to do any act or abets doing or omission of such act on goods which are liable to confiscation or
- ii. who acquires possession of or is in any way concerned with carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation, shall be liable for penalties in following manner:

Situations	Penalty quantum
Goods in respect of which any prohibition is in force under any law for the time being in force	Higher of: <ul style="list-style-type: none"> <li>• Penalty not exceeding the value of the goods or</li> <li>• Rs. 5,000/-</li> </ul>

In case of dutiable goods, other than prohibited goods	Higher of: <ul style="list-style-type: none"> <li>• Penalty not exceeding 10% of the duty sought to be evaded or</li> <li>• Rs. 5,000/-</li> </ul>
In the case of goods in respect of which the value stated in the Bill of entry or in the case of baggage, in the declaration is higher than the value thereof	Higher of: <ul style="list-style-type: none"> <li>• Penalty not exceeding the difference between the declared value and the value thereof or</li> <li>• Rs. 5,000/-</li> </ul>

**II. For improper exportation of goods:**

Any person who does or omits to do any act which renders goods liable to confiscation, or abets the doing or omission of such an act, shall be liable to penalty in the following manner:

Situations	Penalty quantum
Goods in respect of which any prohibition is in force under any law for the time being in force	Higher of: <ul style="list-style-type: none"> <li>• Penalty not exceeding 3 times the value of the goods as declared by the exporter or</li> <li>• Penalty not exceeding 3 times the value as determined under Customs Act</li> </ul>
In case of dutiable goods, other than prohibited goods	Higher of: <ul style="list-style-type: none"> <li>• Penalty not exceeding 10% of the duty sought to be evaded or</li> <li>• Rs. 5,000/-</li> </ul>
Any other goods	Higher of: <ul style="list-style-type: none"> <li>• Penalty not exceeding the value of goods declared by export or</li> <li>• Penalty not exceeding the value of goods as determined under the Customs Act</li> </ul>

**III. Reduced Penalty:**

Particulars	Penalty in bonafide cases	Penalty in malafide cases
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Cases	Cases other than collusion, wilful misstatement or suppression of facts	Cases of collusion, wilful misstatement or suppression of facts
Penalty on non-levy, short-levy, short-payment, erroneous refund of customs duty	No penalty	Penalty equal to 100% of Custom duty
Duty paid along with interest within 30 days from date of issue of SCN	No penalty	Reduced penalty of 15% of Custom Duty
Duty paid along with interest and penalty as above, within 30 days from date of receipt of Adjudication Order	25% of Custom Duty	25% of Custom Duty
<p>Note: Where the amount of duty payable is increased by the order of Commissioner (Appeals), Appellate Tribunal or Court, the benefit of reduced penalty shall be available provided Custom Duty, interest and reduced penalty are paid within 30 days from receipt of the order increasing Custom Duty liability.</p>		

#### IV. Other Penalties

Situations	Penalty quantum
if any person knowingly or intentionally makes, signs, or uses or causes to be made, signed or used, any declaration, statement or document which is false or is incorrect in any material particular	Penalty <sup>[24]</sup> upto 5 times the value of goods

Any person who has obtains any instrument by fraud, collusion, wilful misstatement or suppression of facts and such instrument is utilized by such person or any other person for discharging duty	Penalty <sup>[[25]]</sup> up to the face value of instrument
Where a person claims refund relating to goods exported and tax or duty applicable thereon is discharged by utilizing input tax credit availed on invoices obtained by way of fraud, collusion, willful misstatement or suppression of facts.	Penalty <sup>[[26]]</sup> upto 5 times the value of refund claimed.
General Penalty: If any person contravenes the provision of Customs Act or abets any such contravention or fails to comply with the provisions of the Customs Act, where no express penalty is provided elsewhere, penalty shall be levied not exceeding four lakh rupees	Penalty <sup>[[27]]</sup> upto Rs. 4 lakhs

### 13. PROSECUTION

#### A. Offence relating to evasion of duty

Section 135 of the Customs Act provides that if any person:

- a. Is knowingly concerned in mis-declaration of value or any fraudulent evasion or attempt at evasion of any duty or of any prohibition for the time being imposed under any law for the time being in force or
- b. acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation or
- c. attempts to export any goods which he knows or has reason to believe are liable to confiscation or

- d. fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under Customs Act in connection with export of goods,
- e. obtains any instrument from any authority by fraud, collusion, wilful mis-statement or suppression of facts, where such instrument has been utilized by any person and if duty relatable to utilization of the instrument exceeds Rs. 50,00,000/- , he shall be punishable as under:

Offence	Punishment for first offence	Punishment for second and every subsequent offence
<p>In case of offence relating to-</p> <p>a. goods whose market price exceeds Rs.1 crore; or</p> <p>b. the evasion or attempted evasion of duty exceeding Rs. 50 lakhs; or</p> <p>c. such categories of prohibited goods as notified by the Central Government; or</p> <p>d. fraudulently availing of or attempting to avail of drawback or any exemption for duty in relation to export of amount exceeding Rs. 50 lakhs</p>	<p>Imprisonment upto 7 years and fine</p>	<p>Imprisonment extending to 7 years and fine</p>
<p>In any other case</p>	<p>Imprisonment upto 3 years or with fine or</p>	

	with both	
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*B. Other offences*

Offence	Punishment
Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular	Imprisonment extending upto 2 years or fine or both
If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under Customs Act	Imprisonment extending upto 2 years or fine or both
If any person -  (a) resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a Magistrate, or  (b) resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body	Imprisonment extending upto 6 months or fine or both
Person preparing to export any goods with an intention to commit offence	Imprisonment extending upto 3 years or fine or both
A person who publishes any information, that is furnished	Imprisonment extending upto 6

<p>to customs by an exporter or importer, relating to the value or classification or quantity of goods entered for export from India, or import into India, along with the identity of the persons involved or in a manner that leads to disclosure of such identity, unless required by law or by specific authorisation of such exporter or importer</p>	<p>months or fine upto Rs. 50,000 or both</p>
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#### *14. SETTLEMENT OF CASES*

Any importer, exporter or any other person may, in respect of a case, relating to him make an application before adjudication of a case, to the settlement commission for settlement of “case”.

No such application shall be made unless:

- a. The applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier and in relation to such document/s, a SCN has been issued to him by the proper officer;
- b. The additional amount of duty accepted by the applicant in his application exceeds three lakh rupees;
- c. The applicant has paid the additional amount of customs duty accepted by him along with interest due under Section 28AA of Customs Act

Application shall not be made under following circumstances:

- a. For interpretation of classification of the goods
- b. Case is pending before Appellate Tribunal or any Court

- c. In relation to goods to which Section 123 of Customs Act applies (i.e. seizure in case of smuggled goods) or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed

The application made before settlement commission cannot be withdrawn.

Any person other than applicant may also make an application to Settlement Commission in respect of SCN issued to him in a case relating to applicant which has been settled or pending before Settlement Commission and such notice is pending before adjudicating authority.

Procedure followed by Settlement Commission

Settlement Commission shall within 7 days from the date of receipt of the application issue notice to the applicant, to explain as to why application made by him should be allowed to be proceeded with. After considering the explanation offered by Applicant, the Commission shall accept or reject the application within 14 days from the date of notice. If no notice is issued or no order is passed within the above time limits, the application is deemed to be allowed.

After acceptance of application, the Commission shall within 7 days from the date of Order, call for a report with relevant records from jurisdictional Principal Commissioner of Customs or Commissioner of Customs. Such report shall be provided within 30 days from the date of receipt of communication from Commission. In case no report is submitted within specified time limit, the Commission shall proceed further with the matter on the basis of available record/s.

In case, Commission requires further enquiry or investigation, the Commission may direct the Commissioner (investigation), within 15 days from the date of receipt of jurisdictional Principal Commissioner/Commissioner of Customs report, to make further enquiry or investigation. Such Commissioner (investigation) is required to furnish report within 90 days of receipt of

communication from the Commission. In case no report is submitted within specified time limit, the Commission shall proceed further with the matter on the basis of available record/s.

Thereafter, the Commission shall pass the Order after giving an opportunity, as it deems fit relating to the matters covered by the application and any other matter not covered under the application.

Settlement Commission is empowered to rectify any error apparent on the face of record within three months from date of passing the order either *suo moto* or when such error has been brought to notice by jurisdictional Principal Commissioner/Commissioner of Customs or the applicant. However, no amendment can be made which has effect on enhancement of liability of the applicant unless due procedure of law is followed including providing opportunity of being heard.

#### *15. PERSONAL BAGGAGE*

The Baggage Rules, 2016 has rationalized and simplified duty-free allowance for various categories of passenger. The salient features of Baggage Rules are as follows:

- a. An Indian resident, foreigner residing in India or a tourist of Indian Origin, not being an infant, arriving from any country other than Nepal, Bhutan or Myanmar, is allowed duty free clearance of following goods in his *bona fide* baggage:
  - o Used personal effects and travel souvenirs and
  - o Articles other than mentioned in annexure-I of the Baggage Rules upto value of Rs. 50,000/- if carried by the person or in accompanied baggage of the passenger.The monetary limit for a tourist of Indian origin is Rs. 15,000/-

b. An Indian resident, foreigner residing in India or a tourist, not being an infant, arriving from Nepal, Bhutan or Myanmar, is allowed duty free clearance of following goods in his *bona fide* baggage:

- Used personal effects and travel souvenirs and
- Articles other than mentioned in annexure-I of the Baggage Rules upto value of Rs. 15,000/- if carried by the person or in accompanied baggage of the passenger

If the Passenger is arriving by land, only used personal effects are allowed duty free.

c. If the passenger is infant, only used personal effects are allowed duty free.

d. Annexure I contains the following goods:

- Fire arms
- Cartridges of fire arms exceeding 50
- Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms
- Alcoholic liquor or wines in excess of two litres
- Gold or silver in any form other than ornaments
- Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television

e. Person residing abroad for more than one year shall be allowed clearance free of duty in his *bona fide* baggage of jewellery<sup>[28]</sup> up to following limits:

Type of passenger	Limit
Gentleman	twenty grams with a value cap of fifty thousand rupees
Lady	forty grams with a value cap of one lakh rupees



f. The import and export of currency is governed<sup>[[29]]</sup> in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and the notifications issued thereunder.

### 16. CUSTOMS DUTY DRAWBACKS

‘Drawback’ scheme is an export benefit of the duties of Customs and Central Excise, Service tax and GST, borne by either imported goods re-exported or by the inputs and input services used in manufacture of exported goods. Following types of drawbacks are available:

- a. Import of duty paid goods which are exported as such (without use)<sup>[[30]]</sup>
- b. Import of duty paid goods which are exported after use<sup>[[31]]</sup>
- c. Imported materials used in the manufacture or processing of export goods<sup>[[32]]</sup>

With effect from 01.10.2017, duty drawback benefit on imported is restricted to customs duties other than IGST and GST Compensation Cess.

Section 75A of the Customs Act provides for interest if drawback is not paid within 1 month from the date of filing drawback claim.

Sections 74 to 76 and notifications issued thereunder provide for the quantification of drawback available to any exporter. Customs and Central Excise Duties Drawback Rules, 2017 provide for procedure to claim drawback.

The basic distinction of drawback in both the situations are as under:

Drawback on export of duty paid goods	Drawback on imported materials used in the manufacture or processing of exported goods
The goods must be capable of easily	Since the goods are used as inputs for

identified	manufacturing or processing therefore, there is no criteria of such identity
Drawback is available for both unused as well as used goods exported	No drawback is available if the goods manufactured from imported material are used in India before exports
Rate of drawback: For unused goods: 98% of the import duty For used goods: Notified rate depending upon the period of use	Drawback is allowed as per All Industry Rate (AIR) notified by Drawback directorate. Exporter may also apply for Brand Rate if such All Industry Rate is not notified. Exporter may also apply for Special Brand Rate if duty drawback as per AIR is less than 80% of import duty
The goods shall be re-exported within 2 years from the date of payment of duty or extended time as allowed by Board	There is no time limit for such exportation
No requirement to bring export proceeds in convertible foreign exchange	Export proceeds shall be brought in convertible foreign exchange
There is no requirement of minimum value addition	There should not be any negative value addition and minimum value addition, as specified, shall be achieved

Rates of drawback on export of duty paid goods as notified by Central Government:

Period of use of goods after import	Drawback as a % of import duty paid
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If goods exported as such (unused)	98%
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	Nil

Further, in respect of a motor car or goods (other than the goods specified above), imported by a personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2 and a half percent and 2% for use for each quarter or part thereof during the period of first year, second year, third year and fourth year respectively.

#### *17. UTHORISED ECONOMIC OPERATOR (AEO)*

The objective of the AEO Programme is to provide businesses with an internationally recognized quality mark which will indicate their secure role in the international supply chain and that their Customs procedures are efficient and compliant. A business authorized by the Customs as an AEO can enjoy benefits flowing from being a more compliant and secure company as well as favorable consideration in any Customs proceedings coupled with better relations with Customs. The benefits may also include simplified Customs procedure, declarations, etc. besides faster Customs clearance of consignments for AEO status holders. There will be three tiers of certification i.e. AEO-T1, AEO-T2 and AEO-T3. AEO-T3 receives the highest level of benefit followed by AEO-T2 and AEO-T1.

## *18. FREE TRADE AGREEMENT (FTA) & PREFERENTIAL TRADE AGREEMENT (PTA)*

One of the chief functions of Customs as the guardian of the economic frontier of the country is to administer tariffs, valuation and origin regulations and also strike a fine balance with trade facilitation. Bilateral and plurilateral agreements have become a prominent feature in the multilateral trading system, allowing preferential tariff treatment to partnering countries.

### Rules of Origin

“Rules of origin” are the criteria used to define where a product was made/obtained. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty.

### Types of Rules of Origin:

- Preferential rules of origin – Used to implement trade preferences
- Non-preferential rules of origin – Used for anti-dumping actions, countervailing duty, safeguard measures, origin marking requirements and any discriminatory quantitative restrictions or tariff quotas, as well as those used for trade statistics and government procurement

A new chapter<sup>[[33]]</sup> was introduced viz. Administration of Rules of Origin under Trade Agreement. The new provision casts additional obligations and responsibilities related to country of origin on importer claiming preferential rate of duty. Additionally, confiscation power is enabled in case of goods imported in contravention of said chapter or rules made thereunder.

## *19. COMMON CUSTOMS ELECTRONIC PORTAL (CCEP)*

Government has notified<sup>[[34]]</sup> ICEGATE ([www.icegate.gov.in](http://www.icegate.gov.in)) as Common Customs Electronic Portal for facilitating registration, filing of bill of entry, shipping bills, payment of duty, other documents and forms prescribed under Customs Law, etc.

- [1] Section 2(23) of the Customs Act, 1962
- [2] Section 2(18) of the Customs Act, 1962
- [3] Vide notification no. 11/87-Cus dated 14.01.1987
- [4] Section 3(3), 3(4), 3(5) and 3(6) of the Customs Tariff Act, 1975
- [5] Vide Finance Act, 2018
- [6] Vide Finance Act, 2020
- [7] Vide Section 124 of Finance Act, 2021
- [8] Exemption is granted to SWS leviable on IGST and GST Compensation Cess vide Notification No. 13/2018-Customs dated 2 February, 2018. In other words, SWS is not to be calculated on IGST and GST Compensation Cess but only on Basic Customs Duty.
- [9] Section 15 of the Customs Act, 1962
- [10] Section 16 of the Customs Act, 1962
- [11] Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- [12] Section 30 of the Customs Act, 1962
- [13] As defined under Section 2 (30B) of the Customs Act, 1962
- [14] Section 17 of the Customs Act, 1962
- [15] Section 51A of the Customs Act, 1962
- [16] Section 47 of the Customs Act, 1962
- [17] Section 57 and 58 of the Customs Act, 1962
- [18] Section 61 of the Customs Act, 1962
- [19] Order under Section 60(1) of Customs Act, 1962
- [20] Notification No. 69/2019-Cus (N.T.) dated 01.10.2019 - Manufacture And Other Operations In Warehouse (No. 2) Regulations, 2019 and Notification No. 75/2020-Cus. (N.T.), dated 17.08.2020 - Manufacture And Other Operations In Special Warehouse Regulations, 2020
- [21] Section 28H(1) of Customs Act, 1962
- [22] Section 28J(2) of Customs Act, 1962

[23] Section 28KA of Customs Act, 1962 and substituted vide the Tribunals Reforms Act, 2021 dated 13-08-2021 w.e.f. 04-04-2021

[24] Section 114AA of Customs Act, 1962

[25] Section 114AB of Customs Act, 1962

[26] Section 114AC of Customs Act, 1962

[27] Section 117 of Customs Act, 1962

[28] Rule 5 Baggage Rules, 2016

[29] Rule 7 Baggage Rules, 2016

[30] Section 74 of the Customs Act, 1962

[31] Section 74 of the Customs Act, 1962

[32] Section 75 of the Customs Act, 1962

[33] Vide Finance Act, 2020

[34] Notification No. 33/2021-Customs (N.T.) dated 29.03.2021

HE CUSTOMS TARIFF ACT, 1975, (ACT NO. 51 OF 1975)

[18th August, 1975] An Act to consolidate and amend the law relating to Customs Duties.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows -

1. Short title, extent and commencement. -

1. This Act may be called the Customs Tariff Act, 1975.

2. It extends to the whole of India.

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

2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

3. Levy of additional duty equal to excise duty. -

1. Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

\*Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the official gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different states, are, if a like alcoholic liquor is not produced or manufactured in any state, then, having regard to excise duty which would be leviable for the time being in different states on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation. — In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India, or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

2. For the purpose of calculating under this section, the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in Section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of —

- i. the value of the imported article determined under sub-section (1) of the said Section 14 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
- ii. any duty of customs chargeable on that article under Section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include (with retrospective effect from 1st day of March 2002)-
  - a. the special additional duty referred to in section 3(A)
  - b. the safeguard duty referred to in section 8B and 8C;
  - c. the countervailing duty referred to in section 9.
  - d. anti-dumping duty referred to in section 9A and
  - e. the duty referred to in sub section (1).
    - a. In relation to which it is required, under the provisions of the standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and
    - b. where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944.

Explanation:- Where on any imported article more than one



retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

3. If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or not such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.
4. In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.
5. The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.
6. The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.

### 3A. Special additional duty. -

1. Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having

regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India :

Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article imported into India.

Explanation. — In this sub-section, the expression "maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India" means the maximum sales-tax, local tax, other charges for the time being in force, which shall be leviable on a like article, if sold or purchased in India, or if a like article is not so sold or purchased which shall be leviable on the class or description of articles to which the imported article belongs.

2. For the purpose of calculating under this section the special additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962) or section 3 of this Act, be the aggregate of-
  - i. the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be;
  - ii. any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include (with retrospective effect from 1st day of March 2002) -
    - a. the safeguard duty referred to in section 8B and 8C;
    - b. the countervailing duty referred to in section 9.
    - c. anti-dumping duty referred to in section 9A;

- d. special additional duty referred to in sub-section (1) and
    - iii. the additional duty of customs chargeable on that article under section 3 of this Act.
  3. The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.
  4. The provisions of the Customs Act, 1962 (52 of 1962), and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act.
  5. Nothing contained in this section shall apply to any article, which is chargeable to additional duties levied under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).
4. Levy of duty where standard rate and preferential rate are specified. —
  1. Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, or is admissible by virtue of a notification under Section 25 of the Customs Act, 1962 (52 of 1962), the duty to be levied and collected shall be at the standard rate, unless the owner of the article claims at the time of importation that it is chargeable with a preferential rate of duty, being the produce or manufacture of such preferential area as is notified under sub-section (3) and the article is determined, in accordance with the rules made under sub-section (2), to be such produce or manufacture.
  2. The Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of any preferential area.

3. For the purposes of this section and the First Schedule, "preferential area" means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.
4. Notwithstanding anything contained in sub-section (1), where the Central Government is satisfied that, in the interests of trade including promotion of exports, it is necessary to take immediate action for discontinuing the preferential rate, or increasing the preferential rate to a rate not exceeding the standard rate, or decreasing the preferential rate, in respect of an article specified in the First Schedule, the Central Government may, by notification in the Official Gazette, direct an amendment of the said Schedule to be made so as to provide for such discontinuance of, or increase or decrease, as the case may be, in the preferential rate.
5. Every notification issued under sub-section (3) or sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Also see Notification 101/82-Cus., dated 1-4-1982

5. Levy of a lower rate of duty under a trade agreement. -
  1. Whereunder a trade agreement between the Government of India and the Government of a foreign country or territory, duty at a rate lower than that specified in the First Schedule is to be charged on articles which are the produce or manufacture of such foreign country or territory, the Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of such foreign country or territory and for requiring the owner to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the appropriate lower rate under such agreement.

2. If any question arises whether any trade agreement applies to any country or territory, or whether it has ceased to apply to India or any foreign country or territory, it shall be referred to the Central Government for decision and the decision of the Central Government shall be final and shall not be liable to be questioned in any court of law.
6. Power of Central Government to levy protective duties in certain cases. —
1. Where the Central Government, upon a recommendation made to it in this behalf by the Tariff Commission established under the Tariff Commission Act, 1951 (50 of 1951), is satisfied that circumstances exist which render it necessary to take immediate action to provide for the protection of the interests of any industry established in India, the Central Government may, by notification in the Official Gazette, impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit.
  2. Every duty imposed on any goods under sub-section (1) shall, for the purposes of this Act, be deemed to have been specified in the First Schedule as the duty leviable in respect of such goods.
  3. Where a notification has been issued under sub-section (1), the Central Government shall, unless the notification is in the meantime rescinded, have a Bill introduced in Parliament, as soon as may be, but in any case during the next session of Parliament following the date of the issue of the notification to give effect to the proposals in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder :  
Provided that if the notification under sub-section (1) is issued when Parliament is

in session, such a Bill shall be introduced in Parliament during that session :  
Provided further that where for any reason a Bill as aforesaid does not become law within six months from the date of its introduction in Parliament, the notification shall cease to have effect on the expiration of the said period of six months, but without prejudice to the validity of anything previously done thereunder.

7. Duration of protective duties and power of Central Government to alter them.—

1. When the duty specified in respect of any article in the First Schedule is characterized as protective in Column (5) of that Schedule, that duty shall have effect only up to and inclusive of the date, if any, specified in that Schedule.
2. Where in respect of any such article the Central Government is satisfied after such inquiry as it thinks necessary that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, increase or reduce such duty to such extent as it thinks necessary.
3. Every notification under sub-section (2), insofar as it relates to increase of such duty, 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.

4. For the removal of doubts, it is hereby declared that any notification issued under sub-section (2), including any such notification approved or modified under sub-section (3), may be rescinded by the Central Government at any time by notification in the Official Gazette.

8. Emergency power of Central Government to increase or levy export duties. —

1. Where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

2. The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7.

8A. Emergency power of Central Government to increase im port duties. —

1. Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary: Provided that the Central Government shall not issue any notification under this sub-section for substituting the rate of import duty in respect of any article as specified by an

earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

2. The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

**8B. Power of Central Government to impose safeguard duty. —**

1. If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article: Provided that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine percent of the total imports of that article into India.

\* Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

2. The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry :

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic



industry, it shall refund the duty so collected :

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

\* (2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation:- For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944.

3. The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

4. The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition :

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition :

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

5. The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or causes of threat of

serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

6. For the purposes of this section, -

- a. "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section;
- b. "domestic industry" means the producers -
  - i. as a whole of the like article or a directly competitive article in India; or
  - ii. whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;
- c. "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;
- d. "threat of serious injury" means a clear and imminent danger of serious injury.

7. Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

8C. Power of Central Government to impose transitional product specific safeguard duty on imports from the people's Republic of China.

1. Notwithstanding anything contained in section 8B, if the Central government after conducting such enquiry as it deems fit, is satisfied that any article is imported into India, from the people's Republic of China, in such condition so as to cause or threatening to cause market disruption to domestic industry, then it may, by notification in the official Gazette, impose a safeguard duty on that article: Provided that the central government may, by notification in the official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from

people's republic of China into India, from payment of the whole or part of the safeguard duty leviable thereon.

2. The Central government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause market disruption to a domestic industry:

Provided that where, on final determination, the Central government is of the opinion that increased imports have not caused or threatened to cause market disruption to a domestic industry, it shall refund the duty so collected:

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

3. Notwithstanding anything contained in sub- (1) and (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2) , unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred percent. Export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation:-For the purpose of this section , the expressions "hundred percent. Export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings respectively assigned to them in Explanation 2 to sub-section (1) of section 3 of the central Excise Act, 1944.

4. The duty chargeable under this section shall be in addition to any other duty imposed under this act or under any other law for the time being in force.

5. the duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition;

Provided that if the Central government is of the opinion that such article continues to be imported into

India, from people's Republic of china, in such increased quantities so as to cause or threatening to cause market disruption to domestic industry and the safeguard duty should continue to be imposed, it may extend the period of such imposition for a period not beyond the period of ten years from the date on which the safeguard duty was first imposed.

6. The central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the cause of market disruption or cause of threat of markets disruption in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

7. For the purpose of this section,-

" domestic industry" means the producers—

- i. as a whole of a like article or a directly competitive article in India ; or
- ii. Whose collective output of a like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;
  - a. " Market disruption" shall be caused whenever imports a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significantly cause of material injury, or threat of material injury, to the domestic industry;
  - b. "Threat of market disruption" means a clear and imminent danger of market disruption.

8. Every notification issued under this section shall, as soon as may be after it is issued, be laid before each house of Parliament;

Refund of additional duty of Customs in certain cases.

1. Notwithstanding anything contained in section 25 of the Customs Act, barge mounted power plants, falling under heading 98.01 of the First Schedule to the Customs Tariff Act, shall be deemed to have been exempted from the whole of the additional duty of Customs leviable thereon under sub-section (1) of section 3 of the customs Tariff Act, within the period commencing from the 8th December,2000 and ending with the 28th february,2002 (both the dates inclusive) and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, barge mounted power plants shall be deemed to be, and always to have been, exempted from the said additional duty of customs as if the exemption given by this sub-section had been in force at all material times.
2. for the purpose of sub-section (1), the central Government shall have and shall be deemed to have the power to exempt the goods referred to in the said sub-section with retrospective effect as the Central Government had the power to exempt the said goods under sub-section (1) of section 25 of the customs act, retrospectively at all material times.
3. Refund shall be made of all such additional duty of customs which have been collected but which would have not been so collected if the exemption referred to in sub-section (1) had been in force at all material times.
4. Notwithstanding anything contained in section 27 of the Customs Act, an application for the claim of refund of the additional duty of customs under sub-section (3) shall be made with in six months from the date on which the Finance Bill, 2002 receive the assent of the President.
9. Countervailing duty on subsidized articles. —
  1. Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the

importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if -

- a. there is financial contribution by a Government, or any public body within the territory of the exporting or producing country, that is, where -
  - i. a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;
  - ii. Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);
  - iii. a Government provides goods or services other than general infrastructure or purchases goods;
  - iv. a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments;or
- b. a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from,

or to reduce import of any article into, its territory, and a benefit is thereby conferred.

2. The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -
  - a. the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and
  - b. refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.
3. Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that -
  - a. the subsidy relates to export performance;
  - b. the subsidy relates to the use of domestic goods over imported goods in the export article; or
  - c. the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article unless such a subsidy is for-
    - i. research activities conducted by or on behalf of persons engaged in the manufacture, production or export;
    - ii. assistance to disadvantaged regions within the territory of the exporting country; or

- iii. assistance to promote adaptation of existing facilities to new environmental requirements.
4. If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.
5. The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.
6. The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition: Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension: Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.



7. The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.
8. Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

9A. Anti-dumping duty on dumped articles. -

1. Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. - For the purposes of this section, -

- a. "margin of dumping", in relation to an article, means the difference between its export price and its normal value;
- b. "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable

basis as may be determined in accordance with the rules made under sub-section (6);

c. "normal value", in relation to an article, means-

i. the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

ii. when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -

a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

2. The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined : -

- a. the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and
- b. refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

\* (2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a free trade zone or in a special economic zone.

Explanation:- For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944.

3. If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

- i. there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and
- ii. the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other

circumstances is likely to seriously under-mine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

4. The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.
5. The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition: Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension : Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.
6. The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation

to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

7. Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.
8. The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to non-levy, short levy, refunds and appeals shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

9AA. Refund of anti-dumping duty in certain cases. -

1. Where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty :

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

Explanation - For the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have the meanings respectively assigned to them in the Explanation to sub-section (1) of section 9A.

2. The Central Government may, by notification in the Official Gazette, make rules to -
  - i. provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);
  - ii. authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

- iii. provide the manner in which the excess duty referred to in sub-section (1) shall be  
-(A) determined by the officer referred to in clause (ii); and  
(B) refunded by the Deputy Commissioner of Customs or Assistant  
Commissioner of Customs, as the case may be, after such determination.

9B. No levy under section 9 or section 9A in certain cases. -

1. Notwithstanding anything contained in section 9 or section 9A,-

- a. no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;
- b. the Central Government shall not levy any countervailing duty or anti-dumping duty -
  - i. under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;
  - ii. under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and
  - iii. under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry;

and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation: Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

c. the Central Government may not levy -

- i. any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;
- ii. any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

2. The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

9C. Appeal. -

1. An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Service tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).
2. Every appeal under this section shall be filed within ninety days of the date of order under appeal:  
  
Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
3. The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.
4. The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).
5. Every appeal under sub-section (1) shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.
10. Rules to be laid before Parliament. — Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule



shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

11. Power of Central Government to alter duties under certain circumstances. —

1. Where the Central Government is satisfied that it is necessary so to do for the purpose of giving effect to any agreement entered into before the commencement of this Act with a foreign Government, it may, by notification in the Official Gazette, increase or reduce the duties referred to in section 2 to such extent as each case may require :

Provided that no notification under this sub-section increasing or reducing the duties as aforesaid shall be issued by the Central Government after the expiration of a period of one year from the commencement of this Act.

2. Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

12. Repeal and saving. —

1. The Indian Tariff Act, 1934 (32 of 1934), and the Indian Tariff (Amendment) Act, 1949 (1 of 1949), are hereby repealed.
2. Notwithstanding the repeal of any of the Acts mentioned in sub-section (1), anything done or any action taken (including any notification published and any rules and orders made or deemed to have been made under the provisions of those Acts and in force immediately before the commencement of this Act) shall, insofar as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

13. Consequential amendment of Act 52 of 1962 - In the Customs Act, 1962, in sub-section (1) of Section 12 and in sub-section (1) of Section 14, for the words and figures "Indian Tariff Act, 1934", the words and figures "Customs Tariff Act, 1975" shall be substituted.

## **Custom Duty Drawback**

### **Definition and Objectives**

The Term Drawback Is Applied To A Certain Amount of duties of Customs/central excise, some times the whole, some times only a part remitted or paid by Government on the exportation of the commodities on which they were levied. To entitle goods to drawback, they must be exported to a foreign port, the object of the relief afforded by the Drawback being to enable the goods to be disposed of in the foreign market as if they had never been taxed at all. For Customs purpose drawback means the refund of duty of customs and duty of central Excise that are chargeable on imported and indigenous materials used in the manufacture of Exported goods.

### **GOODS ELIGIBLE FOR DRAWBACK**

This scheme applies to

- a. export goods imported into India as such
- b. export goods imported into India after having been taken for use
- c. export goods manufactured / produced out of imported material
- d. export goods manufactured / produced out of indigenous material
- e. Export goods manufactured /produced out of imported or and indigenous materials.

### **TYPES OF DRAWBACK**

There are two types of drawback. One is called drawback under *Section 74* of the Customs Act, 62 which allows drawback of duty paid on goods originally imported on payment of duty and subsequently re-exported. The manner and time limit for filing the claims are governed by "Re- export of Imported Goods (Drawback of Customs duties) *Rules*, 1995.

1. The other scheme is payment of drawback under *Section 75* and *Rules* made thereunder at specified rates on export of goods manufactured in India. The manner and time limit for filing the claims are prescribed under the Customs and Central Excise Duties Drawback *Rules* 1995 as amended from time to time.

2. The Central government notifies the Drawback rates for various products either on a general basis (**all industry rates**) or for individual exporters (**brand rates**) as the case may be. Drawback sanctioned under section 75 has a two tier system involving (i) fixation of rates by the Directorate of Drawback in the Central Board of Excise and Customs and (ii) disbursement of drawback amount by the Customs Houses and/ Central Excise Commissionerate

### **DUTIES REBATED UNDER DRAWBACK SCHEME**

Under the drawback scheme, the relief is given from the burden of duty incidence of Customs & Central Excise on basic inputs like raw materials, Components, Intermediates and packing materials used at various stages of production / manufacture. No relief of drawback is extended to duties suffered on capital goods, fuels and consumables used in relation to the manufacture of the export goods. It may also be noted that no relief of Sales Tax or Octroi or any other indirect tax is given by way of drawback. The finished stage of excise duties on the export product is also not reimbursed under this scheme and there are separate provisions for rebate of such finished stage duties under the Central Excises and Salt Act 1944 and the *Rules* framed thereunder.

### **DRAWBACK UNDER SECTION 74 – IMPORTED GOODS RE-EXPORTED**

#### **SCOPE**

In this category, two types of cases are covered viz.,

1. Imported goods exported as such i.e. without putting into use – 98% of duty is refunded and
2. Imported goods exported after use – the percentage of duty is refunded according to the period between the date of clearance for home consumption and the date when the goods are placed under Customs control for exports. The percentage of duty drawback is notified under Notification. No 19 Cus, dated 6<sup>th</sup> Feb, 1965 as amended from time to time

### **ELEMENTS NECESSARY FOR DRAWBACK UNDER SECTION 74**

The elements necessary to claim drawback are;

1. The goods on which drawback is claimed must have been previously imported;
2. Import duty must have been paid on these goods when they were imported;
3. The goods should be entered for export within two years from the date of payment of duty on their importation (whether provisional or final duty). The period can be further extended to three years by the Commissioner of Customs on sufficient cause being shown.
4. The goods are identified as the goods imported.
5. The goods must be capable of being identified as imported goods.
6. The goods must actually be re-exported to any place outside India.
7. The market price of such goods must not be less than the amount of drawback claimed.
8. The amount of drawback should not be less than Rs. 50/- as per *Section 76-(1) (c)* of the Customs Act.

### **PROCEDURE TO CLAIM DRAWBACK UNDER SECTION 74**

Drawback claims under *Section 74* of the Customs Act are now being processed manually. To claim drawback under *Section 74*, the exporter should file the shipping bill under claim for drawback in the prescribed *FORM* and after assessment the goods are to be examined by the Customs officers for purposes of physical identification. After shipment, the claim is filed

in the department, for sanction of drawback. The pre-receipted drawback payment order has to be forwarded to the drawback department upon which cheque is issued. If the *information* submitted by the exporter is insufficient to process the claim, a deficiency memo will be issued to the exporter seeking further *information* or documents to process the claim. On compliance the claims will be processed in the usual manner.

#### **SUPPORTING DOCUMENTS REQUIRED FOR PROCESSING DRAWBACK CLAIM UNDER SECTION 74**

- a. Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- b. Copy of the Bill of entry or any other prescribed documents against which goods were cleared for importation.
- c. Import invoice.
- d. Evidence of payment of duty paid at the time of importation of goods.
- e. Permission from the Reserve Bank of India for re-exports of goods, wherever necessary.
- f. Export invoice and packing list.
- g. Copy of the Bill of Lading or Airway bill.
- h. Any other documents as may be specified in the deficiency Memo.

#### **FORM FOR CLAIMING DRAWBACK ON RE-EXPORT OF DUTY PAID GOODS UNDER SECTION 74 OF CUSTOMS ACT, 1962**

#### **PROCEDURE FOR CLAIMING DRAWBACK ON EXPORT OF BAGGAGE UNDER SECTION 74**

If duty paid goods are to be exported as baggage under claim for drawback, a *Formal* declaration has to be filed by the passenger which is deemed to be an entry for export and

thereupon an order permitting clearance of the goods for export is made by proper officer.

The following procedure to be followed

Passengers intending to re-export goods imported and cleared as baggage item under a claim for drawback of duty should furnish with Supdt. of Customs Airport, a declaration in the prescribed *FORM*, in duplicate. Passengers should also produce at the time of re-export of the goods duty payment documents relating to goods cleared by them as baggage.

The goods are examined by the Supdt. of Customs and on being satisfied with the identity of the goods he will permit export and also recommend drawback of duty due on the goods by making suitable endorsement on the examination and also make a suitable note on the duty payment documents produced by the passengers.

The duplicate copy of the declaration cum examination export along with duty payment document is returned to the passenger and the original copy transmitted to the Asst./Deputy Commissioner drawback *Section*.

If the payment is to be made to a person other than the passenger, an authority letter as included in the declaration *FORM* should be furnished by the passenger duly authenticated before the Supdt. Customs: a pre – receipt on a revenue stamp should also be tendered by him.

The passenger or his authorised agent should file his/her drawback claim along with the copy of the declaration at (a) above and the duty payment document the office of the Asst./ Deputy Commissioner of Customs, Drawback *Section*. The cheque granted as draw back of duty is sent to the specified address.

**PROCEDURE FOR CLAIMING DRAWBACK ON GOODS EXPORTED BY POST  
UNDER SECTION 74:**

Where goods are to be exported by post under a claim for drawback, the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK FOR EXPORTS". The exporter shall deliver to the Postal Authorities along with the parcel or package a claim in the *FORM* in quadruplicate duly filled in.

The date of receipt of the aforesaid claim *FORM* by the proper officer of Customs from the postal Authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose *Section 75 A*. . The proper officer of Customs shall give an intimation of the same to the exporter in the prescribed form.

In case the aforesaid claim for is not complete in all respects, the exporter shall be *informed* of the deficiencies therein within fifteen days of its receipt from postal authorities by a deficiency memo in the prescribed *FORM* and such claim shall be deemed not to have been received.

When the exporter complies with the requirements specified in the deficiency memo, within thirty days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer in the prescribed *FORM*. The date of acknowledgement shall be deemed to be date of filing the claim for the purpose of *Section 75A*.

**FORM FOR CLAIM OF DRAWBACK UNDER SECTION 74 OF THE CUSTOMS ACT 1962 ON GOODS EXPORTED BY POST** ( Rule 3 of Re-export of Imported goods (Drawback of Customs Duties) *Rules*, 1995

#### **TIME – LIMIT UNDER SECTION 74**

In order to claim drawback under Section 74 the goods should be entered for export within two years from the date of payment of duty on the importation thereof. Provided that in any

particular case the period of two years may on sufficient cause shown be extended by the by the Central Board of Customs and Central Excise by such period as it may deem fit.

The time limit have to be computed from the date of payment of duty up to the date of entry of goods for export under Sec 50 of the Customs Act for export by air or sea, under *Section 77* for baggage items and Under *Section 83* of the Customs Act for export by post

The claims should be filed in the manner prescribed under Rule 5 of Re-export of Imported Goods(Drawback of Customs Duties) Rules,1995, read with Public Notices issued by the Custom Houses. The time limit for filing the claim is three months from the date of let export order. If the exporter was prevented by sufficient cause from filing the claims within three months, the Asst. Commissioner of Customs can relax the time limit by three months. .

#### **NOTIFICATION ISSUED UNDER *SECTION 74* OF THE CUSTOMS ACT**

#### **RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES 1995.**

#### **DRAWBACK UNDER *SECTION 75* OF THE CUSTOMS ACT 1962**

#### **SCOPE**

This is an export promotion incentive payable for goods manufacture in India with duty paid inputs whether indigenou or imported.

#### **ALL INDUSTRY RATES**

The rates of drawback are announced by the Govt. of India, Ministry of Finance for various categories of goods and are indicated in the schedule appended to the Customs and Central Excise Duties Drawback *Rules*, 1995. The schedule of rates is normally announced on the 1st of June every year or 3 months after the budget. The rates mentioned in the schedule are called **all-industry rates** of drawback. They are applicable to manufacturer exporters as well



as merchant exporters. The all industry rates of drawback are fixed under Rule 3 and can be revised by the Govt. under Rule 4. The all industry rates of drawback are worked out on the basis of broad averages of consumption of inputs, duties suffered, quantity of wastage, f.o.b. prices of the export products etc.

Except where specifically authorised the all – industry rates of drawback are not applicable where an export product has been-

- a. exported in discharge of export obligation against an Advance Licence issued under Duty Exemption Scheme vide the relevant Import and Export Policy.
- b. manufactured partly or wholly in bond under Section 65 of the Customs Act, 1962,
- c. exported by a unit licensed under any 100% Export Oriented Schemes (100%EOY/EHTP/STP/Agriculture/aquaculture etc)
- d. exported by a Unit situated in a Free trade zone/ Export processing Zones
- e. manufactured and exported in terms of Rule 12(1) (a) of the Central Excise Rules 1944; and
- f. manufactured and exported in terms of Rule 13(1) (a) of the Central Excises Rules, 1944; and
- g. manufactured and exported availing the facility under the Import and Export Pass Book schemes of the relevant Exim policy

The restrictions as mentioned in the above clauses are not applicable where payment of drawback at a particular rate/amount has been specifically authorised thereunder any sub serial number in the All industry table subject to such terms and conditions as may be specified thereunder.

## **BRAND RATES**

If any category of goods all industry rates is not available, the exporter can approach the Directorate of Drawback for fixation brand rates. Brand rates are fixed under Rule 6 for specific manufacturer exporter. Even if all industry rates are available for the produce and if the manufacturer desires to have higher rates of drawback because of higher duty paid inputs, such manufacturer can apply for special brand rates under Rule 7.

For fixation of Brand rates, the manufacturer has to submit the application to Directorate of Drawback within 30 days of their first shipment. The application and data in duplicate should be submitted to the Ministry with copies to the concerned Central Excise Commissionerate or the Custom House. The brand rates are fixed by the Commissioner Drawback on the basis of report sent by the jurisdictional Commissione rate after verification of data submitted by the manufacturer exporter.

The rates fixed under all industry categories in most cases are percentage of fob value of goods. . If the pricing of goods is on CIF basis, the insurance and freight bills are required be produced to arrive at the fob value. The rates are operative in terms of *Section 16* read with *Section 51* of the Customs Act. That is the crucial date for application of the rate of drawback in force is the date of 'let export order' given by the appraiser. The all industry rates of drawback are payable subject to restriction and prohibitions mentioned in the General Notes to the Drawback Schedule.

#### **PROCEDURE FOR CLAIMING DRAWBACK UNDER SECTION 75 OF THE CUSTOMS ACT UNDER THE MANUAL SYSTEM:**

For the purpose of claiming drawback, the exporter is required to file a drawback-shipping bill in the prescribed Format as required under Rule 13 along with the necessary declaration. The goods after assessment are examined by the officers posted in the Examination Shed as required for each individual case. The examination report will indicate the nature of goods in terms of drawback schedule for classification and application of correct rate. Samples may have to be drawn for testing by lab in respect of chemicals, synthetic fabrics' etc as specified from time to time to confirm the declarations in the export documents. The triplicate Copy if the drawback shipping bill which contain the examination report is the claim copy

## **SUPPORTING DOCUMENTS REQUIRED FOR PROCESSING THE CLAIM.**

1. Triplicate of the Shipping Bill
2. Copy of the Bank Certified Invoices.
3. Copy of the Bill Lading / Airway Bill
4. Six duplicate Copy of AR-4 wherever applicable
5. Freight and Insurance certificate wherever the contract is CIF / C&F
6. Copy of the Test report where the goods are required to be tested
7. Copy of the Brand rate letters where the drawback claim is against the Brand rate
8. Mate receipt
9. Copy of the Contract or Letter of credit as the case may be
10. Modvat Declaration wherever applicable
11. Any declaration required as per foot note of the Drawback schedule
12. Work sheet showing the drawback amount claimed
13. DEEC Book and licence copy where applicable.
14. Trans-shipment certificate where applicable
15. Proof of foreign agency commission paid if any
16. Blank acknowledgement card in duplicate
17. Pre – receipt for drawback amount on the reverse of Shipping Bill duly signed on the Rs1/- revenue stamp

The claims are settled and passed by the appraiser if the amount sanctioned is below Rs 1,00,000/- and by the Assistant Commissioner, if the amount of drawback exceeds Rs1.00.000/-. After pre-audit, the cheques are issued to the designated banks for credit to the exporters account or handed over to the authorized representative of the exporter. For further details refer to the *Public Notices issued by the concerned Custom Houses/ Central Excise Commissionerate.*