INDIRECT TAX LAWS

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SYLLABUS

Indirect Tax Laws

Objectives: To develop an understanding among the students about the various provisions prevailing in India related to sales tax, excise tax, custom laws and other indirect taxes.

DCOM502 Indirect Tax Laws

Sr. No.	Description
1.	Indirect Taxes: basic features, Difference between Direct and Indirect taxes. Indian Taxation Structure.
2.	Central Excise Duty: Meaning, definitions, Kinds of excise duty, excise ability and manufacture, Classification of excisable goods and Valuation of excisable goods.
3.	Assessment Procedure, Various authorities under Excise Law and their powers, Clearances of excisable goods.
4.	Service tax: features, computation, collection and recovery of service tax and assessment procedure.
5.	Customs Duty: definitions, types of duties, levy of custom duties, collection and exemption from customs duties
6.	Valuation of custom goods, Clearance procedure of imported and exported goods.
7.	Warehousing and Duty Drawback.
8.	Central Sales Tax: Features, Definitions and Principles of Central Sales (Relating to inter-state sales, intra-state sales and sales in the course of import and export including penultimate sales).
9.	Registration of dealers and Procedure of assessment.
10.	Value Added Tax: features, computation and benefits of VAT.

DCOM308 Indirect Tax Laws

Sr. No.	Description
1	**Taxation:** Significance, Basic Principles, Direct and Indirect taxes, Nature of Indirect taxes, advantages and limitations.
2	**Central excise duty:** Meaning, definitions, Kinds of excise duty, excise ability and manufacture, Classification of excisable goods, Valuation of excisable goods
3	Assessment Procedure, Various authorities under Excise Law and their powers, Clearances of excisable goods
4	Introduction to Service tax and procedure of assessment, filing of return.
5	**Customs duty:** Basic concepts of custom law, definitions, types of duties, Details of procedure in relation to levy, collection and exemption from customs duties
6	Valuation of goods, Clearance of imported and exported goods,
7	Provisions relating to warehousing, Duty Drawback
8.	Central Sales Tax- Features, Definitions, Principles of Central Sales (Relating to inter-state sales, intrastate sales and sales in the course of import and export including penultimate sales), Various form to be used, filing of return..
9.	Registration of dealers, Procedure of assessment
10.	Introduction to value added tax

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Unit 1: Introduction to Indirect Taxes

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Objectives

After studying this unit, you should be able to:

- Know about Indirect Taxes
- Understand the basic features of Indirect Taxes
- Know the difference between Direct and Indirect Taxes
- Describe about Indian Taxation structure

Introduction

The indirect tax in India constitutes a group of tax laws and regulations. The indirect taxes in India are enforced upon different activities including manufacturing, trading and imports. Indirect taxes influence all the business lines in India. Charge levied by the State on consumption, expenditure, privilege, or right but not on income or property. The indirect tax system in India has undergone extensive reforms for more than two decades. One of the most important reasons for recent tax reforms in many developing and transitional economies has been to evolve a tax system to meet the requirements of international competition.

1.1 Basic Features of Indirect Taxes

An indirect tax is one in which the burden can be shifted to others. The tax payer is not the tax bearer. The impact and incidence of indirect taxes are on different persons. An indirect tax is

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levied on and collected from a person who manages to pass it on to some other person or persons on whom the real burden of tax falls. For example commodity taxes or sales tax, excise duty, custom duties, etc. are indirect taxes.

Source: http://kalyan-city.blogspot.in/2010/12/indirect-tax-meaning-merits-and.html

1.1.1 Advantages/Merits of Indirect Taxes

The merits of indirect taxes are briefly explained as follows:

1. ***Convenient:*** Indirect taxes are imposed on production, sale and movements of goods and services. These are imposed on manufacturers, sellers and traders, but their burden may be shifted to consumers of goods and services who are the final taxpayers. Such taxes, in the form of higher prices, are paid only on purchase of a commodity or the enjoyment of a service. So taxpayers do not feel the burden of these taxes. Besides, money burden of indirect taxes is not completely felt since the tax amount is actually hidden in the price of the commodity bought. They are also convenient because generally they are paid in small amounts and at intervals and are not in one lump sum. They are convenient from the point of view of the government also, since the tax amount is collected generally as a lump sum from manufacturers or traders.
2. ***Difficult to Evade:*** Indirect taxes have in-built safeguards against tax evasion. The indirect taxes are paid by customers, and the sellers have to collect it and remit it to the Government. In the case of many products, the selling price is inclusive of indirect taxes. Therefore, the customer has no option to evade the indirect taxes.
3. ***Wide Coverage:*** Unlike direct taxes, the indirect taxes have a wide coverage. Majority of the products or services are subject to indirect taxes. The consumers or users of such products and services have to pay them.
4. ***Elastic:*** Some of the indirect taxes are elastic in nature. When government feels it necessary to increase its revenues, it increases these taxes. In times of prosperity indirect taxes produce huge revenues to the government.
5. ***Universality:*** Indirect taxes are paid by all classes of people and so they are broad based. Poor people may be out of the net of the income tax, but they pay indirect taxes while buying goods.

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6. ***Influence on Pattern of Production:*** By imposing taxes on certain commodities or sectors, the government can achieve better allocation of resources. For example by imposing taxes on luxury goods and making them more expensive, government can divert resources from these sectors to sector producing necessary goods.

7. ***May not affect motivation to work and save:*** The indirect taxes may not affect the motivation to work and to save. Since, most of the indirect taxes are not progressive in nature, individuals may not mind to pay them. In other words, indirect taxes are generally regressive in nature. Therefore, individuals would not be demotivated to work and to save, which may increase investment.

8. ***Social Welfare:*** The indirect taxes promote social welfare. The amount collected by way of taxes is utilized by the government for social welfare activities, including education, health and family welfare. Secondly, very high taxes are imposed on the consumption of harmful products such as alcoholic products, tobacco products, and such other products. So it is not only to check their consumption but also enables the state to collect substantial revenue in this manner.

9. ***Flexibility and Buoyancy:*** The indirect taxes are more flexible and buoyant. Flexibility is the ability of the tax system to generate proportionately higher tax revenue with a change in tax base, and buoyancy is a wider concept, as it involves the ability of the tax system to generate proportionately higher tax revenue with a change in tax base, as well as tax rates.

1.1.2 Disadvantages/Demerits of Indirect Taxes

Although indirect taxes have become quite popular in both developed and underdeveloped countries alike, they suffer from various demerits, of which the following are important:

1. ***High Cost of Collection:*** Indirect tax fails to satisfy the principle of economy. The government has to set up elaborate machinery to administer indirect taxes. Therefore, cost of tax collection per unit of revenue raised is generally higher in the case of most of the indirect taxes.

2. ***Increase income inequalities:*** Generally, the indirect taxes are regressive in nature. The rich and the poor have to pay the same rate of indirect taxes on certain commodities of mass consumption. This may further increase income disparities among the rich and the poor.

3. ***Affects Consumption:*** Indirect taxes affects consumption of certain products. For instance, a high rate of duty on certain products such as consumer durables may restrict the use of such products. Consumers belonging to the middle class group may delay their purchases, or they may not buy at all. The reduction in consumption affects the investment and production activities, which in turn hampers economic growth.

4. ***Lack of Social Consciousness:*** Indirect taxes do not create any social consciousness as the taxpayers do not feel the burden of the taxes they pay.

5. ***Uncertainty:*** Indirect taxes are often rather uncertain. Taxes on commodities with elastic demand are particularly uncertain, since quantity demanded will greatly affect as prices go up due to the imposition of tax. In fact a higher rate of tax on a particular commodity may not bring in more revenue.

6. ***Inflationary:*** The indirect taxes are inflationary in nature. The tax charged on goods and services increase their prices. Therefore, to reduce inflationary pressure, the government may reduce the tax rates, especially, on essential items.

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7. ***Possibility of Tax Evasion:*** There is a possibility of evasion of indirect taxes as some customers may not pay indirect taxes with the support of sellers. For instance, individuals may purchase items without a bill, and therefore, may not pay Sales tax or VAT (Value Added Tax), or may obtain the services without a bill, and therefore, may evade the service tax.

1.2 Indirect Tax System in India

In general, the Indirect Tax in India is a complex system of interconnecting laws and regulations, which includes specific laws of different states. For this there are many reliable organizations in India, which employs efficient Indirect Tax professionals to help their clients. These tax professionals with their in-depth knowledge and wide-ranging experience offers effective planning methods to their clients in order to help in their cost minimization. The Indirect Taxation regime encompasses various types of taxes like Sales Tax, Service Tax, Custom and Excise Duties, VAT and Anti-Dumping Duties, and the organizations provide services in all these related fields.

In the recent year, the Indian government has undertaken significant reform of indirect taxation system. This includes the initiation of a region-based and state-level VAT on goods. However, it should be noted that as taxes still forms a barrier to inter-state trading in order to attain a secured market for the activities related to services and goods more reform is needed. Some of the reforms that can be introduced for a better indirect taxation system in India are –

- The serialized set of Indirect Taxes so far activated at the central and state levels should be amalgamated and treated as a single tax.
- The integrated Indirect Tax should be neutral at all levels such that chances of fraudulence would be minimized.
- The Central Sales Tax, which obstructs easy trading between different states, is being under the process of termination that would help to abolish the control measures on the inter-state trade.

Indirect Taxes during Pre-Reforms

The indirect tax structure was extremely irrational between the reforms. The Constitution gives the permission to levy a multitude of indirect taxes. But the most important ones are customs and excise duties charged by the Central government and sales tax excepting inter state sales tax to be charged by the state government. The indirect taxes levied by the center like customs, excise and central sales tax and the major indirect taxes levied by the states and civic bodies like passenger and goods tax, electricity duty and octroi when taken together did not present a rational system.

1.3 Indirect Taxes in Post Reforms

Even post reforms, the indirect tax regime in India is still in the early stages of growth. Both the Central and State governments charge a multitude of indirect taxes. The Central Government charges tax on goods at the point of import (Customs duty), manufacture (Excise duty), interstate sales (Central sales tax or CST) and on provision of services (Service tax).

The State Governments charge tax on goods sold within the state (Sales tax/Value Added Tax or VAT), and on the goods that enter the state (Entry tax). In the present scenario corporate would have to analyze the tax cost involved in a transaction, have enough backup documentation to support their tax positions and keep looking for ways for tax maximization.

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Notes The tax system in India mainly, is a three tier system which is based between the Central, State Governments and the local government organizations.

Self Assessment

Fill in the blanks:

1. The indirect tax in India constitutes a group of .....and regulations.
2. The indirect taxes in India are enforced upon different activities including manufacturing, ...and imports.
3. Indirect taxes influence all the .....lines in India.
4. The serialized set of .....so far activated at the central and state levels should be amalgamated and treated as a single tax.
5. The ..... gives the permission to levy a multitude of indirect taxes.

1.4 Service Tax

Service tax is levied on services provided by the businessman, professional or any other service provider. It is an indirect tax. Service tax was first introduced by the former Finance Minister Dr. Manmohan Singh, in his budget of 1994-95. The then Narasimha Rao government went by the recommendations of the Raja Chelliah Panel on tax reforms. Perhaps, it had to first ensure the acceptance of the concept of service tax. It was initially levied on three services–telephones, non-life insurance and stock-broking. The rate of tax was pegged at a modest of 5%. It was increased from 5% in 1995 to 8% in 2003. It was revised to 10% with effect from September 2004. At present the rate of service tax is 12.36%. The tax came into effect on July 1, 1994.

Task Discuss about Indirect Tax System in India.

Indirect Tax

An indirect tax is a tax collected by an intermediary (such as a retail store) from the person who bears the ultimate economic burden of the tax (such as the customer). An indirect tax is one that can be shifted by the taxpayer to someone else. An indirect tax may increase the price of a good so that consumers are actually paying the tax by paying more for the products. The some important indirect taxes imposed in India are as under:

1.5 Customs Duty

The Customs Act was formulated in 1962 to prevent illegal imports and exports of goods. Besides, all imports are sought to be subject to a duty with a view to affording protection to indigenous industries as well as to keep the imports to the minimum in the interests of securing the exchange rate of Indian currency. Duties of customs are levied on goods imported or exported from India at the rate specified under the Customs Tariff Act, 1975 as amended from time to time or any other law for the time being in force. Under the custom laws, the various types of duties are leviable. (1) Basic Duty: This duty is levied on imported goods under the Customs Act, 1962. (2) Additional Duty (Countervailing Duty) (CVD): This is levied under section 3 (1) of the

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Custom Tariff Act and is equal to excise duty levied on a like product manufactured or produced in India. If a like product is not manufactured or produced in India, the excise duty that would be leviable on that product had it been manufactured or produced in India is the duty payable. If the product is leviable at different rates, the highest rate among those rates is the rate applicable. Such duty is leviable on the value of goods plus basic custom duty payable. (3) Additional Duty to compensate duty on inputs used by Indian manufacturers: This is levied under section 3(3) of the Customs Act. (4) Anti-dumping Duty: Sometimes, foreign sellers abroad may export into India goods at prices below the amounts charged by them in their domestic markets in order to capture Indian markets to the detriment of Indian industry. This is known as dumping. In order to prevent dumping, the Central Government may levy additional duty equal to the margin of dumping on such articles. There are however certain restrictions on imposing dumping duties in case of countries which are signatories to the GATT or on countries given "Most Favoured Nation Status" under agreement. (5) Protective Duty: If the Tariff Commission set up by law recommends that in order to protect the interests of Indian industry, the Central Government may levy protective anti-dumping duties at the rate recommended on specified goods.

The difference between a direct and indirect tax is complicated because it truly depends on whether you are asking from a "legal" or an "economic" perspective. In economics, a direct tax will refer to any levy that is both imposed and collected on a specific group of people or organizations. A sales tax, for instance, would not be considered a direct tax because the money is collected from merchants, not from the people who actually pay the tax (the consumers). An example of direct taxation would be income taxes that are collected from the people who actually earn their income. Indirect taxes are collected from someone or some organization other than the person or entity that would normally be responsible for the taxes.

In this economic context, the law may actually determine the person or entities from which the tax will be collected, but has nothing to do with how that tax burden is distributed in the market. Who bears the economic burden of the tax itself will be determined by market forces and can be calculated by comparing the price of the goods after the tax has been imposed with the price of the goods prior to the tax being in place. For example, if the price of a gallon of gasoline was $2.50 without taxes and the government suddenly imposed a $0.40 tax, the economic forces of supply and demand would ultimately decide how this new burden is distributed between buyers and sellers. For instance, the price could increase to $2.75 per gallon after the tax, with buyers absorbing $0.25 of the increase and sellers the remaining $0.15. The law may have imposed the tax but the marketplace ultimately decided how it would be distributed.

In a legal sense, the meaning of direct and indirect taxes changes so that a direct tax, according to the U.S. Constitution, applies only to property and poll taxes. These direct taxes are based on simple ownership or existence. Indirect taxes are imposed upon a broad range of abstract ideas, including rights, privileges, and activities. In this sense, a tax on the sale of property would be considered an indirect tax while the tax actually owed on the property would be direct.

The legal distinction between direct and indirect taxes was important enough to warrant the passage of a Constitutional amendment - 16th Amendment - in 1913. Prior to this amendment the law was written in such a way that all direct taxes imposed by the government had to be directly apportioned to the population. In other words, any state having half as many people as another state would only have direct tax revenue that equaled half that of the larger state. The direct tax legal definition prevented the government from imposing personal income taxes prior to the passage of the 16th Amendment because of the apportionment requirement. The 16th Amendment ended the apportionment requirement and created personal income taxes. However, the apportionment requirement does remain on the books pertaining to other direct taxes, such as property taxes. Due to the fact that there is no federal property tax, this legal restriction has no literal meaning or fiscal impact.

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To put this in perspective, an income tax is technically an indirect tax levied against people, corporations, and other legal entities recognized by the legal system. There are a number of systems in existence to help collect this income tax, from a simple flat tax to a more complex progressive system. This indirect tax on individuals is typically based upon total income minus legally permitted deductions. For corporations (for profit corporations), the corporate income tax is based upon the net income or total revenue minus all expenses.

The 16th Amendment forever changed the tax code and paved the way for the passage of a wide assortment of indirect taxes that affect virtually every aspect of modern life. While it may seem like mere semantics when looking at the definitions of direct and indirect taxes, the fact is that government revenues increased greatly after the adoption of the 16th Amendment and the income taxes it helped to legalize.

1. ***Allocation Effect:*** The allocative effects of direct taxes are superior to those of indirect taxes. When a particular amount is raised through a direct tax like income tax, it would imply a lesser burden than the same amount raised through an indirect tax like excise duty.

   An indirect tax involves excessive burden as it distorts the consumer's preference regarding goods due to price changes. Thus an indirect tax has an adverse effect on the allocation of resources than a direct tax.

Image Credits © Curious Spider

2. ***Distributive Effect:*** Direct taxes are progressive and they help to reduce inequalities. But indirect taxes are regressive and they widen the gap of inequalities.

   Hence, direct taxes are regarded to be superior to indirect taxes in effecting a more equitable distribution of income and wealth. But this is not always true.

   Even indirect taxes can be made progressive by levying them on luxuries and exempting them on necessaries.

   Both direct and indirect taxes are alternative methods of achieving any particular redistribution of income.

3. ***Administrative Costs:*** The administrative costs of direct taxes are more than that of indirect taxes. Direct taxes are narrow based and has many exemptions. Indirect taxes can be conveniently collected and cost of collection is constant overtime. Indirect taxes are easier to administer than direct taxes.

   From point of view of efficiency and productivity, indirect taxes are better. Indirect taxes are wrapped up in prices and hence they cannot be easily evaded. They are more productive as their cost of collection is the least.

   Thus, from point of view of administrative costs, indirect taxes are relatively superior.

4. ***Built-in Flexibility and Stability:*** Direct taxes are more flexible than indirect taxes. During a period of prosperity, direct taxes fetch more revenue as they are progressive. But indirect taxes are proportional and they do not fetch as much revenue as direct taxes.

   Direct taxes help to reduce the inflationary pressure by taking away the excess purchasing power and hence they promote stability. But indirect taxes are inflationary.

   Hence, from the point of stability, direct taxes are preferred to indirect taxes.

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5. ***Growth Orientation:*** Indirect taxes are more growth oriented than direct taxes. Direct taxes, being progressive, reduce savings. When savings and investments are discouraged, economic growth is adversely effected.

   Indirect taxes discourage consumption and increase savings. Indirect taxes on luxuries reduce conspicuous consumption and channelise resources in to growth oriented programmes.

   Taxes are financial levies or burden imposed by governments upon its citizens to realize money for various purposes. The main purpose is to carry out administration and welfare activities for the population, and also to raise money for the defense of the country. Taxes are not voluntary contributions, but rather enforced upon people. There are two types of taxes called direct taxes and indirect taxes, and both are used in varying proportions by all governments of the world. Though the purpose of revenue generation is served by both direct as well as indirect taxes, they are different in nature. This article attempts to make this distinction clear and remove all doubts from the minds of the readers.

The tax that is realized directly from the individual upon whom it is levied is called a direct tax while the taxes that are collected from intermediaries rather than those who actually pay them are called indirect taxes. The example of a direct tax would be income tax which is also called a progressive kind of tax. On the other hand sales tax is an example of indirect tax as the tax is collected from the merchants who in turn collect it from the end consumers. Indirect taxes are also called regressive taxes as they lead to an increase in inequalities in the society. They can however be made progressive if rich are made to pay them while poor are exempted from paying these taxes.

Did u know? Taxes are financial levies or burden imposed by governments upon its citizens to realize money for various purposes. The main purpose is to carry out administration and welfare activities for the population, and also to raise money for the defense of the country.

Self Assessment

State whether True or False:

6. Service tax is levied on services provided by the businessman, professional or any other service provider.
7. An indirect tax is a tax collected by an intermediary from the person who bears the ultimate economic burden of the tax.
8. The Customs Act was formulated in 1982 to prevent illegal imports and exports of goods.
9. The administrative costs of direct taxes are more than that of indirect taxes.
10. Direct taxes are more flexible than direct taxes.
11. Cost of collection is also less in case of direct taxes which is pretty low in direct taxes.

1.6 What is the difference between Direct Tax and Indirect Tax?

- Indirect tax changes the preference of a consumer towards goods because of price changes. Thus indirect tax has an adverse effect on allocation of resources whereas there is no such effect in case of direct taxes and hence realization is more.

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- One other difference is in the nature of direct taxes being progressive as they reduce inequalities whereas indirect taxes are regressive and lead to more inequalities.
- However, indirect taxes are easier to administer than direct taxes. Then there are no exemptions in case of indirect taxes whereas there are many kinds of exemptions in direct taxes.
- Indirect taxes, being wrapped up with retail prices are more efficient than direct taxes and more difficult to evade.
- Cost of collection is also less in case of direct taxes which is pretty high in direct taxes.
- Indirect taxes are inflationary in nature. On the other hand, direct taxes bring stability and reduce inflationary pressures as they take away excess purchasing power from the people.
- Direct taxes reduce savings and people are not able to make investments which affects growth. On the other hand, indirect taxes are growth oriented. Indirect taxes discourage people from spending too much and as such encourage savings.

Task Describe the difference between Direct and Indirect Tax.

1.7 Indian Taxation Structure

India has a well-developed tax structure with clearly demarcated authority between Central and State Governments and local bodies. Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), customs duties, central excise and service tax.

Value Added Tax (VAT), (Sales tax in States where VAT is not yet in force), stamp duty, State Excise, land revenue and tax on professions are levied by the State Governments. Local bodies are empowered to levy tax on properties, octroi and for utilities like water supply, drainage etc. In last 10-15 years, Indian taxation system has undergone tremendous reforms. The tax rates have been rationalized and tax laws have been simplified resulting in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

Since April 01, 2005, most of the State Governments in India have replaced sales tax with VAT.

- Taxes Levied by Central Government
- Direct Taxes
- Tax on Corporate Income
- Capital Gains Tax
- Personal Income Tax
- Tax Incentives
- Double Taxation Avoidance Treaty
- Indirect Taxes
- Excise Duty
- Customs Duty

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- Service Tax
- Securities Transaction Tax
- Taxes Levied by State Governments and Local Bodies
- Sales Tax/VAT
- Other Taxes

Direct Taxes

Taxes on Corporate Income

Companies residents in India are taxed on their worldwide income arising from all sources in accordance with the provisions of the Income Tax Act. Non-resident corporations are essentially taxed on the income earned from a business connection in India or from other Indian sources. A corporation is deemed to be resident in India if it is incorporated in India or if its control and management is situated entirely in India.

Domestic corporations are subject to tax at a basic rate of 35% and a 2.5% surcharge. Foreign corporations have a basic tax rate of 40% and a 2.5% surcharge. In addition, an education cess at the rate of 2% on the tax payable is also charged. Corporates are subject to wealth tax at the rate of 1%, if the net wealth exceeds ₹1.5 mn (appox. $ 33333).

Domestic corporations have to pay dividend distribution tax at the rate of 12.5%, however, such dividends received are exempt in the hands of recipients.

Corporations also have to pay for Minimum Alternative Tax at 7.5% (plus surcharge and education cess) of book profit as tax, if the tax payable as per regular tax provisions is less than 7.5% of its book profits.

Capital Gains Tax

Tax is payable on capital gains on sale of assets. Long-term Capital Gains Tax is charged if–

- Capital assets are held for more than three years and in case of shares, securities listed on a recognized stock exchange in India, units of specified mutual funds, the period for holding is one year.
- Long-term capital gains are taxed at a basic rate of 20%. However, long-term capital gains from sale of equity shares or units of mutual funds are exempt from tax.
- Short-term capital gains are taxed at the normal corporate income tax rates. Short-term capital gains arising on the transfer of equity shares or units of mutual funds are taxed at a rate of 10%.
- Long-term and short-term capital losses are allowed to be carried forward for eight consecutive years. Long-term capital losses may be offset against taxable long-term capital gains and short-term capital losses may be offset against both long term and short-term taxable capital gains.
- Personal income tax is levied by Central Government and is administered by Central Board of Direct Taxes under Ministry of Finance in accordance with the provisions of the Income Tax Act.

Notes

The rates for personal income tax are as follows:

Individual resident in India other than a woman or a senior citizen

	Income Level/Slabs (₹)	Income Tax Rate
i	0–180,000	NIL
ii	180,000–500,000	10% of amount by which the total income exceeds ₹ 180,000
iii	500,000–800,000	₹ 32,000 + 20% of the amount by which the total income exceeds ₹ 500,000.
iv	800,000 or above	₹ 92,000 + 30% of the amount by which the total income exceeds ₹ 800,000.

Individual being a woman resident in India

	Income Level/Slabs (₹)	Income Tax Rate
i	0–190,000	NIL
ii	190,000–500,000	10% of amount by which the total income exceeds ₹ 190,000
iii	500,000–800,000	₹ 31,000 + 20% of the amount by which the total income exceeds ₹ 500,000.
iv	800,000 or above	₹ 92,000 + 30% of the amount by which the total income exceeds ₹ 800,000.

Individual resident who is of the age of 60 years or more but below the age of 80 years at any time during the previous year

	Income Level/Slabs (₹)	Income Tax Rate
i	0–250,000	NIL
ii	250,000–500,000	10% of amount by which the total income exceeds ₹ 250,000
iii	500,000–800,000	₹ 25,000 + 20% of the amount by which the total income exceeds ₹ 500,000.
iv	800,000 or above	₹ 92,000 + 30% of the amount by which the total income exceeds ₹ 800,000.

Individual resident who is of the age of 80 years or more at any time during the previous year

	Income Level/Slabs (₹)	Income Tax Rate
i	0 – 500,000	NIL
ii	500,000–800,000	20% of the amount by which the total income exceeds ₹ 500,000
iii	800,000 or above	₹ 60,000 + 30% of the amount by which the total income exceeds ₹ 800,000.

Surcharges of 10% on total tax is levied if income exceeds ₹ 8,50,000.

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Rates of Withholding Tax

Current rates for withholding tax for payment to non-residents are:-

(i) Interest 20%

(ii) Dividends paid by domestic companies: Nil

(iii) Royalties 10%

(iv) Technical Services 10%

(v) Any other services Individuals: 30% of the income

Notes Capital assets are held for more than three years and In case of shares, securities listed on a recognized stock exchange in India, units of specified mutual funds, the period for holding is one year.

Companies: 40% of the net income

The above rates are general and are applicable in respect of countries with which India does not have a Double Taxation Avoidance Agreement (DTAA).

Tax Incentives

Government of India provides tax incentives for:-

- Corporate profit
- Accelerated depreciation allowance
- Deductibility of certain expenses subject to certain conditions.

These tax incentives are, subject to specified conditions, available for new investment in

- Infrastructure,
- Power distribution,
- Certain telecom services,
- Undertakings developing or operating industrial parks or special economic zones,
- Production or refining of mineral oil,
- Companies carrying on R&D,
- Developing housing projects,
- Undertakings in certain hill states,
- Handling of food grains,
- Food processing,
- Rural hospitals etc.

1.8 Double Tax Avoidance Treaty

Notes

India has entered into DTAA with 65 countries including the US. In case of countries with which India has Double Tax Avoidance Agreement, the tax rates are determined by such agreements. Domestic corporations are granted credit on foreign tax paid by them, while calculating tax liability in India. In the case of the US, dividends are taxed at 20%, interest income at 15% and royalties at 15%.

Indirect Taxes

Excise Duty

Manufacture of goods in India attracts Excise Duty under the Central Excise Act 1944 and the Central Excise Tariff Act 1985. Herein, the term Manufacture means bringing into existence a new article having a distinct name, character, use and marketability and includes packing, labelling etc.

Most of the products attract excise duties at the rate of 16%. Some products also attract special excise duty/and an additional duty of excise at the rate of 8% above the 16% excise duty. 2% education cess is also applicable on the aggregate of the duties of excise. Excise duty is levied on ad valorem basis or based on the maximum retail price in some cases.

Customs Duty

The levy and the rate of customs duty in India are governed by the Customs Act 1962 and the Customs Tariff Act 1975. Imported goods in India attract basic customs duty, additional customs duty and education cess. The rates of basic customs duty are specified under the Tariff Act. The peak rate of basic customs duty has been reduced to 15% for industrial goods. Additional customs duty is equivalent to the excise duty payable on similar goods manufactured in India. Education cess at 2% is leviable on the aggregate of customs duty on imported goods. Customs duty is calculated on the transaction value of the goods.

Rates of customs duty for goods imported from countries with whom India has entered into free trade agreements such as Thailand, Sri Lanka, BIMSTEC, south Asian countries and MERCOSUR countries are provided on the website of CBEC.

Customs duties in India are administrated by Central Board of Excise and Customs under Ministry of Finance.

Service Tax

Service tax is levied at the rate of 10% (plus 2% education cess) on certain identified taxable services provided in India by specified service providers. Service tax on taxable services rendered in India are exempt, if payment for such services is received in convertible foreign exchange in India and the same is not repatriated outside India. The Cenvat Credit Rules allow a service provider to avail and utilize the credit of additional duty of customs/excise duty for payment of service tax. Credit is also provided on payment of service tax on input services for the discharge of output service tax liability.

Securities Transaction Tax

Transactions in equity shares, derivatives and units of equity-oriented funds entered in a recognized stock exchange attract Securities Transaction Tax at the following rate:

Notes

- Delivery base transactions in equity shares or buyer and seller each units of an equity-oriented fund - 0.075%
- Sale of units of an equity-oriented fund to the seller mutual fund - 0.15%
- Non-delivery base transactions in the above - 0.015%
- Derivatives (futures and options) seller - 0.01% Sales Tax Acts of various State Governments and Central Sales Act governed the application of Sales Tax/VAT.

Sales Tax/VAT

Sales tax is levied on the sale of movable goods. Most of the Indian States have replaced Sales tax with a new Value Added Tax (VAT) from April 01, 2005. VAT is imposed on goods only and not services and it has replaced sales tax. Other indirect taxes such as excise duty, service tax etc., are not replaced by VAT. VAT is implemented at the State level by State Governments. VAT is applied on each stage of sale with a mechanism of credit for the input VAT paid. There are four slabs of VAT:-

- 0% for essential commodities
- 1% on bullion and precious stones
- 4% on industrial inputs and capital goods and items of mass consumption
- All other items 12.5%
- Petroleum products, tobacco, liquor etc., attract higher VAT rates that vary from State to State

A Central Sales Tax at the rate of 2% is also levied on inter-State sales and would be eliminated gradually.

Municipal/Local Taxes

- ***Octroi/entry tax:*** Some municipal jurisdictions levy octroi/entry tax on entry of goods

Other State Taxes

- Stamp duty on transfer of assets
- Property/building tax levied by local bodies
- Agriculture income tax levied by State Governments on income from plantations
- Luxury tax levied by certain State Government on specified goods

Self Assessment

Fill in the blanks:

12. Indirect tax changes the preference of a ..... towards goods because of price changes.
13. ..... of collection is also less in case of direct taxes which is pretty high in direct taxes.
14. ..... taxes reduce savings and people are not able to make investments which affects growth.

15. India has a well-developed .....with clearly demarcated authority between Central and State Governments and local bodies.

Notes

Did u know? Sales tax is levied on the sale of movable goods. Most of the Indian States have replaced Sales tax with a new Value Added Tax (VAT) from April 01, 2005.

Case Study

Indirect Tax case study

The client is a leading technology company, which provides innovative solutions to its clients. It is a strategic partner, delivering a wide range of services including all the required stages which its customers need: design, implementation and commissioning of technology.

Approach

In January 2007 Romania became a Member State of the European Union. As a result, both the Romanian authorities and business had to apply the complex rules on VAT and customs which exist within the EU, and to introduce the IT systems which EU law requires. KPMG helped this company adapt its IT applications to enable management to comply with the new reporting requirements relating to VAT and customs. The client wanted advisors who could:

- assess which systems, processes and procedures were relevant to the provision of VAT and customs returns by the company
- determine how IT systems could be adapted to comply with the new rules, and
- make the necessary changes to IT applications and test them.

Result

KPMG's Tax practice was chosen because the client was attracted by:

- our vision of the appropriate way to achieve the deliverables
- our ability to mobilize rapidly a strong multi-disciplinary team (IT Advisory and Indirect Tax Advisory)
- our progressive use of technology to aid implementation.

Overall, the client was convinced that it could form an effective working relationship with KPMG.

Contd....

Notes

Approach

KPMG supported the client by analyzing all the operations performed and advising on the fiscal implications of each operation. The main result of this phase of the project was that KPMG issued a manual presenting the fiscal implications of all the operations performed by the company. Then the IT system requirements had to be determined and the necessary upgrades carried out. A team formed of Indirect Tax and IT Advisory professionals worked together to design the IT systems' rules and assisted the client in introducing these rules into their management IT system. The final stage of the project involved verifying whether the mechanisms to apply the new fiscal rules had been correctly installed into the company's IT systems and whether the upgraded IT system was working properly.

We also conducted training for all the employees of the company who would work with the new system, making sure that for each stage of data input there was a member of staff who clearly understood the reasons behind his or her actions as well as the consequences of an error.

Result

KPMG helped create an IT system suited to supporting the client's staff in determining and applying the correct fiscal treatment for the company's operations. Our assistance helped the client define clearly everyone's roles and responsibilities in helping to ensure the effective management of indirect tax. The client's central tax team gained greater oversight of compliance processes and greater confidence in the accuracy of their reporting. This has added value to the business by improving the accuracy of returns and mitigating the risk of unexpected tax demands from the authorities, as well as related penalty charges.

Source: http://www.kpmg.com/ro/en/whatwedo/tax/pages/indirect-tax-case-study.aspx

1.9 Summary

- The state governments charge tax on goods sold within the state.
- Service tax is levied on services provided by the businessman, professional or any other service provider.
- An indirect tax is a tax collected by an intermediary from the person who bears the ultimate economic burden of the tax.
- The Customs Act was formulated in 1962 to prevent illegal imports and exports of goods.
- In this economic context, the law may actually determine the person or entities from which the tax will be collected, but has nothing to do with how that tax burden is distributed in the market.
- The legal distinction between direct and indirect taxes was important enough to warrant the passage of a Constitutional amendment.
- The 16th Amendment forever changed the tax code and paved the way for the passage of a wide assortment of indirect taxes that affect virtually every aspect of modern life.
- The allocative effects of direct taxes are superior to those of indirect taxes.
- An indirect tax involves excessive burden as it distorts the consumer's preference regarding goods due to price changes
- Direct taxes are progressive and they help to reduce inequalities. But indirect taxes are regressive and they widen the gap of inequalities.

Notes

- The administrative costs of direct taxes are more than that of indirect taxes.
- Direct taxes are more flexible than indirect taxes.
- Indirect taxes are more growth oriented than direct taxes.
- Taxes are financial levies or burden imposed by governments upon its citizens to realize money for various purposes.

1.10 Keywords

Administrative Costs: The administrative costs of direct taxes are more than that of indirect taxes. Direct taxes are narrow based and has many exemptions. Indirect taxes can be conveniently collected and cost of collection is constant overtime.

Allocation Effect: The allocative effects of direct taxes are superior to those of indirect taxes.

Growth Orientation: Indirect taxes are more growth oriented than direct taxes. Direct taxes, being progressive, reduce savings. When savings and investments are discouraged, economic growth is adversely effected.

Service Tax: Sales tax is levied on the sale of movable goods. Most of the Indian States have replaced Sales tax with a new Value Added Tax (VAT) from April 01, 2005.

1.11 Review Questions

1. What are the basic features of Indirect taxes?
2. Explain about Indirect Tax System in India.
3. Discuss about Indirect Taxes in Post reforms.
4. What is the difference between Direct and Indirect Tax?
5. What do you know about distributive Effect?
6. Describe about taxes on Corporate Income.
7. What do you know about Securities Transaction Tax?
8. Explain about Double Tax Avoidance treaty.
9. What do you know about Allocation Effect?
10. Describe about Customs Duty

Answers: Self Assessment

1.	Tax Laws	2.	Trading
3.	Business	4.	Indirect Taxes
5.	Constitution	6.	True
7.	True	8.	False
9.	True	10.	False
11.	False	12.	Consumer
13.	Cost	14.	Direct
15.	Tax Structure		

Notes

1.12 Further Readings

Books

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Singhania, Dr. Vinod K. and Singhania, Dr. Kapil, *Direct Taxes Law & Practice with Special Reference to Tax Planning*, 41st, Edition 2009-10, Taxman's.

VS Datey, *Indirect Tax Laws*, CHH India

Yogendra Bangar Vandana, *Direct & Indirect Taxes Planning & Management*, Aadhya Prakashan

Online links

www.indirecttax.indlaw.com/search/articles/

www.monckton.com/library/articles.php?area=7

www.onlinecacoaching.com/.../CA%20Final-Indirect%20Taxation.pdf

www. taxlawsandviews.com

www.taxmanagementindia.com/visitor/detail_article.asp

Unit 2: Central Excise Duty

Notes

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about Central Excise Duty
- Understand different Kinds of Excise Duty
- Know about Excise ability and Manufacture
- Describe valuation under Central Excise.

Introduction

Central Excise duty is an indirect tax which is levied and collected on the goods/commodities manufactured in India. Generally, manufacturer of commodities is responsible to pay duty to the Government. This indirect taxation is administered through an enactment of the Central Government viz., The Central Excise Act, 1944 and other connected rules- which provide for levy, collection and connected procedures. The rates at which the excise duty is to be collected are stipulated in the Central Excise Tariff Act, 1985. It is mandatory to pay Central Excise duty payable on the goods manufactured, unless exempted e.g.., duty is not payable on the goods exported out of India. Further various other exemptions are also notified by the Government from the payment of duty by the manufacturers.

2.1 Definition and Concepts of Central Excise Duty

Central Excise Law is levied on manufacturer or production of goods. The liability of paying the central excise is on the manufacturer. So let us examine the concept and definitions of goods, manufacture and manufacturer in detail.

Notes

2.1.1 Factory

Factory means any premises where any part of the excisable goods other than salt are manufactured or any manufacturing process is carried out.

2.1.2 Goods

Goods have not been defined in Central Excise Act. As per Article 366(12) of Constitution of India, Goods includes all material commodities and articles.

Sale of Goods Act defines that "Goods" means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Goods must be: (i) Movable; and (ii) Marketable

Movable means goods, which can be shifted from one place to another place, e.g., motor car, mobile phone, computer etc.

The goods attached to earth are immovable goods, such as, Dams, Roads, and Buildings etc.

Movable Goods are manufactured or produced but immovable goods are constructed.

Goods produced for free distribution, as sample, gifts, or replacement during warranty period is also liable of excise duty.

Excisable Goods are those goods, which are mentioned in the items of tariff defines "Excisable Goods as goods specified in the schedule of CETA 1985 as being subject to a duty of excise and includes salt."

Caution The word 'Manufacture' as specified in various Court decisions shall be called only when a new and identifiable goods emerge having a different name, character, or use.

2.1.3 Manufacture or Production

According to Section 2(f) of Central Excise Act "manufacture" includes any process:

(i) Incidental or ancillary to the completion of manufactured product or

(ii) Which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or

(iii) Which, in relation to goods specified in third schedule to the CEA, involves packing or repacking of such goods in a unit container or labelling or relabelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer?

Clauses (ii) and (iii) are called deemed manufacture. Thus, definition of 'manufacture' is inclusive and not exhaustive.

The word 'Manufacture' as specified in various Court decisions shall be called only when a new and identifiable goods emerge having a different name, character, or use; e.g., manufacture has taken place when table is made from wood or of pulp is converted into base paper, or sugar is made from sugarcane.

Notes

Deemed Manufacture: Deemed manufacture is of two types:

(i) CETA specifies some processes as 'amounting to manufacture'. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to 'manufacture' [Section 2(f) (ii)].

(ii) In respect of goods specified in third schedule of Central Excise Act, repacking, relabelling, putting or altering retail sale price etc. will be 'manufacture'. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A on basis of MRP printed on the package. [Section 2(f) (iii)].

Production: Production has also not been defined in CEA but production is used to cover items like coffee, tea, tobacco, etc. which are called to have been manufactured nut produced.

Assembly: Assembly of various parts and components amount to manufacture provided it result in movable goods which have distinctive identity, use, character, name etc. e.g., assembly of computer is manufacture.

Notes Goods have not been defined in Central Excise Act. As per Article 366(12) of Constitution of India, Goods includes all material commodities and articles.

2.1.4 Manufacturer

Manufacturer is a person who actually manufactures or produces the excisable goods. A person who gets the production of other and sell it after putting its own brand then he will not be called manufacturer, e.g., if Khaitan company gets the fans made from some person and sell it after putting their brand name, the Khaitan company will not be manufacturer. The person actually making the fans will be called manufacturer.

Self Assessment

Fill in the blanks:

1. .....Excise Law is levied on manufacturer or production of goods.
2. The ..... of paying the central excise is on the manufacturer.
3. Manufacturer is a person who actually manufactures or produces the ..... goods.
4. A duty of excise is imposed on ..... preparations under Medical and Toilet Preparations.
5. Additional ..... Duty commonly known as countervailing Duty

2.2 Excise Ability and Manufacture

The tax imposed by the government on the manufacturer or producer on the production of some items is called excise duty. The liability to pay excise duty is always on the manufacturer or producer of goods. The duty being a duty on manufacture of goods, it is normally added to the cost of goods, and is collected by the manufacturer from the buyer of goods. Therefore it is called

Notes

an indirect tax. This duty is now termed as "Cenvat". There are three types of parties who can be considered as manufacturers-

- Those who personally manufacture the goods in question
- Those who get the goods manufactured by employing hired labour
- Those who get the goods manufactured by other parties

For example, excise duty on the production of sugar is an indirect tax because the manufacturers of sugar include the excise duty in the price and pass it on to buyers. Ultimately it is the consumers on whom the incidence of excise duty on sugar falls, as they will pay higher price for sugar than before the imposition of the tax.

In order to attract Excise duty liability, following four conditions must be fulfilled:

(a) The duty is on "goods".

(b) The goods must be "excisable".

(c) The goods must be "manufactured" or produced.

(d) Such manufacture or production must be "in India".

Goods: These are the entities, which can be weighted, measured and marketed, e.g. steel, cloth, computer software, gas, etc. Those commodities having very short life are not goods, if not marketable in that short period, even if there is a specific entry in the tariff. Excise duty can only be levied on those items, which are manufactured in India but excluding goods produced or manufactured in Special Economic Zones (SEZ). Thus, excise levy cannot be imposed on imported goods.

Payment of Excise Duty: In case of Non-SSI (Small Scale Industries) i.e., normal assessees the excise duty is payable monthly, and for SSI (availing exemption based on turnover) it is payable quarterly. The duty on the goods removed from the factory or the warehouse during the month shall be paid by the 5th of the following month in case of Non-SSI and by 15th for SSI.

In case of delayed payment, interest should also be deposited at the rate of 13% p.m or ₹ 1,000 per day for the period of delay after 5th or 15th whichever is applicable, whichever is higher, along with the duty.

Payment by debit in Cenvat credit account: Under the Cenvat credit scheme, the assessee is allowed credit of duty paid on inputs or capital goods, which are used in or in relation to manufacture of the final products, and the credit can be utilized towards payment of duty on the final products. Credit is allowed on inputs and capital goods except LDO (light diesel oil), HSD (high speed diesel) and motor spirit. Also, instant credit is allowed immediately on the inputs being received into the factory. However credit is not allowed if final products are exempted from duty.

Following Example will illustrate the credit method of Cenvat.

Let the price of the commodity be ₹ 100, when the transaction takes place without cenvat, B purchases from A at ₹ 110, (10% as excise duty). After addition a value of ₹ 40, the subtotal is ₹ 150. He pays 10% tax on it (i.e ₹ 15) then total is 165. As against this, in the second case, when transaction takes place with Cenvat, B purchases from A at ₹ 100 because he got credit on that amount. After adding the same value of ₹ 40, the sub total is ₹ 140, He has to pay 10% of excise on ₹ 140, i.e., ₹ 14, then total becomes ₹ 154.

Here you can observe easily that transaction with Cenvat is clearly beneficial. The details are exhibited in the following tabular form:

Notes

	Transaction without Cenvat		Transaction with Cenvat	
Details	A	B	A	B
Purchases	-	110	-	100
Value added	100	40	100	40
Sub-total	100	150	100	140
Add-tax 10%	10	15	10	14
Total	110	165	110	154

Exemption from Payment of Excise Duty: Central Excise Rules grant exemption from duty if goods are exported under bond, except exports to Nepal and Bhutan. Similarly, goods manufactured in Special Economic Zones (SEZ) are not excisable and hence no excise duty can be levied on goods manufactured in SEZ.

Generally 16% excise duty and 2% cess on it are imposed on most goods, but government can fix different tariff values for different classes of goods or goods manufactured by different classes or sold to different classes of buyers. Few exceptions like the following are there in case of Textile sector.

Did u know? In case of Non-SSI (Small Scale Industries) i.e., normal assesses the excise duty is payable monthly, and for SSI (availing exemption based on turnover) it is payable quarterly.

Self Assessment

State whether True or False:

6. The tax imposed by the government on the manufacturer or producer on the production of some items is called excise duty.

7. The liability to pay excise duty is always on the manufacturer or producer of goods.

8. Central Excise Rules grant exemption from duty if goods are exported under bond, except exports to Malyasia and Bhutan.

9. The duty on the goods removed from the factory or the warehouse during the month shall be paid by the 5th of the following month in case of Non-SSI and by 19th for SSI.

10. The production of sugar is an indirect tax because the manufacturers of sugar include the excise duty in the price and pass it on to buyers.

2.3 Procedure for Central Excise Registration and grant of Registration Certificate

Introduction: For the administration of the Central Excise Act, 1944 and the Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules') manufacturers' of excisable goods or any person who deals with excisable goods with some exceptions, are required to get the premises registered with the Central Excise Department before commencing business.

Legal Provisions: As per Section 6 of the Central Excise Act, 1944- any prescribed person who is engaged in-

(a) The production or manufacture or any process of production or manufacture of any specified goods included in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) or

Notes

(b) The wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in (the First Schedule and the Second Schedule) to the Central Excise Tariff Act, 1985 (5 of 1986), shall get himself registered with the proper officer in such manner as may be prescribed.

For all practical purposes, the legal provisions contained in rule 9 of the Central Excise Rules, 2002 govern the scheme of registration. This rule is reproduced below:

Registration-

(1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered:

Provided that a registration obtained under rule 174 of the Central Excise Rules, 1944 or rule 9 of the Central Excise (No.2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.

(2) The Board may by notification and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

(3) The registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

Persons Requiring Registration: In accordance with Rule 9 of the said Rules the following category of persons are required to register with jurisdictional Central Excise Officer in the Divisional Office having jurisdiction over his place of business/factory:

1. Every manufacturer of excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations) on which excise duty is leviable.
2. First and second stage dealers (including manufacturer's depots and importers) desiring to issue Cenvatable invoices.
3. Persons holding warehouses for storing non-duty paid goods.
4. Persons who obtain excisable goods for availing end use based exemption.
5. Exporter-manufacturers under rebate/bond procedure; and Export Oriented Units, which have interaction with the domestic economy (through DTA sales or procurement of duty free inputs).
6. Persons who get yarns, fabrics, readymade garments etc. manufactured on job work under Rule 12B. (not required now)

Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked), but are segregated by public road, canal or railway-line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:

1. Interlinked process product manufactured/produced in one premises are substantially used in other premises for manufacture of final products.
2. Large number of raw materials are common and received/proposed to be received commonly for both/all the premises.
3. Common electricity supplies.
4. There is common Labour/Work Force

Notes

5. Common administration/work management. Common sales tax registration and assessment. Common Income Tax assessment.
6. Any other factor as may be indicative of inter-linkage of the manufacturing processes.
7. This is not an exhaustive list of indicators nor is each indicator necessary in each case. The Commissioner has to decide the issue case by case.

Separate Registration is required for each depot, godown etc. However, in the case of liquid and gaseous products, availability of godown before grant of registration should not be insisted upon.

Registration Certificate may be granted to minors provided they have legal guardians, i.e. natural guardians or guardians appointed by the Court, as the case may be, to conduct business on their behalf.

Exemption from Registration: The Central Board of Excise and Customs (CBEC), by Notification No.36/2001-CE (NT) dated 26.6.2001 as amended has exempted specified categories of persons / premises from obtaining registration. The exemption applies to the following:

a. Person who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by a notification.

b. SSI manufacturers having annual turnover below the specified exemption limit. However, such units will be required to give a declaration once the value of their clearances reaches the specified limit which is ₹ 40 lakhs presently.

c. In respect of ready-made garments, the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability.

d. Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to the following conditions: -

   i. The said excisable goods and any intermediary or by-products including the waste and refuse arising during the process of manufacture of the said goods under the Customs Bond are either destroyed or exported out of the country to the satisfaction of the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, in-charge of the Customs Bonded Warehouse;

   ii. The manufacturer shall file a declaration in the specified form annexed in triplicate for claiming exemption under this notification;

   iii. No drawback or rebate of duty of excise paid on the raw materials or components used in the manufacture of the said goods, shall be admissible;

   iv. The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2002 and the depots of a registered manufacturer);

   v. A Hundred per cent Export Oriented Undertaking, licensed or appointed, as the case may be, under the provisions of the Customs Act, 1962 other than having dealings with DTA;

   vi. Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification.

The Drugs and Cosmetics Rules, 1945 recognises the concept of loan licence in the manufacture of P or P medicines. As a result, the system of accepting the said concept is still prevalent under excise law. In such cases the procedure prescribed under Notification No.36/2001-CE(NT) dated 26/6/2001 has to be followed. The principal manufacturer who has`undertaken to comply with the procedural formalities will have to maintain separate accounts in respect of goods

Notes

manufactured on his own account and goods manufactured on behalf of the loan licensee. However, the principal manufacturer has to aggregate the clearances made by him together with clearances made on behalf of the loan licensees with regard to eligibility as well as exemption limit. In other words, the clearances made on behalf of the loan licensee have to be clubbed with that of the principal manufacturer (by the manufacturer from one or more factories and from the factory by one or more manufacturers).

Board has prescribed a new procedure from 1.10.2002. The salient features of the new Registration process are detailed as follows: -

Important changes in the Registration procedure

(i) The new Registration process has been implemented in respect of all new registrants with effect from 1.10.2002.

(ii) Application for Registration should be submitted to the jurisdictional Divisional Office and Registration shall be done at Divisions instead of Ranges.

(iii) Registration Certificate shall be issued under the signature of the Divisional Officer, i.e. Deputy/Assistant Commissioner.

(iv) Registration Process would be carried out on computer through system called System for Allotment of Central Excise Registration (SACER) by feeding the d493/59/99-CX.6 into Central Server accessing http.//sermon.nic.in/sacer.html which shall automatically generate 15-digit PAN based Registration Number or a Temporary Registration Number in case registrant does not have PAN.

(v) Registration of EOUs which have inter-linkage with domestic economy through procurement and/or sale of goods will be done on identical pattern as in case of other Central Excise assessees with few changes. This has been introduced with effect from 1.10.2002 vide Notification No.31/2002-C.E. (N.T.), dated 17.9.2002, which amends Notification No.36/2001-C.E. (N.T.) dated 26.6.2001. Other EOUs which have no inter-linkage with the domestic tariff area shall continue to be treated as deemed registered and need not obtain the 15 digit PAN-based Registration Number.

(vi) In the Port Towns, the EOU units located therein are administratively under the charge of the officers of Customs vide Board's Circular No.72/2000-Cus. dated 31.8.2000. Accordingly, for the purpose of Registration process and for handling the matters relating to the provisions of Central Excise law including the filing of Returns prescribed thereunder, the officers of Customs have been designated as officers of Central Excise vide Notification No.32/2002-C.E.(N.T.), dated 17.9.2002.

(vii) It has been envisaged that all new registrants not having PAN (including small-scale Bid and Match Units) will be allotted a system generated 15 digit Temporary Registration Number with effect from 1.10.2002. This would eventually get converted to a regular 15 digit PAN Based Registration Number.

Important changes in Format of Application for Registration

(i) The Format of Application for Registration has been revised vide Notification No. 30/2002 C.E.(N.T.), dated 17.9.2002 which amends Notification No.35/2001-C.E. (N.T.), dated 26.6.2001, and has become applicable from 1.10.2002. With effect from 1.10.2002, the new Form provides for both obtaining Registration as well as for carrying out amendments, if any, in the information supplied after completion of Registration. For this purpose, option boxes are provided for new Registration or amendments. In case the Application Form is used to carry out amendments to the information given earlier, the registrant must furnish his Registration Number so that the system can recall the earlier Application Form to carry out the desired amendment(s).

Notes

(ii) An assessee may have different legal names i.e. one appearing in PAN and other under the name and style in which he carries on his business from the registered premises. Therefore an additional field- for providing the name as appearing in PAN is pro-Med the Application Form.

(iii) New fields have been provided for information regarding constitution of assessee, property holding rights (like ownership, lease etc.), estimated investment in land, plant and machinery, assessee's banks account numbers and identifier numbers issued by other Government agencies (Customs, DGFT, Sales Tax etc.).

(iv) Fields like 'Name of the Registrant', addresses, telephone number, fax number, boundaries of premises to be registered, major excisable goods to be manufactured etc. have been modified keeping in mind the requirements of Computer system.

(v) In cases of Proprietorship concerns or those having no authorized persons the details of the Registrant have been added to the relevant field.

(vi) The name of the Registrant/authorized person figures in the Declaration annexed to the Application Form. In case of any change, it would be necessary to obtain another Declaration reflecting the change and effective date.

(vii) Changes have been made in the format for Grant of acknowledgement of the Application, which is to be given in the event, the Registration Certificate is not delivered on the spot at the time of the receipt of the Application Form.

(viii) Separate Document Locator Code has been Dispensed with since the new Registration process envisages on the spot grant of Registration Number which will operate as the reference number.

Components of 15 digit based Registration Number

(i) The PAN based Registration Number is Alphanumeric. The first part is the 10-Character (alphanumeric) Permanent Account Number (PAN) issued by Income Tax authorities to the person (includes a legal person) to whom the Registration No. is allotted.

(ii) The second part comprises of a fixed 2-Character alpha-code indicating the category of the Registrant, which will be as follows:

(1) *Central Excise manufacturers:* XM (Including registered warehouses).

(2) *Registered Dealers:* XD

(iii) The third part is a 3-Character numeric code-001, 002, 003…etc. In case, a manufacturer registered with the Central Excise Department, has only one factory/ dealers's premise/ warehouse, the last 3 characters will be 001?. If there are more than one factories/ warehouses/dealer's premises of such a person having common PAN for all such factories/ warehouses/Dealer's premises, the last 3 characters of the Registration Number would be 001, 002, 003…etc.

Examples of 15 digits PAN based Registration Number:

(a) *Where the registrant has only one factory:* New Registration Number will be -

PAN+XM+001

Suppose PAN is ABCDE1234H, the New Registration Number will be

ABCDE1234HXM 001.

(b) Where the registrant has more than one factory, say 3 factories, having PAN as aforesaid, then the New Registration Number will be:

Notes

ABCDE1234HXM001

ABCDE1234HXM002

ABCDE1234HXM003

(c) Where the registrant has one factory and is also registered as dealer, having PAN as aforesaid, then the New Registration Number will be:

ABCDE1234HXM 001 (for Manufacturer) ABCDE1234HXD 001 (for Dealer)

(iv) Where the Registrant is not having PAN (including small Scale Beedi/Match manufacturers) the system will itself generate a Temporary 15 digit PAN based Registration Number: Similar Temporary Number will be generated automatically (from 1.10.2002) for the assessees who may be having PAN but who have so far not applied for or obtained 15 digit PAN Based Registration Number. An example of the Temporary Number is:

TEMP)000(XXXM001 (for Manufacturer) TEMP)000000(D001 (for Dealer)

Procedure for application for Central Excise Registration and grant of Registration Certificate

(i) With effect from 1.10.2002 every person requiring Registration with the Central Excise (except EOUs located in Port Towns) shall apply in the proper form, complete in all respects, in duplicate along with a self-attested copy of PAN (letter/card issued by the Income Tax Department), to the Jurisdictional Deputy/Assistant Commissioner of Central Excise. The instructions relating to filling up of Application for Registration may be gone through carefully before filling up the Form. The Divisional/Range officers shall provide necessary support to the assessee, as may be required for completing the Form.

(ii) On receipt of Application the nominated officer (Inspector) shall scrutinize the same and if found in order, it shall be fed in the Divisional Office into the SACER by accessing the website http://sermon.nic.in/sacer.html. In this regard, the Directorate of Systems has circulated a manual on SACER, a soft copy of which is also available on the site itself, which will detail the fields and explain how these are to be completed.

(iii) In case the Application is not found in order or is incomplete, the nominated Officer will advise the Registrant of the deficiencies and ensure its completion before it is sent for being entered into SACER. Suitable entry will be made of the action taken in the record to be maintained for the purpose.

(iv) On completion of the data entry, the system would Automatically generate a Registration Certificate bearing the 15 digit Registration Number, which will be delivered to the assessee on the spot. As seen, normal time taken to complete the data entry of a application for Registration is 30 minutes and it would be possible to hand over the Registration Certificate immediately upon completion of the data entry.

(v) In the event the Registrant is not in possession of the PAN and has applied for the same, he shall be required to furnish a copy of the said Application. This would be used by the Divisional/Range Office to pursue the grant of PAN and subsequent conversion of the Temporary Registration Number into a 15 digit PAN based Registration Number.

(vi) In the event, it is not possible to hand over the Registration Certificate immediately at the time of receipt of the Application for any reason such as either Registrant or Deputy/ Assistant Commissioner is not available or there is a technical difficulty, then the acknowledgement of the Application will be given to the assessee on the spot. Later, the Registration Certificate shall either be sent to the assessee by Registered Post or handed

Notes

over personally to him next working day, as per his choice to be indicated upon the Application Form.

(vii) After grant of Registration Certificate, the disposal of the copies of the Application Form shall be, as follows:

(a) Original copy will be retained by the Divisional Office for record along with the copy of Registration Certificate issued.

(b) Duplicate copy along with a copy of Registration Certificate will be sent to the concerned Range Office for post facto verification.

(viii) The Registration Number can be used for removals, duty payments and other requirements of the Central Excise Act, 1944 and rules made thereunder.

(ix) Once Registration is granted, it has a permanent status, unless it is suspended or revoked by the appropriate authority in accordance with law or is surrendered by Registrant.

New Central Excise Registration Procedure for Powerloom weavers/Hand Processors/Dealers of Yarns and Fabrics/Manufacturers of Ready Made Garments

A simpler application Form was introduced exclusively for Registration of Power loom Weavers/ Hand Processors/Dealers of Yarns and Fabrics/Manufacturers of Ready Made Garments who were required to pay duty or follow Central Excise procedures on account of changes in the Finance Act, 2003-04. The new Form was notified vide notification No.38/2003-CE (NT) dated 22nd April, 2003. In comparison to the existing Registration application Form, this format seeks information only about the registrant. The Registration Form-IA, shall be used for the new registrants in the textile and textile articles sector only. It is also prescribed that the Registration Form may be handed over by the trade and industry Associations in the Commissionerate headquarters where these may be processed by a special cell. Finally, the verification of the premises was not required to be conducted at this juncture for grant of Registration.

Vide Circular No. 760/7612003-CX dated 3.11.2003, new Central Excise Registration procedure for manufacturers of hand rolled cheroot of tobacco under sub-Heading No.2402.00 of Central Excise Tariff Act, 1985 has been provided. The applications for Registration of the members can be collected by the Associations and handed over at the Divisional headquarters where the Registration would be issued. As a measure of trade facilitation, a simpler application form exclusively for hand rolled cheroot of tobacco manufacturers has been notified vide notification No. 81/2003-Central Excise (N.T.) dated 3rd November 2003. In comparison to the existing Registration application Form, this format seeks information of paramount importance only from the registrant. The Registration Form-1B, as notified now, shall be used for the new registrants in the manufacture of hand rolled cheroots of tobacco only.

In these categories, those who are already registered need not apply afresh. Further, the normal procedure of grant of PAN based Registration is not to be strictly adhered to while granting Registration to the new registrants in manufacture of hand rolled cheroots of tobacco and in textile sector as detailed above. In other words, Registration should be given in the absence of PAN, if not available.

Procedure for application for Central Excise Registration and allotment of Registration Number for EOUs and EPZ units

(i) EOU and EPZ units which have inter-linkage with Domestic tariff area through procurement and/or sale of goods are required to obtain Registration with effect from 1.10.2002. Other EOUs and EPZ units would continue to be treated as deemed registered with the Central Excise authorities.

Notes

(ii) EOUs within the Municipal Limits of port-cities/town are Administratively under the officers of Customs who have been designated as Officers of Central Excise for purpose of legal requirements under Central Excise provisions. Accordingly, the EOUs in port-cities/ towns shall file their Application Form for Central Excise Registration with the concerned Deputy/Assistant Commissioner of Customs. It is the responsibility of the Deputy/ Assistant Commissioners to have the data entered into SACER and to issue the Registration Certificate by following the procedure described supra.

(iii) EOUs located in other than port towns/cities are administratively under the Central Excise Cornmissionerates. Hence, it shall be the responsibility of the jurisdictional Divisional Officer to grant the Registration to such units. For this purpose the same process would be followed, as indicated.

Verification

(i) There shall be a post-registration verification of the premises for which Registration is sought, by the Range Officer within 5 working days of the receipt of Duplicate Copy of Application for Registration along with a copy of Registration Certificate. The Range Officer along with the Sector Officer shall verify the declared address and premises. If found in order, he will certify the correctness thereof on the Duplicate copy of the Application for Registration and append his dated signature thereon. A Copy thereof will be sent to the Divisional Office for Record. The name of the officer doing the verification and the date of verification shall also be entered into the system.

(ii) If any deviations or variations are noticed during the Verification, the same should be got corrected. Any major discrepancy, such as fake address, non-existence of any Factory etc. shall be reported in writing to the Divisional Officer within 3 working days and action shall be initiated by the Divisional Officer to revoke the Registration after providing reasonable opportunity to the Registrant to explain his case.

(iii) EOUs are also granted a customs private bonded warehouse license. Accordingly, the concerned Officer must at the stage of grant of this license also carry out the verification required from the point of view of Central Excise Registration, if required, so as to avoid repeat visit to the unit. Hence, it is envisaged that in case of EOUs, there would be no necessity of post facto verification.

(iv) If the EOU is exempt from obtaining the Customs private Bonded warehouse license but requires Central Excise Registration then post verification may be done as envisaged in (i) above.

Records

(i) Divisional Office or the Office of the Deputy/Assistant Commissioner of Customs, as the case may be, shall maintain a suitable record of the action taken on receipt of Application for Registration which is incomplete or not in order.

(ii) Divisional Office will maintain a record of Verification Reports received from the Range Office along with the Original copy of the Application Form. Office of Deputy/Assistant Commissioner of Customs will maintain similar record.

(iii) Range Office will maintain suitable record of Registration granted including details of the Application Form and the Registration Certificate.

(iv) Records at Divisional Office/Office of Deputy/Assistant Commissioner of Customs and Range Office shall specifically include details of verification of premises and name and designation of Officers who verified it with his remarks thereon.

Notes

(v) The Divisional Office/Office of Deputy/Assistant Commissioner of Customs and Range Office should have readily available record of Temporary Registration Numbers with details of steps taken to convert them to 15 digit PAN based Registration Numbers.

(vi) The Divisional office/Office of Deputy/Assistant Commissioner of Customs and Range Office should have readily available complete list of all registered units under their charge.

Procedure for existing Registrants

(i) The existing Registrants shall be required to furnish the Details as per the new Format of Application to their jurisdictional Deputy/Assistant Commissioners within 3 months from 1.10.2002. It shall be the responsibility of the concerned Deputy/Assistant Commissioners to ensure that the data available at SACER pertaining to all Registrants in their respective jurisdiction is complete.

(ii) All existing EOUs which are so far treated as Deemed Registered but are required to obtain Registration with effect from 1.10.2002 shall furnish the details as per the New Format of Application to their jurisdictional Deputy/Assistant Commissioners/ Development Commissioner for inclusion in the SACER data base.

Procedure for Amendment of the information

(i) The new Form of Application shall be used for carrying out Amendments to the information provided earlier by the assessee for obtaining Registration. Suitable entries will be made in the database upon receipt of such amended information.

(ii) Change in information in respect of the name and address of the Registrant would require a change in the details entered on the Registration Certificate itself. Hence, in such situation a fresh Registration Certificate bearing the earlier allotted 15 digit PAN based Registration Number will be issued to the assessee after surrender of the earlier issued Registration Certificate. The procedure followed would be the same as in place for issue of fresh Registration Certificate except that no verification is necessary in case there is no change in address or premise.

Conditions, safeguards and procedures for registration: The Central Board of Excise & Customs has specified certain conditions, safeguards and procedures for registration of a person by Notification under Central Excise Rule 9 in specified cases:

(1) ***Application for registration:*** Every person specified under sub-rule (1) of Rule 9, unless exempted from doing so by the Board under sub-rule (2) of rule 9, shall get himself registered with the jurisdictional Deputy or Assistant Commissioner of Central Excise by applying in the form specified;

(2) ***Registration of different premises of the same registered person:*** If the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

Provided that if such person manufactures or carries on trade in goods falling under Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 or 63 of the First Schedule to the Central Excise Tariff Act, 1985 (1 of 1986), and has more than one premises requiring registration; he may obtain a single registration for all such premises, which fall within the jurisdiction of one Commissioner of Central Excise subject to condition that the such person, while making application in terms of clause (1) of this notification, declares the details of all such premises in the form specified.

(3) ***Registration Certificate and Number:*** Registration Certificate in the form containing registration number shall be granted within seven days of the receipt of the duly complete application.

Notes

(4) ***Transfer of Business:*** Where a registered person transfers his business to another person, the transferee shall get himself registered afresh.

(5) ***Change in the constitution:*** Where a registered person is a firm or a company or association of persons, any change in the constitution of firm, company or association, shall be intimated to the jurisdictional Central Excise Officer within thirty days of such change.

(6) ***De-registration:*** Every registered person, who ceases to carry on the operation for which he is registered, shall de-register himself by making a declaration in the form and depositing his registration certificate with the Superintendent of Central Excise.

(7) ***Revocation or suspension of registration:*** A registration certificate granted under this rule may be revoked or suspended by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, if the holder of such certificate or any person in his employment, is found to have committed breach of any of the provisions of the Act or the rules made thereunder or has been convicted of an offence under Section 161, read with Section 109 or with Section 116 of the Indian Penal Code (45 of 1860).

Source: http://taxguru.in/excise-duty/procedure-central-excise-registration-grant-registration-certificate.html

Case Study

UK Vehicle Excise Duty

An illustration of the way differential tax rates can be used by governments to promote 'greener' products can be found in the UK car market. Here, car owners pay an annual charge for the use of their vehicle, known as Vehicle Excise Duty. In 2001, VED was for the first time related to the carbon dioxide (CO_2) emissions of an individual vehicle.

Environmental groups in the UK had been pressing for a reform of the VED regime for years. Until the late 1990s, car owners in the UK had been required to pay a flat-rate charge for using their vehicle, unrelated to the type of car they chose to purchase and use.

Vehicles registered on or after 1 March 2001 are categorised into one of four VED bands, according to their emissions. In general, the larger the car, the more fuel it consumes and the more CO_2 it produces, so the more tax has to be paid by its owner.

The Driver and Vehicle Licensing Agency, which administers the scheme on behalf of the UK government, explains: 'The new system of VED based on CO_2 sends a clear signal to vehicle manufacturers and purchasers about the environmental impact of the cars they make and use, and encourages the use of more fuel-efficient cars.'

The categories and tax rates for petrol-engined cars are summarised below:

Band	CO_2 emission (g/km)	Annual tax (£)
A	Up to 150	100
B	151 to 165	120
C	166 to 185	140
D	Over 185	155

Contd....

Notes

A similar schedule applies to diesel-engined cars, except that all of the tax rates are slightly higher. Conversely, slightly lower rates of tax are payable on cars fuelled by 'clean' fuels such as natural gas and LPG.

For cars registered before 1 March 2001, a cruder banding structure applies. Those with an engine capacity of less than 1.6 litres pay £105 per year, while those of 1.6 litres or more pay £160. This simpler regime reflects the difficulty involved in retrospectively calculating CO_2 emissions of car models that may no longer be in production.

In terms of whole-life environmental costs, the choice of model made by a car buyer at the time of purchase is highly significant. Over its lifetime, a car whose gasoline consumption averages 8 litres per 100 km will consume around two tonnes more fuel than a car that uses 7l/100km, and release around seven tonnes more CO_2 into the atmosphere.

The importance of fuel economy from a whole-life perspective is highlighted by Dr. Stephen Potter of the Open University in the UK, who says car makers have traditionally focused their environmental efforts on the relatively uncontroversial areas of manufacturing, waste and recycling, while playing down the importance of fuel economy. 'Yet these stages in a car's life account for only 12% of key environmental impacts,' says Potter. 'The fuel consumed by a car during its lifetime accounts for 70% of total greenhouse emissions.'

It is too early to say what effect the new UK vehicle excise regime will have on car purchasing behaviour. A spokesman for Vauxhall, the UK arm of General Motors, said the introduction of the variable-rate tax structure had yet to be noticed by most car owners, since few of them had yet had to renew their VED licence under the new regime.

Furthermore, few motorists are likely to rush to buy a new car simply because of the new tax schedule. Any shift in buying habits will become apparent over time, as part of the turnover of the UK car stock.

'What we're finding is that buying patterns are not changing at all,' said the Vauxhall spokesman. 'But you have to expect that they will change in the next three years. People will suddenly realise what's going on, and take the next opportunity to change their choice of car.'

Another effect, Vauxhall believes, will be an increase in the proportion of diesel-engined cars sold, since diesel has a significant advantage over gasoline in terms of CO_2 emissions.

The new VED regime represents a clear financial incentive for motorists to drive smaller, less polluting cars. It has been presented to the public as part of an environmental education campaign called 'Are you doing your bit?', and the publicity material explaining the new regime is headed 'The less it pollutes, the less you pay'.

In his annual Budget speech of 7 March 2001, the UK Chancellor of the Exchequer, Gordon Brown, summarised the new tax regime thus: 'For all newly purchased cars, a new four-band vehicle excise duty rewards the most environmentally friendly vehicles.' To drive home the point that the scheme was designed to reward economical motorists rather than penalise gas-guzzlers, he added: 'Seventy per cent of all new cars will now enjoy a reduced licence fee.'

Question:

Analyse the case and discuss the case facts.

Source: http://www.iisd.org/business/viewcasestudy.aspx?id=94s

Notes

2.4 Summary

- Central Excise duty is an indirect tax which is levied and collected on the goods/ commodities manufactured in India.
- The Central Excise Act, 1944 and other connected rules- which provide for levy, collection and connected procedures.
- Central Excise Law is levied on manufacturer or production of goods.
- Movable means goods, which can be shifted from one place to another place, e.g., motor car, mobile phone, computer etc.
- In respect of goods specified in third schedule of Central Excise Act, repacking, relabelling, putting or altering retail sale price etc. will be 'manufacture'.
- In case of delayed payment, interest should also be deposited at the rate of 13% p.m.
- Generally 16% excise duty and 2% cess on it are imposed on most goods, but government can fix different tariff values for different classes of goods or goods manufactured by different classes or sold to different classes of buyers.

2.5 Keywords

Assembly: Assembly of various parts and components amount to manufacture provided it result in movable goods which have distinctive identity, use, character, name etc. e.g., assembly of computer is manufacture.

Basic Excise Duty (BED): This is the duty charged under section 3 of the Central Excises and Salt Act, 1944 on all excisable goods other than salt which are produced or manufactured in India.

CETA: It specifies some processes as 'amounting to manufacture'. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to 'manufacture'.

National Calamity Contingent Duty (NCCD): A 'National Calamity Continent Duty' has been imposed on cigarettes, biris, pan masala and miscellaneous tobacco products w.e.f. 1-3-2001.

Production: Production has also not been defined in CEA but production is used to cover items like coffee, tea, tobacco, etc. which are called to have been manufactured nut produced.

Special Excise Duty (SED): As per the Section 37 of the Finance Act, 1978 Special Excise Duty was attracted on all excisable goods on which there is a levy of Basic Excise Duty under the Central Excises and Salt Act, 1944.

2.6 Review Questions

1. Describe the concept of Central Excise Duty.
2. What do you know about deemed manufacture?
3. Explain different kinds of excise duty.
4. Explain about basic excise duty.
5. Describe about education cess on excise duty.
6. What do you know about National Calamity Contingent Duty?

Notes

7. Describe about excise ability and manufacture.
8. Define about " Special Excise Duty".
9. What are the duties on Medical and Toilet Preparations?
10. What are the duties under Central Excise Act?

Answers: Self Assessment

1.	Central	2.	Liability
3.	Excisable	4.	Medical
5.	Customs	6.	True
7.	True	8.	False
9.	False	10.	True

2.7 Further Readings

Books

Ahuja, Dr. Girish and Gupta, Dr. Ravi, *Direct Taxes Law & Practice including Tax Planning,* 18th Edition 2008-09, Bharat Law House Pvt. Ltd.

Chanchal Kr Nag, *Direct & Indirect Tax Laws & Practice*, NCB Agency

Singhania, Dr. Vinod K. and Singhania, Dr. Kapil, *Direct Taxes Law & Practice with Special Reference to Tax Planning,* 41st, Edition 2009-10, Taxman's.

VS Datey, *Indirect Tax Laws*, CHH India

Yogendra Bangar Vandana, *Direct & Indirect Taxes Planning & Management*, Aadhya Prakashan

Online links

www.indirecttax.indlaw.com/search/articles/

www.monckton.com/library/articles.php?area=7

www.onlinecacoaching.com/.../CA%20Final-Indirect%20Taxation.pdf

www. taxlawsandviews.com

www.taxmanagementindia.com/visitor/detail_article.asp

Notes

Unit 3: Classification and Valuation of Excisable Goods

CONTENTS

Objectives

After studying this unit, should will be able to:

- Know about Excisable Goods
- Understand classification of Excisable Goods
- Know about valuation of Excisable Goods

Introduction

There are thousands of varieties of manufactured goods and all goods cannot carry the same rate or amount of duty. It is also not possible to identify all products individually. It is, therefore, necessary to identify the numerous products through groups and sub-groups and then to decide a rate of duty on each group/sub-group. This is called 'Classification' of a product, which means determination of heading or sub-heading under which the particular product will be covered. Excise is a duty on excisable goods manufactured or produced in India. The liability of payment of excise is on the Manufacturer. Once the liability of payment is established, the next question is what is the amount of duty payable? The two-step process is:

(a) Classification of excisable goods.

(b) Valuation of excisable goods.

3.1 Classification of Excisable Goods

The excise duty is chargeable at different goods at different rates. Therefore, goods are classified for determination of duty. The classification of goods adopted in Central Excise Tariff Act and Customs Act is common. The classification uses 8-digit nomenclature. CETA consists of two schedules; the first schedule gives basic excise duty (i.e., CENVAT duty) and second schedule gives export duties.

Notes

3.1.1 Scheme of Classification

CETA and Customs Act both have sections and chapters. Remember you have read above that the scheme of class is common for both CETA and Customs Act. Each section has various chapters. A section relates to a class of goods e.g., Section – I is 'Animal Products', Section – XI is 'Textile Products', Section – XVII is 'Vehicles, Aircraft, Vessels and Other Transport Equipments'.

A chapter contains goods of one class e.g., Section – XI of Textile Products has Chapter 50 relating to Silk, Chapter 51 relating to Wool and Chapter 52 relating to Cotton.

Each Chapter is further divided into headings and the headings are divided into sub-headings, e.g., Chapter 50 of silk has 4 headings:

- 50.01 Silk and Cocoons
- 50.02 Raw Silk
- 50.03 Silk Waste
- 50.04 Silk Yarn

The heading 50.04 'Silk Yarn' has sub-headings 5004.11 Silk Yarns with 85% or more silk and sub-heading 5004.19 relates to Silk Yarns with less than 85% silk.

In this classification scheme let us elaborate on 5004.19, in this there are upto 6 digits. The first two digits '50' is chapter number; next two digits '04' is heading number and next two digits after decimal '19' is subheading number.

The 2 more digits (to make these 6 digits to 8 digits) are additional digit to facilitate and provide flexibility in international trade.

Notes The excise duty is chargeable at different goods at different rates. Therefore, goods are classified for determination of duty. The classification of goods adopted in Central Excise Tariff Act and Customs Act is common.

3.1.2 Broad Grouping in CETA

Following is broad grouping of goods in CETA:

1. Animal Products (Section I - Chapters 1 to 5)
2. Vegetable Products (Section II - Chapters 7 to 14)
3. Animal or vegetable fats (Section III - Chapter 15)
4. Prepared foodstuffs, beverages (Section IV - Chapters 16 to 24)
5. Mineral Products (Section V - Chapters 25 to 27)
6. Chemicals, Fertilisers, soap etc. (Section VI - Chapters 28 to 38)
7. Plastics and Rubber and their articles (Section VII - Chapters 39 and 40)
8. Leather and articles (Section VIII - Chapters 41 to 43)
9. Wood, cork, straw and their articles (Section IX - Chapters 44 and 46)
10. Pulp, Paper, Paper-board and articles (Section X - Chapters 47 to 49)

Notes

11. Textile and Textile Products (Section XI - Chapters 50 to 63)
12. Footwear, Headgear, Umbrellas, Articles of human hair (Section XII - Chapters 64 to 67).
13. Articles of stone, plaster, ceramic, glass (Section XIII - Chapters 68 to 70)
14. Pearls, precious metals (Section XIV - Chapter 71)
15. Base metals and articles of base metal (Iron, Steel, Copper, Nickel, Zinc, Tin etc.). (Section XV - Chapters 72 to 83)
16. Machinery and mechanical appliances, electrical equipments, television etc. (Section XVI - Chapters 84 and 85)
17. Vehicles, Aircrafts, vessels (Section XVII - Chapters 86 to 89)
18. Optical, photographic, medical, surgical instruments, clocks, musical instruments (Section XVIII - Chapters 90 to 92)
19. Arms and Ammunition (Section XIX - Chapter 93)
20. Misc. Manufactured articles like Furniture, toys etc. (Section XX - Chapters 94 to 96)
21. Works of Art, collectors' pieces and antiques (Section XXI - Chapters 97 to 99) – This section is only in Customs Tariff and not in Central Excise Tariff.


Task

Discuss Broad Grouping of Goods in CETA.

3.1.3 Trade Parlance Theory

Trade Parlance Theory emerged out of case of Grenfell vs. IRC (1876), where justice Pollok concluded that nay word in statue should be interpreted (understood in its popular sense, in which people understand it.

Some examples:

- A mirror is not a glass wear, as glass loses its character after it is converted into mirror.
- Windscreen of motor vehicle (front glass of car) is not a glass it is understood as automobile part.
- Plastic pen has a separate identity. It cannot be classified as article of plastic like pipes, plastic sheets etc.
- Carbon paper is not a paper because paper is used for writing,
- Printing, drawing etc.

A product is also classified on the basis of its end use, if classification is related to the function of the goods.

In order to determine the rate of excise duty on goods, classification is prerequisite. Excise duty payable is based on the classification of goods given in the **Central Excise Tariff Act, 1985 (CETA)**. The Act gives a list of items chargeable to Central Excise duty. It is divided into 96 Chapters grouped in twenty Sections. Each of these twenty sections relates to broader class of goods such as Section I relates to Animal and Dairy Products, Section VI relates to Products of Chemical and Allied Industries, while Chapter XI relates to Textiles and Textile Articles.

Notes

The Central Excise Tariff Act was amended in 2004. Earlier there was six digits classification code for classification of the goods, which has been replaced by 8 digits classification code. With introduction of this 8 digits classification code, a detailed classification of the goods is now available. The classification of items is significant because it is only the proper classification, which leads to determination of rate of duty.

In Central Excise Tariff, against each item a rate of duty has been prescribed. These are normally termed as "tariff rates". In order to determine the rate of duty on a particular product, first find out the chapter heading under which the item is classifiable. Against that classification, the corresponding tariff rate has to be read with the exemption notification, if any. Thus, effective rate of duty on an item is obtained.

Some commodities may be subject to 'special duty of excise' prescribed under the **Central Excise Tariff Act, 1985**. Certain goods may also be subject to duty under some other Acts such as **Additional Duty of Excise (Goods of Special Importance) Act, 1957** or certain Cess.

1. Classification of Excisable Goods Under Central Excise Act

Classification of a product means the determination of heading/sub-heading under which a particular product fall. Classification means the appropriate classification code which is applicable to the excisable goods in question under the first schedule to the Central Excise Tariff Act, 1985. The classification of goods is required for the purpose of determining eligibility to exemptions, under section 5-A which are with reference to the Tariff headings or sub-headings. Wrong classification would either cause loss of revenue to the Central Government or impose unjustifiable loss to assessee. In Reckitt and Colman of India vs. C.C.EX (1994) (71)EL 11-44, the tribunal has held that for the purpose of classification of goods, the nomenclature, character and function of the product is required to be determined and thereafter the excisable product may be identified accordingly.

2. Harmonised System of Nomenclature (HSN)

HSN system define as excisable goods list in India and goods are classified systematically following the footsteps of HSN (Harmonised System of Nomenclature) as in Customs Tariff. But it is neither a copy of HSN nor a copy of Customs Tariff. HSN is a multi-purpose 6 digit nomenclature classifying goods into 5019 groups. HSN contains 241 headings at 4 digit level and 5019 at 6 digit level. HSN has been adopted by large number of countries to ensure uniformity in classification of items in international trade. Indian Customs adopted HSN w.e.f. 28.2.86 and Customs Tariff is fully aligned with it. Customs Tariff and Central Excise Tariff have two more digits and are using 8 digit nomenclature.

3. Relationship between Central Excise Tariff Act 1985 and Central Excise Act 1944

The CE Act 1944 does not provide any guidelines for classification of goods. Earlier, goods used to be classified as per 'popular or trade parlance' as First-Schedule to CE Act contained bare description of products. In place of it, CETA 1985 based on HSN came into force on 1.3.1986.

The linkage between Central Excise Act 1944 and Central Excise Tariff Act 1985 as amended by the Central Excise Tariff (Amendment) Act 2004 is as follows:

(1) Rate of duty at which excise duty is levied under section 3 (charging section) of CEA is given in Section 2 of CEA. The rates of duty are specified in schedule to CETA (2) Section 3(1) of Central Excise Act 1944 specifies that excise duty shall be levied and collected at the rates mentioned in schedule to CETA.

Notes

The rules of classification of Excisable Goods are:

General Rules for Interpretation of Schedule to Central Excise Tariff and Customs Tariff are given in First Schedule to the Tariff. The rules are same for excise and customs. The highlights of rules are given below:

Rule 1

Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules.

First part of rule 2(a)

Any reference to complete goods also includes incomplete or unfinished goods, if such incomplete or unfinished goods have the essential characteristic of finished goods.

Second part of rule 2(a)

Heading will also include finished goods removed unassembled or disassembled i.e. in SKD or CKD packs.

Second part of rule 2(b)

Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.

Rule 3

When by application of sub-rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as given in rule 3(a), 3(b) or 3(c).

Rule 3(a)

The heading which provides most specific description shall be preferred to heading providing a general description.

3(b)

If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e. rule 3(a), it should be classified as if they consisted of the material or component which gives it their essential character.

3(c)

If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (i.e. latter the better).

Rule 4

If the classification is not possible by any of the aforesaid rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin. [This is only a last resort and a desperate remedy to resolve the classification issue.]

Rule 5

Cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are

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normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods except when the packing is for repetitive use (This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty).

Rule 6

Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable.

Caution In order to determine the rate of excise duty on goods, classification is prerequisite. Excise duty payable is based on the classification of goods given in the **Central Excise Tariff Act, 1985 (CETA)**.

Self Assessment

Fill in the blanks:

1. CETA consists of two schedules, the first schedule gives .....
2. The ..... Excise Tariff Act was amended in 2004.
3. ..... system define as excisable goods list in India and goods are classified systematically following the footsteps of HSN.
4. The CE Act ..... does not provide any guidelines for classification of goods.
5. The linkage between Central Excise Act 1944 and Central Excise Tariff Act ..... as amended by the Central Excise Tariff Act 2004.

3.2 Valuation of Excisable Goods

Duty at ad valorem rates is charged on a wide range of excisable commodities. Valuation of such goods is governed by section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Valuation with reference to the retail sale price in respect of specified excisable goods is governed by section 4A of the above Act. A few cases of short levy of duty due to incorrect valuation involving revenue of ₹ 12.42 crore, are illustrated in the following paragraphs. These observations were communicated to the Ministry through 23 draft audit paragraphs. The Ministry/department has accepted (till December 2009) the audit observations in 15 draft audit paragraphs with a revenue implication of ₹ 7.65 crore, of which ₹ 3.33 crore has been recovered.

Incorrect determination of cost of excisable goods Rule 8 read with proviso to rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 envisages that where excisable goods are not sold by the assessee but are consumed by it or by a related person of the assessee in the manufacture of other articles, the assessable value of such goods shall be one hundred and ten per cent of the cost of production or manufacture of such goods. Further, the Board had clarified (13 February 2003) that the value of goods consumed captively should be determined in accordance with the Cost Accounting Standard (CAS-4) method only.

M/s BSNL (Telecom factory), in Kolkata V Commissionerate, engaged in the manufacture of telecom tower, SS drop-wire etc., cleared goods to its different telecom circles paying duty on the assessable value arrived at on 'cost basis'. Scrutiny of records indicated that the assessable value was determined by adopting value of raw materials which was lower than the actual value. This resulted in short levy of duty of ₹ 20.40 lakh during the period from May 2005 to March 2006.

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On this being pointed out (January 2007), the department accepted the audit observation and reported (August 2008) that a show cause cum demand notice for ₹ 1.43 crore for the period 2003-04 to 2006-07 had been issued out of which ₹ 1.17 crore had also been recovered. The recovery particulars of balance amount of ₹ 0.26 crore were awaited (October 2009).

The reply of the Ministry has not been received (December 2009).

M/s IFB Industries Ltd., in Kolkata VI Commissionerate, engaged in the manufacture of auto parts, cleared goods to related company paying duty on assessable value arrived at on 'cost basis'. Audit noticed that the assessee had failed to consider a few cost elements while determining the assessable value of the goods which resulted in short levy of duty of ₹ 34.79 lakh during the period from April 2005 to June 2006.

On this being pointed out (July 2006), the department accepted the audit observation and intimated (January 2009) that a show cause notice for ₹ 1.04 crore covering the period April 2005 to December 2007 had been issued.

The reply of the Ministry has not been received (December 2009).

M/s Pearl Industries Barotiwala, in Chandigarh I Commissionerate, engaged in the manufacture of additive mixture flavored 'kiwam', cleared the goods to its sister concern on invoice value (transaction value) instead of assessable value arrived at on cost basis. The value was redetermined by the department under the Valuation Rules and the differential duty was recovered in August 2001. Audit observed that the assessable value adopted by the department was undervalued approximately by ten per cent. Moreover, value determined at one hundred and fifteen per cent of the cost of production was incorrectly adopted as cum-duty-price. This resulted in short levy of duty of ₹ 87.82 lakh during the period between January 2001 and September 2001 which was recoverable with interest.

On this being pointed out (May 2003), the department stated (December 2003 and November 2008) that the question of valuation under rule 8 did not arise as the case was covered under section 4(3)(b)(i) of the Central Excise Act, 1944 and not under section 4(3)(b)(ii).

The reply is not tenable as valuation was to be done by invoking provisions of rule 8 of the Valuation Rules in view of rule 10(a) read with the proviso to rule 9 of the Valuation Rules, as the firm was owned by the husband and wife as partners and the husband was the Managing Director in the buyer unit. Thus, by virtue of Explanation (ii) below section 4(3)(b) of the Central Excise Act, 1944, both the seller and buyer were related. Besides, even after redetermination of the transaction value by the department under Valuation Rules, the goods still remained undervalued by approximately 10 per cent because one hundred and fifteen per cent of the cost of production was adopted as cum duty price.

The reply of the Ministry has not been received (December 2009).

M/s Paharpur Cooling Towers Ltd., in Kolkata VI Commissionerate, engaged in manufacture of fabricated steel components, PVC fill sheet etc., cleared goods during the period from April 2005 to January 2007 to its sister units. The duty was paid on assessable value arrived at on comparable price of similar goods for the year 2002 which was lower than the value as determined on the cost of production basis. As a result, there was short levy of duty of ₹ 70.40 lakh for the period from April 2005 to January 2007.

On this being pointed out (February 2007), the Ministry while admitting the audit observation intimated (November 2009) confirmation of demand of ₹ 68.83 lakh, levy of penalty of equal amount and appropriation of duty of ₹ 46.44 lakh paid by the assessee. It was further stated that the assessee has obtained a stay from CESTAT in June 2009.

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M/s Super Cassettes Industries Ltd., in Noida Commissionerate, engaged in the manufacture of unrecorded and recorded audio cassettes cleared a few unrecorded audio cassettes for sale in the open market on payment of duty. Audit observed that the assessee had valued for captive consumption 11.36 lakh unrecorded cassettes at ₹ 7.25 per cassette and 27.16 lakh unrecorded cassettes at ₹ 7.50 per cassette for payment of duty, while similar unrecorded cassettes cleared in the open market were valued at ₹ 15 per cassette for payment of duty. Adoption of lower assessable value resulted in undervaluation of cassettes by ₹ 2.92 crore and consequential short levy of duty of ₹ 48.60 lakh on captive consumption of 38.52 lakh unrecorded cassettes during the year 2007-08. The duty short paid was recoverable with interest of ₹ 1.11 lakh (calculated till June 2008).

On the matter being pointed out (June 2008), the department issued show cause notice (October 2008) demanding duty of ₹ 12.84 crore for the period from October 2003 to March 2008.

The reply of the Ministry has not been received (December 2009).

Did u know? Duty at ad valorem rates is charged on a wide range of excisable commodities. Valuation of such goods is governed by section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Practical Problems

Problem 1: MB Motors manufactures motor vehicles. It gets complete motor vehicles manufactured by sending the chassis of the motor vehicles to BD Works, independent body builders (job-worker), for building the body as per the design/specification given by it. The practice followed is that the chassis is transferred to BD Works on payment of appropriate central excise duty on stock transfer basis and is not sold to them. BD Works avails the CENVAT credit of the duty paid on the chassis and clears the same on payment of duty to the Depot of MB Motors. The duty is discharged by BD Works on the assessable value comprising the value of chassis and the job charges. The Depot of MB Motors sells the vehicles at a higher price than the price on which duty had been paid.

Discuss whether the practice followed is correct in terms of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Solution: As per rule 10A (ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 the assessable value for the purpose of charging central excise duty, in cases where the job-worker transfers the excisable goods to the Depot/Sale office/Distributor and/or any other sale point of the principal manufacturer, shall be the transaction value on which goods are sold by the principal manufacturer from such a place. Accordingly, after the insertion of Rule 10A, the practice of discharging the duty on cost construction method by BD Works is not legally correct.

Circular No. 902/22/2009 CX dated 20.10.2009 also clarifies that wherever goods are manufactured by a person on job work basis on behalf of a principal, then value for the purpose of payment of excise duty may be determined in terms of the provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 subject to fulfilment of the requirements of the said rule.

Thus, BD Works should pay the duty on the transaction value on which vehicles are sold by MB Motors from its depot.

Problem 2: How are goods valued when they are sold partly to a related person and partly to an unrelated person?

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Solution: There is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers valuation will be done as per section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are made to related buyers only.

Problem 3: On 25.02.2007 goods were removed from the factory at Chandigarh for sale from the depot at Mumbai. On that date the normal transaction value of the goods at Chandigarh factory was ₹ 10,000 and tariff rate was 8%. These goods were sold ex Mumbai depot on 3.3.2007. On that date the normal transaction value at Mumbai Depot was 11,000 and tariff rate was 16%. The normal transaction value at Mumbai depot on 25.02.2007 was ₹ 9,000 and tariff rate was 8%. The manufacturer has paid duty @ 8% on ₹ 10,000, but the department claims duty @ 16% on ₹ 11,000. Discuss the correct approach to be adopted in the case.

Solution: According to Rule 7 of Central Excise Valuation Rules, 2000, in cases where the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to his depots or consignment agents or any other place for sale, the assessable value for the goods cleared from factory/warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse.

In the given case, ₹ 10,000 represents value on 25.02.2007 (time of removal) but it is not the value prevalent on the depot. Similarly, ₹ 11, 000 represents depot price, but then it is not the price prevalent on 25.02.2007 (time of removal).

The correct value to be adopted in this case is the depot price of such goods (normal transaction value) on 25.02.2007 i.e., ₹ 9,000 and the correct rate will be 8%.

Problem 4: ABC Ltd. of Kanpur agreed to sell an electric motor to DEF Ltd. of New Delhi for ₹ 15000.00 on ex-factory basis. Other particulars are:

(i) Transportation and transit insurance were arranged by ABC Ltd. at the request of DEF Ltd. for ₹ 1250.00 and ₹ 1500.00 respectively which were charged separately. Actual transportation charges amounted to ₹ 1000.00 only.

(ii) A discount of ₹ 1000 was given to DEF Ltd. on the agreed price on payment of an advance of ₹ 3500.00 with the order. (Ignore notional interest on advance)

(iii) Interest of ₹ 800.00 was charged from DEF Ltd. as it failed to make the payment within 30 days.

(iv) Packing charges of the motor amounted to ₹ 1300.00.

(v) The expenditure incurred by ABC Ltd. towards 'free after sale service' during warranty period comes out to be ₹ 500 per motor.

(vi) Dharmada charges of ₹ 200 were recovered from DEF Ltd.

(vii) ABC Ltd. sold a lubricant worth ₹ 250.00 along with the motor to the interested customers. Lubricant which was purchased from the market by ABC Ltd. at ₹ 200 ensured durability and high efficiency of the motor. DEF Ltd. opted for the said lubricant.

Compute the assessable value.

Solution:

(i) Transportation charges will not be included in the assessable value as the sale is at the factory gate and the seller has merely arranged for the delivery. The payment made by the

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buyer in this case is not in connection with the sale but in connection with the transportation as the sale is over at the factory gate itself. Transit insurance will also not be included in the assessable value as delivery of goods to transporter is prima facie delivery of goods to buyer hence sale gets over at the factory gate itself. [Escorts JCB Ltd. v. CCE 2002 146 ELT 31 (SC)]. Profit of ₹ 250 earned on transportation charges will not be included in the assessable value [Baroda Electric Meters Ltd. v. CCE 1997 (94) ELT 13 (SC)].

(ii) Discount of ₹ 1000 is given on ₹ 15000 (agreed price) i.e., the discounted price is ₹14000 however, as in this case price is not the sole consideration, the extra discount of ₹1000.00 will be included in the assessable value.

(iii) Interest of ₹ 800 will not be included in the assessable value as the payment of such interest is not in connection with the sale but in connection with the payment of the consideration for sale. CBEC Circular No. 643/34/2002-CX dated 1.7.2002 has confirmed that delayed payment charges will not be includible in the assessable value, if shown or indicated separately in invoice and charged over and above the sale price.

(iv) Packing charges will form part of the assessable value.

(v) Charges for 'free after sale service' during warranty period are includible in the assessable value.

(vi) Dharmada charges are includible in the assessable value [CBEC Circular No. 763/79/2003 C.X. dated 21.11.2003].

(vii) Value of such lubricant will not be included in the assessable value as it is a purely trading activity and the sale of main article (motor) is independent of sale of optional bought out item (lubricant). Even the profit earned on such bought out item is not included in the assessable value of manufactured product [Triveni Engineering v. CCE 2000 (122) ELT 386 CEGAT].

Therefore, the assessable value will be:

₹14000 + ₹1000 + ₹1300 + ₹500 + ₹200 = ₹17000.00.

Self Assessment

State whether True or False:

6. Duty at ad valorem rates is charged on a wide range of excisable commodities.

7. Valuation of such goods is governed by section 4 of the Central Excise Act, 1944.

8. Incorrect determination of cost of excisable goods Rule 134 read with proviso to rule 9 of the Central Excise Valuation. (Determination of Price of Excisable Goods) Rules, 2000.

3.3 Valuation under Central Excise

After duty liability is established and after the product is correctly classified, the next question is 'What is the Excise Duty payable ?' If you refer to CETA, you will find that some rates are fixed on per Kg or per quintal basis, while some rates are based on '%' basis. This percentage is the % of 'Assessable Value' of goods fixed as per section 4 of Central Excise Act.

Excise duty is payable on one of the following basis :

- Specific duty
- Duty as % of Tariff Value fixed under Section 3(2).

Notes

- Duty based on Maximum Retail Price printed on carton after allowing deductions - section 4A of CEA (added w.e.f. 14.5.1997)
- Duty as % based on Assessable Value fixed under Section 4 (ad valorem duty)

(1) ***Specific Duty:*** It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc. For example, duty on Cigarette is payable on the basis of length of the Cigarette, duty on sugar is based on per Kg basis etc. Presently, specific rates have been announced for - (a) cigarettes (b) Matches (c) Marble slabs and tiles (d) Colour TV when MRP is not marked on the package or when MRP is not the sole consideration.

(2**)** ***Tariff value:*** In some cases, tariff value is fixed by Government from time to time. This is a "Notional Value" for purpose of calculating the duty payable. Once 'tariff value for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4. This is fixed u/s 3(2) of Central Excise Act. Government can fix different tariff values for different classes of goods or goods manufactured by different classes or sold to different classes of buyers. Presently, tariff values have been fixed for pan masala packed in retail packs of less than 10 gm per pack, vide notification No 16/98-CE(NT) dated 2nd June 1998.

(3) ***Value based on Retail Sale Price:*** Section 4A of CEA (inserted w.e.f. 14.5.1997) empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'. The provisions are as follows -

(a) The goods should be covered under provisions of Standards of Weights and Measures Act.

(b) Central Government can permit reasonable abatement (deductions) from the 'retail sale price'. While allowing such abatement, Central Government shall take into account excise duty, sales tax and other taxes payable on the goods.

(c) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered valid.

(d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, etc.

Self Assessment

Fill in the blanks:

9. In some cases, tariff value is fixed by ..... from time to time.
10. This is a "..... Value" for purpose of calculating the duty payable.
11. The ..... should be covered under provisions of Standards of Weights and Measures Act.
12. ..... Government can permit reasonable abatement (deductions) from the 'retail sale price'.
13. If more than one 'retail sale price' is printed on the same packing, the maximum of such ..... price will be considered.
14. The 'retail sale price' should be the maximum price at which ..... goods in packaged forms are sold to ultimate consumer.

Notes

Caselet

CCEx., Bhubaneshwar v. Champdany Industries Limited 2009 (241) E.L.T. 481 (S.C.)

The assessee was engaged in the manufacture of the carpets in which jute predominated by weight over every other single textile material. However, Revenue contended that the same should be classified as polypropylene carpet.

In this regard, the Apex Court considered the following points:-

(i) Relying on Note 1 to Chapter 57, Revenue argued that the surface of the carpet being entirely of polypropylene, the same should be classified as polypropylene carpet. The Supreme Court viewed that role of Chapter Note is limited to decide whether the goods in question are "carpets and other textile floor coverings" for the purposes of Chapter 57 or not. Once the goods are carpets and falling under Chapter 57, the role of Chapter Note 1 comes to an end.

Further referring to the relevant statutory provisions laid down in Section Notes 2(A) and 14(A) of Section XI2, the Apex Court held since the impugned goods admittedly fell under Chapter 57 and consisted of more than two textile materials, it had to be classified on the basis of that textile material which predominated by weight over any other single textile material. As, in the goods in question, jute admittedly predominated by weight over each other single textile material, the said carpet could only be classified as jute carpets and nothing else. The contrary interpretation given by the Revenue was incorrect.

(ii) Relying on the concept of essentiality test, Revenue argued that as the exposed surface of the carpet was polypropylene fiber and not jute, these goods could not be classified as jute carpets. The Court held the said argument of the Revenue to be erroneous because it was against the principle of predominance test.

(iii) Learned counsel for the Revenue further argued that the common parlance test should be applied for classifying the carpets and the carpets, to the common man, would not appear to be jute carpet but polypropylene carpet. The Supreme Court observed that it is already established principle that while interpreting statutes like the Excise Tax Acts or Sales Tax Acts, the common parlance test can be accepted only if any term or expression is not properly defined in the Act. Therefore, going by the aforesaid principle, the Court held that common parlance test did not have any application here.

(iv) Learned counsel for the Revenue argued that for the purpose of classification in this case, rule 3 of the 'Rules for the Interpretation of the First Schedule to the Central Excise Tariff Act, 1985' should be applied. Applying the said rule, Revenue wanted to classify the carpets under the residuary sub-heading 5702.90 of Heading 57.02 - "others". In this regard, the Apex Court observed that Revenue's stand in this case was contrary to the decision of Supreme Court in HPL Chemicals Ltd. v. CCE, Chandigarh (2006) 5 SCC 208, wherein it was held that rule 3(a) of the Interpretative Rules provides that if the goods are covered by a specific heading, the same cannot be classified under the residuary heading at all.

Contd....

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Apart from that, the Court noted that the point of rule 3, which had been argued by the learned counsel for the Revenue, was not part of its case in the show-cause notice. It is well settled that in Court, Revenue cannot argue a case not made out in its show-cause notice.

In the light of the above discussion, the Apex Court pronounced that the said carpets shall be classified as jute carpets and note as polypropylene carpet.

Note:

1. The Note 1 to Chapter 57 of the Excise Tariff is reproduced as below:-

"For the purposes of this Chapter, the term 'carpets and other textile floor coverings' means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes article having the characteristics of textile floor coverings but intended for use for other purposes."

2. Section Notes 2(A) and 14(A) of Section XI of the Central Excise Tariff Act, 1985 is set out as follows:-

> "2(A) Goods classifiable in Chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over any other single textile material.
>
> "14(A) Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under Note 2 to this section for the classification of a product of Chapters 50 to 55 or of heading 5809 consisting of the same textile materials."

Note: The headings cited in some of the case laws mentioned above may not correlate with the headings of the present Excise Tariff as these cases relate to an earlier point of time.

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

3.4 Summary

- There are thousands of varieties of manufactured goods and all goods cannot carry the same rate or amount of duty.
- It is also not possible to identify all products individually.
- The excise duty is chargeable at different goods at different rates.
- Trade Parlance Theory emerged out of case of Grenfell vs. IRC (1876), where Justice Pollok concluded that nay word in statue should be interpreted (understood in its popular sense, in which people understand it.
- The Central Excise Tariff Act was amended in 2004.
- HSN system define as excisable goods list in India and goods are classified systematically following the footsteps of HSN.
- The CE Act 1944 does not provide any guidelines for classification of goods.
- Duty at ad valorem rates is charged on a wide range of excisable commodities.
- Valuation of such goods is governed by section 4 of the Central Excise Act, 1944, read with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.
- In some cases, tariff value is fixed by Government from time to time. This is a "Notional Value" for purpose of calculating the duty payable.

3.5 Keywords

Notes

CETA: CETA and Customs Act both have sections and chapters. Remember you have read above that the scheme of class is common for both CETA and Customs Act.

HSN (Harmonised System of Nomenclature): HSN system defines as excisable goods list in India and goods are classified systematically following the footsteps of HSN (Harmonised System of Nomenclature) as in Customs Tariff.

Specific Duty: It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc.

Tariff value: In some cases, tariff value is fixed by Government from time to time. This is a "Notional Value" for purpose of calculating the duty payable.

Value based on Retail Sale Price: Section 4A of CEA (inserted w.e.f. 14.5.1997) empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'

3.6 Review Questions

1. Describe Classification of Excisable Goods.
2. Explain about Broad Grouping in CETA.
3. Describe about Trade Parlance Theory.
4. Explain about Valuation of Excisable Goods.
5. Discuss about Valuation under Central Excise.
6. What do you know about Specific Duty?
7. Describe about rules of classification of Classification Goods.

Answers: Self Assessment

1.	Basic excise duty	2.	2004
3.	HSN	4.	1944
5.	1985	6.	True
7.	True	8.	False
9.	Government	10.	National
11.	Goods	12.	Central
13.	Retail	14.	Excisable

3.7 Further Readings

Books

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Unit 4: Various Authorities under Excise Law

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Objectives

After studying this unit, you should be able to:

- Know about authorities under excise law
- Understand appeals to the Appellate Tribunal
- Know about Revision by Central Government

Introduction

The Central Excise Duty is charged under the **Central Excise Act, 1944**. The rates of duty, whether on value (ad valorem) or specific, are prescribed under schedule I and schedule II of the Central Excise Tariff Act, 1985.

Central Excise duty is an Indirect Tax levied on goods manufactured in India. Excisable goods have been defined as those, that have been specified in the Central Excise Tariff Act as being subjected to the duty of excise. The word 'Goods' has not been defined in the Act. Therefore excisable goods meaning is borrowed from the Constitution and from the Sale of Goods Act and understood as per the decision of the Apex Court. Under excise it is understood to be items that are movable, i.e. capable of being moved and marketable, i.e. capable of being sold.

4.1 Authorities under Excise Law

Appeals to Commissioner (Appeals). — (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

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

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

4.2 SECTION 35A. Procedure in Appeal

(1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard, if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

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(3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against:

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.

(4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(5) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.

(6) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Chief Commissioner of Central Excise and the Commissioner of Central Excise.

Notes ***Provided*** that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

4.3 SECTION 35B. Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:

(a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, —

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

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(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty ;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved;

(ii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of Section 47 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(1B) (i) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order:

Provided that where the committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Central Excise who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.

Explanation**:** For the purposes of this sub-section, "Jurisdiction Chief Commissioner" means the Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

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(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, —

(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal —

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub-section.

Task Discuss about Section 35 D.

4.4 SECTION 35C. Orders of Appellate Tribunal

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

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

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

Notes

(2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Central Excise and the other party to the appeal.

(4) Save as provided in section 35G or section 35L, orders passed by the Appellate Tribunal on appeal shall be final.

Self Assessment

Fill in the blanks:

1. Any person aggrieved by any decision or order passed under this Act by a ..... Excise Officer, lower in rank than a Commissioner of Central Excise.
2. Every ..... under this section shall be in the prescribed form and shall be verified in the prescribed manner.
3. The ..... of Chief Commissioners of Central Excise may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Central Excise.
4. The ..... Government may, of its own motion, annul or modify any order referred to in sub-section (1).

4.5 SECTION 35D. Procedure of Appellate Tribunal

(1) 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.

(2) Omitted.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where —

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) the amount of fine or penalty involved, does not exceed ten lakh rupees.

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4.6 SECTION 35E. Powers of Committee of Chief Commissioners of Central Excise or Commissioner of Central Excise to pass certain orders

(1) The Committee of Chief Commissioners of Central Excise may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners of Central Excise in its order:

Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order, if is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.

(2) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under sub-section (1) or sub-section (2) the adjudicating authority or the authorised officer makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 35B shall, so far as may be, apply to such application.

(5) Omitted

4.7 SECTION 35EE. Revision by Central Government

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order:

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation. — For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act,

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1984 against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer in the case to which the application relates is more than one lakh rupees:

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, —

(a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in section 11A.

Caution The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order

4.8 SECTION 35F. Deposit, pending appeal, of duty demanded or penalty levied

Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities

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or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

Explanation. — For the purposes of this section ''duty demanded'' shall include, —

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;

(v) interest payable under the provisions of this Act or the rules made thereunder.

4.9 SECTION 35FF. Interest on delayed refund of amount deposited under the provision to Section 35F

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

4.10 SECTION 35G. Appeal to High Court

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

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(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

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

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

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Did u know? The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

Self Assessment

Fill in the blanks:

5. The ..... of Central Excise or the other party applying to the High Court under sub-section.

6. ..... may admit an application or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section.

7. Every .....which is pending immediately before the appointed day before the Central Government under section 36.

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8. Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Central Excise under.....

4.11 SECTION 35H. Application to High Court

(1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(3A) The High Court may admit an application or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.

4.12 SECTION 35-I. Power of High Court or Supreme Court to require statement to be amended

If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

4.13 SECTION 35J. Case before High Court to be heard by not less than two judges

(1) When any case has been referred to the High Court under section 35G or section 35H, it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

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

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4.14 SECTION 35K. Decision of High Court or Supreme Court on the case stated

(1) The High Court or the Supreme Court hearing any such case shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

(1A) Where the High Court delivers a judgment in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.

(2) The costs of any reference to the High Court or an appeal to the High Court or the Supreme Court, as the case may be which shall not include the fee for making the reference, shall be in the discretion of the Court.

4.15 SECTION 35L. Appeal to the Supreme Court

An appeal shall lie to the Supreme Court from —

(a) any judgment of the High Court delivered -

(i) in an appeal made under section 35G; or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

4.16 SECTION 35M. Hearing before Supreme Court

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

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4.17 SECTION 35N. Sums due to be paid notwithstanding reference, etc.

Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005 sums due to the Government as a result of an order passed under sub-section (1) of section 35C shall be payable in accordance with the order so passed.

Caution Where the High Court delivers a judgment in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.

4.18 SECTION 35-O. Exclusion of time taken for copy

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

4.19 SECTION 35P. Transfer of certain pending proceedings and transitional provisions

(1) Every appeal which is pending immediately before the appointed day before the Board under section 35, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be reheard.

(2) Every proceeding which is pending immediately before the appointed day before the Central Government under section 36, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it:

Provided that if any such proceeding or matter relates to an order where —

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 36 had not been substituted :

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be reheard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Central Excise under section 35A, as it stood immediately before that

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day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Central Excise, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 35Q, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

Task Discuss about Section 35 N.

4.20 SECTION 35Q. Appearance by authorised representative

(1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorized representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

(a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practise in any civil court in India; or

(c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service — Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, —

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Central Excise or the competent authority under the Customs Act, 1962 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person, —

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;

Notes

(b) who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

Notes Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act,

4.21 SECTION 35R. Appeal not to be filed in certain cases

(1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly

Notes

Self Assessment

State whether True or False:

9. Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act.

10. The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such product limits.

Case Study

GE's Taxes: A Case Study

FORTUNE - GE's tax department is well known for its size, skill and hiring of former government officials. About 20 years ago, GE's tax employees totalled a few hundred and were decentralized. Today, there are almost 1,000. The department's strong suit? Reducing the taxes GE reports for earnings purposes.

GE, like other publicly traded companies, publicly reports one set of tax numbers to calculate its earnings but uses a different set, which remain confidential, to calculate what it owes the tax collector. The lower the taxes GE (**GE**) reports, the higher its publicly reported profits. And the higher its profits, presumably, the higher its stock price goes.

That is the holy grail sought by GE and countless other companies. Thus the tax department can be like a profit center of its own — perfectly legally, we might add.

For example, GE boosted its 2008 and 2009 reported profits by a total of about $1 billion just by changing its mind about how it treated some of its overseas earnings.

Here's why — and how — it works.

Many U.S. multinational corporations keep some profits abroad, none more than GE: Its total was $94 billion at the end of last year. As long as corporations tell their accountants they intend to indefinitely invest those profits outside the U.S., they don't have to make a provision for federal and state taxes on them. If the profits stay abroad, they remain untaxed.

GE, in 2008 and 2009, told its accountants that about $3 billion of overseas profits were going to be indefinitely invested abroad. Previously, the company had not made that investment decision, so it was required to set aside a book keeping provision of about $1 billion for U.S. taxes. That provision impacted publicly reported earnings when it was taken.

GE never actually paid the $1 billion in taxes. And it doesn't say when the previous accounting provision of $1 billion was taken. But, lo and behold, in 2008 and 2009, when the company sorely needed higher profits, there they were, thanks to a tax benefit! It didn't have to sell more jet engines, or turbines, or kitchen appliances.

A leading tax accounting professor uses the GE shift as a case study in the flexibility of the accounting rules. Ed Outslay, Deloitte/Michael Licata professor of accounting at Michigan State University's business school, says GE's move shows the "discretion" inherent in the accounting rule.

Contd....

Notes

GE, in answers provided through a spokeswoman, told us that it fully disclosed the investment changes as well as the reason behind them. "We don't think," the company went on, that the rule "allows too much discretion."

But its top tax executive, John Samuels, said at a conference last year that the ability to defer taxes on overseas profits gives companies an incentive to shift them abroad. It's "a heads-I-win, tails-I-break even situation," Samuels said.

Question:

Analyse the case and Discuss the case facts

Source: http://features.blogs.fortune.cnn.com/2011/04/04/ges-taxes-a-case-study/

4.22 Summary

- Under section 3 of the Central Excises and Salt Act, 1944, the basic excise duty is charged on all excisable goods other than salt.
- The goods must be produced or manufactured in India.
- The rates applied are as per the schedule to the Central Excise Tariff Act, 1985.
- Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 states that the levy and collection of additional excise duty is authorized with respect to the goods mentioned in the schedule to the Act.
- This duty is charged in lieu of sales tax under different enactments like industries development, medicinal and toilet preparations, sugar etc.
- The duty received is shared between the State and Central Governments.
- Special excise duty is attracted on all excisable goods on which Basic Excise Duty under the Central Excises and Salt Act, 1944 is levied.
- This duty is charged as per the Section 37 of the Finance Act, 1978.
- Every year since then, the Finance Act specifies whether the duty is to be levied and collected or not for that financial year.

4.23 Keywords

Manufacturer: Manufacturer is a person who actually manufactures or produces the excisable goods.

Maximum Retail Price: MRP is the maximum retail price that shall be chargeable to final consumers.

Personal Ledger Account: PLA is the current account prepared for keeping the account of duty paid and duty payable.

Set-Off: Set-Off mean adjusting the duty paid on inputs with the duty payable on finished goods.

Tariff Value: Tariff Value is the value fixed by government from time to time for valuation of certain excisable goods.

Trade Parlance Theory: The theory states that the goods must be classified in the CEA, in the sense in which it is understood in the trade.

Notes

Warehouse: Warehouse is the place at which the goods are stored after their production in factory.

4.24 Review Questions

1. Describe different Authorities under Excise Law.
2. Explain about Procedure in Appeal.
3. What do you know about appeals to appellate tribunal?
4. What are the orders for Appellate Tribunal?
5. What is the procedure for Appellate Tribunal?
6. Discuss about Section 35 R.
7. Discuss about Section 35 Q.

Answers: Self Assessment

1.	Central	2.	appeal
3.	committee	4.	Central
5.	Commissioner	6.	Highcourt
7.	Proceeding	8.	Section 35 A
9.	True	10.	False

4.25 Further Readings

Books

Ahuja, Dr. Girish and Gupta, Dr. Ravi, *Direct Taxes Law & Practice including Tax Planning,* 18th Edition 2008-09, Bharat Law House Pvt. Ltd.

Chanchal Kr Nag, *Direct & Indirect Tax Laws & Practice*, NCB Agency.

Singhania, Dr. Vinod K. and Singhania, Dr. Kapil, *Direct Taxes Law & Practice with Special Reference to Tax Planning,* 41st, Edition 2009-10, Taxman's.

VS Datey, *Indirect Tax Laws*, CHH India

Yogendra Bangar Vandana, *Direct & Indirect Taxes Planning & Management*, Aadhya Prakashan

Online links

www.**indirecttax**.ind**law**.com/search/**articles**/

www.monckton.com/library/**articles**.php?area=7

www.onlinecacoaching.com/.../CA%20Final-**Indirect**%20**Taxation**.pdf

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Unit 5: Clearances of Excisable Goods

Notes

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about Excisable Goods
- Understand clearances of Excisable Goods
- Know about Self Removal Procedure

Introduction

Removal or clearance means transfer of goods from factory after it finished and excisable. Clearance is a time when excise officer can demand his excise duty. In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), and in supersession of the Central Excise (Valuation) Rules, 1975 except as respect things done or omitted to be done before such supersession, the Central Government. The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable.

Notes

5.1 Rules for clearance or removal of goods under Central Excise Rules

1. Self removal procedure

Under this method, assessee is allowed that he can remove or clearance the goods but he must follow the following steps for self removal:

1st step He must record in the production register daily.

2nd step He must prepare invoice.

3rd step He must calculate his duty liability by himself.

4th step Pass removal entry in production register (Quantity, rate, duty).

5th step Pass the debit entry of duty payable at the end of month.

In 1994 gate pass system changed with invoice –base system.

2. Removal of goods under bonds

It means assessee has right to remove the goods at concessional rate or exempted from duty goods if he get bond of central excise department with surety or security.

Steps for this method

1st step Application is given by manufacturer to obtain the benefits.

2nd step Execute/get bond with security (it means in future these goods will become excisable, he will pay the duty)

3rd step The amount of bond equal to the exempted amount or concession Value of duty.

4th step Application shall counter signed by Assistant Commissioner

5th step Record of concession or exempted goods.

6th step Recovery of duty in certain cases.

3. Removal of goods from Free Trade Zones (FTZ) or 100% EOU or Special Economic Zones: (Rule 17)

If goods produced under free trade zones or 100% export oriented units or special economic zone. The assessee has right to removal after paying its appropriate duty. In some cases, govt. can give right to export without payment of duty.

4. Removal on payment of duty or on invoice: Rule 4

1st way

Removal of goods on payment of excise duty is best way for manufacturer and central excise department. Manufacturer never remove until he pay his duty.

2nd way

Removal of goods on invoice. It means goods send out on invoice and signed by owner of factory.

Notes

Notes If goods produced under free trade zones or 100% export oriented units or special economic zone. The assessee has right to removal after paying its appropriate duty. In some cases govt. can give right to export without payment of duty.

5. Removal of input and capital goods under CENVAT

The manufacturer credit the duty if he get the input from his supplier. Duty is paid by supplier.

Input as raw material '! "! '! Output as finished goods

6. Removal of goods for export

There are many rules for clearance or removal for export of goods. It deals chapter IX of Central Excise Rules.

Method of removal

1st way

Without seal of central excise department :-

There is limited chance of export without duty but commission has the power to allow without examination or seal.

2nd way

With seal of central excise department.

Officer of central excise department is verified that duty is paid on such goods after this he will seal them.

Excise Clearance for Export

As a part of further simplifications and rationalisation of Excise Rules announced by the Finance Minister, a set of Central Excise Rules, 2002 has come into effect from 1-3-2002. Under these new rules, central excise provisions for exports (except exports to Nepal and Bhutan) have been prescribed in Rules 18 and 19.

Procedure for Export to all countries (except Nepal and Bhutan) under Payment of Duty

The procedure for export of excisable goods except Nepal and Bhutan on payment of duty under claim for rebate is governed by the provisions of Rule 18 of the Central Excise (No.2) Rules, 2001. The conditions, limitations and safeguards are separately contained in Notification No. 40/ 2001-CE(NT) dated 26th June, 2001.

5.2 Conditions and Limitations

There are some conditions and limitations:

(i) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse;

(ii) the excisable goods shall be exported within six months from the date on which they were, cleared for export, from the factory of manufacture or warehouse;

Notes

(iii) the rebate claim by filing electronic declaration shall be allowed from such place of export and such date, as may be specified by the Board in this behalf;

(iv) that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

(v) that the amount of rebate of duty admissible is not less than five hundred rupees.

5.3 Sealing of goods and examination at place of dispatch

(a) For the sealing of goods intended for export at the place of despatch, the exporter shall present the goods along with four copies of application in the Form ARE-I to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse, who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, he shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done.

(b) The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter.

(c) The triplicate copy of application shall be—

(i) sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(ii) Sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs.

(d) The exporter may prepare quintuplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application.

(e) where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse who shall, after verification forward the triplicate copy in the manner specified in sub-paragraph (c) above.

Caution For the sealing of goods intended for export at the place of despatch, the exporter shall present the goods along with four copies of application in the Form ARE-I to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse

5.4 Dispatch of goods by self-sealing and self-certification

(a) Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse, the exporter or a person duly authorised by such exporter, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods.

(b) The said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars -

Notes

(i) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(ii) send to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs.

(c) The exporter may prepare quintuplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application.

Self Assessment

Fill in the blanks:

1. There are many rules for clearance or removal for ..... of goods.
2. ..... of central excise department is verified that duty is paid on such goods after this he will seal them.
3. The procedure for export of excisable goods except Nepal and Bhutan on payment of duty under claim for rebate is governed by the provisions of .....
4. An ..... may enter the requisite information in the Shipping Bill filed at such place of export, as may be specified by the Board, for claiming rebate by electronic declaration on Electronic Data Inter-change system of Customs.
5. Where the excisable goods are not sold by the assessee at the time and place of ..... but are transferred to a depot.

5.5 Examination of goods at the place of export

(a) On arrival at the place of export, the goods shall be presented together with original, duplicate and quintuplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer.

(b) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export, provided that if the Superintendent or Inspector of Central Excise has sealed packages or container at the place of despatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.

(c) The officer of customs shall return the original and quintuplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom exporter wants to claim rebate.

Provided that where exporter claims rebate by electronic declaration on Electronic Data Inter-change system of Customs, the duplicate shall be sent to the Excise Rebate Audit Section at the place of export.

(d) The exporter shall use the quintuplicate copy for the purposes of claiming any other export incentive.

Notes

Presentation of claim for rebate to Central Excise

(a) Claim of the rebate of duty shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner.

(b) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the Officer of Customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.

Claim of rebate by electronic declaration

An exporter may enter the requisite information in the Shipping Bill filed at such place of export, as may be specified by the Board, for claiming rebate by electronic declaration on Electronic Data Inter-change system of Customs. The details of the corresponding application shall be entered in the Electronic Data Inter-change system of Customs upon arrival of the goods in the Customs area. After goods are exported or order under section 51 of the Customs Act, 1962 (52 of 1962) has been issued, the rebate of excise duty shall, if the claim is found in order, be sanctioned and disbursed by the Assistant Commissioner of Customs or the Deputy Commissioner of Customs.


Task

Discuss about removal of clearance goods.

5.6 Procedure for Export to all countries (except Nepal and Bhutan) without Payment of Duty

The procedure for export of all excisable goods, except to Nepal and Bhutan, without payment of duty from the factory of the production or the manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise, is governed by the provisions of Rule 19 of the Central Excise (No. 2) Rules, 2002. The conditions, limitations and safeguards are separately contained in Notification No. 42/2001-CE(NT) dated 26th June, 2002.

Conditions

There are some conditions:

(i) that the exporter shall furnish a General Bond (Surety/Security) to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory, warehouse or such approved premises, as the case may be, or the Maritime Commissioner or such other officer as authorised by the Board on this behalf, in a sum equal at least to the duty chargeable on the goods, with such surety or sufficient security, as such officers may approve for the due arrival thereof at the place of export and their export therefrom under Customs or as the case may be postal supervision. The manufacturer-exporter may furnish a letter of undertaking in the Form specified in lieu of a bond;

(ii) that goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or the manufacture or warehouse or other approved premises within such extended period as the Assistant Commissioner of Central Excise or

Notes

Deputy Commissioner of Central Excise or Maritime Commissioner may in any particular case allow;

(iii) that when the export is from a place other than registered factory or warehouse, the excisable goods are in original packed condition and identifiable as to their origin.

Procedure for removal without payment of duty

(a) After furnishing bond, a merchant-exporter shall obtain certificates in Form CT-1 issued by the Superintendent of Central Excise having jurisdiction over the factory or warehouse or approved premises or Maritime Commissioner or such other officer as may be authorised by the Board on this behalf and on the basis of such certificate he may procure excisable goods without payment of duty for export by indicating the quantity, value and duty involved therein;

(b) the exporter who has furnished bond shall ensure that the debit in bond account does not exceed the credit available therein at any point of time;

(c) the manufacturer-exporter may remove the goods without payment of duty after furnishing the letter of undertaking as specified under condition (1);

(d) such General bond or letter of undertaking shall not be discharged unless the goods are duly exported, to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or Maritime Commissioner or such other officer as may be authorised by the Board on this behalf within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer, or until the full duty due upon any deficiency of goods, not accounted so and interest, if any, has been paid.

Sealing of goods and examination at place of dispatch

(a) For the sealing of goods intended for export at the place of despatch, the exporter shall present the goods along with four copies of application in the Form A.R.E.-l to the Superintendent or Inspector of Central Excise who will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, he shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done;

(b) the said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter mid retain the quadruplicate copy;

(c) the triplicate copy of application shall be sent to the officer to whom bond or letter of undertaking has been furnished, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records;

(d) the exporter may prepare quintuplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application;

(e) in case of export by parcel post after the goods intended for export has been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package to which it refers, to the postmaster at the office of booking.

Dispatch of goods by self-sealing and self-certification

The main points are given below:

(a) Where the exporter desires self-sealing and self-certification for removal of goods from the factory, warehouse or any approved premises, the exporter or a person duly authorised, shall

Notes

certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory, warehouse, any such approved premises within twenty four hours of removal of the goods;

(b) The Superintendent or Inspector of Central Excise shall, after verifying the particulars of the bond or letter of undertaking and endorsing the correctness or otherwise, of the particulars on the application, send to the officer to whom the bond or letter of undertaking has been furnished either by post or by handing over to the exporter in a tamper proof sealed cover after recording the particulars in the official records;

(c) The exporter may prepare quintriplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application.

Examination of goods at the place of export

(a) On arrival at the place of export, the goods shall be presented together with original, duplicate and quintuplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer.

(b) The Commissioner of Customs or other duly appointed officer shall examine the goods with the particulars as specified in the application and if he finds that the same are correct arid exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill.

Did u know? On arrival at the place of export, the goods shall be presented together with original, duplicate and quintuplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer.

Self Assessment

State whether True or False:

6. The exporter may prepare quintuplicate copy of application for claiming any other export incentive.
7. The exporter who has furnished bond shall ensure that the credit in bond account does not exceed the credit available therein at any point of time.
8. The manufacturer-exporter may remove the goods without payment of duty after furnishing the letter of undertaking as specified under condition.
9. The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter mid retain the original copy.
10. In case of export by parcel post after the goods intended for export has been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents.

5.7 Remission of duty on goods used for special Industrial purposes

In relation to the excisable goods covered by this Chapter, the provisions of Chapter X of these rules shall apply subject to the following modifications, namely:—

Notes

1. For rule 195, the following rule shall be substituted, namely:—

"195. ***Disposal of refuse of excisable goods.-*** All refuse of excisable goods obtained under rule 192, which may remain after the completion of the industrial process shall be stored separately and the manufacturer shall inform the proper officer in writing the quantity of such refuse and the date on which he proposes to destroy them at least seven days in advance and may destroy or otherwise dispose of such refuse in the manner and in accordance with the conditions as may be prescribed by the Commissioner by a general or special order."

2. For rule 196A, the following rule shall be substituted, namely:—

"196A. ***Surplus excisable goods.-*** If any excisable goods obtained under rule 192 become surplus to the needs of the applicant for any reason, the applicant may, after informing the proper officer in writing at least 24 hours in advance:

(i) clear the goods on payment of duty, the rate of duty and the tariff valuation, if any, applicable to such goods being the rate and valuation, if any, in force on the date of actual removal of the goods from the applicant's premises; or

(ii) return the goods to the original manufacturer of the goods from whom the applicant had obtained them under bond and every such returned goods shall be added to the non-duty paid stock of the original manufacturer and dealt with accordingly. The applicant shall be accountable for the loss or deficiency, if any, during transport of the goods from the applicant's premises to the place of the original manufacturer; or

(iii) clear the goods for export in the manner provided in rule 12 or 13 or 14, as the case may be."

(2A) For rule 196AA, the following rule shall be substituted, namely:—

"196AA. ***Transfer of excisable goods.-*** The applicant may, after informing the proper officer in writing at least twenty-four hours in advance, despatch the excisable goods obtained under rule 192 to another manufacturer who is eligible to the concession in respect of such goods and to whom a registration Certificate has been granted under rule 192 for obtaining such goods."

3. For rule 196B, the following rule shall be substituted, namely:—

"196B. ***Disposal of defective or damaged excisable goods.-*** If any excisable goods obtained under rule 192 are on receipt found to be defective or damaged or unsuitable to the needs of the applicant for any reason, such goods shall be stored separately and the applicant may,—

(a) after informing the proper officer in writing at least 24 hours in advance,—

(i) return such goods to the original manufacturer of the goods from whom the applicant had obtained them under bond within such period and subject to such conditions as may be prescribed by the Commissioner in this behalf, and every such returned goods shall be added to the non-duty paid stock of the original manufacturer and dealt with accordingly. The applicant shall be accountable for the loss or deficiency, if any, during transport of the goods from the applicant's premises to the place of the original manufacturer; or

(ii) clear such goods on payment of duty, the rate of duty and the tariff valuation if any, applicable to such goods being the rate and valuation, if any, in force on the date of actual removal of such goods from the applicant's premises; or

(b) after informing the proper officer in writing at least seven days in advance the quantity of such goods and the date on which he proposes to destroy them and after observing such conditions as may be prescribed by the Commissioner by general or special order, destroy such goods where the duty payable thereon has been remitted."

Notes

Caution All refuse of excisable goods obtained under rule 192, which may remain after the completion of the industrial process shall be stored separately and the manufacturer shall inform the proper officer in writing the quantity of such refuse and the date on which he proposes to destroy them at least seven days in advance and may destroy or otherwise dispose of such refuse in the manner.

5.8 Determination of Value

RULE 3. The value of any excisable goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with these rules.

RULE 4. The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment, subject, if necessary, to such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable.

RULE 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.

Explanation 1. - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods.

RULE 6. Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstance where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

Explanation 1 - For removal of doubts, it is hereby clarified that the value, apportioned as appropriate, of the following goods and services, whether supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale of such goods, to the extent that such value has not been included in the price actually paid or payable, shall be treated to be the amount of money value of additional consideration flowing directly or indirectly from the buyer to the assessee in relation to sale of the goods being valued and aggregated accordingly, namely:

(i) Value of materials components, parts and similar items relatable to such goods;

(ii) Value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;

(iii) Value of material consumed, including packaging materials, in the production of such goods;

Notes

(iv) Value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.

Explanation 2. - Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods by way of charging a lesser price from or by offering a special discount to the buyer who has made the advance deposit.

Example: X, an assessee, sells his goods to Y against full advance payment at ₹ 100 per piece. However, X also sells such goods to Z without any advance payment at the same price of ₹ 100 per piece. No notional interest on the advance received by X is includible in the transaction value.

Example: A, an assessee, manufactures and supplies certain goods as per design and specification furnished by B at a price of ₹ 10 lakhs. A takes 50% of the price as advance against these goods and there is no sale of such goods to any other buyer. There is no evidence available with the Central Excise Officer that the notional interest on such advance has resulted in lowering of the prices. Thus, no notional interest on the advance received shall be added to the transaction value.

RULE 7. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment.

RULE 8. Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.

RULE 9. When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clause (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail:

Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8.

RULE 10. When the assessee so arranges that the excisable goods are not sold by him except to or through an inter-connected undertaking, the value of goods shall be determined in the following manner, namely :-

(a) The undertakings are so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9.

Notes

Explanation. - In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956).

(b) in any other case, the value shall be determined as if they are not related persons for the purpose of sub-section (1) of section 4.

RULE 10A. Where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then, -

(i) case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer;

(ii) case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker;

(iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods:

Provided that the cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Explanation.- For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

5.9 CENVAT

In 1986, the Central Government introduced Modified Value Added Tax called MODVAT, which enabled the manufacturers to avail credit of excise duty paid on the inputs used in or relation to manufacture of the end product. The object of MODVAT was to provide for offset of duty paid on input stage against the duty payable at the final stage. In 1994, the scheme of MODVAT was extended to capital goods also. The MODVAT scheme was renamed to be called Central Value Added Tax Scheme i.e. CENVAT scheme.

Concept of CENVAT

The CENVAT Scheme is a scheme designed to reduce the cascading effect of indirect taxes on final product. Cascading effect in simple terms mean duty on duty. When a raw material passes through various stages of manufacture before being available to the ultimate consumer as finished goods, at every stage, duty is levied and this results in cascading effect on duty.

Notes

The cascading effect of duty can be illustrated by the following example:

Particulars	Under non-CENVAT	Under CENVAT
(A) Raw material say X	100	100
Add Excise Duty @ 16 %	16	16
Total	116	116
Credit allowable	Nil	16
Net Cost of X	116	100
(B) Value Addition	100	100
Product Y	216	200
Add Excise duty @16%	34.56	32
Total cost	250.56	232
Credit available	-	200
(B) Value Addition	100	100
Product Z	350.56	300
Add Excise duty @16%	56.09	48
Total cost	406.09	348
Credit available	-	48
Net Cost of Z	406.09	300

From the above it becomes clear that the person who purchases product X he pays ₹ 116 but under CENVAT he gets a credit of ₹ 16, so his cost is simply ₹ 100 the person who buys product Y he pays ₹ 240.56 under Central Excise and ₹ 232 under CENVAT. However he gets CENVAT credit of ₹ 32 and his net cost remains only ₹ 200. In case of product Z this difference increases to as high as ₹ 106.09.

The present scheme allows instant CENVAT credit to be taken on duties, such as Excise Duty, Special Excise Duty, additional Duty of excise and Countervailing Duty paid on inputs and capital goods received in a factory for the manufacture of any dutiable final product except matches.

Self Assessment

Fill in the blanks:

11. The ..... of Customs or other duly appointed officer shall examine the goods with the particulars.
12. The value of any .....goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with these rules.
13. Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a .....
14. Where the excisable .....are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles.

Notes

Case Study

International Corporate Tax case study

A U.S. corporation has worldwide operations and manufacturing facilities. Nearly all of these foreign entities were historically held directly by one of the consolidated U.S. entities, creating a 'flat' corporate structure. The European headquarters is located in Western Europe, with the largest manufacturing facilities outside the U.S. in four European, Middle Eastern and African countries. What are the issues, and what approach has KPMG taken?

Over the past ten years the company has made several business acquisitions in Europe. The funds for these acquisitions were sourced from the U.S. using cash reserves and/or debt.

Prior to 2004, approximately 70 percent of the company's sales and income came from products manufactured in the U.S. Because of the location of the majority of third-party debt, there was tremendous pressure to keep the flow of cash to the U.S. high enough to service the interest on this debt. This practice resulted in additional U.S. taxes (to the extent the U.S. tax rate was higher than the foreign jurisdiction tax rate plus any withholding taxes) and the need to find a way to utilize foreign tax credits.

In 2004 the company acquired a major European business, increasing market share in a particular business line. The acquisition was designed to create corporate synergies; consolidate functions, leverage customer relationship across business lines, strengthen corporate controls and reduce costs.

The acquisition meant a significant increase in worldwide sales. It also saw 60 percent of global revenue and income coming from non-U.S. manufactured products. Most of the funds used to acquire the European business were financed with third party debt by the U.S. entities. As a result of this transaction, the misalignment of third party debt and income was further exacerbated.

In addition, the company faced a mounting problem of integrating their existing European management structure with the acquired, and larger, business. In order to achieve the synergies contemplated as part of the acquisition, integrate the acquired company's back-office software and functions into the acquirers and significantly reduce the two companies total overhead, the U.S. Corporation contemplated a strategic realignment of functions and activities between the two companies.

Issues

- Can the company create synergies between the older European, Middle Eastern and African (EMEA) companies and the new business?
- Can the company source its debt in the jurisdiction(s) with the largest cash flows, eliminating the need to repatriate European earnings to the U.S.?

Contd....

Notes

- Can the company reduce its overall third party debt?
- Can the company restructure its EMEA operations to take advantage of low-tax income to service newly-aligned third party debt?
- Can the company manage the increased tax burden arising from its non-U.S. operations?

Approach

KPMG helped the company develop an appropriate structure to achieve its long term goals and address the issues described above.

The new structure created a principal European entity that assumed management responsibilities for nearly all of the EMEA manufacturing, development and distribution businesses thus eliminating the redundant functions performed by both the legacy entities and the acquired company. This principal entity owned all contracts, as well as accepting the risks associated with funding R&D activities in Europe and Asia.

The manufacturing entities received a fee based on costs incurred ('contract manufacturing' arrangement). Similar arrangements were concluded with entities providing R&D and other support services. The principal European entity also bought the existing intellectual property for an arm's length amount. All these arrangements were supported by transfer pricing studies between the various foreign entities and according to local law.

Prior to converting to the new arrangement the company needed to address its third party debt issues. By taking advantage of IRC section 965 (which allowed for a one-year window for an 85 percent dividend received deduction on earnings repatriated from CFCs), the company was able to make significant distributions into the U.S., which were in turn used for corporate capital expenditures pursuant to a dividend reinvestment plan. In addition, as a result of the repatriated dividends, the U.S. company was in turn able to use its other available cash to repay third party debt. The remaining U.S. debt could then be serviced by the U.S. businesses income flow. Future funds needed in EMEA would be financed through the foreign entities directly.

The European operations were reorganized so they could raise debt without parental guarantees from the U.S. The reorganization was achieved by creating a partnership under European law. In turn, this partnership sold the relevant entities to the principal European entity in exchange for a note. The interest payable on this note created an interest deduction that significantly reduced the taxable income of the principal European entity.

The European partnership was set up so that any interest earned was not subject to tax in the jurisdiction of its formation, or in the U.S. unless repatriated. The earlier repayment of U.S. debt also meant it was no longer necessary to repatriate debt from Europe.

Outcome

The reorganization consolidates all of the European functions and risks. The new operating structure significantly decreases the amount of tax the company pays. By adopting a permanent reinvestment position under APB 23 the company also reduces its overall effective tax rate for financial statement purposes.

Question:

Analyse the case and discuss the case facts.

Notes

5.10 Summary

- Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse, the exporter or a person duly authorised by such exporter.
- The said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars.
- For rule 196A, the following rule shall be substituted. Under surplus excisable goods if any excisable goods obtained under rule 192 become surplus to the needs of the applicant for any reason, the applicant may, after informing the proper officer in writing at least 24 hours in advance.
- When the assessee so arranges that the excisable goods are not sold by an assessee except to or through a person who is related in the manner specified in either of sub-clauses.
- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse.

5.11 Keywords

CETA: CETA and Customs Act both have sections and chapters. Remember you have read above that the scheme of class is common for both CETA and Customs Act.

RULE 3. The value of any excisable goods shall, for the purposes of clause (b) of sub-section (1) of section 4 of the Act, be determined in accordance with these rules.

RULE 4. The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment.

RULE 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal

Value based on Retail Sale Price: Section 4A of CEA (inserted w.e.f. 14.5.1997) empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'

5.12 Review Questions

1. What are the rules for clearance or removal excise of goods under central Excise Law?
2. Describe about Self Removal Procedure.
3. What do you know about sealing of goods?
4. Describe about examination of goods at the time of export.
5. What is the procedure for removal without payment of Duty?
6. Explain about remission of duty on goods used for special industrial purposes.
7. Discuss about determination of Value.

Answers: Self Assessment

Notes

1.	Export	2.	Officer
3.	Rule 18	4.	Exporter
5.	Removal	6.	True
7.	False	8.	True
9.	False	10.	True
11.	Commissioner	12.	Excisable
13.	Depot	14.	Goods

5.13 Further Readings

Books

Ahuja, Dr. Girish and Gupta, Dr. Ravi, *Direct Taxes Law & Practice including Tax Planning,* 18th Edition 2008-09, Bharat Law House Pvt. Ltd.

Chanchal Kr Nag, *Direct & Indirect Tax Laws & Practice*, NCB Agency

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VS Datey, *Indirect Tax Laws*, CHH India

Yogendra Bangar Vandana, *Direct & Indirect Taxes Planning & Management*, Aadhya Prakashan

Online links

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Notes

Unit 6: Service Tax

CONTENTS

Objectives

After studying this unit, you should be able to:

- Section 65A of Chapter V of the Finance Act, 1994
- The functions and Powers of Director General of Service Tax
- Rectification of mistake
- Challenges ahead before the Service Tax Administration in India
- Electronic Tax Administration
- Audit and Inspections

Introduction

Service Tax was introduced in India in 1994 by Chapter V of the Finance Act, 1994. It was imposed on an initial set of three services in 1994 and the scope of the service tax has since been expanded continuously by subsequent Finance Acts. The Finance Act extends the levy of service tax to the whole of India, except the State of Jammu & Kashmir. To enable Parliament to formulate

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by law principles for determining the modalities of levying the Service Tax by the Central Govt. & collection of the proceeds thereof by the Central Govt. & the State, the amendment vide Constitution (95th Amendment) Act, 2003 has been made.

Consequently, new article 268A has been inserted for Service Tax levy by Union Govt., collected and appropriated by the Union Govt., and amendment of Seventh Schedule to the Constitution, in list I-Union list after entry 92B, entry 92C has been inserted for taxes on services as well as in article 270 of the Constitution the clause (1) of article 268A has been included.

6.1 Section 65A

Section 65A discusses about the classification of taxable services which can be detailed as under:

(1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65.

(2) When for any reason, a taxable service is, *prima facie*, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows:

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.

6.2 Director General (Service Tax)

Considering the increasing workload due to the expanding coverage of service tax, it has been decided to centralise all the work and entrust the same to a separate unit supervised by a very senior official. Accordingly, the office of Director General (Service Tax) has been formed in the year 1997. It is headed by the Director General (Service Tax).

Functions and Powers

The functions and powers of Director General (Service Tax) are:

- To ensure that proper establishment and infrastructure has been created under different Central Excise Commissionerate to monitor the collection and assessment of service tax.
- To study the staff requirement at field level for proper and effective implementation of service tax.
- To study as to how the various service taxes are being implemented in the field and to suggest measures as may be necessary to increase revenue collection or to streamline procedures.
- To undertake study of law and procedures in relation to service tax with a view to simplify the service tax collection and assessment and make suggestions thereon.
- To form a database regarding the collection of service tax from the date of its inception in 1994 and to monitor the revenue collection from service tax.

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- To inspect the service tax cells in the Commissionerate to ensure that they are functioning effectively.
- To undertake any other functions as assigned by the Board from time-to-time.

The Directorate of Service Tax has been co-ordinating between the Board and Central Excise Commissionerates. It also monitors the collection and the assessment of Service Tax. The Service Tax Revenue Reports, received from various Central Excise Commissionerates, are complied at the Directorate and the performance of the Commissionerates/Zones in Service Tax collection is being monitored for corrective actions.

During the course of Inspection of the Central Excise Commissionerates, the Inspection team of this Directorate has in variably pointed out the requirement of the staff in field level for proper and effective implementation of Service Tax. The Directorate has also suggested necessary measures to be adopted to increase Service Tax Revenue collection. The grey areas and evasion prone services have been brought to the notice of the Commissionerate for conducting effective Surveys/Audit.

The Directorate of Service Tax has drafted a separate act for Service Tax and the Rules therefore and has forwarded the same to the Ministry for approval vide Letter F.No.V/DGST/30-Misc-56/2000 dtd. 19/02/2001. The Service Tax Manual has also been prepared and forwarded to Board for approval and issue during year 2001. The correspondences received from field formations and service providers are scrutinised from law and the clarifications sought for are replied to wherever possible. In cases where the doubts/clarification sought involved policy matter, the Board has been apprised for issuing clarification/instruction.

This Directorate has taken up the issue of forming a database regarding register of the assessee and collection of Service Tax in co-ordination with the Directorate of Systems.

The Directorate has also recommended electronic administration in implementation of Service Tax to bring transparency in tax administration and avoid interfacing between service providers and tax authorities. The Board has also instructed the Commissionerate to feed the figures of service tax revenue collection in the system on line before 7th of every month. The Directorate of Service Tax has advised all the Central Excise Commissionerates to reconcile service tax collection with the help of T.R.-6 challans and the statements of the P.A.O.

The Directorate of Service Tax has been conducting inspection of Central Excise Commissionerates. During the course of inspection, verification of Service Tax records, maintained by the Commissionerate, is done. Staff of Service Tax Cell is also guided suitably in proper implementation of Service Tax and maintenance of records. A meeting with the Service Tax Officers is always conducted in the Commissionerate during inspection. Open-house meeting is also arranged in the Commissionerate wherever it was felt necessary. Problems faced by the assessees in Service Tax compliance are sorted out in the open-house meeting with the members of various service providers associations.

Presently there are 65 Central Excise Commissionerates and 6 Service tax Commissionerates within the jurisdiction of 23 Central Excise Zones. The 6 Service Tax Commissionerates have been established in Mumbai, Delhi, Kolkata, Chennai, Ahmedabad and Bangalore.

Notes The Directorate of Service Tax has drafted a separate act for Service Tax and the Rules therefore and has forwarded the same to the Ministry for approval vide Letter F.No.V/DGST/30-Misc-56/2000 dtd. 19/02/2001.

Notes

6.3 Existing scheme for levy, assessment and collection of Service Tax in India

Service tax is levied on specified taxable services and the responsibility of payment of the tax is cast on the service provider. System of self-assessment of Service Tax Returns by service tax assessees has been introduced w.e.f. 01.04.2001. The jurisdictional Superintendent of Central Excise is authorized to cross verify the correctness of self assessed returns. Tax returns are expected to be filed half yearly.

Central Excise Officers are authorized to conduct surveys to bring the prospective service tax assessees under the tax net. Directorate of Service Tax at Mumbai oversees the activities at the field level for technical and policy level coordination.

6.3.1 Legal Provisions

The provisions relating to Service Tax were brought into force with effect from 1st July 1994. It extends to whole of India except the State of Jammu & Kashmir. The services, brought under the tax net in the year 2009-2010, are as below:

S. No.	Service Category	Date of Introduction
1.	Advertising agency's services	1-Nov-1996
2.	Airport services	10-Sep-2004
3.	Air travel agent's services	1-Jul-1997
4.	Architect's services	16-Oct-1998
5.	Asset management service	1-Jun-2007
6.	Auctioneer's service	1-May-2006
7.	Authorised service station's services	16-Jul-2001
8.	Automated Teller Machines (ATM) operations maintenance or management services	1-May-2006
9.	Banking and other financial services	16-Jul-2001
10.	Beauty treatment service	16-Aug-2002
11.	Broadcasting services	16-Jul-2001
12.	Business auxiliary services	1-Jul-2003
13.	Business exhibition services	10-Sep-2004
14.	Business support services	1-May-2006
15.	Cable services	16-Aug-2002
16.	Cargo handling service	16-Aug-2002
17.	Chartered accountant's services	16-Oct-1998
18.	Cleaning activity service	16-Jun-2005
19.	Clearing and forwarding agents' services	16-Jul-1997
20.	Club or association service	16-Jun-2005
21.	Commercial or industrial construction services	10-Sep-2004

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22.	Commercial training or coaching service	1-Jul-2003
23.	Commodity exchange service	16-May-2008
24.	Company secretary's services	16-Oct-1998
25.	Computer network services (On-line information	16-Jul-2001
26.	and database access or retrieval services)	
27.	Construction of complex service	16-Jun-2005
28.	Consulting engineer's services	7-Jul-1997
29.	Convention services	16-Jul-2001
30.	Cosmetic and plastic surgery service	1-Sept-2009
31.	Cost accountant's services	16-Oct-1998
32.	Courier service	1-Nov-1996
33.	Credit card, debit card, charge card or other payment card service	1-May-2006
34.	Credit rating agency's services	16-Oct-1998
35.	Custom house agent's services	15-Jun-1997
36.	Design services	1-Jun-2007
37.	Development and supply of contents service	1-Jun-2007
38.	Dredging service	16-Jun-2005
39.	Dry cleaning services	16-Aug-2002
40.	Erection, commissioning or installation service	1-Jul-2003
41.	Event management service	16-Aug-2002
42.	Fashion designing service	16-Aug-2002
43.	Forward contract service	10-Sep-2004
44.	Franchise service	1-Jul-2003
45.	General insurance service	1-Jul-1994
46.	Health and fitness services	16-Aug-2002
47.	Information technology software service	16-May-2008
48.	Insurance auxiliary services	16-Jul-2001
49.	Intellectual property services	10-Sep-2004
50.	Interior decorator's services	16-Oct-1998
51.	Internet cafe service	1-Jul-2003
52.	Internet telecommunication services	1-May-2006
53.	Legal consultancy service	1-Sept-2009
54.	Life insurance service	16-Aug-2002
55.	Mailing list compilation and mailing service	16-Jun-2005
56.	Management or Business consultant's services	16-Oct-1998
57.	Management, maintenance or repair service	1-Jul-2003

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58.	Management of investment under ULIP service	16-May-2008
59.	Mandap keeper's services	1-Jul-1997
60.	Manpower recruitment or supply agency's services	7-Jul-1997
61.	Market research agency's services	16-Oct-1998
62.	Mining of mineral, oil or gas service	1-Jun-2007
63.	Opinion poll services	10-Sep-2004
64.	Other port services	1-Jul-2003
65.	Outdoor caterer's service	10-Sep-2004
66.	Packaging activity services	16-Jun-2005
67.	Pandal or shamiana contractor's service	10-Sep-2004
68.	Photography services	16-Jul-2001
69.	Port services	16-Jul-2001
70.	Processing and clearing house service	16-May-2008
71.	Programme producer's services	10-Sep-2004
72.	Public relation management service	1-May-2006
73.	Rail travel agent's services	16-Aug-2002
74.	Real estate agent's services	16-Oct-1998
75.	Renting of immovable property service	1-Jun-2007
76.	Recovery agent's service	1-May-2006
77.	Registrar to an issue's service	1-May-2006
78.	Rent-a-cab scheme operator's service	1-Apr-2000
79.	Sale of space or time for advertisement services	1-May-2006
80.	Scientific or technical consultancy services	16-Jul-2001
81.	Security agency's services	16-Oct-1998
82.	Share transfer agent's service	1-May-2006
83.	Ship management services	1-May-2006
84.	Site formation and clearance, excavation and earth moving and demolition services	16-Jun-2005
85.	Sponsorship services	1-May-2006
86.	Sound recording studio or agency services	16-Jul-2001
87.	Steamer agent's services	15-Jun-1997
88.	Stock-broker's services	1-Jul-1994
89.	Stock Exchange service	16-May-2008
90.	Storage and warehousing service	16-Aug-2002
91.	Supply of tangible goods service	16-May-2008
92.	Survey and exploration of mineral, oil and gas service	10-Sep-2004
93.	Survey and map-making service	16-Jun-2005

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94.	Technical inspection and certification service	1-Jul-2003
95.	Technical testing and analysis service	1-Jul-2003
96.	Telecommunication service	1-Jun-2007
97.	Transport of coastal goods and goods transported through inland water service	1-Sept-09
98.	Tour operator's service	1-Apr-2000
99.	Transport of goods by air service	10-Sep-2004
100.	Transport of goods by rail service	1-May-2006
101.	Transport of goods by road service	1-Jan-2005
102.	Transport of goods, other than water, through pipeline or other conduit service	16-Jun-2005
103.	Transport of passengers embarking in India for international journey by air service	1-May-2006
104.	Transport of persons embarking from port in India by cruise ship service	1-May-2006
105.	Travel agent's service	10-Sep-2004
106.	Underwriter's service	16-Oct-1998
107.	Video production agency's services	16-Jul-2001
108.	Works contract service	1-Jun-2007

The levy of service tax on these services is effective from the date written against them and the rate of service tax has been enhanced to 10% from 8%. Besides this 2% Education Cess on the amount of service tax has also been introduced. Thus the effective service tax rate is now 10.2% including Education Cess.

6.3.2 Administrative Mechanism

Service Tax is administered by the Central Excise Commissionerates working under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India. The unique feature of Service Tax is reliance on collection of tax, primarily through voluntary compliance.

Government has from the very beginning adopted a flexible approach concerning Service Tax administration so that the assessees and the general public gain faith and trust in the tax measure so that voluntary tax compliance, one of the avowed objectives of the Citizens Charter, is achieved. Substantive and procedural liberalization measures, adopted over the years for this purpose, are clear manifestations of the above approach. Following are some of the measures adopted in that direction.

Under Section 67 of the Finance Act, 1994, Service Tax is levied on the gross or aggregate amount charged by the service provider on the receiver. However, in terms of Rule 6 of Service Tax Rules, 1994, the tax is permitted to be paid on the value received. This has been done to ensure that providers of professional services are not inconvenienced, as in many cases, the entire amount charged/billed may not be received by the service provider and calling upon him to pay the tax on the billed amount in advance would have the effect of asking him to pay from his own pocket. It would also make the levy a direct tax, which is against the very scheme of Service Tax.

Notes

Corporate assessees are given the liberty to pay tax on the value of taxable service, provided by them in a month, by the 25th of the following month to enable them to finalize the accounts. Further, the individual assessees are required to pay the levy only once in a quarter.

The process of registration of assessees has been considerably simplified.

No separate accounts have been prescribed for the purposes of Service Tax. It has been provided that accounts being maintained by the assessees under any other law in force would be sufficient. This has placed the Department at considerable inconvenience to itself, so as to minimize difficulties for the assessees.

The Finance Act, 2001 has introduced self-assessment for service tax returns; thereby sparing the assessees from the rigours of routine scrutiny and assessment.

Frequency of filing the returns is minimized. Filing of statutory return has been made half yearly and by the 25th of the month following the half-year. This is in replacement of the monthly/quarterly returns prescribed earlier.

Penal provisions do exist in respect of Service Tax also. Failure to obtain registrations, failure to pay the tax, failure to furnish the prescribed returns, suppression of the correct value of the taxable services and failure to comply with notice do attract penal provisions as prescribed. But, it is specifically provided that no penalty is imposable on the assessee for any of the above failures, if the assessee proves that there was reasonable cause for the failure. This provision has been inserted to take care of the genuine difficulties of the new assessees.

Government's liberal attitude is more evident in the case of prosecutions. Hardly will there be any tax statute with revenue implications, where prosecutions of the offenders are not provided. In the case of the Service Tax also it was thought of and sections 87 to 93 of the Finance Act, 1994, did provide for prosecution of offenders. However, these provisions were subsequently withdrawn as a noble gesture towards the assessees.

Service Tax Credit Rules, 2002, have been replaced by the CENVAT Credit Rules, 2004, introduced by the Finance Act, 2004, where under CENVAT credit has been extended across the sectors i.e. goods and services.

Did u know? Service tax is levied on specified taxable services and the responsibility of payment of the tax is cast on the service provider. System of self-assessment of Service Tax Returns by service tax assessees has been introduced w.e.f. 01.04.2001.

Self Assessment

Fill in the blanks:

1. .....was introduced in India in 1994 by Chapter V of the Finance Act.
2. The .....has also recommended electronic administration in implementation of Service Tax to bring transparency in tax administration and avoid interfacing between service providers and tax authorities.
3. Service tax is levied on specified .....services and the responsibility of payment of the tax is cast on the service provider.
4. The .....Superintendent of Central Excise is authorized to cross verify the correctness of self assessed returns.
5. .....assessees are given the liberty to pay tax on the value of taxable service.

Notes

6.4 Rectification of Mistake

1. With a view to rectifying any mistake apparent from the record, the Central Excise Officer who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
2. Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the Central Excise Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
3. Subject to the other provisions of this section, the Central Excise Officer concerned:
   (a) may make an amendment under sub-section (1) of his own motion; or
   (b) shall make such amendment if any mistake is brought to his notice by the assessee or the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals).
4. An amendment, which has the effect of enhancing the liability of the assessee or reducing a refund, shall not be made under this section unless the Central Excise Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.
5. Where an amendment is made under this section, an order shall be passed in writing by the Central Excise Officer concerned.
6. Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the liability of an assessee or increasing the refund, the Central Excise Officer shall make any refund which may be due to such assessee.
7. Where any such amendment has the effect of enhancing the liability of the assessee or reducing the refund already made, the Central Excise Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

6.5 Challenges before the Service Tax Administration in India

Service tax administration in India has before it multi-dimensional challenges. Few of them are related to the very nature and growth of service sector in the economy and others relate to procedural aspects of the service tax collection.

The growth of service sector at higher rate offers opportunities as well as challenges to bring under the tax net hitherto uncovered services. This offers tremendous revenue potential to the Government. It is expected that in due course Service Tax would reduce the tax burden on international trade (Customs duty) and domestic manufacturing sector (Excise duty). So a planned growth of service tax would be commensurate with the goals of economic liberalization and globalization. This process requires levy of taxes on new services without substantial rise in the rate or cost of collection.

The administration of service tax requires a separate comprehensive legislation along with distinct administrative machinery exclusively devoted to the collection of service tax. That alone would bring in greater clarity, streamlined procedures, greater taxpayer assistance and a new tax culture of voluntary compliance. The twin goal of revenue maximization introduction of the culture of voluntary tax compliance also throw up major challenge before the service tax administration in the country.

Notes

Caution Service tax administration in India has before it, multi-dimensional challenges. Few of them are related to the very nature and growth of service sector in the economy and others relate to procedural aspects of the service tax collection.

6.6 Electronic Tax Administration

The Directorate has formulated a proposal for online web-based Electronic Tax Administration system for service tax. This system envisages the facility for online registration, payment of tax, filing of returns, assessment etc. for better tax administration and reducing the officer-assessee interface. M/s. CMC Ltd conducted a system feasibility study for implementation of this proposal. Their report indicates that such a system is not only feasible but could also be implemented at a relatively low cost. A detailed proposal is under preparation. It is anticipated that with the implementation of this system, service tax could be administered as the first e-tax in the country, which could work as a model for other tax administrations.

As decided by the Board, the programme for computerization of Service Tax administration is being worked out by the Directorate of Systems (South Zonal Branch) and Directorate of Service Tax.

Directorate of Systems has worked out the framework for computerization of service tax administration, with the help of NIC. They have introduced software programmes for Allotment of Service Tax Payer Code Number (SAPS) and Service Tax Revenue Monitoring System (STREMS) which are used for registration of assessees and filing of ST-3 returns.

Consequent to the above, the Central Board of Excise and Customs vide Circular No. ST 52/2003 dtd. 1.3.2003 (in F.No. 137/9/2003-CX4 has allowed E-fil ing of Service Tax Returns-ST-3 from the month of April 2003. Initially, this facility has been extended to only select class or group of service tax providers for services falling under following categories – viz.

1. Telegraph Services (TGH)
2. Telephone Services (TSU)
3. Life Insurance Services (LIS)
4. Insurance Auxiliary Services (IAX)
5. General Insurance Business (GIB)
6. Stock Brokers (STB)
7. Advertising Agencies (ADV)
8. Courier Services (COU)
9. Banking & Financial (BFN)
10. Custom House Agent (CHA)

The Central Board of Excise & Customs vide Circular No. 71/01/2004-Central Excise (ST), dated 20.01.2004, has extended this facility of E-filing to all the categories of services.

Task Describe the challenges before the service Tax Administration in India.

Notes

6.7 Provisions of Input Tax Credit

1. Input Tax Credit is very vital to the concept of Value Added Tax system. Input tax is the tax that a taxable person has paid on his business purchases.
2. Section 13 of the Punjab VAT Act, 2005 deals with Input Tax Credit. The system of credit on input tax paid is tax-based. It is a major check on leakage of tax.
3. Input Tax includes tax paid on:
   (i) Purchases of raw material;
   (ii) Goods purchased for resale;
   (iii) Purchase of capital goods such as machinery or equipment for use in business;
   (iv) Tools and accessories used in business; and
   (v) Packing material for resale and use in manufacture.
4. Input Tax Credit is available only on purchases made from taxable persons holding VAT registration number, in the State.
5. Input Tax Credit can be claimed only by a taxable person holding VAT registration number on the basis of Original VAT Invoice received from seller.
6. Taxable persons cannot claim Input Tax Credit for the following goods unless they are in the business of dealing in these goods:

   Automobiles including commercial vehicles, three wheelers and two wheelers and spare parts thereof;

   (a) Food, beverages and tobacco products;
   (b) Petroleum products;
   (c) Goods used for personal consumption or gifts;
   (d) Goods used in manufacture, processing and packing of tax free goods;
   (e) Office equipment and building material;
   (f) Air-conditioning units except where air-conditioning is essential in the manufacturing process of taxable goods;
   (g) Weigh bridge except when installed inside the manufacturing premises for use in the process of manufacturing;
   (h) Goods used in manufacture, processing or packing of tax free goods;
   (i) Goods used in generation and distribution of electrical energy; and
   (j) Goods which remain unsold at the time of closure of business.
7. If a taxable person is making taxable and tax free sales, he would be entitled to claim input tax proportionate to his taxable sales using the following formula:

   $$(A \times B)/C$$

   A : Total amount of input tax for the period.

Notes

B : Total value of taxable sales for a period including zero rated sales, excluding VAT.

C : Total value of sales including tax free sales, excluding VAT.

8. A taxable person can claim input tax credit with return for each tax period. If the claim for input tax credit exceeds the amount of output tax in that return, input tax credit shall be carried forward to next return period.

9. The net tax payable by a VAT dealer claiming input tax credit shall be:

Output tax – Input tax = Net tax.

Input tax shall include the input tax credit carried forward from previous return period.

10. Input tax credit is non-transferable, i.e., it cannot be transferred from one taxable person to another.

11. Section 14 of the Punjab VAT Act, 2005 provides for input tax credit on the tax paid under sec. 5(1A) and on Schedule D goods under the PGST Act, 1948 during the past one year. Taxable person shall be entitled to claim Input Tax Credit on the goods in hand on the appointed day if the purchases were made within twelve months prior to the appointed day and the goods have suffered tax under the PGST Act, 1948. However, all taxable persons having stock of tax paid goods on the appointed day shall have to get their stocks authenticated, by submitting details in prescribed proforma upto 30.04.2005, and getting the same verified from the concerned Assessing Authority and produce/secure documentary evidence of tax paid on such stock.

12. ITC is not available for exempted units. Instead an exempted unit is entitled to refund of tax paid or payable by it on purchases made from a taxable person with in the State, for use in manufacturing, processing or packing of taxable goods. This refund is available only if the dealer having Exemption has filed correct returns as per provision of the rules of 1991. The unit shall make an application for refund.

Notes If a taxable person is making taxable and tax free sales, he would be entitled to claim input tax proportionate to his taxable sales using the following formula:

$$(A \times B)/C$$

6.8 Procedure for Service Tax Registration

1. The assessee shall make an application in form ST 1 to the Superintendent of Central Excise in duplicate. Such application can be filed online www.aces.gov.in. For this the following procedure shall be adhered to:

   a. The user shall first log onto the site aces.gov.in and select "Service Tax" option on the left side of the screen

   b. He shall then register himself by clicking on "New users to click here to register with ACES" option. On clicking the same he will be required to give certain basic details and a e-mail id. The password for such registration will be sent to this mail id.

   c. On submitting the form the password will be sent to the ID above and the user shall login into ACES with this password. Such a password is only to gain access to ACES and it does not imply that registration with the department is done.

Notes

d. In the case of an existing assessee, he shall fill in the "Declaration Form for ACES" and submit it to the respective commissionerate. The assessee will then receive a user ID and password at the mail ID specified in such form to activate his registration numbering ACES. An existing assessee is NOT required to fill Form ST-1 again in ACES.

e. For a new assessee who does not have a service tax registration certificate, shall register with ACES with the ID and password that is sent as mentioned in 'c' above and select the option "REG" and "Fill ST-1".

f. The form shall be filed online with all the required details and submitted online itself.

g. A print of the form submitted online shall be taken and along with this the documents as mentioned below shall be submitted to the department at the concerned commissionerate.

2. The application shall be filed within 30 days from the date of providing taxable service and shall bear the address sought to be registered.

3. The application should be filled up carefully without errors and columns and boxes which are not applicable may contain "NA" stated across them. All the taxable services provided should be mentioned on the application and there would not be separate applications for each of such taxable services

4. The Form should be signed by the director/partner/sole proprietor as the case may be or the authorized signatory. Once filed, the acknowledgement for having filed the application is to be obtained on the duplicate copy for one's own reference. If the Particulars stated in the Form are correct, then the registration certificate would be provided within a period of seven days.

Where not so provided, the registration is deemed to have been granted.

Centralized Registration

Centralised registration is opted for in a case where the accounting and billing operations of the assessee are centralized in an administrative office which may be a branch or Head Office despite the services being provided from more than one location. The premises that is registered here is the one where the centralized accounting and billing is done. This decision is at the option of the tax payer and he can also opt to have multiple registration which however may not be advisable. The procedure would be the same as explained above with a few exceptions -

- The registration in case of centralized registration would be granted by the Commissioner of Central Excise having jurisdiction over the centralized premises.
- The registration formality at the department's end takes a little longer than the period stated above and the concept of deemed registration need not apply here.

The following documents are required in addition to the documents needed under the aforesaid procedure -

1. Proof of address of each such premises or branches for which centralized registration is sought
2. Proof of address of branches, new offices opened if any
3. In case of the Centralised Registration Annexures as per the Trade Notice no. 03/2011-12-ST dated 20/10/2011 are also required to be submitted.

Notes

Normally 15-20 days are required to issue the ST reg Certificate under the Centralised Reg, as compared to 1-2 days for single premised registration

Documents Required for Service Tax Registration

The application shall be accompanied by copies of the following documents -

- Self certified copy of PAN, (where allotment is pending, copy of the application for PAN may be given).
- Copy of MOA/AOA in case of Companies
- Copy of Board Resolution in case of Companies
- Copy of Lease deed/Rental agreement of the premises
- A brief technical write up on the services provided
- Registration certificate of Partnership firm / Partnership Deed
- Copy of a valid Power of Attorney where the owner/MD/Managing Partner does not file the application
- Power of Attorney in favor of the Consultant (POA)

Format of power of Attorney for Service tax Registration

Name (or letterhead) of the Landlord/Assessee

Address

By this Power of attorney executed at Mumbai at this _____ day of _____ 2012, we _____ (name of the client) hereby nominate, constitute and appoint, Mr. _____ and / or representative of M/s. ABC Chartered Accountants, Address _____, as attorney for our behalf to do or file/execute/collect service tax registration certificate or any of the acts or things in connection with the service tax and also to collect the Service Tax Registration Certificate.

And we hereby agree to ratify and confirm all and whatsoever attorney shall do.

Yours truly,

For _____

(Properietor/ Partners/ Directors/Authorised Signatory)

Source: http://taxguru.in/service-tax/procedure-documents-required-service-tax-registration.html

Self Assessment

Fill in the blanks:

6. Service tax administration in ..... has before it multi-dimensional challenges.
7. The growth of service sector at .....rate offers opportunities as well as challenges to bring under the tax net hitherto uncovered services.
8. The .....of service tax requires a separate comprehensive legislation along with distinct administrative machinery exclusively devoted to the collection of service tax.

Notes

9. The .....has formulated a proposal for online web-based Electronic Tax Administration system for service tax.

10. .....Tax Credit is very vital to the concept of Value Added Tax system.

6.9 Computation of Service Tax

In continuation to our previous post service tax registration payment and return; we wish to give you some more information about service tax. In this post you can read some regular questions and its answers.

Shall I pay service tax on billed amount or amounts actually received?

How are you paying service tax? On billed amount or on receipt? Many are paying service tax on billed amount and unaware of the concept 'tax payment on amount actual received'. There is no problem paying service tax on billed amount. But this is not the correct way for the payment of service tax. A service provider is liable to pay service tax' only when he receives the consideration for his service. Thinking practically it is not fair paying service tax on service provided; that has never received payment. I will explain this with an Example.

Example: ABC Ltd billed ₹ 500000.00 (Inclusive of service tax) on 1st May 2009. Payment received ₹ 300,000.00 on 14th July and ₹ 200000.00 on 25th August.

From the above example let's find out the service tax liability on each month.

Date	Bill Amount	Payment received	Tax liability	Service tax payment date without interest
01/05/2009	500000.00	0	0	0
14/07/2009	0	300000.00	28014.00	05/08/2009
25/08/2009	0	200000.00	18677.00	05/09/2009

However there is an exception for this clause. Transaction between associated enterprises; service tax is payable even if the consideration for service provided is received or not. The service tax is payable immediately after debiting /crediting in the books of account.

How do We find out the tax liability on partly received payments?

From the above example, ₹ 500,000.00 is inclusive of service tax. This means ABC Ltd. charged a gross amount of ₹ 453309.00. And a service tax ₹ 46691 in their service bill.

How do you calculate tax liability when you receive a part payment? Here you are getting ₹ 300000.00 as a part payment. So our liability is calculated by making back calculation on ₹ 300000.00 use the following formula.

$$\text{Tax Rate} = \frac{\text{Gross amount Charged} \times \text{Rate of Tax}}{(100 + \text{Rate of tax})}$$

$$\text{Tax Rate} = \frac{300000 \times 10.3}{110.3} = 28014.00$$

Notes

How to find out the Service tax liability if tax is not collected from customer?

It is the liability of the service provider to pay service tax even if tax is not collected from client. In such cases, total bill amount is considered as inclusive of tax and liability is ascertained by making back calculation.

To find out value of taxable service use the following formula

$$\text{Value of taxable service} = \frac{\text{Gross amount charged} \times 100}{(100 + \text{Rate of tax})}$$

You can calculate service tax liability from the value of taxable service or assessable amount.

For example you have billed ₹ 100000.00 and no tax is collected from customer your taxable amount and service tax is calculated as follows

$$\text{Value of taxable service} = \frac{100000 \times 100}{110.3} = 90662$$

$$\text{Service tax liability} = 90662 \times 10.3\% = 9338.00$$

Practical Problems

Problem 1: With reference to banking and other financial services, state whether service tax is applicable in the following cases:

(i) Services provided by State Bank of India to the Central Board of Direct Taxes in relation to collection of advance income-tax.

(ii) Discount charged by SB Ltd., a non-banking financial company, on the facility of bill discounting provided by it. Such discount is shown separately in the bill issued for this purpose.

(iii) Rich Bank, a Scheduled Bank, purchases foreign currency from Generous Bank, another Scheduled Bank

Solution:

(i) Service tax will not be applicable in this case as Notification No. 13/2004 ST dated 10.09.2004 exempts the taxable services provided by a banking company or a financial institution including a non-banking financial company, or any other body corporate or ay other person to the Government of India or a State Government in relation to collection of any duties or taxes levied by the Government of India or a State Government from the whole of service tax leviable thereon.

(ii) Service tax will not be applicable in this case as Notification No. 29/2004 ST dated 22.09.2004 exempts the value of taxable service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, in relation to:

(a) overdraft facility;

(b) cash credit facility; or

(c) discounting of bills, bills of exchange or cheques,

which is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount from the service tax subject to the condition that the said interest amount

Notes

is shown separately in an invoice, a bill or, as the case may be, a challan issued for this purpose.

(iii) Service tax will not be applicable in this case as Notification No 19/2009 ST dated 07.07.2009 exempts taxable services of the nature referred to in sub-clause (zm) or (zzk), as the case may be, of clause (105) of section 65 of the Finance Act, provided to a Scheduled bank, by any other Scheduled bank, in relation to Interbank transactions of purchase and sale of foreign currency from the whole of the service tax leviable thereon.

Problem 2: ABC & Co. received the following amounts during the half year ended 31-03-2012 (i) For services performed prior to the date of levy of Service tax - ₹ 3,50,000 (Assume service tax was levied from a specified date by change of law) (ii) Advance amount received in March, 2012 - ₹ 75,000 (No service was rendered and the amount was refunded to the client in July 2012) (iii) For free services rendered to customers, amount reimbursed by the manufacturer of such product (for the period after the imposition of service tax) - ₹ 50,000 (iv) Amounts billed and on which service tax is payable (excluding the items (i) to (iii) above) - ₹ 14,26,500. - Calculate the service tax liability duly considering the threshold limit.

Solution: In absence of any specific information, it is presumed that service tax is not charged separately. Hence, the amounts received are presumed to be inclusive of service tax. Tax liability of each transaction is as follows - (i) No tax payable (ii) Tax is payable on advance of ₹ 75,000 as service tax is payable by 31st March itself. If assessee gets refund later, he can adjust the service tax paid earlier in subsequent return (iii) Tax is payable on ₹ 50,000. Even if these are termed as 'free services', they are not actually free as the amount is received for that service from manufacturer (iv) Taxis payable on ₹ 4,26,500 as assessee can claim threshold exemption of ₹ 10 lakhs. - Thus, tax is payable on ₹ 5,51,500 (75,000 plus 50,000 plus 4,26,500). The amount is inclusive of service tax. Hence, net value for service tax is ₹ 5,00,000 (5,51,500 × 100/110.30). Hence, service tax payable is ₹ 50,000. Education cess @ 2% - ₹ 1,000. SANE cess - ₹ 500. Total service tax payable ₹ 51,500.

Problem 3: X & Co. received the following amounts (i) Date of Receipt 20-04-2011- ₹ 1,00,000 for services rendered in July, 2011 (ii) Date of Receipt 30-06-2011 - Advance for services to be rendered Z5,00,000. Services were rendered in July and August, 2011 (iii) Date of receipt 5-8-2011 - ₹ 50,000 for services rendered in April, 2011 for which billing was done on 1-8-2011 (iv) Date of receipt 10-09-2011 - Advance for service ₹ 3,50,000. A sum of ₹ 50,000 was refunded in April, 2012 after termination of Agreement. For the balance amount, service was provided in September, 2011. Compute: (i) The amount of taxable service for the first two quarters of the Financial Year 2011-12, assuming the assessee is eligible for payment of service tax on quarterly basis (ii) The amount of Service tax payable.

Solution: (i) and (ii) Service tax is payable on advance received also. Hence, for quarter April-June 2011, service tax is payable on advance of ₹ 6,00,000.

(iii) If service was rendered in April, 2011, that will be 'Point of Taxation' even if billing is done in August 2011. Hence, service tax on ₹ 50,000 is payable in April-June 2011 quarter.

These amounts are to be taken as inclusive of service tax and back calculations should be made. Hence, for April-June 2011, gross amount receives on which service tax is payable is ₹ 6,50,000. Assessable Value of service is ₹ 5,89,301.90 [6,50,000 × 100)/110.30]. Service tax @ 10% is ₹ 58,930.19. Education cess @ 2% is 21,178.61 and SAHE cess @ 1% is ₹ 589.30 (Total ₹ 6,50,000).

(iv) For quarter July-September 2011, value of service is ₹ 3,50,000. Hence, 'value' of service is ₹ 3,17,316.40 [(3,50,000 × 100)/110.30]. Service tax @ 10% is ₹ 31,731.64. Education cess @ 2% is ₹ 634.64 and SAHE cess @ 1% is ₹ 317.32 (Total ₹ 3,50,000).

Notes

In respect of amount of ₹ 50,000 refunded in April 2012, it is presumed that the amount was refunded as service was not provided. Hence, if Credit Note is issued to party with service tax, the excess service tax can be adjusted while making payment of service tax for the month of April, 2012.

Note: If the period was prior to 31-3-2011, service tax was payable on receipt basis. Hence, in respect of ₹ 50,000 received in August, 2011, service tax would have become payable only in quarter July-September, 2011

Problem 4: M/s ABC Services Ltd. a service provider for the first time made an agreement on 22nd May, 2011 with XYZ Ltd. to provide different services covered under Business Auxiliary Services at a price of ₹ 80 lakhs (inclusive of service tax) per annum. They are not providing any other services except as above. As per terms of contract executed by ABC Services Ltd., an advance of 15% of contract price has been received for the services to be provided which would be adjusted against final bill in the end of the year. The bills raised and amount received (in ₹ lakhs) are given as follows-

(1) Advance 15% of Contract price for service to be provided - Bill dated 1-6-2011 for ₹ 12 lakhs - Amount received ₹ 12 lakhs on 1-6-2011 ₹ 12 lakhs

(2) 1st Bill for June 2011 for service provided - Bill dated 8-7-2011 for ₹ 25 lakhs. Amount received on 20-7-2011 ₹ 12 lakhs

(3) 2nd Bill for July 2011 for service provided - Bill dated 5-8-2011 - ₹ 12 lakhs - Amount received on 18-8-2011 - ₹ 25 lakhs. Service tax due as per provision has been deposited in due time. Total gross value of services provided was ₹ 37 lakhs after which the contract was terminated with mutual consent. On closure of the contract amount of advance of ₹ 12 lakhs has been refunded to M/s XYZ Ltd. Please explain the following assuming service tax payable is 10.3% (and figures are expressed in ₹ in lakhs) -

   (i) What action should be taken by ABC Services Ltd. on execution of agreement on dated 22nd May, 2011?

   (ii) Can ABC Services Ltd. avail threshold limit for the year 2011-12, if so what is the amount?

   (iii) Is service tax payable on the advance of ₹ 12 lakhs for which no service has been provided in June 2011. How much advance is taken for computation of service tax?

   (iv) What is the value of services taken for computation and the amount of service tax paid through designated branches and on which dates?

   (v) What will happen to the service tax, if any, excess deposited for which no service was provided due to termination of contract and refund of the amount thereof?

Solution:

(i) ABC Ltd. should apply for registration under service tax within 30 days

(ii) Yes, upto first ₹ 10 lakhs advance received

(iii) Service tax is payable on ₹ 2 lakhs to be treated as inclusive of service tax

(iv) Service tax payable on billing basis. These are to be treated as inclusive of service tax

(v) The excess service tax paid can be adjusted against future payment of service tax. For which a credit note should be issued. This should be shown in the ST-3 return.

Did u know? The CENVAT Scheme is a scheme designed to reduce the cascading effect of indirect taxes on final product. Cascading effect in simple terms mean duty on duty

Notes

6.10 Audit and Inspections

Directorate of Service Tax conducts inspections of Service Tax work in Central Excise Commissionerates all over the country. Inspections in the past have prompted the Commissionerates to streamline the service tax administration system and to conduct surveys to register all prospective assessees under the tax net. Commissionerates have also been directed to conduct the internal audit of assessees' records as per the instructions of the Board. This audit drive has resulted in the augmentation of revenue. Similarly, CERA has brought on record many instances where assessees were either suppressing the value of taxable service or not getting registered under the tax net.

A few Commissionerates have taken up this work seriously and shown commendable results. Some Commission rates have certainly lagged behind in the field of survey work. Still many of them remain major service tax earning Commissionerates. Survey efforts are adversely affected due to non-deployment of adequate manpower and other resources such as vehicles, etc. it is necessary that all available resources and efforts are mobilized by the field formations to register all assessees for optimum service tax realization.

The service tax is envisaged to be administered on self-assessment basis. Legal provisions for facilitating such self-assessment have been made in the Finance Act, 2001. This underlines the need for strengthening the audit mechanism to prevent tax evasion/avoidance.

Self Assessment

Fill in the blanks:

11. Directorate of Service Tax conducts inspections of Service Tax work in ..... Excise Commissionerates all over the country.
12. Inspections in the past have prompted the ..... to streamline the service tax administration system and to conduct surveys to register all prospective assessees under the tax net.
13. A few Commissionerates have taken up this work seriously and shown ..... results.
14. ..... provisions for facilitating such self-assessment have been made in the Finance Act, 2001.
15. The ..... drive has resulted in the augmentation of revenue.

Case Study

Calculating your income tax

Case studies on how to calculate your tax in 2012.

These examples show the different factors involved in calculating your tax in 2012.

Tax Credits

Joan is single and earns €28,000 a year. She receives her notice of determination of tax credits and standard rate cut-off point from Revenue.

Contd....

Notes

Joan's tax credits are listed on the notice as:

Single Person Tax Credit = €1,650

Employee (PAYE) Tax Credit = €1,650

Rent Tax Credit = €320

Tax credit total = €3,620.

The standard rate cut-off point for a single person is €32,800. Because Joan's income is below the cut-off point, all of her income is taxed at the standard rate, (20%), to give her gross tax.

28,000 x 20% = €5,600 gross tax.

All her tax credits are deducted from the gross tax to give the tax that is payable:

€5,600 - €3,620 = €1,980

Joan is also liable to pay the Universal Social Charge (USC): The USC is 2% of gross income up to €193 per week, 4% from €194 to €308, and 7% on any weekly income above €308. Find out more about the Universal Social Charge.

USC = €1,278.80

The total amount deducted from her income is:

€1,980 (income tax) + €1,278.80 (USC) = €3,258.80

You can get the monthly or weekly amount of the tax that should be deducted from wages by dividing this annual figure by 12 or by 52 respectively.

Tax rates and the standard rate cut-off point

A single taxpayer who earns €40,000 a year will have their tax calculated as follows:

The standard rate band for a single taxpayer is €32,800.

This means that the first €32,800 is taxed at the standard rate of tax, 20%, and the remainder (€7,200) is taxed at the higher rate of tax, 41%.

€32,800 x 20% = €6560

€7,200 x 41% = €2,952

Total = €9,512

Tax credits are deducted from this amount to give the tax due. A single PAYE (Pay As You Earn) taxpayer is entitled to

Single Person Tax Credit = €1,650

Employee (PAYE) Tax Credit = €1,650

Total = €3,300

In this example, the taxpayer is not entitled to any other tax credits so the total tax due is:

Gross tax of €9,512

Minus tax credits of €3,300

Tax due = €6,212

Contd....

Notes

The USC on gross income is also payable. The total amount deducted from income in the year is:

€6,212 (income tax) + €2,118.80 (USC) = €8,334.80

Tax allowances

See the section on tax allowances in How your income tax is calculated for a simple explanation of how to calculate the value of a tax allowance.

Question:

Analyse the case and Discuss the case facts

Source: http://www.citizensinformation.ie/en/reference/case_studies/case_study_calculating_your_income_tax_case_studies.html

6.11 Summary

- Service tax is a tax levied on services rendered by a person and the responsibility of payment of the tax is cast on the service provider.
- It is an indirect tax as it can be recovered from the service receiver by the service provider in course of his business transactions.
- Service Tax was introduced in India in 1994 by Chapter V of the Finance Act, 1994.
- It was imposed on an initial set of three services in 1994 and the scope of the service tax has since been expanded continuously by subsequent Finance Acts.
- The Finance Act extends the levy of service tax to the whole of India, except the State of Jammu & Kashmir.
- The Central Board of Excise & Customs (CBEC) under Department of Revenue in the Ministry of Finance deals with the task of formulation of policy concerning levy and collection of Service Tax.
- In exercise of the powers conferred, the Central Government makes Service Tax Rules for the purpose of the assessment and collection of service tax.
- The Service Tax is being administered by various Central Excise Commissionerates, working under the Central Board of Excise & Customs.
- The Service Tax collections have shown a steady rise since its inception in 1994.
- The Indian Service Tax law has been ever evolving since its introduction in 1994.
- A tax which started with three services now has more than 100 services under its ambit.
- In addition, the legislation has also undergone changes with respect to Export of Service Rules and Import of Service Rules, leading to a substantial increase in the legislative provisions.

6.12 Keywords

Appropriatie: To seize.

CENVAT: Central Value Added Tax.

Finance Act: When a bill is passed with a two third majority in Indian Parliament, it is known as Finance Act or Annual Budget.

Notes

6.13 Review Questions

1. Discuss the taxable services under the service tax.
2. Elucidate upon the existing scheme for levy, assessment and collection of Service Tax in India.
3. What do you see as the reason for the provisions relating to Service Tax extending to whole of India except the State of Jammu & Kashmir? Discuss.
4. What are the challenges before the Service Tax Administration in India?
5. What is the rationale behind Indian Government adopting a flexible approach concerning Service Tax?
6. Write short notes on audit and inspections for the service tax in India.
7. Discuss about Section 65A.
8. Explain about Administrative Mechanism.
9. What are the Provisions for Input Tax Credit?
10. What do you know about Electronic Tax Administration?

Answers: Self Assessment

1.	Service	2.	Directorate
3.	Taxable	4.	Jurisdictional
5.	Corporate	6.	India
7.	Higher	8.	Administration
9.	Directorate	10.	Input
11.	Central	12.	Commissionerates
13.	Commendable	14.	Legal
15.	Audit		

6.14 Further Readings

Books

Datey, V.S. 2005. *Indirect Taxes*, Taxmann Publisher, Delhi. Twentieth Edition.

Dinkar Pagare; *Law and Practice of Income Tax*; Sultan Chand & Sons; latest edition

Dr. Vinod K. Singhania and Monica Singhania; *Students' Guide to Income Tax*; Taxmann Publications Pvt. Ltd.; latest edition.

Girish Ahuja and Ravi Gupta; *An Elementary Approach to Income Tax & Sales Tax*; Bharat Publications; latest edition.

H.C. Mehrotra; *Income-tax Law and Accounts*; Sahitya Bhawan; latest edition.

Mahesh Chandra & D.C. Shukla; *Income-tax Law and Practice*; Pragati Publications; latest edition.

Sanjeev Kumar. 2005. *Indirect Taxes*, Bharat Law House, Delhi. Fifth Edition.

Notes

Online links

www.**indirecttax**.ind**law**.com/search/**articles**/

www.monckton.com/library/**articles**.php?area=7

www.onlinecacoaching.com/.../CA%20Final-**Indirect**%20**Taxation**.pdf

www. **taxlaws**andviews.com

www.**tax**managementindia.com/visitor/detail_**article**.asp

Unit 7: Collection and Recovery of Service Tax and Assessment Procedure

Notes

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about collection of service Tax
- Know about Recovery of Service tax
- Understand about Assessment Procedure

Introduction

The Finance Ministry has decided to take a relook at the recent move to collect service tax on an accrual basis. Indications are that the Finance Minister, Mr Pranab Mukherjee, may come up with some relief for service providers on this front during his reply to the discussions on the Finance Bill 2011 this week.

"We have received many representations on this new rule. We will take a relook and act accordingly", official sources said.

The Centre had, in Budget 2011-12, announced a shift in the basis of collection of service tax from receipt basis to an accrual basis with effect from April 1. The Finance Ministry's decision to review this move comes in the wake of representations from many industry associations, who have suggested that *status quo* be maintained and service tax collections be continued on receipt basis.

For instance, the Federation of Indian Chambers of Commerce and Industry (FICCI) had suggested that the new rule (Point of Taxation rule) should not be introduced and *status quo* be maintained.

The point of taxation rule determines the point in time when the services would be deemed to be provided. As a general rule, the time of provision of service would be earliest of the date on

Notes

which service is provided or to be provided; date on which invoice is issued; and date of receipt of payment for a taxable service.

Did u know? The Centre had, in Budget 2011-12, announced a shift in the basis of collection of service tax from receipt basis to an accrual basis with effect from April 1.

7.1 Levy and Assessment

Service tax is levied on specified services and the responsibility of payment of the tax is generally cast on the service provider but for few exceptions. System of self-assessment of Service Tax Returns by service tax assessees has been introduced w.e.f. 01.04.2001. The jurisdictional Superintendent of Central Excise is authorized to cross verify the correctness of self assessed returns. These tax returns have to be filed half yearly.

The Central Excise Officers are authorized to conduct surveys to bring the prospective service tax assessees under the tax net. Directorate General of Service Tax at Mumbai oversees the activities at the field level for technical and policy level coordination.

7.2 Legal Provisions

The provisions relating to Service Tax were brought into force with effect from 1st July 1994. It extends to the whole of India except the state of Jammu & Kashmir. The chronological list of taxable services with date of their introduction as on 1.5.2011 is given below:

The following services were brought under the tax net in the year 1994-95:

1	Telephone	01.07.1994 {This service has been de-notified and grouped as 'Telecommunication Services' w.e.f. 01.06.2007 vide Notfn. .23/07 ST dated 22.05.07 and Sec.135 of Finance Act,2007 (22 of 2007)}
2	Stock broker	01.07.1994
3	General Insurance	01.07.1994

Rate of service tax was 5% adv.

The Finance (No. 2) Act 1996 enlarged the scope of levy of Service Tax covering three more services viz.,

4	Advertising agencies	01.11.1996
5	Courier agencies	01.11.1996
6	Radio pager services.	01.07.1994 {This service has been de-notified and grouped as 'Telecommunication Services w.e.f. 01.06.2007 vide Notfn. No.23/07 ST dated 22.05.07 and Sec.135 of Finance Act, 2007 (22 of 2007)}

Rate of service tax was 5%.

Notes

The Finance Act of 1997 further extended the scope of service tax to cover a larger number of services rendered by the following service providers, from the dates indicated against each of them:

7	Consulting engineers	(7th July, 1997)
8	Custom house agents	(15th June, 1997)
9	Steamer agents	(15th June, 1997)
10	Clearing & forwarding agents	(16th July, 1997)
11	Air travel agents	(1st July, 1997)
12	Tour operators	01.09.1997 (exempted upto 31.3.2000 Notification No.52/98, 8th July, 1998, reintroduced w.e.f. 1.4.2000)
13	Rent-a-Cab Operators	16.07.1997 (exempted from 1.3.1999 upto 31.3.2000 Vide Notification No.3/99 Dt.28.2.99, reintroduced w.e.f. 1.4.2000)
14	Manpower recruitment Agency	(7th July, 1997)
15	Mandap Keepers	(1st July, 1997)

Did u know? The services provided by **goods transport operators, out door caterers and pandal shamiana contractors** were brought under the tax net in the budget 1997-98, but abolished vide Notification No.49/98, 2nd June,1998.

The Service Tax was leviable @ 5% on the 'gross amount' charged by the service provider from the client, from the dates as notified and indicated above.

Following new services were brought under the Service Tax net in the 1998-99 union Budget. These services were notified on 7th October, 1998 and were subjected to levy of Service Tax w.e.f. 16th October, 1998.

Notes The provisions relating to Service Tax were brought into force with effect from 1st July 1994.

16	Architects	16.10.1998
17	Interior Decorators	16.10.1998
18	Management or Business Consultants	16.10.1998
19	Practicing Chartered Accountants	16.10.1998
20	Practicing Company Secretaries	16.10.1998
21	Practicing Cost Accountants	16.10.1998
22	Real Estates Agents/Consultants	16.10.1998
23	Credit Rating Agencies	16.10.1998
24	Security Agencies	16.10.1998
25	Market Research Agencies	16.10.1998
26	Underwriters Services	16.10.1998

Notes

In case of mechanized slaughter houses, since exempted, vide Notification No.58/98 dtd. 07.10.1998, the rate of Service Tax was used to be a specific rate based on per animals slaughtered.

The rate of service tax was 5% on gross amount charged by the service provider.

In the Finance Act, 2001, the levy of service tax was extended to the following services with effect from 16.07.2001:

27	Scientific and technical consultancy services	16.07.2001
28	Photography	16.07.2001
29	Convention	16.07.2001
30	Telegraph	16.07.2001 {This service has been de-notified and grouped as 'Telecommunication Services w.e.f. 01.06.2007 vide Notfn. No.23/07 ST dated 22.05.07 and Sec. 135 of Finance Act,2007 (22 of 2007)}
31	Telex	16.07.2001 {This service has been de-notified & grouped as 'Telecommunication Services w.e.f.01.06.2007 vide Notfn. No.23/07 ST dated 22.05.07 and Sec.135 of Finance Act,2007 (22 of 2007)}
32	Facsimile (fax)	16.07.2001 {This service has been de-notified and grouped as 'Telecommunication Services' w.e.f.01.06.2007 vide Notfn. No.23/07 ST dated 22.05.07 and Sec.135 of Finance Act,2007 (22 of 2007)}
33	Online information and database access or retrieval	16.07.2001
34	Video Tape Production services	16.07.2001
35	Sound recording	16.07.2001
36	Broadcasting	16.07.2001
37	Insurance auxiliary services in relation to General Insurance	16.07.2001
38	Banking and other financial services	16.07.2001
39	Port Services (by Major Ports).	16.07.2001
40	Authorized Service Stations	16.07.2001
41	Leased circuits Services	16.07.2001{This service has been de-notified and grouped as 'Telecommunication Services' w.e.f.01.06.2007 vide Notfn. No.23/07 ST dated 22.05.07 and Sec.135 of Finance Act,2007 (22 of 2007)}

The rate of service tax was 5% on gross amount charged by the service provider.

Notes

In the Budget 2002-2003, the following services were added to the tax net with effect from 16.08.2002:

42	Life Insurance services	16.08.2002
43	Insurance auxiliary services in relation to Life Insurance	16.08.2002
44	Cargo handling	16.08.2002
45	Storage and warehousing services	16.08.2002
46	Event Management	16.08.2002
47	Cable operators	16.08.2002
48	Beauty parlors	16.08.2002
49	Health and Fitness centers	16.08.2002
50	Fashion designer	16.08.2002
51	Rail travel agents.	16.08.2002
52	Dry cleaning services.	16.08.2002

Rate of service tax was 5% (till 13.05.2003) on the gross amount charged by the service provider.

In the Budget 2003-04, the following new services along with extension to the existing services were added to the tax net with effect from 01.07.2003:

53	Commercial Training & Coaching centers	01.07.2003
54	Technical testing and analysis	01.07.2003
55	Technical inspection and certification service.	01.07.2003
56	Management, Maintenance or Repair services	01.07.2003
57	Erection, Commissioning and Installation Services	01.07.2003
58	Business Auxiliary Services	01.07.2003
59	Internet café	01.07.2003
60	Franchise Services	01.07.2003
61	Foreign Exchange Broker	01.07.2003
62	Port Services (Other or Minor Ports)	01.07.2003 {extension to port services}

The rate of Service Tax was 5% till 13.05.2003 and from 14.05.2003 the rate was increased to 8% of the gross amount charged by the service provider on all the taxable services till 09.09.2004.

In the Budget 2004-05, 10 more services have been introduced in the service tax net along with reintroduction of three existing services w.e.f 10.09.2004 as follows:

63	Out door Caterer's service (re-introduced)	10.09.2004
64	Pandal or Shamiana service (re-introduced)	10.09.2004
65	Airport Services	10.09.2004
66	Transport of Goods by Air Services	10.09.2004
67	Business Exhibition Services	10.09.2004
68	Construction Services in relation to commercial or Industrial Building	10.09.2004

Contd....

Notes

69	Intellectual Property Services	10.09.2004
70	Opinion Poll Services	10.09.2004
71	TV or Radio Programme Production Services	10.09.2004
72	Survey and Exploration of Minerals Services	10.09.2004
73	Travel Agent's Services other than Rail and Air travel agents	10.09.2004
74	Forward Contract Services	10.09.2004

The rate of service tax on these services as well as all other services was enhanced from 8% to 10% with effect from 10th September, 2004. Besides this, 2% Education Cess on the amount of service tax was introduced. Thus the effective service tax rate was 10.2% including Education Cess w.e.f 10.09.2004.

Vide Notfn. No.33/2004 ST. 34/2004-ST and 34/2004-ST, all dated 3.12.2004, the following service was brought under service net with effect from 01.01.2005.

75	Transport of goods by road (earlier Goods Transport Operators service re-introduced).	01.01.2005

In the Budget 2005-06, 9 more services were brought under the service tax net with effect from 16.06.2005, as detailed below-

76	Transport of goods through pipe line or other conduit Services	16.06.2005
77	Site Formation & Clearance etc. Services	16.06.2005
78	Dredging Services	16.06.2005
79	Survey & Mapmaking Services	16.06.2005
80	Cleaning Services	16.06.2005
81	Membership of Clubs & Associations	16.06.2005
82	Packaging Services	16.06.2005
83	Mailing list compilation & Mailing Services	16.06.2005
84	Construction Services in relation to Residential Complexes	16.06.2005

The rate of service tax was 10% plus 2% Education Cess till 17.04.2006 and from 18.04.2006 rate was enhanced to 12% Plus 2% Education Cess.

In the Budget 2006-07, 15 more services were brought under the service tax net with effect from 01.05.2006 vide Notfn.No.15/2006-ST dated 25.04.2006 and Finance Act, 2006 (21 of 2006) as detailed below:

85	Sale of space or time for advertisement	01.05.2006
86	Auctioneers' Services	01.05.2006
87	ATM Operation, maintenance or management Services	01.05.2006
88	Business Support Services	01.05.2006
89	Credit Card, Debit Card, Charge Card or other payment Card Services	01.05.2006
90	Internet Telecommunication Services	01.05.2006
91	Public Relations Services	01.05.2006

Contd....

Notes

92	Services provided by Recovery Agent	01.05.2006
93	Services provided by Registrar to an Issue	01.05.2006
94	Services provided by Share Transfer Agent	01.05.2006
95	Ship Management Services	01.05.2006
96	Sponsorship Services	01.05.2006
97	Transport by Cruise ship services	01.05.2006
98	Transport of goods in container by rail services ('Other than Govt. Railway') The words 'other than Govt. Railways' have been deleted w.e.f.01.09.2009)	01.05.2006
99	Transport of passengers by air on international journey services	01.05.2006

Rate of service tax from 18-04-2006 to 10.05.2007 was 12% plus 2% Education Cess on service tax. **With effect from 11.05.2007 the rate of service tax became 12% plus 2% Education Cess on service tax plus 1% Secondary & Higher Education Cess on service tax (Aggregating to 12.36%)**

In the Budget 2007-08, 7 more services were brought under the service tax net with effect from 01.06.2007, and 6 existing services were grouped with Telecommunication Services vide Notfn.No.23/2007-ST dated 22.05.2007 and Finance Act, 2007 (22 of 2007), as per the details given below:

100	Asset Management Services	01.06.2007
101	Development & Supply of Content Services	01.06.2007
102	Designing Services	01.06.2007
103	Mining of Mineral, Oil or Gas	01.06.2007
104	Renting of immovable property services	01.06.2007
105	Works Contract Services	01.06.2007
106	Telecommunication Services	01.06.2007 (This is not a new service but the existing services viz.Telephone services, pager, facsimile, telegraph, leased circuit, telex were grouped under it)

Rate of service tax was 12% plus 2% Education Cess plus 1% Secondary Higher Education cess (Aggregating to 12.36%)

In the Budget 2007-08, the scope of service tax was extended to cover 6 more services with effect from 16.05.2008 vide Notfn.No.18/2008-ST dated 10.05.2008 and Finance Act, 2008 (18 of 2008), as per the details given below:

107	Services of Clearing & Processing House	16.05.2008
108	Registered or Recognised Associations' services in relation to sale or purchase of goods and forward contract	16.05.2008
109	Information Technology Services	16.05.2008
110	Investment Management Services under ULIP	16.05.2008
111	Services of Recognised Stock Exchange	16.05.2008
112	Supply of tangible goods services	16.05.2008

Notes

Rate of service tax w.e.f.11.05.2007 was 12% + 2% (of service tax) education Cess + 1% (of service tax) Secondary Higher Education Cess.

From 24.02.2009, Rate of service tax became 10% + 2% (of service tax) education Cess + 1% (of service tax) Secondary Higher Education Cess (aggregating to 10.30%).

In budget 2009, following three new services have been brought under service tax net vide Finance (No. 2) Act, 2009 (33 of 2009) and taxed w.e.f. 01.09.2009 vide Notification No. 26/2009 ST dated 19.08.2009.

113	Cosmetic or Plastic Surgery Services	01.09.2009
114	Transport of Coastal goods, Goods through National Waterways or Goods through Inland Waterways	01.09.2009
115	Legal Consultancy Services	01.09.2009

From 24.02.2009, Rate of service tax became 10% + 2% (of service tax) education Cess + 1% (of service tax) Secondary Higher Education Cess (aggregating to 10.30%)

In the Budget 2010 vide Finance (14/2010) Act, 2010, the scope of service tax was extended to cover 8 more services w.e.f. 01.07.2010 vide Notification No.24/2010 ST dated 22.06.2010 as per details given below:

116	Promotion, marketing or organizing of games of chance including lottery, bingo etc. services	01.07.2010
117	Health services undertaken by Hospitals or Medical establishments	01.07.2010
118	Maintenance of Medical Records services	01.07.2010
119	Promotion of Brand of Goods/Services etc.	01.07.2010
120	Services of Permitting Commercial Use or Exploitation of any event	01.07.2010
121	Electricity Exchange Services	01.07.2010
122	Copyright Services	01.07.2010
123	Services provided by Builder in relation to preferential location, internal/external development etc.	01.07.2010
124	Services of Air-conditioned restaurants having license to service alcoholic beverages in relation to service of food or beverages.	1.5.2011
125	Services of providing of accommodation in hotels / inns/ cubs/ guest houses/ campsite for a continuous period of less than three months	1.5.2011

Caution From 24.02.2009, Rate of service tax became 10% + 2% (of service tax) education Cess + 1% (of service tax) Secondary Higher Education Cess (aggregating to 10.30%)

Notes As on 1.05.2011, 119 Services are under service tax net. Six services among listed above at Sr. No. 1,6,30,31,32 and 41 have been merged with "Telecommunication Service" with effect from 01.06.2007)

Self Assessment

Notes

Fill in the blanks:

1. The. ..... Ministry has decided to take a relook at the recent move to collect service tax on an accrual basis.
2. The point of. ..... rule determines the point in time when the services would be deemed to be provided.
3. The Finance Act of. ..... further extended the scope of service tax to cover a larger number of services rendered by the following service providers, from the dates indicated against each of them.
4. As a general rule, the time of. ..... of service would be earliest of the date on which service is provided or to be provided; date on which invoice is issued; and date of receipt of payment for a taxable service.
5. The Finance Ministry's. ..... to review this move comes in the wake of representations from many industry associations, who have sugg ested that *status quo* be maintained and service tax collections be continued on receipt basis.

7.3 Administrative Mechanism

Service Tax is administered by the Central Excise & Service Tax Commissionerates and the Service Tax Commissionerates working under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India. LTUs are also collecting Service Tax in respect of the Large Tax Paying units registered with them. The unique feature of Service Tax is reliance on collection of tax, primarily through voluntary compliance.

Government has from the very beginning adopted a flexible approach concerning Service Tax administration so that the assessees and the general public gain faith and trust in the tax measure so that voluntary tax compliance, one of the avowed objectives of the Citizens Charter, is achieved. Substantive and procedural liberalization measures, adopted over the years for this purpose, are clear manifestations of the above approach. Following are some of the measures adopted in that direction:

(i) Under Section 67 of the Finance Act, 1994, Service Tax is levied on the gross or aggregate amount charged by the service provider on the receiver. Rule 6(1) of the Service Tax Rules, 1994 has provided that Service Tax shall be paid to the credit of the Government account in respect of the services deemed to be provided as per the rules framed in this regard. Point of Taxation Rules, 2011 has provided the point in time when a service shall be deemed to have been provided; Rule 3 of the said Rules provides that for the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within 14 days of the provision of the service, the point of taxation shall be date of such completion.

(b) In a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment to the extent of such payment.

Explanation – For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Notes

Rule 4. *Determination of point of taxation in case of change in effective rate of tax.* – Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:-

(a) In case a taxable service has been provided before the change in effective rate of tax,-

(i) Where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

(ii) Where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or

(iii) Where the payment is also received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the point of taxation shall be the date of payment;

(b) In case a taxable service has been provided after the change in effective rate of tax,-

(i) Where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or

(ii) Where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

(iii) Where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax, the point of taxation shall be date of issuing of invoice.

Explanation – For the purposes of this rule, "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.

(ii) Corporate assessees are given the liberty to pay tax on the value of taxable service, provided by them in a month, by the 6th of the following month if tax is deposited electronically and 5th of the following month if tax is deposited in any other manner. Further, in case the assessee is individual or proprietary firm or partnership firm, tax payment is required to be made only **once in a quarter i.e., by** 6th of the following quarter if tax is deposited electronically and 5th of the following quarter if tax is deposited in any other manner.

(iii) The process of registration of assessees has been considerably simplified.

(iv) No separate accounts have been prescribed for the purposes of Service Tax. It has been provided that accounts being maintained by the assessees under any other law in force would be sufficient. This has placed the Department at considerable inconvenience to itself, so as to minimize difficulties for the assessees.

(v) The Finance Act, 2001 has introduced self assessment for service tax returns; thereby sparing the assessees from the rigours of routine scrutiny and assessment.

(vi) Frequency of filing the returns in the form of ST 3 or ST3A as the case may be is minimized. Filing of Statutory return has been made half yearly and by the 25th of the month following the half-year ending on 31st arch and 30th September. This is in replacement of the monthly/quarterly returns prescribed earlier.

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(vii) Penal provisions do exist in respect of Service Tax also. Failure to obtain registrations, failure to pay the tax, failure to furnish the prescribed returns, suppression of the correct value of the taxable services and failure to comply with notice do attract penal provisions as prescribed. But, it is specifically provided that no penalty is imposable on the assessee for any of the above failures, if the assessee proves that there was reasonable cause for the failure. This provision has been inserted to take care of the genuine difficulties of the new assessees.

(viii) Service Tax Credit Rules, 2002, have been replaced by the CENVAT Credit Rules, 2004, introduced by the Finance Act, 2004, where under CENVAT credit has been extended across the sectors i.e. goods and services.

7.4 Non-recovery of Service Tax in certain situations

Service Tax is a relatively new tax and as with any new tax its understanding and correct implementation may take time. This applies equally to the service providers and the tax administrators. Therefore, it may so happen that a practice may develop regarding either the levy or non-levy of the tax on a particular service, which may not be strictly legally correct. For instance, it may so happen that in respect of a particular service the tax may not be levied or be short levied on account of the practice. In this situation there is an apprehension that on discovery of the fact of non-payment or short payment, the service providers would be burdened with duty demands which would adversely impact them. On the other hand, Section 11 C of the Central Excise Act, 1944 takes care of similar problem in the case of central excise duty by empowering the Government to direct that in such situation the duty not paid or short paid shall not be required to be paid. It is the view that like provision in respect of Service Tax would bolster the confidence of the service providers.

7.5 Recovery of Service Tax

Sections 73, 73A to 73D and Section 87 provide for recovery of service tax under various circumstances. Let us discuss the provisions made under each section separately.

Section 73: This section empowers the Central Excise Officer to serve notice to the person, chargeable with service tax, which has been not levied or paid or short-levied or short-paid or erroneously refunded. Time limit for serving a notice under this situation is 'one year' from the relevant date. Definition of 'relevant date' is given at the end of this chapter.

In cases where service tax has been not levied or paid or short-levied or short-paid or erroneously refunded by the reason of fraud; or collusion; or wilful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act or rules made there under with an intent to evade payment of service tax, then the time limit for serving the notice is extended up to five years.

Section 73(1A) provides for conclusion of adjudication proceedings in respect of a person to whom a notice is served under the proviso to sub-section (1) of section 73 (i.e. deliberate evasion of service tax), if such person voluntarily deposits the service tax demanded in full and the interest payable thereon under section 75 and penalty equal to 25% of the service tax demanded, the adjudication proceedings can be treated as conclusive.

Section 73A provides for voluntary payment by an assessee of any amount collected in excess of the service tax leviable or recovery of any amount as representing service tax, that has been collected by a person but not deposited with the Central Government.

Section 73B enables the Central Government to collect interest on the amount as determined under sub-section (4) of section 73A at a rate notified by the Central Government. (not less than 10% but not exceeding 24% p.a.)

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Section 73C provides for provisional attachment by Central Excise Officer of any property belonging to a person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A during the pendency of such proceedings.

Section 73D provides for publishing the name of any person and any other particulars relating to any proceedings under the provisions of Chapter V of the Finance Act, 1994, in relation to such person, in public interest, in such manner as may be prescribed.

Section 87 provides for recovery of any amount due to the Central Government by any one of the following modes :

(a) by deducting such amount from any money owed to such person, under the control of any Central Excise Officer or any Officer of Customs.

(b) by recovery from any other person from whom money is due to such defaulting person.

(c) by restraining any movable or immovable property belonging to such person and detain the same until the amount payable is paid.

(d) by preparing a certificate signed by such person specifying the amount due and send it to the Collector of district in which such person owns any property or carries on his business. The said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

7.6 Assessment Procedure of Service Tax in India

Normal Procedure of Taxation

The usual process of Taxation is:

1. The assessee earns income
2. He deposits tax – based on self calculation – or as determined by his Tax Consultant
3. The assessee fills Income Tax Return (ITR)

Here we focus on the various procedures of assessment. Under Income Tax Act 1961, there are the following types of assessment:

1. Sec 140 A – Self Assessment
2. Sec 143 (3) – Regular/Scrutiny Assessment
3. Sec 144 – Best Judgment Assessment
4. Sec 147 – Assessment/Reassessment of Income Escaping Assessment

Here we shall not deal with search and seizure situations.

1. ***Self Assessment u/s 140 A:*** This simply means that the person is calculating his own tax liability and thereafter filing ITR after payment of self-calculated tax. Since assessee himself calculates the tax and income returned – it is called self-assessment. However, the system of self-assessment is only to make the work of IT Dept. easier – it is not the end of assessment. It is simply paying tax and filing of Return by the assessee. The IT Dept only gives an acknowledgement/intimation u/s 143(1). The assessee can file ITR as Self assessment under the different sections of 139 (Return within due date/Belated Return/ Return of Loss etc.) or in response to notice u/s 142(1) or 148 or 153A The Self Assessment also covers case where one has filed IT Return – and some Refund is due. Then when the IT

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Dept processes the Return and sends the Refund Cheque (Income Tax Refund Order) – it is sent under cover of 'Intimation u/s 143(1)'

2. ***Regular/Scrutiny Assessment u/s 143(3): For this notice is issued u/s 143(2).***

   The salient features are:

   This notice can be issued only when the assessee has furnished Return of Income u/s 139(1) or 142(1)

   The notice u/s 143(2) has to be served on the assessee within six months of expiry of financial year in which the return was furnished.

   Only 3% to 5% cases are taken for scrutiny assessment

   The Assessing Officer (A.O) is not required to possess any 'reason to believe'. In this assessment, A.O is charged with the duty to ensure that the assessee:

   - has not understated income
   - has not computed excessive loss
   - has not under paid taxes

3. ***Best Judgement Assessment u/s 144:***

   Conditions:

   - Assessee fails to furnish ITR u/s 139(1) and has not furnished it u/s 139(4)
   - fails to comply with all terms of notice u/s 142(1)
   - fails to comply with direction issued u/s 142 (2A)
   - fails to comply with terms of notice u/s 143(2)

   Then the A O to the best of his judgment can determine the income and tax pay able by assessee based on records possessed by A O.

   Prior to proceeding on assessment u/s 144, the A O should give a show cause notice to the assessee. However if the A O has already issued notice u/s 142(1)(i) and the assessee has not complied with its terms, then A O can go ahead with assessment and no show cause notice is required.

4. ***Assessment/Reassessment of Income Escaping Assessment u/s 147:***To undertake assessment u/s 147 , notice has to be issued u/s 148. Before issuing notice u/s 148 the A O shall 'record his reasons' for issuing the notice. The notice has to be issued separately for each A Y for which proceedings are to be taken up u/s 147. The assessee has to file Return in response to notice u/s 148 – even if he has filed the return previously within due date. Also, the A O is duty bound to provide the assessee the reasons recorded by him – if the assessee requests for it after filing Return of Income in response to the notice.

Example: Now take an example – the assessee "X" has filed Return for A Y 2006-07 based on income for the FY 2005-06 within due date of 31-July-2006. For doing scrutiny assessment u/s 143(3), Notice u/s 143(2) can be issued upto 30-Sept-2007.

But now he can do the assessment u/s 147.

So, he would issue him notice u/s 148 on 30-May-2009 for opening assessment proceedings u/s 147. Now in response to this notice – "X" files return in 5-June-2009. Now this return is

Notes

treated as return u/s 139. Now A O can issue him notice u/s 143(2) till 30-Sept-2010 to call for various documents and records and undertake to scrutinize the documents and compute/ recomputed assessable income and tax. The assessment shall be considered to have been carried out u/s 147. If the A O issues notice u/s 143(2) after 30-Sept-2010, then the proceeding u/s 147 would be void.

Now consider, that in the above case – in response to notice u/s 147 , the assessee "X" does not file any return. Then A O shall proceed u/s 147 to the Best of his Judgment to assess the income and tax. In doing assessment as per Best Judgement, the A O shall be bound by the procedures of Sec 144. U/s 148 notice can be issued till the end of six years from the end of relevant A Y. There are various criteria laid down as to whose sanction is required and the monetary limits etc. But suffice here to say that notice u/s 148 cannot be issued after expiry of 6 years from the end of relevant A Y – whatever may be the income escaping assessment.

Self Assessment

Fill in the blanks:

6. Section ..... provides for publishing the name of any person and any other particulars relating to any proceedings under the provisions of Chapter V of the Finance Act, 1994, in relation to such person, in public interest.
7. In cases where service tax has been not .....or paid or short-levied or short-paid or erroneously refunded by the reason of fraud; or collusion; or willful mis-statement; or suppression of facts.
8. ..... is a relatively new tax and as with any new tax it's understanding and correct implementation may take time.
9. Service Tax is administered by the ..... & Service Tax Commissionerates and the Service Tax Commissionerates working under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India.
10. ..... has from the very beginning adopted a flexible approach concerning Service Tax administration.

Caselet

Ambuja Cements Ltd. v. UOI 2009 (14) S.T.R. 3 (P & H)

The assessee was engaged in the business of manufacturing and selling of cement and had been duly paying the excise duty in respect of cement produced by it. The assessee claimed that it supplied cement to its customers "FOR destination" and bore the freight up to the door steps of the customer i.e. the destination point. The assessee had taken the CENVAT credit of the service tax paid on the aforementioned freight by it.

The Department contended that the payment of service tax on the freight incurred by the assessee was not input service as per rule 2(l) of the CENVAT Credit Rules, 2004 and hence the CENVAT credit was not admissible on it under the said Rules.

The High Court observed that the 'input service' has been defined under rule 2(l) to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal.

Contd....

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Further, the Board's Circular No. 97/6/2007 (sic) 97/8/2007-ST, dated 23-8-2007 contemplates compliance of certain conditions where the sale has taken place at the destination point. These conditions are as follows:-

(i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;

(ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and

(iii) the freight charges were an integral part of the price of goods.

The circular provides that if aforesaid conditions are satisfied, the credit of the service tax paid on the transportation up to such place of sale would be admissible.

The first requirement was fulfilled because:

(i) the supply of cement by appellant to its customer was 'FOR destination',

(ii) the freight up to the door step of the customer was borne by the appellant, and

(iii) the service tax on the freight charges was paid by the appellant.

Moreover, for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, the second condition also stood fulfilled.

Since, the delivery of the goods is "FOR destination' price, the third condition that the freight charges were integral part of the excisable goods also stood fulfilled.

In view of above discussion, the High Court opined that the questions of law deserved to be answered in favour of the assessee-appellant and against the Revenue. Hence, it held that the assessee was entitled to the credit of the service tax paid on the freight up to the door steps of the customer.

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

7.7 Summary

- The Centre had, in Budget 2011-12, announced a shift in the basis of collection of service tax from receipt basis to an accrual basis with effect from April 1.
- The Finance Ministry's decision to review this move comes in the wake of representations from many industry associations, who have suggested that *status quo* be maintained and service tax collections be continued on receipt basis.
- The Finance Act of 1997 further extended the scope of service tax to cover a larger number of services rendered by the following service providers, from the dates indicated against each of them.
- The unique feature of Service Tax is reliance on collection of tax, primarily through voluntary compliance.
- Government has from the very beginning adopted a flexible approach concerning Service Tax administration so that the assessees and the general public gain faith and trust in the tax measure so that voluntary tax compliance, one of the avowed objectives of the Citizens Charter, is achieved. Substantive and procedural liberalization measures, adopted over

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the years for this purpose, are clear manifestations of the above approach. Following are some of the measures adopted in that direction:

- Section 73D provides for publishing the name of any person and any other particulars relating to any proceedings under the provisions of Chapter V of the Finance Act, 1994, in relation to such person, in public interest, in such manner as may be prescribed.

7.8 Keywords

Service tax: it is an indirect tax levied under the Finance Act, 1994, as amended from time to time, on specified services. At present, there are approximately 96 categories (including 15 new services introduced by Budget 2006) of services taxable under the service tax net.

Self Assessment u/s 140A: This simply means that the person is calculating his own tax liability and thereafter filing ITR after payment of self-calculated tax.

7.9 Review Questions

1 Define service tax.

2 Discuss the normal procedure of taxation.

3 Elaborate Assessment Procedure of Service Tax in India.

4 Explain the legal provisions of taxation.

5 Discuss the non-recovery of Service Tax in certain situations.

Answers: Self Assessment

1.	Finance	2.	Taxation
3.	1997	4.	Provision
5.	Decision	6.	73D
7.	Levied	8.	Service tax
9.	Central excise	10.	government

7.10 Further Readings

Books

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Notes

Unit 8: Custom Duties

CONTENTS

Objectives

After studying this unit, you should be able to:

- Understand meaning and significance of custom duties
- Know types of custom duties in India
- Define acts and rules and regulations related to customs duty in India
- Explain restriction on import and export of goods
- Know warehousing
- Explain provisions related to baggage and special provisions

Introduction

The Custom Duty in India is one of the most important tariffs. The Customs Act was formulated in 1962 to prevent illegal imports and exports of goods. Besides, all imports are sought to be subject to a duty with a view to affording protection to indigenous industries as well as to keep the imports to the minimum in the interests of securing the exchange rate of Indian currency.

Duties of customs are levied on goods imported or exported from India at the rate specified under the Customs Tariff Act, 1975 as amended from time to time or any other law for the time being in force. For the purpose of exercising proper surveillance over imports and exports, the Central Government has the power to notify the ports and airports for the unloading of the imported goods and loading of the exported goods, the places for clearance of goods imported or to be exported, the routes by which above goods may pass by land or inland water into or out of Indian and the ports which alone shall be coastal ports.

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In order to give a broad guide as to classification of goods for the purpose of duty liability, the Central Board of Excises Customs (CBEC) brings out periodically a book called the "Indian Customs Tariff Guide" which contains various tariff rulings issued by the CBEC. The Act also contains detailed provisions for warehousing of the imported goods and manufacture of goods is also possible in the warehouses.

For a person who do not actually import or export goods customs has relevance in so far as they bring any baggage from abroad.

Notes Duties of customs are levied on goods imported or exported from India at the rate specified under the Customs Tariff Act, 1975.

8.1 Types of Duties

Under the custom laws, the following are the various types of duties which are leviable:

Basic Duty

This is the basic duty levied under the Customs Act. The rate varies for different items from 5% to 40%.

Additional Duty

Also known as Countervailing Duty or CVD: This additional duty is levied under section 3(1) of the Custom Tariff Act and is equal to excise duty levied on a like product manufactured or produced in India. If a like product is not manufactured or produced in India, the excise duty that would be leviable on that product had it been manufactured or produced in India is the duty payable. If the product is leviable at different rates, the highest rate among those rates is the rate applicable. Such duty is leviable on the value of goods plus basic custom duty payable. For example if the customs value of goods is ₹ 5000 and rate of basic customs duty is 10% and excise duty on similar goods produced in India is 20%, CVD will be ₹1100/-.

Additional Duty to compensate duty on inputs used by Indian manufacturers. This Additional Duty is levied under section 3(3) of the Customs Act. It can be charged on all goods by the central government to counter balance excise duty leviable to raw materials, components and other inputs similar to those used in the production of such good.

Anti-dumping Duty

Sometimes, foreign sellers abroad may export into India goods at prices below the amounts charged by them in their domestic markets in order to capture Indian markets to the detriment of Indian Industry. This is known as dumping. In order to prevent dumping, the Central Government may levy additional duty equal to the margin of dumping on such articles, if the goods have been sold at less than normal value. Pending determination of margin of dumping, such duty may be provisionally imposed. After the exact rate of dumping duty is finally determined, the Central government may vary the provisional rate of dumping duty. Dumping duty can be imposed even when goods are imported indirectly or after changing the condition of goods. There are however certain restrictions on imposing dumping duties in case of countries which are signatories to the GATT or on countries given "Most Favoured Nation Status" under agreement. Dumping duty can be levied on imports on such countries only if the Central

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Government proves that import of such goods in India at such low prices causes material injury to Indian Industry.

Protective Duty

If the Tariff Commission set up by law recommends that in order to protect the interests of Indian Industry, the Central Government may levy protective anti-dumping duties at the rate recommended on specified goods. The notification for levy of such duties must be introduced in the Parliament in the next session by way of a bill or in the same session if Parliament is in session. If the bill is not passed within six months of introduction in Parliament, the notification ceases to have force but the action already undertaken under the notification remains valid. Such duty will be payable upto the date specified in the notification. Protective duty may be cancelled or varied by notification. Such notification must also be placed before Parliament for approval as above.

Duty on Bounty Fed Articles

In case a foreign country subsidises its exporters for exporting goods to India, the Central Government may import additional import duty equal to the amount of such subsidy or bounty. If the amount of subsidy or bounty cannot be clearly deter mined immediately, additional duty may be collected on a provisional basis and after final determination, difference may be collected or refunded, as the case may be.

Export Duty

Such duty is levied on export of goods. At present very few articles such as skins and leather are subject to export duty. The main purpose of this duty is to restrict exports of certain goods. The Central Government has been granted emergency powers to increase import or export duties if the need so arises. Such increase in duty must be by way of notification which is to be placed in the Parliament within the session and if it is not in session, it should be placed within seven days when the next session starts. Notification should be approved within 15 days.

8.2 Acts under the custom duty

The Acts under the custom duty in India:

- Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993
- Customs Act, 1962
- Customs Tariff Act, 1975
- Foreign Trade (Development and Regulation) Act, 1992
- Taxation Laws (Amendment) Act, 2006
- Provisional Collection of Taxes Act, 1931
- Central Excise Tariff Act, 1985
- Foreign Trade (Regulation) Rules, 1993
- Central Excise Act, 1944

8.3 Rules and Regulations

Notes

The rules and regulations under the custom duty in India:

- Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957
- Denaturing of Spirit Rules, 1972
- Customs (Attachments of Property of Defaulters for Recovery of Government Dues) Rules, 1995
- Accessories (Condition) Rules, 1963
- Specified Goods (Prevention of Illegal Export) Rules, 1969
- Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995
- Notice of Short-Export Rules, 1963
- Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995
- Customs and Central Excise Duties Drawback Rules, 1995
- Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
- Customs Valuation (Determination of Price of Imported Goods) Rules, 1988
- Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules,1995
- Notified Goods (Prevention of Illegal Import) Rules, 1969
- Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976
- Customs Tariff (Determination of Origin of the U.A.R. and Yugoslavia) Rules, 1976
- Customs (Settlement of Cases) Rules, 1999
- Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996
- Customs (Publication of Names) Rules,1975
- Rules of Determination of Origin of goods under the Agreement on South Asian Free Trade Area (SAFTA)
- Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997
- Baggage Rules, 1998 Customs Tariff (Determination of Origin of Other Preferential Areas) Rules,1977
- Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000.


Task

Discuss about Rules and Regulation in Custom Duty in India.

Notes

8.4 Restriction on Import and Export of Goods

Under sub-section (d) of section 111 and sub-section (d) of Section 113, any goods which are imported or attempted to be imported and exported or attempted to be exported, contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force shall be liable to confiscation. Section 112 of the Customs Act provides for penalty for improper importation and Section 114 of the Customs Act provides for penalty for attempt to export goods improperly. In respect of prohibited goods the Adjudicating Officer may impose penalty upto five times the value of the goods. It is, therefore, absolutely necessary for the trade to know what are the prohibitions or restrictions in force before they contemplate to import or export any goods.

The terms "Prohibited Goods" have been defined in sub-section (33) of Section 2 of the Customs Act as meaning "any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force".

Under section 11 of the Customs Act, the Central Government has the power to issue Notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. The specified purposes for which a notification under section 11 can be issued are maintenance of the security of India, prevention and shortage of goods in the country, conservation of Foreign Exchange, safeguarding balance of payments etc. The Central Govt. has issued many notifications to prohibit import of sensitive goods such as coins, obscene books, printed waste paper containing pages of any holy books, armored guard, fictitious stamps, explosives, narcotic drugs, rock salt, saccharine, etc.

Under Export and Import Policy, laid down by the DGFT, in the Ministry of Commerce, certain goods are placed under restricted categories for import and export. Under sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government can make provisions for prohibiting, restricting or otherwise regulating the import of export of the goods. As for example, import of second hand goods and second hand capital goods is restricted. Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence. For example export of human skeleton is absolutely prohibited whereas export of cattle is allowed against an export licence. Another example is provided by Notification No.44 (RE-2000) 1997 dated 24.11.2000 in terms of which all packaged products which are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1997, when produced/packed/sold in domestic market, shall be subject to compliance of all the provisions of the said Rules, when imported into India. All packaged commodities imported into India shall carry the name and address of the importer, net quantity in terms of standard unit of weights measures, month and year of packing and maximum retail sale price including other taxes, local or otherwise. In case any of the conditions is not fulfilled, the import of packaged products shall be held as prohibited, rendering such goods liable to confiscation.

Another restriction under the aforesaid Notification issued by the Ministry of Commerce is that the import of a large number of products, presently numbering 133, are required to comply with the mandatory Indian Quality Standards (IQS) and for this purpose exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS). Non-fulfilment of the above requirement shall render such goods prohibited for import.

Import and export of some specified goods may be restricted/prohibited under other laws such as Environment Protection Act, Wild Life Act, Indian Trade and Merchandise Marks Act, Arms Act, etc. Prohibition under those acts will also apply to the penal provisions of the Customs Act, rendering such goods liable to confiscation under section 111(d) of the Customs Act (for import) and 113 (d) of the Customs Act (for export).

Notes

Any Importer or Exporter for being knowingly concerned in any fraudulent evasion or attempted evasion of any prohibition under the Customs Act or any other law for the time being in force in respect to any import or export of goods, shall be liable to punishment with imprisonment for a maximum term of three years (seven years in respect of notified goods) under section 135 of the Customs Act. Any person who is reasonably believed to be guilty of an offence, punishable under section 135, may be arrested under the provisions of section 104 of the Customs Act.

Keeping in view the above penal provisions in the Customs Act to deal with any deliberate evasion of prohibition/restriction of import of export of specified goods, it is advisable for the Trade to be well conversant with the provisions of EXIM Policy, the Customs Act, as also other allied Acts. They must make sure that before any imports are effected or export planned, they are aware of any prohibition/restrictions and requirements subject to which alone goods can be imported/exported, so that they do not get penalised and goods do not get involved in confiscation etc. proceedings at the hands of Customs Authorities.

Principles of Restriction

DGFT may, through a notification, adopt and enforce any measure necessary for:

- Protection of public morals.
- Protection of human, animal or plant life or health.
- Protection of patents, trademarks and copyrights and the prevention of deceptive practices.
- Prevention of prison labour.
- Protection of national treasures of artistic, historic or archaeological value.
- Conservation of exhaustible natural resources.
- Protection of trade of fissionable material or material from which they are derived, and
- Prevention of traffic in arms, ammunition and implements of war.

Terms and Conditions of a Licence/Certificate/Permission

Every licence/certificate/permission shall be valid for the period of validity specified in the licence/certificate/permission and shall contain such terms and conditions as may be specified by the licensing authority which may include:

- The quantity, description and value of the goods;
- Actual user condition;
- Export obligation;
- The value addition to be achieved; and
- The minimum export price.

Licence/Certificate/Permission not a Right

No person may claim a licence/certificate/permission as a right and the Director General of Foreign Trade or the licensing authority shall have the power to refuse to grant or renew a licence/certificate/permission in accordance with the provisions of the Act and the Rules made thereunder.

Notes

Penalty

If a licence/certificate/permission holder violates any condition of the licence/certificate/permission or fails to fulfil the export obligation, he shall be liable for action in accordance with the Act, the Rules and Orders made there under, the Policy and any other law for the time being in force.

Self Assessment

Fill in the blanks:

1. Duties of ..... are levied on goods imported or exported from India at the rate specified under the Customs Tariff Act, 1975.
2. ..... Duty to compensate duty on inputs used by Indian manufacturers.
3. The terms "..... Goods" have been defined in sub-section (33) of Section 2 of the Customs Act.
4. Under ..... and Import Policy, laid down by the DGFT, in the Ministry of Commerce, certain goods are placed under restricted categories for import and export.
5. Import and export of some specified goods may be restricted under other laws such as ..... Protection Act.

8.5 Illegal Imports and Illegal Exports

If, having regard to the magnitude of the illegal import of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal import, circulation or disposal of such goods, or facilitating the detection of such goods, it may, by notification in the Official Gazette, specify goods of such class or description.

Persons Possessing notified Goods to Intimate the Place of Storage, etc.

Every person who owns, possesses or controls, on the notified date, any notified goods, shall, within seven days from that date, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored.

Every person who acquires, after the notified date, any notified goods, shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition and shall, immediately on such acquisition, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods acquired by him : Provided that a person who has delivered a statement, whether under sub-section (1) or sub-section (2), in relation to any notified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further statement in relation to any notified goods acquired by him, after the date of delivery of the said statement, so long as the notified goods so acquired are kept or stored at the intimated place.

If any person intends to shift any notified goods to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

Notes

No person shall, after the expiry of seven days from the notified date, keep or store any notified goods at any place other than the intimated place.

Where any notified goods have been sold or transferred, such goods shall not be taken from one place to another unless they are accompanied by the voucher referred to in section 11F.

No notified goods (other than those which have been sold or transferred) shall be taken from one place to another unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the persons owning, possessing or controlling such goods.

Precautions to be taken by Persons Acquiring notified Goods

No person shall acquire (except by gift or succession, from any other individual in India), after the notified date, any notified goods:

1. unless such goods are accompanied by:
   (i) the voucher referred to in section 11F or the memorandum referred to in sub-section of section 11G, as the case may be, or
   (ii) in the case of a person who has himself imported any goods, any evidence showing clearance of such goods by the Customs Authorities; and
2. unless he has taken, before acquiring such goods from a person other than a dealer having a fixed place of business, such reasonable steps as may be specified by rules made in this behalf, to ensure that the goods so acquired by him are not goods which have been illegally imported.

Persons Possessing notified Goods to Maintain Accounts

Every person who, on or after the notified date, owns, possesses, controls or acquires any notified goods shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall, as often as he acquires or parts with any notified goods, make an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the notified goods to which such accounts relate:

Provided that it shall not be necessary to maintain separately accounts in the form and manner specified by rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

Every person who owns, possesses or controls any notified goods and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the notified goods so used by him and shall keep such account at the intimated place.

Sale, etc., of notified Goods to be Evidenced by Vouchers

On and from the notified date, no person shall sell or otherwise transfer any notified goods, unless every transaction in relation to the sale or transfer of such goods is evidenced by a voucher in such form and containing such particulars as may be specified by rules made in this behalf.

Notes

11C, 11E and 11F not to apply to goods in personal use.

(1) Nothing in sections 11C, 11E and 11F shall apply to any notified goods which are:

(a) in personal use of the person by whom they are owned, possessed or controlled, or

(b) kept in the residential premises of a person for his personal use.

(2) If any person, who is in possession of any notified goods referred to in sub-section (1), sells, or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee, as the case may be, a memorandum containing such particulars as may be specified by rules made in this behalf and no such goods shall be taken from one place to another unless they are accompanied by the said memorandum.

Caution When the goods enter the territorial waters of India, no doubt they would be under control of the customers authorities, but for fiscal purposes this date is irrelevant for determining the rate of customs duty.

8.6 Date of Determination of Duty and Tariff Valuations of Imported Goods

When the goods enter the territorial waters of India, no doubt they would be under control of the customers authorities, but for fiscal purposes this date is irrelevant for determining the rate of customs duty. The rate of duty, rate of exchange and valuation applicable to any imported goods shall be the rate and the valuation in force:

1. in case of goods entered for home consumption on the date on which a bill of entry in respect of such goods is presented under that section
2. in case of goods cleared from a warehouse on the date on which the goods are actually removed from the warehouses
3. in case of any other goods – on date of payment of duty

Rates

The rate of duty, rate of exchange and valuation applicable to any Exported goods shall be the rate and the valuation in force:

1. in the case of goods entered for exported under section 50 of the Customs Act–on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51 of the Act.
2. in the case of any other goods – on the date of payment of duty

These provisions do not apply to baggage and goods exported by post the export duty becomes leviable only when the goods are exported and not on the goods which are not exported or which could not be exported. The amount of duty which has been deposited but not appropriated would evidently be repayable to the person who has deposited it unless some statutory bar to such recovery is shown to exist.

8.7 Levy of Custom Duties

Custom Duty is imposed under the **Indian Customs Act formulated in 1962** by the Constitution of India under the Article 265, which states that "no tax shall be levied or collected except by

Notes

authority of law. So, the **Indian Customs Act** was introduced that allow the Central Government to collect the taxes under the name of Custom Duty.

Custom Duties are usually levied with ad valorem rates and their base is determined by the domestic value 'the **imported goods** calculated at the official **exchange rate**. Similarly, export duties are imposed on export values expressed in domestic **currency**.

Export duties are levied occasionally to clear up excess profitability in **international price** of goods in respect of which domestic prices may be low at given time. But the concept of import duty is wide and almost universal, except for a few goods like food grains, fertilizer, life saving drugs and equipment etc.

The Indian Customs Duties are major source of revenue for the Union Government and constitute around 30% of its tax revenues. Together with **Central Excise duties**, the contribution amount to nearly three-fourth of total tax revenue of the Union Government.

Custom duty not only raises money for the Central Government but also helps the government to prevent the illegal **imports** and illegal **exports** of goods from India. The Central Government has emergency powers to increase import or export duties whenever necessary after a **notification** in the session of Parliament.

Did u know? **Custom Duty** is imposed under the **Indian Customs Act formulated in 1962** by the Constitution of India under the Article 265, which states that "no tax shall be levied or collected except by authority of law.

Self Assessment

Fill in the blanks:

6. The rate of duty, rate of exchange and ..... applicable to any imported goods shall be the rate and the valuation in force.
7. **Custom Duty** is imposed under the **Indian Customs Act formulated in**..... by the Constitution of India under the Article 265.
8. Custom duty not only raises money for the Central Government but also helps the government to prevent the illegal ..... and illegal **exports** of goods from India.
9. The ..... government has emergency powers to increase import or export duties.
10. The Indian Customs Duties are major source of revenue for the Union Government and constitute around .....% of its tax revenues.

8.8 Collection and Exemption from Custom Duties

SECTION 12. ***Dutiable goods.*** **–** (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Notes

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

SECTION 14. ***Valuation of goods.*** — (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

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

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. — For the purposes of this section —

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

(i) determined by the Board, or

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

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

SECTION 15. ***Date for determination of rate of duty and tariff valuation of imported goods.*** (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

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(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

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

(a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;

(b) in the case of any other goods, on the date of payment of duty.

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

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

SECTION 17. ***Assessment of duty.*** (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

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

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

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, reassess the duty leviable on such goods.

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

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

Explanation.— For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.".

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SECTION 18. ***Provisional assessment of duty.*** – (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,—

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed.

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or reassessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or reassessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

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SECTION 19. ***Determination of duty where goods consist of articles liable to different rates of duty.*** Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows:-

(a) articles liable to duty with reference to quantity shall be chargeable to that duty;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that, -

(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) if the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

SECTION 20. ***Re-importation of goods.*** If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

SECTION 21. ***Goods derelict, wreck, etc.*** All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

SECTION 22. ***Abatement of duty on damaged or deteriorated goods.*** (1) Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

(a) the value of such goods may be ascertained by the proper officer, or

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(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods.

In India custom clearance is a complex and time taking procedure that every export face in his export business. Physical control is still the basis of custom clearance in India where each consignment is manually examined in order to impose various types of export duties. High import tariffs and multiplicity of exemptions and export promotion schemes also contribute in complicating the documentation and procedures. So, a proper knowledge of the custom rules and regulation becomes important for the exporter. For clearance of export goods, the exporter or export agent has to undertake the following formalities:

Registration

Any exporter who wants to export his good need to obtain PAN based Business Identification Number (BIN) from the Directorate General of Foreign Trade prior to filing of shipping bill for clearance of export goods. The exporters must also register themselves to the authorised foreign exchange dealer code and open a current account in the designated bank for credit of any drawback incentive.

Registration in the case of export under export promotion schemes:

All the exporters intending to export under the export promotion scheme need to get their licences/DEEC book etc. registered at the customs station. For such registration, original documents are required.

Processing of Shipping Bill - Non-EDI

In case of Non-EDI, the shipping bills or bills of export are required to be filled in the format as prescribed in the Shipping Bill and Bill of Export (Form) Regulations, 1991. An exporter need to apply different forms of shipping bill/bill of export for export of duty free goods, export of dutiable goods and export under drawback etc.

Processing of Shipping Bill - EDI

Under EDI System, declarations in prescribed format are to be filed through the Service Centers of Customs. A checklist is generated for verification of data by the exporter/CHA. After verification, the data is submitted to the System by the Service Center operator and the System generates a Shipping Bill Number, which is endorsed on the printed checklist and returned to the exporter/CHA. For export items which are subject to export cess, the TR-6 challans for cess is printed and given by the Service Center to the exporter/CHA immediately after submission of shipping bill. The cess can be paid on the strength of the challan at the designated bank. No copy of shipping bill is made available to exporter/CHA at this stage.

Quota Allocation

The quota allocation label is required to be pasted on the export invoice. The allocation number of AEPC (Apparel Export Promotion Council) is to be entered in the system at the time of shipping bill entry. The quota certification of export invoice needs to be submitted to Customs along-with other original documents at the time of examination of the export cargo. For determining the validity date of the quota, the relevant date needs to be the date on which the

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full consignment is presented to the Customs for examination and duly recorded in the Computer System.

Arrival of Goods at Docks

On the basis of examination and inspection goods are allowed enter into the Dock. At this stage the port authorities check the quantity of the goods with the documents.

System Appraisal of Shipping Bills

In most of the cases, a Shipping Bill is processed by the system on the basis of declarations made by the exporters without any human intervention. Sometimes the Shipping Bill is also processed on screen by the Customs Officer.

Customs Examination of Export Cargo

Customs Officer may verify the quantity of the goods actually received and enter into the system and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Dock Appraiser of the Dock who many assign a Customs Officer for the examination and intimate the officers' name and the packages to be examined, if any, on the check list and return it to the exporter or his agent.

The Customs Officer may inspect/examine the shipment along with the Dock Appraiser. The Customs Officer enters the examination report in the system. He then marks the Electronic Bill along with all original documents and check list to the Dock Appraiser. If the Dock Appraiser is satisfied that the particulars entered in the system conform to the description given in the original documents and as seen in the physical examination, he may proceed to allow "let export" for the shipment and inform the exporter or his agent.

Stuffing/Loading of Goods in Containers

The exporter or export agent hand over the exporter's copy of the shipping bill signed by the Appraiser "Let Export" to the steamer agent. The agent then approaches the proper officer for allowing the shipment. The Customs Preventive Officer supervising the loading of container and general cargo in to the vessel may give "Shipped on Board" approval on the exporter's copy of the shipping bill.

Drawal of Samples

Where the Appraiser Dock (Export) Orders for samples to be drawn and tested, the Customs Officer may proceed to draw two samples from the consignment and enter the particulars thereof along with details of the testing agency in the ICES/E system. There is no separate register for recording dates of samples drawn. Three copies of the test memo are prepared by the Customs Officer and are signed by the Customs Officer and Appraising Officer on behalf of Customs and the exporter or his agent. The disposal of the three copies of the test memo is as follows:-

- ***Original*** - to be sent along with the sample to the test agency.
- ***Duplicate*** - Customs copy to be retained with the 2nd sample.
- ***Triplicate*** - Exporter's copy.

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The Assistant Commissioner/Deputy Commissioner if he considers necessary, may also order for sample to be drawn for purpose other than testing such as visual inspection and verification of description, market value inquiry, etc.

Amendments

Any correction/amendments in the check list generated after filing of declaration can be made at the service center, if the documents have not yet been submitted in the system and the shipping bill number has not been generated. In situations, where corrections are required to be made after the generation of the shipping bill number or after the goods have been brought into the Export Dock, amendments is carried out in the following manners.

1. The goods have not yet been allowed "let export" amendments may be permitted by the Assistant Commissioner (Exports).
2. Where the "Let Export" order has already been given, amendments may be permitted only by the Additional/Joint Commissioner, Custom House, in charge of export section.

In both the cases, after the permission for amendments has been granted, the Assistant Commissioner/Deputy Commissioner (Export) may approve the amendments on the system on behalf of the Additional/Joint Commissioner. Where the print out of the Shipping Bill has already been generated, the exporter may first surrender all copies of the shipping bill to the Dock Appraiser for cancellation before amendment is approved on the system.

Export of Goods under Claim for Drawback

After actual export of the goods, the Drawback claim is processed through EDI system by the officers of Drawback Branch on first come first served basis without feeling any separate form.

Generation of Shipping Bills

The Shipping Bill is generated by the system in two copies- one as Custom copy and one as exporter copy. Both the copies are then signed by the Custom officer and the Custom House Agent.

Source: http://www.eximguru.com/exim/Guides/How-To Export/Ch_18 _Custom _Procedure _For Export.aspx

Self Assessment

Fill in the blanks:

11. If goods are imported into India after ..... there from, such goods shall be liable to duty and be subject to all the conditions and restrictions.
12. All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were ..... into India.
13. The duty and interest, if any, ... on such duty on imports made by an individual for his personal use;
14. .....liable to duty with reference to quantity shall be chargeable to that duty.
15. The amount of .....refundable under sub-section (2) and the interest under sub-section (4).

Notes

Caselet

ABB Ltd. v. CCEx. 2009 (15) S.T.R. 23 (Tri. - LB)

In the instant case, Revenue contended that in the inclusive clause of the definition of "input service" under rule 2(l) of the CENVAT Credit Rules, 2004, it is specifically mentioned that only outward transportation up to the place of removal shall be included. Therefore, credit for outward transportation from the place of removal to the customer's place should not be allowed with reference to any other limb or category of the definition of input service which is general in nature. However, the large Bench of the Tribunal rejected the contention of the Revenue.

The Tribunal held that each of the limbs of the definition of "input services" is an independent benefit/concession. If an assessee can satisfy any one of the above, then credit on input service would be admissible even if the assessee does not satisfy the other limbs.

The expression "activities relating to business" admittedly covers transportation upto the customers place and, therefore, credit cannot be denied by relying on specific coverage of outward transportation upto the place of removal in the inclusive clause.

Revenue further alleged that since the cost of outward transportation did not form part of the transaction value of the manufactured goods, any service tax paid for the outward transportation of goods from place of removal could not be allowed as credit to the manufacturer. In this regard the Tribunal clarified that for admissibility of credit for outward transportation, there is no requirement that the cost of freight should enter into the transaction value of the manufactured goods. The two issues, namely, 'valuation' and 'CENVAT credit' are independent of each other and have no relevance to each other.

Hence, it inferred that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as an input service and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services.

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

8.9 Summary

- The Customs Act was formulated in 1962 to prevent illegal imports and exports of goods.
- Duties of customs are levied on goods imported or exported from India at the rate specified under the Customs Tariff Act.
- For the purpose of exercising proper surveillance over imports and exports,
- The Central Government has the power to notify the ports and airports for the unloading of the imported goods and loading of the exported goods,
- The places for clearance of goods imported or to be exported, the routes by which above goods may pass by land or inland water into or out of Indian and the ports which alone shall be coastal ports.
- The different duties under custom duty in India include basic duty, additional duty (countervailing duty), anti-dumping duty, protective duty, export duty.
- In bearing with the main objective of the customs duty, any goods which are imported or attempted to be imported and exported or attempted to be exported, contrary to any

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prohibition imposed by or under the Customs Act or any other law for the time being in force shall be liable to confiscation.

8.10 Keywords

Additional Duty: This additional duty is levied under section 3(1) of the Custom Tariff Act and is equal to excise duty levied on a like product manufactured or produced in India. If a like product is not manufactured or produced in India.

Countervailing duty: This duty is equivalent to central excise duty leviable on a like product manufactured in India.

Illegal import: The import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

Import-Export Policy: Import of goods into and export from India is regulated by the Foreign Trade Policy (the Policy) issued from time to time by Government of India. The Policy remains in force for five years and is amended from time to time.

8.11 Review Questions

1. How does the customs duty restrict import of hazardous goods?
2. Elucidate upon various types of duties that can be levied under the Indian custom laws.
3. What has Indian govt. done to check trafficking of illegal import and export?
4. When would an International trader need warehousing? What role does customs duty play in that?
5. Discuss the regulations regarding goods imported or to be exported by post.
6. Explain the concepts of green channel and red channel. Also discuss their significance.
7. Why are the concessions made in customs duty in respect of imported stores for the Navy? Discuss.
8. Describe about the levy of custom duties.
9. What are the rules for collection and exemption from custom duty?

Answers: Self Assessment

1. Customs
2. Additional
3. Prohibited
4. Export
5. Environment
6. Valuation
7. 1962
8. Imports
9. Central
10. 30%
11. Exportation
12. Imported
13. Paid
14. Articles
15. Duty

8.12 Further Readings

Notes

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Notes

Unit 9: Valuation of Custom Goods

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about valuation of Custom Goods
- Know about rules of the agreement and Customs valuation
- Know about five other standards

Introduction

When customs duties are levied on an ad valorem basis (e.g. 10 % of the value of imported goods), the actual incidence of duty depends on how Customs determines dutiable value. The Agreement on Customs Valuation requires Customs to determine the value on the basis of the price paid or payable by the importer in the transaction that is being valued. As a result of a Decision adopted in the Uruguay Round, Customs can reject transaction values when it has reasons to doubt the truth or accuracy of the value declared by importers or of the documents submitted by them. In order to protect the interests of importers in such situations, Customs is required to provide them with an opportunity to justify their price. Where Customs is not satisfied with the justifications given, it is obliged to give to these importers in writing its reasons for not accepting the transaction value they have declared.

When the transaction value is not accepted by Customs, the Agreement lays down five methods for establishing value. In determining value on the basis of these methods, Customs is required to consult the importers and take their views into account.

A number of developing countries currently use valuation systems based on the Brussels Definition of Value, developed by the World Customs Organization (WCO). These countries will have to modify their systems to bring them in conformity with the rules of the Agreement on Customs Valuation within the transitional period of five years (i.e. up to 1 January 2000) that

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has been accorded to developing countries for changing over to the system established by the Agreement

Customs duties are levied on an ad valorem basis (e.g. 20% of the value of the imported product) or as specific duties (e.g. $2 per kilogram or per litre). Combined or mixed duties containing both ad valorem and specific rates are also levied (10% of the value + $2 per kilogram) on some products. With a few exceptions, most countries levy ad valorem duties. Governments prefer to levy such duties for three broad reasons. First, it is easier for the authorities to estimate collectable revenue from ad valorem duties, which are assessed on the basis of value, than revenue from specific duties, which are levied on the basis of volume or weight. Second, ad valorem duties are more equitable than specific duties as their incidence is lower on cheaper products and higher on more expensive goods. For instance, a specific duty of $2 per litre would have an incidence of 50% on a bottle of wine costing $4, and 10% on a higher-priced wine costing $20 a bottle. An ad valorem duty of 10% would have an incidence of $0.20 on the cheaper bottle and $2 on the more expensive bottle. Third, in international negotiations for reductions in tariffs it is far easier to compare the level of tariffs and negotiate reductions if the duties are ad valorem.

Caution When the transaction value is not accepted by Customs, the Agreement lays down five methods for establishing value. In determining value on the basis of these methods, Customs is required to consult the importers and take their views into account.

However, the incidence of ad valorem duties depends to a large extent on the methods used to determine dutiable value. Thus, if Customs determines the dutiable value at $1,000, an ad valorem duty of 10% will result in a duty of $100.

If, on the other hand, it determines value at $1,200, the importer will have to pay an import duty of $120 for the same goods. The benefits to the trade arising from tariff bindings could fall considerably if Customs uses prices other than invoice prices for determining values for customs purposes. The rules that are applied for the valuation of goods are therefore of crucial importance in ensuring that the incidence of duties as perceived by the importer is not higher than that indicated by the nominal rates shown in the importing country's tariff schedules.

Did u know? A number of developing countries currently use valuation systems based on the Brussels Definition of Value, developed by the World Customs Organization (WCO).

9.1 Rules of the Agreement on Customs Valuation

The detailed WTO rules on the valuation of goods for customs purposes are contained in the Agreement on Customs Valuation (full title: Agreement on Implementation of Article VII of GATT 1994). The Agreement's valuation system is based on simple and equitable criteria that take commercial practices into account. By requiring all member countries to harmonize their national legislation on the basis of the Agreement's rules, it seeks to ensure uniformity in the application of the rules so that importers can assess with certainty in advance the amounts of duties payable on imports.

9.1.1 Main Standard: Transaction Value

The basic rule of the Agreement is that the value for customs purposes should be based on the price actually paid or payable when sold for export to the country of importation (e.g. the invoice price), adjusted, where appropriate, to include certain payments made by buyers such as

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the costs of packing and containers, assists, royalties and license fees. The rules exclude buying commissions and special discounts obtained by sole agents and sole concessionaires from being taken into account in arriving at dutiable value.

The Tokyo Round Agreement strictly limited the discretion available to Customs to reject transaction value to the small number of cases. This was a matter of concern to numerous developing countries. They considered that the rule unduly inhibited the ability of their customs administrations to deal with the traders' practice of undervaluing imported goods in order to reduce incidence on duties. This was one reason for the reluctance of a large number of developing countries to accede to the Agreement in the pre-WTO period.

The Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value (also known as the Decision on Shifting the Burden of Proof), adopted as a result of the initiative taken by developing countries during the Uruguay Round, corrects this lacuna. The Tokyo Round Agreement placed the burden of proof on Customs if it rejected the transaction value declared by the importer. The Uruguay Round decision shifts the burden of proof on to the importers when Customs, on the basis of the information on prices and other data available to it, "has reason to doubt the truth or accuracy of the particulars or of documents produced in support" of declarations made by the importers.

Did u know? The basic rule of the Agreement is that the value for customs purposes should be based on the price actually paid or payable when sold for export to the country of importation (e.g. the invoice price), adjusted, where appropriate, to include certain payments made by buyers such as the costs of packing and containers, assists, royalties and license fees.

In order to ensure that the transaction value is rejected by Customs in such cases on an objective basis, the Agreement on Customs Valuation stipulates that national legislation should provide certain rights to importers. First, where Customs expresses doubts as to the truth or accuracy of a declared value, importers should have a right to provide an explanation, including documents or other evidence to prove that the value declared by them reflects the correct value of the imported goods. Second, where Customs is not satisfied with the explanations given, importers should have a right to ask Customs to communicate to them in writing its reasons for doubting the truth or accuracy of the declared value. This provision is intended to safeguard the interests of importers, by giving them the right to appeal against the decision to higher authorities and, if necessary, to a tribunal or other independent body, within the customs administration.

The rule that transaction values declared by importers should be used for valuation of goods applies not only to arms-length transactions but also to transactions between related parties. In the latter transactions, which generally take place among transnational corporations and their subsidiaries or affiliates, prices are charged on the basis of transfer pricing which may not always reflect the correct or true value of the imported goods. Even in such cases, the Agreement requires Customs to enter into consultations with the importer, in order to ascertain the type of relationship, the circumstances surrounding the transaction and whether the relationship has influenced the price. If Customs after such examination finds that the relationship has not influenced the declared prices, the transaction value is to be determined on the basis of those prices.

Further, in order to ensure that in practice the transaction value is not rejected simply on the grounds that the parties are related, the Agreement gives importers the right to demand that the value should be accepted when they demonstrate that the value approximates the test values arrived at on the basis of:

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- Customs value determined in past import transactions occurring at about the same time between unrelated buyers and sellers of identical or similar goods, or
- Deductive or computed values calculated for identical or similar goods.


Task

Discuss the rules of valuation of custom duty.

Self Assessment

Fill in the blanks:

1. The rule that ..... values declared by importers should be used for valuation of goods applies not only to arms-length transactions but also to transactions between related parties.
2. The detailed ..... rules on the valuation of goods for customs purposes are contained in the Agreement on Customs Valuation.
3. When the transaction value is not accepted by ....., the Agreement lays down five methods for establishing value.
4. The Agreement on Customs ..... requires Customs to determine the value on the basis of the price paid or payable by the importer in the transaction that is being valued.

9.1.2 Five Other Standards

How should Customs determine dutiable value when it decides to reject the transaction value declared by the importer? In order to protect the interests of importers and to ensure that the value in such cases is determined on a fair and neutral basis, the Agreement limits the discretion available to Customs to using the five standards it lays down. The Agreement further insists that these standards should be used in the sequence in which they appear in the text, and only if Customs finds that the first standard cannot be used should the value be determined on the basis of the succeeding standards. The standards, presented in the sequence in which they are to be used, are discussed below:

The transaction value of identical goods: Where value cannot be determined on the basis of the transaction value, it should be established by using an already determined transaction value for identical goods.

The transaction value of similar goods: Where it is not possible to determine value on the basis of the above method, it should be determined on the basis of the transaction value of similar goods.

Under both these methods, the transactions selected must relate to imported goods that were sold for export to the country of importation and at about the same time as the goods being exported.

Deductive Value

The next two methods are the deductive method and the computed value method.

Deductive value is determined on the basis of the unit sales price in the domestic market of the imported goods being valued or of identical or similar goods after making deductions for such

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elements as profits, customs duties and taxes, transport and insurance, and other expenses incurred in the country of importation.

Computed Value

The computed value is determined by adding to the cost of producing the goods being valued "an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation."

Fall-back method

Where customs value cannot be determined by any of the four methods described above, it can be determined by using any of the previous methods in a flexible manner, provided that the criteria employed are consistent with Article VII of the General Agreement. The value so fixed should not, however, be based on the following factors, among others:

- The price of goods for export to a third country market,
- Minimum customs values,
- Arbitrary or fictitious values.

As a general rule, the Agreement visualizes that where a transaction value is not accepted, the value should be determined by using the above standards on the basis of the information available within the country of importation. However, it recognizes that in order to determine a computed value, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. The Agreement therefore suggests, in order to ensure that the importer is not subjected to unnecessary burdens, that the computed value standard should be used only when buyer and seller are related and the producer is prepared to provide to the customs authorities in the importing country the necessary cost data and facilities for their subsequent verification.

Notes The computed value is determined by adding to the cost of producing the goods being valued "an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation."

Self Assessment

Fill in the blanks:

5. Where value cannot be determined on the basis of the transaction value, it should be established by using an already determined transaction value for ..... goods.
6. As a general rule, the Agreement visualizes that where a transaction value is not accepted, the value should be determined by using the above standards on the basis of the information available within the country of .....
7. Where it is not possible to determine value on the basis of the above method, it should be determined on the basis of the transaction value of ..... goods.
8. Where customs value cannot be determined by any of the four methods described above, it can be determined by using any of the previous methods in a flexible manner, provided

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that the criteria employed are consistent with Article ..... of the General Agreement.

9.2 Developing Countries and the Agreement

Prior to 1 January 1995, only 11 countries were applying the Agreement's valuation system. When the Agreement was being negotiated, it was recognized that the majority of developing countries (which based their valuation systems on the Brussels Definition of Value, a definition entirely different from that followed by the Agreement) would need some time to adopt the legislative and institutional framework and train the officials required for its implementation.

The Agreement therefore gave a delay period of five years to developing countries which considered that an immediate change to the new system would be difficult for them.

A number of developing countries have now become members of the Agreement. However, about 50 countries (including some LDCs) have invoked the provisions on the delay period. This period will expire for all countries by early or mid 2000. In order to facilitate adoption of the system by the target date, the WTO and WCO Secretariats have stepped up their technical assistance in training officials in the methods of the Agreement. A request to extend the delay period of five years may be made to the Committee on Customs Valuation, which has been established under the Agreement. The developing country making the request must demonstrate the difficulties it is encountering in adopting the system. Any extension must be approved by the Committee.

9.3 Valuation of Goods

Customs duty is payable as a percentage of 'Value' often called 'Assessable Value' or 'Customs Value'. The Value may be either (a) 'Value' as defined in section 14 (1) of Customs Act or (b) Tariff value prescribed under section 14 (2) of Customs Act.

Tariff Value: Tariff Value can be fixed by CBE&C (Board) for any class of imported goods or export goods. Government should consider trend of value of such or like goods while fixing tariff value. Once so fixed, duty is payable as percentage of this value. (The percentage applicable is as prescribed in Customs Tariff Act).

Customs value - Customs Value fixed as per section 14 (1) is the 'Value' normally used for calculating customs duty payable (often called 'customs value' or 'Assessable Value'.)

Section 14 (1) provide following criteria for deciding 'Value' for purpose of Customs Duty:

- Price at which such or like goods are ordinarily sold or offered for sale
- Price for delivery at the time and place of importation or exportation
- Price should be in course of International Trade
- Seller and buyer have no interest in the business of each other or one of them has no interest in the other
- Price should be sole consideration for sale or offer for sale
- Rate of exchange as on date of presentation of Bill of Entry as fixed by CBE&C (Board) by Notification should be considered

This criterion is fully applicable for valuing export goods. However, in case of imported goods, valuation is required to be done according to valuation rules Valuation has to be on the basis of condition at the time of import – (a) CVD should be levied on goods in the stage in which they

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are imported - stage subsequent to processing of goods is not relevant - (b) It is well settled that the imported goods have to be assessed to duty in the condition in which they are imported.

Practical Problems

Computation of Customs Duty can be done on the following basis:

Basis Value	100.000
Custom duty @ 5%	5.000
	105.000
CVD @ 8%	8.400
Cess on CVD @ 3%	0.252
Total Duty	13.652
Cess on Total Duty @ 3%	0.410
Net duty/Excise duty for EOU	14.062
Cess on Excise Duty	0.422
Final duty	14.483

Problem 1: Assessable value of certain goods imported from USA is ₹ 1,000,000. The packet contains 10,000 pieces with maximum retail price of ₹ 200 each. The goods are assessable under section 4A of the Central Excise Act, 1944, after allowing an abatement of 40%. The excise duty rate is 8% ad valorem. Calculate the amount of additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @ 10% ad valorem.

Solution: As the goods are assessable under section 4A of the Central Excise Act, 1944, additional duty of customs will be payable on the basis of maximum retail price printed on the packing; less abatement as permissible [proviso to section 3(2) of the Customs Tariff Act.]

	₹
Maximum retail price [10,000 pieces x ₹ 200/]	20,00,000
Less : Abatement 40%	8,00,000
Assessable value under section 3(2)	12,00,000
Additional duty of customs @ 8%	96,000
Add : Education Cess @ 2% on Additional Duty of Customs	1,920
Secondary and Higher Education Cess @ 1% on Adl. Duty.	960
Additional customs duty payable	98,880

Problem 2: What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made hereunder?

(i) Where no provisional duty is imposed;

(ii) Where provisional duty is imposed;

(iii) Where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

Solution: The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed hereunder.

Notes

(i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.

(ii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.

(iii) In a case where anti-dumping duty is imposed retrospectively under section 9A (3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

Problem 3: Miss Priya imported certain goods weighing 1,000 kgs with CIF value US$ 40,000. Exchange rate was 1 US$ = ₹ 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and education cess as applicable. There is no excise duty payable on these goods, if manufactured in India.

As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US $ 60 per kg and landed value of goods. You are required to compute custom duty and anti - dumping duty payable by Miss Priya.

Solution: Computation of customs duty payable:

Particulars	₹
Total CIF value in INR = US $ 40,000 x ₹ 45	18,00,000
Add: Landing charges @1%	18,000
Assessable value (AV)	18,18,000
Basic customs duty (BCD) @10%	1,81,800
Education cess (EC) @ 2% on BCD	3,636
Secondary and higher education cess (SAHEC) @ 1% on BCD	1,818
Landed value of imported goods	20,05,254
Total customs duty payable (BCD + EC+ SAHEC)	1,87,254

Computation of Anti-dumping duty payable:

Particulars	₹
Value of goods in INR as per Notification = 1,000 Kgs x US $ 60 x ₹ 45	27,00,000
Less : Landed value of goods	20,05,254
Anti-dumping duty payable	6,94,746

Notes Customs duty is payable as a percentage of 'Value' often called 'Assessable Value' or 'Customs Value'. The Value may be either (a) 'Value' as defined in section 14 (1) of Customs Act or (b) Tariff value prescribed under section 14 (2) of Customs Act.

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9.4 Valuation Rules for Imported Good

Valuation in Customs Act has to be done as per valuation rules. These rules are based on 'WTO Valuation Agreement' (Earlier termed as GATT Valuation Code). These rules are only for valuation of imported goods and not applicable to export goods.

The value of imported goods for purposes of assessment of duly is determined in accordance with the provisions of Section 14 of 1962 and the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which were brought into force on 16th August, 1988 Rule 3(i) of the Valuation Rules provides that the value of imported goods shall be the. 'Transaction value' under Rule 4 'Transaction value' has been defined as the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9. The adjustments under Rule 9 provide, inter alia, the addition in all cases, of freight and cost of insurance to the 'transaction value' if not already included and also for the addition of loading, unloading and handling charges for purposes of assessment. In other words, the assessable value is the safe price of the imported goods plus the landing charges subject to any other adjustment which may be necessary under the provisions of Rule. If the value cannot be determined under Rule 3(i), the value is to be determined under Rules 5 to 8, which are required to be in that order.

The rate of exchange applicable for conversion of foreign currency in Indian currency is the rate in force on the date of presentation of the Bill Entry under Section 46. Such exchange rates are notified by the Govt. from time to time by notifications issued under clause a (i) of Section 14(3).

Methods of Valuation for Customs

The Valuation Rules, 1988, based on WTO Valuation Agreement (earlier GATT Valuation Code); consist of rules providing six methods of valuation.

The methods are:

(a) Transaction Value of Imported goods

(b) Transaction Value of Identical Goods

(c) Transaction Value of Similar Goods

(d) Deductive Value, which is based on identical or similar imported goods, sold in India.

(e) Computed value, which is based on cost of manufacture of goods plus profits

(f) Residual method based on reasonable means and data available.

These are to be applied in sequential order, i.e. if method one cannot be applied, then method two comes into force and when method two also cannot be applied, method three should be used and so on. The only exception is that the 'computed value' method may be used before 'deductive value' method, if the importer requests and Assessing Officer permits.

Self Assessment

Fill in the blanks:

9. The Valuation Rules, ..., based on WTO Valuation Agreement (earlier GATT Valuation Code); consist of rules providing six methods of valuation.

10. The adjustments under ..... provide, inter alia, the addition in all cases, of freight and cost of insurance to the 'transaction value' if not already included and also for the addition of loading, unloading and handling charges for purposes of assessment.

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11. ..... is payable as a percentage of 'Value' often called 'Assessable Value' or 'Customs Value'.

12. ..... in Customs Act has to be done as per Valuation Rules.

Caselet

Union of India v. Padam Narain Aggarwal 2008 (231) ELT 397 (SC)

The respondent - Padam Narain Aggarwal filed an anticipatory bail in the sessions court which dismissed it, but he later moved to the High Court which granted him anticipatory bail with a direction to the authorities that he should not be arrested without giving a ten days' prior notice to him. Revenue contended that the order passed by the High Court was illegal and erroneous.

Supreme Court observed that power to arrest a person by a Custom Officer under section 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with. Supreme Court further noted that the law, on one hand, allows a Custom Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. 'Blanket' order of bail may amount to an invitation to commit an offence or a passport to carry on criminal activities.

Supreme Court pronounced that on the facts and in the circumstances of the present case, above directions could not be said to be legal or in consonance with law. Firstly, the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructed, interfered and curtailed the authority of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving ten days prior notice, a condition not warranted by law. Hence, the order granting the anticipatory bail to the accused was set aside.

Note - Section 104 of the Customs Act, 1962 reads as under:-

If an officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest [Sub-section (1)]

Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate [Sub-section (2)].

Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898) [Sub-section (3)].

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable [Sub-section (4)].

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

Notes

9.5 Summary

- When the transaction value is not accepted by Customs, the Agreement lays down five methods for establishing value.
- In determining value on the basis of these methods, Customs is required to consult the importers and take their views into account.
- The detailed WTO rules on the valuation of goods for customs purposes are contained in the Agreement on Customs Valuation (full title: Agreement on Implementation of Article VII of GATT 1994).
- The Agreement's valuation system is based on simple and equitable criteria that take commercial practices into account.
- As a general rule, the Agreement visualizes that where a transaction value is not accepted, the value should be determined by using the above standards on the basis of the information available within the country of importation.
- Valuation in Customs Act has to be done as per valuation rules. These rules are based on 'WTO Valuation Agreement' (Earlier termed as GATT Valuation Code).
- The rate of exchange applicable for conversion of foreign currency in Indian currency is the rate in force on the date of presentation of the Bill Entry under Section 46.
- Such exchange rates are notified by the Govt. from time to time by notifications issued under clause a (i) of Section 14(3).

9.6 Keywords

Computed Value: It is determined by adding to the cost of producing the goods being valued "an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

Customs Duty: It is payable as a percentage of 'Value' often called 'Assessable Value' or 'Customs Value'.

Deductive Value: It is determined on the basis of the unit sales price in the domestic market of the imported goods being valued or of identical or similar goods after making deductions for such elements as profits, customs duties.

Tariff: A tariff is a tax on imports or exports. Money collected under a tariff is called a duty or customs duty.

9.7 Review Questions

1. Discuss the rules of the Agreement on Customs Valuation.
2. "Prior to 1 January 1995, only 11 countries were applying the Agreement's valuation system." Elaborate this statement.
3. What are the Methods of Valuation for Customs?
4 What do you mean by Valuation Rules for imported good?
5 How valuation of goods can be done?

6 Define the following terms:

Notes

(a) Tariff value

(b) Computed value

(c) Deducted value

(d) Custom duty

Answers: Self Assessment

1.	Transaction	2.	WTO
3.	Customs	4.	Valuation
5.	Identical	6.	Importation
7.	Similar	8.	VII
9.	1988	10.	Rule 9
11.	Custom duty	12.	Valuation

9.8 Further Readings

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Unit 10: Clearance Procedure of Imported and Exported Goods

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about Procedure for Clearance of Imported Goods
- Understand clearance of Exported Goods.
- Know processing of Shipping Bill

Introduction

In this chapter we will discuss about clearance procedure of imported and Exported Goods. In terms of the Customs Act, 1962 read with the relevant rules and regulations, imported and export goods are subjected to certain legal and procedural formalities before being permitted clearance by Customs. These requirements include the submission of prescribed documents and adherence to laid down procedures before an appropriate legal order is given by the proper officer permitting the importer/exporter to clear the goods for the intended purpose.

10.1 Procedure for Clearance of Imported Goods

Import Procedure- Bill of Entry

1. Goods imported in a vessel/aircraft attract customs duty and unless these are not meant for customs clearance at the port/airport of arrival by particular vessel/aircraft and are intended for transit by the same vessel/aircraft or transshipment to another customs station or to any place outside India, detailed customs clearance formalities of the landed goods have to be followed by the importers. In regard to the transit goods, so long as these are mentioned in import report/IGM for transit to any place outside India, Customs allows transit without payment of duty. Similarly for goods brought in by particular vessel aircraft for transshipment to another customs station detailed customs clearance formalities at the port/airport of landing are not prescribed and simple transshipment procedure has to be followed by the carrier and the concerned agencies. The customs clearance formalities have to be complied with by the importer after arrival of the goods at the other customs station. There could also be cases of transshipment

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of the goods after unloading to a port outside India. Here also simpler procedure for transshipment has been prescribed by regulations, and no duty is required to be paid. (Sections 52 to 56 of the Customs are relevant in this regard).

2. For other goods, which are offloaded importers, have the option to clear the goods for home consumption after payment of the duties leviable or to clear them for warehousing without immediate discharge of the duties leviable in terms of the warehousing provisions built in the Customs Act. Every importer is required to file in terms of the Section 46 an entry (which is called Bill of Entry) for home consumption or warehousing in the form, as prescribed by regulations.

3. If the goods are cleared through the EDI system no formal Bill of Entry is filed as it is generated in the computer system, but the importer is required to file a cargo declaration having prescribed particulars required for processing of the entry for customs clearance.

4. The Bill of entry, where filed, is to be submitted in a set, different copies meant for different purposes and also given different colour scheme, and on the body of the bill of entry the purpose for which it will be used is generally mentioned in the non-EDI declaration.

5. The importer clearing the goods for domestic consumption has to file bill of entry in four copies; original and duplicate are meant for customs, third copy for the importer and the fourth copy is meant for the bank for making remittances.

6. In the non-EDI system along with the bill of entry filed by the importer or his representative the following documents are also generally required:

- Signed invoice
- Packing list
- Bill of Lading or Delivery Order/Airway Bill
- GATT declaration form duly filled in
- Importers/CHA's declaration
- License wherever necessary
- Letter of Credit/Bank Draft/wherever necessary
- Insurance document
- Import license
- Industrial License, if required
- Test report in case of chemicals
- Ad hoc exemption order
- DEEC Book/DEPB in original
- Catalogue, Technical write up, Literature in case of machineries, spares or chemicals as may be applicable
- Separately split up value of spares, components machineries
- Certificate of Origin, if preferential rate of duty is claimed
- No Commission declaration

7. While filing the bill of entry and giving various particulars as prescribed therein the correctness of the information given has also to be certified by the importer in the form a declaration at the

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foot of the bill of entry and any misdeclaration/incorrect declaration has legal consequences, and due precautions should be taken by importer while signing these declarations.

8. Under the EDI system, the importer does not submit documents as such for assessment but submits declarations in electronic format containing all the relevant information to the Service Centre. A signed paper copy of the declaration is taken by the service centre operator for non-repudiability of the declaration. A checklist is generated for verification of data by the importer/CHA. After verification, the data is submitted to the system by the Service Centre Operator and system then generates a B/E Number, which is endorsed on the printed checklist and returned to the importer/CHA. No original documents are taken at this stage. Original documents are taken at the time of examination. The importer/CHA also need to sign on the final document after Customs clearance.

9. The first stage for processing a bill of entry is what is termed the noting of the bill of entry, vis-à-vis, the IGM filed by the carrier. In the non-EDI system the importer has to get the bill of entry noted in the concerned unit which checks the consignment sought to be cleared having been manifested in the particular vessel and a bill of entry number is generated and indicated on all copies. After noting the bill of entry gets sent to the appraising section of the Custom House for assessment functions, payment of duty etc. In the EDI system, the Steamer Agents get the manifest filed through EDI or by using the service centre of the Custom House and the noting aspect is checked by the system itself – which also generates bill of entry number.

10. After noting/registration of the Bill of entry, it is forwarded manually or electronically to the concerned Appraising Group in the Custom House dealing with the commodity sought to be cleared. Appraising Wing of the Custom House has a number of Groups dealing with earmarked commodities falling under different Chapter Headings of the Customs Tariff and they take up further scrutiny for assessment, import permissibility etc. angle.

Assessment

11. The basic function of the Assessing Officer in the appraising groups is to determine the duty liability taking due note of any exemptions or benefits claimed under different export promotion schemes. They have also to check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so whether these are forthcoming. Assessment of duty essentially involves proper classification of the goods imported in the customs tariff having due regard to the rules of interpretations, chapter and sections notes etc., and determining the duty liability. It also involves correct determination of value where the goods are assessable on ad valorem basis. The Assessing Officer has to take note of the invoice and other declarations submitted alongwith the bill of entry to support the valuation claim, and adjudge whether the transaction value method and the invoice value claimed for the basis of assessment is acceptable, or value needs to be redetermined having due regard to the provisions of Section 14 and the Valuation Rules issued thereunder, the case law and various instructions on the subject. He also takes note of the contemporaneous values and other information on valuation available with the Custom House.

12. Where the appraising officer is not very clear about the description of the goods from the document or as some doubts about the proper classification, which may be possible only to determine after detailed examination of the nature of the goods or testing of its samples, he may give an examination order in advance of finalisation of assessment including order for drawing of representative sample. This is done generally on the reverse of the original copy of the bill of entry which is presented by the authorized agent of the importer to the appraising staff posted in the Docks/Air Cargo Complexes where the goods are got examined in the presence of the importer's representative.

13. On receipt of the examination report the appraising officers in the group assesses the bill of entry. He indicates the final classification and valuation in the bill of entry indicating separately

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the various duties such as basic, countervailing, anti-dumping, safeguard duties etc., that may be leviable. Thereafter the bill of entry goes to Assistant Commissioner/Deputy Commissioner for confirmation depending upon certain value limits and sent to comptist who calculates the duty amount taking into account the rate of exchange at the relevant date as provided under Section 14 of the Customs Act.

14. After the assessment and calculation of the duty liability the importer's representative has to deposit the duty calculated with the treasury or the nominated banks, whereafter he can go and seek delivery of the goods from the custodians.

15. Where the goods have already been examined for finalization of classification or valuation no further examination/checking by the dock appraising staff is required at the time of giving delivery and the goods can be taken delivery after taking appropriate orders and payment of dues to the custodians, if any.

16. In most cases, the appraising officer assesses the goods on the basis of information and details furnished to the importer in the bill of entry, invoice and other related documents including catalogue, write-up etc. He also determines whether the goods are permissible for import or there are any restriction/prohibition. He may allow payment of duty and delivery of the goods on what is called second check/appraising basis in case there are no restriction/ prohibition. In this method, the duties as determined and calculated are paid in the Custom House and appropriate order is given on the reverse of the duplicate copy of the bill of entry and the importer or his agent after paying the duty submits the goods for examination in the import sheds in the docks etc., to the examining staff. If the goods are found to be as declared and no other discrepancies/misdeclarations, etc., are detected, the importer or his agent can clear the goods after the shed appraiser gives out of charge order.

17. Wherever the importer is not satisfied with the classification, rate of duty or valuation as may be determined by the appraising officer, he can seek an assessment order. An appeal against the assessment order can be made to appropriate appellate authority within the time limits and in the manner prescribed.

EDI Assessment

18. In the EDI system of handling of the documents/declarations for taking import clearances as mentioned earlier the cargo declaration is transferred to the Assessing Officer in the groups electronically.

19. The Assessing Officer processes the cargo declaration on screen with regard to all the parameters as given above for manual process. However in EDI system, all the calculations are done by the system itself. In addition, the system also supplies useful information for calculation of duty.

Example: When a particular exemption notification is accepted, the system itself gives the extent of exemption under that notification and calculates the duty accordingly. Similarly, it automatically applies relevant rate of exchange in force while calculating. Thus no comptist is required in EDI system. If Assessing Officer needs any clarification from the importer, he may raise a query. The query is printed at the service centre and the party replies to the query through the service centre.

20. After assessment, a copy of the assessed bill of entry is printed in the service centre. Under EDI, documents are normally examined at the time of examination of the goods. Final bill of entry is printed after 'out of charge' is given by the Custom Officer.

21. In EDI system, in certain cases, the facility of system appraisal is available. Under this process, the declaration of importer is taken as correct and the system itself calculates duty which is paid by the importer. In such case, no Assessing Officer is involved.

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22. Also, a facility of tele-enquiry is provided in certain major Customs stations through which the status of documents filed through EDI systems could be ascertained through the telephone. If nay query is raised, the same may be got printed through fax in the office of importer/exporter/CHA.

Examination of Goods

23. All imported goods are required to be examined for verification of correctness of description given in the bill of entry. However, a part of the consignment is selected on random selection basis and is examined. In case the importer does not have complete information with him at the time of import, he may request for examination of the goods before assessing the duty liability or, if the Customs Appraiser/Assistant Commissioner feels the goods are required to be examined before assessment, the goods are examined prior to assessment. This is called First Appraisement. The importer has to request for first check examination at the time of filing the bill of entry or at data entry stage. The reason for seeking First Appraisement is also required to be given. On original copy of the bill of entry, the Customs Appraiser records the examination order and returns the bill of entry to the importer/CHA with the direction for examination, who is to take it to the import shed for examination of the goods in the shed. Shed Appraiser/Dock examiner examines the goods as per examination order and records his findings. In case group has called for samples, he forwards sealed samples to the group. The importer is to bring back the said bill of entry to the Assessing Officer for assessing the duty. Appraiser assesses the bill of entry. It is countersigned by Assistant/Deputy Commissioner if the value is more than ₹ 1 lakh.

24. The goods can also be examined subsequent to assessment and payment of duty. This is called Second Appraisement. Most of the consignments are cleared on second appraisement basis. It is to be noted that whole of the consignment is not examined. Only those packages which are selected on random selection basis are examined in the shed.

25. Under the EDI system, the bill of entry, after assessment by the group or first appraisement, as the case may be, need to be presented at the counter for registration for examination in the import shed. A declaration for correctness of entries and genuineness of the original documents needs to be made at this stage. After registration, the B/E is passed on to the shed Appraiser for examination of the goods. Alongwith the B/E, the CHA is to present all the necessary documents. After completing examination of the goods, the Shed Appraiser enters the report in System and transfers first appraisement B/E to the group and gives 'out of charge' in case of already assessed Bs/E. Thereupon, the system prints Bill of Entry and order of clearance (in triplicate). All these copies carry the examination report, order of clearance number and name of Shed Appraiser. The two copies each of B/E and the order are to be returned to the CHA/Importer, after the Appraiser signs them. One copy of the order is attached to the Customs copy of B/E and retained by the Shed Appraiser.

Green Channel Facility

26. Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisement is done as per normal procedure except that there would be no physical examination of the goods. Only marks and number are to be checked in such cases. However, in rare cases, if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered by the senior officers/investigation wing like SIIB.

27. Wherever necessary, for availing duty free assessment or concessional assessment under different schemes and notifications, execution of end use bonds with Bank Guarantee or other surety is required to be furnished. These have to be executed in prescribed forms before the assessing Appraiser.

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Payment of Duty

28. The duty can be paid in the designated banks or through TR-6 challans. Different Custom Houses have authorised different banks for payment of duty. It is necessary to check the name of the bank and the branch before depositing the duty. Bank endorses the payment particulars in challan which is submitted to the Customs.

Amendment of Bill of Entry

29. Whenever mistakes are noticed after submission of documents, amendments to the of entry is carried out with the approval of Deputy/Assistant Commissioner. The request for amendment may be submitted with the supporting documents.

Example: If the amendment of container number is required, a letter from shipping agent is required. Amendment in document may be permitted after the goods have been given out of charge i.e. goods have been cleared on sufficient proof being shown to the Deputy/ Assistant Commissioner.

Prior Entry for Bill of Entry

30. For faster clearance of the goods, provision has been made in section 46 of the Act, to allow filing of bill of entry prior to arrival of goods. This bill of entry is valid if vessel/aircraft carrying the goods arrive within 30 days from the date of presentation of bill of entry.

31. The importer is to file 5 copies of the bill of entry and the fifth copy is called Advance Noting copy. The importer has to declare that the vessel/aircraft is due within 30 days and they have to present the bill of entry for final noting as soon as the IGM is filed. Advance noting is available to all imports except for into bond bill of entry and also during the special period.

Mother Vessel/Feeder Vessel

32. Often in case of goods coming by container ships they are transferred at an intermediate ports (like Ceylon) from mother vessel to smaller vessels called feeder vessels. At the time of filing of advance noting B/E, the importer does not know as to which vessel will finally bring the goods to Indian port. In such cases, the name of mother vessel may be filled in on the basis of the bill of lading. On arrival of the feeder vessel, the bill of entry may be amended to mention names of both mother vessel and feeder vessel Specialised Schemes.

33. The import of goods are made under specialised schemes like DEEC or EOU etc. The importer in such cases is required to execute bonds with the Customs authorities for fulfilment of conditions of respective notifications. If the importer fails to fulfil the conditions, he has to pay the duty leviable on those goods. The amount of bond would be equal to the amount of duty leviable on the imported goods. The bank guarantee is also required along with the bond. However, the amount of bank guarantee depends upon the status of the importer like Super Star Trading House/Trading House etc.

Bill of Entry for Bond/Warehousing

34. A separate form of bill of entry is used for clearance of goods for warehousing. All documents as required to be attached with a Bill of Entry for home consumption are also required to be filed with bill of entry for warehousing. The bill of entry is assessed in the same manner and duty payable is determined. However, since duty is not required to be paid at the time of warehousing of the goods, the purpose of assessing the goods at this stage is to secure the duty in case the goods do not reach the warehouse. The duty is paid at the time of ex-bond clearance of goods for which an ex-bond bill of entry is filed. The rate of duty applicable to imported goods cleared from a warehouse is the rate in-force on the date on which the goods are actually removed from

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the warehouse. (*References:* Bill of Entry (Forms) Regulations, 1976, ATA carnet (Form Bill of Entry and Shipping Bill) Regulations, 1990, Uncleared goods (Bill of entry) regulation, 1972, , CBEC Circulars No. 22/97, dated 4/7/1997, 63/97, dated 21/11/1997).

Notes Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods.

Self Assessment

Fill in the blanks:

1. ..... allows transit without payment of duty.
2. If the goods are cleared through the ..... system no formal Bill of Entry is filed as it is generated in the computer system.
3. The ..... clearing the goods for domestic consumption has to file bill of entry in four copies; original and duplicate are meant for customs.
4. Under the EDI system, the importer does not submit documents as such for assessment but submits declarations in electronic format containing all the relevant information to the ..... Centre.
5. On receipt of the examination report the appraising officers in the group assesses the .....

10.2 Clearance Procedure of Exported Goods

For clearance of export goods, the export or his agents have to undertake the following formalities:

(a) Registration

35. The exporters have to obtain PAN based Business Identification Number (BIN) from the Directorate General of Foreign Trade prior to filing of shipping bill for clearance of export goods. Under the EDI System, PAN based BIN is received by the Customs System from the DGFT online. The exporters are also required to register authorised foreign exchange dealer code (through which export proceeds are expected to be realised) and open a current account in the designated bank for credit of any drawback incentive.

36. Whenever a new Airline, Shipping Line, Steamer Agent, port or airport comes into operation, they are required to be registered into the Customs System. Whenever, electronic processing of shipping bill etc. is held up on account of non-registration of these entities, the same is to be brought to the notice of Assistant/Deputy Commissioner in-charge of EDI System for registering the new entity in the system.

Caution The exporters have to obtain PAN based Business Identification Number (BIN) from the Directorate General of Foreign Trade prior to filing of shipping bill for clearance of export goods

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(b) Registration in the case of export under export promotion schemes

37. All the exporters intending to export under the export promotion scheme need to get their licences/DEEC book etc. registered at the Customs Station. For such registration, original documents are required.

(c) Processing of Shipping Bill-Non-EDI

38. Under manual system, shipping bills or, as the case may be, bills of export are required to be filed in format as prescribed in the Shipping Bill and Bill of Export (Form) regulations, 1991. The bills of export are being used if clearance of export goods is taken at the Land Customs Stations. Different forms of shipping bill/bill of export have been prescribed for export of duty free goods, export of dutiable goods and export under drawback etc.

39. Shipping Bills are required to be filed along with all original documents such as invoice, AR-4, packing list etc. The Assessing Officer in the Export Department checks the value of the goods, classification under Drawback schedule in case of Drawback Shipping Bills, rate of duty/cess where applicable, exportability of goods under EXIM policy and other laws-in-force. The DEEC/ DEPB Shipping bills are processed in the DEEC group. In case of DEEC Shipping bills, the Assessing Officer verifies that the description of the goods declared in the shipping bill and invoice match with the description of the resultant product as given in the DEEC book. If the Assessing Officer has any doubts regarding value, description of goods, he may call for samples of the goods from the docks. He may also call for any other information required by him for processing of shipping bill. He may assess the shipping bill after visual inspection of the sample or may send it for test and pass the shipping bill provisionally.

40. Once, the shipping bill is passed by the Export Department, the exporter or his agent present the goods to the shed appraiser (export) in docks for examination. The shed appraiser may mark the document to a Custom Officer (usually an examiner) for examining the goods. The examination is carried out under the supervision of the shed appraiser (export). If the description and other particulars of the goods are found to be as declared, the shed appraiser gives a 'let export' order, after which the exporter may contact the preventive superintendent for supervising the loading of goods on to the vessel.

41. In case the examining staff in the docks finds some discrepancy in the goods, they may mark the shipping bill back to export department/DEEC group with their observations as well as sample of goods, if needed. The export department reconsiders the case and decide whether export can be allowed, or amendment in description, value etc. is required before export and whether any other action is required to be taken under the Customs Act, 1962 for misdeclaration of description of value etc.

(d) Processing of Shipping Bill-EDI

42. Under EDI System, declarations in prescribed format are to be filed through the Service Centers of Customs. A checklist is generated for verification of data by the exporter/CHA. After verification, the data is submitted to the System by the Service Center operator and the System generates a Shipping Bill Number, which is endorsed on the printed checklist and returned to the exporter/CHA. For export items which are subject to export cess, the TR-6 challans for cess is printed and given by the Service Center to the exporter/CHA immediately after submission of shipping bill. The cess can be paid on the strength of the challan at the designated bank. No copy of shipping bill is made available to exporter/CHA at this stage.

Notes


Task

Discuss about Processing of Shipping bill.

(e) Octroi procedure, Quota Allocation and Other certification for Export Goods

43. The quota allocation label is required to be pasted on the export invoice. The allocation number of AEPC is to be entered in the system at the time of shipping bill entry. The quota certification of export invoice needs to be submitted to Customs alongwith other original documents at the time of examination of the export cargo. For determining the validity date of the quota, the relevant date needs to be the date on which the full consignment is presented to the Customs for examination and duly recorded in the Computer System. In EDI System at Delhi Air cargo, the quota information is automatically verified from the AEPC/TEXPROCIL system.

44. Since the shipping bill is generated only after the 'let export order' is given by Customs, the exporter may make use of export invoice or such other document as required by the Octroi authorities for the purpose of Octroi exemption.

(f) Arrival of Goods at Docks

45. The goods brought for the purpose of examination and subsequent 'let export' is allowed entry to the Dock on the strength of the checklist and other declarations filed by the exporter in the Service Center. The Port authorities have to endorse the quantity of goods actually received on the reverse of the Check List.

(g) System Appraisal of Shipping Bills

46. In many cases the Shipping Bill is processed by the system on the basis of declarations made by the exporters without any human intervention. In other cases where the Shipping Bill is processed on screen by the Customs Officer, he may call for the samples, if required for confirming the declared value or for checking classification under the Drawback Schedule. He may also give any special instructions for examination of goods, if felt necessary.

(h) Status of Shipping Bill

47. The exporter/CHA can check up with the query counter at the Service Center whether the Shipping Bill submitted by them in the system has been cleared or not, before the goods are brought into the Docks for examination and export. In case any query is raised, the same is required to be replied through the service center or in case of CHAs having EDI connectivity through their respective terminals. The Customs Officer may pass the Shipping Bill after all the queries have been satisfactorily replied to.

(i) Customs Examination of Export Cargo

48. After the receipt of the goods in the dock, the exporter/CHA may contact the Customs Officer designated for the purpose present the check list with the endorsement of Port Authority and other declarations as aforesaid along with all original documents such as, Invoice and Packing list, AR-4, etc. Customs Officer may verify the quantity of the goods actually received and enter into the system and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Dock Appraiser of the Dock who many assign a Customs Officer for the examination and intimate the officers' name and the packages to be examined, if any, on the check list and return it to the exporter or his agent.

Notes

49. The Customs Officer may inspect/examine the shipment along with the Dock Appraiser. The Customs Officer enters the examination report in the system. He then marks the Electronic Bill along with all original documents and checklist to the Dock Appraiser. If the Dock Appraiser is satisfied that the particulars entered in the system conform to the description given in the original documents and as seen in the physical examination, he may proceed to allow "let export" for the shipment and inform the exporter or his agent.

(j) Variation Between the Declaration & Physical Examination

50. The check list and the declaration along with all original documents is retained by the Appraiser concerned. In case of any variation between the declaration in the Shipping Bill and physical documents/examination report, the Appraiser may mark the Electronic Shipping Bill to the Assistant Commissioner/Deputy Commissioner of Customs (Exports). He may also forward the physical documents to Assistant Commissioner/Deputy Commissioner of Customs (Exports) and instruct the exporter or his agent to meet the Assistant Commissioner/Deputy Commissioner of Customs (Exports) for settlement of dispute. In case the exporter agrees with the views of the Department, the Shipping Bill needs to be processed accordingly. Where, however, the exporter disputes the view of the Department principles of natural justice is required to be followed before finalization of the issue.

(k) Stuffing/ Loading of Goods in Containers

51. The exporter or his agent should hand over the exporter copy of the shipping bill duly signed by the Appraiser permitting "Let Export" to the steamer agent who may then approach the proper officer (Preventive Officer) for allowing the shipment. In case of container cargo the stuffing of container at Dock is dome under Preventive Supervision. Loading of both containerized and bulk cargo is done under Preventive Supervision. The Customs Preventive Superintendent (Docks) may enter the particulars of packages actually stuffed in to the container, the bottle seal number particulars of loading of cargo container on board into the system and endorse these details on the exporter copy of the shipping bill presented to him by the steamer agent. If there is a difference in the quantity/number of packages stuffed in the containers/goods loaded on vessel the Superintendent (Docks) may put a remark on the shipping bill in the system and that shipping bill requires amendment or changed quantity. Such shipping bill also may not be taken up for the purpose of sanction of Drawback/DEEC logging, till the shipping bill is suitably amended for the changed quantity. The Customs Preventive Officer supervising the loading of container and general cargo in to the vessel may give "Shipped on Board" endorsement on the exporters copy of the shipping bill.

Did u know? The exporter or his agent should hand over the exporter copy of the shipping bill duly signed by the Appraiser permitting "Let Export" to the steamer agent who may then approach the proper officer (Preventive Officer) for allowing the shipment. In case of container cargo the stuffing of container at Dock is dome under Preventive Supervision.

Self Assessment

State whether True or False:

6. All imported goods are required to be examined for verification of correctness of description given in the bill of entry.
7. The goods can also be examined subsequent to assessment and payment of duty.

Notes

8. Some major importers have been given the blue channel clearance facility.
9. The import of goods are made under specialized schemes like DEEC or EOU.
10. A separate form of bill of products is used for clearance of goods for warehousing.

(l) Drawal of Samples

52. Where the Appraiser Dock (export) orders for samples to be drawn and tested, the Customs Officer may proceed to draw two samples from the consignment and enter the particulars thereof along with details of the testing agency in the ICES/E system. There is no separate register for recording dates of samples drawn. Three copies of the test memo are prepared by the Customs Officer and are signed by the Customs Officer and Appraising Officer on behalf of Customs and the exporter or his agent. The disposals of the three copies of the test memo are as follows:

- ***Original*** – to be sent along with the sample to the test agency.
- ***Duplicate*** – Customs copy to be retained with the 2nd sample.
- ***Triplicate*** – Exporter's copy.

53. The Assistant Commissioner/Deputy Commissioner if he considers necessary, may also order for sample to be drawn for purpose other than testing such as visual inspection and verification of description, market value inquiry, etc.

(m) Amendments

54. Any correction/amendments in the checklist generated after filing of declaration can be made at the service center, provided, the documents have not yet been submitted in the system and the shipping bill number has not been generated. Where corrections are required to be made after the generation of the shipping bill No. or after the goods have been brought into the Export Dock, amendments is carried out in the following manners:

- If the goods have not yet been allowed "let export" amendments may be permitted by the Assistant Commissioner (Exports).
- Where the "Let Export" order has already been given, amendments may be permitted only by the Additional/Joint Commissioner, Custom House, in charge of export section.

55. In both the cases, after the permission for amendments has been granted, the Assistant Commissioner/Deputy Commissioner (Export) may approve the amendments on the system on behalf of the Additional/Joint Commissioner. Where the print out of the Shipping Bill has already been generated, the exporter may first surrender all copies of the shipping bill to the Dock Appraiser for cancellation before amendment is approved on the system.

(n) Export of Goods Under Claim for Drawback

56. After actual export of the goods, the Drawback claim is processed through EDI system by the officers of Drawback Branch on first come first served basis. There is no need for filing separate drawback claims. The status of the shipping bills and sanction of DBK claim can be ascertained from the query counter set up at the service center. If any query has been raised or deficiency noticed, the same is shown on the terminal. A print out of the query/deficiency may be obtained by the authorized person of the exporter from the service center. The exporters are required to

Notes

reply to such queries through the service center. The claim will come in queue of the EDI system only after reply to queries/deficiencies are entered by the Service Center.

57. All the claims sanctioned on a particular day are enumerated in a scroll and transferred to the Bank through the system. The bank credits the drawback amount in the respective accounts of the exporters. Bank may send a fortnightly statement to the exporters of such credits made in their accounts.

58. The Steamer Agent/Shipping Line may transfer electronically the EGM to the Customs EDI system so that the physical export of the goods is confirmed, to enable the Customs to sanction the drawback claims.

(o) Generation of Shipping Bills

59. After the "let export" order is given on the system by the Appraiser, the Shipping Bill is generated by the system in two copies i.e., one Customs copy, one exporter's copy (E.P. copy is generated after submission of EGM). After obtaining the print out the appraiser obtains the signatures of the Customs Officer on the examination report and the representative of the CHA on both copies of the shipping bill and examination report. The Appraiser thereafter signs and stamps both the copies of the shipping bill at the specified place.

60. The Appraiser also signs and stamps the original and duplicate copy of SDF. Customs copy of shipping bill and original copy of the SDF is retained along with the original declarations by the Appraiser and forwarded to Export Department of the Custom House. He may return the exporter copy and the second copy of the SDF to the exporter or his agent.

61. As regards the AEPC quota and other certifications, these are retained along with the shipping bill in the dock after the shipping bill is generated by the system. At the time of examination, apart from checking that the goods are covered by the quota certifications, the details of the quota entered into the system needs to be checked.

(p) Export General Manifest

62. All the shipping lines/agents need to furnish the Export General Manifests, Shipping Bill wise, to the Customs electronically within 7 days from the date of sailing of the vessel.

63. Apart from lodging the EGM electronically the shipping lines need to continue to file manual EGMs along with the exporter copy of the shipping bills as per the present practice in the export department. The manual EGMs need to be entered in the register at the Export Department and the Shipping lines may obtain acknowledgements indicating the date and time at which the EGMs were received by the Export Department.

64. The above is the general procedure for export under EDI Systems. However special procedures exist for specified schemes, details of which may be obtained from the Public Notice/Standing Orders issued by the respective Commissionerates.

Self Assessment

Fill in the blanks:

11. ..... Bills are required to be filed along with all original documents such as invoice.
12. The ..... Officer may inspect/examine the shipment along with the Dock Appraiser.

Notes

13. The ..... also signs and stamps the original & duplicate copy of SDF.

14. Customs copy of shipping bill and original copy of the ..... is retained along with the original declarations by the Appraiser and forwarded to Export Department of the Custom House.

15. .....endorses the payment particulars in challan which is submitted to the Customs.

Caselet

Valli Inc. v. CCEx., Tiruchirappali 2009 (14) S.T.R. 528 (Tri. - Chennai)

The appellant, Valli, entered into an agreement with ITC. As per the agreement, the appellant has to maintain a showroom, display the products of ITC and remit the proceeds promptly to ITC. Revenue contended that Valli had rendered clearing and forwarding agent's service to ITC.

The Tribunal held that the appellant did not satisfy the definition of a consignment agent as clarified in the C.B.E. & C. Circular No. 59/8/2003-S.T., dated 20-6-2003. The Board had clarified that a consignment agent receives and dispatches goods on behalf of the principal. However, in the instant case, Valli received the goods and sold them on its own as a dealer. The appellant was not an agent of ITC, but an independent dealer in ITC's branded goods. Merely receiving the goods in order to sell them from its own premises will not amount to clearing of the goods as a clearing and forwarding agent. In the instant case, the appellants received goods from ITC and disposed them on sale from its own outlet. The appellant was not engaged in clearing and forwarding of the branded goods of ITC.

The Tribunal affirmed the contention of Revenue that three agents are normally involved when clearing and forwarding agent's service is rendered, i.e., the principal, the ultimate recipient of goods in business and the clearing and forwarding agent that forwards the goods after taking delivery to dealers. In the given case, the dealer received the goods and sold them in retail to consumers. He had Sales Tax registration and issued bills for sales. No third agency was involved.

In the light of aforesaid discussion, it held that Valli could not be regarded as a clearing and forwarding agent.

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

10.3 Summary

- In this chapter we have discussed about Goods imported in a vessel/aircraft attract customs duty and unless these are not meant for customs clearance at the port/airport of arrival by particular vessel/aircraft and are intended for transit by the same vessel/aircraft or transshipment to another customs station or to any place outside India.
- Detailed customs clearance formalities of the landed goods have to be followed by the importers.
- In regard to the transit goods, so long as these are mentioned in import report/IGM for transit to any place outside India.
- Customs allows transit without payment of duty.

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- Similarly for goods brought in by particular vessel aircraft for transshipment to another customs station detailed customs clearance formalities at the port/airport of landing are not prescribed and simple transshipment procedure has to be followed by the carrier and the concerned agencies.
- The customs clearance formalities have to be complied with by the importer after arrival of the goods at the other customs station.
- In EDI system, in certain cases, the facility of system appraisal is available.
- In case the examining staff in the docks finds some discrepancy in the goods, they may mark the shipping bill back to export department/DEEC group with their observations as well as sample of goods

10.4 Keywords

AEPC: The allocation number of AEPC is to be entered in the system at the time of shipping bill entry. The quota certification of export invoice needs to be submitted to Customs alongwith other original documents at the time of examination of the export cargo.

Shipping Bills: Shipping Bills are required to be filed along with all original documents such as invoice, AR-4, packing list etc. The Assessing Officer in the Export Department checks the value of the goods, classification under Drawback schedule in case of Drawback Shipping Bills.

The Bill of entry: where filed, is to be submitted in a set, different copies meant for different purposes and also given different colour scheme, and on the body of the bill of entry the purpose for which it will be used is generally mentioned in the non-EDI declaration.

10.5 Review Questions

1. Describe the Clearance Procedure of Imported Goods.
2. Explain about the Import Procedure.
3. Explain about the clearance procedure of Exported Goods.
4. Discuss about the Processing of Shipping Bill.
5. Explain about Export of Goods under Claim of Drawback.
6. Describe generation of Shipping Bills.
7. Explain about Customs Examination of Export Cargo.
8. Discuss about system Appraisal of Shipping Bills.
9. Describe about Arrival of Goods at Docks.

Answers: Self Assessment

1.	Custom	2.	EDI
3.	Importer	4.	Service
5.	Bill of Entry	6.	True
7.	True	8.	False

Notes

9. True
10. False
11. Shipping
12. Customs
13. Appraiser
14. SDF
15. Bank

10.6 Further Readings

Books

Ahuja, Dr. Girish and Gupta, Dr. Ravi, *Direct Taxes Law & Practice including Tax Planning,* 18th Edition 2008-09, Bharat Law House Pvt. Ltd.

Chanchal Kr Nag, *Direct & Indirect Tax Laws & Practice*, NCB Agency

Singhania, Dr. Vinod K. and Singhania, Dr. Kapil, *Direct Taxes Law & Practice with Special Reference to Tax Planning,* 41st, Edition 2009-10, Taxman's.

VS Datey, *Indirect Tax Laws*, CHH India

Yogendra Bangar Vandana, *Direct & Indirect Taxes Planning & Management*, Aadhya Prakashan

Online links

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Unit 11: Warehousing and Duty Drawback

Notes

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about Warehousing
- Understand about Duty Drawback
- Know about Registration of Warehouses
- Describe about Private Warehouse

Introduction

Warehousing provisions to apply only to goods specially notified in the Official Gazette. - The provisions of this Chapter shall apply only to excisable goods to which they are extended by the Central Government by notification in the Official Gazette, and the provisions relating to the removal from one warehouse to another shall not apply to such goods:

Provided that the Central Government may by notification in the Official Gazette direct that the provisions relating to the removal from one warehouse to another shall extend to such goods subject to such limitations and conditions as may be specified therein.

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11.1 Appointment and Registration of Warehouses

(1) The Commissioner shall, by order in writing, from time to time, approve and appoint public warehouses and may in like manner register private warehouses for the storage of excisable goods on which duty has not been paid, and may direct in what parts or divisions of such warehouses, and in what manner and on what terms, such goods may be stored and how and in what manner such warehouses, or parts or divisions thereof, shall be secured by locks, fastenings or otherwise. The Commissioner may revoke his approval of a warehouse; and upon such revocation all goods warehoused therein must be removed as the Commissioner directs, and no abatement of duty or allowance shall be made in respect of any such goods for deficiency of quantity, strength or quality after notice of the revocation has been given to the proprietor or occupier of the warehouse.

(2) If the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by a general or special order, declare any premises or group of premises to be a refinery, either permanently or for a specified period, and on such declaration, such refinery shall be deemed to be a warehouse appointed or registered under sub-rule (1) and the provisions of this Chapter shall apply in relation to the goods processed or manufactured in such refinery as they apply in relation to the goods stored in a warehouse appointed or registered under sub-rule (1).

11.2 Receipt of Goods at Warehouse

All goods brought for warehousing shall be produced to the officer-in-charge of the warehouse together with the relative transport permit or certificate and shall be weighed, measured or gauged in his presence, and assessed to duty prior to entry into the warehouse; and the quantity and description of the goods, the marks and numbers of the packages, the number and date of the permit or certificate and the amount of duty leviable thereon shall be noted in the warehouse register. All goods received into a warehouse shall be kept separate from other goods until the receipt account has been taken by the officer.

Owner's power to deal with warehoused goods

With the sanction of the proper officer and in accordance with such instructions as the Commissioner may, from time to time, issue in writing in this behalf, any owner of goods lodged in a warehouse may sort, separate, pack and repack the goods and make such alterations therein as may be necessary for the preservation, sale or disposal thereof. After the goods have been so separated and repacked in such manner as may be ordered by the Commissioner, the proper officer may, at the owner's request, cause or permit any refuse or damaged goods remaining after such repacking to be destroyed subject to such limitations as the Commissioner may from time to time impose, and may remit the duty assessed thereon.

Notes If the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by a general or special order.

11.3 Special provisions with respect to goods processed and manufactured in refineries

With the sanction of the proper officer and in accordance with such instructions as the Commissioner may, from time to time, issue in writing in this behalf, the owner of the goods

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processed or manufactured in a refinery, declared under sub-rule (2) of rule 140, may blend or treat or make such alterations or conduct such further manufacturing processes in the aforesaid goods in such manner and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify.

Goods not to be taken out of warehouse except as provided by these rules.

No goods shall be removed from any warehouse except as on payment of duty or, where so permitted by the Central Government by notification in this behalf, for removal to another warehouse or for export, from India and on presentation of the written application prescribed in rule 158 or in rule 185, as the case may be.

Owner of goods may take samples. Provided that, subject to such conditions and limitations as the Commissioner may impose the owner may remove samples sufficient to enable him to conduct his business. Such samples shall be duly ticketed and certified by an officer and shall be entered in the warehouse register and included in the total quantity of such goods liable to duty when an account of the stock in the warehouse is taken as prescribed in rule 223A and duty shall be levied thereon when such account is taken and not at the time of removal of the samples from the warehouse.

Period for which goods may remain warehoused

Any goods warehoused may be left in the warehouse in which they are deposited, or in any warehouse to which such goods may, in manner hereinafter provided, be removed, till the expiry of three years, from the date on which such goods were first warehoused. The owner of any such goods remaining in a warehouse on the expiry of such period shall clear the same either for home consumption after payment of duty in the manner provided in rule 157, or for exportation in bond in the manner laid down in rule 13 or rule 14:

Provided that in the case of tobacco this rule shall have effect as if for the words "three years" the words "two years" were substituted:

Provided further that if the goods (other than tobacco) have not deteriorated and the Commissioner on sufficient cause being shown is satisfied about the condition of the goods and the genuineness of the reasons advanced for claiming extension, he may —

(a) permit such goods to remain in any warehouse for a further period not exceeding one year, in extension of the period of three years referred to in this rule;

(b) permit such goods to remain warehoused in such warehouse for a further period not exceeding one year in addition to the extension granted under clause (a) of this proviso:

Provided also that in the case of tobacco if the goods have not deteriorated and on sufficient cause being shown, the Commissioner may, if he is satisfied about the condition of the goods and the genuineness of the reasons advanced for claiming extension,—

(a) permit such goods to remain in any warehouse for a further period not exceeding one year, beyond the period of two years referred to in this rule;

(b) in the case of flue-cured tobacco, permit such goods to remain warehoused in such warehouse for such further period as may be specified by him in addition to the extension granted under clause (a) of this proviso:

Provided further that if the said period of three years or two years, as the case may be, or such extended period as may have been allowed under the aforesaid provisos to this rule expires at any time during which the Central Government have imposed quantitative restrictions on the clearance of excisable goods from a warehouse for home consumption, the restrictions on removal

Notes

of goods laid down in sub-rule (3) of rule 224 shall apply to the clearance of such goods in the same manner and to the same extent as they apply to all other goods in the warehouse, and any quantity of such goods remaining uncleared at the end of the period of restriction shall be cleared on the day immediately following the date of expiry of such period and where any such goods are not likely to deteriorate the Central Board of Excise and Customs may, on application, permit the goods to remain for such extended period as it may specify if it is satisfied that the period allowed by the Commissioner under the aforesaid provisions is inadequate under the circumstances of the case.

Goods in private warehouse to be cleared on cancellation of Registration Certificate

Notwithstanding anything contained in rule 145, when the Registration Certificate for any private warehouse is cancelled, and the registration authority gives notice of such cancellation to the registered person of such warehouse, the registered person shall in manner hereinafter provided and within fourteen days from the date on which such notice is given or such extended time as the registration authority may in his discretion allow, remove such goods to a public warehouse, or sell them to the registered person of another private warehouse, or clear them for home consumption after payment of duty in the manner provided in rule 157, or export them in bond as provided in rule 13 or rule 14.

Mode of calculating quantity of goods warehoused

The quantity of goods contained in any package warehoused may be calculated by weight, measure, gauge, or in such other manner as the Central Board of Excise and Customs may direct.

Power to remit duty on warehoused goods lost or destroyed

If any goods lodged in a warehouse are lost or destroyed by unavoidable accident, the Commissioner may in his discretion remit the duty due thereon:

Provided that if any goods be so lost or destroyed in a private warehouse, notice thereof shall be given to the officer-in-charge of the warehouse within forty-eight hours after the discovery of such loss or destruction.

Responsibility of warehouse-keeper

The warehouse-keeper in respect of goods lodged in a public warehouse, and the registered person of the warehouse, in respect of goods lodged in a private warehouse, shall be responsible for their due reception thereon and delivery there from and for their safe custody while deposited therein, according to the quantity or weight reported by the officer who has assessed the goods, allowance being made, if necessary, for wastage and losses as provided in rule 223A.

Compensation for loss or damage. - ***Provided*** that no owner of goods shall be entitled to claim from the Commissioner, or from any keeper of a public warehouse, compensation for any loss or damage occurring to the goods while they are being passed into or out of such warehouse, unless it is proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer.

Destruction of unusable material, waste and other refuse. - Every owner of the goods stored in a warehouse who wishes to claim immunity from duty in respect of any goods unfit for consumption or manufacture shall destroy them in the presence of an officer or shall show to the satisfaction of the officer that they are being applied to some purpose which render them eligible for remission of duty.

Notes

Excisable goods may be lodged in Customs bonded warehouse under certain conditions. - (1) Subject to such terms, conditions and limitations as the Central Board of Excise and Customs may, from time to time, make in this behalf, excisable goods of any description may be warehoused in any Customs warehouse approved by the Commissioner for the purpose.

(2) All the powers, provisions and penalties, contained in or imposed by these rules, as to warehousing, custody and delivery out of warehouse of excisable goods, and as to any deficiencies therein or allowance thereon, shall, where applicable, be observed, applied, enforced and put into execution with reference to such goods warehoused in Customs warehouses.

Goods may be removed from one warehouse to another. (1) Subject to the limitation imposed by rule 139, any goods warehoused under these rules may at any time within the period during which such goods can be left, or are permitted to remain in a warehouse under rule 145, may be removed from one warehouse to another subject to the observance of the procedure hereinafter prescribed.

(2) For the purpose of such procedure—

(a) "consignor" shall be deemed to be —

(i) if the goods are to be removed from a public warehouse, the owner of such goods;

(ii) if the goods are to be removed from a private warehouse, the Registered person of such warehouse;

(b) "consignee" shall be deemed to be—

(i) if the goods are to be removed to a public warehouse, the owner of such goods;

(ii) if the goods are to be removed to a private warehouse, the Registered person of such warehouse.

Certificate regarding consignee to be produced

Along with his application for the removal of the goods, the consignor shall produce before the proper officer a certificate in the proper Form stating the particulars of the Central Excise licenses held by the consignee.

A. Procedure in respect of goods removed from one warehouse to another

(1) The application for removal of goods from one warehouse to another shall be presented by the consignor in triplicate, and in the proper Form, to the officer-in-charge of the warehouse of removal, at least 24 hours before the intended removal, together with such other information as the Commissioner may by general or special order require.

(2) Such officer shall then take account of the goods, and after completing the removal certificate on all the copies of the application, shall send the duplicate to the officer-in-charge of the warehouse of destination, and hand over the triplicate to the consignor for despatch to the consignee. He shall also deliver to the consignor a transport permit in the proper Form.

(3) On arrival of the goods at the warehouse of destination, the consignee shall present them together with the triplicate application and the transport permit to the officer-in-charge of such warehouse, who shall, after taking account of the goods, complete the rewarehousing certificate on the duplicate and the triplicate application, return the duplicate to the officer-in-charge of the warehouse of removal, and triplicate to the consignee for despatch to the consignor.

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(4) The consignor shall present the triplicate application duly endorsed with such certificate to the officer-in-charge of the warehouse of removal within ninety days of the date of issue of the transport permit under sub-rule (2).

Failure to present triplicate application (1) If the consignor fails to present the triplicate application to the officer-in-charge of the warehouse of removal in the manner laid down in sub-rule (4) of rule 156A, and the duplicate application endorsed with the rewarehousing certificate has also not been received by such officer from the officer-in-charge of the warehouse of destination, the consignor shall, upon a written demand being made by the former officer, pay the duty leviable on such goods within ten days of the notice of demand and if the duty is not so paid he shall not be permitted to make fresh removals of any warehoused goods from one warehouse to another until the duty is paid or until the triplicate application is so presented or the duplicate application is so received.

(2) Where such duty has been paid, it shall be refunded to the consignor either on his presentation of the triplicate application to or on the receipt of the duplicate application by the officer at the warehouse of removal, duly endorsed, as provided in sub-rule (3) of rule 156A, with a certificate by the officer-in-charge of the warehouse of destination that the goods covered by the application have been satisfactorily rewarehoused.

Clearance of goods for home consumption. Any owner of goods warehoused may, at any time within the period during which such goods can be left or are permitted to remain in a warehouse under rule 145 clear the goods for home consumption by paying—

(a) the duty thereon assessed prior to entry or reassessed under rule 159; and

(b) all rent, penalties, interest and other charges payable in respect of such goods.

The goods shall then be assessed and cleared in the manner described in rule 52.

Form of application for clearance of goods. - Applications to clear goods from a warehouse on payment of duty or for transfer to another warehouse or for export from India shall be in the proper Form, or in such modified reproduction of such Form as the Commissioner may in any particular case allow, and shall be delivered to the officer-in-charge of the warehouse at least twenty-four hours before it is intended to remove the goods.

Reassessment. (1) If, after any goods are entered for warehousing—

(a) any alteration is made in the rate of duty leviable thereon, or in the tariff valuation (if any) applicable thereto, or

(b) the goods are sorted, separated, crushed, or subjected to any other process which causes the goods or any part thereof to become liable to duty at a rate other than that at which they were assessed on entry into the warehouse, the goods shall be reassessed in accordance with such alteration.

(2) Where the rate of duty leviable upon any goods is determined by the use to which the goods are to be put after clearance from the warehouse, the goods shall be reassessed to duty at such rate if such rate be different from the rate at which goods were assessed to duty when they were received in the warehouse.

If goods are improperly removed from warehouse or allowed to remain beyond time fixed, or lost, or destroyed, Commissioner may demand duty, etc. - If any goods are removed from the warehouse without permission, or if any goods are not removed from the warehouse within the period during which such goods can be left or are permitted to remain in a warehouse under rule 145, or if any goods are lost or destroyed otherwise than as provided in rule 143, 147 or 149, or are not accounted for to the satisfaction of the proper officer, that officer may thereupon

Notes

demand and the owner of the goods shall forthwith pay, the full amount of duty chargeable thereon, together with all rent, penalties, interest and other charges payable on account of the goods.

Procedure on failure to pay duty, etc. - (1) If any owner fails to pay any sum demanded under rule 160, the proper officer shall forthwith cause the goods (if any) in the warehouse or, as the case may be, such portion thereof, on account of which the amount is due, to be detained with a view to the recovery of the demand, and if the demand be not discharged within ten days from the date of such detention due notice thereof being given to the owner (if his address be known) the goods so detained may be sold by public auction duly advertised in the Official Gazette, or in such other manner as the Central Board of Excise and Customs may in any particular case direct.

(2) The sum demanded under rule 160 and the expenses (if any) incurred on account of the public auction of the goods shall be defrayed from the proceeds of the sale and the surplus proceeds (if any) shall be paid to the owner of the goods:

Provided that application for the same shall be made within one year from the sale, or that sufficient cause be shown for not making the application within that period.

Noting removal of goods. - When any goods are taken out of any warehouse, the proper officer shall cause the fact to be noted in the warehouse register.

Every note so made shall specify the quantity and description of the goods, the marks and numbers of the packages, the name of the person removing them, the number and date of the application for clearance and the amount of duty paid (if any).

Warrant to be given when goods are lodged in a public warehouse. - The owner of goods, which are to be deposited in a public warehouse shall, after they have been duly assessed to duty as provided in rule 141, deliver the goods to the keeper of the warehouse and the latter shall, after comparing the packages with the description entered in the warehouse register, grant him a warrant in the proper Form.

Owner of goods to pay such dues when demanded. - The owner of goods, who has deposited the goods in a public warehouse, shall,—

(a) pay, on demand, all duties, rent and charges claimable on account of such goods under the Act or these rules, together with interest on the same from the date of demand, at such rate not exceeding six per cent per annum as may for the time being be fixed by the Central Board of Excise and Customs;

(b) discharge all penalties imposed for contravention of the provisions of the Act or these rules in respect of such goods.

Access of owner to warehoused goods.- (1) Any owner of goods lodged in a public warehouse shall, at any time within the hours of business, have access to his goods in the presence of an officer and an officer shall, upon application for the purpose being made in writing to the proper officer be deputed to accompany such owner.

(2) When an officer is specially employed to accompany such owner a sum sufficient to meet the expense thereby incurred shall, if the Commissioner so require, be paid by such owner to the proper officer, and such sum shall, if the Commissioner so directs, be paid in advance.

Keeper of public warehouse solely responsible for safety of goods stored therein.- The keeper of a public warehouse shall be alone responsible to the proprietor of any goods warehoused therein for the safety of the goods.

Notes

Did u know? When any goods are taken out of any warehouse, the proper officer shall cause the fact to be noted in the warehouse register.

Self Assessment

Fill in the blanks:

1. ..... provisions to apply only to goods specially notified in the Official Gazette.
2. The ..... shall, by order in writing, from time to time, approve and appoint public warehouses and may in like manner register private warehouses for the storage of excisable goods.
3. No .....shall be removed from any warehouse except as on payment of duty.
4. Any goods .....may be left in the warehouse in which they are deposited.
5. The warehouse-keeper in respect of goods lodged in a ..... warehouse, and the registered person of the warehouse.

11.4 Payment of Rent and Warehouse Dues

(1) The owner of goods lodged in a public warehouse shall pay monthly, on receiving a bill or written demand for the same from the proper officer, rent and warehouse dues at such rates as the Commissioner may fix.

(2) A table of rates of rent and warehouse dues so fixed shall be placed in a conspicuous part of the warehouse.

(3) If any bill for rent or warehouse dues presented under this rule is not discharged within ten days from the date of presentation, the proper officer may, in the discharge of such demand, cause to be sold by public auction after due notice in the Official Gazette, or in such other manner as the Central Board of Excise and Customs may in any particular case direct, such sufficient portion of the goods as he may select.

(4) Out of the net proceeds of such sale, the proper officer shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods:

Provided that application for such surplus be made within one year from the date of sale of the goods or that sufficient cause be shown for not making it within such period.

Keeper of public warehouse to keep record of all entries into, operations in, and removals from his warehouse,- The public warehouse-keeper shall maintain proper records of all entries into, operations in, and removals of goods from his warehouse indicating among other particulars, the quantity, value, rate and amount of duty, marks and numbers, as the case may be, in regard to such receipts, manufacture or any other processing as are carried on the goods received including repacking, storage, and delivery of the goods.

Public warehouse to be locked. - Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Commissioner.

Expenses of carriage, packing, etc., to be borne by owner. - The expenses of carriage, packing and storage of such goods on their reception into or removal from a public warehouse shall, if paid

Notes

by the proper officer or the warehouse keeper, be chargeable on the goods and be defrayed by and recoverable from the owner in the manner prescribed in rule 167.

Wholesale dealer in excisable goods may receive such goods into a private warehouse without payment of duty. - Notwithstanding the provisions of rule 40, any wholesale dealer in excisable goods who is also the Registered person of an approved warehouse may receive into such warehouse, goods on which duty has not been paid provided that such goods are covered by a valid permit in the proper Form granted by an officer, or by a certificate in the proper Form signed by a registered curer, or by such wholesale dealer or by his broker or commission agent, and are duly assessed to duty as provided in rule 141:

Provided further that such wholesale dealer shall not receive into the warehouse any unmanufactured products which do not belong to him, unless he is also the holder of Registration Certificate granted under these rules to act as a broker or commission agent in respect of such products.

Private warehouses to contain only goods belonging to warehouse owner or held by him as a broker or a commission agent and only goods on which duty has not been paid. - A private warehouse shall be used solely for warehousing excisable goods belonging to the Registered person himself, or held by him as a broker or a commission agent; and the Registered person shall not admit to or retain in the warehouse any goods on which duty had been paid:

Provided that, where the goods are held by a broker or commission agent, he shall be deemed to be the owner of such goods for all the purposes of these rules in so far as they relate to warehousing of goods in a private warehouse.

Registered person of private warehouse to keep record of all entries into, operations in, and removals from his warehouse. - Every registered person of a private warehouse shall maintain proper records of all entries into, operations in, and removals of goods from his warehouse indicating among other particular, the quantity, value, rate and amount of duty, marks and numbers, as the case may be, in regard to such receipts, manufacture or any other processing as are carried on the goods received including repacking, storage, and the delivery of the goods.

Caution Private warehouses to contain only goods belonging to warehouse owner or held by him as a broker or a commission agent and only goods on which duty has not been paid.

11.5 Place of Registration of Warehouse

Commissioner of Central Excise will specify the places under his jurisdiction where warehouse can be registered, by issuing Trade Notice. Any person desiring to have warehouse will get himself registered under the provisions of Rule 9 of the said Rules.

Procedure for warehousing of excisable goods removed from a factory or a warehouse

The consignor (i.e. the manufacturer or the registered person of the warehouse) shall prepare an application for removal of goods from a factory or a warehouse to another warehouse in quadruplicate in the specified Form.

The consignor shall also prepare an invoice in the manner specified in Rule 11 of the said Rules in respect of the goods proposed to be removed from his factory or warehouse.

Notes

The consignor shall send the original, duplicate and triplicate application and duplicate invoice along with the goods to the warehouse of destination.

The consignor shall send quadruplicate copy of the application to the Superintendent–in-charge of his factory or warehouse within twenty-four hours of removal of the consignment.

On arrival of the goods at the warehouse of destination, the consignee (i.e. the registered person of the warehouse who receives the excisable goods from the factory or a warehouse) shall, within twenty-four hours of the arrival of goods, verify the same with all the three copies of the application. The consignee shall send the original application to the Superintendent-in-charge of his warehouse, duplicate to the consignor and retain the triplicate for his record.

The Superintendent-in-charge of the consignee shall countersign the application received by him and send it to the Superintendent-in-charge of the consignor.

The consignor shall retain the duplicate application duly endorsed by the consignee for his record.

Self Assessment

Fill in the blanks:

6. All the ....., provisions and penalties, contained in or imposed by these rules, as to warehousing, custody and delivery out of warehouse of excisable goods.
7. The application for removal of goods from one warehouse to another shall be presented by the ..... in triplicate, and in the proper Form.
8. The owner of goods, which are to be deposited in a ..... warehouse shall, after they have been duly assessed to duty as provided in rule 141.
9. A ..... of rates of rent and warehouse dues so fixed shall be placed in a conspicuous part of the warehouse.
10. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the .....

11.6 Failure to receive a Warehousing Certificate

The consignor should receive the duplicate copy of the warehousing certificate, duly endorsed by the consignee, within ninety days of the removal of the goods. If the warehousing certificate is not received within ninety days of the removal or such extended period as the Commissioner may allow, the consignor shall pay appropriate duty leviable on such goods.

If the Superintendent-in-charge of the consignor of the excisable goods does not receive the original warehousing certificate, duly endorsed by the consignee and countersigned by the Superintendent-in-charge of the consignee, within ninety days of the removal of the goods, weekly reminders must be issued by him to the Superintendent-in-charge of the consignee. If despite such reminders the original warehousing certificate is not received within a further period of sixty days of the expiry of the ninety days period, the Superintendent-in-charge of the consignor shall inform his Assistant Commissioner/Deputy Commissioner who shall either secure a satisfactory proof of the goods having been duly received by the consignee or ensure that the duty of excise due on the goods not received at destination is recovered from the consignor.

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Accountal of goods in a Warehouse

The registered person of the warehouse shall maintain a register showing all entries in to and removals of the goods from his warehouse and shall indicate the value, quantity of the goods removed, their marks and numbers as well as the rate of duty and amount of duty involved. The processes carried out on the warehoused goods, if any, shall also be recorded.

The first and last pages of the register should be pre-authenticated by the owner of the warehouse or his authorised agent.

Responsibility of the Registered Person

The registered person of the warehouse shall be responsible for due reception of the goods in to the warehouse and delivery therefrom including their safety during the period they are lodged in the warehouse.

The registered person shall be responsible for the payment of penalty or interest leviable in respect of the goods which are warehoused as per the provisions of the Central Excise Act, 1944 and the rules made thereunder.

Revoked or suspended Registration of a Warehouse

If the registration of a warehouse is revoked or suspended, the excisable goods lodged therein shall either be cleared for home consumption on payment of duty or shall be removed to another warehouse without payment of duty.

Warehouse to Store Goods belonging to the Registered Person

A warehouse shall be used solely for storing excisable goods belonging to the registered person of the warehouse alone. He shall not admit or retain in the warehouse any excisable goods on which duty has been paid.

The Commissioner of Central Excise having jurisdiction over the warehouse may permit storage of excisable goods along with the excisable goods belonging to another manufacturer.

The Commissioner of Central Excise having jurisdiction over the warehouse may permit the registered person of the warehouse to store duty paid excisable goods or duty paid imported goods along with non-duty paid excisable goods in the warehouse.

Registered person right to deal with the warehoused goods

The owner of the warehouse may sort, separate, pack or repack the goods and make such alterations therein as may be necessary for the preservation, sale or disposal thereof.

Task Describe about accountal goods in warehouse.

11.7 Duty Drawback

Drawback is the refund of Customs duties, certain Internal Revenue taxes, and certain fees that have been paid to U.S. Customs at the time of importation. The refund is administered after the exportation or destruction of either the imported/substituted product or article that has been manufactured from the imported/substituted product. Drawback is recognized as the most

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complex commercial program the U.S. Customs Service administers because it involves every facet of Customs business, including both exports and imports.

There are several kinds of drawbacks, the main ones being:

Unused Merchandise

Imported merchandise is unused and exported or destroyed under Customs supervision. 99 percent of the duties, taxes or fees paid on the merchandise may be recovered as drawback.

Substitution Unused Merchandise

Merchandise that is commercially interchangeable with imported merchandise upon which duties and taxes were paid and that has not been used, is exported or destroyed under Customs supervision. 99 percent of the duties, taxes or fees paid on the merchandise may be recovered as drawback.

Rejected Merchandise

Merchandise is exported or destroyed because it does not conform with samples or specifications, or has been shipped without the consent of the consignee, or has been determined to be defective as of the time of importation. 99 percent of the duties which were paid on the merchandise may be recovered as drawback.

Direct Identification Manufacturing

If articles manufactured in the United States with the use of imported merchandise are subsequently exported or destroyed then drawback not exceeding 99 percent of the duties paid on the imported merchandise may be recoverable.

Substitution Manufacturing

Both imported merchandise and any other merchandise of the same kind and quality are used to manufacture articles, some of which are exported or destroyed before use, then drawback not exceeding 99 percent of the duty which was paid on the imported merchandise may be payable on the exported/destroyed articles.

11.8 How to Obtain Drawback

- The guidelines for completing a drawback claim are provided in the Customs Regulations, more specifically 19 CFR 191 Subpart E. We can help you with the application process, prepare inventory record and file the claim.
- The locations for filing a drawback claim are Boston, Chicago, Houston, Los Angeles, Miami, New Orleans, Newark, and San Francisco.
- A drawback entry and all documents necessary to complete a claim generally must be filed within three years after exportation or destruction of the articles.

Export Procedure

Duty Drawback – for Past Exports. Waiver form requirement of prior notice of intent to export must be supported by a direct inventory identification method.

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The conditions for identification by accounting method are:

- The lots of merchandise must be fungible
- Inventory records must establish that the lots so identified as being received into and withdrawn from the same inventory are being used in the ordinary course of business.
- All receipts into and all withdrawals from the inventory must be recorded in the accounting record.
- Subject to verification by Customs.
- It must be used without variation for a period of at least one year unless approval is given by Custom for a shorter period.
- Waiver of Prior Notice of Intent to Export.
- You may be eligible for Waiver of Prior Notice under Section 191.91 of the Customs Regulations. The approval is based on the submission of an application and compliance with the regulations.

Claim Period

In the case of unused merchandise drawback, it is necessary to establish that the merchandise was exported or destroyed within three years from the date of import

In the case of rejected merchandise drawback, you must establish that the merchandise was returned to Customs custody within three years after it was originally released from Customs custody.

In the case of manufacturing drawback, you must establish that manufactured articles on which drawback is being claimed were exported within five years from the date of import.

11.9 Payment of Drawback Claims

When a claim has been determined to be complete and satisfies all drawback requirements, the drawback amount is verified and the entry liquidated for the refund due. Drawback is payable to the exporter/destroyer unless the right to claim drawback has been transferred to a third party through a Certificate of Delivery and/or Manufacture. Furthermore, the exporter/destroyer must certify that drawback on the particular exportation or destruction will not be assigned to any other party.

11.10 Duty Drawback under Section 19 BIS

The duty drawback scheme enables exporting companies to obtain a refund of Customs duty paid on imported goods where those goods will have undergone production, mixing, assembling, or packing and then exported to a foreign port. Only the person who is the legal owner of the goods at the time the goods are exported, or a person to whom this right has been assigned, is eligible to make a claim for duty drawback.

Definition

According to the Revised Kyoto Convention, the term "drawback" means the amount of import duties and taxes repaid under the drawback procedure.

Duty drawback is provided under Section 19 BIS of the Customs Act (No.9) B.E. 2482. It means the refund of import duty already paid or the return of guarantee placed on imports which have

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undergone production, mixing, assembling, or packing and then exported to a foreign port or as stores for use on board a ship proceeding to a foreign port within one (1) year from the date of importation.

Eligibility for Duty Drawback

If the exports meet the criteria listed below, the import duty already paid or the guarantee placed on such imports shall be repaid or returned as drawback to the importer.

1. The drawback on such imports is not prohibited by the Ministerial Regulations.
2. The quantity of the imports used in producing, mixing, assembling, or packing exports is in accordance with the rules approved or specified by Customs.
3. The goods are exported through a port or place of exit designated for a drawback scheme.
4. The goods are exported within one (1) year from the date of importation of the goods used in producing, mixing, assembling or packing exported goods. In case where there is a force majeure event that causes the delay of such exportation, Customs may extend the aforementioned period by six (6) months.
5. A claim for drawback must be made within six (6) months from the date of exportation of the goods. However, Customs may extend this time limit on a case by case basis.

Eligible Goods for Duty Drawback

1. Raw materials which are obviously seen in the exports e.g. fabrics, buttons, zippers and thread in garments, plastic sheeting in plastic products, etc.
2. Raw materials used directly in the manufacturing process and contained in the exports but not obviously seen e.g. preservatives in canned food, stiffening agents in garments, solvents for glue in cellophane and anti-rust agents in electronic circuits, etc.
3. Raw materials required in the manufacturing process e.g. sizing materials and bleaching agents used in textile products, sand paper, scouring powder, varnish, velvet, scouring agents, chalk, carbon paper and pattern.

Non Eligible Goods for Duty Drawback

1. Machinery, tools, moulds and various appliances e.g. grinding ball for ores, tools and appliances made from tungsten carbide used in the manufacturing of watches, etc.
2. Fuels for manufacturing e.g. fuel oil, firewood, coal, etc.

Drawback Procedures

1. Request for approval
2. Importation of raw materials
3. Submission of production formula
4. Submission of "right transferred table"
5. Exportation of Goods
6. Claiming for duty drawback
7. Duty payment on raw materials not exported

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Application forms for duty Drawback

1. Form for approval of drawback (Form Kor Sor Kor 29)
2. Form for the approval of production formula (Form Kor Sor Kor 96)
3. Form for transferring the right of duty drawback (Form Kor Sor Kor 96/6)
4. Form for claiming duty drawback under Section 19 bis and bank guarantee (Form Kor Sor Kor 111)
5. Form for the summary of total amount of outstanding import duties and taxes (Form Kor Sor Kor 112)
6. Form for requesting duty concession (Form Kor Sor Kor 131)
7. Sample of report on duty refund on exportation
8. Sample of report on duty drawback classified by export declaration
9. Sample of report on raw material imported and used
10. Sample of report on duty drawback classified by import declaration
11. Sample of report on raw material drawback

Duty Drawback and Compensation Division, Tax and duty drawback Incentives Bureau is responsible for duty drawback under Section 19 BIS. The Division is further divided into 5 sub-divisions, according to types of exports as listed below:

As for the importation and exportation of goods, please contact Customs at port/place of entry/ exit.

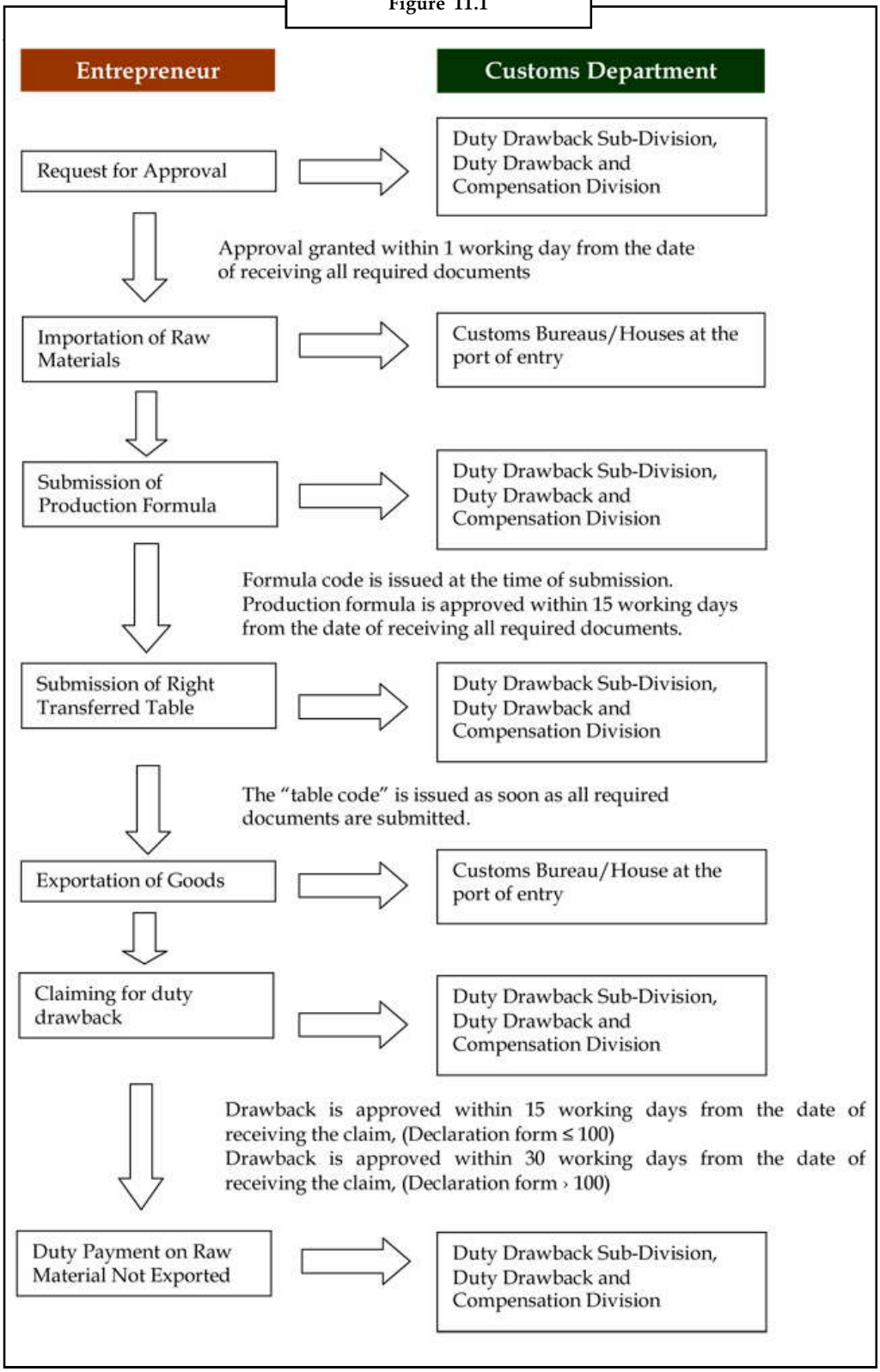
Name	Goods under Responsibility	Contact Details: 120th year Building Customs Department
Duty Drawback Sub-Division 1	Food, Chemical Products and Plastics under Heading 01-40	2nd Floor Tel: 02-667-7485
Duty Drawback Sub-Division 2	Textile and Leather Products under Heading 41-63	2nd Floor Tel: 02-667-7034
Duty Drawback Sub-Division 3	Miscellaneous Products under Heading 64-83 and 93-97	3rd Floor Tel: 02-667-7061
Duty Drawback Sub-Division 4	Electronic and Electrical Equipments under Heading 84-85 and 90-92	3rd Floor Tel: 02-667-7255
Duty Drawback Sub-Division 5	Automobiles and Parts under Heading 86-89	3rd Floor Tel: 02-667-7275

Request for Approval of Duty Drawback

The importer who requests for an approval of duty drawback under Section 19 BIS must be a legal person who operates either Company Limited, Public Company Limited, Limited Partnership or Registered Ordinary Partnership. Such request has to be submitted before processing Customs formality or before submitting an Import Declaration at the Duty Drawback Sub-Division.

Notes

Figure 11.1



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When Customs grants an approval for the duty drawback scheme, the importer is required to pay applicable import duty. Five payment options are provided as follows:

- Cash;
- Guarantee issued by the Ministry of Finance;
- Bank guarantee;
- Revolving guarantee provided by a commercial bank (Revolving guarantee must cover full amount of applicable duty); or
- Other security deposited for import duty payment.

First-Time Request for Approval of Duty Drawback

The request for approval of duty drawback must be in the form of a letter as indicated by Customs and accompanied by the documents/information listed below:

- The request for approval of duty drawback under Section 19 BIS (Form Kor Sor Kor 29);
- A certification letter issued not more than 6 (six) months by the Ministry of Commerce indicating legal person registration, the purposes of the legal person, authorized person, paid up registered capital, and a company address;
- A Factory Operation Notice (Form Ror Ngor 2), or a Factory Operation Permit (Form Ror Ngor 4) or Factory Operation Certification issued by a government agency. If an importer does not own the factory himself, a lease contract, an employment contract or a sales contract together with the Factory Operation Notice (Form Ror Ngor 2), or a Factory Operation Permit (Form Ror Ngor 4) or Factory Operation Certification issued by a government agency of the land lord, the employer or the buyer as the case may be.

The importer then submits a request form (Form Kor Sor Kor 29) and all supporting documents to Customs. Thai Customs has set standard for granting an approval within one day of receipt of all necessary documents and information. If additional information is not submitted promptly upon the request of Customs, Thai Customs cannot guarantee that the approval will be granted within one days.

Please note that the importer may request Customs to revise certain particulars in the approval of duty drawback at the later stage. Similar procedures for the first-time request for approval of duty drawback must be followed under this circumstance. The approval is granted within one working day from the date of receiving all required documents.

In addition, the importer granted approval for the duty drawback under Section 19 BIS is also allowed to amend the name other than that given at the first-time request, provided that the company registration with the Ministry of Commerce and the Revenue Department is revised. The minimum documents required for the amendment of the name are as listed below:

- A request to amend the name of the importer granted an approval for duty refund under Section 19 BIS
- A letter certifying that an approval for duty drawback under Section 19 BIS has been granted
- A certification letter issued by the Ministry of Commerce indicating the status of a legal person registration, the purposes of a legal person, authorized person and company address where the name of the importer is amended.

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Request for Approval of Duty Concession under the Notification of the Ministry of Finance

Two options for the request for approval of duty concession under the Notification of the Ministry of Finance are provided:

- A request seeking 50% **concession of the MFN** rate:

  An eligible person should meet the criteria listed below:

  - A legal person
  - No financial obligation with Customs
  - No past record of any offence in claiming duty drawback under Section 19 BIS
  - Fulfill any of the following qualifications:
  - A company which have securities registered with the Stock Exchange of Thailand
  - A public company limited
  - A member of the Federation of Thai Industries and is certified by the Federation to have stable and creditable financial status according to regulations set forth by the Federation as approved by the Ministry of Finance
  - A member of the Thai Chamber of Commerce and is certified by the Thai Chamber of Commerce to have stable and creditable financial status according to regulations set forth by the Thai Chamber of Commerce as approved by the Ministry of Finance
  - Submission of a financial statement to the Ministry of Commerce as regulated by the Ministry of Commerce. The statement has to be certified by an account auditor that the company has earned a profit for more than 2 consecutive years. In addition, the financial status must never be rejected by the Federation of Thai Industries or the Thai Chamber of Commerce.

A request seeking 50% concession of the MFN rate must be in the form of a letter as indicated by Customs (Form Kor Sor Kor 131) and accompanied by the documents/information listed below:

- A request for duty concession (Form Kor Sor Kor 131) with one duplicate
- A letter certifying that an approval for duty drawback under Section 19 BIS is granted

Original documents, with their certified true copies, which indicate any of the following qualifications:

- A Registration Certificate indicating securities trading between a legal person and the Stock Exchange of Thailand
- A Registration Certificate of a public company limited
- A certification letter from the Federation of Thai Industries indicating that the company have stable and creditable financial status according to regulations set forth by the Federation as approved by the Ministry of Finance
- A certification letter from the Thai Chamber of Commerce indicating that the company has stable and creditable financial status according to regulations set forth by the Thai Chamber of Commerce as approved by the Ministry of Finance
- Financial statement as regulated by the Ministry of Commerce and certified by the authorized account auditor that the company has earned a profit for more than 2 consecutive years. However, the financial status must never be rejected by the Federation of Thai Industries or the Thai Chamber of Commerce.

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The eligible importer then submits the request form (Form Kor Sor Kor 131) and all supporting documents to Customs. Thai Customs has set standard for granting an approval within one day of receipt of all necessary documents and information as well as verification of financial obligation and record of past offence. If additional information is not submitted promptly upon the request of Customs, Thai Customs cannot guarantee that the approval will be granted within one days.

Self Assessment

Fill in the blanks:

11. .....warehouses to contain only goods belonging to warehouse owner or held by him as a broker or a commission agent and only goods on which duty has not been paid.

12. Every .....person of a private warehouse shall maintain proper records of all entries into, operations in, and removals of goods from his warehouse indicating among other particular, the quantity, value, rate and amount of duty.

13. The consignor shall also prepare an invoice in the manner specified in .....of the said Rules in respect of the goods proposed to be removed from his factory or warehouse.

14. The Superintendent-in-charge of the consignee shall ..... the application received by him and send it to the Superintendent-in-charge of the consignor.

15. A ..... shall be used solely for storing excisable goods belonging to the registered person of the warehouse alone

Caselet

Union of India v. Cus. & Ex. Settlement Commission 2010 (258) ELT 476 (Bombay)

Facts of the Case: the question on this case was the issue for consideration in a writ petition filed by the Union of India to challenge an order passed by the Settlement Commission in respect of a proceeding relating to recovery of drawback. The Commission vide its majority order overruled the objection taken by the Revenue challenging jurisdiction of the Commission and vide its final order settled the case. The aforesaid order of the Settlement Commission was the subject matter of challenge in this petition.

The contention of the Revenue was that the recovery of the duty drawback does not involve levy, assessment and collection of custom duty as envisaged under section 127A(b) of the Custom Act, 1962. Therefore, the said proceedings could not be treated as a case fit to be applied before the Settlement Commission. However, the contention of the respondent was that the word "duty" appearing in the definition of "case" is required to be given a wide meaning. The Custom Act provides for levy of customs duty as also the refund thereof under section 27. The respondent contended that the provision relating to refund of duty also extend to drawback as drawback is nothing but the return of the custom duty and thus, the proceedings of recovery of drawback would be a fit case for settlement before Commission.

Decision of the case: the High Court noted that the Settlement Commission while considering the aforesaid question of its jurisdiction for taking up the cases relating to drawback had considered the definition of "drawback" as defined in rules relating to drawback as also the definition of the word "case" as defined in section 127A (b) and after

Contd....

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referring to the various judgments of the Tribunal came to the conclusion that the Commission had jurisdiction to deal with the application for settlement. The High Court stated that the reasons given by the Settlement Commission in support of its order are in consonance with the Law laid down by the Supreme Court in the case of Liberty India v. Commissioner of Income Tax (2009) 317 ITR 218 (SC) wherein the Supreme Court has observed that drawback is nothing but remission of duty on account of statutory provisions in the Act and Scheme framed by Government of India.

The High Court thus concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in excise of statutory powers under the provisions of the Act. Thus, the high Court held that the Settlement Commission has jurisdiction to deal with the issue related to the recovery of drawback erroneously paid by the revenue.

Source: http://220.227.161.86/26942bos16384IDTL.pdf

11.11 Summary

- All goods brought for warehousing shall be produced to the officer-in-charge of the warehouse together with the relative transport permit or certificate and shall be weighed, measured or gauged in his presence, and assessed to duty prior to entry into the warehouse.
- The quantity and description of the goods, the marks and numbers of the packages, the number and date of the permit or certificate and the amount of duty leviable thereon shall be noted in the warehouse register.
- All goods received into a warehouse shall be kept separate from other goods until the receipt account has been taken by the officer.
- The drawback on such imports is not prohibited by the Ministerial Regulations.
- The quantity of the imports used in producing, mixing, assembling, or packing exports is in accordance with the rules approved or specified by Customs.
- The goods are exported through a port or place of exit designated for a drawback scheme.
- The goods are exported within one (1) year from the date of importation of the goods used in producing, mixing, assembling or packing exported goods. In case where there is a force majeure event that causes the delay of such exportation, Customs may extend the aforementioned period by six (6) months.
- A claim for drawback must be made within six (6) months from the date of exportation of the goods. However, Customs may extend this time limit on a case by case basis.

11.12 Keywords

Direct Identification Manufacturing: If articles manufactured in the United States with the use of imported merchandise are subsequently exported or destroyed then drawback not exceeding 99 percent of the duties paid on the imported merchandise may be recoverable.

Rejected Merchandise: Merchandise is exported or destroyed because it does not conform with samples or specifications, or has been shipped without the consent of the consignee,.

Substitution Manufacturing: Both imported merchandise and any other merchandise of the same kind and quality are used to manufacture articles, some of which are exported or destroyed before use, then drawback not exceeding 99 percent of the duty which was paid on the imported merchandise may be payable on the exported/destroyed articles.

Notes

Substitution Unused Merchandise: Merchandise that is commercially interchangeable with imported merchandise upon which duties and taxes were paid and that has not been used, is exported or destroyed under Customs supervision. 99 percent of the duties, taxes or fees paid on the merchandise may be recovered as drawback.

Unused Merchandise: Imported merchandise is unused and exported or destroyed under Customs supervision. 99 percent of the duties, taxes or fees paid on the merchandise may be recovered as drawback.

11.13 Review Questions

1. Describe about appointment and registration of ware houses.
2. Explain about Receipts of goods at warehouse.
3. Describe mode of calculating quantity of goods warehoused.
4. Explain clearance of goods for home consumption.
5. Describe about payment of rent and warehouse dues.
6. Explain about place of registration of warehouse.
7. Describe about Duty Drawback.
8. What do you know about Rejected Merchandise?
9. Explain about payment of Drawback claims.

Answers: Self Assessment

1. Warehousing
2. Commissioner
3. Goods
4. Warehoused
5. Public
6. Powers
7. Consignor
8. Public
9. Table
10. Commissioner
11. Private
12. Registered
13. Rule 11
14. Countersign
15. Warehouses

11.14 Further Readings

Books

Ahuja, Dr. Girish and Gupta, Dr. Ravi, *Direct Taxes Law & Practice including Tax Planning,* 18th Edition 2008-09, Bharat Law House Pvt. Ltd.

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Singhania, Dr. Vinod K. and Singhania, Dr. Kapil, *Direct Taxes Law & Practice with Special Reference to Tax Planning,* 41st, Edition 2009-10, Taxman's.

VS Datey, *Indirect Tax Laws*, CHH India

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Unit 12: Central Sales Tax

Notes

CONTENTS

Objectives

After studying this unit, you should be able to:

- Know about the important features of the Central Sales Tax
- Understand the Principles of Central Sales Tax
- Know about the determination of Turnover

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Introduction

According to article 265 of the constitution of India no tax of any nature can be levied or collected by the central or State Governments except by the authority of law. The constitution of India vide entry no. 54 of the state list, gave power to the state legislature to levy sales tax on sale or purchase of goods other than newspapers, which takes place within the state. However, at that time the parliament was not empowered to levy any type of sales tax. Therefore, only state legislature enacted state sales tax laws in their respective state for levy of sales tax on sale or purchase of goods other than newspapers.

Although, the State Government were empowered to levy and collect tax on sales made within its own territory but there was no specific provisions of levying tax on sale and purchase having interstate composition. As a result, same goods came to be taxed by several states on the ground that one or more ingredient of sale was present in their state. This led to multiple levy of tax. Therefore central sales tax Act, 1956 was enacted by the Parliament and received the assent of the president on 21.12.1956. Imposition of tax became effective from 01.07.1957.

12.1 Important Features of the Act

The following are the important features of the Act:

1. It extends to the whole of India.
2. Every dealer who makes an inter-state sale must be a registered dealer and a certificate of registration has to be displayed at all places of his business.
3. There is no exemption limit of turnover for the levy of central sales tax.
4. Under this act, the goods have been classified as:
    (a) Declared goods or goods of special importance in inter-state trade or commerce and
    (b) Other goods.

The rates of tax on declared goods are lower as compared to the rate of tax on goods in the second category. The tax is levied under this act by the Central Government but, it is Collected by that state government from where the goods were sold. The tax thus collected is given to the same state government which collected the tax. In case of union Territories the tax collected is deposited in the consolidated fund of India.

The rules regarding submission of returns, payment of tax, appeals etc. are not given in the act. For this purpose, the rules followed by a state in respect of its own sales tax law shall be followed for purpose of this act also.

Even though the central sales tax has been framed by the central government but, the state governments are allowed to frame such rules, subject to such notification and alteration as it deem fit.

12.2 Important Definitions

Following are the important definitions under the Central Sales Tax.

Notes

Appropriate State [Section 2(A)]

It means –

(1) In relation to a dealer who has one or more place of business situated in the same state, that state, and

(2) In relation to a dealer who has more than one place of business situated in different states, every such state with respect to the place or places of business situated within its territory.

Example: Mr. X has one place of business at Faridabad and other at Sonepat, since both the cities are in the state of Haryana therefore, the appropriate state will be Haryana.

Business [Section 2(AA)]

(a) Any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not it is carried on with a motive to make gain or profit and whether or not any profit or gain accrues from it, and

(b) Any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern. According to the above definition –

- It is not necessary to have profit motive to call an activity a business.
- Regularity of business is not essential.
- Business may be legal or illegal.

Any transaction incidental or ancillary to business will also be treated as business. For example, if a registered dealer sells outdated machines, he will be liable to pay central sales tax on it.

Notes The rates of tax on declared goods are lower as compared to the rate of tax on goods in the second category.

Dealer [Section 2(B)]

Any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission, remuneration or other valuable consideration It includes -

1. A local authority, a body corporate, a company, any cooperative society, other society, club, firm, Hindu undivided family, association of persons which carries on such business.

2. A factor, broker, commission agent who carries on business of buying, selling, supplying or distributing goods belonging to any principal.

3. An auctioneer who carrier on the business of selling or auctioning goods belonging to any principal.

4. Government.

However, in case of sale, supply or distribution of old obsolete or waste products, government is not liable to pay tax under this Act.

This exception does not apply to government companies, public sector undertakings, and private enterprises. Under this Act services are not considered. Therefore, if a person is rendering professional service of any type say teacher, doctor etc. shall not be treated as dealer.

Notes

Registered Dealer [Section 2(f)]

This means a dealer who is registered under Section 7 of the Act.

Declared Goods [Section 2(C)]

It includes those goods which are considered to be of special importance in interstate trade or commerce under section 14. Some of these goods are:

- Cereals
- Coal
- Cotton
- Crude Oil
- Jute
- Oilseeds
- Pulses
- Sugar

Goods [Section 2(D)]

This includes all material articles or commodities and all kind of movable property excluding newspapers, actionable claims, stocks, shares, and securities. If newspapers are sold as scrap then, it will be charged to central sales tax if it is an inter-state sale.

Task Discuss about Appropriate State.

Place of Business [Section 2(DD)]

Central sales tax is collected by that state Government where the dealer has place of business. This includes –

1. the place of business of agent if, business is carried on through such agent.
2. place where dealer stores his goods like warehouse and godown.
3. place where a dealer keeps his books of accounts.

Sale [Section 2(G)]

It means transfer of property in goods by one person to another for cash or for deferred payment or for any valuable consideration. However, a mortgage, hypothecation of, or a charge, or pledge on goods is not included.

Essential elements of sale:

- Goods should be transferred
- General property in good should be transferred
- Price must be paid

Notes

- There must be a seller and a buyer
- There must be a valid consent of both buyer and seller

Sale Price [Section 2(H)]

It means amount payable to a dealer as consideration for the sale of any goods which includes the following -

- Central sales tax
- Excise duty
- Cost of packing material
- Packing Charges
- Bonus given for effecting additional sales
- Insurance charges, if goods are insured by seller Freight charges if, not shown separately
- Any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof

Sale price does not includes the following -

- Freight or transport charges for delivery of goods, if charged separately
- Cost of installations, if charged separately
- Cash discounts for making timely payments.
- Trade discount
- Insurance charges of goods insured on behalf of the buyer
- Goods rejected
- Goods returned within 6 months of the date of sale

Sales Tax Law [Section 2(I)]

It means any law for the time being in force in any state, or part thereof, which provides for the levy of taxes on the sale or purchase of goods generally. Now VAT Legislation of a state shall also be included within the ambit of the definition of "State Tax Law".

Turnover [Section 2(J)]

It is the aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-state trade or commerce made during a prescribed period. Prescribed period is the period in which sales tax return is filed.

Year [Section 2(K)]

It means the year applicable in relation to a dealer under the general sales tax law of the appropriate state, and if, there is no such year applicable, it is the financial year.

Notes

12.3 In the Course of Inter-state Trade

According to section 3, a sale or purchase of goods shall be deemed to take place in the course of inter state trade or commerce if the sale or purchase:

(i) Occasions the movement of goods from one state to another; or (ii) Is effected by a transfer of documents of title to goods during their movement from one state to another.

Caution If sale or purchase of goods is effected by transfer of documents of title to the goods during their movement from one state to another then, such sale or purchase shall be deemed to take place in the course of inter-state trade.

12.3.1 Occasions Movement of Goods Section 3(a)

This means there is a completed sale in pursuance of contract of sale or purchase where by goods move from one state to another.

A sale can be treated as an inter-state sale if, all the following conditions are satisfied:

1. Transaction is a Completed sale
2. The contract of sale contains a condition for the movement of goods from one state to another.
3. There should be physical movement of good from one state to another.
4. The sale concludes in the state where the goods are sent and that state is different from the state from where the goods actually moved.
5. It is not necessary that sale precedes the inter-state movement of goods, sale can be entered before or after the movement of goods.
6. It is immaterial in which state the ownership of goods passes from seller to buyer.

12.3.2 Sale by Transfer of Documents Section 3(b)

If sale or purchase of goods is effected by transfer of documents of title to the goods during their movement from one state to another then, such sale or purchase shall be deemed to take place in the course of inter-state trade.

A Document of title to goods, bears internal evidence of ownership of goods by holder of document. Some of the examples are Lorry Receipt (LR) in case of transport by road; Railway Receipt (RR) in case of transport by rail.

12.4 Sale or Purchase of Goods Outside a State

As per section 4(1) when a sale or purchase is inside a state as per section 4(2) such sale or purchase shall be deemed to have taken place outside all other States.

Sale inside a state as per section 4(2) means –

1. In case of specific goods or ascertained, if goods are within the state at the time of the contract of sale is made.

2. In case of unascertained or future goods, if goods are within the state, at the time of their appropriation to the contract.

12.5 Inter-state Sales Tax

Notes

The charging section under the Central Sales Tax Act which provides for inter-sales tax is as follows:

Liability to Tax on Inter-state Sales

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter State trade or commerce during any year on and from the date so notified.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (IA), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods;

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made-

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,-

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than 4 (four) percent (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sales proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by

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reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

Illustration: A from Bangalore sends goods in his own name to Delhi. At Delhi goods are sold to different parties by the employees of A. In this case, the movement of goods is not result of sale or agreement to sell. It is sale which takes place in Delhi and not subject to central sales tax.

12.6 Intra-state Sales Tax

State VAT Acts have been legislated by State Legislatures under Entry 54 of List-II of the Seventh Schedule to the Constitution, which runs as under:

"Tax on sale or purchase of goods other than newspapers except tax on interstate sale or purchase."

Hence, every law legislated under Entry 54 of State List must levy tax only on the sale or purchase of goods other than newspapers within the State Jurisdiction. If a state law legislated under entry 54 levies tax on the inter-state sale or purchase of goods, it has to be struck down as ultra vires of the Constitution.

Sales tax on intra-State sale (sale within State) (now termed as Vat) is levied by State Government under Entry 54 of List II (State List) of Seventh Schedule to constitution of India. State Government can impose sales tax only on sale within the State.

Value Added Tax (VAT) is nothing but a general consumption tax that is assessed on the value added to goods & services. It is the indirect tax on the consumption of the goods, paid by its original producers upon the change in goods or upon the transfer of the goods to its ultimate consumers. It is based on the value of the goods, added by the transferor. It is the tax in relation to the difference of the value added by the transferor and not just a profit.

Did u know? All over the world, VAT is payable on the goods and services as they form a part of national GDP. More than 130 countries worldwide have introduced VAT over the past 3 decades; India being amongst the last few to introduce it.

It means every seller of goods and service providers charges the tax after availing the input tax credit. It is the form of collecting sales tax under which tax is collected in each stage on the value added of the goods. In practice, the dealer charges the tax on the full price of the goods, sold to the consumer and at every end of the tax period reduces the tax collected on sale and tax charged to him by the dealers from whom he purchased the goods and deposits such amount of tax in government treasury.

VAT is a multi-stage tax, levied only on value that is added at each stage in the cycle of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the cycle/ chain. The aim is to avoid 'cascading', which can have a snowballing effect on the prices. It is assumed that because of cross-checking in a multi-staged tax; tax evasion would be checked, hence resulting in higher revenues to the government.

Notes

12.6.1 Importance of VAT in India

India, particularly being a trading community, has always believed in accepting and adopting loopholes in any system administered by State or Centre. If a well-administered system comes in, it will not only close options for traders and businessmen to evade paying their taxes, but also make sure that they'll be compelled to keep proper records of sales and purchases.

Under the VAT system, no exemptions are given and a tax will be levied at every stage of manufacture of a product. At every stage of value-addition, the tax that is levied on the inputs can be claimed back from tax authorities.

At a Macro Level, Two Issues Make the Introduction of VAT Critical for India

Industry watchers believe that the VAT system, if enforced properly, will form part of the fiscal consolidation strategy for the country. It could, in fact, help address issues like fiscal deficit problem. Also the revenues estimated to be collected can actually mean lowering of fiscal deficit burden for the government.

International Monetary Fund (IMF), in the semi-annual World Economic Outlook expressed its concern for India's large fiscal deficit - at 10 per cent of GDP.

Moreover any globally accepted tax administrative system would only help India integrate better in the World Trade Organization regime.

Items Covered under VAT

These items are mentioned below:

- All business transactions that are carried on within a State by individuals/partnerships/ companies etc. will be covered under VAT.
- More than 550 items are covered under the new Indian VAT regime out of which 46 natural & unprocessed local products will be exempt from VAT
- Nearly 270 items including drugs and medicines, all industrial and agricultural inputs, capital goods as well as declared goods would attract 4 % VAT in India.
- The remaining items would attract 12.5 % VAT. Precious metals such as gold and bullion will be taxed at 1%.
- Petrol and diesel are kept out of the VAT regime in India.

Tax Implication under Value Added Tax Act

Seller	Buyer	Selling	Price (Excluding Tax)	Tax Rate Invoice value (InclTax)	Tax Payable	Tax Credit	Net Tax Outflow
A	B	100	4% CST	104	4	0	4.00
B	C	114	12.5% VAT	128.25	14.25	0*	14.25
C	D	124	12.5% VAT	139.50	15.50	14.25	1.25
D	Consumer	134	12.5% VAT	150.75	16.75	15.501.25	
Total to Govt.						**VAT 16.75**	**CST 4.00**

Notes

12.7 Sale or Purchase of Goods in the Course of Import and Export – Section 5

State Government cannot impose any tax on sale or purchase of goods in course of import and export. In order to make our exports competitive no central sales tax are imposed, and tax is also not imposed on imported goods because they are already subjected to custom duties.

12.7.1 Export of Goods Out of India – Section 5(1)

A sale or purchase of goods shall be deemed to take place in the course of export of goods outside India if, such sale or purchase -

(i) either occasions such export, or

(ii) is effected by transfer of documents of title to the goods after the goods have crossed the customs frontier of India.

As per section 5 (3), last sale or purchase of any goods preceding the sale or purchase occassioning the export of these goods shall also be deemed to be in the course of such export, if following conditions are satisfied –

(i) The last sale or purchase has been made after the purchaser of such goods has obtain the order of export or agreement for export was entered into by him.

(ii) Such last sale or purchase has been made for the purpose of complying with such order of export or agreement of export.

(iii) Form 'H' has been submitted by the dealer to the prescribed authority. The form should be signed by the exporter to whom the goods are sold.

12.7.2 Deemed Exports Section 5(5)

If any designated Indian carrier purchases Aviation Turbine Fuel for the purpose of it's International flight such purchase shall be deemed to take place in the course of the export of goods out of territory of India.

Self Assessment

Fill in the blanks:

1. According to the article ..... of the constitution of India no tax of any nature can be levied or collected by the central or State Governments except by the authority of law.
2. The ..... of tax on declared goods are lower as compared to the rate of tax on goods in the second category.
3. A factor, ..., commission agent who carries on business of buying, selling, supplying or distributing goods belonging to any principal.
4. An ..... who carrier on the business of selling or auctioning goods belonging to any principal.
5. State Government cannot impose any tax on sale or purchase of goods in course of ..... and export.

Notes

12.8 Liability to Tax on Inter-state Sales

As per Section 9(1) central Sales tax shall be levied by the central government but shall be collected and retained by the state government where the movement of goods have commenced.

12.8.1 Rates of Tax

The rate of central sales tax is 4 % or local state rate whichever, is lower on the first point of inter-state sale if, the goods are sold to the government or to a registered dealer, and on the fulfillment of specified condition, subsequent sales during the movement of same goods will be exempted from tax. But, if any of the dealers in these subsequent sales is or an unregistered dealer then the last registered dealer will collect tax @ 10% from an unregistered dealer to whom goods have been sold.

Incidence of Central Sales Tax in Different Situations

	Declared goods Rate of tax	Undeclared goods Rate of tax
Sale to Government on Form D	Lower of 4% or local sales rate	lower of 4% or local sales rate
Sale to registered dealer of specified goods on Form C	Lower of4% or local sales rate	Lower of 4% or local sales rate
Tax free goods in state	Nil	Nil
Notified reduced rate on Form C and D	Notified rate	Notified rate
Other sale	Twice the local sales tax	10% or local sales tax rate whichever is higher

12.8.2 Determination of Turnover

As per section 8(A), to determine turnover following amounts will be deducted –

- Central sales tax
- Sale price of goods returned within six months
- Other items as the central government may notify

Central Sales Tax

If tax forms a part of aggregate sales price then amount of tax collected by a registered dealer shall be deducted from his gross turnover. Tax is calculated by the following formula.

$$\frac{\text{Rate of tax} \times \text{Aggregate of sales price}}{100 + \text{Rate of tax}}$$

If the turnover of a dealer is taxable at different rates, then above formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

12.8.3 Collection of Tax Section 9(A)

The central sales tax can be collected from the buyers only by the registered dealers on the inter-state sale effected by them. According to rules prescribed under this Act., Dealers who are not

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liable to pay tax under general sales tax law the period of filing the return in a financial year is

1. Quarter ending on 30 June
2. Quarter ending on 30 September
3. Quarter ending on 31 December
4. Quarter ending on 31 March

Notes Every dealer who is liable to pay Central sales tax should make an application for registration under the Act to appropriate authority in his state.

Self Assessment

Fill in the blanks:

6. The last sale or .....has been made after the purchaser of such goods has obtain the order of export or agreement for export was entered into by him.
7. The rate of central sales tax is .....% or local state rate whichever, is lower on the first point of inter-state sale.
8. The .....sales tax can be collected from the buyers only by the registered dealers on the inter-state sale effected by them.
9. Every ..... who is liable to pay Central sales tax should make an application for registration under the Act. to appropriate authority in his state.
10. Dealer shall submit an application along with his ..... and copies thereof to the registering authority within six months before the end of the relevant year.

12.9 Registration of Dealers

According to Section 7, registration of dealer can be done in any of the two ways-

1. Compulsory registration
2. Voluntary registration

Compulsory Registration Section (7): Every dealer who is liable to pay Central sales tax should make an application for registration under the Act to appropriate authority in his state. If a dealer does not get himself registered, he would be subject to penalty under section 10 which is imprisonment which may extend to six months or fine or both and in case of continuing offence, a fine of ₹ 50 per day till the default continues.

Voluntary Registration Section (7): Under following circumstances any dealer can voluntarily apply for registration even though he is not liable to pay tax under central sales tax Act.

1. If he is registered under sales tax law of state but, is not liable to pay tax under central sales tax Act.
2. If there is no sales tax Act in a state or any part of it, any dealer having a place of business in that state or part thereof.
3. If he deals in a tax-free goods in a state.

Notes

The dealer can apply for registration at any time and, if he does not apply for registration no penalty will be imposed upon him.

Application for Registration

Application for registration should be made in prescribed form 'a' as per CST (registration and turnover) rules; within 30 days from the date when dealer becomes liable to CST. Application fee of ₹ 25 is payable (by way of court fee stamps). Application has to be signed by (a) proprietor of business (b) one of the partners in case of business owned by partnership firm (c) karta or manager of huf (d) director or principal officer of company (e) principal officer in case of association of individuals or (f) officer authorised by government in case of government.

Additional Places of Business

If a dealer has places of business in different states, he has to obtain separate registration in each state. However, if he has more than one places of business within the same state, he has to get only one registration with additional places of business endorsed on the certificate.

Security from Dealer Under CST Act

As per section 7(2a) of CST Act, the registering authority can ask for proper security from the applicant for (a) realisation of taxes due and (b) proper custody and use of forms (like c, e-i/e-ii, f and h) which are supplied by sales tax authorities for use by the dealer [section 7(2a)]. Additional security can also be demanded from a dealer who is already registered [section 7(3a)]. Security cannot be demanded without granting opportunity of personal hearing. The security should not be more than estimated tax liability for the current year i.e. Year in which security/additional security is demanded [section 7(3bb)]. Security may be in form of surety, execution of a bond, by deposit of government securities or by way of cash deposit. Demanding security is not essential. Moreover, security demanded should be reasonable and for good and sufficient reasons.

The security can be forfeited, after giving personal hearing, if the CST due is not paid by dealer or the blank sales tax forms issued to him are misused [section 7(3d)]. After such forfeiture, additional security has to be furnished. If such additional security is not furnished, sales tax authority may not issue further blank sales tax forms.

The security can be refunded, partly or wholly, if, sales tax authorities are of opinion that such security is not required.

Order demanding security or additional security or not refunding security is appealable. Appeal should be filed within 30 days. The appellate authority can condone the delay in filing of appeal, if sufficient cause is shown [section 7(3h)]. There is no further appeal against the order of appellate authority and the order passed by appellate authority is final [section 7(3j) of CST Act].

Other Documents Required at Time of Registration

Other documents required at the time of registration vary from state to state. Normally, following are asked for - (a) particulars of directors/partners (b) copies of articles of association, memorandum in case of company and partnership deed if applicant is a firm (c) copies of rent agreements (d) nominations as manager (e) list of places of business, godown (f) details of machinery (g) details of bankers (h) photographs of directors/partners.

Notes

Advantages of Registration

The following are the advantages of registration:

1. A registered dealer has to pay actual sales Tax @ 4% only on goods purchased by him for manufacture or resale and he buys the same against Form C. Otherwise, he will be charged @ 10%.
2. Subsequent sales in the course of movement of goods by transfer of documents of title to goods will be exempted from central sales-tax if, registered dealer effecting sales is able to produce Form E-I.

Procedure for Registration

It consists of the folllowing:

1. The dealer must make an application to the concerned authority in the appropriate state, in Form A within 30 days of the day when he becomes liable to pay tax. The form contains the following details.

(i) Name of the manager of business.

(ii) Name and addresses of proprietor or partner of the business.

(iii) Date of establishment of business.

(iv) Date on which first inter-state sale was made.

(v) Name of the Principal place and other places of business in the appropriate state.

(vi) Particulars of any license held by the dealer.

2. ***Single Place of business:*** If a dealer has single place of business in the appropriate State and he is registered in that state, he shall apply to the sales tax authority of that state only for obtaining registration under central sales tax Act.

3. ***More than one place of business in the same state:*** If a dealer has more than one place of business in the same state, he shall select one of these places as the principal place of business and, get only one certificate of registration.

4. ***More than one place of business in different states:*** If a dealer has more than one place of Business in different states, he will get a separate certificate of registration with respect to each state.

5. Fees for Registration is Rupees twenty five to be paid in cash or court fee stamp.

6. The application has to be signed by, in case of –

- Sole proprietorship, the proprietor
- Partnership firm, any one the partner
- HUF, the karta
- Company, the director
- Government, authorized officer

Grant of Certificate of Registration Sec 7(3)

If the application is in order and assessing officer is fully satisfied with the facts contained therein, he will register the dealer under this Act and issue a certificate of Registration in Form

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B. If a dealer has more than one place of business then additional copies of certificate will be issued.

Caution If a dealer has single place of business in the appropriate State and he is registered in that state, he shall apply to the sales tax authority of that state only for obtaining registration under central sales tax Act

12.9.1 Amendment of Certificate of Registration

Certificate of registration may be amended:

(i) At the request of dealer.

(ii) By authorities themselves after giving one notice to the dealer.

The amendment will be made:

1. If dealer has changed the name, place or nature of his business or
2. If dealer has changed the class or classes of goods.
3. For any other reasons.

12.9.2 Cancellation of Certificate of Registration

It may be cancelled either:

1. At the request of the dealer.
2. By authority granting registration.

Cancellation at the Request of Dealer: Dealer shall submit an application along with his certificate and copies thereof to the registering authority within six months before the end of the relevant year. The certificate will be cancelled if dealer is not liable to pay any tax under CST Act.

Cancellation by the Authority: Certificate of registration will be cancelled under following situations:

- The dealer has discontinued the business.
- The dealer dies.
- Dealer fails to furnish security or additional security.
- Dealer has failed to pay tax or penalty under CST Act.
- Voluntarily registered dealer has ceased to be liable to pay tax under state tax law of that state.
- For any other sufficient reasons.

Self Assessment

Fill in the blanks:

11. If tax forms a part of aggregate sales price then amount of tax collected by a …… dealer shall be deducted from his gross turnover.

Notes

12. Sale or Purchase is effected by transfer of …… of title to the goods after the goods have crossed the customs frontier of India.
13. The certificate will be cancelled if dealer is not liable to pay any tax under …… Act.
14. Certificate of …… may be amended at the request of customer.

12.10 Procedures under CST Act

Procedures are important for any taxation law. Often valuable tax concessions are lost or penalties are imposed only because prescribed procedures are not followed.

Procedures for CST Act are covered as follows:

- Rules framed by central government
- Rules framed by state governments under CST Act
- Rules as prescribed in state sales tax laws of each state.

Central Sales Tax Act is a peculiar Act - though the tax is levied as Central Sales Tax, it is administered by respective state governments. In bharat heavy electricals v. Uoi - air 1996 sc 1854 = (1996) 102 stc 373 (sc) = 1996(4) scc 230 = jt 1996(4) sc 427, it was held that state machinery Acts as machinery of central government for administration of CST Act. In khemka & co. V. State of maharashtra air 1975 sc 1549 = (1975) 3 scr 753 = 1975(2) scc 22, it was held that substantive laws of central Act must be applied. State Act is applicable for procedures alone.

CST Act and rules framed by central government make provisions for very few procedures. In respect of other procedures and provisions, provisions as applicable in the state in respect of the general sales tax law of the state are also applicable in respect of Central Sales Tax in respect of dealers registered in that state. State governments are also authorised to frame rules under CST Act.

Some provisions of state laws applicable to CST - section 9(2) of CST Act provides that all provisions of 'general sales tax law' of each state, except those provided in CST Act and rules itself, in respect of the following shall also apply to persons liable under Central Sales Tax Act in that state:

- Periodic returns
- Assessment, provisional assessment and reassessment
- Advance payment of taxes
- Registration of transferee and imposition of tax liability on transferee
- Recovery of tax from third parties
- Appeals, review, revision and references [except in case of appeals u/s 6a or 9]
- Refunds, rebate, penalties and interest
- Compounding of offences
- Treatment of documents furnished by dealer as confidential.
- Offences and penalties (except those covered in CST Act itself)

State authorised to administer and collect tax - CST Act is administered by states. The state authorised to collect tax is authorised to administer the tax.

12.11 Forms for Declarations

Notes

A dealer has to issue certain declarations in prescribed forms to buyers/sellers. These forms are prescribed in Central Sales Tax (registration and turnover) rules, 1957. Out of these forms, forms c, e-i, e-ii, f and h are printed and supplied by sales tax authorities and are supplied by them. Dealer has to issue declarations in the forms printed and supplied by the sales tax authorities only. These forms are in triplicate. [form d was to be issued by government and can be printed/ typed by the government department making purchases. Now form d has been abolished w.e.f. 1-4-2007].

Declaration in Form 'c'

As per section 8(1)(b) of CST Act, sales tax on inter state sale is 4% or sales tax rate for sale within the state whichever is lower, if sale is to registered dealer and the goods are covered in the registration certificate of the purchasing dealer. Otherwise the tax is higher - (10% or tax leviable on sale of goods inside the state, whichever is higher). If the selling dealer pays CST @ 4% or lower (if applicable), he has to produce proof to his sales tax assessing authority that the purchasing dealer is eligible to get these goods at concessional rate. Otherwise, the selling dealer will be asked to pay balance tax payable plus penalty as applicable. Section 8(4)(a), therefore, provides that concessional rate is applicable only if purchasing dealer submits a declaration in prescribed form 'c'.

Authority to issue blank c form - the blank c form has to be obtained by purchasing dealer from sales tax authority in the state in which goods are delivered, which is usually the place where purchasing dealer is registered. However, in case on inter state sale by transfer of documents, the purchasing dealer may not be registered with the sales tax authorities in the state where the goods are delivered. In such case, he can obtain blank c form from sales tax authority where he is registered.

C form is mandatory to avail concessional rate - submission of c form is mandatory and unless c form is submitted, concessional rate of sales tax will not apply. It has been held that this procedure is designed to prevent fraud and collusion, and facilitate administrative efficiency. Hence it is mandatory. Concession can be denied if the form is not submitted - kedarnath jute mfg co.v. Cto - (1965) 3 scr 626 = (1965) 16 stc 607 (sc) = air 1966 sc 12.

State government cannot waive the condition of c/d form - section 8(5) has been amended w.e.f. 11th may 2002 to provide that state government can issue an exemption subject to fulfilment of requirements of section 8(4). This sub-section requires declaration form registered dealer/ government. Thus, state government cannot waive condition of c/d form.

Number of transactions per 'c' certificate - one declaration in c form can cover all transactions in one whole financial year, irrespective of total amount/value of transactions during the year. [rule 12 amended w.e.f. 7-8-1998].

One certificate for each financial year - if a transaction covers more than one financial year, separate c form is required for each financial year. Provision of one 'c' form per financial year has been upheld in laxmi agarbatti factory v.uoi (1996) 102 stc 248 (mp hc db).

Procedure in case of loss of c form - if duly completed or blank c form is lost when it was in custody of purchasing dealer or when the form was in transit to selling dealer, the purchasing dealer will have to furnish 'indemnity bond' to sales tax authority (from whom the blank forms were obtained) in prescribed 'g' form. If the duly completed c form is lost after it is received by selling dealer, he has to submit indemnity bond to sales tax authority of his state.

Notes

Form 'c' is a declaration given by the buyer to seller declaring therein details (bill no, date, amount, commodity etc.) Of purchases made. The seller present it to the local sales tax/vat authorities telling that he sold goods on exempted or on less rate of Central Sales Tax.

Actually and in reality there is no exemption against it though it seems. When a buyer purchases it at less rate of vat or exempted then he is selling these commodities at the rate of his cost plus profit so the value go up and he charges vat on this increased value and in this process govt. Ends in getting more tax.

In the case of inter state trade or commerce, registered dealer can get goods at concessional rate of CST, if he produces a declaration in form c to the selling dealer.

The registered purchasing dealer can get blank form c from the sales tax authorities of the state in which he is Actually registered.

Contents of Form 'c'

form c contains particulars like name of issuing state, date of issue, name of purchasing dealer, to whom form c is issued, his r.c.no., date from which r.c is valid, name and address of the seller with name of the state, details of the goods ordered and obtained. It bears seal of the sales tax authority issuing the form.

Form c is issued by the purchasing dealer to the selling dealer who shall submit to the sales tax assessing authority.

Earlier, one c form was used for all transductions during a financial year, but now, it is issued quarterly since the imposition of vat.

In the case of inter state trade or commerce, registered dealer can get goods at concessional rate of CST, if he produces a declaration in form c to the selling dealer.

The registered purchasing dealer can get blank form c from the sales tax authorities of the state in which he is Actually registered.

Form 'c' is a declaration given by the buyer to seller declaring therein details (bill no, date, amount, commodity etc.) Of purchases made. The seller present it to the local sales tax/vat authorities telling that he sold goods on exempted or on less rate of Central Sales Tax.

Actually and in reality there is no exemption against it though it seems. When a buyer purchases it at less rate of vat or exempted then he is selling these commodities at the rate of his cost plus profit so the value go up and he charges vat on this increased value and in this process govt. Ends in getting more tax.

Declarations in e-i and e-ii Form

As per section 6(2) of CST Act, first inter state sale is taxable. Subsequent sale during movement of goods by transfer of documents is exempt from tax, if the subsequent sale is to government or a registered dealer. This is subject to condition that such subsequent seller obtains declaration (a) from the selling dealer i.e. From registered dealer from whom goods were purchased. (b) from purchaser a declaration in c form or declaration in d form. The selling dealer has to make declaration in e-i form if it is a first sale and in e-ii form if it is a subsequent sale. One example will clarify the requirements. Assume that despatches goods from karnataka to orissa and raises invoice on x in madhya pradesh, w charges 4% CST and pays the same in karnataka. During movement of goods, x sells goods to y in west bengal and y ultimately sells goods to z in orissa. Z takes delivery of goods and the 'movement of goods' comes to end. Sale from x to y and y to

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z is by transfer of documents. In this case, w will receive declaration in 'c' form from x and will issue declaration in 'e-i' form to x. Later, x will issue declaration in 'e-ii' form to y and receive declaration in c form from y. Finally, y will issue declaration in e-ii form to z and will receive declaration in 'c' form from z, which will complete the chain. If the chain is broken, CST will be payable again.

Some provisions of c form applicable to e-i/e-ii forms - following provisions of c form are also applicable in respect of e-i/e-ii form (a) one declaration for all transactions in one year (b) separate declaration for each financial year (c) indemnity bond if form is lost (d) issue of duplicate form (e) submission at any time before assessment (f) like c form, the e-i/e-ii forms are mandatory and sales tax concession is not available if the required form is not submitted.

Declaration in f Form

We have seen that when the goods are despatched to another state on consignment basis or to branch of dealer in another state, there is inter state movement of goods but there is no sale and hence no CST is payable. This provision is often misused and goods are despatched in the garb of consignment or branch transfer though Actually it may be a sale. Hence, section 6a(1) of CST Act provides that when a dealer claims that the inter state movement of goods is not a sale, he has to prove the same. (in legal terminology, it is called that 'burden of proof' is on the dealer). For this purpose, he must produce a declaration in 'f' form received from consignment agent or branch office in another state.

As per section 6a(1) as amended w.e.f. 11-5-2002, submission of f form is mandatory to prove stock transfer. Otherwise, the transaction will be treated as 'sale' for all purposes of CST Act.

Goods can be sent to other state for further manufacture - goods can be purchased at concessional rate if the goods are for use in the manufacture. Thus, after manufacture, the sale need not be in the same state. In Indian aluminium co. Ltd. V. Sto - (1993) 90 stc 410 (ori hc db), the company was manufacturing aluminium ingots at hirakud, orissa. These were despatched to plants of the company in other states for further manufacture of aluminium coils, sheets etc. Plants in other states were sending 'f' forms. The department accepted the forms without any objection.

One form f covering receipts during the month can be issued. If space in form f is not adequate, a separate list may be attached as annexure to form f giving details, provided that the annexure is firmly attached to the form. The blank form has to be obtained from sales tax authority in which the transferee is situated, i.e. State where goods were received. If the form is lost, indemnity bond has to be given and duplicate form clearly marked as 'duplicate' can be issued.

Certificate in Form 'h'

Sale during course of export is exempt from CST. As per section 5(3) of CST Act, penultimate sale is also deemed to be in course of export and is exempt from CST. Dealer Actually exporting the goods has proof of export like customs documents, bank certificate, airway bill/bill of lading, shipping bill etc. However, the penultimate seller does not have any direct evidence to prove that his sale is exempt from tax. In such cases, the Actual exporter has to issue a certificate to the penultimate seller in form h. The blank 'h' forms are to be obtained from sales tax authority by the final exporter.

Sez unit has to submit i form - as per CST rule 12(10), sez [special economic zone] unit will supply i form. In such case, supplies to unit in sez made by dealer outside special economic zone will not be liable to CST.

Notes

Prescribed Forms under CST

Following are the forms prescribed under CST (registration and turnover) rules, 1957.

Form	Description	Frequency
A	Application for registration	Once
B	Certificate of registration	Once
C	Declaration by purchasing registered dealer to obtain goods at concessional rate	To be obtained for every quarter and submitted on quarterly basis
D	Form of certificate for making government purchases (d form cannot be issued in case ofsale made to government on or after 1-4-2007)	No question arises after 1-4-2007.
E-i/e-ii	Certificates for sale in transit	To be obtained for every quarter and submitted on quarterly basis
F	Form by branch/consignment agent for goods received on stock transfer	Monthly, but to be submitted to authorities quarterly
G	Indemnity bond when c form lost	When required
H	Certificate of export	Upto the time of assessment by first assessing authority.
I	Certificate by sez unit	Not specified in rules (but should be submitted before assessment).
J	Certificate to be issued by foreign diplomaticmission or consulate in india or the un agency	Upto the time of assessment by first assessing authority.

Source: http://caamitjain.blogspot.in/2011/03/cst-procedure.html

Caselet

UOI v. Dharamendra Textile Processors 2008 (231) E.L.T. 3 (S.C.)

The Apex Court pronounced that under section 11AC, there is no discretion vested with the authority to impose any penalty different than the one prescribed by the said provision. The Court observed that section 11AC of the Act was introduced in Union Budget of 1996-97. In para 136 of the Union Budget, reference had been made to the said provision stating that the levy of penalty was a mandatory penalty. In the Notes on Clauses also, the similar indication had been given.

The Court noted that if the contention of learned counsel for the assessee was accepted that the use of the expression "assessee shall be liable" proved the existence of discretion, it would lead to a very absurd result. In the same provision, there was an expression used i.e. "liability to pay duty". It could by no stretch of imagination be said that the adjudicating authority had even discretion to levy duty less than what was legally and statutorily leviable.

Note - Relevant portion of section 11AC of the Central Excise Act, 1944 reads as under:

"Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or

Contd....

Notes

suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined.

Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent."

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

12.12 Summary

- The rates of tax on declared goods are lower as compared to the rate of tax on goods in the second category.
- The tax is levied under this act by the Central Government but, it is Collected by that state government from where the goods were sold.
- The tax thus collected is given to the same state government which collected the tax.
- In case of union Territories the tax collected is deposited in the consolidated fund of India.
- The rules regarding submission of returns, payment of tax, appeals etc. are not given in the act.
- For this purpose, the rules followed by a state in respect of its own sales tax law shall be followed for purpose of this act also.
- Even though the central sales tax has been framed by the central government but, the state governments are allowed to frame such rules, subject to such notification and alteration as it deem fit.
- It is the aggregate of the sale prices received and receivable by the dealer in respect of sales of any goods in the course of inter-state trade or commerce made during a prescribed period.
- Prescribed period is the period in which sales tax return is filed.

12.13 Keywords

Ascertained goods: It means goods are segregated out of the whole lot which are intended to be sold.

Custom frontier: The limits of the area of customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Hypothecation: It means a pledge without transferring the possession of goods to the lender. The owner of goods can use his goods in the normal course of his business. But, if the owner fails to repay the loan to the lender then lender can take possession of the hypothecated goods.

Pledge: It means transferring possession of goods to the lender in order to get loan.

Single Place of business: If a dealer has single place of business in the appropriate State and he is registered in that state, he shall apply to the sales tax authority of that state only for obtaining registration under central sales tax Act.

Notes

12.14 Review Questions

1. Write notes on the following under central Sales Tax Act:

   (a) Goods; (b) Place of business (c) Turnover.

2. What is meant by Inter-State sale or purchase? When does a sale or purchase of goods take place in the course of import or export?

3. How will you determine taxable turnover under the C.S.T. Act? Explain.

4. Explain the procedure for registration of dealers under the central Sales-Tax Act.

5. Who levies Central Sales-Tax and who collects its? Explain liability to tax in the course of Inter-State or commerce.

6. Describe the sale or purchase of goods outside a state.

7. What is the liability to Tax on Intra State sales?

8. Describe the collection of Tax Section 9(A).

9. Describes the Central Sales Tax.

10. Explain the registration of Dealers.

Answers: Self Assessment

1.	265	2.	Rates
3.	Broker	4.	Auctioning
5.	Import	6.	Purchase
7.	4	8.	Central
9.	Dealer	10.	Certificate
11.	Registered	12.	Documents
13.	CST	14.	Registration

12.15 Further Readings

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www. taxlawsandviews.com

www.taxmanagementindia.com/visitor/detail_article.asp

Notes

Unit 13: Registration of Dealers

CONTENTS

Objectives

After studying this unit, you will be able to:

- Understand the concept of State, Dealer, Declared Goods
- Know about the principles for determining where sale or purchase of goods takes place
- Understand when sale or purchase in the course of import or export take place
- Determine the taxable turnover
- Elaborate the registration of dealers
- Know how and when central sales tax is imposed

Introduction

Every manufacturer of excisable goods is required to get himself registered before commencing production. Similarly every importer or dealer desiring to issue CENVAT invoices should also get himself registered. There is no fee for registration and a factory or unit is to be registered once only. There is no requirement of renewing the registration. The registration is valid only for the premises it is granted. Thus, the manufacturer or dealer having more than one premises is required to obtain a separate registration for each premises from the respective Range Superintendent having jurisdiction over the premises, whether it be a factory or a depot/branch office desiring to issue Cenvat invoices. If a manufacturer desires to start production of a new product he should get his registration certificate duly endorsed to this effect. The Registration

Notes

Certificate is to be granted within 30 days of the receipt of an application and if the same is not granted within the said period, it shall be deemed to have been granted. The units manufacturing fully exempted goods or 'nil' rated goods unconditionally are not required to get themselves registered.

13.1 Registration of Dealers

The existing registration nos. have been replaced by PAN based 15 digit registration nos. w.e.f. 1st December 2001. The PAN based registration no. is alpha numeric . The first part would be the 10 character (alpha numeric) Permanent Account number issued by Income tax authorities. The second part would comprise of a fixed 2 character alpha code which will be as follows:

	Category	Code
1.	Cental Excise Manufacturers	XM
2.	Registered Dealers	SD

This is required to be followed by three character numeric code - 001, 002, 003 ... etc. as the case may be. In case, a manufacturer has only one factory/dealer's premise/ware house, the last three character will be 001. If there are more than one factories/dealer's premises/ware houses of such a person having common PAN for all such premises, the last three character would be 002, 003 ... etc.

The SSI units exempted from payment of duty on the basis of annual value of clearances have been exempted from the requirement of registration so long as their value of clearances for a financial year does not exceed the exemption limit. Such units are only required to file a declaration to the department and there is no need to maintain the statutory Central Excise Records in respect of their production and clearances. However, the units are required to maintain the running serial numbered invoice book and they should also mention the progressive value of clearances in the said invoices. They are not required to submit any return to the department.

The Central Government has made it possible for manufacturer of excisable goods to avail MODVAT (now CENVAT) credit of duty paid on the inputs purchased from any dealer w.e.f. 04.07.94. The dealer intending to issue moveable (now Cenvatable) invoices should get themselves registered with the jurisdictional Range Superintendent by following the procedure prescribed in Rule 9 of Central Excise (No.2) Rules, 2001. A Separate registration should be obtained for every godown/store-room of the dealer. The dealers who get themselves registered with Central Excise will ensure that the prescribed register is maintained in the godown/store-room. The Dealer is required make proper entry of each consignment received/issued by them in the prescribed register.

The Dealer shall issue the invoices made out in quadruplicate. The copies of the invoices issued by a first stage dealer and a second stage dealer shall be marked at the top as "FIRST STAGE DEALER" and "SECOND STAGE DEALER" respectively. The invoice issued by a first stage or second stage dealer in the case of imported goods and by a second stage dealer in the case of other goods, shall be duly authenticated by the proper officer.

The Dealer shall issue only one invoice in respect of the consignment if all the packages comprising the said consignment are dispatched in one lot at any one time. If a consignment is split up into two or more lots and each such consignment is dispatched separately either on the same day or on different days, a separate invoice shall be made out in respect of each lot. Separate invoices shall be issued in case where the consignment is loaded on more than one vehicle.

Notes

The Dealers are required to submit to the Range Superintendent, a monthly return and other documents for verification.

Notes The SSI units exempted from payment of duty on the basis of annual value of clearances have been exempted from the requirement of registration so long as their value of clearances for a financial year does not exceed the exemption limit.

13.2 Classification and Value

Under the Self Assessment Procedure prescribed in the Rule 6 of the Central Excise (No.2) Rules, 2001, the assessees are required to apply correct classification and value (where duty is ad valorem) to his goods being removed by him and indicate the same in the invoice except in case of goods specified for assessment by the proper officer before removal such as Cigarettes. The assessees are required to assess his return for a month and submit to the Range Officer having jurisdiction over his factory within ten days of the succeeding month (see details in Central Excise Rules and Central Excise Manual).

Task Discuss the registration of Dealers.

13.3 Procedure of Assessment

This section will explain the procedure and types of assessment, when and how an assessee has to file his return of income and what are the last dates of filing of return of income, if assessee does not file the return of income then what are the consequences and can a return be filed after the due dates and so on.

At the end of financial year i.e., the previous year an assessee is required to compute the exact amount of income and tax. The income so computed and tax on it has to be filled in a form (generally form No. 2D "SARAL"), and tax is deposited in bank, a copy of the income tax form and the proof of the income tax deposited in the bank is prepared in duplicate. A copy is submitted with income tax office and the assessee himself retains the other copy.

Caution After the end of financial year i.e., the previous year (the year in which an assessee earns income), an assessee is required to compute his exact amount of income and tax thereon

Self Assessment

Fill in the blanks:

1. The existing registration nos. have been replaced by ..... based 15 digit registration number.
2. The ..... units exempted from payment of duty on the basis of annual value of clearances have been exempted from the requirement of registration.
3. The Central Government has made it possible for manufacturer of excisable goods to avail .....

Notes

4. The ..... shall issue the invoices made out in quadruplicate.
5. A return filed by an assessee indicating the amount of loss incurred is called ..... return.
6. ..... return is the return filed by the assessee after the due date.
7. ..... is a new return filed by income tax assesses which corrects the information filed earlier in the regular return is called Revised return.
8. ..... tax department issues Permanent Account Number called PAN to all those persons who apply for it.

Who is Required to Submit the Income Tax Return

At present for the Assessment Year 2006-07, Return of income is required to be filed by the following persons:

	Person	If Gross total income Exceeds
1.	Senior Citizen i.e., person age 65 years or more	₹ 1,85,000 p.a.
2.	Woman	₹ 1,35,000 p.a.
3.	Any other person not covered above i.e., Man below 65 years of age	₹ 1,00,000 p.a.

Last Date of Filing Income Tax Return

The last date to submit the income tax return is 31st October of the Assessment Year for assessee whose accounts are required to be audited under any law and for the partner of a such a firm whose accounts are to be audited, thus it includes a company assessee, a society, a cooperative society, a businessmen having turnover more than 40 lakh and professional having gross receipt of more than ₹ 10 lakh.

The last date in all other cases is 31st July of the Assessment Year, that is in all those cases where no audit of accounts is required such as individuals, a businessmen having turnover not exceeding 40 lakh and professional having gross receipt not exceeding ₹ 10 lakh.

What if the Assessee does not File his Return of Income

If Assessee does not file his return of income even after the due date then the Assessing Officer (AO) can issue a notice to the assessee asking for filing his return of income. This notice is issued under section 142(1) of the income tax Act. If the Assessee does not comply with this notice also then the AO can complete the assessment i.e., compute his income and the tax liability under section 144 called "Best Judgment Assessment".

Did u know? The income tax department has decided to set up special 'tax kiosks is residential area to facilitate tax payment.

13.4 Types of Income Tax Return

In income tax Act there are various types of income tax returns such as Regular Return, Loss Return, Belated Return, Revised Return, and Defective Return.

Notes

Regular Return

Regular return is the income tax return filed by assessee on or before the due date it is covered u/s 139(1) of the income tax Act. Thus, if an assessee submits his return of income before due date of filing of return of income, then the return of income is called Regular return.

Loss Return

It is covered u/s 139(3) of the income Tax Act. Thus, if an assessee submits his return of income in which assessee declares the loss incurred by him during the previous year, and then the return of income is called Loss return. It important to note here, that if the loss return is submitted before the before due date of filing of return of income, then only the loss can be carried forward. Remember you have studied in the lesson 10 that the losses can be carried forward up to 8 years if the return of income is filed before due date. The reference there was to the Loss Return u/s 139(3). If loss return is not filed on or before due date then the losses incurred cannot be carried forward for set-off in coming year.

Belated Return

Belated return is the return filed by the assessee after the due date; it is covered u/s 139(4) of the income tax Act. Thus, if an assessee submits his return of income after the due date of filing of return of income, then the return of income is called Belated return.

Revised Return

Revised return is a new return filed by income tax assesses which corrects the information filed earlier in the regular return is called Revised return. It is covered u/s 139(5). A return can be revised any number of times by an assessee. A belated return however, cannot be revised.

Time period for revising a return and for filing a belated return is the earlier of the following two dates:

1. End of one year from the end of relevant Assessment year
2. Date of Completion of Assessment.

Permanent Account Number (PAN) Sec 139A

Income tax department issues Permanent Account Number called PAN to all those persons who apply for it. The application is made in from no. 49A along with a prescribed fee and documents. Computer allots the PAN randomly.

Therefore, it is unique for every person. PAN is a 10 digit alphanumeric code the first 5 digits are the alphabets, next 4 digits are the numbers and the last one digit is also an alphabet, e.g., ADMPM7588C is an example of PAN. It is mandatory to mention the PAN on income tax return. Wrong quoting of PAN is an offence, which is punishable with a fine of ₹ 10,000.

PAN is actually used by income tax department as our account number on which all the details relating to persons income are stored. It helps income tax department in keeping track of incomes of a person.

Caution Income tax department issues Permanent Account Number called PAN to all those persons who apply for it. The application is made in from no. 49A along with a prescribed fee and documents.

Notes

13.5 Types of Assessment

Assessment means checking, judging or in simple words computing the income and tax on it. In the Income Tax Act there are four types of Assessment:

1. Self assessment u/s 140A.
2. Scrutiny assessment u/s 143(3).
3. Best judgment assessment u/s 144.
4. Income escaping assessment u/s 147.

13.5.1 Self Assessment U/S 140A

As we know after the end of the financial year every person who is required to file income tax return, should file his return of income. Thus, an assessee himself files his return of income, and pay tax as per the return of income filed. This process of self-calculation of income and tax is called self-assessment. Since the tax and income under return of income is calculated by assessee himself therefore, it is called self-assessment. The Assessing Officer (AO) only checks the return of income on the face of it and corrects the mistake, if any on it. If there is any short of tax he call for it and if there is any excess of tax paid he shall refund the same.

13.5.2 Scrutiny Assessment U/S 143(3)

On the basis of return of income filed, AO may undertake deep examination of some return of income roughly 2% to 3% of the total returns filed. In scrutiny assessment the AO calls the assessee to furnish the explanations and books of accounts. For undertaking the scrutiny assessment the AO has to issue a notice to the assessee under section 143(2). If Assessee produces the information and explanations required by the Assessing Officer (AO) the AO completes the assessment and determine the Taxable income and income tax liability on the basis of the information and explanations produced before him.

13.5.3 Best Judgement Assessment U/S 144

Best Judgment Assessment, as the name indicates Best Judgment Assessment means the computation of income and tax is undertaken by the AO himself, on the basis of the best of his judgment. The Best judgment Assessment can be made by an AO under the following cases:

1. Assessee does not file his regular return of income u/s 139.

2. Assessee does not comply with instructions u/s 142 (1), i.e., notice requiring to file his return of income or 142 (2A), i.e., notice requiring assessee to conduct audit of his accounts.

3. Assessee does not comply with instructions u/s 143(2), i.e., notice of scrutiny assessment.

4. AO is not satisfied regarding completeness of accounts. Since in all of the above cases either assess does not cooperate with the Assessing Officer (AO) or does not file return of income or does not have complete accounts. Thus, the assessing officer cannot calculate the income and therefore, he has to judge the income on the basis of his best assumptions/judgments. The AO must give a hearing to the assessee before completing the assessment as per best of his judgment. No refund can be granted under best judgment assessment.

Notes

13.5.4 Income Escaping Assessment U/S 147

If AO believes that the income of assessee of any PY has escaped assessment, he can reopen the assessment and complete it as per new information about income or tax. Assessment up to last 6 years can be opened. In order to open an income escaping assessment AO has to issue notice u/s 148 to the assessee.

Self Assessment

State whether True or False:

9. Belated return is the return filed by the assessee after the due date; it is covered u/s 139(4) of the income tax Act.
10. Revised return is a new return filed by income tax assesses which corrects the information filed earlier in the regular return is called Revised return.
11. Income tax department issues Permanent Account Number called PAN to all those persons who apply for it.
12. TAN is actually used by income tax department as our account number on which all the details relating to persons income are stored
13. Assessing Officer (AO) or does not file return of income or does not have complete accounts.
14. Assessee does not comply with instructions u/s 163(2), i.e., notice of scrutiny assessment.

Caselet

CCEx., Panchkula v. Kulcip Medicines (P) Ltd. 2009 (14) S.T.R. 608 (P & H)

The assessee-respondent entered into an agreement with M/s. Cipla for handling and distribution of their products and was entrusted with the job of receiving, storing and distributing Cipla products to their authorised stockists and distributing centres. For the services so rendered, the assessee-respondent was entitled to commission based on agreed percentage of sales figures and also to reimbursement of recurring expenses. Revenue contended that the services provided by the assessee attracted service tax under the category "clearing & forwarding agent's services". On the other hand, the assessee pleaded that service tax could be levied under the said category only when clearing and forwarding agent would have carried out both clearing and forwarding operations.

The Tribunal held that as per the facts of the case, there was no clearing activity being undertaken by the dealer. Therefore, the services rendered by him would not satisfy the requirement of clearing and forwarding agent and consequently, no service tax liability would arise. The High Court, affirming the decision taken by the Tribunal, held that since no clearing activity was directly undertaken by the agent from the manufacturer's (Principal) premises, he was not liable to pay the service tax under the category "clearing and forwarding services". Service tax is leviable under the category "clearing and forwarding" only if an agent renders both clearing and forwarding services.

The High Court further elaborated the question - whether word 'and' used after the word 'clearing' but before the word 'forwarding' in section 65(105)(j) can be considered in a conjunctive (combined) sense or disjunctive (separating) sense. It elucidated that if one

Contd....

Notes

person who has rendered service only as 'forwarding agent' without rendering any service as 'clearing agent' would be deemed to have rendered both services, it would amount to replacing the conjunctive 'and' by a disjunctive which is not possible. Besides, the learned counsel for the Revenue failed to bring on record any material to show the word 'and' should be construed as disjunctive. Further, Revenue had also not shown any 'trade practice' which might lead to a necessary inference that service of one kind rendered was invariably considered to comprise both. Therefore the word 'and' should be understood in a conjunctive sense.

Note: Students may note that in the above case, the High Court has overruled the decision in case of Medpro Pharma Pvt. Ltd. v. Commissioner 2006 (3) S.T.R. 355 (Tribunal-LB) [reported in Select Cases-2006]. In Medpro Pharma, the large bench of the Tribunal had held that the "clearing and forwarding operations" cannot be dissected into "clearing" and "forwarding". Both fall in the common category and any service provided in that category will attract service tax. Even if one segment of activities is not performed, the appellants can be said to be engaged in the taxable service.

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

13.6 Summary

- Every person having income more than ₹ 1,00,000/ ₹ 1,35,000/ ₹ 1,85,000 during the previous year must file his return of income and pay tax on the income earned.
- This voluntary discloser of income and payment of tax is called self-assessment and it is covered u/s 140A.
- The last date of filing of income tax return is 31st July or 31st October.
- The return filed after these dates is called belated return and if the return is belated then the losses declared therein cannot be carried forward.
- A return of income can be revised in order to correct any information disclosed therein earlier.
- On filing of income tax return the AO may either briefly examine the return of income on the face of it or may undertake deep examination.
- If the return is not filed or assessee does not cooperate with the AO the best judgment assessment may also be invoked by the AO.

13.7 Keywords

Assessment: Assessment means appraisal, evaluation, estimation, measurement, judgment etc. In the context income tax law it means then evaluation, estimation, or measurement of income.

Assessing Officer: AO are those officers in the income tax office who are given the power to assess the income of the assessee.

Best Judgment Assessment: Best Judgment Assessment, as the name indicates Best Judgment Assessment means the computation of income and tax is undertaken by the AO himself, on the basis of the best of his judgment.

Procedure: Procedure means a way, modus operandi, process, a method or a course of action for completing a particular task.

Scrutiny: Scrutiny means detailed examination, analysis or inquiry into the income of a person in order to detect any income concealed by the assessee.

Notes

Regular Return: Regular return is the income tax return filed by assessee on or before the due date it is covered u/s 139(1) of the income tax Act.

Self Assessment: As we know after the end of the financial year every person who is required to file income tax return, should file his return of income.

13.8 Review Questions

1. When a Best Judgment Assessment can be made by AO.?
2. Can the return of income be revised? If yes then what is maximum time for revising the return of income?
3. Can the previous cases of the income tax be reopened? If yes, what is the maximum number of years for which income tax cases may be reopened?
4. Write short notes on:
   (a) Scrutiny Assessment
   (b) PAN
   (c) Regular Assessment
   (d) Belated Return.
5. Discuss the types of Income Tax Return.
6. Describe the Procedure of Assessment.
7. Explain the types of Assessment.
8. Who is required to submit the Income Tax Return?

Answers: Self Assessment

1.	PAN	2.	SSI
3.	MODVAT	4.	Dealer
5.	Loss	6.	Belated
7.	Revised	8.	Income
9.	True	10.	True
11.	True	12.	False
13.	True	14.	False

13.9 Further Readings


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www.freelancer.com/jobs/Project-Management/

Notes

Unit 14: Value Added Tax

CONTENTS

Objectives

After studying this unit, you will be able to:

- Explain why and how is VAT replacing sales tax
- Understand meaning, importance, advantages, disadvantages, methods of collection and charging VAT

Introduction

Value Added Tax (VAT) is a general consumption tax assessed on the value added to goods and services.

It is a general tax that applies, in principle, to all commercial activities involving the production and distribution of goods and the provision of services. It is a consumption tax because it is borne ultimately by the final consumer.

It is not a charge on companies. It is charged as a percentage of price, which means that the actual tax burden is visible at each stage in the production and distribution chain.

Notes

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

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

Over 130 countries worldwide have introduced VAT over the past three decades and India is amongst the last few to introduce it.

India already has a system of sales tax collection wherein the tax is collected at one point (first/ last) from the transactions involving the sale of goods. VAT would, however, be collected in stages (instalments) from one stage to another.

The mechanism of VAT is such that, for goods that are imported and consumed in a particular state, the first seller pays the first point tax, and the next seller pays tax only on the value-addition done – leading to a total tax burden exactly equal to the last point tax.

14.1 Value Added Tax (VAT)

Value Added Tax (VAT) is a multi point sales tax with set off for tax paid on purchases. It is basically a tax on the value addition on the product. The burden of tax is ultimately born by the consumer of goods. In many aspects it is equivalent to last point sales tax. It can also be called as a multi point sales tax levied as a proportion of Valued Added.

All over the world, VAT is payable on the goods and services as they form a part of national GDP. More than 130 countries worldwide have introduced VAT over the past 3 decades; India being amongst the last few to introduce it.

It means every seller of goods and service providers charges the tax after availing the input tax credit. It is the form of collecting sales tax under which tax is collected in each stage on the value added of the goods. In practice, the dealer charges the tax on the full price of the goods, sold to the consumer and at every end of the tax period reduces the tax collected on sale and tax charged to him by the dealers from whom he purchased the goods and deposits such amount of tax in government treasury.

Notes VAT is a multi-stage tax, levied only on value that is added at each stage in the cycle of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the cycle/chain.

14.1.1 Difference between VAT and CST

Under the CST Act, the tax is collected at one stage of purchase or sale of goods. Therefore, the burden of the full tax bond is borne by only one dealer, either the first or the last dealer. However, under the VAT system, the tax burden would be shared by all the dealers from first to last. Then, such tax would be passed upon the final consumers.

Under the CST Act, the tax is levied at a single point. Under the VAT system, the retailers are not subject to tax except for the retail tax.

Notes

Under the CST Act, general and specific exemptions are granted on certain goods while VAT does not permit such exemptions. Under the CST law, concessional rates are provided on certain taxes. The VAT regime does away with such concessions as it would provide the full credit on the tax that has been paid earlier.

Under VAT law, first, the dealer pays tax on the sale or purchase of goods. The subsequent dealer pays tax on the portion of the value added upon such goods. Thus, the tax burden is shared equally by the last dealer. To illustrate the whole procedure of VAT, we give you an example as follows:

At the first point of sale, the value of goods is ₹100. The tax on this is 12.5%. Therefore, the net VAT would be 12.5%. At the second change of sale, the sale value is ₹120 and the tax thereon is 15%. The tax that is to be paid at every point is 15%. The input tax is 15%. You will get a credit for first change in sale of 2.5%, i.e. 15%–12.5%. Therefore, 2.5% will be the net rate. At the third change of sale, the sale value is ₹150 and the tax on this is 18.75%. At the last stage, the tax paid is 18.75%. The Input Tax is 18.75%. You get a credit for second change in sale, i.e., 18.75% – 15% = 3.75%. Therefore, 3.75% would be the net VAT. This means that VAT is paid in the last point tax under the sale tax regime.

14.1.2 Features of Value Added Tax

Value Added Tax (VAT) is a multistage sales tax with credit for taxes paid on business purchases. As the economy grew, business complexities led to the taxation structure towards its own peril. This warranted a revision of the existing taxation. For achieving this, the government introduced a single rate of excise (CENVAT) as a major step and bought in a fundamental rationalization in the tax structure and levy.

25 states/ UTs had introduced VAT to replace the sales tax by December 31, 2005. Andaman and Nicobar Islands and Lakshadweep do not have a sales tax. All the five BJP ruled states Chhattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, and Gujarat have introduced VAT to replace the sales tax in April 1, 2006. Tamil Nadu adopted VAT in the year 2007 Jan 1. Uttar Pradesh and union territory Puducherry have not yet accepted the VAT. Haryana was the first state to introduce VAT in 2003.

VAT has the follwing features:

(i) VAT is imposed on goods and services at import stage, manufacturing, wholesale and retails levels;

(ii) A uniform VAT rate of 15 percent is applicable for both goods and services;

(iii) 15 percent VAT is applicable for all business or industrial units with an annual turnover of Taka 2 million and above;

(iv) Turnover tax at the rate of 4 percent is leviable where annual turnover is less than Taka 2 million;

(v) VAT is applicable to all domestic products and services with some exemptions;

(vi) VAT is payable at the time of supply of goods and services;

(vii) Tax paid on inputs is creditable/adjustable against output tax;

(viii) Export is exempt;

(ix) Cottage industries (defined as a unit with an annual turnover of less than Taka 2 million and with a capital machinery valued up to Taka 3,00,000) are exempt from VAT;

(x) Tax returns are to be submitted on monthly or quarterly or half yearly basis as notified by the Government.

Notes

(xi) Supplementary Duty (SD) is imposed at local and import stage under the VAT Act, 1991.

Existing statutory SD rates are as follows:

(a) On goods: 20%, 35%, 65%, 100%, 250% & 350%

(b) On services: 10%, 15% & 35%.

Some more features of VAT are:

1. Uniform schedule rates of VAT for all states. This would make the tax system simple and uniform and prevent unhealthy tax competition among states.
2. The provisions of input tax credit would help in prevent cascading effect tax.
3. The provisions of self assessment by dealers would reduce harassment small traders with turn over upto ₹ 5 lakh would be exempt from the provisions of VAT.
4. The zero–rating of exports would increase the competitiveness of Indian exports.

Self Assessment

Fill in the blanks:

1. Value Added Tax (VAT) is a multi point ..... with set off for tax paid on purchases.
2. The aim is to avoid ..... which can have a snowballing effect on the prices.
3. Under the VAT system, the retailers are not subject to tax except for the ..... tax.
4. Value Added Tax is a multistage sales tax with ..... for taxes paid on business purchases.
5. The ..... regime does away with such concessions as it would provide the full credit on the tax that has been paid earlier.

14.3 Computation of VAT

VAT can be computed by adopting three alternative methods. They are:

1. ***Addition method:*** Calculation of value added can be done by summation of all the elements of value added (i.e. profits, rent, and wages).
2. ***Subtraction method:*** This method estimates value added by taking the difference between the value of outputs and inputs.
3. ***Tax-credit method:*** Under this method the tax on inputs is deducted from the tax on sales to arrive at the VAT payable by the dealer. In practice, most countries use this method.


Task

Describe the ways for computation of VAT.

The VAT Computation reports provide the **Assessable Value** and the **Tax Amount** of the purchase and sales transactions entered using different **VAT/ Tax classifications**. The adjustment entries recorded using the VAT Adjustments are also captured in the VAT Computation.

To view the **VAT Computation** report,

Go to **Gateway of Tally > Display > Statutory Reports > VAT > VAT Computation**

Notes

The **VAT Computation** report is displayed as shown.

VAT Computation — ABC Company — Ctrl + M

Particulars	ABC Company 1-Apr-2011 to 30-Jun-2011 Assessable Value	Tax Amount
Sales		
A. Output Tax		
CST @ 1%	48,000.00	480.00
CST @ 13.5%	7,200.00	972.00
CST @ 14%	9,600.00	1,344.00
CST @ 15%	2,800.00	420.00
CST @ 2% Against Form C	41,200.00	824.00
CST @ 20%	3,800.00	760.00
CST @ 4%	23,000.00	920.00
CST @ 5%	14,000.00	700.00
Inter-State Sales	32,400.00	
Inter- State Sales - Exempted	15,000.00	
Output VAT @ 1%	1,28,000.00	1,280.00
Output VAT @ 13.5%	18,000.00	2,430.00
Output VAT @ 14%	1,65,745.32	20,204.34
Output VAT @ 15%	20,160.00	2,700.00
Output VAT @ 2%	32,800.00	656.00
Output VAT @ 20%	18,240.00	3,648.00
Output VAT @ 4%	46,000.00	1,840.00
Output VAT @ 5%	4,10,369.68	19,268.48
Works Contract		
Output VAT - Works Contract @ 14%	27,500.00	3,080.00
Output VAT - Works Contract @ 5%	15,000.00	675.00
Total Output Tax	10,78,815.00	62,201.82
B. Purchase Tax		
		27 more ...
VAT Payable		2,500.00

VAT Computation — ABC Company — Ctrl + M

Particulars	ABC Company 1-Apr-2011 to 30-Jun-2011 Assessable Value	Tax Amount
... 24 more		
B. Purchase Tax		
Purchase Tax @ 1%	26,000.00	260.00
Purchase Tax @ 13.5%	12,000.00	1,620.00
Purchase Tax @ 14%	20,500.00	2,870.00
Purchase Tax @ 2%	9,000.00	180.00
Purchase Tax @ 5%	21,000.00	1,050.00
Total Output Tax	88,500.00	5,980.00
Purchases		
C. Input Tax		
Excess Input Credit Brought Forward		2,000.00
Input Tax Credit on Purchase From URDs @ 1%	26,000.00	260.00
Input Tax Credit on Purchase From URDs @ 5%	42,000.00	2,100.00
Input VAT @ 1%	2,27,500.00	1,950.00
Input VAT @ 13.5%	15,000.00	2,025.00
Input VAT @ 14%	1,25,949.64	17,632.95
Input VAT @ 15%	12,400.00	1,860.00
Input VAT @ 2%	30,600.00	612.00
Input VAT @ 20%	14,000.00	2,800.00
Input VAT @ 4%	63,000.00	2,520.00
Input VAT @ 5%	5,82,582.36	15,721.87
Purchase From URDs - Taxable Goods @ 1%	26,000.00	
Purchase From URDs - Taxable Goods @ 13.5%	12,000.00	
Purchase From URDs - Taxable Goods @ 14%	20,500.00	
Purchase From URDs - Taxable Goods @ 2%	9,000.00	
Purchase From URDs - Taxable Goods @ 5%	21,000.00	
Purchases - Capital Goods @ 14%	80,000.00	11,200.00
Purchases - Capital Goods @ 5%	1,00,000.00	5,000.00
Total Input Credit	14,07,532.00	65,681.82
VAT Payable		2,500.00

The VAT computation report shown above precisely indicates the value of ITC to be availed against Output VAT payable.

Assessable Value

The Assessable Value is the sum of the total value of goods at which they are purchased and sold. This assessable value forms the value on which VAT is calculated.

Notes

Tax Amount

The total Tax Amount calculated on Assessable value using the respective Tax percentage is the Tax Amount.

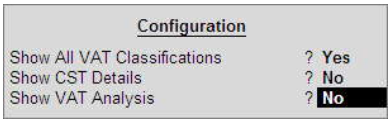
Notes You can drill down the **VAT Computation** screen to view the **VAT Classification vouchers**.

F1: Detailed: To view the VAT Computation Report in detail, click the button **F1: Detailed** or press **Alt + F1**.

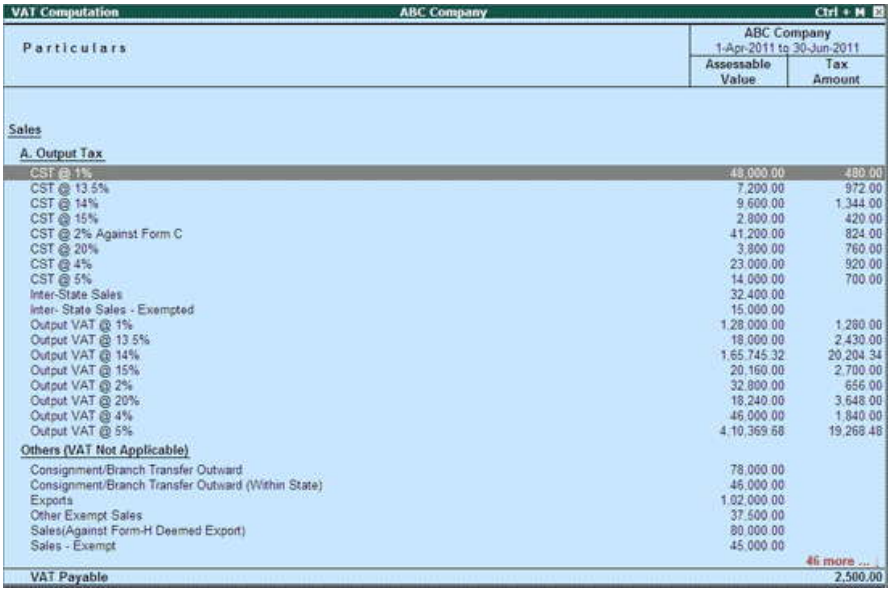
VAT Computation – VAT and CST Details

You can configure the VAT Computation screen to display all the VAT Classifications by setting the options as given below in the **F12: Configuration**.

Set Show All VAT Classifications to Yes



The VAT Computation screen displays as shown:



Notes

VAT Computation — ABC Company — Ctrl + M

Particulars		ABC Company 1-Apr-2011 to 30-Jun-2011 Assessable Value	Tax Amount
... 25 more			
Sales - Exempt		45,000.00	
Sales in the Course of Import Into India		55,600.00	
Sales - Others		54,000.00	
Works Contract			
Output VAT - Works Contract @ 14%		27,500.00	3,080.00
Output VAT - Works Contract @ 5%		15,000.00	675.00
	Total Output Tax	15,76,915.00	62,201.82
B. Purchase Tax			
Purchase Tax @ 1%		26,000.00	260.00
Purchase Tax @ 13.5%		12,000.00	1,620.00
Purchase Tax @ 14%		20,500.00	2,870.00
Purchase Tax @ 2%		9,000.00	180.00
Purchase Tax @ 5%		21,000.00	1,050.00
	Total Output Tax	88,500.00	5,980.00
Purchases			
C. Input Tax			
Excess Input Credit Brought Forward			2,000.00
Input Tax Credit on Purchase From URDs @ 1%		26,000.00	260.00
Input Tax Credit on Purchase From URDs @ 5%		42,000.00	2,100.00
Input VAT @ 1%		2,27,500.00	1,950.00
Input VAT @ 13.5%		15,000.00	2,025.00
Input VAT @ 14%		1,25,949.64	17,632.95
Input VAT @ 15%		12,400.00	1,860.00
			24 more ...
VAT Payable			2,500.00

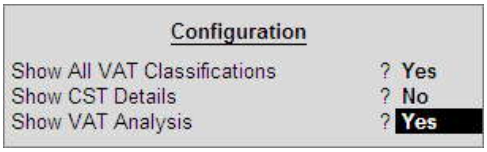
VAT Computation — ABC Company — Ctrl + M

Particulars		ABC Company 1-Apr-2011 to 30-Jun-2011 Assessable Value	Tax Amount
... 46 more			
Input VAT @ 13.5%		15,000.00	2,025.00
Input VAT @ 14%		1,25,949.64	17,632.95
Input VAT @ 15%		12,400.00	1,860.00
Input VAT @ 2%		30,600.00	612.00
Input VAT @ 20%		14,000.00	2,800.00
Input VAT @ 4%		63,000.00	2,520.00
Input VAT @ 5%		5,82,582.36	15,721.87
Purchase From URDs - Taxable Goods @ 1%		26,000.00	
Purchase From URDs - Taxable Goods @ 13.5%		12,000.00	
Purchase From URDs - Taxable Goods @ 14%		20,500.00	
Purchase From URDs - Taxable Goods @ 2%		9,000.00	
Purchase From URDs - Taxable Goods @ 5%		21,000.00	
Purchases - Capital Goods @ 14%		80,000.00	11,200.00
Purchases - Capital Goods @ 5%		1,00,000.00	5,000.00
Others (VAT Not Applicable)			
Consignment/Branch Transfer Inward		1,07,001.20	
Imports		1,51,200.00	
Inter-State Purchases		47,000.00	
Interstate Purchases @ 1%		65,650.00	
Interstate Purchases @ 14%		93,480.00	
Interstate Purchases @ 15%		5,750.00	
Interstate Purchases @ 2% Against Form C		76,500.00	
Interstate Purchases @ 20%		12,600.00	
Interstate Purchases @ 5%		1,10,250.00	
Purchases - Exempt		50,000.00	
Purchases From Composition Dealers		20,500.00	
	Total Input Credit	21,47,463.20	65,681.82
VAT Payable			2,500.00

The option - **Show CST Details** will display the breakup of interstate transactions with CST values recorded by specifying the CST rate in ledger master without selecting the multi-CST classifications.

Notes

The option - **Show VAT Analysis** will display the VAT refundable and other liabilities accounted for the current period is captured here.



The VAT Analysis displays as shown:

VAT Classification Vouchers Report

The details of transactions recorded using a particular VAT/Tax class will be displayed here. Select a VAT/tax classification in VAT Computation screen and press Enter key to view the VAT Classification Vouchers report.

VAT Classifications Vouchers Report without MRP Column

While invoicing if the **MRP/Marginal** field is **not enabled**, the VAT Classification Vouchers report displays without the MRP column as shown:

VAT Classification Vouchers — ABC Company — Ctrl + M

VAT Classification: Input VAT @ 5% — 1-Apr-2011 to 30-Jun-2011

Voucher Date	Particulars	VAT TIN	Voucher Type	Voucher Number	Supplier Inv/ Ref. No.	Assessable Value	VAT Amount
4-4-2011	Arijit Traders	29040098930	Purchase	2	P002	3,01,050.36	15,052.52
12-4-2011	Arijit Traders	29040098930	Debit Note	1	DN/001	(-)22,968.00	(-)1,148.40
27-4-2011	Arijit Traders	29040098930	Purchase	5	P005	2,00,000.00	10,000.00
15-6-2011	Jyothi Traders	29014574584	Purchase	15	P015	84,000.00	4,200.00
20-6-2011	Jyothi Traders	29014574584	Purchase	17	P017	20,500.00	1,025.00
22-6-2011	Reverse Credit on Others		Journal	1			(-)2,100.00
23-6-2011	Non - Deductible Input Tax - Special Rebating		Journal	2			(-)1,050.00
24-6-2011	Non - Deductible Input Tax - Section 11		Journal	3			(-)1,125.00
25-6-2011	Non - Deductible Input Tax - Purchase Returns		Journal	4			(-)1,148.00
27-6-2011	Non - Deductible Input Tax - Pre-Registration Purchases		Journal	5			(-)1,200.00
30-6-2011	Adjustment of Any Excess Credit Towards KST/KTEG/KSTECG		Journal	13			(-)1,400.00
30-6-2011	Adjustment Towards Refund Claim		Journal	16			(-)5,384.25
	Grand Total					5,82,582.36	15,721.87

VAT Classifications Vouchers Report with MRP Column

In case where the **MRP/Marginal** field is **enabled** while invoicing and VAT Classification Vouchers report is generated, the MRP/Marginal value appears in **MRP column** as shown.

Notes

VAT Classification Vouchers — ABC Company — Ctrl + M

VAT Classification : Output VAT @ 15% — 1-Apr-2011 to 30-Jun-2011

Voucher Date	Particulars	VAT TIN	Voucher Type	Voucher Number	Supplier Inv/ Ref. No.	MRP Value	Assessable Value	VAT Amount
11-5-2011	Rajhans Enterprises	29040098930	Tax Invoice	5	NT/004	18,000.00	20,160.00	2,700.00
	Grand Total					18,000.00	20,160.00	2,700.00

The **VAT Analysis** section is introduced in the **VAT Computation** report to provide information on VAT Payable, amount paid and refund amount for the current period along with the details of input tax credit and VAT liability carried forward to the next return period.

Notes To illustrate the VAT Analysis, the entries of purchases and sales are recorded in the month of December in a newly created company. Hence the Input VAT or output VAT of previous months are not carried forward from previous months.

Assume that there are taxable purchase and sales entries as illustrated below:

Purchase Entry: Record a purchase entry by selecting purchase & input VAT ledgers with VAT/ Tax class -**Purchases @ 5%** and **Input VAT @ 5%** respectively. The purchase entry appears as shown:

Accounting Voucher Creation — ABC Company — Ctrl + M

Purchase — No. 1 — 1-Apr-2011 Friday

Supplier Invoice No. : P001 — Date : 1-Apr-2011

Party's A/c Name : Arijit Traders
Current Balance :
Purchase Ledger : Purchases @ 5%
VAT/Tax Class : Purchases @ 5%

Name of Item	Quantity	Rate per	Amount
Computers	6 Nos	21,000.00 Nos	1,26,000.00
Input VAT @ 5%		5 %	6,300.00

Is e-Sugam Applicable ? No

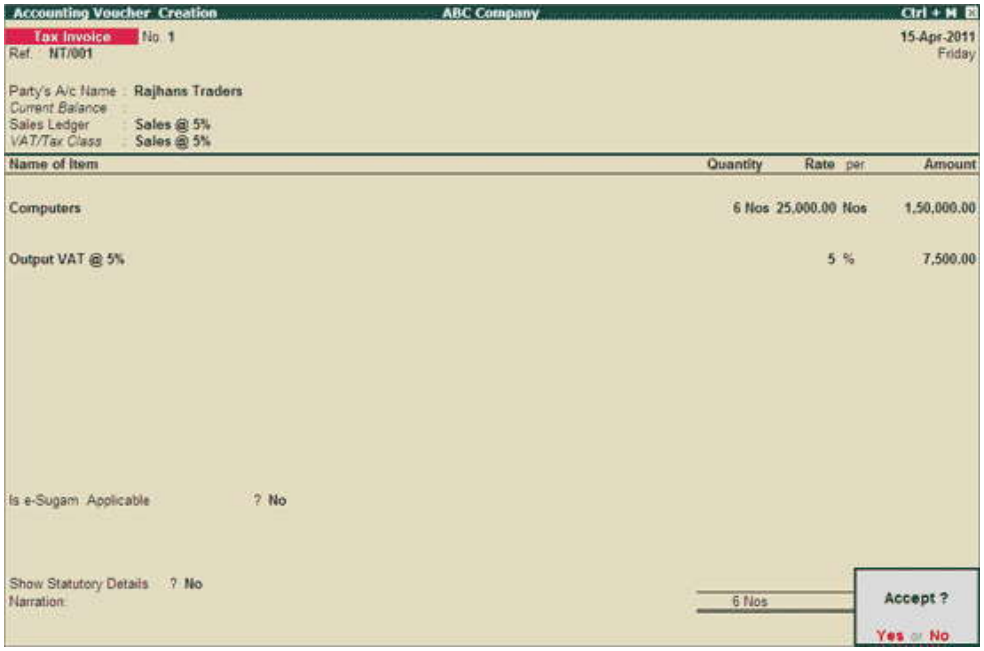
Show Statutory Details ? No
Narration :

6 Nos

Accept ?
Yes or No

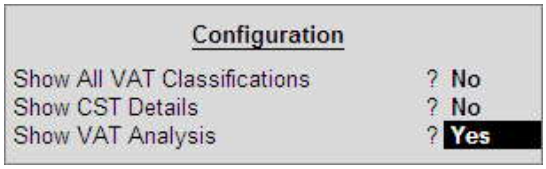
Notes

Sales Entry: Record a sales entry by selecting sales & output VAT ledgers with VAT/Tax class - **Sales @ 5%** and **Output VAT @ 5%** respectively. The sales entry appears as shown:

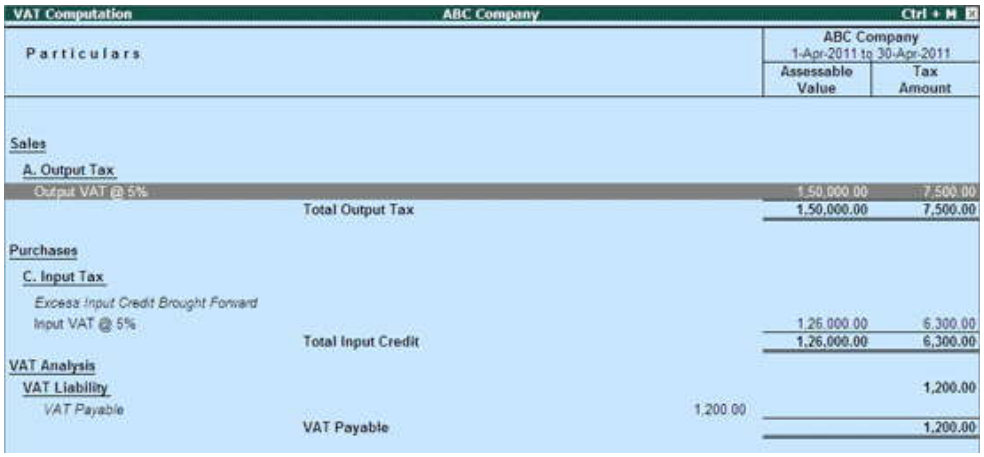


VAT Computation

In the VAT Computation screen click on **F12: Configure** and set **Show VAT Analysis** to **Yes**.



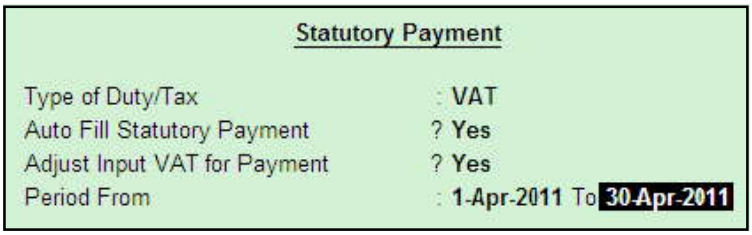
Press **Alt+F1** to view the report in **Detailed** mode. The VAT Computation with VAT Analysis displays as shown:



Notes

VAT Analysis – Payable and Paid Amount on Full Payment of VAT Dues

For the above purchase and sales entries, record a payment entry for full payment of VAT dues using the **Auto-fill** option. In the single entry mode of Payment voucher, select the bank ledger in **Accounts** field and press **S**: **Stat Payment** button (Alt+S). Set the options as shown in **Statutory Details** screen.



Self Assessment

Fill in the blanks:

6. ..... is imposed on goods and services at import stage, manufacturing, wholesale and retails levels.
7. A uniform VAT rate of ..... percent is applicable for both goods and services.
8. VAT is applicable to all ..... products and services with some exemptions.
9. VAT is payable at the time of supply of ..... and services.
10. ..... returns are to be submitted on monthly or quarterly or half yearly basis as notified by the Government.
11. ..... is imposed at local and import stage under the VAT Act, 1991.

14.4 VAT Rates

Broadly following VAT rates were being proposed:

- 0% on natural and unprocessed produces in unorganized sector goods of social importance like states, pencil education book etc.
- 1% floor rate for gold, silver, precious and semi-precious store.
- 4% for goods of basic necessities industrial and agricultural inputs like beedi leaves, fibers, seeds, declared goods (Iron and steel, hide and skin, etc.) Medicine and drugs; textiles and sugar, capital goods.
- 12.5% RNR (Revenue Neutral Rate) on other goods.
- Aviation turbine fuel and petroleum products will be out of VAT regime. Liquor and cigarettes will also be taxed at higher rate.

Did u know? India, particularly being a trading community, has always believed in accepting and adopting loopholes in any system administered by State or Centre.

Notes

14.4.1 Importance of VAT

India, particularly being a trading community, has always believed in accepting and adopting loopholes in any system administered by State or Centre. If a well-administered system comes in, it will not only close options for traders and businessmen to evade paying their taxes, but also make sure that they'll be compelled to keep proper records of sales and purchases.

Under the VAT system, no exemptions are given and a tax will be levied at every stage of manufacture of a product. At every stage of value-addition, the tax that is levied on the inputs can be claimed back from tax authorities.

At a macro level, two issues make the introduction of VAT critical for India. Industry watchers believe that the VAT system, if enforced properly, will form part of the fiscal consolidation strategy for the country. It could, in fact, help address issues like fiscal deficit problem. Also the revenues estimated to be collected can actually mean lowering of fiscal deficit burden for the government. International Monetary Fund (IMF), in the semi-annual World Economic Outlook expressed its concern for India's large fiscal deficit – at 10 percent of GDP. Moreover any globally accepted tax administrative system would only help India integrate better in the World Trade Organization regime.

14.4.2 Advantages and Disadvantages of VAT

The advantages of VAT include the following:

1. ***Coverage:*** If the tax is considered on a retail level, it offers all the economic advantages of a tax of the entire retail price within its scope. The direct payment of tax spreads out over a large number of firms instead of being concentrated only on particular groups, such as wholesalers & retailers.
2. ***Revenue Security:*** Under VAT only buyers at the final stage have an interest in undervaluing their purchases, as the deduction system ensures that buyers at earlier stages are refunded the taxes on their purchases. Therefore, tax losses due to undervaluation will be limited to the value added at the last stage.

   Secondly, under VAT, if the payment of tax is avoided at one stage nothing will be lost if it is picked up at later stage. Even if it is not picked up later, the government will at least have collected the VAT paid at previous stages. Where as if evasion takes place at the final/last stage the state will lose only tax on the value added at that particular point.
3. ***Selectivity:*** VAT is selectively applied to specific goods & business entities. In addition, VAT does not burden capital goods because of the consumption-type. VAT gives full credit for tax included on purchases of capital goods.
4. ***Co-ordination of VAT with direct taxation:*** Most taxpayers cheat on sales not to evade VAT but to evade their personal and corporate income taxes. Operation of VAT resembles that of the income tax and an effective VAT greatly helps in income tax administration and revenue collection.

Disadvantages of VAT are as under:

1. VAT is regressive
2. VAT is difficult to operate from position of both administration and business
3. VAT is inflationary
4. VAT favors capital intensive firms

Notes

14.4.3 Items Covered under VAT

All business transactions that are carried on within a State by individuals/partnerships/companies etc. will be covered under VAT.

More than 550 items are covered under the new Indian VAT regime out of which 46 natural and unprocessed local products will be exempt from VAT.

Nearly 270 items including drugs and medicines, all industrial and agricultural inputs, capital goods as well as declared goods would attract 4 % VAT in India.

The remaining items would attract 12.5 % VAT. Precious metals such as gold and bullion will be taxed at 1%.

Petrol and diesel are kept out of the VAT regime in India.

14.4.4 Salient Features of VAT

The salient features of VAT are as under:

1. Rate of Tax VAT proposes to impose two types of rate of tax mainly:
   (a) 4% on declared goods or the goods commonly used.
   (b) 10-12% on goods called Revenue Neutral Rates (RNR). There would be no fall in such remaining goods.
   (c) Two special rates will be imposed – 1% on silver or gold and 20% on liquor. Tax on petrol, diesel or aviation turbine fuel are proposed to be kept out from the VAT system as they would be continued to be taxed, as presently applicable by the CST Act.
2. Uniform Rates in the VAT system, certain commodities are exempted from tax. The taxable commodities are listed in the respective schedule with the rates. VAT proposes to keep these rates uniform in all the states so the goods sold or purchased across the country would suffer the same tax rate. Discretion has been given to the states when it comes to finalizing the RNR along with the restrictions. This rate must not be less than 10%. This will ensure by doing this that there will be level playing fields to avoid the trade diversion in connection with the different states, particularly in neighbouring states.
3. No concession to new industries Tax Concessions to new industries is done away with in the new VAT system. This was done as it creates discrepancy in investment decision. Under the new VAT system, the tax would be fair and equitable to all.
4. Adjustment of the tax paid on the goods purchased from the tax payable on the goods of sale All the tax, paid on the goods purchased within the state, would be adjusted against the tax, payable on the sale, whether within the state or in the course of interstate. In case of export, the tax, paid on purchase outside India, would be refunded. In case of the branch transfer or consignment of sale outside the state, no refund would be provided.
5. Collection of tax by seller/dealer at each stage. The seller/dealer would collect the tax on the full price of the goods sold and shows separately in the sell invoice issued by him.
6. VAT is not cascading or additive though the tax on the goods sold is collected at each stage, it is not cascading or additive because the net effect would be as follows – the tax, previously paid on the sale of goods, would be fully adjusted. It will be like levying tax on goods, sold in the last state or at retail stage.

Notes

14.4.5 Methods of Collecting and Charging the VAT

Generally, there are two methods that are followed while charging and collecting the VAT:

1. ***Invoice or tax credit method:*** The tax is collected and charged separately on the basis of the tax that is paid on the purchase and the tax that is payable on the sale, shown separately in the invoice. Therefore, the difference between the tax paid on purchase and the tax payable on sale as per the invoice is the VAT.
2. ***Subtraction method:*** Under this method, the tax is collected and charged on the aggregate value of the tax payable on sale and purchase by applying the rate of tax, applicable to the goods. Therefore, the difference between the sale price and purchase price would be VAT. It means VAT is the tax which consumers ultimately face. It is collected at each stage. The tax earlier paid can be allowed as set off or credit. Therefore, it is called as Last Point Tax.

Caution VAT is not cascading or additive though the tax on the goods sold is collected at each stage.

14.4.6 Levies of Tax under the VAT

It is discussed as follows:

1. Sale Tax or Output Tax including Deemed Sale within the state. It covers all kinds of transfer of goods, under the Sale of Goods Act including deemed sale that is transfer of goods by way of Works Contract delivery of goods on the basis of a hire purchase agreement or installment, etc.
2. Purchase Tax, including Deemed Purchase within the state. The tax paid on purchase of goods in certain circumstances.
3. Composition tax, that is in lieu of tax by way of lump sum tax. This means the amount paid by the dealers like retailers whose turnover is below the specified limit of the taxable turnover that is allowed to pay the amount at his option.

14.4.7 Who is the Dealer?

Dealer means the person, who is engaged in the activities in connection with or consequent to or incidental to trade or commerce. It also means the person, who supplies, distributes, sells or buys any goods against the valuable consideration or otherwise. He can be the merchandise agent, factor, broker, auctioneer or executes Works Contracts, transfer the goods by way of lease, delivers the goods on

Hire-Purchase Agreement or installment or supplies goods or distributes them by way of or as part of the service. He can be a casual dealer or his agent or non-resident dealer or sub-agent. The dealer also means the local branch of any firm company, any association, body of individual, situated outside the state whether incorporated or not.

Agriculturist or educational institutions will not be deemed to be dealers.

Any dealer, registered under the earlier law or whose turnover exceeds the prescribed limits subject to tax; or any merchandise agent like factor, broker, auctioneer, etc., or non-resident dealer, are also liable to pay CST. Any dealer registered himself under voluntary registration under Section 25 or any successors to the business to which the predecessors are also liable to tax under section 60.

Notes

Any dealer whose turnover exceeds the specified limit as prescribed by the state is liable to pay tax. The turnover will be considered on the total turnover of sale and purchase. It will be levied in the event of any sale or purchase.

Registration

Registration is the process of obtaining certificate of registration (RC) from the authorities under the VAT Acts. A dealer registered under the VAT Acts is called a registered dealer. Any dealer, who intends to carry on the business of purchase and sale of goods in the State and is liable to pay tax, cannot carry on the business unless he is registered and holds a valid registration certificate under the Act.

Eligibility for Registration

As per the provisions contained in the White Paper, registration of dealers with gross annual turnover above ₹ 5 lakh will be compulsory. There will be provision for voluntary registration. All existing dealers will be automatically registered under the VAT Act. A new dealer will be allowed 30 days time from the date of liability to get registered. An application for registration should be made to the VAT Commissioner.

The White Paper specifies that registration under the VAT Act will not be compulsory for the small dealers with gross annual turnover not exceeding ₹ 5 lakhs. However, the Empowered Committee of State Finance Ministers subsequently allowed the States to increase the threshold limit for the small dealers to ₹ 10 lakhs with the condition that the concerned State would bear the revenue loss, on account of increase in limit beyond ₹ 5 lakhs.

Generally, a dealer means any person, who consequent to, or in connection with, or incidental to, or in the course of his business, buys or sells goods for a consideration or otherwise.

All sales or purchases of goods made within the State except the exempted goods would be subjected to VAT.

Compulsory Registration

If an assessee fails to obtain registration under the VAT Act, he may be registered compulsorily by the Commissioner. The Commissioner may assess the tax due from such

Service Tax & VAT: Person on the basis of evidence available with him. In this event the assessee shall have to forthwith pay such amount of tax. Further, failure to get registered shall result in attracting default penalty and forfeiture of eligibility to set off all input tax credit related to the period prior to the compulsory registration.

Voluntary Registration

A dealer otherwise not eligible for registration may also obtain registration if the Commissioner is satisfied that the business of the applicant requires registration. The Commissioner may also impose any terms or conditions that he thinks fit.

Notes

Cancellation of Registration

The registration can be cancelled on:

(i) Discontinuance of business; or

(ii) Disposal of business; or

(iii) Transfer of business to a new location; or

(iv) Annual turnover of a manufacturer or a trader dealing in designated goods or services falling below the specified amount.

Tax Payer's Identification Number (TIN)

TIN (Tax Payer's Identification Number) is a code to identify a tax payer. It is the registration number of the dealer. The taxpayer's identification number will consist of 11 digit numerals throughout the country. First two characters will represent the State code as used by the Union Ministry of Home Affairs. The set-up of the next nine characters will be, however, different in different States. TIN will facilitate computer applications, such as detecting stop filers and delinquent accounts. TIN will help cross-check information on tax payer compliance, for example, the selective cross-checking of sales and purchases among VAT taxpayers.

VAT Invoice

Invoice is a document listing goods sold with price, tax charged and other details as may be prescribed and issued by a dealer authorized under the Act.

The whole structure of the VAT with input tax credit is founded on the documentation of a tax invoice, a cash memo or a bill. The White Paper mainly provides for the following provisions, which are mandatory, and failure to comply with these attracts penalty:

(i) Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, cash memo or bill with the prescribed particulars.

(ii) The tax invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.

(iii) The dealer shall keep a counterfoil or duplicate of such tax invoice duly signed and dated.

Importance of VAT Invoice (Tax Invoice)

Invoices are crucial documents for administering VAT. In the absence of invoices VAT paid by the dealer earlier cannot be claimed as set off. Invoices should be preserved with full care. In case any original invoice is lost or misplaced, a duplicate authenticated copy must be obtained from the issuing dealer.

A VAT invoice:

(i) helps in determining the input tax credit;

(ii) prevents cascading effect of taxes;

(iii) facilitates multi-point taxation on the value addition;

(iv) promotes assurance of invoices;

Notes

(v) assists in performing audit and investigation activities effectively;

(vi) checks evasion of tax.

Contents of VAT Invoice

VAT legislations of all States provide for the contents of the tax invoice. By and large there would be no need for a separate tax invoice, a regular invoice can also be termed as tax invoice if it has the prescribed contents. Generally, the various legislations provide that the tax invoice should have the following contents:

(i) the words 'tax invoice' in a prominent place;

(ii) name and address of the selling dealer;

(iii) registration number of the selling dealer;

(iv) name and address of the purchasing dealer;

(v) registration number of the purchasing dealer (may not be required under all VAT legislations);

(vi) pre-printed or self-generated serial number;

(vii) date of issue;

(viii) description, quantity and value of goods sold;

(ix) rate and amount of tax charged in respect of taxable goods;

(x) signature of the selling dealer or his regular employee duly authorized by him for such purpose.

Other Invoices

Normally, a VAT dealer is expected to indicate the rate of tax and the amount of tax charged in the invoice issued. However, in case of small dealers or if the sale is to end consumer, other invoices are permitted without the details of tax. Such invoices should contain the following particulars:

(i) name and address of the selling dealer;

(ii) registration number of the selling dealer;

(iii) name and address of the purchasing dealer;

(iv) registration number of the purchasing dealer;

(v) pre-printed or self generated serial number;

(vi) date of issue;

(vii) description, quantity and value of goods sold;

(viii) signature of dealer or his/her representative.

Notes

Format of a Tax Invoice

No prescribed statutory format is given for tax invoice in the White Paper or for that matter in any State VAT Act. Only the contents of the tax invoice have been prescribed. However, a standard format of the same may look like the one given below:

Tax Invoice

Original - Buyer's Copy

Seller's Name ..... Tax Invoice No. .....

Address ..... Date: .....

Challan No. and date

Phone No. ..... Buyer's Name & Address .....

VAT Registration No. ..... Buyer's VAT Registration No., if any .....

CST Registration No. .....

S No.	Quantity	Description of Goods	Price per unit	Value (₹)	VAT Rate	Tax Amt.	Total (₹)	

TOTAL .....

Rupees in figures .....

Signature
(of selling dealer or his authorized employee)

E & O.E

Composition Scheme

The provisions relating to tax invoice do not apply to a selling dealer who has opted to avail the composition scheme under the respective State VAT laws. Thus, a composition scheme dealer cannot issue a 'tax invoice'.

Records

The following records should be maintained under VAT system:

(i) Purchase records

(ii) Sales records

(iii) VAT account

(iv) Separate record of any exempt sale

Further, the following records should also be kept and produced to an officer:

(i) copies of all invoices issued, in serial number;

(ii) copies of all credit and debit notes issued, in chronological order;

Notes

(iii) all purchase invoices, copies of customs entries, receipts for payment of customs duty or tax, and credit and debit notes received to be filed chronologically either by date of receipt or under each supplier's name;

(iv) details of the amount of tax charged on each sale or purchase;

(v) total of the output tax and the input tax in each period and a net total of the tax payable or the excess carried forward, as the case may be, at the end of each month;

(vi) details of goods manufactured and delivered from the factory of the taxable person;

(vii) details of each supply of goods from the business premises, unless such details are available at the time of supply in invoices issued at, or before, that time.

Service Tax & VAT

Failure to keep these records may attract penalty. All such records should be preserved for the period specified in respective State provisions.

No Declaration Forms

Most of the declaration forms that existed before the introduction of VAT have been dispensed with. Use of declaration forms is expected to be stopped completely. Lot of time and energy is wasted by the dealer in getting declaration forms from the department.

There is no provision for concessional sale under the VAT Acts since the provision for set off makes the input zero-rated. Hence, there will be no need for declaration form.

Returns

Under VAT laws there are simple forms of returns. Returns are to be filed monthly/quarterly/ annually as per the provisions of the State Acts/Rules. Returns will be accompanied with the payment challans. Some States have devised return cum challans. In these cases the returns along with the payment can be filed with the treasury.

A registered dealer may be required to file a monthly/quarterly/annual return along with the requisite details such as output tax liability, value of input tax credit, payment of VAT, etc. Opportunity may be provided to lodge revised returns.

Every return furnished shall be scrutinized expeditiously within the prescribed time limit from the date of filing the return. If any technical mistake is detected on scrutinizing, the dealer shall be required to pay the deficit appropriately.

Return filing procedures under VAT laws are designed with the objective of:

(i) reducing the compliance costs incurred by the businesses in completing and filing their returns; and

(ii) encouraging businesses to comply with their obligations to file returns and pay VAT through the application of penalties in case of late payment of VAT and late filling of returns; and

(iii) ensuring the efficient processing of the data included in the returns.

The basic simplification of VAT is with reference to assessment. Under VAT system, there is no compulsory assessment at the end of each year. The VAT liability is self-assessed by the dealer himself in terms of submission of returns upon setting off the tax credit, return forms etc. The other procedures are also simple in all the States.

Notes

Deemed assessment concept is a major feature of the VAT. If no specific notice is issued proposing departmental audit of the books of account of the dealer within the time limit specified in the Act, the dealer will be deemed to have been self-assessed on the basis of the returns submitted by him.

VAT presupposes that all the dealers are honest. Scrutiny may be done in cases where a doubt arises of under-reporting of transaction or evasion of tax. Honest dealers will be protected and fictitious or dishonest would be penalized heavily.

System of Cross Checking

In the VAT system more emphasis has been laid on self-assessment. Hence, a system of cross-checking is essential. Dealers may be asked to submit the list of sales or purchases above a certain monetary value or to give the dealer-wise list from whom or to whom the goods have been purchased/sold for values exceeding a prescribed monetary ceiling.

A cross-checking computerized system is being worked out on the basis of coordination between the tax authorities of the State Governments and the authorities of Central Excise and Income-tax to compare constantly the tax returns and set-off documents of VAT system of the States and those of Central Excise and Income-tax. This comprehensive cross-checking system will help reduce tax evasion and also lead to significant growth of tax revenue. At the same time, by protecting the interests of tax-complying dealers against the unfair practices of tax-evaders, the system will also bring in more equal competition in the sphere of trade and industry.

Audit

In the VAT system considerable weightage is placed on audit work in place of routine assessment work.

Correctness of self-assessment will be checked through a system of Departmental Audit. A certain percentage of the dealers will be taken up for audit every year on a scientific basis. If, however, evasion is detected in the course of audit, the previous records of the concerned dealer may be taken up for audit.

Authorized officers of the department will visit the business place of the dealer to conduct the audit. The auditors will examine the correctness of the returns vis-a-vis the books of account of the dealer or any other information available with them. They will be equipped with the information gathered from various agencies such as suppliers, income tax department, excise and customs department, banks etc. Officers of the higher rank will supervise to ensure that the audit work is done in a free, fearless and impartial manner.

Accounts to be Audited in Certain Cases

Under the sales-tax laws, tax evasion is considered to be on a large scale. The sales-tax departments of various States have not been able to effectively check the menace of tax avoidance and tax evasion. Therefore, apart from the departmental audit many States have also incorporated the concept of audit of accounts by chartered accountants. The State of Maharashtra has prescribed an elaborate list of particulars to be furnished by the dealers. These particulars have to be verified by the VAT auditor.

However, auditing for all types of dealers may not be necessary. The selection of cases for auditing has to be made in accordance with the criteria of the size of dealers. In such a case, the returns supported by the audited statement can be accepted summarily. However, it might

Notes

indeed be useful to cull out a fixed proportion of large and medium sized dealers for regular assessments on a regular basis. In Maharashtra and Rajasthan, the dealer whose turnover exceeds ₹ 40 lakhs in any year is required to get his accounts audited in respect of such year.

Penal Provisions

Since VAT is purely a State subject, States will have incorporated penal provisions as per their requirements. However, these are in general more stringent than those in the earlier sales tax laws. Since, the State taxation laws have allowed certain additional benefits in the form of input tax credit, which was not available earlier, they have introduced more stringent penal provisions to discourage evasion of taxes.

Tax Rates under VAT

Under the VAT system, there are only two basic VAT rates of 4% and 12.5% plus a specific category of tax-exempted goods and a special VAT rate of 1 % for gold and silver ornaments, etc. Thus the multiplicity of rates in the sales-tax system has been done away with under the VAT system.

Exempted Category

Under exempted category, there are about 50 commodities comprising of natural and unprocessed products in unorganised sector, items which are legally barred from taxation and items which have social implications. Included in this exempted category is a set of maximum of 10 commodities flexibly chosen by individual States from a list of goods (finalised by the Empowered Committee) which are of local social importance for the individual States without having any inter-State implication. The rest of the commodities in the list will be common for all the States.

4% VAT Category

Under 4% VAT rate category, there are largest number of goods, common for all the States, comprising of items of basic necessities such as medicines and drugs, all agricultural and industrial inputs, capital goods and declared goods. The schedule of commodities are attached to the VAT Acts of the States.

12.5% Category

The remaining commodities, common for all the States, fall under the general VAT rate of 12.5%.

1% Category

The special rate of 1% is meant for precious stones, bullion, gold and silver ornaments, etc.

Non-VAT goods

Petrol, diesel, ATF, other motor spirit, liquor and lottery tickets are kept outside VAT. The States may or may not bring these commodities under VAT laws. However, it is agreed that all these commodities will be subjected to 20% floor rate of tax.

Miscellaneous

Notes

Coverage of Goods under VAT

In general, all the goods, including declared goods are covered under VAT and get the benefit of input tax credit.

The few goods which are outside VAT are liquor, lottery tickets, petrol, diesel, aviation turbine fuel and other motor spirit since their prices are not fully market determined. These will continue to be taxed under the Sales-tax Act or any other State Act or even by making special provisions in the VAT Act itself at uniform floor rates decided by the Empowered Committee.

Stock Transfer

Inter-State transfers do not involve sale and, therefore they are not subjected to sales-tax. The same position continues under VAT.

However, the tax paid on:

(i) inputs used in the manufacture of finished goods which are stock transferred; or

(ii) purchases of goods which are stock transferred

will be available as input tax credit after retention of 4% of such tax by the State Governments.

Compensation for Losses

Although the introduction of VAT may, after a few years, lead to revenue growth, there may be a loss of revenue in some States in the initial years of transition. Some of the State Governments were resistant to introduce VAT account of this reason.

The Government of India therefore agreed to compensate for 100 per cent of the loss in the first year, 75 per cent of the loss in the second year and 50 per cent of the loss in the third year of introduction of VAT. The loss would be computed on the basis of an agreed formula. This position was not only reaffirmed by the Union Finance Minister in his Budget Speech of 2004-05, but a concrete formula for this compensation has also been worked out after interaction between the Union Finance Minister and the Empowered Committee. However, in the first year of introduction, only a few States have claimed such compensation.

Imports into the VAT Chain

Presently States do not have powers to levy a tax on imports. It is also essential to bring imports into the VAT chain. This will need a constitutional amendment. Because of the availability of set-off, not only cascading effect would be reduced but tax compliance would also improve. The Empowered Committee is discussing this issue with the Government of India. ***Source:*** http://220.227.161.86/18950sm_finalnew_idtl_service_cp10.pdf

Self Assessment

Fill in the blanks:

12. All ..... transactions that are carried on within a State by individuals companies will be covered under VAT.

Notes

13. More than .....items are covered under the new Indian VAT regime out of which 46 natural and unprocessed local products will be exempt from VAT.
14. The .....commodities are listed in the respective schedule with the rates.
15. VAT is not cascading or additive though the ..... on the goods sold is collected at each stage.

Caselet

Banco Products (India) Ltd. v. CCEx., Vadodara-I 2009 (235) ELT 636 (Tri-LB)

The appellant was using plastic crates as a material handling device within their factory premises. Such plastic crates were used for internal transportation of the raw material from stores to processing machine, semi-finished goods from one machine to other machine and finished goods to their storage area. The appellant contended that the plastic crates were eligible capital goods for the purposes of CENVAT credit and alternatively as input.

The Tribunal first analyzed the definition of "accessories to the main machine" in order to decide whether plastic crates got covered in the definition of the capital goods as per rule 2(b) of the erstwhile CENVAT Credit Rules, 2002 [now rule 2(a)(A)(iii) of the CENVAT Credit Rules, 2004]. After meticulous consideration of various relevant judgments, the Tribunal observed that the only criteria for an object to be held as an accessory is that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine.

The plastic crates in question were used for transportation of the raw material to the processing machine and all the finished goods from the machine to storage area. If instead of using plastic crates manual transportation of the inputs or semi-finished goods had been opted for, practically, it would have hampered the continuous working of the machine on account of delays in the delivery of the raw material/semi-finished goods etc. Hence, viewed and judged in the light of the interpretation of the term "accessory" by various Courts, the Tribunal concluded that the plastic crates could be held as accessory. Hence, plastic crates would be eligible for CENVAT credit as capital goods.

While dealing with the expression "in the manufacture of the goods" in the definition of inputs under rule 2(g) of the erstwhile CENVAT Credit Rules, 2002 [now rule 2(k) of the CENVAT Credit Rules, 2004], the Apex Court, in the case of Collr. of C.E. v. M/s. Rajasthan State Chemical Works 1991 (55) E.L.T. 444, had observed that the said expression encompassed all processes which were directly related to the actual production. The process of handling/lifting/pumping/transfer/transportation of the raw material was also a process in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods.

By applying the ratio as enacted by the Supreme Court to the issue in dispute, the Tribunal held that process started with the issuance of the inputs from the stores and their further transportation to the production platform was only a part of the process of manufacture integrally related to the final production. In absence of the delivery of the raw material to the manufacturing platform, the process could not start. Such delivery of the goods included transportation of the goods by plastic crates. Similarly, finished products were required to

Contd....

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be stored in a bonded store room. The plastic crates were again used for such transportation. Hence, the Tribunal opined that the plastic crates would also be eligible for CENVAT credit as input.

In the light of aforesaid discussion, the large bench of the Tribunal held that CENVAT credit was admissable on the plastic crates used as material handling equipment in the factory premises as capital goods as also as input.

Source: http://220.227.161.86/20925frpubcd_bos1.pdf

14.5 Summary

- In this unit we have discussed about Value Added Tax and its basic features.
- VAT as proposed is intended to revolutionize our tax system, be responsive to economic activity, and make a real contribution to nation building.
- It is our belief that VAT will bring higher levels of efficiency in the tax system, thereby creating a new culture of voluntary compliance amongst tax payers.
- VAT is a multi-stage tax, levied only on value that is added at each stage in the cycle of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the cycle/chain.
- The aim is to avoid 'cascading', which can have a snowballing effect on the prices.
- It is assumed that because of cross-checking in a multi-staged tax, tax evasion would be checked; hence resulting in higher revenues to the government.

14.6 Keywords

Business: It includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and, whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern and any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

Manufacture: The conversion of goods into a new form, whereby an altogether different article emerges.

Place of supply: The country where a supply of goods or services is said to be made for VAT purposes.

Supply: Selling or otherwise providing goods or services, including hire purchase and lay away.

Supply of goods: When exclusive ownership of goods passes from one person to another.

Tax period: The period of time covered by your VAT Return, i.e., one calendar year.

Taxable person: Any business entity that buys or sells goods or services and is required to be registered for VAT - this can be an individual, partnership, company, club, association or charity.

Taxable supplies: All goods and services you sell or otherwise supply which are liable to VAT at the standard, reduced or zero rate – whether or not you are registered for VAT.

Taxable turnover: The total value – excluding VAT – of the taxable supplies you make in the UK (excludes capital items like buildings, equipment, vehicles or exempt supplies).

Notes

Turnover: The aggregate of the sale prices in respect of sales of any goods in the course of inter-State trade or commerce, made during any prescribed period.

VAT Registrant: This is a taxable person registered to charge VAT on supplies to consumers.

14.7 Review Questions

1. What is Value Added Tax?
2. Describe the features of Value Added tax.
3. Describe the method of Computation of VAT.
4. What are the benefits of VAT?
5. Critically evaluate VAT as applied in various states of India.
6. Elucidate upon the main advantages and disadvantages of VAT.
7. Discuss CENVAT and its advantages.
8. Elucidate upon the sales tax in case of export from and import to India.
9. Explain the differences between VAT and CST.
10. What is VAT classification vouchers report?

Answers: Self Assessment

1. Sales Tax
2. Cascading
3. Retail
4. Credit
5. VAT
6. VAT
7. 15
8. Domestic
9. Goods
10. Tax
11. Supplementary
12. Business
13. 550
14. Taxable
15. Tax

14.8 Further Readings

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Notes

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