

**Course Objective**

Indirect Tax represents the concepts of central sales tax, VAT, customs duty, service tax this paper provides the basics about an understanding the existence of various indirect tax laws in India.

**Course Outcome**

- To enlighten the students knowledge in indirect tax
- To impart students knowledge on the fundamentals of indirect tax

**UNIT –I**

Tamil Nadu general sales Tax Act – Definition of Business, Dealers, Casual Trader, Goods, Sales, Declared goods, Turnover – Procedure for Registration –VAT (Value Added Tax) Meaning, Applicability, Coverage of goods under VAT,-- Tax Payers Identification Number (TIN) – Modes of charging sales tax – Levy of purchase tax.

**UNIT –II**

Central Sales Tax Act, - Definitions of Dealer, Registered dealer, Turnover, Business,- Inter State Sales- Determination of taxable Turnover- Registration of Dealer under the CST Act.

**UNIT – III**

Central Excise Act, 1944 – Levy and Collection – Purpose of charging excise duty – Excisable goods – Concepts of manufacturer –Exemption from Excise duty – Valuation of Excisable goods – Licensing provisions- CENVAT .

**UNIT –IV**

Customs Act, 1962- Definitions, -Types of duty –Prohibition on importation and exportation of goods – Dutiable Goods U/S 26, Power of grant exemption from duty U/S 25,Restrictions on custody and removed in imported goods U/S45-Duty Draw back.

**UNIT-V**

Service Tax – Concepts and general principles. Charge of service tax and taxable services.

**TEXT BOOKS**

1. Dingare Pagare, (2014), Business Taxation, Sultan Chand & Sons, New Delhi.

**REFERENCES.**

1. Balachandran. (2014). Indirect Taxation. Sultan Chand & Sons, New Delhi.
2. R.L.Gupta V.K.Gupta, (2012), Indirect Tax, Sultan Chand &Co., New Delhi.
3. V.S.Datey, (2015), Indirect Taxes Law and Practices, Taxmann Publications (P) Ltd., New Delhi.

**KARPAGAM ACADEMY OF HIGHER EDUCATION**  
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**Coimbatore – 641021**

**DEPARTMENT OF MANAGEMENT**

**COIMBATORE-641021**

**III BBA – V SEMESTER**

**SUBJECT CODE: 15BAU505**

**INDIRECT TAX**

**LECTURE PLAN**

**UNIT-I**

<b>S. No</b>	<b>Lecture Duration (Hr)</b>	<b>Topics to be Covered</b>	<b>Support Materials</b>
1	1	Introduction to Tamilnadu General Sales Tax Act-1959	T: Page No: 01-04
2	1	Definitions- Business, Dealer, Casual Trader	T: Page No: 05-09
3	1	Goods, Sales and Works Contract	T: Page No: 05-09
4	1	Turnover- Meaning Total Turnover	T: Page No: 09-13 T: Page No: 04; 25-26
5	1	Taxable Turnover	T: Page No: 04; 25-26
6	1	Procedure for Registration	T: Page No: 04; 25-26
7	1	Value Added Tax Meaning of VAT	R <sub>1</sub> : Page No:B149-B150
8	1	Objectives of VAT	R <sub>1</sub> : Page No:B149-B150
9	1	Features of VAT	R <sub>1</sub> : Page No:B149-B150
10	1	Types of VAT and Variants of VAT Tax Payers Identification Number (TIM)	R <sub>1</sub> : Page No:B150-B152
11	1	Modes of Charging Sales Tax, Levy of Purchase Tax	T: Page No: 14-22
12	1	Recapitulation and Discussion of Important Questions	
<b>Total No. of Hours Planned for Unit – I</b>			<b>12</b>

## UNIT-II

S. No	Lecture Duration (Hr)	Topics to be Covered	Support Materials
1	1	Introduction to CST Act 1956 Meaning of Sales Tax General/State Sales Tax	T: Page No: 01-03
2	1	Central Sales Tax	T: Page No: 01-03
3	1	Features of CST Act	T: Page No: 01-03
4	1	Important Definitions- Business, Appropriate State, Dealer,	T: Page No: 06-13 R <sub>2</sub> : Page No: 72
5	1	Registered Dealer, Sales, Sale Price, turnover	R <sub>2</sub> : Page No: 72
6	1	Levy and Collection of CST Inter State Sales	R <sub>2</sub> : Page No: 72
7	1	Sales or Purchase of Goods Outside a State, Liability to Tax on Interstates sales	T: Page No: 13-18
8	1	Registration of Dealer Sec 7 Compulsory Registration	R <sub>2</sub> : Page No: 66-67
9	1	Voluntary Registration Security from Dealer	R <sub>2</sub> : Page No: 66-67
10	1	Procedure for Registration	R <sub>2</sub> : Page No: 67-69
11	1	Declaration forms- Form C, Form D, Form F, Form G, Form H, form E-I, form E-II	R <sub>2</sub> : Page No: 76-80
12	1	Recapitulation and Discussion of Important Questions	
<b>Total No. of Hours Planned for Unit – II</b>			<b>12</b>

### UNIT-III

S. No	Lecture Duration (Hr)	Topics to be Covered	Support Materials
1	1	Introduction to Central Excise Act, 1944 Features of Central Excise Duty	T: Page No: 34 R <sub>2</sub> : Page No: 132-133
2	1	Sources of Central Excise Law	
3	1	Levy of Tax Collection of Excise Duty	R <sub>2</sub> : Page No: 151-154
4	1	Valuation of Excisable goods for purpose of Charging of Duty of Excise (Sec4)	R <sub>3</sub> : Page No: 113-116
5	1	Valuation of Excisable goods with respect to Retail Sales price (Sec 4A)	
6	1	Concept of Manufacturer, Exemption from Excise duty	T: Page No: 43-47 R <sub>3</sub> : Page No: 116-117
7	1	Valuation of Excisable goods Sec 4- Valuation on the basis of Transaction Value	R <sub>3</sub> : Page No: 158-162
8	1	Licensing Provisions CENVAT	W <sub>1</sub> R <sub>1</sub> : Page No:B167-B168
9	1	Definition -CENVAT	R <sub>1</sub> : Page No:B167-B168
10	1	CENVAT vs MODVAT	R <sub>1</sub> : Page No:B167-B168
11	1	CENVAT Credit Rules Features	R <sub>1</sub> : Page No:B167-B168
12	1	Recapitulation and Discussion of Important Questions	
<b>Total No. of Hours Planned for Unit – III</b>			<b>12</b>

#### UNIT-IV

S. No	Lecture Duration (Hr)	Topics to be Covered	Support Materials
1	1	Introduction to Customs Act, 1962 WTO	T: Page No: 469-472
2	1	GATT	T: Page No: 469-472
3	1	Concept of Customs Duty	T: Page No: 107-109
4	1	Types of Customs Duty	T: Page No: 107-109
5	1	Restriction on Import and Export of Goods	T: Page No: 114-115
6	1	Negative list of Exports	T: Page No: 114-115
7	1	Dutiable Goods (Sec12) Duty on Pilfered goods (Sec13)	T: Page No: 118-192
8	1	Abatement of duty on damaged or deteriorated goods (Sec22)	T: Page No: 118-192
9	1	Remission of duty on lost, destroyed or abandoned goods Power of grant exemption from duty U/S 25	T: Page No: 119-134
10	1	Restrictions on custody and removal of imported goods (Sec45)	T: Page No: 119-134
11	1	Customs Duty Draw back	R <sub>2</sub> : Page No: 121-124
12	1	Recapitulation and Discussion of Important Questions	
<b>Total No. of Hours Planned for Unit – IV</b>			<b>12</b>

## UNIT-V

S. No	Lecture Duration (Hr)	Topics to be Covered	Support Materials
1	1	Introduction to Service Tax	R <sub>3</sub> : Page No: 213
2	1	Concept of Service Tax	R <sub>3</sub> : Page No: 213-215
3	1	Features of Service Tax	R <sub>3</sub> : Page No: 215-216
4	1	Service Tax Credit Rules 2002	R <sub>1</sub> : Page No: B/290
5	1	Kelkar on Services Tax	R <sub>1</sub> : Page No: B/290-B/291
6	1	Service Tax payable by Management Consultant and Practicing professional, Chartered Accountant	R <sub>1</sub> : Page No: B/295-B/296
7	1	Service Tax payable Practicing Company Secretary, and Cost Accountant	R <sub>1</sub> : Page No: B/295-B/296
8	1	Meaning of Business Exhibition Services, Airport Services and Transport Goods by Air	R <sub>1</sub> : Page No: B/301-B/302
9	1	Recapitulation and Discussion of Important Questions	
<b>Total No. of Hours Planned for Unit – V</b>			<b>9</b>
10	1	Discussion of Previous year ESE question paper	
11	1	Discussion of Previous year ESE question paper	
12	1	Discussion of Previous year ESE question paper	
<b>Total No. of Hours Planned for Unit – V and Previous ESE Discussion</b>			<b>9+3=12</b>

### TEXT BOOKS:

**T:** Dingare Pagare, (2014). *Business Taxation*, Sultan Chand & Sons, NewDelhi.

### REFERENCE BOOK:

**R<sub>1</sub>:** V Balachandran, (2014). *Indirect Taxation*, Sultan Chand & Sons, 16<sup>th</sup> Edition, NewDelhi.

**R<sub>2</sub>:** P. Radhakrishnan. (2011). *Indirect Taxation*, Kalyani Publishers, NewDelhi

**R<sub>3</sub>:** Dr Radha, Dr Parameswaran, *Business Taxation (Indirect Tax)* Prasanna Publishers, Chennai-2006.

**INDIRECT TAX**  
**III BBA- Fifth Semester 15BAU505**  
**UNIT 1**

**THE TAMIL NADU GENERAL SALES TAX ACT, 1959**

Tamil Nadu general sales Tax Act – Definition of Business, Dealers, Casual Trader, Goods, Sales, Declared goods, Turnover – Procedure for Registration –VAT (Value Added Tax) Meaning, Applicability, Coverage of goods under VAT,-- Tax Payers Identification Number (TIN) – Modes of charging sales tax – Levy of purchase tax.

**Section 1.Short title, extent and commencement.**– This Act may be called theTamil Nadu General Sales Tax Act, 1959.

**Section 1(2)**It extends to the whole of the State of Tamil Nadu.

**Section 1(3)**It shall come into force on such date as the Government may, bynotification, appoint.

**Section 2 Definition**– In this act, unless the context otherwise requires, –

**Section 2(a)**“Administrative Assistant Commissioner” means any personappointed to be an Administrative Assistant Commissioner of Commercial Taxes (appellate Assistant Commissioner under section 28;)

**Section 2(aa)**“Appellate Assistant Commissioner” means any person appointedto be an Appellate Assistant Commissioner under section 28;

**Section 2(aaa)**“Appellate Deputy Commissioner” means any person appointed to be an Appellate Deputy Commissioner of Commercial Taxes under section 28;

**Section 2(b)**“Appellate Tribunal” means the Tribunal appointed under section 30;

**Section 2(c)**“Assessing Authority” means any person authorized by the Government or by any authority empowered by them, to make any assessment under this Act;

**Section 2(cc)**“Assistant Commercial Tax Officer” means any person appointed by the Deputy Commissioner by name or by virtue of his office, to exercise the powers of an Assistant Commercial Tax Officer;

**Section 2(ccc)**“Assistant Commissioner (Assessment)” means any person appointed to be an Assistant Commissioner of Commercial Taxes (Assessment) under section 28;

**Section 2(cccc)**“Assistant Commissioner (check-posts)” means any person appointed to be an Assistant Commissioner of Commercial Taxes (check-posts) under section 28;

**Section 2(ccccc)**“Assistant Commissioner (Enforcement)” means any person appointed to be an Assistant Commissioner of Commercial Taxes (Enforcement) under section 28;

### **Important Definition:**

**Section 2(d)**“business” includes, –



- (i) any trade, or commerce or manufacture or any adventure or (concur) 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 profit accrues from such trade, commerce, manufacture, adventure or concern; and
- (ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

**Section 2(e)**“Casual trader” means a person who has, whether as principal, agent or in any other capacity, occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration, or other valuable consideration and who does not reside or has no fixed place of business within the State;

**Section 2(f)**“Commercial Tax Officer” means any person appointed to be Commercial Tax Officer under section 28;

**Section 2(ff)**“Commissioner” means any person appointed to be a Commissioner of Commercial Taxes under section 28;

**Section 2(g)**“dealer” means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes –

- (i) A local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;
- (ii) a casual trader,
- (iii) a factor, a broker, a commission agent or *arhati*, a *del credere* agent or an auctioneer, or any other mercantile agent by whatever name called, and

whether of the same description as herein before or not, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;

- (iv) every local branch of a firm or company situated outside the State;
- (v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
- (vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (vii) a person engaged in the business of delivery of goods on hire purchase or any system of payment by installments;
- (vii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (viii) a person engaged in the business of supplying by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

This Act to the extent of such disposals, namely :-

- (a) Post Trust;
- (b) Municipal Corporations, Municipal Councils and other local authorities constituted under any law for the time being in force ;
- (c) Railways administration as defined under the Railways Act, 1989 (Central Act 24 of 1989);
- (d) Shipping, transport and construction companies ;
- (e) Air Transport Companies and Airlines;

- (f) Any person holding permit for the transport vehicles granted under the Motor Vehicle Act, 1988 (Central Act 59 of 1988) which are used or adopted to be used for hire’
- (g) The Tamil Nadu State Road Transport Corporations;
- (h) Customs Department of the Government of India administering the Customs Act, 1962 (Central Act LII of 1962);
- (i) Insurance and Financial Corporations or Companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934(Central Act II of 1934);
- (j) Advertising Agencies ; and

**Section 2(h)**“declared goods” means goods declared by section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), to be of special importance in inter-State trade or commerce;

**Section 2(hh)**“Deputy Commercial Tax Officer” means any person appointed by the Deputy Commissioner by name or, by virtue of his office, to exercise the powers of Deputy Commercial Tax Officer;

**Section 2(i)**“Deputy Commissioner” means any person appointed to be a Deputy Commissioner of Commercial Taxes under section 28;

**Section 2(j)**“goods” means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes all materials, commodities, and articles including the goods( as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property; and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;

**Section 2(n)** “sale” with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes –

- ❖ a transfer, otherwise than in pursuance of a contract, of property in any goods of cash, deferred payment or other valuable consideration;
- ❖ a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- ❖ a delivery of goods on hire-purchase or any system of payment by installments;
- ❖ a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- ❖ a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- ❖ a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making (such) the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

**Section 2(p)** “taxable turnover” means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed;

**Section 2(q)** “total turnover” means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax;

**Section 2(r)**<sup>1</sup> “turnover” means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on

account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce other than tea, and rubber (natural rubber latex) and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, mortgagee, tenant or otherwise, shall be excluded from his turnover;

### **Modes of Charging Sales Tax:**

**Section 3.levy of taxes on sales or purchases of goods.-** (1)(a)(i) Every dealer other than the dealer, casual trader or agent of a non- resident dealer refer to in clause (ii), whose total turnover for a year exceeds three lakhs of rupees; and

(ii) every dealer in bullion , gold, silver and platinum jewellery including articles thereof and worn-out or beaten jewellery and precious stones and every casual trader or agent of a non-resident dealer , whatever be his turnover for the year,

Sec.3(1)(b) Notwithstanding anything contained in clause (a), every dealer (other than a dealer in bullion , gold, silver and platinum jewellery including articles thereof and worn- out or beaten jewellery and precious stones and casual trader or agent of a non- resident dealer]) whose total turnover for a year exceeds three lakhs of rupees but does not exceed ten lakhs of rupees shall not be liable to pay tax on the first three lakhs of rupees of his total turnover, provided that no amount by way of tax or purporting to be by way of tax has been collected by him under this Act in respect of that first three lakhs of rupees.

**Section 3-A. Levy of tax on right to use any goods. –** (1) Notwithstanding anything contained in sub -sections \*[(2-A), (2-B), (2-C) (3), (4), (7) or (8) of section 3], or section 7 -A but subject to the other provisions of this Act including the provisions of sub-section

(1) of section 3, every dealer referred to in item (viii) of clause (g) of section 2 shall pay, for each year, a tax on his taxable turnover relating to the business of transfer of the right to use any goods for any purpose at the rates mentioned in \*[sub-section (2), (2-A) or (2-C) of section 3] or as the case may be, in section 4.

(2) The taxable turnover of the dealer, of the business of transfer of the right to use any goods for any purpose, shall, on and from the 1<sup>st</sup> day of April 1986 be arrived at after deducting the following amounts from the total turnover of that dealer: –

- (a) all amounts involved in respect of goods involved in the business of transfer of the right to use any goods for any purpose, in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce;
- (b) all amounts for which any goods specified in the First Schedule or Second Schedule are purchased from registered dealers liable to pay tax under this Act and used in the same form in the transfer of the right to use such goods for any purpose; and
- (c) all amounts relating to sale of any goods involved in the business of transfer of the right to use, which are specifically exempted from tax under any of the provisions of this Act.

Section 3-B. Levy of tax on the transfer of goods involved in works contract. – (1) Notwithstanding anything contained in sub-sections (2-B), (3), (4), (7) and (8) of section 3, or section 7-A, but subject to the other provisions of this Act including the provisions of sub-section (1) of section 3, every dealer referred to in item

(vi) of clause (g) of section (2) shall pay, for each year, a tax on his taxable turnover of transfer of property in goods involved in the execution of works contract at the rates mentioned in [sub-section (2), (2-A) or (2-C)] of section 3 or, as the case may be, in section 4.

Explanation:- Where any works contract involves more than one item of work, the rate of tax shall be determined separately for each item of work.

(2) The taxable turnover of the dealer of transfer of property involved in the execution of works contract shall, on and from the 26th day of June 1986, be arrived at after deducting the following amounts from the total turnover of that dealer:-

(a) all amounts involved in respect of goods involved in the execution of works contract in the course of export of the goods out of the territory of India, or in the course of import of the goods into the territory of India or in the course of inter-State trade or commerce:

(b) all amounts for which any goods, specified in the First Schedule or Second Schedule, are purchased from registered dealers liable to pay tax under this Act and used in the execution of works contract in the same form in which such goods were purchased:

(c) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:

(d) all amounts paid to the sub-contractors as consideration for execution of works contract whether wholly or partly:

Provided that no such deduction shall be allowed unless the dealer claiming deduction, produces proof that the sub-contractor is a registered dealer liable to pay tax under this Act and that the turnover of such amounts is included in the return filed by such sub-contractor: and

(e) all amounts towards 'labour charges and other like charges' not involving any transfer of property in goods, actually incurred in connection with the execution of works contract, or such amounts calculated at the rate specified in column (3) of the Table below, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

**Section 3-C.** Input tax credit.- (1) Notwithstanding anything contained in sub-section(2) of section 3, every dealer shall pay tax at the rate specified in the First Schedule, on every sale made by him within the State, in respect of goods as may be notified by the Government from among the goods specified in the First Schedule.

**Sec.3C(2)** A registered dealer shall be entitled to claim input tax credit, subject to such conditions as may be prescribed.

**Section 3-D. Payment of tax by hotels, restaurants and sweet stalls. –**

(1) Notwithstanding anything contained in sub-section (1) of section 3, every dealer whose total turnover is not less than twenty five lakhs of rupees for the year shall pay tax at the rate of two per cent on the first point of sale of ready to eat unbranded foods including sweets, savouries, unbranded non-alcoholic drinks and beverages served in or catered indoors or outdoors by hotels, restaurants, sweetstalls, clubs, caterers and any other eating houses other than those falling under item 29 of Part-C of the First Schedule.

**Section 3-E.** Payment of tax by dealers in jewellery. – (1) Notwithstanding anything contained in sub-section (1) of section 3, every dealer whose total turnover is not more than fifty lakhs of rupees for the year on the sale of gold and silver jewellery including articles thereof may, at his option, instead of paying tax in accordance with the provisions of sub-section (2) of section 3, shall pay tax at the rate specified in Part B of the Ninth Schedule.

**Sec.3-E(2)** Every dealer, who opts for payment of tax under sub-section (1), shall apply to the assessing authority in such form as may be prescribed, on or before the 30th day of April of the year or within 30 days of commencement of business, as the case may be, and shall pay tax in advance during the year in monthly instalments and for the purpose, he shall furnish such return, within such period and in such manner, as may be prescribed:

Provided that the option under this sub-section for the year commencing on the 1st day of April, 1999 shall be exercised on or before the [31st day of January, 2000].



**Sec.3-E(3)** The option so exercised under sub-section (2) shall be final for that year and shall continue for subsequent years until the dealer becomes ineligible or withdraws his option in writing.

**Sec.3-E(4)** A dealer who has been permitted to pay the tax under sub -section (1) shall not collect any amount by way of tax or purporting to be by way of tax on the sale so long as he opts to tax as provided under sub-section (1)

**Section 3-G. Payment of tax at compounded rate by Printers. –**  
(1)Notwithstanding anything contained in sub-section (2) of section 3 or section 3-B, every dealer who carries on the business of printing may, at his option, instead of paying tax in accordance with sub-section (2) of section 3 or section 3-B, pay tax at the rate of three per cent on the total turnover.

**Section 3-H. Levy of resale tax -** Notwithstanding anything, contained in [sub-sections (1) and (2) of section 3, section 3-A or 3-B], every dealer, other than the dealer liable to pay tax under section 3-J, whose total turnover is not less than ten lakhs of rupees for the year, shall pay a resale tax at such rate not exceeding one per cent as may be fixed by the Government, by notification, on the turnover of resale of goods specified in the First Schedule and the Eleventh Schedule other than the goods notified by the Government under section 3-C, at a point other than the point of levy specified therein:

Provided that any resale turnover included in the total turnover of a dealer paying tax under sub-section (2) of section 3-D and sections 3-E, 7-C, 7-D and 7-E is not liable for resale tax: Provided further that the goods taxable at the point of last purchase in the State are not liable to resale tax.

**Section 3-I. Levy of surcharge. –** A surcharge at the rate of five percent shall be levied on the tax levied under sub- sections (2), (2 -C), (3) and (5) of section 3, sections 3-A, 3-B and 3-C, sub -sections (1) of section 3-D and sections 3-G,3-J, 5, 7-A and 7-C and at the first point of sale in the State under sub-section (2-A) of section 3.

**Section 3-J. Levy of tax on trade mark holder.-** Notwithstanding anything contained in this Act, whenever a dealer, who holds the trade mark or the patent thereof, sells goods other than the declared goods at any point of sale other than the first point of sale, he shall be deemed to be the first seller in the State and shall be liable to

pay tax accordingly and for determining the tax due to be paid by him, the tax levied and collected, if any, at the immediate preceding point of sale, on the same goods shall be deducted from the tax payable by him at the point of sale.

**Section 4. Tax in respect of declared goods.**—[Notwithstanding any thing contained in Sub-section (2) to (8) of Section 3 or Section 3-A or Section 3-B but subject to the provisions of sub-section (1) of Section 3], the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year.

**Section 4-C. Refund of tax on sales returns.**— Where a dealer has refunded the price of the goods returned by customers together with the tax collected from such customers in respect of the sale of such goods and where the amount representing the price refunded by the dealer is included in his turnover, the dealer shall be entitled to claim refund of the tax paid by the dealer in respect of such sale, subject to the following conditions, namely: —

- (a) that the sale or purchase was included in the return and the tax (was) paid:
- (b) that the goods were received back or returned within a period of six months of the date of sale or purchase, as the case may be;
- (c) that the price of the goods and the tax, if any, charged thereon were refunded in full to the buyer or seller, as the case may be; and
- (d) that the claim for refund of tax is filed within a period of thirty days of the receipt or despatch of the goods or before the completion of final assessment, whichever is latter, to such authority, in such manner and subject to such conditions as may be prescribed.

**Section 6. Tax under this Act to be in addition to tax under Central Act 74 of 1956 or any other Law.**— The provisions of this Act relating to taxation of successive sales or purchases inside the State, only at a single point or at one or more points shall apply only to sales or purchases inside the State (other than sales or purchases in the course of inter-State trade or commerce) and the tax under this Act shall be in addition to any tax levied under the

Central Sales Tax Act, 1956 (Central Act 74 of 1956) or any other law for the time being in force.

**Section 7. Payment of tax at compounded rates.**– (1) [Notwithstanding anything contained in sub-section (1) of section (3) but subject to sub-section (4)] every dealer [other than a casual trader or an agent of a non-resident dealer] whose total turnover is not less than one lakh of rupees but not more than two lakhs of rupees, may at his option instead of paying the tax in accordance with the provisions of that sub-section pay tax at the following rates, namely: –

**Section 7-A. Levy of purchase Tax.**– (1)[Subject to the provisions of sub-section (1) of section 3, every dealer] who in the course of his business purchases from a registered dealer or from any other person, any goods, (the sale or purchase of which is liable to tax under this Act) in circumstances in which [no tax is payable under <sup>2</sup>(sections 3 or 4,) as the case may be, [not being a circumstance in which goods liable to tax under [sub-section (2), (2-A) or (2-C) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First, the Fifth, the Eleventh or the Second Schedule], respectively, and either, –

**Section 7-A(2).**Notwithstanding anything contained in sub-section (1), the provisions of section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods { the sale of which is liable to tax under sub-section (1) of section 3} and whose total turnover for a year is not less than one lakh of rupees but not more than two lakhs of rupees, and such a dealer may, at his option instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rates mentioned in sub-section (1) of section 7:

Provided that this sub-section shall not apply to the purchase made on or after the 1<sup>st</sup> day of April, 1990.

**Section 7-A (3)** .Every dealer liable to pay purchase tax under sub-section (1), shall, or the purpose of this Act, be deemed to be a registered dealer.

**Section 7-B. Payment of tax at compounded rate by hotels and restaurants.**–

(1) Notwithstanding anything contained in sub-section (1) of section 3, every dealer whose total turnover is not less than ten lakhs of rupees but not more than fifteen lakhs of rupees on the sale of food and drinks in hotels and restaurants, may at his option instead of paying the tax in accordance with the provisions of that sub-section pay tax at the following rates, namely:—

**Section 7-C. Payment of tax at compounded rates by (works contractors)**—[(1)

Notwithstanding anything contained in section 3-B, every dealer referred to in item

(vi) of clause (g) of section 2, May, at his option, instead of paying tax in accordance with section 3-B, pay, [either on the total value of each works contract or on the total value of all works contract, executed by him in a year,] tax calculated at the following rate.

**Section 8.Exemption from tax.**— Subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule shall not be liable to pay any tax under this Act in respect of such goods.

**Section 9.Stage of levy of taxes in respect of imported and exported goods.**—Where in the case of any goods tax is leviable at one point in a series of sales or purchases, such series shall —

(a) in the case of goods imported into the State either from outside the territory of India or from any other State in India, be deemed to commence at the stage of the sale or purchase effected immediately after the import of such goods;

(b) in the case of goods exported out of the State to any place outside the territory of India or to any other State in India, be deemed to conclude at the stage of sale or purchase effected immediately before the export of such goods;

Provided that in the case of goods exported out of the State to any place outside the territory of India, where the sale or purchase effected immediately before the export

of such goods is under sub-section (3) of section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), a sale or purchase in the course of export, the series of sales or purchases of such goods shall be deemed to conclude at the stage of the sale or purchase immediately preceding such sale or purchase in the course of export.

**Procedure to Registration in TNGST Act 1959:**

1. Application for Registration- Form D
2. Registration fee
3. Documents for Registration
4. Time limit for Registration
5. Scrutinizing of Application
6. Security for Registration
7. Certificate of Registration
8. Issue of permit to a registered dealer
9. Amendment of certificate of Registration
10. Cancellation of certificate of Registration

**What is VAT?**

VAT is a multi point levy where the tax paid on local purchases from the registered dealer can be set off against the tax payable on the sale of goods, other than special goods.

**Value Added Tax**

Under the Indian constitution, the States have the exclusive powers to levy tax on the sales of goods. The tax on the inter-state trade is levied by central government, and is called Central Sales Tax (CST). It is proposed to abolish CST in phased manner. Due to various defects in the Sales Tax System, the Govt, has introduced a new system called Value Added Tax (VAT) in place of State Sales Tax. VAT is a multi-point tax levied and collected on the value added to goods at different stages of sale. It is a method of taxing by stages. The method consists of

levying a tax on the value added to a product at each stage of production or distribution. It is another form of sales tax where tax is collected in stages rather than collection of the tax at the first or last point. VAT, in simple terms, is a multi-point levy on each of the entities in the supply chain with the facility of set-off of input tax i.e. that is, the tax paid at the stage of purchase of goods by a trader and on purchase of raw materials by a manufacturer. Only the value addition in the hands of each of the entities is subject to tax. For instance, if a dealer purchases goods for Rs 100 from another dealer and a tax of Rs 10 has been charged in the bill, and he sells the goods for Rs 120 on which the dealer will charge a tax of Rs 12 at 10 per cent, the tax payable by the dealer will be only Rs 2, being the difference between Rs. 12 the tax collected and Rs. 10 tax already paid on purchases. Thus, the dealer has paid tax at 10 per cent on Rs 20 being the value addition of goods in his hands. Most State governments have implemented VAT w.e.f. 1.4.2005. Haryana was the first state to implement VAT w.e.f. 1.4.2004 in the first year itself, Growth in tax revenue has been reported by the States as compared to the tax collection during the same period in previous year. In case of the loss to the State on switching over to VAT, the Central Government will compensate the loss to the State.

**Characteristics of VAT:**

1. It is simple, modern and transparent tax system.
2. It is a multipoint tax with credit for the tax paid at preceding stage.
3. Small traders (whose turnover is up to Rs10 lakhs) are outside VAT.
4. VAT replaces a number of taxes like turnover tax, luxury tax, surcharge etc.
5. VAT being efficient is considered to be better than sales tax.
6. VAT has four rates instead of the large number of rates under sales tax.
7. Composition scheme for small dealer having turnover above taxable quantum of Rs 10 lakhs but below 50 lakhs.
8. VAT eliminates cascading by providing credit of taxes paid on inputs and only taxing value addition.

**Advantages Of Value Added Tax (VAT)**

Following are the advantages of VAT:

1. As compared to other taxes, there is a less chance of tax evasion. VAT minimizes tax evasion due to its catch-up effect.

2. VAT is simple to administer as compared to other indirect tax.
3. VAT is transparent and has minimum burden to consumers as it is collected in small fragments at various stages of production and distribution.
4. VAT is based on value added not on total price. So, price does not increase as a result of VAT.
5. There is mass participation of taxpayers.

## **Disadvantages Of Value Added Tax (VAT)**

Following are the disadvantages of VAT:

1. VAT is costly to implement as it is based on full billing system.
2. VAT is relatively complex to understand. The calculation of value added in every stage is not an easy task.
3. To implement the VAT successfully, customers, need to be conscious, otherwise tax evasion will be widespread.

## **Objectives of VAT**

1. Increase in government revenue
2. Developing stable source of government revenue
3. To make the tax system more transparent
4. To avoid cascading effect.
5. To reduce tax evasion practices
6. To increase in exports.

## **PROCEDURE FOR VAT REGISTRATION**

VAT registration is required for any business that is into sales either by way of trading, manufacturing etc. The units may be Proprietary, Partnership, Private Limited as the case.

**The documents that are required to submit for company are as below:**

### **Proprietary company:**

1. Application in VAT (Form 1).
2. Additional for CST registration (Form A).

3. Professional tax registration (Form 2).
4. Copy of the rental agreement of the business place.
5. Copy of the address proof, ID proof of the Proprietor / Partner / Director.
6. Four PP size photographs of Proprietor / Partner / Director.
7. PAN No. & Bank Account No.
8. Details of business activities.

**Additional Documents for Partnership:**

1. Partnership deed

**Additional document for Private Limited:**

1. Memorandum of Association and Articles of Association.

**Procedure:**

1. The application along with the documents to be submitted to the functional local VAT office.
2. Local VAT Office shall conduct an inspection of the premises within three days after submitting the application, after inspection the relevant deposit fee to be paid.
3. On payment of the Professional fee deposit the TIN No. will be allotted and Certificate will be issued within a day.

**Fee structure:**

1. VAT registration fee Rs.500
2. Professional tax Rs.1000 for Proprietor, Rs.1000 for each Partners for Partnership, Rs.2500 for Private Limited / Limited.
3. For turnover of Rs.0 to Rs.2.00lakhs - Rs.2000/-  
Rs. 2.00 lakhs to Rs.10.00 lakhs - Rs.3000/-

Rs.10.00 lakhs to Rs.25.00 lakhs - Rs.6000/-

Above Rs.25.00 lakhs - Rs.10000/-

**Calculation of Tax Liability under VAT**

Suppose a TV dealer sells TV worth Rs. 20,000 and VAT is 4%, he will collect Rs. 800( $20,000 \times 0.04$ ) as VAT. If the dealer had purchased the TV for Rs. 19,000 and at that time he had already paid Rs. 760 as VAT. So the VAT payable by the dealer will be  $800 - 760 = 40$ . He



will pay to the government only Rs. 40.00 the tax payable is tax rate multiplied by valuation addition. In this case it would be  $0.04 \times (20000 - 19000) = 40$ .

VAT liability for any tax period, is calculated by decreasing total input tax from total output tax. The output tax is calculated by multiplying the turn over (Sales) by applicable VAT rates.

$$\text{Net tax} = \text{output tax} - \text{input tax}$$

If difference is (+) pay this amount to government. If difference is (-) apply excess credit against your VAT liability and claim refund for any remaining balance OR the excess credit can be carried forward to the next period.

### Advantages of VAT

1. Self-assessment by dealers.
2. Higher revenue growth from states.
3. Set off for input tax paid on previous purchases.
4. Other taxes to be eliminated.
5. Fairness in the taxation system. Visits to tax department will reduce.
6. Help to reduce tax evasion and corruption.
7. Uniform rates of VAT will boost fair trade.
8. VAT does not lead to price rise.
9. VAT is easier to enforce.

### Disadvantages of VAT

1. Record keeping systems and procedure will need to re-strengthen with Tax Authorities in order to claim input tax credit.
2. VAT may lead to tax evasion if false input credits are submitted by dealers.

### Additional Information on VAT

**Turnover:** It means the aggregate of the amounts of purchase price paid or payable by a person in any tax period, including any input tax.

**Sale:** Any transfer of property in goods by one person to another for cash or for any deferred payment.

**Rates of Tax:** The rates of VAT payable on the taxable turnover of a dealer shall be :

- i) in respect of goods specified in the second schedule, at the rate of 1%.
- ii) in respect of goods specified in the third schedule, at the rate of 4%.
- iii) in respect of goods specified in the fourth schedule, at the rate of 20%.
- iv) and all the goods other than those in three schedules, at the rate of 12.5%.

**Tax Credit:** A dealer who is registered shall be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sale.

No tax credit shall be allowed

- i) in the case of the purchase of goods from a person who is not a registered dealer.
- ii) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person.
- iii) when a dealer has purchased goods and the goods are to be used partly for the purpose of making the sales, the amount of the tax credit shall be reduced proportionately.

**Net Tax:** The net tax payable by a dealer for a tax period shall be determined by the formula:

$$\text{Net tax} = O - I - C$$

where

O= the amount of tax payable by the person at rates stipulated in respect of the taxable turnover arising in the tax period.

I= the amount of the tax credit arising in the tax period to which the person is entitled for adjustment to the tax credit required by this Act.

C= the amount if any, brought forward from the previous tax period.

**Penalty:** If a person is required to furnish a return, but fails to furnish any return by the due date or fails to furnish with a return any other document that is required to be furnished with the return then he has to pay penalty of Rs 100. per day from the day on which the requirement arose until the failure is rectified and maximum amount of this penalty is Rs. 10,000.

TAMIL NADU VALUE ADDED TAX RULES, 2007<sup>1</sup> . [G.O. Ms. No.1, Commercial Taxes and Registration (B1), dated 1st January 2007.] No. SRO A-(a-1)/2007.

In exercise of the powers conferred by subsection (1) of section 80 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), the Governor of Tamil Nadu hereby makes the following rules:-**RULES**

1. Short title Short title.- These rules may be called the Tamil Nadu Value Added Tax Rules, 2007.

2. Commencement -They shall come into force on the 1st day of January, 2007.

3. Definitions - In these rules, unless there is anything repugnant to the subject or context—

(a) "Act" means the Tamil Nadu Value Added Tax Act, 2006; 2 [(aa) "Authority" means the authority constituted by the Government under Section 48-A of the Act.]

(b) "departmental representative" means an officer appointed by the State Government to receive on behalf of the assessing authority, notices issued by the Appellate 3 [Deputy] Commissioner or Appellate 3 [Joint] Commissioner and to appear, act and plead on behalf of the assessing authority before the Appellate Assistant Commissioner or Appellate Deputy Commissioner, as the case may be;

(c) "Form" means a form appended to these rules;

(d) "Government Treasury" means a treasury or sub-treasury of the State Government and includes State Bank of India or any other bank authorised by the Government from time to time;

(e) "importer" means any dealer who imports goods into the State from outside India; (f) "month" means a calendar month;

"Section" means a section of the Act; and

(h) "State representative" means an officer of the Commercial Taxes Department appointed by the

State Government to receive on their behalf notices issued by the Appellate Tribunal and to appear, act and plead on behalf of the State Government before the Appellate Tribunal.

Application for registration -

(1) Every dealer whose total turnover in respect of purchase and sale within the State in any year is not less than ten lakhs of rupees and every other dealer whose total turnover in a year is not less than five lakhs of rupees shall submit an application for registration under this Act to the

registering authority in whose jurisdiction his principal place of business is situated, within thirty days from the date of commencement of the Act.

(2) Any other dealer or person intending to commence business may, if he so desires, submit an application for registration under the Act to the registering authority in whose jurisdiction his principal place of business is to be situated: Provided that if such dealer reaches a total turnover, as mentioned in sub-rule (1), he shall submit an application for registration within thirty days on reaching the said turnover.

(3) Notwithstanding anything contained in sub-rules (1) and (2), every dealer registered under sub-section (3) of section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), every dealer residing outside the State or his agent carrying on business in the State and every factor, broker, commission agent, or arhati, del credere agent or auctioneer or any other mercantile agent, by whatever name called, and every dealer in bullion, gold, silver and platinum jewellery including articles thereof and worn out or beaten jewellery and precious stones, irrespective of the quantum of his turnover in such goods and every person who commences any such business after the commencement of the Act shall submit an application for registration under the Act to the registering authority in whose jurisdiction his principal place of business is situated, within thirty days of the commencement of the Act or commencement of his business, as the case may be.

(4) Notwithstanding anything contained in sub-rules (1) and (2), every casual trader shall, irrespective of the quantum of his turnover, submit an application for registration under the Act to the registering authority of the area in which he effects the occasional transaction, within twenty-four hours of commencement of the said transaction.

(5) Where a dealer who resides outside the State and has no fixed place of business in the State, sells, supplies or distributes goods through an employee or a person other than an agent by whatever name called, such dealer shall before commencement of the said transaction file an application for registration to the Commissioner of Commercial Taxes or any officer authorised by the Commissioner of Commercial Taxes in this behalf, within twenty-four hours of his arrival in the State.

(6) Where a minor inherits an existing business or succeeds a dealer, the guardian, trustee or agent of such minor shall, within thirty days of such inheritance or succession, as the case may

be, submit an application for fresh registration under the Act to the registering authority in whose jurisdiction his principal place of business is situated.

(7) In cases mentioned in sub-section (4) of section 38, the successor to whole or part of the business shall unless he already holds a certificate of registration, within thirty days of the date on which he succeeds to the business submit an application for fresh registration under the Act to the registering authority in whose jurisdiction his principal place of business is situated.

(8) Every registered dealer whose certificate of registration was in force under the Tamil Nadu General Sales Tax Act, 1959 shall file an application in Form A along with a sufficiently stamped self addressed envelope to the registering authority without payment of specified fee [ before the 15th day of February 2007\* ] within fifteen days of the commencement of the Act.\*

(9) Every application for registration shall be in Form A and accompanied by two recent passport size photographs, and sufficiently stamped self addressed envelope along with proof of payment of registration fee as specified in sub-section (1) of section 39 within the period prescribed in this rule. Provided that the registering authority may entertain the said application for a further period of thirty days, if it is satisfied that the applicant has sufficient cause for not submitting the application within the prescribed period.

### **Goods covered under VAT**

All the goods including declared goods as mentioned in the Central Sales Tax Act, 1956 are covered under VAT and will get the benefit of input tax credit.

Only few goods which has been kept outside VAT is 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, and with uniform floor rates decided by the Empowered Committee.

### **Items Not Covered by VAT**

There are some items that are not covered by VAT. These items are referred to as Exempt goods and services.

### **Exempt Items**

These include the following:

- insurance (vehicle, medical, life, property)

- transportation
- education services (tuition fees)
- interest on loans
- electricity
- water (domestic)
- most services provided by doctors and dentists

Selling, leasing and letting of commercial land and buildings are also exempt from VAT. However you may elect to waive this exemption and choose to apply VAT at the standard rate. This is known as 'opting to tax'.

**Registration of Dealer under VAT:**

**Application for registration.** – (1) Every dealer, who does not have more than one place of business, liable to be registered under sub-section (1) of section 25 shall make an application for registration in Form VAT-101 to the registering authority under whose jurisdiction the place of business is situated. (2) Any person, not being liable to pay tax under section 10, who intends to establish a business for manufacturing or processing of taxable goods of value exceeding rupees two lakh in a year for sale under sub-section (1) of section 26 shall make an application in Form VAT-101 to the registering authority, under whose jurisdiction the place of business is situated. (3) Every dealer, who has more than one place of business within the State, liable to be registered under sub-section (1) of section 25 shall declare one of such places of business as the principal place of business and make an application in Form VAT-101 to the registering authority under whose jurisdiction such principal place of business is situated. (4) A dealer or a person making application for registration under sub-rule (1), sub-rule (2) or sub-rule (3) may, on his option, furnish such application to the registering authority, as specified under sub-rule (6), under whose jurisdiction the place of business is situated : Provided that all applications for registration under sub-rule (1), sub-rule (2) and sub-rule (3), received in the Assessment Unit or circle shall, after initial processing, be submitted to the appropriate registering authority as specified in sub-rule (6). (5) For the purpose of making an application for registration under this rule, a warehouse or godown, where no books of account are kept, shall not be deemed to be a place of business. (6) The registering authority as referred to in these rules, shall mean –(a)

registering authority of the circle in respect of the dealers liable to pay turnover tax under section 16 ; (b) registering authority of the range in respect of dealers liable to pay VAT under section 14 or 15. (c) registering authority of the range in respect of any person, who applies for grant of voluntary registration under sub-section (1) of section 26. (7) Every dealer registered under the repealed Act, whose certificate of registration remains valid on the date immediately preceding the appointed day and who is liable to pay tax under the Act, shall be deemed to be a registered dealer under subsection (5) of section 25: Provided that, where a dealer has more than one place of business in the State, he shall be issued with one certificate of registration in respect of the principal place of business or such other place of business, as may be determined as appropriate by the registering authority in accordance with proviso to sub-section (5) of section 25. (8) Every dealer, who is deemed to be registered under sub-section (5) of section 25, shall furnish information and declarations in Form VAT-1 to the appropriate registering authority as specified under sub-rule (6), within thirty days from the appointed day. (9) The application for registration in Form VAT-101 shall be accompanied with fee as specified in rule 125 and declarations:- (a) in respect of the address of additional places of business, branch offices, warehouses or godowns situated inside the State in Form VAT-101-A. (b) in respect of the address of additional places of business, branch offices, warehouses or godowns situated outside the State in Form VAT-101-B. (c) in respect of the personal details of the proprietor, each of the partners, directors, authorised officer or karta of the business in Form VAT-101-C, affixing thereto two sets of specimen signature and two copies of self-signed passport size photographs of : the proprietor, in case the applicant is a proprietorship concern; (ii) the partners (each of the partners individually), in case the applicant is a partnership firm; (iii) the managing director, director or the officer duly authorised by the Board of Directors through a resolution, in case the applicant is a company incorporated under the Companies Act, 1956; (iv) the president, secretary or duly authorised officer, in case the applicant is an association of persons; (v) the karta, in case the applicant is a Hindu Undivided Family; and the said form shall be duly filled in, signed individually by the aforesaid person(s), as applicable, and verified in the manner specified in the form. (d) in respect of the bona fides of the applicant by two registered dealers; (e) in respect of name and address alongwith the signature of the manager or employee of the business or any other person associated with the business in Form VAT-101-D, who have been authorised to

receive notice, order or communication under the Act and these rules on behalf of the dealer and the service of such notice, order or communication on whom, shall be binding on the dealer: Provided that any change in the information furnished in Form VAT-101-D shall be intimated to the registering authority within seven days from the date of occurrence of such change and the intimation shall be accompanied by a fresh declaration in Form VAT- 101-D incorporating therein such changes.

**Registration of dealers under special circumstances.** – (1) Where a dealer has no fixed place of business in the State but sells or supplies or purchases goods either direct or through travelling agents, salesmen or having one or more place(s) of business in the State, sells, supplies or purchases goods in circles or ranges, other than those in which such place(s) of business are situated, the Commissioner may, notwithstanding anything contained in these rules, by general or special order in writing, direct that such dealer shall be registered in a circle or range constituted by the Government and specified by him in such order (2) A dealer shall make an application in form VAT-101 to the Commissioner for registration under sub-rule (1) (3) Where the Commissioner, after causing such enquiries as he deems necessary, is satisfied that the application is correct and complete with the information and declaration as required therein or may have been required in course of such enquiries have been furnished, may, by order, under sub-rule (1), direct the dealer to be registered in the circle or range as specified in that order. (4) The registration of the dealer under sub-rule (1) shall be subject to the provisions of rules 15, 18 and 24.

## INPUT AND OUTPUT VAT

### Input tax - Definition

Indirect tax (such as value added tax or VAT) levied on capital goods, raw materials, spare parts, services etc., which a business consumes or uses in its operations.

*Input VAT* is the value added tax added to the price when you *purchase* goods or services liable to VAT. If the buyer is registered in the VAT Register, the buyer can deduct the amount of VAT paid from his/her settlement with the tax authorities.

### Output tax



Ad valorem tax charged on the selling price of taxable goods or services, and is payable by the customer. Value added tax (VAT) charged by businesses is an output tax that is distinguished from the VAT paid by them, which is their input tax.

*Output VAT* is the value added tax you calculate and charge on your own *sales* of goods and services if you are registered in the VAT Register. Output VAT must be calculated on sales both to other businesses and to ordinary consumers. VAT on sales between businesses must be specified in a sales document

Output VAT must also be calculated when when you withdraw goods or services for private use from a registered business. If goods are withdrawn for use that is not liable to VAT under the VAT Act, VAT on withdrawals must be calculated unless the goods in question are capital goods that fall under the scope of the adjustment provisions for input VAT.

#### **Tax on Sales/Purchases: Input and Output Tax**

Input and output tax is calculated on revenue or expense items (base amount). The tax amounts are posted to separate tax accounts and refunded by the tax office (input tax) or paid to the tax office (output tax). The tax percentage rates vary from country to country and are determined when you define the tax codes.

The tax amount is determined as a percentage of the base amount, meaning that the tax amount is included in the invoice amount. Given a tax rate of 15 percent, the invoice amount or the total of the expense or revenue items and the tax items together would be 115 percent. To calculate the tax amount, the invoice amount is divided by 115 and multiplied by 15. The result is an amount corresponding to 15 percent of the base amount.

The tax amounts are automatically posted to tax accounts. The system always posts the amounts to the side of the account to which the other G/L account amounts are also posted. See also

The input tax can be completely or partially non-deductible. This part cannot be claimed from the tax office. The amount can be posted to a separate expense account, or it can be distributed to the G/L account and asset line items.

#### **Input Tax Credit.**

1) After the commencement of the Act, where any dealer gets registered as a VAT dealer or where the authority prescribed registers any dealer as a VAT dealer under Rule 11 (1), such dealer shall be eligible for input tax credit as provided under sub-section (2)(b) of Section 13.

The claim shall be made on Form VAT 118 within 10 days from the date of receipt of VAT registration. The goods on which the input tax credit is claimed or allowed shall be available in stock on the effective date of VAT registration.

The documentary evidence for such claim shall be on the basis of a tax invoice issued by a VAT dealer for the purchases made and the input tax credit allowed on Form VAT 119 shall be claimed on the first return to be submitted by such dealers.

The prescribed authority shall issue such Form VAT 119 within 10 days of receipt of Form VAT.



**UNIT 1**

**TAMILNADU GENERAL SALES TAX ACT, 1959**

**PART B**

1. Explain the different modes of charging Sales tax under Tamilnadu General Sales Tax Act 1959.
2. What are the different types of registration under TNGST Act 1959?
3. Describe the levy of purchase tax under TNGST Act, 1959.
4. Describe the procedure for filing of return under state VAT Act?
5. Explain the procedure for assessment under the TNGST Act 1959.
6. Examine the Value Added Tax and discuss to what extent it differs from turnover tax?
7. Describe the different modes of charging sales tax under TNGST Act, 1959.
8. Explain Value Added Tax in Indian context?
9. Describe the procedure for registration under TNGST Act, 1959.
10. Explain Value Added tax? Give its merits and demerits.

**CIA I & II : 3\*10 = 30 Marks (Either or Type)**

**Model : 5\*8 =40 Marks (Either or Type)**

**ESE : 5\*8=40 Marks (Either or Type)**

**UNIT 2**

**CENTRAL SALES TAX ACT 1956**

Central Sales Tax Act, - Definitions of Dealer, Registered dealer, Turnover, Business- Inter State Sales- Determination of taxable Turnover- Registration of Dealer under the CST Act.

**CENTRAL SALES TAX**

The sixth amendment in the Constitution of India changed the scenario of taxation in India by introducing the Central Sales Tax (hereinafter referred as CST). The amendment brought the taxes on purchases or sales of goods in the course of inter-State trade or commerce expressly within the purview of the legislative jurisdiction of Parliament and restrictions could be imposed on the powers of State legislatures with respect to the levy of taxes on the sale or purchase of goods within the State where the goods are of special importance in inter-State trade or commerce. According to Article 266 of the Constitution of India no tax can be levied on a person until or unless it is backed by a law. Hence in pursuance of this the Central and Sales Tax, 1956 was enacted which governs the current Central Sales Tax system.

Central Sales Tax is levied by the Central Government of India under Entry 92A of List I (Union List) of the Seventh Schedule to the Constitution on India but, it is collected by that state government from where the goods were sold. Hence the tax revenue collected is given to the same State Government which collected the tax. The current Central Sales Tax rate in India is 3 per cent.

Central Sales Tax is charged only on the inter-state transactions and not on the transactions occurred within the state or import/export of sales. Section 3(a)/ (b) defines the interstate nature of transaction. When any transaction between two parties from different states records the movement of goods then it is called interstate transaction. A sale, effected by transfer of documents of title to goods when goods are in inter-state movement, is also an interstate sale. However, consignments to agents or transfer of goods to branch or other offices are not considered as interstate sale. In addition to this goods that are sold within a state, but

while transporting travel through another state is not considered inter-state sales. Moreover, there is no exemption limit of turnover for the levy of central sales tax.

Central Sales Tax Act has also provided special importance to certain goods in order to increase their circulation. Section 2(d) of the Act classifies good into two categories: declared goods and other goods. Declared goods are those goods which have been given special importance by the virtue of Section 14. Examples of such goods are cereals, coal, cotton, crude oil, jute, oilseeds, pulses, sugar, etc. The rates of tax on declared goods are lower as compared to the rate of tax on goods in the second category.

If goods are traded within the State, Value Added Tax can be imposed. If such trade is done in between 2 states, then Central Sales Tax (CST) can be imposed subject to satisfaction of some conditions. CST is presently levied @ 2% on sale by the seller and the same is remitted to the State Government in which he has a place of business.

### **OBJECTIVES OF THE CST ACT, 1956**

The Preamble to the CST Act, 1956, states 3 main objectives with which it has been enacted. They are as under:

1. To formulate the principles for determining when a sale or purchase of goods takes place in the course of
  - Inter-State trade or commerce,
  - Outside a State, or
  - In the course of Import into or Export from India
2. To provide for the levy, collection and distribution of taxes on sales of goods in the course of Inter-State trade or commerce
3. To declare certain goods to be of special importance in inter-state trade or commerce.
4. To specify the restrictions and conditions in respect of the State Laws which seek to impose tax on the sale or purchase of goods which have been declared to be of special importance.

## **LEVY AND COLLECTION OF CST**

### **Levy:**

The Central Sales Tax Act provides for levy of sales tax on inter-State sales only. Inter-State purchases are outside its purview. Terms such as “sale in the course of inter-State trade or commerce”, “Sale outside the State” and “Sale during the course of import or export” have been defined in the Act.

### **Collection:**

While Central Sales Tax is levied by the Central Government, it is collected and retained by the State Government within whose jurisdiction movement of goods in the course of inter-State trade or commerce has commenced. This is in conformity with the scheme that sales tax revenue should only belong to the States.

### **Sale - Sec 2(g)**

A sale means any transfer of property in goods by one person to another for cash, or for deferred payment, or for any other valuable consideration, and includes the following:

(a) any transfer (except any transfer in purchase of a contract), of property in any goods for cash, deferred payment or other valuation consideration;

(b) any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) any delivery of goods on hire purchase or any system of payment by installments;

(d) any transfer of the right to use any goods for any purpose (irrespective of the period involved) for cash, deferred payment or other valuable consideration;

(e) any supply of goods by any unincorporated association or body of persons to its member for cash, deferred payment or other valuable consideration;

(f) any supply, by way of or as part of any service or in any other manner, of goods (food or any other article for human consumption or any drink, whether intoxicating, or not), whether such supply or service is for cash, deferred payment or other valuable consideration.

The 4 essential ingredients of a sale are as follows:

**1) Two Parties:**

In a sale transaction, there must be 2 parties, i.e. a seller and a buyer.

**2) Transfer of Goods:**

Goods will be deemed to be transferred when they have been ascertained. If they are yet to be ascertained they cannot be subject matter of “sale”. Goods may be legal or illegal goods.

**3) Transfer of property (ownership):**

In a contract of sale, general property in goods immediately passes from the seller to the buyer and hence it will be “sale”. However, in an agreement to sell, property in goods does not pass immediately. Hence it will be outside the scope of “Sale”.

Mutual consent as to transfer of property in goods is not necessary and transfer of controlled commodities will be “Sale”, even though such consent may be lacking in such a case.

**4) Consideration:**

The price of goods may be paid on transfer of goods, or agreed to be paid in future.

**DEEMED SALES**

- a) Compulsory sale is taxable as deemed sales under CST.
- b) Goods involved in works contract is taxable under CST as deemed sales.
- c) Hire purchase sale is deemed sales and it is taxable under CST.
- d) Sale of food articles is considered as deemed sale and taxable.
- e) Sale to member of unincorporated association or body of persons is taxable.



**Appropriate State – Sec. 2(a)**

In case of one or more business situated in the same state, appropriate State means that State in which such business is situated.

For a dealer who has a place of business in different States, then each such State is called Appropriate State.

For example, if a dealer has places of business in different States, he has to obtain separate registration in each State.

**Business – Sec. 2(aa)**

A “business” 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 irrespective of whether any gain or profit accrues from it; and
- Any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

Ordinarily, a business means any activity which occupies the time, attention and labour of a person and it is generally with the object of making profit. The activity should be of sufficient volume, frequency, continuity and regularity. An activity pursued without the profit motive may fall under “business”, but every such activity cannot be treated as business.

**Dealer – Sec. 2(b)**

A dealer means 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, and includes

A local authority, a body corporate, a company, any cooperative society or other society, club, firm, HUF, or other AOP which carries on such business;

- a) A factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not; and
- b) An auctioneer, who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal, or a nominee of the principal.

The term “dealer” would also apply to every person who acts as an agent in any state, of a dealer residing outside the State and who buys, sells, supplies or distributes goods in the State, or acts on behalf of such dealer as –

- A mercantile agent as defined in the Sale of Goods Act, 1930;
- An agent for handling of goods, or documents of title relating to goods; or
- An agent for the collection or payment of the sale price of goods, or as a guarantor for such collection or payment.

### **Goods – Sec. 2(d)**

The term “goods” includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.

If anything is embedded in earth, or is attached to such embedded thing for permanent beneficial enjoyment of that to which it is attached, then it is not movable property.

### **Place of Business – Sec. 2(dd)**

Place of business includes the following:

- Place of his agent,
- A warehouse, godown, other places where a dealer stores his goods, and
- A place where a dealer keeps his books of accounts.

### **Turnover – Sec. 2(g)**

It means the aggregate of the sale price received and receivable by any dealer in respect of sales of any goods in the course of inter state trade or commerce, made during any prescribed period, and determined in accordance with the provisions of this Act, and the rules made there under.

### **Subsequent Sales**

No sales tax is levied under CST Act, on the subsequent sales, if the following conditions are satisfied by the seller:

- a) First sale should be inter state sale as per Sec. 3(a) or 3 (b) of the CST Act.
  - b) The subsequent sale should be made to registered dealers only.
  - c) The subsequent sale is made by transfer of documents during the movement of goods from one State to another.
  - d) Dealer selling goods in subsequent sale has to issue a certificate to the purchasing dealer in Form E-II and the buyer has to issue Form C to the seller.
- No sales tax is levied under CST when the sale of declared or undeclared goods by a registered dealer to a registered dealer for manufacturing, processing, assembling, repairing in a unit of the said dealer in a SEZ, provided the buyer has to give declaration in Form I to the seller.
  - No sales tax is levied under CST when the sale or purchase takes place in the course of import or export as per Sec. 5(2) or 5(1) of the CST Act, 1956.
  - No sales tax is levied under CST if the sales is made to any official diplomatic mission in India or UN body.
  - No sales tax will be levied under CST if the goods are exempted by way of notification issued by the Government.

### **CST TRANSACTION FORMS**

Manufacturers/Traders /Exporters/Dealers, during the course of transaction, have to issue certain proclamations in the prescribed form to the sellers/buyers. The forms are printed and supplied by sales tax authorities and these forms are to be prepared in triplicate.

Some important forms are mentioned below:

### **Form D:**

Any sale to Government is taxable @ 4 per cent or applicable sales tax rate for the particular sale within that State whichever is lower. To avail this concession on CST, Form D is issued by the Govt. Department which purchase the goods.

### **Form I:**

This form is issued by a dealer/buyer located in a Special Economic Zone. This form gives concession on the central sales tax because no tax is levied when sales are made to a dealer located in SEZ.

## **REGISTRATION**

Registration is compulsory in the case of dealers having liability under this Act. It is optional in the case of dealers who, though not having any liability under this Act, are liable to tax under the law of their respective States or, if there is no such law, then they have a place of business therein.

### **Compulsory Registration – Sec. 7(1)**

As per Sec. 7(1) of the CST Act, 1956 the dealer must make an application for registration in the appropriate State in Form A within 30 days from the date of first inter state sale made.

### **Voluntary Registration – Sec. 7(2)**

As per Sec. 7(2) of the CST Act, 1956 a dealer registered with State sales tax authorities may voluntarily apply for registration even if he is not liable to pay CST. This application for registration can be made at any time.

Voluntary registration under CST Act, 1956 can be allowed to those dealers who are registered under appropriate sales tax laws as a dealer.

### **Registration Procedure:**

The application is to be made to the prescribed authority and it should contain the particulars as prescribed [Sec. 7(1)].

The following documents are generally required for registration:

- PAN issued by the Income Tax Authority
- Particulars of Directors or Partners and their PAN
- Copies of Articles of Association, Memorandum of Association in case of company
- Partnership Deed if the applicant is a firm.
- Copies of rent agreements, if any.
- List of places of business, godown or factories.
- Details of bankers, etc.

### **The application for registration should be signed and verified by –**

- The proprietor of the business or
- In the case of a firm, by one of its partners, or
- In the case of a HUF, by its karta or manager, or
- In the case of a company, by a director or principal officer, or
- In the case of the government, by a duly authorized officer.

Certificate of registration will be issued by the appropriate authority to the dealer in Form B. This registration certificate is not transferable.

The registration is effective from the date on which application for registration is made, even if the registration is granted later. If the registration is made after inter state sale is effected, date of registration is the date of first inter state sale.

**Provisions as to Security:**

**a) Demand of Security – Sec. 7(2A)**

The registering authority may demand security from the applicant as a pre condition for the issue of registration certificate. The security may be demanded with respect to –

Proper realization of the tax payable; or

Proper custody and use of Forms referred to in Sec. 6(2) (a), Sec. 6A(1) or Sec. 8(4)(a)

Sec. 7(3A) empowers the registering authority, in certain cases, to demand security in the manner laid down in Sec. 7(2A) even from old registered dealers.

The grounds for demanding security may be –

- Proper realization of the tax payable under this Act; and
- Proper custody and use of the Forms referred to in Sec. 7(2A)

However, before an order demanding security in any case is made, the dealer applicant is to be given an opportunity of being heard. Sec. 7 (3B). The dealer applicant may object to the demand for cash security, and may offer an alternative security instead.

**b) Limit as to Security – Sec. 7(3BB)**

The amount of security cannot in any case exceed the following:

- In the case of an applicant or a dealer registered under Sec. 7(1) – actual amount of tax payable as estimated by the registering authority on the total amount of turnover for the year; and
- In the case of an applicant or a dealer registered under Sec. 7(2) – the tax chargeable under the Act on sales to the dealer in the course of inter state trade or commerce in the year in which the security is furnished.

**c) Forfeiture of security – Sec. 7(3D)**

The registering authority may forfeit the whole or any part of security furnished by a dealer. However, this can be done only if –

- The dealer has defaulted in the payment of any amount of assessed tax or penalty; or
- He has misused any of the forms referred to in Sec. 7(2A) or he has failed to keep them in proper custody. However, before passing such order, the dealer must be given an opportunity of being heard.

**d) Refund of security – Sec. 7(3G)**

On application by a dealer, the authority granting registration may refund any amount of security if it is not required any more.

**e) Appeal against demand or forfeiture of security – Sec. 7 (3H)**

Any aggrieved person may appeal, after furnishing the security, against any order of demand or forfeiture of security. The appeal is to be made to the authority and in the manner as prescribed.

**Grant of Certificate of Registration – Sec. 7(3)**

If on receipt of application for registration u/s 7(1) or (2), the notified authority is satisfied that –

- The application satisfies the provisions of this Act and the rules thereunder, and
- The security, if any, has been duly furnished, he shall register the applicant in the prescribed Form “B” and specify therein the class or classes of goods dealt in by the dealer, for the purposes of Sec. 8(1).

**Amendment of Certificate – Sec. 7(4)**

A certificate of registration granted u/s 7(3) may be amended on the application of the dealer himself or if there is no application by him, after due notice to him, if the authority granting the certificate is satisfied that –

- The registered dealer has changed the name, place or nature of his business; or

- The registered dealer has changed the class or classes of goods in which he carries on business; or
- For any other reason, an amendment in the certificate is called for.

The amendment is to be effective from the date on which it is applied for.

**Cancellation of registration – Sec. 7(4)(b)**

The authority granting the registration may cancel the certificate of registration if, after due notice to the dealer concerned, he is satisfied that –

- The dealer has ceased to carry on business;
- The dealer has ceased to exist; or
- The dealer has failed, without sufficient cause, to comply with an order u/s 7(3A) to furnish security; or
- The dealer has failed without sufficient cause, to comply with the provision of Sec. 7(3C) as regards intimation relating to death or insolvency of the surety;
- The dealer has failed, without sufficient cause, to comply with the provision of Sec. 7(3E) as regards making up deficiency in security; or
- The dealer has failed to pay any tax or penalty under this Act; or
- The dealer, who is registered u/s 7(2), has ceased to be liable to pay tax under the sales tax law of his State; or
- There is any other sufficient reason.

**INTER STATE TRADE OR COMMERCE IN SALES TAX**

A sale or purchase of goods shall be deemed to take place in the course of interstate trade or commerce if the sale or purchase--

- a. Occasions the movement of goods from one state to another.
- b. Is effected by a transfer of documents of title to the goods during their movement from one state to another.



Where the goods are delivered to a carrier or other bailee for transmission, the movement of the goods for the purpose of clause is deemed to start at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Also, when the movement of goods starts and terminates in the same State, it shall not be deemed to be a movement of goods from one State to another.

To make a sale as one in the course of interstate trade, there must be an obligation to transport the goods outside the state. The obligation may be of the seller or the buyer. It may arise by reason of statute or contract between the parties or from mutual understanding or agreement between them or, even from the nature of the transaction, which linked the sale to such transaction. There must be a contract between the seller and the buyer. According to the terms of the contract, the goods must be moved from one state to another. If there is no contract, then there is no inter-state sale.

There can be an interstate sale even if the buyer and the seller belong to the same state; even if the goods move from one state to another as a result of a contract of sale; or, the goods are sold while they are in transit by transfer of documents.

### **TRANSACTIONS NOT AMOUNTING TO INTER-STATE SALES**

Not all despatches of goods from one state to another result in inter state sales rather the movement must be on account of a covenant or incident of the contract of sales. There are some instances wherein the goods are moved out of the selling state and yet they are not considered inter statesales :-

- Intra-state sales.
- Stock transfer from head office to branch & vice versa.
- Import and Export sales or purchases.
- Sale through commission agent / on account sales.
- Delivery of Goods for executing works contract.

### **DETERMINATION OF TURNOVER.**

Inserted by Act. 28 of 1969 retrospectively. (1) In determining the turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale prices, namely;

- (a) the amount arrived at by applying the following formula –  
rate of tax X aggregate of sale prices

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$$100 + \text{rate of tax}$$

- (b) Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sales prices.

### **COLLECTION OF TAX TO BE ONLY BY REGISTERED DEALERS**

No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of interstate trade or commerce any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder.

### **CERTAIN GOODS TO BE OF SPECIAL IMPORTANCE IN INTER-STATE TRADE OR COMMERCE**

- (i) Cereals,
- (ii) Rice
- (iii) Wheat
- (iv) Jowar or milo
- (v) Bajra
- (vi) Maize
- (vii) Ragi
- (viii) Kutki

(x) Bareilly

**WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE IN THE COURSE OF INTER- STATE TRADE OR COMMERCE**

A Sale or purchase of goods shall be deemed to take place in the course of inter-state trade of commerce if the sale or purchase-

- (a) occasions the movement of goods from one State to another or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

**Explanation 1 :** Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

**Explanation 2:** Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

**WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE OUTSIDE A STATE**

(1) subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a state such sale or purchase shall be deemed to have taken place outside all other states.

(2) A sale or purchase of goods shall be deemed to take place inside a state if the goods are within the State ...

(a) in the case of specific or ascertained goods at the time the contract of sale is made and

(b) in the case of unascertained or future goods at the time of appropriation to the

contract of sale by the seller or by the buyer whether assent of the other party is prior or subsequent to such appropriation

**Explanation :** where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this subsection shall apply as if there were separate contracts in respect of the goods at each of such places.

**WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE IN THE COURSE OF IMPORT OR EXPORT.**

(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of good shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

[(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

**PART B**

1. Explain the procedure for registration under CST Act?
2. Explain the restrictions of sale or purchase of declared goods within a state under CST Act?
3. State the Salient features of CST Act 1956?
4. Discuss the provisions of Central Sales Tax Act regarding registration of dealers?
5. State the provisions regarding levy and collection of tax under CST Act?
6. Explain the compulsory registration under CST?
7. Discuss the provisions of Central Sales Tax Act regarding registration of Dealers?

8. Bring out the importance of various forms as per CST Act?
9. State the Objectives of CST Act 1956?
10. How will you determine a sale as an interstate sale under the CST Act?

**UNIT 2**

**CENTRAL SALES TAX ACT, 1956**

**PART B**

1. Explain the procedure for registration under CST Act?
2. Explain the restrictions of sale or purchase of declared goods within a state under CST Act?
3. State the Salient features of CST Act 1956?
4. Discuss the provisions of Central Sales Tax Act regarding registration of dealers?
5. State the provisions regarding levy and collection of tax under CST Act?
6. Explain the compulsory registration under CST?
7. Discuss the provisions of Central Sales Tax Act regarding registration of Dealers?
8. Bring out the importance of various forms as per CST Act?
9. State the Objectives of CST Act 1956?
10. How will you determine a sale as an interstate sale under the CST Act?

**CIA I & II : 3\*10 = 30 Marks (Either or Type)**

**Model : 5\*8 =40 Marks (Either or Type)**

**ESE : 5\*8=40 Marks (Either or Type)**

## Unit 3

**CENTRAL EXCISE ACT, 1944**

Central Excise Act, 1944 – Levy and Collection – Purpose of charging excise duty – Excisable goods – Concepts of manufacturer – Exemption from Excise duty – Valuation of Excisable goods – Licensing provisions- CENVAT .

**What is excise duty?**

Excise is derived from the Latin word “**Excisum/Excidere** which means to cut out”.

The duty of excise is levied on a manufacturer or producer in respect of the commodities produced or manufactured by him. It is a tax upon manufacture of goods and not upon sales or proceeds of sale of goods.

Duty of excise has been renamed as Central Value Added Tax (CENVAT).

**CENVAT includes duty, duties duty of excise or „duties of excise.**

Although excise started as a pure duty on manufacturing activity, over a period of time it has included deemed manufacture and became a value added tax. The changed nomenclature (CENVAT) indicates the same.

**CONSTITUTIONAL PROVISIONS**

**Entry 84 of the Union List of the Seventh Schedule** to Article 246 of

Constitution of India provides as under:

- This Act may be called the Central Excise Act, 1944].
- It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.
- Subs. by Act 33 of 1996, s. 71, for subsection (1), w.e.f. 28.9.1996.
- The words “except the State of Jammu and Kashmir” omitted by Act 41 of 1954, S. 2 and Sch.

Came into force on 28th February, 1944, vide Noti. No. III-D, G.O.I.(E), dt.26.2.1944.

2. **Definitions-** In this Act, unless there is anything repugnant in the subject or context:-

1[(a) “Adjudicating authority” means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) Commissioner of Central Excise (Appeals) or Appellate Tribunal;

(aa) “Appellate Tribunal” means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129 of the Customs Act, 1962 (52 of 1962);]

2(aaa)] “Broker” or “commission agent” means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

3 [(b) “Central Excise Officer” means the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, 4[joint Commissioner of Central Excise], 5[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act;]

(c) “Curing” includes wilting, drying, fermenting and any process for rendering an un-manufactured product fit for marketing or manufacture;

(d) “Excisable goods” means goods specified in the 6[Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)] as being subject to a duty of excise and includes salt;

(e) “Factory” means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;



7[(ee) “Fund” means the Consumer Welfare Fund established under Section 12C;]

**“Manufacture” includes any process-**

- (i) Incidental or ancillary to the completion of a manufactured product;
- (ii) Which is specified in relation to any goods in the Section or Chapter Notes of 9[the first Schedule] to the Central Excise Tariff Act, 1985 as amounting to manufacturer, and the word “manufacture” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;]
- (g) “Prescribed” means prescribed by rules made under this Act;
- (h) “Sale” and “purchase”, with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;
- (k) “Wholesale dealer” means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent, who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

**History of Central Excise Law**

**History:** Prior to 1944 there were 16 individual Acts which levied excise duty. Each such act dealt with one or same type of commodities. All these acts were consolidated and a consolidating Act was passed in 1944 called as Central Excises and Salt Act, 1944 which came into effect from 28<sup>th</sup> February 1944. In 1996 the Act was renamed as Central Excise Act, 1944.

The Central Excise Act, 1944 (originally Central Excises and Salt Act, 1944) and Rules framed there under came into force on 28<sup>th</sup> February, 1944.

**Application:** The Act applies to the whole of India. It also extends to areas designated in the Continental Shelf and Exclusive Economic Zone of India. The

exclusive economic zone' extends upto 200 nautical miles inside the sea from base line. Though originally the Act did not apply to the State of Jammu and Kashmir, its application was extended to that State since the enactment of Taxation Laws (Extension to Jammu & Kashmir) Act, 1954.

**Different kinds of Excise Duties**

1. Basic Excise Duty : This is the duty leviable under First Schedule to the Central Excise Tariff Act, 1985 at the rates mentioned in the said Schedule.
2. Special Excise Duty : This is the duty leviable under Second Schedule to the Central Excise Tariff Act, 1985 at the rates mentioned in the said Schedule. At present this is leviable on very few items.
3. Additional Duties of Excise (Textiles and textile Articles) : This duty is leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles ) Act, 1978. This is leviable at the rate of fifteen percent of Basic Excise Duty payable on specified textile articles.
4. Additional Duties of Excise (Goods of Special Importance) : duty is leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on the specified goods mentioned in its First Schedule.
5. National Calamity Contingent Duty - Normally known as NCCD. This duty is levied as per section 136 of the Finance Act, 2001, as a surcharge on specified goods.
6. Excise Duties and Cesses Leviable Under Miscellaneous Act - On certain specified goods, in addition to the aforesaid duties, prescribed rate of excise duty and cess is also leviable.
7. Education Cess on excisable goods is levied in addition to any other duties of excise chargeable on such goods, under the Central Excise Act, 1944 or any other law for the time being in force.

**Levy and Collection of Excise Duty:**

Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied.-

1. There shall be levied and collected in such manner as may be prescribed,—

- a. a duty of excise to be called the Central Value Added Tax (CENVAT), on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- b. a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule: Provided that the duties of excise which shall be levied and collected on any excisable goods which are produced or manufactured,—
  - i. in a free trade zone or a special economic zone and brought to any other place in India; or
  - ii. by a hundred per cent export-oriented undertaking and brought to any other place in India,

shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962), or any other law for the time being in force on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the

provisions of the Customs Act, 1962(52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1.—Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable under the said section 12 at the highest of those rates.

Explanation 2.—In this proviso,—

- iii. "free trade zone" means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf;
- iv. "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;
- v. "special economic zone" means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt which are produced or manufactured in India by, or on behalf of

Government, as they apply in respect of goods which are not produced or manufactured by Government.

2. The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)] as chargeable with duty ad valorem and may alter any tariff values for the time being in force.
3. Different tariff values may be fixed—
  - a. for different classes or descriptions of the same excisable goods; or
  - b. for excisable goods of the same class or description—
    - i. produced or manufactured by different classes of producers or manufacturers; or
    - ii. sold to different classes of buyers:

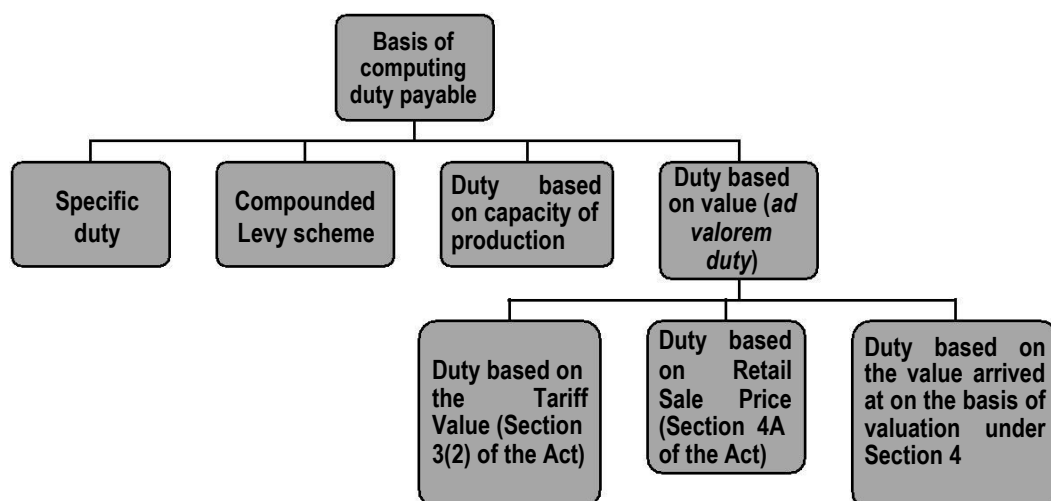
Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such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

Section 109 of Finance Act, 2000 (10 of 2000)

Section 133 of Finance Act, 2002 (20 of 2002)

### **Valuation:**

However, it is important to know that duty is payable on more than one basis:



**(a) Specific duty:** In the case of some goods, duty is payable on the basis of certain unit, length, weight, volume, etc. Duty is calculated quite easily by following this method. However, specific duties do not keep pace with inflation i.e., even if selling price of product rises, revenue earned by Government does not increase correspondingly. Hence, more and more tariff entries are designed based on *ad valorem* duty structure.

**Example:** Duty payable on cigarettes is on the basis of length.

**(b) Compounded levy scheme:** In sectors where there are large numbers of small manufacturers, it is not practically feasible for the Department to exercise normal excise controls and procedures. At the same time, small manufacturers find it difficult to comply with the complicated excise procedures.

Under this scheme, the assessee has the **option** to pay the duty of excise on the basis of specified factors relevant to production of the goods covered under the scheme (size of equipment employed, number and the types of machines used for manufacture etc.) at the specified rates. The prescribed duty has to be paid by the assessee for the specified period. The advantage of this scheme is that it frees the

manufacturer from observing day to day central excise formalities and maintenance of detailed accounts after making the lump sum periodic payment.

**Example:** Stainless steel pattas/pattis and aluminium circles are covered under this scheme. The rate of duty is ` 40,000 and ` 12,000 pm per cold rolling machine for stainless steel pattas/pattis and aluminium circles respectively.

**(c) Duty based on capacity of production:** This duty is payable on the basis of production capacity, without any reference to the actual production. The production capacity is determined as per the rules made in this regard. The Government may notify the goods which will be assessed to such duty having regard to the nature of the process of manufacture or



production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant. This duty is mandatory i.e., duty cannot be paid in any other manner in respect of the goods notified under this scheme.

**Example:** Pan masala, gutkha, tobacco etc. are notified under this scheme.

**(d) Duty based on value:** In (a), (b) and (c) above, valuation of excisable goods is not required as duty is not based on the value of the goods. However, if the rate of duty is *ad valorem*, i.e., duty is expressed as a percentage of the value of goods; valuation of the excisable goods becomes essential. Significance of valuation increases as majority of the excisable goods are charged to *ad valorem* duty. Thus, in case of goods chargeable to *ad valorem* duty, for calculating the amount of duty payable, first the assessable value of the goods has to be determined.

#### **Valuation of excisable goods for purposes of charging of duty of excise -**

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be

(a) The normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale.

Provided that-

(i) Where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the

existence of the other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

2 (i) Where the price at which such goods are ordinarily sold by the assessee is different for different places of removal, each such price shall, subject to the existence of other circumstances specified in clause (a), be deemed to be the normal price of such goods in relation to each such place of removal;]

(ii) Where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) Where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons) who sell such goods in retail;

(b) Where the normal price of such goods is not ascertainable for the reason that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

(3) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.

(4) For the purposes of this section,-

(a) “Assessee” means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) “Place of removal” means-

(i) A factory or any other place or premises of production or manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such goods are removed;

4[(iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory and;]

4[(ba) “Time of removal”, in respect of goods removed from the place of removal referred to in sub-clause (iii) of clause (b), shall be deemed to be the time at which such goods are cleared from the factory;]

(c) “Related person” means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation - In this clause “holding company”, “subsidiary company” and “relative” have the same meanings as in the Companies Act, 1956 (1 of 1956);

(d) “Value”, in relation to any excisable goods,-

(i) Where the goods are delivered at the time of removal in a packed condition includes, the cost of such packing except the cost of the packing, which is of a durable nature and is returnable by the buyer to the assessee;

Explanation- In this, sub-clause “packing” means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) Does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale;

5[Explanation- For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of-

(a) The effective duty of excise payable on such goods under this Act; and

(b) The aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods, and the effective duty of excise on Such goods under each act referred to in clause (a) or clause (b) shall be,

(i) In a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, 6[or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid] on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

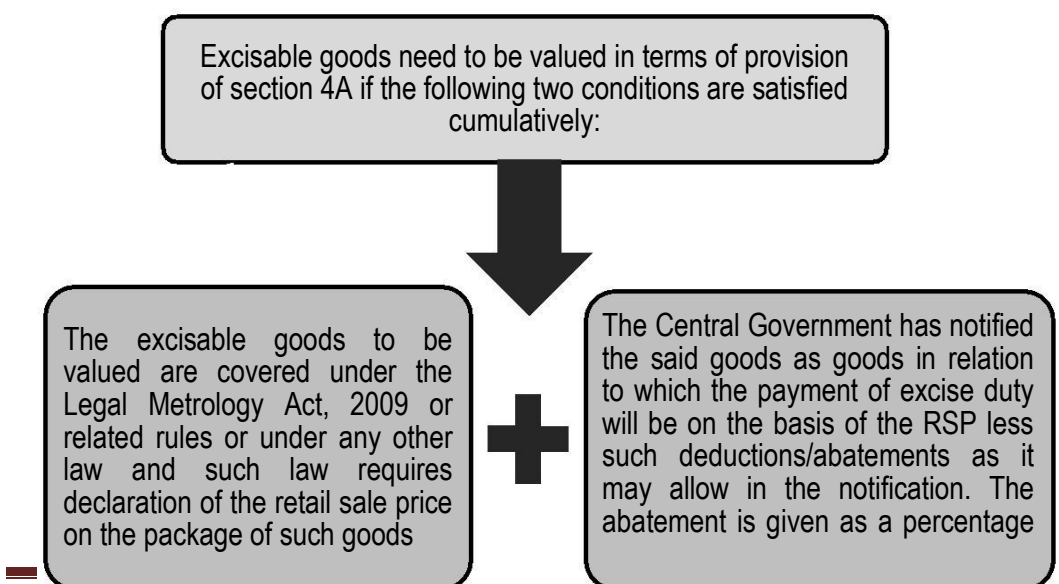
(ii) In any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods.]

(e) “Wholesale trade” means sales to dealers, industrial consumers, Government local authorities and other buyers, who or which purchase their requirements otherwise than in retail.]

1. Subs. by Act 22 of 1973, s. 2, w.e.f. 1.10.1975.
2. Ins. by Act 33 of 1996, s. 74, w.e.f. 28.9.1996.
3. The word “or” omitted by Act 33 of 1996, s. 74, w.e.f. 28.9.1996.
4. Ins. by Act 33 of 1996, s. 74, w.e.f. 28.9.1996.
5. Ins. by Act 14 of 1982, s. 47, w.e.f. 1.10.1975.
6. Subs. by Act 21 of 1984, s. 46, for certain words.

#### **Valuation of excisable goods with reference to retail sale price-**

**(ii) Valuation with reference to retail sale price (RSP):** Section 4A of the Act provides for valuation of excisable goods based on the retail sale price.



of the retail sale price.

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in Section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

2[(4) If any manufacturer removes from the place of manufacture any excisable goods specified under sub-section (1) without declaring the retail sale price of such goods on the packages, or declares a retail sale price which does not constitute the sole consideration for such sale, or tampers with, obliterates or alters any such declaration made on the packages after removal, such goods shall be liable to confiscation.]

3[Explanation I- For the purpose of this section, “retail sale price” means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be and the price is the sole consideration for such sale.]

Explanation 2- Where on any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purpose of this section.

**Power to grant exemption from duty of excise-** (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified descriptions from the whole or any part of the duty of excise leviable thereon.

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured-

- (i) In a free trade zone and brought to any other place in India; or
- (ii) By a hundred percent export-oriented undertaking and allowed to be sold in India.

Explanation- In this proviso, “free trade zone” and “hundred per cent export oriented undertaking” shall have the same meanings as in Explanation 2 to subsection (1) of Section 3.

2[(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, for reasons to be stated in such order, any excisable goods of strategic or secret nature, or for charitable purpose, on which duty is leviable.]

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty

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



(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of Rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excise Laws (Amendment) Act, 1987 shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.

3[(5) Every notification issued under sub-section (1) shall, -

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

(b) Also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963.

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

1. Ins. by Act 29 of 1988, s. 9, w.e.f. 1.7.1988.

2. Subs. by Act 27 of 1999, s. 123, w.e.f. 11.5.1999.

3. Ins. by Act 21 of 1998, s. 106, w.e.f. 1.8.1998.

**Registration of certain persons- Any prescribed person who is engaged in-**

(a) The production or manufacture or any process of production or manufacture of any specified goods included in 2[the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (Act 5 of 1986), or

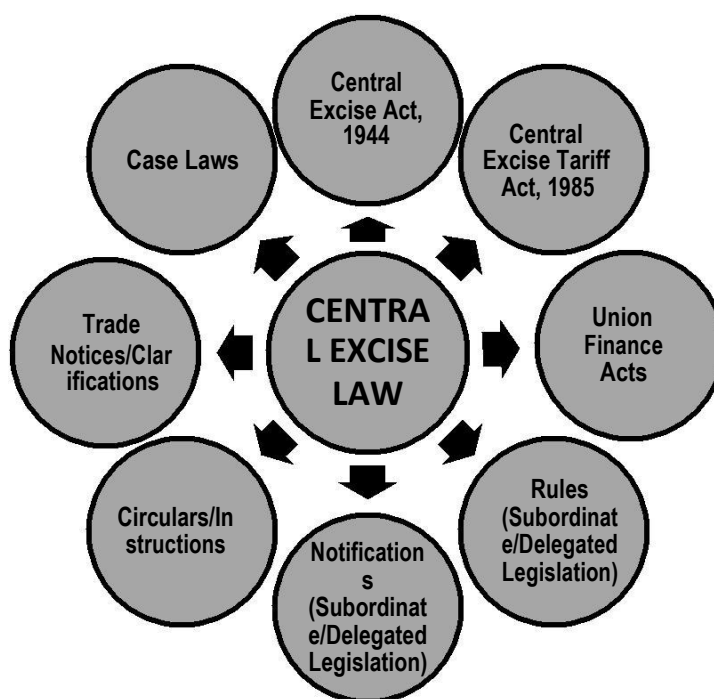
(b) The wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in 2[the First Schedule

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.

1. Subs. by Act 18 of 1992, s. 113, w.e.f. 14.5.1992.
2. Subs. by Act 27 of 1999, s. 119, for “the Schedule”, w.e.f. 11.5.1999.

### Sources of central excise law

Central Excise Law is a combined study of -



[Fig. 5]

(i) **Central Excise Act, 1944:** The Central Excise Act, 1944 (hereinafter referred to as the „Act“ in this Unit) contains the basic provisions relating to the levy of excise duty. It comprises of Chapters I to VII.

(ii) **Central Excise Tariff Act, 1985:** The Central Excise Tariff which was originally aschedule to the Central Excise Act, 1944 was de-linked from it and the Central Excise Tariff, Act 1985 containing the Tariff Schedule was enacted, based on the international product coding system called Harmonised System of Nomenclature (H.S.N.). The Schedules to the

Act enlist all the excisable goods and provide for the corresponding rates of excise duty chargeable on the same.

**(iii) Annual Union Finance Acts:** Every year, the Finance Minister of the Government of India presents the Union Budget to the Parliament. Part A of the Budget Speech contains the proposed policies of the Government in fiscal areas. Part B of the Budget Speech contains the detailed tax proposals. In order to implement the above proposals, the Finance Bill is introduced in the Parliament. Once the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act .

The annual Union Finance Acts are one of the most significant ways through which the Government makes amendments to the central tax acts like the Central Excise Act and Central Excise Tariff Act.

**(iv) Rules:** Rules are framed by the Central Government for carrying out the provisions of the Act. Rules cannot override the provisions contained in the Act. Rules should be read with the statutory provisions contained in the Act. The following significant rules have been issued under the Central Excise Act, 1944:

- **Central Excise Rules, 2002:** These Rules contain the procedure for the assessment and collection of duty including other procedures like manner of payment of duty, registration, maintenance of records, invoicing, rebate of duty, export without payment of duty etc.
- **Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:**

These rules have been framed to prescribe valuation methods when transaction value cannot be determined under Section 4 of the Central Excise Act, 1944.

- **CENVAT Credit Rules, 2004:** These rules extend the credit of excise duty and service tax across goods and services. They provide for the manner of availing the credit and the utilization thereof.

Besides above, other rules namely, Central Excise (Appeal) Rules, 2001, Central Excise (Advance Rulings) Rules, 2002, Central Excise (Settlement of Cases) Rules, 2007, Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, Central Excise (Compounding of Offences) Rules 2005, Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008 have also been notified to carry out the purposes of the Central Excise Act, 1944<sup>1</sup>.

**(v) Notifications:** Notifications are issued by the Central Government or the Central Board of Excise and Customs (CBEC) in terms of the power given under the Act or the Rules. Notifications are issued to provide rules relating to excise duty, make amendments therein, provide or withdraw exemptions from excise duty or deal with any other matter which the Central Government may think would facilitate the governance of excise duty.

**(VI) Circulars/Instructions:** The Central Board of Excise and Customs issues departmental circulars or instruction letters from time to time for the purpose of ensuring uniformity in the classification of excisable goods or with respect to levy of duty of excise on goods. These circulars/instructions should be in conformity with the Act, Rules and Notifications. The circulars are binding on the Department but not binding on the assessee and the Supreme Court, High Court or the Tribunal.

**(vi) Trade Notices/Clarifications:** Trade notices are issued by the Departmental authorities for trade facilitation and clarification purposes. They are binding on the departmental officers concerned. Authorities cannot take one stand in one State

and another stand in another State. Trade notice disseminate the contents of the notifications and circulars/letters, define their jurisdiction; identify the banks in which excise duty can be deposited etc.

**(vii) Case Laws:** It is not possible for the Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence, the judiciary hears the disputes between the assesseees and the Department and gives decisions on various issues. The Supreme Court is the Apex Court of the country and the law laid down by the Supreme Court is the law of the land. The decisions given by various High Courts apply in the respective States in which such High Courts have jurisdiction. The study of case laws is very essential as the case laws facilitate in interpreting the provisions of the Act and comprehending the real intention of the law makers. In fact, in India the tax laws are perceived to be of very complex nature and thus, role of the judiciary becomes all the more substantial as only the judiciary has the mandate of interpreting such intricate provisions of law.

### **Levy of duty**

**(1) Application of the central excise law:** The Central Excise Act applies to the whole of India. Though originally the Act did not apply to the State of Jammu and Kashmir, its application was extended to the same vide the enactment of Taxation Laws (Extension to Jammu & Kashmir) Act, 1954.

It also extends to designated areas in the Continental Shelf and Exclusive Economic Zone of India (EEZ). The EEZ extends upto 200 nautical miles inside the sea from base line.

Therefore, goods manufactured in Indian landmass as also in the designated areas in EEZ will be liable to excise duty.

The Central Excise Tariff Act also applies to whole of India and extends to the designated areas in the Continental Shelf and Exclusive Economic Zone of India (EEZ).

**(2) TAXABLE EVENT:** Taxable event is a event or transaction that results in a taxconsequence for the party who executes the event. For example, the taxable event for levy of state level VAT is sale of products i.e., whenever any sale transaction is occasioned, sales tax liability would arise. Taxable event is the event which triggers the levy of tax.

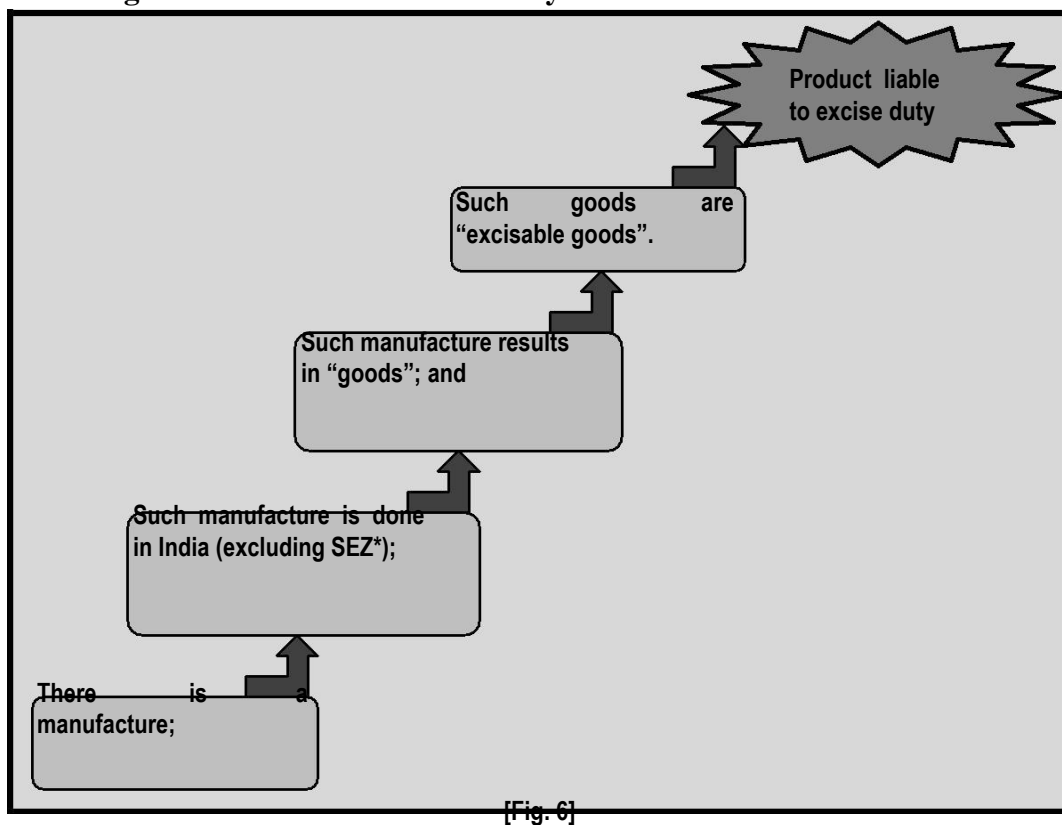
The taxable event for levy of excise duty is manufacture – only when manufacture takes place, excise duty liability arises. However, all manufacturing processes do not attract levy of excise duty unless some basic conditions are met.

Excise duty is not concerned with ownership or sale. Liability under excise law is event based (based on manufacture) and does not depend upon whether the goods are sold or captively consumed.

**Note:** Though the levy of excise duty arises on manufacture but the same is collected on removal of goods from the factory [*Collection of duty has been dealt in detail in the subsequent pages of this Unit*].

**(3) Charge of excise duty:** Section 3 of the Act is the charging section which provides for levy of excise duty. The provisions of section 3 are discussed below:

**(i) Basic conditions for levy of duty:** Excise duty is leviable when the following four are satisfied cumulatively:



**(ii) Government goods also liable to excise duty:** There is no distinction between excisable goods produced by the Government and those produced by others, with regard to payment of excise duty. Excise duty is payable on all excisable goods, other than salt, manufactured in India by or on behalf of the Government (both Central and State) also.

**(iii) Goods manufactured by 100% EOU and brought to DTA liable to excise duty equal to customs duty:** Hundred percent Export Oriented Undertakings are set up to promote exports. They generally export whole of the goods manufactured by them and such exports are exempt from duty. However, sometimes they may sell their goods in India also (known as Domestic Tariff Area). When EOU's sell their goods in DTA, the goods become liable to excise duty.

Excise duty leviable in such a case is computed as follows:

**Excise duty = Total customs duties leviable under the Customs Act/other applicable law on like goods produced/manufactured outside India, if imported into India.**

**Valuation as per customs law:** The value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 if the duty to be levied is based on the value of such goods (*ad valorem*).

**Highest rate to be taken in case of different rates:** Where in respect of any such like goods, customs duty is leviable at different rates, then, highest of those rates shall be taken.

Unless the four basic conditions as set out in section 3 for levy are satisfied [Refer point (i)], central excise duty cannot be levied. Thus, it is very important to understand / interpret each of the conditions in detail to appreciate the implications. Each of the conditions is discussed in subsequent pages of this Unit.

## **GOODS AND EXCISABLE GOODS**



**(1) Goods:** Explanation to section 2(d) of the Act provides that “goods includes any article, material or substance which is being capable of brought and sold for a consideration and such goods shall be deemed to be marketable”. Section 2(d) defines excisable goods. Though the explanation to section 2(d) of the Act sets out as to what are included within the meaning of goods, the concept of goods has been more elaborately defined/explained in other laws/case laws as under:

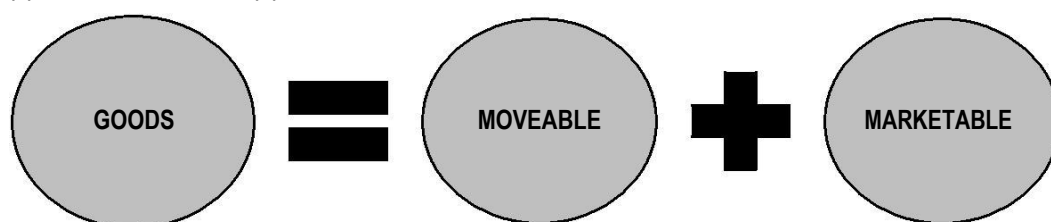
**(i) Article 366(12) of the Constitution of India:** “Goods include all materials, commodities and articles”.

**(ii) Sale of Goods Act, 1930:** Section 2(7) defines goods to mean “every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale”.

Thus, immovable property cannot be goods but any movable property whether visible, tangible, corporeal or not will constitute goods. Goods can be tangible like computer, machinery, pen, pencil etc. as also intangible like drawings, designs, software stored on a media. Similarly, electricity is also goods.

**(iii) Judicial View:** The Supreme Court in the case of *U.O.I. v. DCM 1997(1) E.L.T. 1199* has held that in order to be goods the articles must be capable of coming to the market to be bought and sold. Therefore, to be called goods, the items must be moveable and marketable.

From the above, **two fundamental aspects of the term “goods” arise that they should be (a) „moveable” and (b) „marketable”.**



[Fig. 7]

**(a) Goods must be Moveable”:** To be called goods, the articles must be something, which can ordinarily come or can be brought to the market to be

bought and sold. As opposed to moveable goods, immovable property cannot be brought to the market to be sold. Immovable property includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. **Thus, excise duty cannot be levied on immovable property.**

**Example:** Construction of roads is not liable to excise duty as roads are not goods. However, manufacture of car, truck etc. will attract excise duty as they are goods.

**(b) Goods must be Marketable:** Unless the goods are capable of being marketed, they cannot be charged to duty. As per Explanation to section 2(d), goods includes any article, material or substance which is being capable of brought and sold for a consideration and such goods shall be deemed to be marketable. Thus, the only condition required for a product to be marketable is its capability of being put into the market for sale.

The following points merit consideration in this regard:

- **Actual sale is not necessary:** Actual sale is not necessary in determining excisability of a product; its capability of being brought and sold for a consideration is sufficient to render it marketable. The fact that goods are not actually marketed is of no relevance. It is also not necessary that goods in question should be generally available in the market.
- **Even one purchaser enough:** Marketability does not depend upon the number of purchasers nor is the market confined to territorial limits of India.
- **Burden of proof on Department:** Marketability is a question of fact to be decided on the basis of the facts of each case. It is the onus of the Department to produce evidence of marketability.
- **Goods of short-shelf life:** Goods of short-shelf life, say one or two days will be deemed to be marketable only if they are capable of being brought and sold during that period.

**(2) Excisable Goods:** Before we examine the question of what amounts to manufacture, it must be understood that unless the goods that are manufactured are excisable goods, there will be no question of levying excise duty.

### Collection of duty

**(1) When is duty liable to be paid?:** As learned before, the taxable event for the

levy of excise duty is manufacture, but the collection thereof is postponed to the stage of removal. Therefore, excisable goods cannot leave the factory of production unless excise duty thereon has been paid. However, excisable goods can be removed from the factory and stored in a warehouse without payment of duty. Excise duty, in such a case, becomes payable when the excisable goods are removed from the warehouse.

**(2) On which type of removals is the duty liable to be paid?:** As per rule 4 of the Central Excise Rules, 2002, excisable goods cannot be removed from the place of manufacture or from warehouse - when the goods are stored in warehouse - **without payment of duty** whether for

- consumption, or
- export, or
- manufacture of any other commodity in or outside the place of manufacture until the excise duty leviable thereon has been paid in the prescribe manner.

**(3) Who is liable to pay duty?:** The liability to pay excise duty has been casted on every person-

- who produces or manufactures any excisable goods, or
- who stores such goods in a warehouse

### Exception

**Procurer of molasses liable to pay excise duty on molasses:** Where molasses are produced in a Khandsari sugar factory, the person who procures such molasses (not the person who produces the same) for use in the manufacture of any commodity has to pay the duty leviable on such molasses as if the molasses had been produced by the procurer.



[Fig. 11]

**(4) What is the relevant date for determining the rate of duty?:** Rule 5 of the Central Excise Rules, 2002 contains the provisions for determining the relevant date. The rate of duty and the tariff value prescribed under section 3(2) of the Act prevalent on the relevant date are used for the purpose of computing the amount of excise duty payable. Valuation of excisable goods based on tariff value is discussed in subsequent pages of this Unit. Provisions of rule 4 and 5 have been tabulated as under:

Particulars	Person liable to pay excise duty	Event for duty payment	Relevant date
1. Excisable goods (other than khandsari molasses) produced and stored in the factory of the manufacturer	Manufacturer	Removal of goods from the factory	Date of removal of such goods from the factory

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2. Khandsari molasses produced and stored in the factory of the	Procurer of the khandsari molasses	Receipt of such molasses by the	Date of receipt of such molasses in the factory of the
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manufacturer		procurer	procurer of such molasses
3. Excisable goods produced and cleared for captive consumption in the factory of production	Manufacturer	Issuance of goods for further production	Date on which the goods are issued for such use
4. Excisable goods produced in the factory and stored in a warehouse without payment of duty	Person who stores such goods in the warehouse	Removal of goods from the warehouse	Date of removal of goods from the warehouse

**(i) Change in rate of duty between the date of manufacture and the date of removal:**

Sometimes it may happen that the rate of duty which was prevalent when the goods were manufactured undergoes a change when the goods are removed from the factory. This generally happens when the rate of duty is increased / decreased in the annual Union Budget.

**Example:** Excise duty rate has been increased from 12% to 12.5% with effect from 01.03.2015. Thus, in case of excisable goods manufactured during the month of February and cleared on 20.03.2015, the rate of duty was 12% when the same were manufactured but was increased to 12.5% when the same were removed from the factory.

It needs to be remembered that where the goods were excisable at the time of manufacture, duty will be leviable at the rate prevalent on the date of removal.

Thus, in the above example, excise duty will be paid @ 12.5%.

**(ii) Goods becoming excisable/dutiable post manufacture but before removal:** There can be situations when goods which are manufactured at the period in time when they were either not chargeable to duty or were exempted from duty get included in Tariff or become dutiable on account of withdrawal of the exemption subsequent to manufacture but before removal of such goods.

The following points need to be considered in this regard:

- Non-excisable goods (goods not covered in the Central Excise Tariff) will not be chargeable to duty even though subsequent to manufacture but before removal such goods are brought within the purview of the Tariff or are made chargeable to a specified rate of duty under the Tariff.

The rationale behind such a treatment is that since the goods were not excisable goods as per the provisions of section 2(d) at the time of manufacture, they would not be liable to duty even though they are brought within the purview of the aforesaid section prior to removal from the factory.

- Exempted goods (excisable goods exempted from payment of duty vide an exemption

### **CLASSIFICATION OF EXCISABLE GOODS**

**(1) What is classification?:** There are thousands of varieties of manufactured goods. Since all goods do not carry the same rate or amount of duty, it is practically impossible to identify all the goods individually. Therefore, it is necessary to identify the goods through groups and sub-groups and then to determine the rate of duty on each group or sub-groups of goods. The exercise of placing the various excisable goods under the various groups or sub-groups is known as 'Classification' of a product.

In other words, the classification of excisable goods consists of determining the headings or sub-headings of the Central Excise Tariff Act, 1985 (CETA) under which the said goods would be covered.

**(2) Why is classification necessary?:** Classification of excisable goods is essential for determining the applicable rate of duty as different rates of duty are chargeable on different types of goods. It is also required for the purpose of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub headings.

**(3) What is the scheme of classification?:** CETA is based on the Harmonised System of Nomenclature (popularly known as HSN).

**Harmonised System of Nomenclature:** HSN is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs & Trade (GATT). The Central Excise Tariff Act is modelled along with international practices. The international practice of adopting a uniform classification internationally facilitates a common understanding of products across countries. In other words, the classification of a product under this code would be the same across the countries.

**The two Schedules to CETA:** The classification of goods in the CETA is comprised in two Schedules; the First Schedule specifies the rate of basic excise duty (CENVAT) and the Second Schedule specifies the rate of special excise duty. **Sections and Chapters:** The First Schedule has Sections and Chapters. Each Section has various Chapters. A Section represents a broad class of goods. For example, Section I relates to Live animals and Animal products while Section V relates to Mineral products.

A Chapter contains goods of one class e.g., Section – V of Mineral Products has Chapter 25 relating to Salt; sulphur; earths and stone; plastering materials; lime and cement and Chapter 26 relating to Ores, slag and ash. The Chapter is further divided into headings and sub-headings depending on different types of goods belonging to same class of products.

Section Notes and Chapter Notes are given at the beginning of each Section and Chapter which govern the entries in that Section and Chapter respectively.

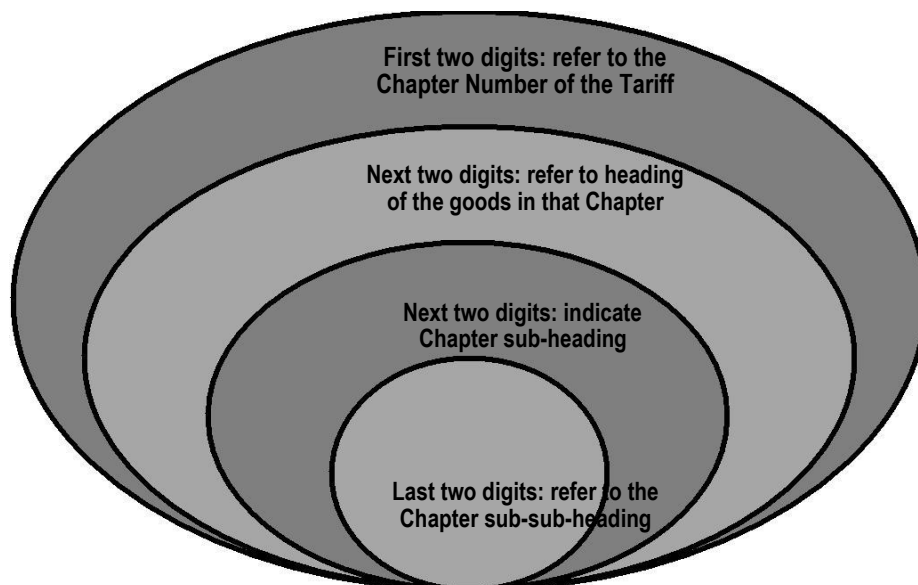
The First Schedule to the CETA contains 96 Chapters grouped into 20 sections and specific code is assigned to each item. All of the items listed in the second



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schedule have been exempted from special excise duty with effect from 01.03.2006.

**Eight digit classification system:** The excisable goods are classified by using 8-digitsystem. Description with eight digits is termed as „**tariff item**“. A tariff item under eight digit system would be interpreted as follows:-



### **Dutiability of intermediate products and captive consumption**

Captive consumption in the context of excise law means utilisation of goods produced or manufactured within the factory of production. This is normally prevalent in large factories with several departments in diverse manufacturing processes with their departmental and intra-departmental stock transfers. The goods internally consumed to manufacture the final product are termed as intermediate goods. In terms of the definition of manufacture under section 2(f) of the Act, manufacture takes place even at an intermediate stage of the manufacturing process, if the intermediate product is known commercially as a distinct and identifiable product.

The Supreme Court in its decisions in *Union Carbide India Ltd. Vs. Union of India* (1986) (24) ELT-169 and in *Bhor Industries Ltd. Vs. C.C.EX.* (1989) (40) ELT-280 has held that an intermediate product would be excisable only if it is a complete product in the sense that it is capable of being sold to a consumer. Thus marketability is essential for charging an article to duty. Therefore where the intermediate product is not capable of being sold, it is not dutiable even if it is included in the Tariff Entry. In other words intermediate goods will be chargeable to duty under law only if the test of marketability is met.

Intermediate goods which are bought into being *insitu* in the process will not be chargeable to duty since they are not marketable. Moreover, transient and unstable intermediate goods would also not be chargeable to duty on the same basis. However, other kind of intermediate products, which are capable of being marketed as goods in their own right,

will be chargeable to duty, notwithstanding that they are not packed or stored separately but are used as part of a continuous process.

Thus to conclude, intermediate goods will be chargeable to duty if they arise in the course of manufacture/production, are moveable and marketable in such intermediate stage, listed in the Tariff, and are subject to duty of excise in the Tariff.

### **Packing, labelling and branding activities**

Packing of dutiable goods is a process of manufacture. The definition of manufacture as contained in section 2(f) of the Act, covering incidental and ancillary activities there under, would incorporate within its ambit the activity of packing, which is a necessary adjunct to manufacture. Further, goods are normally treated as fully manufactured for the purpose of accounting in the statutory excise records at the stage where they are packed in their normal packing, without which they cannot be delivered in wholesale at the factory gate. In other words the activity of packing of otherwise fully manufactured goods is the process which renders such goods marketable and consequently the activity of packing is part and parcel of manufacture. Reference is also made in this connection to section 4 of the Central Excise Act governing the determination of value of excisable goods. The aforesaid provisions of section 4 would also indicate that packing is always contemplated under excise law as a part of the entire process of manufacture by which input materials are transformed into commercially distinct, identifiable and marketable finished products.

It is to be noted that for the goods specified in Third Schedule of Central Excise Act, 1944, the process of packing or repacking of such goods in a unit container or labelling or re labelling of containers amounts to manufacture. Further, the declaration or alteration of retail sale price or adoption of any other treatment on the goods to render the product marketable to the consumer also results in manufacture. The goods specified in Third Schedule of the Central Excise Act, 1944 are valued on MRP basis as per the provisions of section 4A. Further, several Chapters of the Central Excise Tariff also incorporate the duty rates on excisable goods packed in packages. In other words, the Tariff itself determines the duty rates of excisable goods in a fully packed and saleable condition. For example, milk powder is chargeable to duty only if it is put up in unit containers. In case it is produced and consumed within the factory of production without packing in such unit containers, there is no liability to duty. Unit containers are also defined in the Tariff as

containers, large or small, designed to hold a predetermined quantity or number. Several examples of unit containers are also described therein.

The position in law however changes when excisable goods which are packed in bulk are charged to duty and are thereafter dispatched to outside godowns wherein they are repacked into small containers. In such a situation, the principle in law is that since the bulk product has already been fully manufactured and has been marketed or dispatched in the factory, the repacking activity

would not constitute manufacture in law. There are numerous decisions to this effect both of the Tribunal and of the High Courts. Another aspect of the issue is that of packing together of a manufactured item together with a bought out or purchased item. It was held by the tribunal that packing together of a fully manufactured product and the bought out item would not bring into existence any new commodity. Consequently, the duty liability would be restricted to the manufactured product only. The mere activity of packing together of two distinct goods in a single container would not bring into existence any new commodity; here it is important to distinguish the activity of packing together of two different products from that of assembly of the products together to form a distinct third product. In other words, while such packing would not constitute manufacture, assembly would certainly constitute manufacture. Reference is made in this connection to the Supreme Court's decision in the *Narney Tulamane* case. Coming now to the aspect of whether labelling and branding activities constitute manufacture or not, the settled position in law is that an unlabelled and a labelled product is normally treated in commercial parlance as the same and consequently the mere labelling of fully manufactured products would not constitute manufacture in law. The Bombay High Court, in

***Pioneer Tools and Appliances (P) Ltd. Vs. Union of India (1989) (42) ELT-384*** has held that mere affixation of labels would not render the person who undertakes the said activity as a manufacturer since the activity would not constitute manufacture in law.

As far as question of branding of goods is concerned there are numerous decisions, which hold that such branding would not amount to manufacture. In most of these cases, the manufacturer was affixing the brand name of the customers on the specified goods and the Department sought to establish that the brand name owner was the manufacturer in law. This was negated by the Supreme Court in a series of three decisions in ***Union of India Vs. Cibatul Ltd. (1985) (22) ELT- 302, Joint Secretary to Govt. of India Vs. Food***

*Specialties Ltd. (1985) (22) ELT-324*, and in *Sidhosons Vs. UOI (1986) (26) ELT-881*.

The question whether branding of already manufactured goods was a process of manufacture was not *per se* considered in these decisions and Court rendered its decision only on whether or not the brand name owner was the manufacturer under excise law.

However, in *Banner & Co. Vs Union of India (1994) (70) ELT-181*, the Calcutta High Court held that affixation of a brand name on specified goods did not amount to manufacture. Similarly, in the Pioneer Tools case (*supra*), the Bombay High Court impliedly held that the activity of branding carried out by a wholesale buyer on fully manufactured goods could not constitute manufacture under excise law so as to require excise duty liability discharged on such an activity. The Apex Court agreed in this regard in *Metal Box (I) Ltd. (1996)*.

In view of the aforesaid position of law, wherever there are serious revenue implications, the Legislature has introduced the concept of artificial definition of manufacture to include the activity of repacking, relabelling or branding as amounting to manufacture. For example, you would find these activities as amounting to manufacture under Chapter 21 or Chapter 30 of the Tariff.

Therefore, wherever the Tariff would state so, such activities would amount to manufacture.

**Activity of transferring the goods from tankers into smaller drums is not manufacture:**

As per note 10 to Chapter 29, the activity of repacking products mentioned in the said Chapter from bulk packs to retail packs shall amount to manufacture under section 2(f)(iii) of the Central Excise Act, 1944.

In this regard, it has been clarified that the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs [*Circular No. 910/30/2009-CX dated 16-12-2009*].

**PART B**

1. How would you determine the valuation of excisable goods?
2. Explain Self Removal procedure in Excise Act?
3. What are different methods of Excise Collection?

4. Explain the provision relating to registration under the Excise Act?
5. Describe the procedure for clearance of goods on the basis of record based control and self removal procedure?
6. Explain the different types of Excise Duty?
7. What are the objectives of Excise duty?
8. Distinguish between Excise duty and Sales tax?
9. Write a note on Central Excise Tariff Act 1985?
10. State the provisions relating to Levy and Collection of Excise duty?



**UNIT 3**

**CENTRAL EXCISE ACT, 1944**

**PART B**

1. How would you determine the valuation of excisable goods?
2. Explain Self Removal procedure in Excise Act?
3. What are different methods of Excise Collection?
4. Explain the provision relating to registration under the Excise Act?
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9. Write a note on Central Excise Tariff Act 1985?
10. State the provisions relating to Levy and Collection of Excise duty?

**CIA I & II : 3\*10 = 30 Marks (Either or Type)**

**Model : 5\*8 =40 Marks (Either or Type)**

**ESE : 5\*8=40 Marks (Either or Type)**



**Unit 4**  
**CUSTOMS ACT 1962**

Customs Act, 1962- Definitions, -Types of duty –Prohibition on importation and exportation of goods – Dutiable Goods U/S 26, Power of grant exemption from duty U/S 25, Restrictions on custody and removed in imported goods U/S 45-Duty Draw back.

What is customs duty?

Customs duty is a duty or tax, which is levied by the Central Government on import of goods into, and export of goods from, India.

The term ‘customs’ derives its colour and essence from the term ‘custom’, which means a habitual practice or course of action that characteristically is repeated in like circumstances.

Duties on import and export of goods have been levied from time immemorial by all the countries. In India, at the time when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer gifts to the King for allowing him to sell his goods in that kingdom. Kautiliya’s Arthashastra also refers to ‘shulka’ consisting of import duty and export duty that was collected at the city gates on goods coming in and going out respectively.

Subsequently, the levy of customs duty was organised through legislation during the British period. Post independence, the Customs Act was passed and promulgated in India by the Parliament in the year 1962. It consolidated the erstwhile Sea Customs Act, 1878, Land Customs Act, 1924 and provisions for air customs. Further, the Customs Tariff Act was passed in the year 1975 to replace the erstwhile Indian Tariff Act, 1934.

**FEATURES OF CUSTOM DUTIES**

The following are the features and objectives of customs duties,

1. Regulating the amount of import in India in order to protect the domestic market.

2. Protecting Indian Industry from undue competition
3. Prohibiting certain imports of goods for achieving the policy objectives of the Government.
4. Regulating imports
5. Coordinating legal provisions with other laws dealing with foreign exchange such as Foreign Trade Act, Foreign Exchange Regulation Act, Conservation of Foreign Exchange and Prevention of Smuggling Act, etc.

All import goods are classified into categories known as called “headings” and “subheadings” for the purpose of levy of duty. For each sub-heading, a specific rate of duty has been prescribed in the Customs Tariff Act, 1975.

### THE MAJOR OBJECTIVES OF IMPOSING EXPORT DUTIES

The following are the major objectives of levying especially export duties,

1. Export duties for revenue purposes
2. Export duties for anti inflationary condition
3. Export duties to stabilize price of essential commodities
4. Export duties to protect home industries
5. Export duties as countervailing measure
6. Export duties to control export of raw materials.

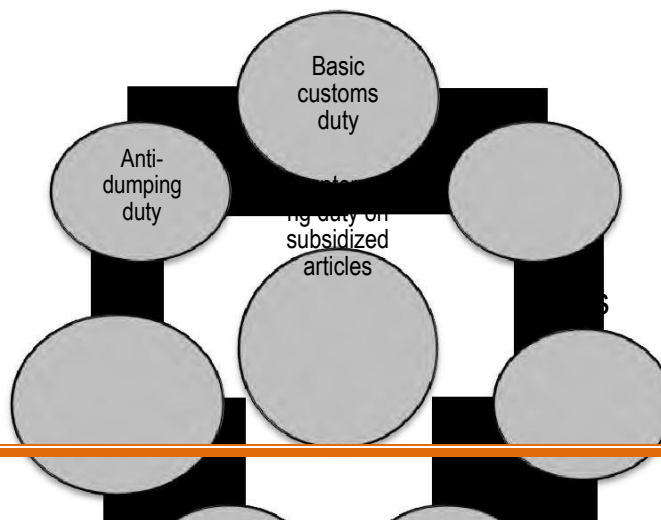
### CONSTITUTIONAL PROVISIONS

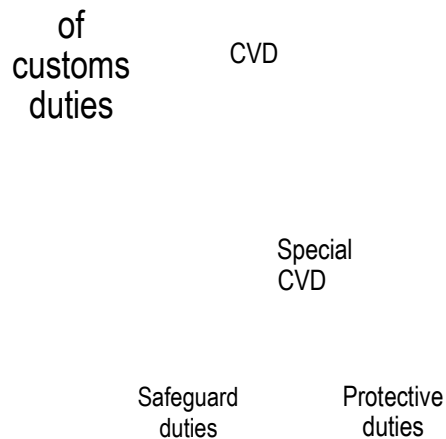
As learned earlier, customs duty is an indirect tax levied by the Central Government. The power to levy the customs duty is conferred by **Entry 83** of the **Union List of the Seventh Schedule** to the Constitution of India.

**Entry 83** provides as under:

#### Duties of Customs including Export duties

The various types of customs duties are as under:-





The aforesaid duties have been elaborated subsequently in this Unit.

### Sources of customs law

Customs Law is a combined study of the Customs Act, 1962, Customs Tariff Act, 1975, Annual Union Finance Acts, Rules, Notifications, Circulars/ Instructions, Trade Notices/Clarifications and Case Laws.

- (1) **Customs Act, 1962:** Customs Act, 1962 contains the provisions governing the import and export duty imposed on imports and exports of the goods.
- (2) **Customs Tariff Act, 1975:** contains the provisions relating to various types of customs duties and the classification of imported and export goods.
- (3) **Rules and regulations:** Some of the rules and regulations issued under the Customs Act, 1962 are the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Customs Valuation (Determination of Value of Export Goods) Rules 2007, Baggage Rules, 1998, Export Manifest (Vessels) Regulations, 1976, etc.

### Levy of customs duty

**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.]

*Substituted (w.e.f. 2.8.1976) by s. 13 of CTA, 1975 (51 of 1975)*

*Substituted (w.e.f. 1.10.1963) by s. 2 of Customs and Central Excise (Amendment) Act, 1963 (30 of 1963)*

**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

**Date for determination of rate of duty and tariff valuation of imported goods.** - (1) <sup>1</sup> [The rate of duty <sup>2</sup> [Omitted]] and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a **\*bill of entry for home consumption in respect of such goods is presented under that section;**

(c) in the case of any other goods, on the date of payment of duty:

[Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

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

**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, -

(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.

**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

(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.

(I) Application of the Act

The Customs Act, 1962 applies to the whole of India. India includes territorial waters of India. Besides, the Customs Act, 1962 and Customs Tariff Act, 1975 have been further extended to: -

(i) the notified designated areas in the Continental Shelf of India (CSI) and Exclusive Economic Zone of India (EEZI) and

(ii) whole of EEZI and CSI for the purpose of processing for extraction or production of mineral oils and supply of any goods in connection thereto.

India has sovereignty in its territorial waters whereas it has full and exclusive economic rights in its EEZ and Continental Shelf.

Example: The machinery purchased by the oil rigs carrying on operations in the EEZI shall be considered as imported goods.

1. Baseline: It is the lower water mark along the coast.

2. Exclusive Economic Zone of India: It is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline.

3. Continental Shelf of India: Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps.

Continental Shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.

(a) Indian territorial waters: Indian territorial waters extend upto 12 nautical miles (22 km) into the sea from the appropriate base line. India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

(b) Indian customs waters: Indian customs waters means the waters extending into the sea up to the limit of contiguous zone of India and includes any bay, gulf, harbour, creek or tidal river [Section 2(28) of the Customs Act, 1962].

Indian customs waters cover both the Indian territorial waters and contiguous zone. Indian territorial waters extend up to 12 nautical miles (nm) from the base line whereas contiguous zone extend to a further 12 nm from the outer limit of the territorial waters. Therefore, Indian customs waters extend upto a total of 24 nm from base line.

Contiguous zone of India: It is an area 12 nautical miles (nm) beyond the Indian territorial waters. Therefore, it is at a distance of 24 nautical miles from the nearest point of the baseline.

(c) Significance of Indian territorial waters and Indian customs waters: Since India includes Indian territorial waters, all the provisions of the Customs Act and rules and regulations thereunder are applicable in Indian territorial waters. In addition to this, the Customs Act, 1962 has extended certain powers of the customs officers in the Indian customs waters as well (for example, power to stop and search any vessel, power to arrest a person in Indian customs waters etc.).

(II) Charging section [Section 12 of the Customs Act, 1962]

1. Except as provided in this Act, or any other law for the time being in force,

- duties of customs shall be levied

- at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force,
- on goods imported into and exported from India.

2. The aforesaid provisions shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

However, imports by Indian Navy, specific equipment required by police, Ministry of Defence, Coastal Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the said notifications.

**ANALYSIS :** The following propositions arise from the aforesaid section:-

1. Customs duty is charged on goods and not on the person importing them or paying the duty. The goods shall be such as are imported to or exported from India. Being such, it is expected to be passed on to the buyer.

2. It may, however, be noted that this levy is subject to other sections in the Act. For instance:

Section 13 – no duty on pilfered goods Section 22 – reduced duty on damaged goods

Section 23 – remission of duty on destroyed goods or no duty in case of relinquishment of the title to the goods.

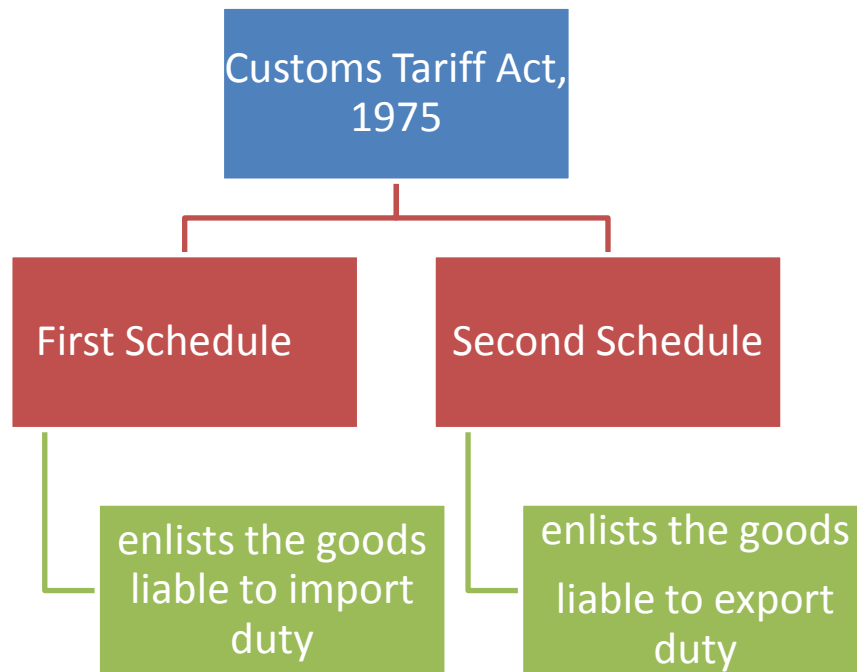
3. Government goods shall be treated at par with non -Governmental goods for the purposes of levy of customs duty.

4. Rates of duty: The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules of the Customs Tariff Act, 1975.



**Preferential rate of duty:** If the goods are imported from the preferential areas [as notified by the Central Government], then a lower preferential rate of duty will be applicable on such goods subject to the fulfillment of specified conditions.

- (i) **Standard rate of duty:** In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.



#### (i) TAXABLE EVENT IN CASE OF IMPORTS

(a) In case of goods cleared for home consumption: Import of goods commences when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

(b) In case of goods cleared for warehousing: In case of warehoused goods, the goods continue to be in customs bond. Hence, import takes place when the goods are cleared from the warehouse. The customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

Clearance for home consumption: It implies that customs duty on imported goods has been paid and thus, goods can be removed by the importer for utilization or consumption within the country.

Clearance for warehousing: In case where the goods are not immediately cleared for home consumption, they may be deposited in a warehouse and cleared at a later point of time. In such a case, the collection of customs duty will be deferred till such goods are cleared from warehouse for home consumption.

#### (ii) TAXABLE EVENT IN CASE OF EXPORTS





Export of goods is complete when the goods cross the territorial waters of India. If ship sinks within the territorial waters, export is not complete.

- (1) Goods: includes-
  - (a) vessels, aircrafts and vehicles;
  - (b) stores;
  - (c) baggage;
  - (d) currency and negotiable instruments;
  - (e) any other kind of movable property [Section 2(22)].

For anything to be called as goods, it must be moveable and marketable. The concept of movability and marketability of goods has been discussed at length in Unit 2: Central Excise Duty.

- (2) **Export:** The term—export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India [Section 2(18)].
- (3) **Export goods:** means any goods, which are to be taken out of India to a place outside India [Section 2(19)].
- (4) **Exporter:** in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter [Section 2(20)].
- (5) **Import:** The term —import, with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Section 2(23)].
- (6) **Imported goods:** means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption [Section 2(25)].
- (7) **Importer:** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer [Section 2(26)].

### Customs duty not leviable in certain cases

 <p>Section 13</p>	<p>No duty on pilfered goods</p>
<p>Prepared</p>	
	

Section  
22

Reduced duty on damaged goods

Section  
23(1)

Remission of duty on destroyed goods

Section  
23(2)

No duty on relinquishment of the title to the goods

**1. No duty on pilfered goods [Section 13]**

If any imported goods are pilfered after the unloading thereof but 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. However, where such goods are restored to the importer after pilferage, the importer becomes liable to duty.

**Meaning of term ‘pilfer’:** The term ‘pilfer’ means —to steal, especially in small quantities; petty theft. Therefore, the term does not include loss of total package.

The underlying principle behind this provision is that when the goods are not under the control of the importer, he should not be required to pay duty on such goods.

**ANALYSIS:**

**(a) Conditions to be satisfied for exemption from duty**

- ☐ The imported goods should have been pilfered.
- ☐ The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.
- ☐ The pilfered goods should not have been restored back to the importer.

**(b) Points which merit consideration**

- If goods are pilfered after the order of clearance is made but before the goods are actually cleared, section 13 is not applicable and thus, duty would be leviable.
- Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
- Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.
- In case of pilferage, only section 13 applies and remission of duty under section 23(1) is not permissible.

**Abatement of duty on damaged or deteriorated goods [Section 22]**

Section 22 provides the importer with an option to pay the reduced duty if the goods are damaged or deteriorated under any of the specified circumstances.

- (a) Cases where abatement is available:** Abatement is available if it is shown to the satisfaction of the Assistant Commissioner/ Deputy Commissioner of Customs that the goods are damaged/deteriorated under any of the following circumstances:

S.No.	In case
1.	any imported goods had been damaged or had deteriorated <b>at any time before or during the unloading of the goods in India</b>
2.	any imported goods, other than warehoused goods, had been damaged on account of any accident, <b>at any time after the unloading thereof in India but before their examination for assessment by the customs authorities</b>
3.	<del>any warehoused goods had been damaged on account of any accident</del> <b>at any time before clearance for home consumption</b>

Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent.

- (1) **Damage:** The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.
- (2) **Deterioration:** Deterioration is reduction in quality of goods due to natural causes.
- (b) **Amount of duty chargeable after abatement:** The duty to be charged on such goods 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.

$$\text{Duty to be charged} = \frac{\text{Value of damaged/deteriorated goods*}}{\text{Value of goods before damage/deterioration}} \times \text{Duty on goods before damage/deterioration}$$

**Example:** If the value of goods is ₹50,000 and after damage the value is ₹10,000 then duty payable on ₹50,000/- should be appropriately reduced to 20% of the duty on such goods before their damage (proportion of 10,000 to 50,000).

- (c) **Valuation of the damaged or deteriorated goods:** The value shall be:-
- (a) Value ascertained by the proper officer
  - or
  - (b) The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

## EXEMPTION FROM CUSTOMS DUTY

**Central Government's power to grant exemption:** Article 265 of the Constitution provides that —No tax shall be levied or collected except by authority of law. The power of the Central

Government to alter the duty rate structure is known as delegated legislation and this power is always subject to superintendence and check by the Parliament [Section 25].

- a. General exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

- b. Special exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order.

Both the above mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable. Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

The Central Government is vested with similar powers of granting exemption under central excise laws also. Thus, excise duty can also be exempted by Central Government by way of general and special exemptions.

**Rationale for grant of customs duty exemption:** The power for grant of exemption vests with the Central Government subject to the overall control of the Parliament. The Government on a rational basis may use this power and the exemptions may be based on any of the following factors:

- a. Moral grounds, where the duty should not be levied at all. Some of the instances, which may be given, are;
  - (i) Where the goods do not reach the Indian soil at all.
  - (ii) Where the goods have reached the Indian soil, but are not available for consumption.

Where the goods get damaged or deteriorated in transit.

### **Central Excise Valuation (Determination of Price of Excisable**

Goods) Rules, 2000

These rules were notified vide Notification No. 45/2000-C.E. (N.T.)

dated 30-6-2000. They came into effect from 01.07.2000. The text of the rules is given for the reference.

#### **Rule - 1**

(1) These rules may be called the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

(2) They shall come into force on and from the 1<sup>st</sup> day of July, 2000.

**Rule - 2.**

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Central Excise Act, 1944;
- (b) "normal transaction" means the transaction value at which the greatest aggregate quantity of goods are sold;
- (c) "value" means the value referred to in Section 4 of the Act;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the 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, 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 to the proper officer.

**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 circumstance 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.

**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.

**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-clauses (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) If 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.

**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) in a 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) in a 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.

**Rule - 11.**

If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of section 4 of the Act.

**Maximum Retail Price (MRP) based valuation [Section 4A]**

The provision relating to duty based on MRP is dealt in section 4A. Section 4A was introduced with effect from 14.5.97 and today covers more than 83 Tariff headings. The Government thought it fit to introduce the said section to fight the evil of manufacturers transferring cost to

trading companies and reducing the excise duty payable by them. The provisions of section 4A are discussed below:

(a) The goods are required under Legal Metrology Act, 2009 or rules made there under or under any other law to declare on the package the retail sale price thereof [sub-section (1)].

(b) The Government may notify such products for the purpose of this Section. However, it must be noted that if products are to be so notified, law must require such products to declare the retail sale price on the package [sub-section (1)].

(c) The valuation has to be done on the basis of retail sale price declared on the package less abatement [sub-section (2)]. Abatements can be given by the Central Government after taking into account the amount of duties and taxes. Abatements are also given in the notification as explained above. The basis of such abatements have not been made public [sub-section (3)].

(d) The 'retail sale price' has been defined to mean the maximum price at which the excisable goods in packaged form may be sold

to the ultimate consumer and includes all

taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

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umer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

However, if the provisions of the Act, rules or other law referred to in (a) above requires the retail sale price to exclude any taxes, local or otherwise, the retail sale price shall be construed accordingly [explanation 1].

(e) It is also stated that where there is more than one retail sale price the maximum of such retail sale price will be deemed to be the retail sale price for the purpose of this section [explanation 2(a)].

(f) The excisable goods shall be confiscated and the retail sale price will be ascertained in the manner prescribed by the Central Government if the manufacturer does any of the following acts:

(i) removes excisable goods from the place of manufacture, without declaring the retail sale price of such goods on the packages, or

(ii) declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law referred to in (a) above or

(iii) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture [sub-section 4].

(g) Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates [explanation 2(c)].

(h) If the retail sale price declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price [explanation 2(b)].

An example of some goods that are notified along with percentage of abatement under section 4A is as follows:

- (i) Biscuits 30%
- (ii) Toothpaste 30%
- (iii) Photographic cameras 30%
- (iv) Pressure cooker 25%

Duty based on MRP not a sales tax :

The basis of this type of valuation is based on the decision of the Supreme Court in the case of UOI Vs. Bombay Tyres International 1986

(14) ELT 1896, which lays down the principle that although the taxable event for the charge of the duty of excise is manufacture of goods, necessarily be restricted to the so called manufacturing costs/profits. In other words, the excise duty on goods would not be transformed into a sales tax merely because the value for the purpose of the levy would be based on the MRP. Statutory requirement of declaring retail sale price on the package of notified

excisable goods is a pre-requisite for applying section 4A : For the purpose of valuation under section 4A, care should be taken to see that unless the products are required under the Legal Metrology Act, 2009 or the rules made thereunder to declare on the package the retail sale price of such goods, the question of applying section 4A does not arise. In other words, if there is no statutory requirement under the provisions of the Legal Metrology Act, 2009, or the rules made thereunder or any other law for the time being in force to declare the retail sale price on the packages, section 4A will not apply. Such goods will be valued as per section 4 of the Central Excise Act, 1944 or as per section 3(2) of the Central Excise Act, 1944, if tariff values have been fixed for the commodity.

**Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008:**

Notification No. 13/2008 CE (NT) dated 01.03.2008 has introduced “Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008” to determine the retail sale price of any excisable goods under sub-section (4) of section 4A of the Act.

**Rule 4**

provides that where a manufacturer removes the excisable goods:

- (a) without declaring the retail sale price on the package or

(b) by declaring the retail sale price, which is not the retail sale price as per law or

(c) by declaring the retail sale price but obliterates the same after their removal, then, the retail sale price of such goods shall be retail sale price of identical goods manufactured by the manufacturer and removed within a period of one month, before or after removal of such goods, otherwise, it shall be ascertained by conducting the enquiries in the retail market at or about the same time of the removal of such goods. However, if more than one retail sale price is ascertained, then the highest of the retail sale price, so ascertained, shall be taken as the retail sale price of all such goods. It has been clarified that where the retail sale price is required to be ascertained based on market inquiries, the said inquiries shall be carried out on sample basis.

#### **Rule 5**

provides that where a manufacturer alters or tampers the retail sale price declared on the package of goods after their removal from the place of manufacture, resulting into increase in the retail sale price, then such increased retail sale price shall be taken as the retail sale price of all goods removed during a period of one month before and after the date of removal of such goods. However, where the manufacturer alters or tampers the declared retail sale price resulting into more than one retail sale price available on such goods, then, the highest of such retail sale price shall be taken as the retail sale price of all such goods.

**Rule 6** further provides that if the retail sale price of any excisable goods cannot be ascertained under these rules, the retail sale price shall be ascertained in accordance with the principles and the provisions of section 4A of the Act and the rules aforesaid.

#### **Valuation of free samples of the product assessed on the basis of MRP:**

As explained earlier, Circular No. 813/10/2005-CX dated 25.4.2005 clarifies that in the case of free samples, the value should be determined under rule 4.

### **DIFFERENCE BETWEEN SALES TAX AND CUSTOMS DUTY**

The following are the differences between excise duty and customs duty

Sales tax	Customs duty
1. Sales tax is on the sale and not on the goods	Customs duty is levied on goods

2. Sales tax is imposed on intra sale	Customs duty is imposed on imports and exports
3. It is collected by state government	It is imposed by central government
4. Sales tax may differ from state to state . Because there is separate sales tax act for each state	Since there is only one customs act, customs duty is charges uniformly through out the country
5. Revenue from sales is for the state government	Revenue from customs duty is for the central government
6. It is regulated by state sales sales tax Act.	It is regulated by customs duty Act 1962.

## TYPE OF CUSTOMS DUTIES

While Customs Duties include both import and export duties, but as export duties contributed only nominal revenue, due to emphasis on raising competitiveness of exports, import duties alone constituted major part of the revenue from Customs Duties. The import duties are imposed under The Customs Act, 1962 and Customs Tariff Act, 1975. The structure of Customs Duties includes the following:

### 1. Basic Customs Duty

All goods imported into India are chargeable to a duty under Customs Act, 1962 .The rates of this duty, popularly known as basic customs duty, are indicated in the First Schedule of the Customs Tariff Act, 1975as amended from time to time under Finance Acts. The duty may be fixed on ad –valorem basis or specific rate basis. The duty may be a percentage of the value of the goods or at a specific rate. The Central Government has the power to reduce or exempt any good from these duties

### 2. Auxiliary Duty of Customs

This duty is levied under the Finance Act and is leviable all goods imported into the country at the rate of 50 per cent of their value. However this statutory rate has been reduced in

the case of certain types of goods into different slab rates based on the basic duty chargeable on them. Additional (Countervailing) Duty of Customs This countervailing duty is leviable as additional duty on goods imported into the country and the rate structure of this duty is equal to the excise duty on like articles produced in India. The base of this additional duty is c.i.f. value of imports plus the duty levied earlier. If the rate of this duty is on ad-valorem basis, the value for this purpose will be the total of the value of the imported article and the customs duty on it (both basic and auxiliary).

### **3. Export Duties**

Under Customs Act, 1962, goods exported from India are chargeable to export duty The items on which export duty is chargeable and the rate at which the duty is levied are given in the customs tariff act, 1975 as amended from time to time under Finance Acts. However, the Government has emergency powers to change the duty rates and levy fresh export duty depending on the circumstances.

### **4. Cesses**

Cesses are leviable on some specified articles of exports like coffee, coir, lac, mica, tobacco (unmanufactured), marine products cashew kernels, black pepper, cardamom, iron ore, oil cakes and meals, animal feed and turmeric. These cesses are collected as parts of Customs Duties and are then passed on to the agencies in charge of the administration of the concerned commodities.

### **5. Education cess on customs duty**

An education cess has been imposed on imported goods w.e.f. 9-7-2004. The cess will be 2% of the aggregate duty of customs excluding safeguard duty, countervailing duty, Anti Dumping Duty.

### **6. Protective Duties**

Tariff Commission' has been established under Tariff Commission Act, 1951. If the Tariff Commission recommends and Central Government is satisfied that immediate action is necessary to protect interests of Indian industry, protective customs duty at the rate

recommended may be imposed under section 6 of Customs Tariff Act. The protective duty will be valid till the date prescribed in the notification.

#### **7. Countervailing duty on subsidized goods**

If a country pays any subsidy (directly or indirectly) to its exporters for exporting goods to India, Central Government can impose Countervailing duty up to the amount of such subsidy under section 9 of Customs Tariff Act.

#### **8. Anti Dumping Duty on dumped articles**

Often, large manufacturer from abroad may export goods at very low prices compared to prices in his domestic market. Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock. This is called 'dumping'. In order to avoid such dumping, Central Government can impose, under section 9A of Customs Tariff Act, anti-dumping duty upto margin of dumping on such articles, if the goods are being sold at less than its normal value. Levy of such anti-dumping duty is permissible as per WTO (world trade organisation) agreement. Anti dumping action can be taken only when there is an Indian industry producing 'like articles'.

#### **9. Safeguard duty**

Central Government is empowered to impose 'safeguard duty' on specified imported goods if Central Government is satisfied that the goods are being imported in large quantities and under such conditions that they are causing or threatening to cause serious injury to domestic industry. Such duty is permissible under WTO agreement. Safeguard duty is a step in providing a need-based protection to domestic industry for a limited period, with ultimate objective of restoring free and fair competition

#### **10. National Calamity Contingent Duty**

A National Calamity Contingent Duty (NCCD) of customs has been imposed vide section 129 of Finance Act, 2001. This duty is imposed on pan masala, chewing tobacco and cigarettes. It varies from 10% to 45%. - - NCCD of customs of 1% was imposed on PFY, motor cars, multi



utility vehicles and two wheelers and NCCD of Rs 50 per ton was imposed on domestic crude oil, vide section 134 of Finance Act, 2003.

## DIFFERENCES BETWEEN SAFEGUARD DUTY AND ANTI DUMPING DUTY

The following are the differences between safeguard and anti- dumping duty,

Safeguard duty	Anti dumping duty
<p><b>1. Legal authority</b></p> <p>The safeguard duty on imported goods is leviable under section 8 b of the customs tariff act 1975.</p>	<p>The government has been given the powers under sec 9 A of the customs tariff Act 1975 to levy anti dumping duty.</p>
<p><b>2. Purpose</b></p> <p>Safeguard duty is levied on order to ensure that goods imported increased quantity do not cause or threaten to cause serious injury to domestic industry.</p>	<p>Anti dumping duty is levied on the dumped articles in order to protect the domestic market.</p>
<p><b>3. Nature</b></p> <p>Safeguard duty relates to quantum of imports</p>	<p>Anti- dumping duty is concerned with valuation of imported goods.</p>
<p><b>4. Duration</b></p> <p>Safeguard duty is effective for 4 years Bur in appropriate cases can be</p>	<p>Anti dumping duty is effective up to 5 years and can be extended in certain</p>

extended to a period not exceeding 10 years.	cases for a further period of 5 years.
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### **REMISSION ON DUTY ON LOST GOODS, DESTROYED GOODS (OR) ABANDONED GOODS**

Customs Act provides remission of duty on goods lost, destroyed before clearance for home consumption. Importer should establish loss / destruction by natural causes (Act of Govt; not of man)

Sec. 23 covers losses occurring after clearance order but before actual clearance.

In case duty has already been paid on goods lost / destroyed refund can be obtained after getting remission order. No duty will be levied on goods abandoned by the importer on account of heavy duty.

#### **1. Physical availability:**

- Lost / destroyed goods are not physically available.
- Abandoned goods are physically available.

#### **2. Quantity Lost:**

- Any quantity

#### **3. Duty liability**

- Duty is leviable. But AC / DC may grant remission for lost / destroyed goods.
- Owner not liable to pay duty for abandoned goods.

#### **4. Nature of Benefit:**

- Benefit is given by Statute, but discretion is available to AC /DC.

#### **5. Burden of proof:**

- Loss / destruction due to natural causes, should be proved by importer.

#### **6. Restoration:**

- Restoration is not possible, since goods are physically lost / destroyed.

**7. Abandonment:**

- Sec. 23 covers situations of abandonment / surrender also.

**8. Time point:**

- Lost / destroyed any time before clearance for home consumption (either directly or from warehouse)

**9. Warehoused goods:**

- Applicable to warehoused goods also.

**THE CUSTOMS TARIFF ACT, 1975 (51 Of 1975)<sup>1</sup> (18th August, 1975)**

An act to consolidate and amend the law relating to customs duties. Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

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

(2) It extends to the whole of India.

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

The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules,<sup>4 5 3</sup>.

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

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs. Explanation.— In this

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

(2) For the purpose of calculating under subsections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of— (i ) the value of the imported article determined under sub-section ( 1) of section 14 or the tariff value of such article fixed under sub-section ( 2) of that section, as the case may be; and (ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include—

(a) the duty referred to in sub-sections ( 1), ( 3) and ( 5);  
(b) the safeguard duty referred to in sections 8B and 8C;  
(c) the countervailing duty referred to in section 9; and (d) the anti-dumping duty referred to in section 9A: Provided that in case of an article imported into India,—

( a) in relation to which it is required, under the provisions of the "Legal Metrology Act, 2009" \* or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

( b) where the like article produced or manufactured in India, or in case where such like article is not so produced Special additional duty (1) Any article which is imported into India shall in addition be liable to a duty (hereinafter referred to in this section as the special additional duty), which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India: Provided that until such rate is specified by the Central Government, the special additional duty shall be levied and collected at the rate of eight per cent of the value of the article

imported into India.

### **CUSTOMS DUTY DRAW BACK**

Drawback Defined. In terms of rule 2 (a), "drawback" in relation to any goods exported out of India, means the refund of duty paid on importation of such goods in terms of Sec. 74 of the Customs Act.

Section 74 of the Customs Act 1962 as amended vide Customs (Amendment) Act; 1985 allows Drawback on re-export of duty paid goods. It reads as under:

(1) When any goods capable of being easily identified which have been Imported Into India and upon which any duty has been paid on importation,

(i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51: or

(ii) are to be exported as baggage and the owner of such baggage for the purpose of clearing it makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation or

(iii) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation.

**Ninety-eight per cent** of such duty shall except otherwise here in after provided be repaid as drawback, if-

(a) The goods are identified to the satisfaction of the Assistant Commissioner of Customs as the goods which Imported and

(b) The goods are entered for export within two years from the date of payment of duty on the importation thereof, Provided that in any particular case the aforesaid period be extended by the Board by such further period as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1). the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having regard to the duration of use, depreciation in value and other relevant circumstances may, by notification in the Official Gazette, fix.

(3) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may –

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established ;

(b) specify the goods which shall be deemed to be not capable of being easily identified.

(4) For the purposes of this section-

(a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16;

(b) in the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be date of payment of duty.

#### **Distinction Between Sec. 74 and 75 of Customs Act, 1962**

There is a distinction between Sec. 74 and Sec. 75 of the CA 1962. Sec. 74 of Customs Act comes into operation when articles are imported and thereafter re-exported, such articles being easily identifiable; and Sec. 75 comes into operation when "imported materials are used in the manufacture of goods which are re-exported." 1995 Rules

The Drawback Rules for Re-export of Imported goods are reproduced in Part 2 of this book.

#### **Conditions**

Accordingly, for claiming drawback on re-export of duty paid goods, the following conditions need to be fulfilled:

(1) the goods are identified to the satisfaction of the customs as the goods which were imported, as per Sec. 74 (1)

(2) the goods are entered for export within two years from the date of payment of duty on the importation thereof, unless the said period is extended by the Central Board of Excise & Customs, as per Sec. 74(1)

(3) The claim for drawback should not exceed the prevailing market price or value (PMV) of the goods exported as per Sec. 76. Hence, the market value should not be less than the drawback

claim or, i.e., drawback is not admissible if its claim amount is higher than the market value of the goods exported.

**Amount of Drawback**

98% of the duty will be re-paid as drawback, on the fulfillment of the necessary conditions.

**No Drawback.**

When any of the goods specified below have been used after their importation into India, drawback of duty paid thereon shall not be allowed, when they are exported out of India.

- (i) Wearing apparel
- (ii) Tea chests
- (iii) Exposed cinematograph films passed by the Board of Film Censors in India
- (iv) Unexposed photographic films, paper and plates, and X-ray films

**Personal Goods.**

In respect of a motor car or goods (other than those above) imported by a person for his personal use, drawback shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2% and 2% for use for each quarter or part thereof during the period of first year, second year, third year and fourth year respectively. Moreover, if the period exceeds more than 2 years, drawback shall be allowed only if the said period is got extended. Besides, the motorcar or goods should not have been used for more than four years.

**Exhibits**

Goods imported on payment of duty for the purpose of exhibition and demonstration can be regarded as "used" depending upon whether these are worked upon/operated or not in the course of exhibition. Each case will be decided on merits for grant of drawback on their re-export under Sec. 74 of the Customs Act.

**Drawback Claim Procedure on Re-export of Imported Goods**

**1. Postal Exports**

- Drawback Parcels

- The outer packing carrying the address of the consignee shall also carry in bold letters the words: "DRAWBACK EXPORT".

### **Claim Form & Documents**

Along with the parcel/packet, file a claim in the prescribed form at Annexure 17, to the post office. The form is to be filled in quadruplicate and submit along with:

- (i) copy of Bill of Entry or any other document against which goods were cleared on importation.
- (ii) evidence of having paid import duty
- (iii) calculation sheet showing the amount of drawback claimed.

### **Date of Receipt**

An intimation showing date of receipt of claim application shall be given by the proper officer of Customs to the exporter.

### **Deficiency Memo**

In case the drawback claim is not complete in all respect, the exporter shall be intimated through a deficiency memo in the form prescribed, within 15 days of its receipt from postal authorities.. The exporter is required to comply with the requirements specified in the deficiency memo, within 30 days of its receipt. In that case the date of issue of an acknowledgment of reply to deficiency memo shall be considered as date of receipts of drawback claim for the purpose of payments of interest on delayed settlement/payment of drawback under Sec. 75A of the Customs Act.

## **2. Non-Postal Export**

- a. Shipment

### **Shipping Bill/Bill of Export**

The procedure for export (rather re-export) of imported goods by sea, air or land (surface) but other than post is same as for normal exports explained partly in Chapters 2 and 4. Accordingly, the exporter is to file Drawback Shipping Bill/Bill of Export in triplicate.

### **Declarations/Statements**

Give the following declarations/statements on SB/Bill of Export.



- (i) State the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback on their re-export.
- (ii) Make a Declaration that –
  - (a) the export is being made under a claim for drawback under section 74 of the Customs Act;
  - (b) that the duties of customs were paid on the goods imported;
  - (c) that the goods imported were not taken into use after importation

**Documents**

Enclose the following documents along with the SB/Bill of Export.

- (i) Bill of Entry or Any other prescribed document against which goods were cleared on importation.
- (ii) Import invoice
- (iii) Documentary evidence of having paid the import duty
- (iv) Export invoice
- (v) Packing List
- (vi) RBI's permission to Re-export the goods, where necessary.

**Post-shipment Stage****Claim of Drawback**

Rule 5 of the Drawback Rule on Re-export of Imported Goods, 1995 lays down the procedure to claim drawback.

**Claim Form**

The claim should be made in prescribed form at Annexure 8 to the concerned Customs House Drawback Cell/Deptt.) within 3 months from the date of "Let Export Order" given by the customs on the SB/Bill of Export. It can be filed within a further period of 3 months on sufficient cause for late filing, being shown and accepted by the Asstt. Commissioner of Customs.

**Documents**

The claim application should be sent with the following documents

- (i) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export

- (ii) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.
- (iii) Import invoice.
- (iv) Evidence of payment of duty paid at the time of importation of the goods.
- (v) Permission from Reserve Bank of India for re-exports of goods, wherever necessary.
- (vi) Export invoice and packing list.
- (vii) Copy of Bill of lading or AirWay bill.
- (viii) Any other documents as may be specified in the deficiency memo.

**Payment**

The drawback and interest, if any, shall be paid to the exporter or his agent specially authorised by him to receive the said amount of drawback and interest.

**Interest**

15% interest per annum will be payable on delayed payment of drawback i.e. if it is not paid within three months from the date of filing of the claim or receipt of the compliance of the deficiency memo issued, if any.

**Repayment**

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the exporter is entitled to the claimant shall be liable to repay/refund the said excess amount within three months from the date of demand.

**DUTY DRAWBACK**

Duty Drawback is the rebate of duty chargeable on imported material or excisable material used in the manufacturing of goods in and is exported. The exporter may claim drawback or refund of excise and customs duties being paid by his suppliers. The final exporter can claim the drawback on material used for the manufacture of export products. In case of re-import of goods the drawback can be claimed.

**The following are Drawbacks:**

- Customs paid on imported inputs plus excise duty paid on indigenous imports.
- Duty paid on packing material.

Drawback is not allowed on inputs obtained without payment of customs or excise duty. In part payment of customs and excise duty, rebate or refund can be claimed only on the paid part.

In case of re-export of goods, it should be done within 2 years from the date of payment of duty when they were imported. 98% of the duty is allowable as drawback, only after inspection. If the goods imported are used before its re-export, the drawback will be allowed as at reduced percent.

### **BRAND RATE OF DUTY DRAWBACK**

Brand rate of duty drawback is applicable in either of the following circumstances:

- When individual rate fixed in respect of goods on which all industry rate is not applicable, or
- All industry rate does not cover 80% of the drawback amount due

The brand rate of duty drawback is fixed by the Central Government after necessary verification of the manufacturing processes and the documents provided giving details of input output ratio, duty paid on inputs, etc. No drawback is allowed on VAT, CST

### **PURPOSE AND REASON FOR PROHIBITION ON IMPORTATION (OR) EXPORTATION OF GOODS**

1. 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.

2. 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".

3. 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.

4. 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. The Central Government can make provisions for prohibiting, restricting or otherwise regulating the import of export of the goods. Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence. 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.

5. 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-fulfillment of the above requirement shall render such goods prohibited for import.

6. 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).

7. 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.

8. Keeping in view the above penal provisions in the Customs Act to deal with any deliberate evasion of prohibition/restriction of import or 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.

#### **POWER TO PROHIBIT IMPORTATION OR EXPORTATION OF GOODS-**

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

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

- (a) The maintenance of the security of India;
- (b) The maintenance of public order and standards of decency or morality;
- (c) The prevention of smuggling;
- (d) The prevention of shortage of goods of any description;
- (e) The conservation of foreign exchange and the safeguarding of balance of

payments;

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

(g) The prevention of surplus of any agricultural product or the product of fisheries,-

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

(i) The establishment of any industry;

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

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

(l) The protection of national treasures of artistic, historic or archaeological value;

(m) The conservation of exhaustible natural resources;

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

(o) The prevention of deceptive practices;

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

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

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

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

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

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

- (v) Any other purpose conducive to the interests of the public.

**PART B**

1. Discuss the provisions relating to assessment of customs duty?
2. What is custom duty? Explain its features?
3. State the different types of Customs Import duties?
4. Explain the purpose of prohibition on imports or export of goods?
5. Explain the relevance of the “duty drawback” scheme? State the type of transactions entitled for duty drawback?
6. Describe the exemption from customs duty as per Customs Act?
7. Explain the concept of ‘value’ for purposes of levy of customs duty?
8. What is custom duty? Explain its features?
9. What are differences between Sales Tax and Customs Duty?
10. Explain the provisions relating to warehouse of goods as per Customs Act?

**UNIT 4**

**CUSTOMS ACT, 1962**

**PART B**

1. Discuss the provisions relating to assessment of customs duty?
2. What is custom duty? Explain its features?
3. State the different types of Customs Import duties?
4. Explain the purpose of prohibition on imports or export of goods?
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10. Explain the provisions relating to warehouse of goods as per Customs Act?

**CIA I & II : 3\*10 = 30 Marks (Either or Type)**

**Model : 5\*8 =40 Marks (Either or Type)**

**ESE : 5\*8=40 Marks (Either or Type)**



**UNIT 5**  
**SERVICES TAX**

Service Tax – Concepts and general principles.Charge of service tax and taxable services.

**MEANING OF SERVICE TAX**

Service tax is an indirect tax. It is being administered by the central board of excise and customs (CBEC) which is under the control of the Department of Revenue, Ministry of finance. CBEC administered the service tax through the central excise department. A separate cell called the service tax cell under each commissionerate of central excise has been created for the purpose. The rate of service tax is itself mentioned in the charging section. As per the new charging section 66B service tax is leviable @12% on the value of all services. Further, education cess of 2% plus secondary and higher education cess of 1% is levied. Section 69 of the finance Act, read with Rule 4 of the service Tax Rules make provisions relating to registration. It is mandatory for every person liable to pay service tax to get register with superintendent of Central Excise.

**Service Tax** is a tax imposed by Government of India on services provided in India. The service provider collects the tax and pays the same to the government. It is charged on all services except the services covered in the negative list (Section 66d of Finance Act 1994) of services & services covered under Mega Exemption Notification (Notification NO. 25/2012 ST dated 20.06.2012). The current rate is 12.36% and the proposed rate i.e 14% would be applicable from 1June 2015 as per notification no 14/2015

It is the prime responsibility of the Government to fulfill the increasing development needs of the country and its people, by way of public expenditure. The Government's primary sources of revenue are direct and indirect taxes. Central Excise Duty on the goods manufactured and produced in India and Customs Duties on imported goods constitute the two major sources of indirect taxes in India. Due to WTO commitments and rationalization of commodity duties, the revenue receipts from customs and excise duties are low. It is a tax levied on the transaction

of certain specified services by the Central Government under the Finance Act, 1994. It is an indirect tax, in which normally the service provider pays the tax and recovers the amount from the recipient of service.

Service Tax was first levied on General Insurance Services, Stock Broking and telephone and Pager services. The Central Excise Department administers the Service Tax Law.

### **EVALUATION OF SERVICE TAX IN INDIA.**

Dr.RajaChelliahcommittee on tax reforms recommend the introduction of service tax. Service tax had been first levied at a rate of five per cent flat from 15 July 1994 till 13 May 2003, at the rate of eight percent flat w.e.f 1 plus an education cess of 2% thereon w.e.f 10 September 2004 le services provided by service providers. The rate of service tax was enhanced to 12% by Finance Act, 2006 w.e.f 18.4.2006. Finance Act, 2007 has imposed a new secondary and higher education cess of one percent on the service tax w.e.f 11.5.2007, increasing the total education cess to three percent and a total levy of 12.36 percent. The revenue from the service tax to the Government of India have shown a steady rise since its inception in 1994. The tax collections have grown substantially since 1994-95 i.e. from Rs. 410 crores in 1994-95 to Rs.132518 crores in 2012-13. The total number of Taxable services also increased from 3 in 1994 to 119 in 2012. However, from 1 July 2012 the concept of taxation on services was changed from a 'Selected service approach' to a 'Negative List regime'.Dr.Manmohan Singh, the then Union Finance Minister, in his Budget Speech for the year 1994-95, introduced the new concept of Service Tax and stated as under:

“There is no sound reason for exempting services from taxation, where goods are taxed and many countries treat goods and services alike for tax purposes. I, therefore, propose to make a modest effort in this direction by imposing a tax on services of telephone, non-life insurance, and stock brokers”.

- Therefore, the Service Tax was levied under Chapter V of the Finance Act, 1994.
- It was introduced for the first time on 3 services with a nominal rate of 5% advalorem basis.

- Subsequent Finance Acts have added more and more services to be taxed for Service Tax purposes.
- As such, today, more than 100 services are chargeable to Service Tax.

### **THE SERVICE TAX RELATED RULES**

**The service Tax related rules are given below,**

**The provision of the Finance Act , 1994 as amended by successive Finance Acts,**

- Service tax Rules , 1994, as amended from time to time**
- Service Tax (Advance Ruling ), rules 2003**
- The CENVAT Credit Rules , 2004**
- Authority for Advance Rulings (Central excise, customs and service tax procedure regulations , 2005**
- Service Tax (Registration of Special Category of persons) Rules , 2005**
- Service Tax (Determination of value) Rules , 2008**
- Service Tax (Publication of Names) Rules, 2008**
- Service Tax Return preparer Scheme , 2009**
- Point of Taxation Rules , 2011**
- Service Tax (Settlement cases ) Rules , 2012**
- Service Tax (compounding of offences) Rules , 2012**
- Service Tax (Removal of difficulty) Order , 2012**
- Place of provision of services Rules , 2012.**

### **FEATURES OF SERVICE TAX**

The salient features of levy of service tax are:

- 1. Scope:** It is leviable on taxable services ‘provided’ or ‘to be provided’ by a service provider. The services ‘to be provided’ in future are taxed only if payment in its respect is received in advance.

**2. Two separate persons required Payment to employees not covered:** For charge of service tax, it is necessary that the service provider and service recipient should be two separate persons acting on 'principal to principal basis'. Services provided by an employee to his employer are not covered service tax and, therefore, salaries or allowances paid to them cannot be charged to service tax.

**3. Rate:** It is leviable @ 12% of the value of taxable services. Education Cess @ 2% and Secondary and Higher Education Cess @ 1 % are chargeable on the amount of service tax, thus, making the effective rate of service tax at 12.36% of the value of taxable service.

**4. Taxable services:** Service tax is leviable only on the taxable services. Taxable services mean the services taxable under section 65(105) of the Finance Act, 1994.

**5. Value:** For the levy of the service tax, the value shall be computed in accordance with section 67 read with Service Tax (Determination of Value) Rules, 2006.

**6. Free services not taxable :** No service tax is leviable upon the services provided free of cost.

**7. Payment of service tax :** The person providing the service (i.e. the service provider) has to pay service tax in such manner and within such period as is prescribed in the Service Tax Rules, 1994. The service tax is to be paid only on the receipt of payment towards the value of taxable services.

**8. Procedures:** Provisions have been made for registration, assessment including self assessment, rectifications, revisions, appeals and penalties on the service provider.

**9. CENVAT credit:** The credit of service tax and excise duty across goods and services is allowable in accordance with the CENVAT Credit Rules, 2004.

Accordingly, output service provider (i.e. provider of any taxable service) can avail credit not only of the service tax paid on any input service consumed for rendering any output service but also of the excise duty paid on any inputs and capital goods used for rendering output service. CENVAT credit so availed can be utilized for payment of service tax on taxable output service.

**10. Services provided by an unincorporated association/body to its members also taxable**

‘Taxable service’ includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration. Hence, the services (falling under any category of taxable service) provided or to be provided by any unincorporated association/body to member thereof shall be liable to service tax. **This provision is an exception to the ‘principle of mutuality’.**

**11. Performance of statutory activities/duties, not ‘service’:** An activity performed by a sovereign /public authority under provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such entities.

**12. Import/Export of services:** While import of services is chargeable to tax u/s 66A, the export of services has been made exempt from tax. Import/export provisions are discussed separately.

**SCOPE AND COVERAGE**

Service tax extends to the whole of India except the state of Jammu and Kashmir

**SERVICES UNDER SERVICE TAX**

(1) **"Actuary"** has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938 (4 of 1938);

(2) **"Advertisement"** includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

(3) **"Advertising agency"** means any 3[person] engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

[(3a) “**Aircraft**” has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 (22 of 1934); 5 [

(3b) “**Aircraft operator**” means any person which provides the service of transport of goods or passengers by aircraft;]

(3c) “**Airport**” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994);

(3d) “**Airports Authority**” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994) and also includes any person having the charge of management of an airport or a civil enclave;]

(4) “**Air Travel Agent**” means any person engaged in providing any service connected with the booking of passage for travel by air;

(5) “**Appellate Tribunal**” means the Customs, Excise and Service Tax Appellate constituted under section 129 of the Customs Act, 1962 (52 of 1962);

(6) “**Architect**” means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architect Act, 1972 (20 of 1972) and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture;

(7) “**Assessee**” means a person liable to pay the service tax and includes his agent; 1

(7a) “auction of property” includes calling the auction or providing a facility, advertising or illustrating services, pre-auction price estimates, short- term storage services, repair or restoration services in relation to auction of property,

(7b) “associated enterprise” has the meaning assigned to it in section 92A of the Income tax Act, 1961;

(8) “**Authorised Dealer Of Foreign Exchange**” has the meaning assigned to “authorised person” in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

(9) “**Automated Teller Machine**” means an interactive automatic machine designed to dispense cash, accept deposit of cash, transfer money between bank accounts and facilitate other financial transactions;

(a) “**automated teller machine operations, maintenance or management service**” means any service provided in relation to automated teller machines and includes site selection, contracting of location, acquisition, financing, installation, certification, connection, maintenance, transaction processing, cash forecasting, replenishment, reconciliation and value-added services;] 6

(b) “**banker to an issue**” means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants;]

(10) “**Banking**” has the meanings assigned to it in clauses (b) of section 5 of the Banking Regulation Act, 1949 (10 of 1949),

(11) “**Banking Company**” has the meaning assigned to it in clauses (a) of section 45 A of the Reserve Bank of India Act, 1934 (2 of 1934);

(12) “**Banking And Other Financial Services**” means the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate namely :—

(i) financial leasing services including equipment leasing and hire-purchase;

(ii) such contract is for use and occupation of the asset by the lessee

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;

(v) asset management including portfolio management, all forms of fund management, pension fund management, 6[custodial, depository and trust services,

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;

(vii) provision and transfer of information and data processing;

(viii) banker to an issue services; and

(ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;

(13) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963); (14) "body corporate" shall have the meaning assigned to it in clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956);

(14) "**Broadcasting** " has the meaning assigned to it in clause (c ) of section 2 of the PrasarBharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;

15) "**Broadcasting Agency Or Organization**" means any agency or organization engaged in providing service in relating to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any



person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or 3[collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency] or organisation;

(16) **“Beauty Treatment”** includes hair cutting, hair dyeing, hair dressing, face and beauty treatment, cosmetic treatment, manicure, pedicure or counseling services on beauty, face care or make-up or such other similar services;] (18) "beauty parlor" means any establishment providing beauty treatment services;

(17) **“Business Auxiliary Service”** means any service in relation to, —

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client;  
or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client;

[(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent,

18. **“Business Exhibition”** means an exhibition, —

(a) to market; or

(b) to promote; or

(c) to advertise; or

(d) to showcase, any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be.

19. **“Business Entity”** includes an association of persons, body of individuals, company or firm but does not include an individual;]

20. **“Cab”** means

(i) amotorcab, or

(ii) amaxicab, or

(iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward

(21) **“Cable Operator”** shall have the meaning assigned to it in clause (aa) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

(22) **“Cable Service”** shall have the meaning assigned to it in clause (b) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995); 3

[(23) **“Cargo Handling Service”** means loading, unloading, packing or unpacking of cargo and includes,—

(a) cargo handling services provided for freight in special containers or for non containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;]

(24) "**Caterer**" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose of occasion;

(25) "**Cleaning Activity**" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of —

(i) Commercial or industrial buildings and premises thereof; or

(ii) Factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying;

(26) "**Construction of Complex**" means —

(a) Construction of a new residential complex or a part thereof; or

(b) Completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) Repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;]

(31) "**Consulting Engineer**" means any professionally qualified engineer or 2[any body corporate or any other firm] who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner 3 to any person] in one or more disciplines of engineering;

(32) "**Convention**" means a formal meeting or assembly which is not open to the general public, and does not include a meeting or assembly the principal purpose of which is to provide any type of amusement, entertainment or recreation;

(33) "**Courier Agency**" means any person engaged in the door-to-door transportation of time – sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles; “credit card, debit card, charge card or other payment card service” includes any service provided,—

(i) by a banking company, financial institution including non-banking financial company or any other person (hereinafter referred to as the issuing bank), issuing such card to a card holder;

(ii) by any person to an issuing bank in relation to such card business, including receipt and processing of application, transfer of embossing data to issuing bank’s personalisation agency, automated teller machine personal identification number generation, renewal or replacement of card, change of address, enhancement of credit limit, payment updation and statement generation;

(iii) by any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card.

(iv) in relation to joint promotional cards or affinity cards or co-branded cards; (v) in relation to promotion and marketing of goods and services through such card;

(vi) by a person, to an issuing bank or the holder of such card, for making use of automated teller machines of such person; and

(vii) by the owner of trade marks or brand name to the issuing bank under an agreement, for use of the trade mark or brand name and other services in relation to such card, whether or not such owner is a club or association and the issuing bank is a member of such club or association.

(34) "**Credit Rating Agency**" means any person engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal;

(35) "**Customs House Agent**" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962

(36) "**Information Technology Software**" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

(37) "**Internet Telecommunication Service**" includes,— (i) internet backbone services, including carrier services of internet traffic by one Internet Service Provider to another Internet Service Provider, (ii) internet access services, including provision of a direct connection to the internet and space for the customer's web page, (iii) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet;]

(38) "**Management, Maintenance or Repair**" means any service provided by—

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorised by him, in relation to,—

(a) management of properties, whether immovable or not;

(b) maintenance or repair of properties, whether immovable or not; or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;]

(39) "**Practising Chartered Accountant**" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the

provision of the Chartered Accountants Act, 1949 (38 of 1949) and includes any concern engaged in rendering services in the field of Chartered accountancy;

(40) "**Practicing Cost Accountant**" means a person who is member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and works Accountants Act, 1959 (23 of 1959) and includes any concern engaged in rendering services in the field of cost accountancy;

(41) "**Practicing Company Secretary**" means a person who is a member of the Institute of company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 (56 of 1980) and includes any concern engaged in rendering services in the field of company secretaryship;

(42) "**Processing And Clearing House**" means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to,—

(i) the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences there under;

(ii) the delivery of, and payment for, securities, goods or forward contracts;

(iii) any other matter incidental to, or connected with, securities, goods and forward contracts;

(43) "**Security Agency**" means any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;

(44) "**Ship Management Service**" includes,—

(i) the supervision of the maintenance, survey and repair of ship;

(ii) engagement or providing of crews;

- (iii) receiving the hire or freight charges on behalf of the owner;
- (iv) arrangements for loading and unloading;
- (v) providing for victualling or storing of ship;
- (vi) negotiating contracts for bunker fuel and lubricating oil;
- (vii) payment, on behalf of the owner, of expenses incurred in providing services or in relation to the management of ship;
- (viii) the entry of ship in a protection or indemnity association;
- (ix) dealing with insurance, salvage and other claims; and
- (x) arranging of insurance in relation to ship;

#### **PART B**

1. Discuss the powers of services tax authorities?
2. Elucidate the benefits of Goods and Services Tax in India.
3. Explain the features of service tax?
4. Explain the constitutional background of Service Tax?
5. Explain the features of service tax?
6. Discuss the powers of service tax authorities?
7. Explain the provisions relating to the offences and penalties under the Service Tax Act?
8. Explain the objectives of levying service tax?
9. Explain the objectives of levying service tax?
10. Explain the constitutional background of Service Tax.

**UNIT 5**

**SERVICES TAX**

**PART B**

1. Discuss the powers of services tax authorities?
2. Elucidate the benefits of Goods and Services Tax in India.
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**CIA I & II : 3\*10 = 30 Marks (Either or Type)**

**Model : 5\*8 =40 Marks (Either or Type)**

**ESE : 5\*8=40 Marks (Either or Type)**



Reg. No.....

[15BAU505]

**KARPAGAM UNIVERSITY**

Karpagam Academy of Higher Education  
(Established Under Section 3 of UGC Act 1956)  
COIMBATORE – 641 021  
(For the candidates admitted from 2015 onwards)

**BBA DEGREE EXAMINATION, NOVEMBER 2017**

Fifth Semester

**BUSINESS ADMINISTRATION**

**INDIRECT TAX**

Time: 3 hours

Maximum : 60 marks

**PART – A (20 x 1 = 20 Marks) (30 Minutes)**  
**(Question Nos. 1 to 20 Online Examinations)**

**PART B (5 x 8 = 40 Marks) (2 ½ Hours)**  
**Answer ALL the Questions**

21. a. Describe the levy of purchase tax under TNGST Act, 1959.  
Or  
b. Describe the procedure for filing of return under state VAT Act?
22. a. State the Salient features of CST Act 1956?  
Or  
b. Discuss the provisions of Central Sales Tax Act regarding registration of dealers?
23. a. What are different methods of Excise Collection?  
Or  
b. Explain the provision relating to registration under the Excise Act?
24. a. State the different types of Customs Import duties?  
Or  
b. Explain the purpose of prohibition on imports or export of goods?
25. a. Explain the features of service tax?  
Or  
b. Explain the constitutional background of Service Tax?