



**SATHYABAMA**

INSTITUTE OF SCIENCE AND TECHNOLOGY  
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SCHOOL OF MANAGEMENT STUDIES

**UNIT I - BUSINESS TAXATION - SBAA1304**

## UNIT 1

Introduction- Objectives of Taxation - Canons of Taxation - Tax system in India - Direct and Indirect Taxes - Meaning and Types - Powers of Union and States to levy taxes

### INTRODUCTION

The fund collected through tax is used for infrastructural development in states. Through infrastructural developments several functional development programs are in progress. The main utilization of tax amount for war, enforcement of law and public order, property protection and infrastructure projects. Infrastructure projects are like roads, drainage system, public hospitals, public schools and colleges, etc. No tax no Government. So, Government also utilizing the tax fund for the several operational activities. Utilizing the tax amount efficiently and effectively is Government skill. If everyone pays the tax without finding loopholes Government can generate a lot of money so that which can be used it for social security programs like pension, insurance, unemployment allowances, old age people allowances, health care benefits and public transportations.

Collection of different sources of energies, water management systems and drain and sewage system are very essential in our country. So, tax revenues can be utilized for these public developments too.

Government declares different slabs of tax rates in every fiscal budget in the country. They collect tax from different periodical programs like value added tax, minimum alternative tax and goods and services of tax. Usually government distribute burden of people to collect the tax which are all based on the individual, business classes and any other classifications of population size. There are four main purposes and effects of taxation. They are revenue, redistribution, re-pricing and representation. Now, let us understand all these.

a. **Revenue:** This is the main purpose of taxation. The tax which is collected from this category used for infrastructural development like roads, schools, hospitals, and other governmental functions like market regulations or legal systems development.

b. **Re-distribution:** The second important purpose is redistribution which means transferring wealth from richer sections to economically weaker sectors.

c. **Re-pricing:** The third purpose of taxation is re-pricing of certain goods to increase or decrease of people consumptions.

d. **Re-presentation:** This purpose is for the citizens by paying taxes demand accountability in return from the rulers or governments. There are several studies which have shown that direct taxation (such as income taxes) generates the greatest degree of accountability and better governance, while indirect taxation tends to have smaller effects.

## **HISTORY OF TAX**

The first known system of taxation was amount ancient Egyptians which was between 3000 BC - 2800 BC and it was the first dynasty of the Old Kingdom. Different records shown

that the pharaoh would conduct a biennial tour of the kingdom which was the revenues for the kingdom from the people. Other records are granary receipts on limestone flakes and papyrus is evidence. Early taxation is also described in the Bible in the book of Genesis (chapter 47, verse 24 - the New International Version), which states "But when the crop comes in, give a fifth of it to Pharaoh. The other four-fifths you may keep as seed for the fields and as food for yourselves and your households and your children." Joseph was telling the people of Egypt how to divide their crop, providing a portion to the Pharaoh. A share (20%) of the crop was the tax on those days. United States of America has charged 45% of tax which is maximum tax rate among the world. Now, let us briefly describe about taxation in various countries.

### **1. Egyptian Taxes**

The first known taxation system was in ancient Egypt. The Pharaoh would collect taxes twice a year from the Egyptians. One of the most commonly taxed items in the ancient world was edible oil, which was actually taxed throughout Egyptian history because of shortages of this product. Egyptian taxes eventually practiced so widely that was mentioned in the Bible too. It mentioned like "When the crop comes in, give a fifth of it to Pharaoh."

### **2. Athens, Greece**

Among the Athenians in Greece, war was a lifestyle, and a pricey one among them. As such, Athenians taxed their citizens for war costs with a tax called "eisphora." The most historic factor of this is to consider the first democratic taxation system which cannot be exempted from any one and after the wars finished if any left over the money was often refunded to the people. There is also some documentation of a tax put on foreigners (or any individual without an Athenian mother and father), called "metoikion."

### **3. Salt Tax in India**

Salt has been taxed in India for centuries. However, in 1835 the British East India Company raised the import taxes drastically after they began to impose rule over Indian provinces. The salt as tax was raised and lowered by multiple leader with events, and was not repealed until 1946.

### **4. Rome and Caesar**

Taxes called "portoria" were first levied in Rome on imports and exports things to the city people. Caesar Augustus, who was considered a genius tax strategist of his time and he gave individual cities as the job to collect taxes. He also raised sales taxes on slaves from 1% to 4%, and created a tax to raise retirement funds for soldiers of the army.

## 5. Great Britain

The occupation of the Roman Empire may have sparked the flame for first taxes in England. During the 11th century, Lady Godiva's husband, Leofric, Earl of Mercia, said he would lower taxes was to ride through the streets naked on a horse. Lady Godiva is the reason that for famous in lowered taxes for her people.

## 6. The French Revolution

Before the French Revolution, civil unrest laid heavily on the shoulders of high taxes for lower classes. While clergymen and nobles were exempted to taxes, peasants and regular wage earning workers were not exempted. The tax gap also left lower class citizens where people could unable to pay court fees which also making justice for unaffordable groups except by those wealthy enough to afford it. The true cause of the French Revolution is still being debated today, many Historians feel these high and unfair taxes were a large contributing factor to the civil unrest.

## 7. United States

The history of taxation in the United States began when it was composed of colonies ruled by the British Empire, French Empire, and Spanish Empire. After independence from Europe, the United States collected poll taxes, tariffs, and excise taxes. The United States imposed income taxes intermittently until 1895 when unapportion taxes on interest, dividends and rents were ruled unconstitutional. The advent of the 16th Amendment to the United States Constitution modified the apportionment requirement in 1913, and since then the income tax has become one of the means of funding the Federal Government.

## 8. India

In India, the tradition of taxation has been in force of ancient times. It finds references in many ancient books like '*Manu Smriti*' and '*Arthasastra*'. There was a perfect admixture of direct taxes with indirect taxes and they were varied in nature.

India's history of taxation suggests existence of a large and composite taxable population. With the advent of the moguls in India the country witnessed a sea of change in the taxation system of India. Although, they also practiced the same norm of taxation but it was more homogeneous in structure and collection. The Islamic rulers imposed *Jizya* which was later on abolished by Akbar. However, Aurangzeb, the last prominent Mughal Emperor, levied *Jizya* on his mostly Hindu subjects in 1679. Reasons for this are cited to be financial stringency and personal inclination on the part of the emperor, and a petition by the *ulema*. His subjects were taxed in accordance with the property they owned. Government servants were exempt, as were the blind, the paralyzed, and the indigent. Its introduction encountered much opposition, which was, however, abolished. *Jizya* is a per capita tax levied on a section of an Islamic state's non-Muslim citizens, who meet certain criteria. From the point of view of the Muslim rulers, *Jizya* was a material proof of the non-Muslims' acceptance of subjection to the state and its laws, "just as for the inhabitants which was a concrete continuation of the taxes paid to earlier regimes."

In return, non-Muslim citizens were permitted to practice their faith, to enjoy a measure of communal autonomy, to be entitled to Muslim state's protection from outside aggression, to be exempted from military service and the Zakat as obligatory upon Muslim citizens. The period of British rule in India witnessed some remarkable change in the whole taxation system of India. Although, it was highly in favour of the British government and its exchequer but it incorporated modern and scientific method of taxation tools and systems. In 1922, the country witnessed a paradigm shift in the overall Indian taxation system. Setting up of administrative system and taxation system was first done by the British.

## **INDIRECT TAXES**

Indirect Tax was introduced for the first time in India as far back as 300 BC. Kautilya in his Arthashastra had enumerated that kings could collect taxes on the manufacture of textiles, alcoholic drink and textiles. Indirect taxes are those whose burden can be shifted to others so that those who pay these taxes to the government do not bear the whole burden but pass it on wholly or partly to others. Indirect taxes are levied on production and sale of commodities and services and small or a large part of the burden of indirect taxes are passed on to the consumers. Import duties, fuel, liquor and cigarette taxes are all considered examples of indirect taxes.

Indirect taxes are defined by contrasting them with direct taxes. In the case of direct taxes, the person immediately paying the tax is the person that the government is seeking to tax. Income tax is the clearest example of a direct tax, since the person earning the income is the one immediately paying the tax. Admission fees to a national park is another clear example of direct taxation

There are a number of indirect taxes applied by the government. Taxes are levied on import, manufacture, sale and even purchases of goods and services. Indirect taxes are touted to be streamlined following the introduction of the uniform Goods and Services Tax (GST). The GST is under deliberation in the parliament and may be approved by mid-2016.

## **FEATURES OF INDIRECT TAX**

Indirect taxation is policy commonly used to generate tax revenue. Indirect tax is so called as it is paid indirectly by the final consumer of goods and services while paying for purchase of goods or for enjoying services. It is broadly based since it is applied to everyone in the society whether rich or poor. Since the cost of the tax does not vary according to income, indirect taxation includes *Ad Valorem tax*<sup>1</sup> and Specific tax, of which Ad Valorem (VAT, GST) is proportional and Specific tax is fixed. However, indirect taxation can be viewed as having the effect of a regressive tax as it imposes a greater burden on the poor than on the rich, as both rich and poor pay the same tax amount for consumption of a certain quantity of a specific good. The taxpayer who pays the tax does not bear the burden of tax; the burden is shifted to the ultimate consumers. In the case of a direct tax, the taxpayer has to bear the burden of tax personally; in case of indirect tax the taxpayer and the tax bearer are not the same person.

Tax levied on the goods and services sold by an intermediary to final consumers. The consumers pay the tax in the form of higher price of purchased items. Goods are broadly divided into categories such as sale of goods, imported/exported goods, offering of services and manufacture of goods. Indirect taxes are levied on clearance of goods and services from the origin, instead of actual sale of the products to the customers. What this means is that the intermediary will pay excise duties irrespective of whether they could sell the good or service to consumers.

Indirect taxes fall under both the central and state governments according to specific type of indirect tax. For instance, VAT is levied by the state governments whereas CST is levied by the central government.

## **Features of Indian Tax Structure**

### **1. The Scientific Division of Tax Powers:**

India being a federation, there is the existence of a multi-level finance system. **The constitution of India forms the basis of division of powers into:** (a) Union (b) State and (c)

An ad valorem tax is based on the assessed value of an item such as real estate or personal property. The most common ad valorem taxes are property taxes levied on real estate; however, ad valorem taxes may extend to a number of tax applications, such as import duty taxes on goods from abroad.

Concurrent. Based on this the constitution has also made a provision for division of tax powers between the center and the states. The area and sphere of taxation of center and state is clearly demarcated as per constitutional provision. Tax is in the purview of 50 percent of its revenue the central government. Some taxes are again levied by the Central government and the proceeds of such taxes are divided between the center and the state governments.

### **2. Multiplicity of Tax Structure:**

India is having a broad based and extensive tax structure. Its main feature is the existence of multiplicity of taxes. There are both union government taxes and state government taxes. The tax structure includes both direct and indirect taxes. In the case of states indirect taxes play a dominant role, in the composition of tax revenue. Among the direct taxes imposed in India, the most important is income tax. Other prominent taxes are wealth tax capital gains tax, gift tax etc.

The indirect taxes in India Consists of various taxes like excise duties, customs duties, etc. The most important taxes levied by the union government are income tax, corporation tax, central excise duties, wealth tax, gift tax, custom duties etc. The state governments main taxes are land revenue, sale tax, state excise duties entertainment tax, stamp and registration duties etc. The gross tax revenue of the Central Government grew by 17.6 percent and 19.9 percent in 2003-04 .

### **3. Larger share of Indirect Taxes:**

In India in the total tax revenue there is the domination of indirect taxes over direct taxes. Indirect taxes shared 63% in 1950 ♦ 51 where it increased to 77% in 2001-02. It shows that because of the undeveloped character of the economy and glaring inequality in income, the scope of direct taxes is limited.

### **4. Insufficient Tax Revenue:**

In spite of rising trend in tax revenue, the total revenue remained small when compared to developed countries. The tax GDP ratio generally remained in the range of 8 percent to 9 percent in India ( E.Survey. 2005-06) where as it is very high in countries like Sweden, France, West Germany, UK, USA, etc. where the share ranges between 30 to 40 percent.

### **5. Greater Importance to State Government in Federal Fiscal System:**

In Indian fiscal federalism much importance is assigned to state governments. The field within which tax revenue, are raised and spend regularly is very wide in India when compared to many federal governments. This reflects the importance of state government in our federal system. This is because of the growing responsibilities of the state government in the discharge of developmental activities.

### **6. Incidence of Taxation:**

In India the incidence of taxation is much higher in urban areas than in rural areas this is because of the predominance of agriculture in rural area and low income of rural households. The urban population depends more on service and business sector and enjoys comparatively higher income and taxpaying capacity.

### **7. Progressiveness in Tax Structure:**

Indian tax structure is framed in such a way that all indices of ability to pay is taxed. The direct tax is framed in such a way that as tax base increases, tax rate also rises sharply.

Excise duties are levied and collected discriminately, depending on the type of commodity and the class of consumers.

### **8. Narrow Base:**

Fiscal experts opine that the tax base is very narrow in India in the case of both direct and indirect taxes. A planning commission estimate shows that only one percent of working population comes under the preview of direct tax. In 2000 ♦ 01, total income tax on the corporate income was only 2.6 percent GDP. Out of a population of more than 100 crores, around 10 million are coming under the Income tax belt. The indirect tax to GDP ratio is only 5.4 percent in 2003- 04. The service sector, though contributing the largest share in GDP was not subject to tax till 1993-94.

Service tax was introduced in the year 1994-95. Service sector, even though accounts for more than 50 percent of GDP, contributed Rs. 14200/- Crores as tax in 2004- 05. This is a small share when compared to the vast potential from this sector.

## **9. Complexity of Indian Tax Laws:**

With the intension of broad based tax system, a plethora of changes have been introduced in the tax structure. However both direct and Indirect tax laws are highly complex, with a lot of loopholes which enable the people to avoid as well as to evade taxes. Integration between Centre and State Revenue:

After independence concrete efforts were made to organize the tax structure scientifically in tune with the requirements of a federal set of government. At present there is well-organized machinery for the collection distribution and expenditure of the revenue. Now the tax system is well structured to generate sufficient revenue to meet the requirements of development objectives.

However we can point out a number of short comings in Indian tax structure.

The main objective of taxation is to reduce glaring inequality in income distribution. But in spite of having a multiplicity of taxes covering different income source base, the tax machinery failed to reduce the income inequality considerably. This is a serious short coming of our tax system.

The accumulated tax arrears, the parallel economy nourished by black money shows the flows in our tax system. The un-coordinated inefficient and corrupt tax machinery is pin- point to the deficiency in our tax system. To overcome these defects the government of India over time appointed different taxation commissions. These commissions were appointed to detect and analyses the defects and to suggest suitable recommendations.

The Taxation Enquiry commission Report (1953), Prof Kaldors proposal for tax reforms (1956), The MahavirTyagi Committee Report (1958), Wanchoo Committee Report (1970) Raj Committee Report on Agricultural taxation (1972), Indirect Tax Enquiry Committee Report (1976), Chokshi Direct Taxation Committee Report (1977) are some important measures adopted by the central government to rationalize and revitalize the Indian tax structure.

After 1990, in lieu with the economic reforms and structural adjustment programs, the central government initiated concrete efforts to rationalize the tax structure. The appointment of Dr. Raja J. Chelliah committee, popularly called the Tax Reform Committee, was a bold step to reform the Indian Tax structure in tune with the changing economic scenario.



## **OBJECTIVES OF TAXATION**

Tax is permanent instrument for collecting revenues. It is a major source of revenue in the developed world and has been appearing as an important source of revenue in the developing world as well. It has been an instrument of social and economic policy for the government. The main objectives of tax are as follows:

### **1. Raise More Revenue**

The fundamental objective of taxation is to finance government expenditure. The government requires carrying out various development and welfare activities in the country. For this, it needs a huge amount of funds. The government collects funds by imposing taxes. So, raising more and more revenues has been an important objective of tax.

### **2. Prevent Concentration of Wealth in A Few Hands**

Tax is imposed on persons according to their income level. High earners are imposed on high tax through progressive tax system. This prevents wealth being concentrated in a few hands of the rich. So, narrowing the gap between rich and poor is another objective of tax.

### **3. Redistribute Wealth for Common Good**

Tax collected by the government is expended for carrying out various welfare activities. In this way, the wealth of the rich is redistributed to the whole community,

### **4. Boost up the Economy**

Tax serves as an instrument for promoting economic growth, stability and efficiency. The government controls or expands the economic activities of the country by providing various concessions, rebates and other facilities. The effective tax system can boost up the economy. Similarly, taxes can correct for externalities and other forms of market failure (such as monopoly). Import taxes may control imports and therefore help the country's international balance of payments and protect industries from overseas competition.

### **5. Reduce Unemployment**

The government can reduce the unemployment problem in the country by promoting various employment generating activities. Industries established in remote parts or industries providing more employment are given more facilities. As a result, the unemployment problem can be reduced to a great extent through liberal tax policy.

### **6. Remove Regional Disparities**

Regional disparity has been a chronic problem to the developing countries. Tax is one of the ways through which regional disparities can be minimized. The government provides tax exemptions or concessions for industries established or activities carried out in backward areas. This will help increase economic activities in those areas and ultimately regional disparity reduces to minimum.

## TYPES OF TAXES IN INDIA

Taxes have been broadly categorized into direct tax and indirect taxes. Direct taxes include those taxes which are paid by the person on whom these are levied like income tax, wealth tax etc. On the other hand, indirect taxes are levied on one person, but paid by another e.g. sales tax and custom duty.

### Direct tax

Those taxes whose burden cannot be shifted to others and the person who pays these to the government has to bear it are called direct taxes. In other words direct tax is imposed on an individual or a group of individuals, which affects them directly i.e, which they have to pay to the government directly. The direct tax can be of different types: Income Tax, Wealth Tax and Gift Tax.

### Indirect tax

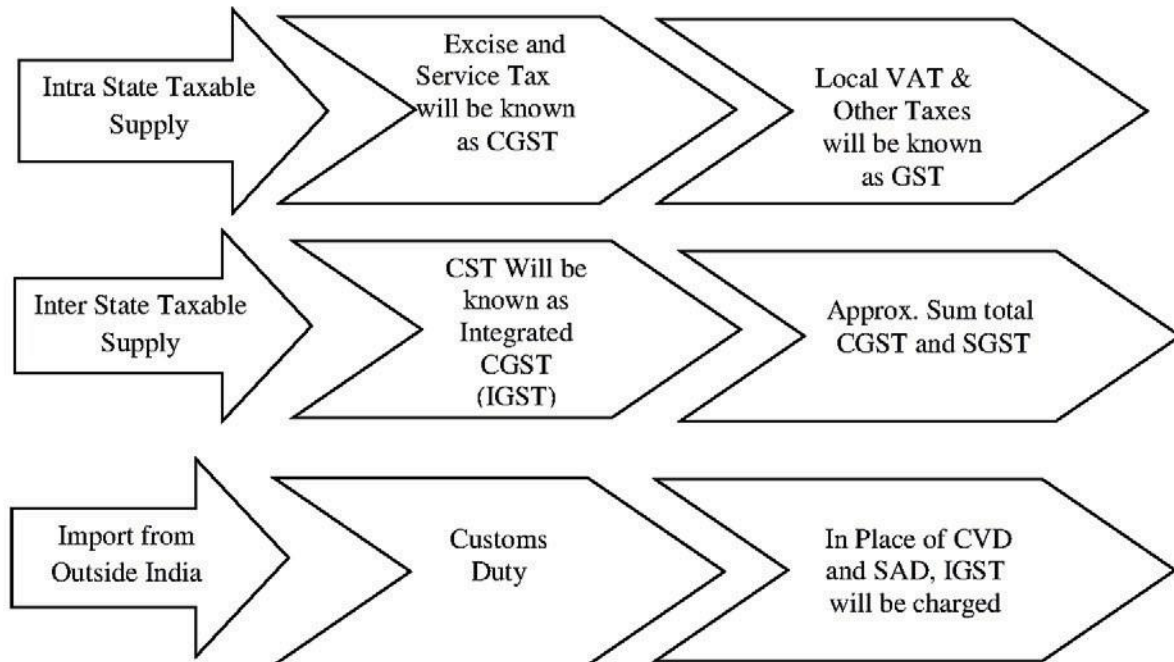
An indirect tax is one in which the burden can be shifted to others. The tax payer is not the tax bearer. The impact and incidence of indirect taxes are on different persons. An indirect tax is levied on and collected from a person who manages to pass it on to some other person or persons on whom the real burden of tax falls. For e.g. commodity taxes or sales tax, excise duty, custom duties, etc. are indirect taxes.

### Difference between Direct and Indirect Taxes:

Direct Taxes	Indirect Taxes
Payer of tax and sufferer of tax one and same (i.e. impact and incidence on the same person).	Payer of tax not sufferer of tax whereas sufferer of tax is not paying directly to the Government (i.e. impact on one head and incidence on other head).
Income based taxes	Transaction based taxes.
Rate of taxes are different from person to person.	Rate of duties are not different from person to person.
Entire revenue goes to Central Government of India.	Revenue source to Central Government of India as well as State Governments.
Central Board of Direct Taxes (CBDT) is an important part of Department of Revenue, Ministry of Finance (India). It plays a vital role in planning & implementing direct taxes policy in India. It also monitors direct taxes law followed by Income Tax Departments.	Central Board of Excise and Customs (CBE&C) is an important part of Department of Revenue, Ministry of Finance (India). It plays a vital role in planning & implementing indirect taxes policy in India. It also monitors indirect taxes law followed by Excise and Customs Departments.

## 1.6 INDIRECT TAX STRUCTURE IN INDIA

The following figure shows the indirect tax structure in India.



**Fig.1.1**

### 1.6.1 Organisation Structure in GST

Organization Structure for a Government Department is as important as an organizational structure for a corporate or business entity. In a tax context, the roles and responsibilities of the officers are clearly defined in the relevant statutes and the departmental officers should adhere to their jurisdictional limits prescribed by law.

In the GST regime, both the Centre and State level officers are required to work in tandem and in consultation with each other. This poses a serious challenge as there is already a comparison about cadres, rank of officers, experience, junior or senior, IAS or IRS cadre, etc. To ensure uniformity, the model in the context of present central indirect taxes can be adopted by all States even before GST is implemented, which would enable smooth transition into GST regime and also result in perfect sync between the Centre and State level officers after GST is unveiled. Unless the organization structure is properly worked out, the avowed objects of bringing in GST may not be achieved in its real sense. As we are on the verge of introducing GST, the Centre and State should initiate cadre reviews and restructuring to suit GST administration and implementation.

GST is considered to be the essential tax reform in the Indian history. It is a destination based tax on consumption of goods and services where tax will be levied at all stages from the stage of manufacturing till the final consumption and set off is allowed in the form of input tax credit to the business parties involved in the process. There will be three kinds of applicable Goods and Services Taxes. They are,

- a. CGST: where the central government will collect the revenue

- b. SGST: where the state governments will collect the revenue for intra-state sales.
- c. IGST; where the central government will raise the revenue for inter-state sales.

Various studies were carried out before the implementation of GST on how it will work and benefit the Indian economy. Dr. R. Vasanthagopal (2011) stated that GST would be a positive step in booming the Indian economy. Ehtisham Ahmed and Satya Poddar (2009) also indicated that GST would lead to increase in output and production efficiency of the Indian economy and the benefits depends upon the design of the GST rates. Vinoth Kumar (2017) also stated that GST would be a benefit for the end consumer as the GST will reduce the overall tax burden on the goods and services in the country.

### **Canons of taxation:**

#### **Meaning of Canons of Taxation:**

By canons of taxation we simply mean the characteristics or qualities which a good tax system should possess. In fact, canons of taxation are related to the administrative part of a tax. Adam Smith first devised the principles or canons of taxation in 1776.

Even in the 21st century, Smithian canons of taxation are applied by the modern governments while imposing and collecting taxes.

#### **Types of Canons of Taxation**

##### **i. Canon of Equality:**

Canon of equality states that the burden of taxation must be distributed equally or equitably among the taxpayers. However, this sort of equality robs of justice because not all taxpayers have the same ability to pay taxes. Rich people are capable of paying more taxes than poor people. Thus, justice demands that a person having greater ability to pay must pay large taxes.

If everyone is asked to pay taxes according to his ability, then sacrifices of all taxpayers become equal. This is the essence of canon of equality (of sacrifice). To establish equality in sacrifice, taxes are to be imposed in accordance with the principle of ability to pay. In view of this, canon of equality and canon of ability are the two sides of the same coin.

##### **ii. Canon of Certainty:**

The tax which an individual has to pay should be certain and not arbitrary. According to A. Smith, the time of payment, the manner of payment, the quantity to be paid, i.e., tax liability, ought all to be clear and plain to the contributor and to everyone. Thus, canon of certainty embraces a lot of things. It must be certain to the taxpayer as well as to the tax-levying authority. Not only taxpayers should know when, where and how much taxes are to be paid. In other words, the certainty of liability must be known beforehand. Similarly, there must also be certainty of revenue that the government intends to collect over the given time period. Any amount of uncertainty in these respects may invite a lot of trouble.

### **iii. Canon of Economy:**

This canon implies that the cost of collecting a tax should be as minimum as possible. Any tax that involves high administrative cost and unusual delay in assessment and high collection of taxes should be avoided altogether.

According to A. Smith: “Every tax ought to be contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the State.”

### **iv. Canon of Convenience:**

Taxes should be levied and collected in such a manner that it provides the greatest convenience not only to the taxpayer but also to the government

### **Other canons of taxation**

#### **1. Canon of Productivity:**

According to a well-known classical economist in the field of public finance, Charles F. Bastable, taxes must be productive or cost-effective. This implies that the revenue yield from any tax must be a sizable one. Further, this canon states that only those taxes should be imposed that do not hamper productive effort of the community. A tax is said to be a productive one only when it acts as an incentive to production.

#### **ii. Canon of Elasticity:**

This canon implies that a tax should be flexible or elastic in yield.

It should be levied in such a way that the rate of taxes can be changed according to exigencies of the situation. Whenever the government needs money, it must be able to extract as much income as possible without generating any harmful consequences through raising tax rates. Income tax satisfies this canon.

#### **iii. Canon of Simplicity:**

Every tax must be simple and intelligible to the people so that the taxpayer is able to calculate it without taking the help of tax consultants. A complex as well as a complicated tax is bound to yield undesirable side-effects. It may encourage taxpayers to evade taxes if the tax system is found to be complicated.

A complicated tax system is expensive in the sense that even the most honest educated taxpayers will have to seek advice of the tax consultants. Ultimately, such a tax system has the potentiality of breeding corruption in the society.

#### **iv. Canon of Diversity:**

Taxation must be dynamic. This means that a country's tax structure ought to be dynamic or diverse in nature rather than having a single or two taxes. Diversification in a tax structure will demand involvement of the majority of the sectors of the population.

If a single tax system is introduced, only a particular sector will be asked to pay to the national exchequer leaving a large number of population untouched. Obviously, incidence of such a tax system will be greatest on certain taxpayers. A dynamic or a diversified tax structure will result in the allocation of burden of taxes among the vast population resulting in a low degree of incidence of a tax in the aggregate.

The above canons of taxation are considered to be essential requirements of a good tax policy. Unfortunately, such an ideal tax system is rarely observed in the real world. But a tax authority must go on maintaining relentlessly the above canons of taxation so that a near-ideal tax structure can be built-up.

**This is known as the ‘fairness’ criterion which focuses on two principles:**

Horizontal equity—equals should pay equal taxes; and vertical equity—un-equals should pay unequal taxes. That is to say, rich people should pay more taxes.

ii. But equity must not hamper productive efficiency such that burdens should be provided to correct inefficiencies. This ‘efficiency’ criterion says that it should raise revenue with the least costs to the taxpayers so that tax system can allocate resources without distortion.

iii. The two other criteria are: ‘flexibility’ and ‘transparency’.

A good tax system demands changes in tax rates whenever circumstances change the system. Further, a good tax must be transparent in the sense that taxpayers should know what they are paying for the services they are getting.

iv. A good tax system is expected to facilitate the use of fiscal policy to achieve the goals of

(a) stability

(b) economic growth.

For the attainment of these goals, there must be built-in-flexibility in the tax structure.

**From the above discussion, it follows that taxation serves the following purposes:**

(i) To raise revenue for the government

(ii) To redistribute income and wealth from the rich to the poor people

(iii) To protect domestic industries from foreign competition

(iv) To promote social welfare.

## **Powers of Collection of Taxes to the State and Central Government**

Tax structure in India is a three tier federal structure. The central government, state governments, and local municipal bodies make up this structure. Article 256 of the constitution states that “No tax shall be levied or collected except by the authority of law”.

The Tax structure in India consists of 3 federal parts:

1. Central Government
2. State Governments
3. Local Municipal bodies

According to Article 256 of the Indian Constitution: “No tax shall be levied or collected except by the authority of law”

Taxes are determined by the Central and State Governments along with local authorities like municipal corporations. The government cannot impose any tax unless it is passed as a law.

Here are the salient features of the taxation system in India:

### **1. Role of the Central and State Government**

The entire system is clearly demarcated with specific roles for the central and state government. The Central Government of India levies taxes such as customs duty, income tax, service tax, and central excise duty.

The taxation system in India empowers the state governments to levy income tax on agricultural income, professional tax, value added tax (VAT), state excise duty, land revenue and stamp duty. The local bodies are allowed to collect octroi, property tax, and other taxes on various services like drainage and water supply.

### **2. Types of taxes**

Taxes are classified under two categories namely direct and indirect taxes. The largest difference between these taxes is their implementation. Direct taxes are paid by the assessee while indirect taxes are levied on goods and services.

#### **A) Direct taxes**

Direct taxes are levied on individuals and corporate entities and cannot be transferred to others. These include income tax, wealth tax, and gift tax.

#### **B) Indirect taxes**

Indirect taxes are not directly paid by the assessee to the government authorities. These are levied on goods and services and collected by intermediaries (those who sell goods or offer services). Here are the most common indirect taxes in India:

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

This is levied by the state government and was not imposed by all states when first implemented. Presently, all states levy such tax. It is imposed on goods sold in the state and the rate is decided by the state governments.

## **Customs duty**

Imported goods brought into the country are charged with customs duty which is levied by the Central Government.

## **Octroi**

Goods that move from one state to another are liable to octroi duty. This tax is levied by the respective state governments.

## **Excise duty**

All goods produced domestically are charged with excise duty. Also known as Central Value Added Tax (CENVAT), this is paid by the manufacturers.

## **Service Tax**

All services provided domestically are charged with service tax. The tax is paid by all service providers unless specifically exempted.

## **C) Goods and Service Tax (GST)**

As a significant step towards the reform of indirect taxation in India, the Central Government has introduced the Goods and Service Tax (GST). GST is a comprehensive indirect tax on manufacture, sale and consumption of goods and services throughout India and will subsume many indirect taxes levied by the Central and State Governments. GST will be implemented through Central GST (CGST), Integrated GST (IGST) and State GST (SGST).

Four laws (IGST, CGST, UTGST & GST (Compensation to the States), Act) have received President assent. All the States & UT expected to pass State GST Act, by end of May 2017. GST law is expected to take effect from July 1, 2017.

## **3. Revenue Authorities**

### **CBDT**

The Central Board of Direct Taxes (CBDT) is a part of the Department of Revenue under the Ministry of Finance. This body provides inputs for policy and planning of direct taxes in India and is also responsible for administration of direct tax laws through the Income Tax Department.

### **CBEC**

The Central Board of Excise and Customs (CBEC) is also a part of the Department of Revenue under the Ministry of Finance. It is the nodal national agency responsible for administering customs, central excise duty and service tax in India.



## CBIC

Under the GST regime, the CBEC has been renamed as the Central Board of Indirect Taxes & Customs (CBIC) post legislative approval. The CBIC would supervise the work of all its field formations and directorates and assist the government in policy making in relation to GST, continuing central excise levy and customs functions.

The Indian taxation system in India has witnessed several modifications over the years. There has been standardization of income tax rates with simpler governing laws enabling common people to understand the same. This has resulted in ease of paying taxes, improved compliance, and enhanced enforcement of the laws.

**Table 1: Some taxes levied by the centre, state and local bodies**

Centre	States	Local Bodies
<ul style="list-style-type: none"><li>▪ Income Tax</li><li>▪ Corporation Tax</li><li>▪ Central GST</li><li>▪ Customs</li></ul>	<ul style="list-style-type: none"><li>▪ State GST</li><li>▪ Tax on Electricity</li><li>▪ Excise Duty on Alcohol</li><li>▪ Stamp Duty</li></ul>	<ul style="list-style-type: none"><li>▪ Tax on Land and Building</li><li>▪ Vehicle Tax</li><li>▪ Tolls</li><li>▪ Entertainment Tax</li></ul>

Sources: Constitution of India; PRS.



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## SCHOOL OF MANAGEMENT STUDIES

**UNIT II - BUSINESS TAXATION - SBAA1304**

## UNIT 2

### CENTRAL EXCISE DUTY

Classification - Levy and Collection of Excise Duty - Clearance of Excisable goods - Exemption from Excise Duty - Excise and Small Scale Industries - Excise and Exports - Demand, Refund, Rebate of Central Excise Duty - Offences and Penalties - Settlement - Appellate Provisions.

#### Meaning of Excise Duty

In India, term “Excise Duty” has not been defined, either in the Constitution of India or even in the Central Excise Act, 1944. However, the Constitution of India has vested in the Seventh Schedule, powers to levy various taxes and duties by the Union as well as the states.

Allocation of sources between centre and states under the constitution of India grants to the Central Government power to impose “Duties of excise on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, narcotics, but including medical and toilet preparations containing alcohol, which is called “Central Excise”.

#### Nature or Characteristics of Excise duty

Central Excise duty is a central tax imposed by Government of India. The following features of the excise duty –

1. Imposition
2. Nature
3. Basis of Taxation
4. Payment
5. Scope
6. Maintenance of Records
7. Excise rate
8. Administration

#### Importance of Central Excise Duty in Respect of Revenue

Excise Duty is the most important source of income of Indian Govt. The Govt. earns huge revenue through this. This tax is imposed on the manufacturing of goods. It is an indirect tax and collected from manufactures. This tax was first imposed on the manufacturing of cotton yarn in 1894. For the proper implementation of excise duty, Central Excise Duty Act, 1944 and central Excise Tariff Ac, 1985 are applicable which is also known as CEAT. At present this tax is applicable on various types of goods covered under 20 sections and 96 chapters there of and approximately it earns Rs. 2 lac crores per year.

#### Merits of Excise Duty or Importance of Excise Duty

1. Major source of Government revenue
2. Psychological advantages to tax payer
3. Easier to collect
4. Balanced Industrial Growth
5. Less collection cost

6. Tax evasion difficult
7. Control over wasteful expenditure

### **Disadvantages or demerits of Excise Duty**

1. Increase the Price of goods
2. The incidence is uniform
3. Reduces demand of goods
4. Increases project costs
5. Increases project costs
6. Protect inefficient local industries
7. Modern technology becomes costly
8. Increases smuggling/tax evasion

### **Types of Excise Duties**

#### **1. Central Excise Duty**

**Basic Excise Duty** – Basic duty of excise levied under Central Excise Act, Basic excise duty (also termed as Cenvat as per section 2A of CEA) is levied at the rates specified in first schedule to central Excise Tariff Act. The general rate of Excise Duty is 12% and 3% education cess there on So, at present normal excise rate is 12.36%. There is partial exemption to a few products.

#### **2. Provincial Excise Duty**

Although Excise duty is imposed by Central Govt. Indian Constitution has given rights to state government to impose and collect excise duty on intoxicants like Liquor, Bhang, Ganja, Opium etc.

#### **3. Duties under other Acts**

Some duties and cess are levied on manufactures products under other Acts. The administrative machinery of central excise is used to collect those taxes. Provisions of Central Excise Act and Rules have been made applicable for levy and collection of Central duties cesses. Other duties related to excise duty are as under –

- a. **Education Cess on excise duty no education Cess on excise duty (w.e.f.1/3/2017)**
- b. **National Calamity Contingent Duty** – A ‘National Calamity Contingent Duty’ (NCCD) has been imposed vide section 136 of Finance Act, 2001. This duty is imposed on pan masala, chewing tobacco and cigarettes.
- c. **Additional Excise Duty in pan masala and tobacco products** – Additional Duty of Excise by way of surcharge has been imposed under clause 85 of Finance Bill, 2005 w.e.f. 1-3-2005. Thus duty is payable @ 10% of aggregate of cigars, manufactured tobacco, tobacco extract and essences.
- d. **Duty on Medical and Toilet preparations** – A duty of excise is imposed on medical preparations under Medical and Toilet preparations (Excise Duties) Act, 1955
- e. **Additional duty on mineral products** – Additional duty on mineral imposed (like motor spirit, kerosene, diesel and furnace oil) is payable under Mineral products (Additional Duties of excise and customs) Act, 19

### **Brief History of Central Excise Duty**

1. Tax on the Production of salt During Mughal Period
2. Indian Salt Act, 1882
3. Excise duty on cotton Yarn
4. Inclusion of various Goods
5. Central Excise Duty Act, 1944

### **Main Provisions of Central Excise Act 1944**

1. Brief History of Excise Law
2. Levy and collection of Duty
3. Rates of Duty
4. Excise duty based on value
5. Provisions relating of Reflations
  - a. Manufacturer
  - b. Person who Issue CENVAT invoice
  - c. Private warehouse holder
  - d. End-use based exemption user
  - e. Exporters
  - f. Valuation of Excisable goods
  - g. Cenvat credit
  - h. administration of Excise Duty
  - i. Appeal and Revision
  - j. Penalty and Prosecutions

### **Basic Conditions of Excise Duty Liability**

Section 3 of Central Excise Act the 'charging Section' states that there shall be levied and collected duties on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India. This definition of charging section of central Excise is vital, because it clearly signifies that there are four basic conditions for levy of Central Excise duty.

1. The excise duty levied on goods;
2. The goods must be excisable;
3. The goods must be manufactured or produced; and
4. The manufactured or production must be in India.

### **Levy and Liability of Excise duty**

The words 'Levy' means imposition of tax. Once a tax or duty is imposed, it has to be quantified (assessed) and then 'collected'. Once a duty is levied, it has to be collected. It cannot be collected unless the duty is quantified (assessed). Hence, normally, 'levy' should cover 'imposition', 'assessment' and 'collection'.

### **The following point should be kept in view regarding Levy of Excise Duty –**

1. Taxable event
2. Person liable to pay excise duty
3. The duty Liability in case of Ware house Goods
4. Duty Liability in case of Job work
5. Duty leviable on captive consumption

6. Duty can be levied on Government undertaking
7. Rate of duty as applicable on date of removal relevant
8. State of goods at the time of removal is relevant
9. Marketability is essential

### **Goods**

The Excise Duty is levied on manufacturing of goods, but the term goods has not been defined under Central Excise Act 1944 or the Central Excise Rules. However, based on definitions in other enactments as well as judicial pronouncements, certain broad guidelines have evolved in this regard.

Article 366 (12) of the constitution defines goods as “Goods includes all materials, commodities and articles.”

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

- a. Goods must be Movable
- b. Goods must be Marketable

### **Excisable Goods – Sec 2(d)**

Excisable Goods means goods specified in the schedule to the Central excise Tariff Act, 1985, as being subject to a duty excise and includes salt’.

Goods liable to the imposition of excise duty are such items upon which excise is imposed under the legislation. Since 1985, it has been provided under the Act that the excise duty shall now be levied only upon those items which have been covered in the schedule of the Central Excise and Tariff Act, 1985.

1. It should be specified in the tariff schedule
2. Goods not included in CEAT are non excisable goods
3. Mere mention in CEAT not enough
4. Subject to duty
5. Goods manufactured in SEZ are excluded excisable goods
6. Dutiable and non dutiable goods

### **Manufacture – Sec. 2 (f)**

Every action or process is manufacture, which results into the transformation of raw material into a commercial commodity or finished product that a separate identify. However, excise is a tax on manufacture and is not depends on the end use of the manufactured product.

1. New substance having distinct name, character or use must emerge
2. Transformation or Conversion
3. Identify of original Article should be lost
4. Assembling can be manufacture
5. Commercial Known Product

## **What is not Manufacture?**

### **Manufacturer**

Section 2(f), which defines the word ‘manufacturer’, after defining the word ‘manufacturer’ states that the word manufacturer shall be understood accordingly and shall include not only a person who employs hired labor in the production or manufacture of excisable goods, but also person who engages in their production or manufacture on his own account.” So this definition is not exhaustive.

### **Assessable Value – Sec. 41 (a)**

Section 4(1) (a) of Central Excise Act states that ‘assessable value’ when duty of excise is chargeable on excisable goods with reference to value will be transaction value on each removal of goods, if following conditions are satisfied –

1. The goods should be sold at the time and place of removal
2. Buyer and assessee should not be related

Assessable Value (AV) is the ‘Value’ on which duty is payable as a percentage. Generally by ‘Value’, we understand the price as mentioned in Bill or Invoice.

### **Basis of Assessable Value**

As per section 4 excise duty is payable on basis of transaction value if the goods are sold at the factory gate to an unrelated buyer when price is the sole consideration. If these requirements are not satisfied, valuation will be done as per Valuation Rules.

### **As per the Central Excise Tariff Act, excise duty is payable on the following basis**

1. Specific Duty,
2. duty based on value (ad valorem duty) i.e. fixed percentage of-
  - a. Tariff value fixed under Section 3(2) of the central Excise Act, 1944
  - b. Transaction value determined under section 4 of the Central Excise Act, 1944
  - c. Retail Sale Price determined under Section 4A of the Central Excise Act, 1944
3. Duty based on production capacity also known as Compound levy scheme.

### **Transaction Value Sec. 4(3) (d)**

Define Transaction Value under section 4 of the Central Excise, 1944. Section 4(3)(d) defines transaction value as the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter, but does not include the amount of duty of excise sales tax and other taxes, if any actually paid or actually payable on such goods.

### **Adjudicating Authority – Sec. 2 (a)**

“Adjudicating authority means any authority competent to pass any order or decision under this act but does not include Central Board of Excise and customs constituted under the Central Boards of Revenue Act, 1963, Commissioner of Central Excise Appeals or Appellate Tribunal.”

**Curing – Sec. 2 (c)**

“Curing includes writing drying, fermenting and any process for rendering an un-manufactured product fit for marketing or manufacturer.”

All such processes, which are adopted for converting any raw or un-manufactured items into the produced or manufactured form or making them marketable are covered under the jurisdiction of curing.

**Factory – Sec. 2(e)**

Factory means any premises including the precincts thereof, where in or in any part of which excisable goods other than salt are manufactured or where in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.

**Sale or Purchase – Sec. 2(h)**

Sale and purchase with their grammatical variations and cognate expressions, means 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.

**Central Excise Officer – Sec. 2(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, Joint Commissioner of Central Excise, Deputy Commissioner of Central Excise, Assistant Commissioner of Central Excise, Deputy Commissioner of Central Excise or any other officer of 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 Board of Revenue Act, 1963 with any of the powers of a Central Excise Officer under this Act.”

**Persons Requiring Registration**

According to Section 6 of the Central Excise Act, 1944 and Rule 9 of the Central Excise Rules, 2002, the following persons are required to obtain registration –

1. Manufacturer
2. Persons who issue CENVAT invoice
3. Private warehouse holder
4. End –use based exemption user
5. Exporters

**Persons Exempted from Obtaining Registration**

The following categories of persons are exempt from obtaining Registration under Central Excise –

1. Persons who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempted from duty by a notification.
2. Small scale units availing the slab exemption based on value of clearances under a notification.
3. The supplier of raw material who gets his goods manufactured on his account from any other person.
4. In respect of branded jewellery, the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability.



5. Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962.
6. Persons who carries on wholesale trade or deals in excisable goods (except first and second stage dealer and the depots of a registered manufacturer);
7. A 100% Export Oriented Undertaking, or a unit in Export Processing Zone or Special Economic Zone licensed or appointed, as the case may be, under the provisions of the Customs Act, 1962.
8. Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification.

### **Registration in case of Multiple Premises etc**

In case of separate premises, separate registration will be required. However, separate registration will not be required, in case where two or more premises are actually part of the same factory i.e. where processes are interlinked, but are segregated by public road, canal or railway-line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors.

### **Procedure for making Application for Registration**

1. Application in Form A-I
2. signature on Application
3. Submission of Ground Plan
4. Documents to be submitted

### **Procedure for Issue of Registration Certificate**

1. Verification of Application
2. Discrepancy of Verification
3. Time limit for Issue of Certificate
4. Recording of Applications and Grant of Certificate
5. Exhibition of Certificate of Registration

### **Excise Control Code (ECC Number)**

The Central Excise assesses and registered dealers have to obtain new Excise Control Code (ECC) number. This number is based on the principles of Common business Identifier and will ultimately replace the existing registration number.

### **Meaning of classification of Goods**

Classification of goods in Central Excise means under which Heading and subheading of CETA, 1985, is the goods kept and which rate is applicable on it. This procedure is called HSN and coding system.

### **Central Excise Tariff Act, 1985 (CETA)**

Excise duty liability arises on production of goods. Once, liability is fixed, then the amount of duty is to be fixed. for this purposes, amount of duty is determined in two steps. In first step, it is decided that at what rate duty will be paid. This rate is arrived through classification. In the second step, it is decided

that on what amount, rate fixed in first step will be taken for calculation. For this provisions are made in sec. 4 of Central Excise Act.

### **Methods of Valuation of Excisable goods**

Wherever excise duty is leviable at the rates prescribed in Central Excise Tariff Act (CETA), the scheme of valuation of excisable goods is governed by the provisions of section 4 of the excise Act, 1944. The value of the excisable goods so determined under Section 4 is generally termed as the “Assessable value” based on which the rate of duty is applied and the actual duty liability is calculated.

Basis of calculation of duty payable

Excise duty is payable on excisable goods on the following basis –

1. Duty as percentage based on Assessable value (advalorem duty)
2. Duty based on Maximum Retail Price
3. Specific duty
4. Duty as percentage of Tariff Value.

### **Meaning of Transaction Value**

As per Sec. 4(1) of the Act, excise duty is chargeable on any excisable goods with reference to their transaction value.

Section 4(3) defines ‘Transaction value’ as the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as piece, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods. Thus, following are main requirements or ‘transaction value’.

1. Price actually paid or payable
2. Price is for the goods
3. It includes, in addition to the price charged, any amount the buyer is liable to pay to assessee in the respect of the sales.
4. It includes advertising, financing, servicing, warrantee commission or any other amount payable by buyer to the manufacturer.
5. It does not include excise duty, sales tax and other taxes.
6. The transaction value will not be applicable for the purpose of payment of duty if the buyer and seller are related.
7. If the goods are sold to related person or if the goods are not sold valuation will be done on the basis of rules as may be prescribed.

### **MRP Basis of changing Excise Duty**

Section 4A of CEA empowers Central government to specify goods on which duty will be payable based on 'retail sale piece'. For the purposes of this section, "retail sale price" means the maximum price on 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, packaging, forwarding and the like and the price is the sole consideration for such sale.

### **Specific Duty**

It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc. For example, duty on Cigarette is payable on the basis of length of the Cigarette, duty on sugar is based on per kg

### **Duties Leviable**

- Basic Excise Duty is levied u/s 3(1) of Central Excise Act. The section is termed as 'charging section'. General rate of duty of central excise on non-petroleum products is 10% . This duty is applicable to majority of excisable goods. There is partial exemption to a few products.

Education Cess @ 2% of excise duty under section 93 of Finance (No. 2) Act

Secondary and Higher Education Cess (S&H Education Cess) @ 1% of the total duties of excise vide section 136 read with section 138 of Finance Act, 2007.

Thus, total excise duty is 10.30% in majority of the cases.

National Calamity Contingent Duty – A 'National Calamity Contingent Duty' (NCCD) has been imposed vide section 136 of Finance Act, 2001 on some products. NCCD of 1% has been imposed on mobile phones

In addition, cesses and duties have been imposed on some specified products.

### **Presently, specific rates have been announced for –**

- a. Cigarettes (length basis),
- b. Matches (per 100 boxes/packs),
- c. Sugar (per quintal basis),
- d. Marble slabs and tiles (Sugar meter basis),
- e. Colour TV when MRP is not marked on the package or when MRP is not the sole consideration (Based on screen in cm.),
- f. Cement clinkers (per tonne basis)
- g. Molasses resulting from extraction of sugar (per ton basis)

### **Duty Based on Tariff Value**

In some cases, tariff value is fixed by Government from time to time. This is a “National Value” for purpose of calculating the duty payable. Once ‘tariff value’ for a commodity is fixed, duty is payable as percentage of this ‘tariff value’ and not the Assessable value fixed u/s 4. This is fixed u/s 3(2) of Central Excise Act. Government can fix different tariff values for different classes of goods or goods manufactures by different classes or sold to different classes of buyers. When tariff value is fixed, provisions of section 4 will form the basis for assessment.

The tariff value may be fixed on basis of wholesale price or average price of various manufacturers as the Government may consider appropriate. Basis for deciding value should be method provided in section 4. It should be one of the criteria, but need not be the only one criteria.

Provision of fixing tariff value is used very rarely as frequent changes become necessary when prices rise. Such tariff value can be fixed only for few selected commodities.

Presently, tariff values have been fixed for (a) Pan masala packed in retail packs of less than 10 gm per pack.

(b) Tariff value for readymade garments has been prescribed as 60% of the retail sale price of such goods as specified on the package.

### **Inclusion of Transaction Value**

The following items will be included in transaction value for finding out Assessable value; if these items are not included in transaction value or invoice price or separately charged –

1. Advertisement publicity and marketing expenses
2. Packing charges
3. Design and Engineering charges
4. Compulsory after Sales Service/service in warranty period is included
5. Loading and handling charges within the factory
6. Price reduction due to advance
7. Consultancy charges
8. Dharmada

### **Exclusions from Transaction Value**

Central Excise Act provides that ‘transaction value’ does not include amount of duty of excise, sales tax and other taxes, if any actually paid or actually payable on such goods. Moreover, any other payment made by buyer to assessee will be included only if it is by reason or sale or in connection with sales.

### **The following deduction will be allowed towards Transaction Value –**

1. Trade Discount
2. Deduction of Taxes from AV
3. Outward Handling Charges
4. Installation charges
5. Post removal charges

### **Retail Sale Price**

The retail sale price means the maximum price at which the excisable goods in package form may be sold to ultimate consumer and includes all taxes local or otherwise, freight transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding like and the price is the sole consideration for sale.

#### **Special features of the MRP based Method**

Following are the special features of the maximum Retail Price based valuation method for charging excise duty on goods –

1. Applicability of Provision
2. MRP provisions are overriding provisions
3. Products covered under the scheme
4. Partly assessed on MRP based and partly on transaction value based
5. MRP inclusive of all taxes
6. Increase in retail price after clearance from factory
7. MRP is not indicated or wrongly indicated
8. When more than one retail price declared
9. Department cannot challenge MRP printed on package

### **Value based on Maximum Retail Price**

Central Government can impose excise duty on goods based on 'retail sale price'. The provisions are as follows –

- a. The goods should be covered under provisions of standards of weights and Measures Act.
- b. Central government can permit reasonable abatement (deductions) from the 'retail sale price'. While allowing such abatement, Central Government shall take into account excise duty, sales tax and other taxes payable on the goods.
- c. If more than one 'retail sale price' is printed on the same packing the maximum of such retail price will be considered.
- d. The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer.
- e. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc.
- f. Central government has to issue a notification in official Gazettee specifying the commodities for which the provision is applicable and the abatements permissible.

### **PROCEDURE FOR COMPUTATION OF ASSESSABLE VALUE AND EXCISE DUTY PAYABLE UNDER CENTRAL EXCISE DUTY.**

Central Excise Duty is payable on Assessable Value of the goods at specific rates. The following procedure should be adopted for determination of assessable value and calculation of Excise Duty payable-

1. Computation of Assessable Value.
2. Calculation excise duty payable on Assessable value.
3. Rebate for CENVAT.

**Refund of C.Ex.duty and interest, if any, paid thereon:**

- Refund includes Rebate of duty in case of export. Any person claiming refund of duty with interest, if any paid, thereon may, within a period of one year from the relevant date, file a refund claim in prescribed Form-R along with documents evidencing duty payment with copy of the ER-1, original copies of invoices and other relevant documents, if any, before the AC or DC of the Central Excise Division with a copy to the jurisdictional RO provided the amount of claim is not less than Rs.100/-. The assessee should also submit sufficient proof that the burden of duty has not been passed on to the buyer of such goods

**Interest on delayed payment of refund:** - The claimant is entitled for interest at a rate prescribed by a notification under Sec 11BB of CEA'44, if any amount of duty ordered to be refunded is not refunded within a period of three months from the date of receipt of such claim by the office of AC or DC.

**Status of all refund claims on Government web site:** - The refund claims pending as on the first day of a month are reflected on the Government website with explanation, if any claim is pending for a period of more than three months. The assessee may keep a track of such claims by visiting the said site

**Action against delayed payment of duty:** - As a mandatory requirement, the assessee is required to pay the amount of duty as assessed by him on the quantity removed for home consumption or export under claim of rebate of duty on prescribed dates. If he fails to pay the total amount of duty by the due date, he will have to pay interest at the rate prescribed by a notification under section 11AA of CEA' 44, from the first day after the due date (i.e. the 5th/6th of a month or 31st of March, as the case may be) till the date of full payment.

**Application to Settlement Commission:** - If the Show Cause Notice under Sec 11A of CEA' 44 has been issued, the assessee has two options to proceed further. He may refer the case to the Settlement Commission constituted under Central Excise Act or may proceed to submit reply to the SCN within the prescribed time limit.

The case pending for adjudication may be referred to the Settlement Commission by the assessee himself provided he has filed the Central Excise Returns regarding production and clearance of goods and duty payable thereon etc., and the SCN asking him to pay duty has already been received by him.

In the application to the Settlement Commission, the assessee is required to honestly declare the amount of duty actually payable by him on account of alleged misclassification, under valuation or misuse of any exemption notification or contravention of any provision of CCR' 04.

The additional amount so admitted by the assessee should be paid along with interest before an application is made to the Commission. However, if such amount is less than Rs. 3 lakhs, no application to the Commission can be filed. Any application for interpretation of tariff classification is also not entertainable by the Commission.

In case of seizure of any goods, documents or books of accounts, no such application can be filed before expiry of 180 days from the date of seizure.

If the Commission is convinced that the assessee has co-operated and has made a true disclosure of the additional amount of duty and has paid the same with interest, it may pass an order after proper enquiry in deserving cases, where by exemption from penalty/fine under C.Ex. Act

### **Search & Seizure:**

If a Central Excise Officer (in the rank of Inspector and above) has reason to believe that a vehicle is carrying any goods on which duty is not paid with intent to evade it or has reason to believe that such goods has been removed without payment of duty with the said intent, he may stop and search the vehicle and detain or seize the goods (Rule 23 & 24 of CER' 02).

### **Adjudication:**

According to the monetary limit fixed and other conditions prescribed under the Act (as amended from time to time) such SCNs are required to be decided by a Superintendent of C.Ex or AC/DC or JC/ADC or the Commissioner of C.Ex. as the case may be.

After examination of the reply to the SCN and the submissions made by the assessee during personal hearing, if any, the adjudicating officer is required to determine the amount of duty which has been actually evaded or erroneously refunded for recovery of the same and also whether such non-payment or short payment was attributable to fraud/collusion/mis-statement etc. or not. Besides, penalty as following may also be imposed as provided under the Act and the Rules made there under-

- a. Penalty which is equivalent to the amount of duty evaded under fraud, collusion, mis-statement etc.[Sec 11AC(1a) of CEA,44].
- b. Penalty equivalent to 50% of the amount of duty determined by the adjudicating officer, if the details of the transaction are reflected in other specified records but limited to 25% of the determined duty, in case the determined amount of duty along with interest and the reduced amount of penalty (25% of duty) is paid within 30 days from the date of communication of the adjudication order. [Sec. 11 AC (1b &c)].
- c. Penalty not exceeding the amount of duty or Rs. 2000, whichever is greater with or without confiscation of goods.[Rule25 of CER,02]

d. Penalty not exceeding the amount of illegal benefit taken on the basis of any improper document or Rs.5000, whichever is greater [Rule26(2ii) Of CER' 02; and

e. Penalty not exceeding Rs. 5000/- with the confiscation of goods, if no penalty is provided for any breach of CER' 02 (Rule 27 of CER, 02 )

### **Arrest and prosecution:**

Officer of the rank of Inspector or above has reason to believe that a person is liable for punishment under Section 9 of the Act, he may, after approval of the Commissioner, arrest such person. Section 18 of the Act, however lays down that any arrest should be in accordance with the provisions of CrPC, 1973.

### **Appeal against the order and decision of C.Ex. Officers as well as other Appellate**

Sec. 35 of CEA, 44 provides that any person aggrieved by an order or decision whether it relates to confirmation of demand of duty, rejection of refund etc. may prefer an appeal before competent Appellate forum. It bifurcates orders or decisions in two categories – (i) when such order or decision has been passed by an officer below the rank of Commissioner of C.Ex. and (ii) when it has been passed by the Commissioner himself. In former case, while the appeal shall lie to the Commissioner (Appeals), it will lie to the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) in the latter case. Such appeals are called first stage appeal.

The appeals should be filed in prescribed form of appeal and it should be accompanied with the grounds of appeal and statement of facts. The appellant should himself sign the form of appeal and verify the same in prescribed manner. The appellant may also file a stay application along with the appeal petition. The appellate authority may grant or reject such stay petition before finalization of the appeal. However, the second proviso to Section 35 C (2A) of CEA'44 lays down that if a stay has been granted by the CESTAT but such appeal petition is not decided within six months, the stay will stand vacated.

The power is being exercised by the Commissioner (Appeals) in the light of decision of the Hon'ble High Court of Gujarat in the matter of CCE vs Medico Labs -2004 and by the Hon'ble Supreme Court in the matter of UOI vs Umesh Dhaimode -1998.

A chart showing the competent forum of appeal against a particular order along with pre-requisites for such appeal is given on the next page. However, a limitation has been imposed by the Board vide. According to the said instruction, cases involving duty of Rs. 5 lakhs or less are not required to be appealed in CESTAT against any order of Commissioner (A) or the Commissioner (C.Ex.), as the case may be. Similarly cases involving duty not exceeding Rs. 10 lakhs or Rs. 25 lakhs are not required to be appealed in the High Court & Supreme Court respectively. If only the amount of penalty or interest is the matter of dispute, the said limit shall still be applicable for filing appeal against imposition of penalty or charging of interest.





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SCHOOL OF MANAGEMENT STUDIES

**UNIT III - BUSINESS TAXATION - SBAA1304**

## **UNIT III**

### **CUSTOMS DUTY**

Meaning - Levy and Collection of Customs Duty - Organization of the Customs Department - Officers of the Customs - Powers - Appellate machinery - Infringement of the law - Offences and Penalties - Exemption from Duty - Customs Duty Drawback - Duty Free Zones.

The term customs have derived its essence from the term custom, which means a customary practice or a course of action that is observed and repeated in the like circumstances. Customs duty has been in vogue from ancient times.

In the present time customs duty means a tax which is levied by the Government on import of goods into India and export out of India. It is a central tax and mainly imposed on imported goods. Generally Govt. levies export duty on a very few items due to export promotion. At present peak rate of customs duty is 10%.

#### **Main features of customs duty –**

Customs duty is tax on import or export of goods. It is levied by central Govt. of India. It is collected and used by the centre. The main features of this tax are as under

—

- 1) Customs Duty levied on import and export
- 2) Leaving of customs duty
- 3) Indirect Tax
- 4) Goods under Customs Act
- 5) Objects of Customs Duty
- 6) Important source of Revenue
- 7) Rate of Customs Duty

#### **Merits of Customs Duty**

- 1) Regulating import and export
- 2) Protection to Domestic industries
- 3) Regulating the international trade competition
- 4) Checking on wasteful expenditure

#### **Disadvantages of Customs Duty**

- 1) Increase the prices
- 2) Increase the cost of project
- 3) Domestic industries become lethargic
- 4) Incidence of customs Duty is uniform without discrimination.
- 5) Corruption

## **Important Definitions: Customs Act**

- 1) Import – Sec. 2 (23)
- 2) Export – Sec. 2 (18) to 2 (20)
- 3) Goods – Sec. 2 (22)
- 4) Baggage
- 5) Assessable Value
- 6) Bill of Entry
- 7) Export manifest or export report
- 8) Shipping Bill
- 9) Foreign going vessels and Aircraft – Sec. 2 (24)
- 10) Customs airport Sec. 2(10)
- 11) Customs Port Sec. 2 (12)
- 12) Customs Station Sec. 2 (13)
- 13) Customs Area Sec. 2 (11)
- 14) Entry Sec. 2 (16)
- 15) Prohibited Goods Sec. 2 (33)
- 16) Proper Officer Sec. 2 (38)
- 17) Warehoused Goods Sec. 2 (48)
- 18) Market Price Sec. 2 (34)
- 19) Person in charge Sec. 2 (35)
- 20) Coastal Goods Sec. 2 (9)
- 21) Smuggling Sec. 2 (43)
- 22) Vehicles Sec. 2 (46)
- 23) Adjudicating Authority Sec. 2 (1)
- 24) Appellate Tribunal Sec. 2 (1B)
- 25) Assessment Sec. 2 (2)
- 26) Indian Customs Waters Sec. 2 (28)
- 27) Land Customs Station Sec. 2 (29)

## **Types of Customs Duties –**

Tariff rates for customs duty are prescribed in Customs Tariff Act, 1975. The types of duties are explained below.

1. **Basic Customs Duty** – Basic Customs Duty is levied under section 12 of the Customs Act. The rates at which duties of customs shall be levied are specified in the First and Second Schedules to the Customs Tariff Act, 1975.
2. **Additional Customs Duty (CVD) for Excise** – This duty is popularly known as countervailing duty because it is levied to counter balance the excise duty in India for such imported items. Under Section 3(1) of the Customs Tariff Act, an additional duty on goods imported into the country is levied. The rate of this duty is equal to the excise duty on like articles produced or manufactured in India.

3. **Additional Customs Duty for sales tax** – Special Additional Duty is levied under section 3(5) of the Customs Tariff Act accordingly, any article which is imported into India shall in addition, be liable to a special additional duty, which shall be levied at a rate of 4% 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.

4. **Safeguard duty** – Central Government is empowered to impose safeguard duty in 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. The only condition under WTO is that it should not discriminate between imports from different countries having Most Favoured Nation (MFN) status.

5. **Protective duties** – Section 6 of the Customs Tariff Act empowers the Central Government to levy a protective duty based on a recommendation made by the Tariff Commission.

6. **Countervailing duty** – If a country pays any subsidy (directly or indirectly) to the exporters for exporting goods to India, Central Government can impose Countervailing duty up to the amount of subsidy cannot be ascertained, provisional duty can be collected and after final determination, difference may be refunded. Such imposition should be by way of a notification.

7. **Anti-Dumping duty** – Dumping means export of an article from any country or territory to India at less than its normal value i.e. when the prices at which the goods are exported to India are less than the comparable price for the like product when destined for consumption in the domestic market of the exporting country. Anti dumping duty is imposed for offsetting the adverse effects of increased imports, subsidized imports or dumped imports.

8. **Export duty** – At present, 15% Export Duty is levied only on hides, skins and leather, and duty of 10% is levied on snake skins, hides, skins and leathers, and fur lamb skins (No export duty is levied on hides, skins and leather of finished leather of goat, sheep and bovine animals and their young ones). There is no export duty on any other product.

A detailed discussion is given below in respect of various types of customs duty.

#### **Procedure for Computation of Customs Duty**

1. Firstly calculate basic Customs Duty on Assessable Value @ 10%.
2. Secondly calculate Additional customs duty (CVD) @ of Excise duty rate applicable in India on aggregate amount. Assessable Value + Basic Customs Duty.
3. Then calculate 3% education cess on aggregate amount of Basic Customs Duty and Additional Customs Duty.
4. Lastly calculate special Additional Customs Duty @ 4% on aggregate amount of AV + total duties.

### **Prohibition on Import and Export –**

Prohibition on import or export denotes prohibition on import and export of the specified goods.

#### **Reasons for prohibiting imports and exports –**

The customs act, 1962 envisages enforcing various restrictions and prohibitions in respect of import and export of goods. Section 11 of the customs act empowers the central government to prohibit the import or export of goods of any specified description. The conditions for restrictions may be required to be fulfilled before or after clearance. The purposes for which import/exportation can be prohibited are enumerated below –

- 1) Maintenance of security of India.
- 2) Maintenance of public order and standards of decency or morality.
- 3) Prevention of smuggling.
- 4) Prevention of shortage of goods of any description.
- 5) Conservation of foreign exchange and safeguarding of balance of payments.
- 6) Prevention of injury to the economy of the country by uncontrolled import or export of gold or silver.
- 7) Prevention of surplus any agricultural produce or the product of fisheries.
- 8) Maintenance of standards for classification, grading or marketing of goods in international trade.
- 9) Established of any industry.
- 10) Prevention of serious injury to domestic production of goods of any description.
- 11) Protection of human, animal or plant life or health.
- 12) Protection of national treasures of artistic, historic or archaeological value.
- 13) Conservation of exhaustible natural resources.
- 14) Protection of patents, trade mark and copyrights.
- 15) Prevention of deceptive practices.
- 16) 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.
- 17) Fulfillment of obligations under the Charter of the United Nations for the maintenance of international peace and security.
- 18) Implementation of any treaty, agreement or convention with any country.
- 19) Compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India.
- 20) 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.
- 21) Prevention of the contravention of any law for the time being in force.
- 22) Any other purpose conducive to the interests of the general public.

### **Prohibited items of Imports/Exports –**

Some of the prohibited items of imports/exports are shown here under –

#### **a) Exports –**

- 1) Sandalwood oil,
- 2) Cardamom,
- 3) Psychotropic substances,
- 4) Obscene books and other publications,
- 5) Tussar/Muga silk
- 6) Indian made wool,
- 7) Chillies and vegetable oil products
- 8) Animal casings
- 9) Specified fruits
- 10) Mechanical lighters
- 11) Books containing maps/diagrams showing borders of India erroneously.

#### **b) Imports –**

- 1) Explosives,
- 2) Arms and ammunition,
- 3) Psychotropic substances
- 4) Narcotic drugs
- 5) Counterfeit coins
- 6) Quinine,
- 7) Saccharine
- 8) Matches
- 9) Fictitious stamps
- 10) Armored cars
- 11) Antiquities
- 12) Negative film or print of an Aerial photograph of any place in India.

### **Prohibited goods for export –**

Prohibited goods for exports mean such goods which cannot be exported from India in any case. The following goods are prohibited for export –

- 1) Wild life and their parts
- 2) Exotic birds
- 3) Endangered plants
- 4) Beef
- 5) Human skeletons
- 6) Tallow
- 7) Fat
- 8) Wood and wood product
- 9) Chemicals for weapons

- 10) Sandal wood
- 11) Red sandal wood

Aforesaid goods cannot be exported due to scarcity and to protect national interests. Exports of prohibited goods shall be illegal export and punishable.

#### **Restricted items for export –**

In this category such goods covered which shall be exported under some restrictions. Such goods can be exported after the fulfillment of required conditions and legal formalities. The list of restricted goods for exportation is as up under –

- 1) Cattle
- 2) Camel
- 3) Chemical fertilizers
- 4) Fresh and frozen silver pom fishes
- 5) Fur, hides and skins
- 6) Industrial leather, fur leather, luggage leather, shoe upper leather.
- 7) Ores of chrome, manganese
- 8) Pulses, paddy, rice bran, seeds and planting material
- 9) Sea shells
- 10) Silk worms
- 11) Groundnut oil in consumer packs above 5 kgs.
- 12) Vintage motor cars,
- 13) Human blood plasma
- 14) Waste special minerals
- 15) Viscose staple fibre and
- 16) Chemicals for weapons

Aforesaid restricted items can be exported by dealers and agencies after obtaining license. They should follow the conditions mentioned in license. The quantity of export of such restricted goods must be in the limit permitted.

#### **Free Import & Restricted Import**

There were many restrictions and legal formalities in relation to import of goods in India before liberalization. Presently, most of the goods can be imported without any license. Schedule II gives Export Policy. It contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free.

#### **Imports may be classified in two categories –**

1. Free Import
2. Restricted Import

Detailed discussion is given in connection of above categories.

### **Free Import**

As per WTO (World Trade Organization), India had to remove all quantitative restrictions (QRs) on imports in phased manner. Hence, the imports were being liberalized every year and import restrictions were completely lifted on 1.4.2001. Now almost all items are freely importable. However, to control imports, customs duty on some Products has been increased.

Basically, all imports are free except to the extent regulated by Foreign Trade Policy or any other law, Importer can be actual user or trader. All items, except restricted, prohibited and State Trading Enterprises can be freely imported under OGL i.e. Open General Licence.

### **Restricted Import**

Now, imports of goods are generally freely permitted. However, there are various restrictions on import of some goods.

Very few items have been included in restricted list. These can be imported only against license –

### **Provisions in respect of Imports – Restrictions on imports are summarized here.**

1. Import only through State Trading Enterprises
2. Import of food Articles
3. Import of gold & Silver
4. Prohibited Items
5. Import of Textile material
6. Import of old cars
7. Import of new cars
8. Import of alcoholic items

### **Transaction Value – Inclusions –**

Some costs, services and expenses are to be added to the price paid or payable, these are not already included in the invoice price. These are discussed below –

**1) Commission and Brokerage includible** – Commission and brokerage except buying commission is includible. Buying commission means fees paid by importer to his agent for the service of representing him abroad in purchase of goods being valued.

Exporters from abroad often appoint local agents in India to promote their sales in India. These agents get commission in Indian Rupees which is paid directly by Indian Importer. (Amount net of commission is paid to foreign exporter in foreign currency). This commission is includible for purpose of valuation.



In some cases, when imports are made by canalizing agency, goods are sold to Indian buyer on high sea sale basis. The imported goods are cleared by Indian buyer. In such cases, service charges payable to the canalizing agency have to be included for calculation of 'Assessable Value'.

2) **Packing cost is includible** – Cost of containers which are treated as being part of goods for customs purposes. Similarly, cost of packing-both labour and material is to be included.

Cost of durable and returnable containers not to be added-Modern trend is pack goods in containers for convenience of transport. These containers are durable and re-usable. Hence, cost of such containers is not added for Customs Valuation, if importer agrees to execute a bond to re-export the containers within six months.

3) **Value of Goods supplied by buyer to be added** – If buyer has supplied goods free of cost or at reduced cost in connection with production or export of goods, these should be included. The goods may be (a) materials, components, parts and similar items incorporated in imported goods (b) tools, dies, moulds and similar items used in production of imported goods (c) consumables used in production of imported goods.

4) **Services/documents/technical know-how supplied by Buyer to be added** – Cost of engineering, development, art work, design work and plans and sketches undertaken by buyer which is necessary for production of imported goods is includible, only if such work is undertaken outside India. The addition should be done on objective and quantifiable data. Data available with importer should be used as far as possible. If the services are purchased or leased by importer, such purchase/lease cost should be added. If the importer has himself done the work abroad, its cost should be added on basis of structure and management practices of importer and his accounting methods.

5) **Royalties and license fee** – If buyer has paid royalties and license fees separately in relation to imported goods, these are includable, unless they are already included in selling price. Royalty may include payments in respect of patents, trademarks or copyrights. However, following i.e. (a) charges for the right to reproduce the goods in Indian shall not be added and (b) payments made by buyer (importer) for right to distribute or resale the imported goods shall not be added if such payment is not a condition for export to India.

Royalties and license fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

6) **Other payments made to seller to be added** – If buyer has made, directly or indirectly, any payment to seller as a condition of sale, such payments should be included for obvious reason that ordinary selling price has been reduced due to such payment.

7) **Cost of Transport upto port should be added** – Cost of transport from exporting country to India is to be added in Assessable Value. In other words, CIF value is the basis for valuation. If the goods are imported by air, the air freight will be very high. Hence, in case air freight is higher than 20% of FOB price of goods, only 20% of FOB price will be added for customs valuation purposes.

8) **Insurance cost should be added** – Insurance charges on goods are to be added. If these are not ascertainable, these will be calculated @ 1.125% of FOB value of goods. If the importer has paid insurance charges on customs duty, which is a post importation factor, insurance charges relating to such customs duty are not includible.

9) **Landing charges to be added** – Cost of unloading and handling associated with delivery of imported goods in port (called landing charges) shall be added. These will be calculated @ 1% of CIF value, i.e. FOB price plus freight plus insurance.

**Exclusions from Assessable Value –**

If the following items are included in the transaction value, then such expenses or charges should be excluded –

1) Some specific charges –

If the following charges are included in the invoice, shall be excluded from assessable value.

- a) Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation of plant, machinery or equipment.
- b) Cost of transport after importation.
- c) Duties and taxes in India.

2) Payment not related to imported goods –

Other payments from buyer to seller that do not relate to imported goods are not part of the customs value.

3) Interest on Deferred Payment –

Interest on deferred payment, if shown separately in the Invoice cannot be added. However, if there is a fixed charges payable irrespective of date of payment, it will not be allowed as deduction even if such fixed charges is termed as interest.

## **Calculation of Customs Duty Payable**

The following are the different types of customs (Import) duties –

### **1. Basic Customs Duty (BCD)**

This is the duty levied under Section 12 of the Customs Act. It is levied as a percentage of value as determined under section 14 (1) of the Act. Basic duties are prescribed in the Customs Tariff Act.

### **2. Additional Duty of Customs (CVD)**

This duty is popularly known as countervailing duty. Under Section 3(1) of the customs Tariff Act, an additional duty on goods imported into the country is leviable. The rate of this duty is equal to the excise duty on like articles if produced or manufactured in India. If the rate of this duty is on as valorem basis the value for this purpose will be the total of the value of imported articles and the customs duty on it. For example if rate of excise duty in India like improved goods is 12% or 20% or 8%.

Special Note – AS per Notification issued by customs department (17.3.12) Basic Excise Duty shall be taken for the purposes of calculation of Additional Customs Duty e.g. 12% or 8% or 4% as case may be. prior this notification excise Duty + Education cess i.e. gross rate of excise duty was considered, but raw education cess shall not be added to excise rate.

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

An education cess has been imposed on imported goods. This Education cess will be customs' it means it will be calculated on aggregated amount of Basic Customs Duty + Additional Customs Duty (Counter Vailing Duty)

### **4. Special Additional Duty in Lieu of Sales Tax (Sec. 3(35))**

A special additional duty was imposed @4% to counter balance sales tax etc.

### **Note –**

1. If the goods are imported through air and air freight is more than 20% of FOB price, then maximum 20% of FOB will be taken as transportation cost.
2. For the conversion of value in foreign currency to Indian currency (i.e. Dollars to Rs.) the Exchange Rate will be taken declared by the Board of Excise & customs (CBE & C). Rate announced by Reserve Bank of India or Rate charged by the bank is immaterial.

Figure 10.1. **Typical Structure of Customs Administration Headquarters**



Notes: **Internal Audit.** Review financial, administrative, and operational systems, and monitor compliance with management policies.

**Public Relations.** Develop internal and external communications policies and procedures.

**Information Technology.** Manage computer operations, maintain hardware and software, and develop application software.

**Corporate Services.** Develop policies and procedures for human resource services (including training), administration, finance, and corporate planning.

**Technical Interpretations.** Develop policies and procedures related to valuation, tariff classification, exemptions, and origin determination, including contacts with the World Customs and World Trade Organizations and other customs administrations.

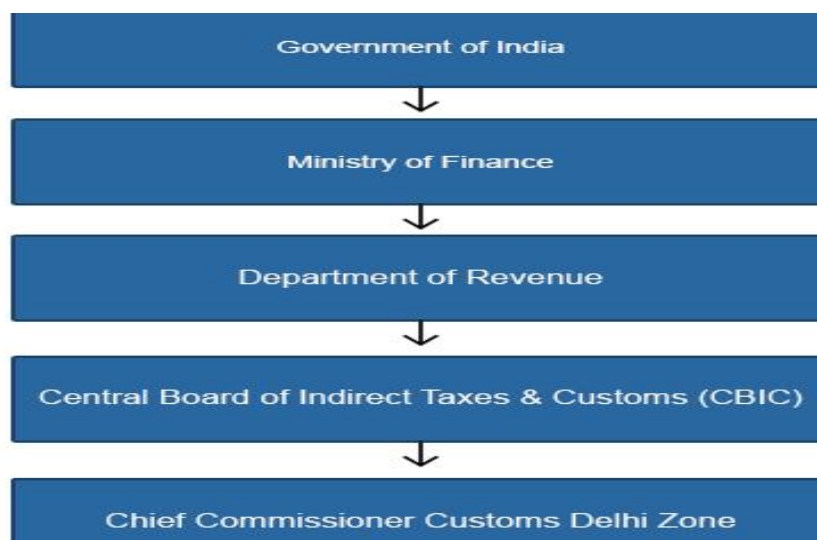
**Customs Procedures.** Develop policies and procedures related to import and export declaration processing, cargo reporting, transit, temporary admission, warehousing, and others procedures related to the processing of goods and passengers.

**Legal Services.** Draft legislation, provide legal interpretations, adjudicate appeals, and advise on policies and procedures related to penalties and prosecutions.

**Field Operations.** Manage all regional and local offices, including monitoring operations against preestablished performance criteria.

**Enforcement.** Develop policies and procedures for investigations and intelligence gathering and analysis.

## ORGANIZATION STRUCTURE OF CUSTOMS



## **Classes of officers of customs.**

There shall be the following classes of officers of customs, namely:-

Chief Commissioners of Customs;

Commissioners of Customs;

Commissioners of Customs (Appeals);

(cc) Joint Commissioners of Customs;

Deputy Commissioners of Customs;

Assistant Commissioners of Customs or Deputy Commissioner of Customs;

such other class of officers of customs as may be appointed for the purposes of this Act.

## **Appointment of officers of customs.**

The Board may appoint such persons as it thinks fit to be officers of customs.

Without prejudice to the provisions of sub-section (1), Board may authorise a Chief Commissioner of Custom or a Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs or Deputy Commissioner of Customs.

Powers of officers of customs. -

Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

Notwithstanding anything contained in this section, a Commissioner ( Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

## **Offence and Penalties**

- Offences & Penal Provisions
- Seizure
- Confiscation
- Confiscation of Conveyances/ Packages & Their Contents
- Confiscation of goods used for concealing smuggled goods
  - Confiscation of smuggled goods notwithstanding any change in form, etc.
- Confiscation of sale proceeds of smuggled goods
- Penal Provisions under the Customs Act:
- Penalties in respect of improper importation of goods:
- Penalties in respect of improper exportation of goods
- Mandatory Penalty for Short-levy or Non-levy of duty in certain cases ( Section 114 A)
- Penalty for not Accounting for Goods ( Section 116)
- Penalties for contravention, etc., not expressly mentioned

- Adjudication of confiscations and penalties
- Arrest:  
Offences & Prosecution
- Non-bailable or cognisable offences
- (ii) Bailable or non-cognisable offences
- Presumption of culpable mental state
- Prosecution:
- Persons involved in smuggling of imports and exports, in violation of prohibitions/restrictions in vogue or with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act. The offending goods can be confiscated (seizure) and heavy fines and penalties imposed. There are also provisions for arrests and prosecution to deter them from smuggling and commercial frauds-which seriously affect the economy and even society at large when it comes to sensitive goods like drugs, arms and ammunition.

### **Seizure**

An officer of Customs can seize any goods, The proper officer may also seize any document or things that may be relevant to any proceedings under the Custom Act. However,

The person from whom the goods are seized is issued a show cause notice, usually within six months. However, the Commissioner of Customs, on sufficient cause being shown, can extend the time period for issue of Show cause notice, by a further six months.

In case the seized goods are perishable or hazardous in nature or is prone to depreciate in value over time or for reasons of constraints in space, the government can notify these goods and these goods can be disposed off before the conclusion of the proceedings eg. All electronic goods, Currency, Liquors, P&P medicine, Gold, Silver etc.

### **Confiscation**

The word ‘confiscation’ implies appropriation consequential to seizure. The essence and the concept of confiscation is that after confiscation, the property of the confiscated goods vests with the Central Government.

if there is an intention to evade Customs duty or to fraudulently avail the benefits available under various export promotion schemes, such as duty drawback,

### **Confiscation of Conveyances/ Packages & Their Content**

In addition to confiscation of Goods, the conveyances, i.e., vessels, aircrafts or vehicles, or animals that are used in the smuggling activities or in connection with fraudulent availment of drawback are liable to confiscation as per specific provisions in section 115 of the Customs Act.

**Penal Provisions under the Customs Act:**

The word 'penalty' means punishment under the law, i.e., such punishment as is provided in penal laws. It also means the sum payable as a punishment for a default

- Penalties in respect of improper importation of goods: value of goods or balance duty payable (value showed and original value) or 5,000 which ever is greater
- Penalties in respect of improper exportation of goods: value of goods or tax evaded or amount of drawback or 5,000 whichever is great.
- Penalties in respect of improper importation of goods: penalty not exceeding twice the amount of duty that would have been chargeable on the goods.

**Adjudication**

As per Section 122 of the Customs Act, adjudication powers have been given to different class of officers as follows:-without limit, by a Commissioner of Customs or a Joint Commissioner of Customs;

Where the value of the goods liable to confiscation does not exceed fifty thousand rupees, by an Assistant Commissioner of Customs or Deputy Commissioner of Customs;

Where the value of the goods liable to confiscation does not exceed two thousand five hundred rupees, by a Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs.

**Arrest**

The persons involved can be arrested and prosecuted in a Court of Law. Prosecution action can also be taken for providing false documents/declarations to Customs and for obstructing Customs officers working intentionally.

Department has issued several instructions to ensure that powers of arrest by Customs officers are exercised with care at senior level and arrest should be resorted in sufficient grave nature of offences as per laid down guidelines.

**Offences & Prosecution**

- Non-bailable offences
- Bailable offences

**Non-bailable offences**

carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing the goods which are prohibited by the government to import or export shall be punishable, the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine.

**Bailable offences**

- knowing or having reason to believe that declaration, statement or document is false in any material particular, he shall be punishable with imprisonment for a term which may extend to six months, or with fine
- If any person intentionally obstructs any officer of customs in the exercise of any powers, such person shall be punishable with imprisonment for a term, which may extend to six months, or with fine.
- If any person resists or refuses to allow a radiologist to screen or to take X-ray picture of his body in accordance with an order made by a Magistrate under section 103, or resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body.
- The punishment for imprisonment may extend to a term of three years, or with fine, or with both. (Bailable offences).
- He is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine.
- The officers of Customs also cannot escape serious action including prosecution action, if they are found abusing their powers, a customs officer shall be punishable with imprisonment for a term which may extend to three years, or with fine, or
- Prosecution - Based upon the results of investigations and evidence brought on record, Commissioners of Customs apply their mind before sanctioning prosecution- after being satisfied that there are sufficient reasons justifying prosecution. Criminal complaint is thereafter filed in appropriate Court of law and followed up with a view to get expeditious orders / conviction. with both

**The duty drawback**

The duty drawback scheme has been notified for a large number of export products by the Government after an assessment of the average incidence of Customs, Central Excise duties, Service Tax and Transaction Cost suffered by the export products. Duty Drawback Scheme aims to provide the refund/ recoupment of custom and excise duties paid on inputs or raw materials and service tax paid on the input services used in the manufacture of export goods.



## **Goods Eligible for Drawback**

The following are the eligible goods for the duty drawback.

- To export – goods which you imported into India
- To export goods imported into India after having been taken for use
- To export goods manufactured/produced out of imported material
- To export goods manufactured/produced out of indigenous material
- To export goods manufactured /produced out of imported or and indigenous materials.
- 

## **Eligibility Criteria**

- The below following are the minimum criteria to claim for processing drawback claim.
- Any individual must be the legal owner of the goods at the time the goods are exported.
- You must have paid customs duty on imported goods.
- Duty drawback is available on most goods on which customs duty was paid on importation and which has been exported.

## **Documents Required**

The below following are the documents required for processing drawback claim.

- Triplicate copy of the Shipping Bill
- Copy of the Bill of entry
- Import Invoice
- Proof of payment of duty paid on the importation of goods.
- Approval from the Reserve Bank of India for re-exports of goods
- Copy of the Bill of Lading or Airway bill.
- Copy of the Bank Certified Invoices.
- Export invoice and packing list.
- Freight and Insurance certificate
- Copy of the Test report of goods
- A worksheet showing the drawback amount claimed
- DEEC Book and licence copy where applicable.
- Transshipment certificate where applicable
- Blank acknowledgement card in duplicate
- Pre-receipt for drawback amount on the reverse of Shipping Bill duly signed on the Rs1/- revenue stamp

**The procedure for claiming duty drawback on export goods** (whether AIR or Brand Rate) to be claimed at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export under Drawback. If the processing of documents has been computerised, then the exporter is not required to file any separate application for claiming duty drawback. In the case of manual export, a separate application is to be submitted for claiming duty drawback. The claim is to be accompanied by certain documents as laid down in the Drawback Rules 1995.



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SCHOOL OF MANAGEMENT STUDIES

**UNIT IV - BUSINESS TAXATION - SBAA1304**

## **UNIT IV**

GST - Background behind implementing GST - The need for GST- Business impact - Benefits of GST-SGST-CGST and IGST - Taxes covered by GST- Definitions - Scope and Coverage Scope of supply-Levy of tax - Rate Structure -Taxable Events.

### **2016 INTRODUCTION**

The introduction of Goods and Services Tax (GST) would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it would mitigate cascading or double taxation in a major way and pave the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated to be around 25% to 30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Last but not the least, this tax, because of its transparent and self-policing character, would be easier to administer.

### **Genesis of GST.**

The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2007-08. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the

proposed GST and has formed the basis for discussion between the Centre and the States so far.

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

Currently, fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on sale of goods. In case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the originating States. As for services, it is the Centre alone that is empowered to levy service tax. Since the States are not empowered to levy any tax on the sale or purchase of goods in the course of their importation into or exportation from India, the Centre levies and collects this tax as additional duties of customs,

which is in addition to the Basic Customs Duty. This additional duty of customs (commonly known as CVD and SAD) counter balances excise duties, sales tax, State VAT and other taxes levied on the like domestic product. Introduction of GST would require amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST.

The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST would require a unique institutional mechanism that would ensure that decisions about the structure, design and operation of GST are taken jointly by the two. For it to be effective, such a mechanism also needs to have Constitutional force.

### **Constitution (One Hundred and First) Amendment Act, 2016.**

To address all these and other issues, the Constitution (122nd Amendment) Bill was introduced in the 16<sup>th</sup> Lok Sabha on 19.12.2014. The Bill provides for a levy of GST on supply of all goods or services except for Alcohol for human consumption. The tax shall be levied as Dual GST separately but concurrently by the Union (central tax - CGST) and the States (including Union Territories with legislatures) (State tax - SGST) / Union territories without legislatures (Union territory tax- UTGST). The Parliament would have exclusive power to levy GST (integrated tax - IGST) on inter-State trade or commerce (including imports) in goods or services. The Central Government will have the power to levy excise duty in addition to the GST on tobacco and tobacco products. The tax on supply of five specified petroleum products namely crude, high speed diesel, petrol, ATF and natural gas would be levied from a later date on the recommendation of GST Council.

A Goods and Services Tax Council (GSTC) shall be constituted comprising the Union Finance Minister, the Minister of State (Revenue) and the State Finance Ministers to recommend on the GST rate, exemption and thresholds, taxes to be subsumed and other features. This mechanism would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as across States. One half of the total number of members of GSTC would form quorum in meetings of GSTC. Decision in GSTC would be taken by a majority of not less than three-fourth of weighted votes cast. Centre and minimum of 20 States would be required for majority because Centre would have one-third weightage of the total votes cast and all the States taken together would have two-third of weightage of the total votes cast.

The Constitution Amendment Bill was earlier passed by the Lok Sabha in May, 2015. The Bill was referred to the Select of Rajya Sabha on 12.05.2015. The Select Committee had submitted its Report on the Bill on 22.07.2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in August, 2016. Further the bill had been ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16th September, 2016.

## **Goods and Services Tax Council (GSTC)**

The GSTC has been notified with effect from 12th September, 2016. GSTC is being assisted by a Secretariat. Thirteen meetings of the GSTC have been held so far. The following decisions have been taken by the GSTC:

- (i) The threshold exemption limit would be Rs. 20 lac. For special category States enumerated in article 279A of the Constitution, threshold exemption limit has been fixed at Rs. 10 lac.
- (ii) Composition threshold shall be Rs. 50 lac. Composition scheme shall not be available to inter-State suppliers, service providers (except restaurant service) and specified category of manufacturers.
- (iii) Existing tax incentive schemes of Central or State governments may be continued by respective government by way of reimbursement through budgetary route. The schemes, in the present form, would not continue in GST.
- (iv) There would be four tax rates namely 5%, 12%, 18% and 28%. Besides, some goods and services would be under the list of exempt items. Rate for precious metals is yet to be fixed. A cess over the peak rate of 28% on certain specified luxury and sin goods would be imposed for a period of five years to compensate States for any revenue loss on account of implementation of GST. The Council has asked the Committee of officers to fit various goods and services in these four slabs keeping in view the present incidence of tax.
- (v) The five laws namely CGST Law, UTGST Law, IGST Law, SGST Law and GST Compensation Law have been recommended.
- (vi) In order to ensure single interface, all administrative control over 90% of taxpayers having turnover below Rs. 1.5 crores would vest with State tax administration and 10% with the Central tax administration. Further all administrative control over taxpayers having turnover above Rs. 1.5 crores shall be divided equally in the ratio of 50% each for the Central and State tax administration.
- (vii) Powers under the IGST Act shall also be cross-empowered on the same basis as under CGST and SGST Acts with few exceptions.
- (viii) Power to collect GST in territorial waters shall be delegated by Central Government to the States.
- (ix) Formula and mechanism for GST Compensation Cess has been finalized.
- (x) Four rules on input tax credit, composition levy, transitional provisions and valuation have been recommended. Further five Rules on registration, invoice, payments, returns and refund, finalized in September, 2016 and as amended in light of the GST bills introduced in the Parliament, have also been recommended.

## **SALIENT FEATURES OF GST**

### **1.18.1 The salient features of GST are as under:**

GST would be based on the principle of destination based consumption taxation as against the present principle of origin based taxation.

- It would be a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States [including Union territories with legislature] would be called State GST (SGST). Union territories without legislature would levy Union territory GST (UTGST).
- An Integrated GST (IGST) would be levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre so that the credit chain is not disrupted.
- Import of goods would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties.
- Import of services would be treated as inter-State supplies and would be subject to
- IGST.
- CGST, SGST /UTGST & IGST would be levied at rates to be mutually agreed
- upon by the Centre and the States under the aegis of the GSTC.
- GST would replace the following taxes currently levied and collected by the Centre:

- Central Excise Duty;
- Duties of Excise (Medicinal and Toilet Preparations);
- Additional Duties of Excise (Goods of Special Importance);
- Additional Duties of Excise (Textiles and Textile Products);
- Additional Duties of Customs (commonly known as CVD);
- Special Additional Duty of Customs (SAD);
- Service Tax;
- Cesses and surcharges insofar as they relate to supply of goods or services

**State taxes that would be subsumed within the GST are:**

- State VAT;
- Central Sales Tax;

- Purchase Tax
- Luxury Tax;
- Entry Tax (All forms);
- Entertainment Tax (except those levied by the local bodies);
- Taxes on advertisements;
- Taxes on lotteries, betting and gambling;

**State cesses and surcharges insofar as they relate to supply of goods or services.**

1. GST would apply to all goods and services except Alcohol for human consumption.
2. GST on five specified petroleum products (Crude, Petrol, Diesel, ATF & Natural gas) would be applicable from a date to be recommended by the GSTC.
3. Tobacco and tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.
4. A common threshold exemption would apply to both CGST and SGST. Taxpayers with an annual turnover of Rs. 20 lac (Rs. 10 lac for special category States as specified in article 279A of the Constitution) would be exempt from GST. A compounding option (i.e. to pay tax at a flat rate without credits) would be available to small taxpayers (including to specified category of manufacturers and service providers) having an annual turnover of up to Rs. 50 lac. The threshold exemption and compounding scheme would be optional.
5. The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as well as across States as far as possible.
6. Exports would be zero-rated.
7. Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST/UTGST paid on inputs may be used only for paying SGST/UTGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilized, except in specified circumstances of inter-State supplies for payment of IGST. The credit would be permitted to be utilized in the following manner:
8. ITC of CGST allowed for payment of CGST & IGST in that order;
9. ITC of SGST allowed for payment of SGST & IGST in that order;
10. ITC of UTGST allowed for payment of UTGST & IGST in that order;
11. ITC of IGST allowed for payment of IGST, CGST & SGST/UTGST in that order. ITC of CGST cannot be used for payment of SGST/UTGST and vice versa.

12. Accounts would be settled periodically between the Centre and the State to ensure that the credit of SGST used for payment of IGST is transferred by the originating State to the Centre. Similarly the IGST used for payment of SGST would be transferred by Centre to the Destination State. Further the SGST portion of IGST collected on B2C supplies would also be transferred by Centre to the Destination State. The transfer of funds would be carried out on the basis of information contained in the returns filed by the taxpayers.
13. Input Tax Credit (ITC) to be broad based by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.
14. Electronic filing of returns by different class of persons at different cut-off dates.
15. Various modes of payment of tax available to the taxpayer including internet banking, debit/ credit card and National Electronic Funds Transfer (NEFT) / Real Time Gross Settlement (RTGS).
16. Obligation on certain persons including government departments, local authorities and government agencies, who are recipients of supply, to deduct tax at the rate of 1% from the payment made or credited to the supplier where total value of supply, under a contract, exceeds two lakhs and fifty thousand rupees (Rs. 2.5 lac).
17. Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date.
18. System of self-assessment of the taxes payable by the registered person.
19. Audit of registered persons to be conducted in order to verify compliance with the provisions of Act.
20. Limitation period for raising demand is three (3) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in normal cases.
21. Limitation period for raising demand is five (5) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short-payment or non-payment of tax or erroneous refund and its adjudication in case of fraud, suppression or willful mis-statement.
22. Arrears of tax to be recovered using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person.



23. Officers would have restrictive powers of inspection, search, seizure and arrest.
24. Goods and Services Tax Appellate Tribunal would be constituted by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Provisional Authority. States would adopt the provisions relating to Tribunal in respective SGST Act.
25. Provision for penalties for contravention of the provision of the proposed legislation has been made.
26. Advance Ruling Authority would be constituted by States in order to enable the taxpayer to seek a binding clarity on taxation matters from the department. Centre would adopt such authority under CGST Act.
27. An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.
28. Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.

## **Benefits of GST**

### **(A) Make in India**

- (i) Will help to create a unified common national market for India, giving a boost to foreign
- (ii) Will prevent cascading of taxes as Input Tax Credit will be available across goods and services at every stage of supply;
- (iii) Harmonization of laws, procedures and rates of tax;
- (iv) It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;
- (v) Ultimately it will help in poverty eradication by generating more employment and more financial resources;
- (vi) More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports;
- (vii) Improve the overall investment climate in the country which will naturally benefit the development in the states;
- (viii) Uniform SGST and IGST rates will reduce the incentive for evasion by eliminating rate arbitrage between neighboring States and that between intra and inter-state sales;
- (ix) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption, which in turn means more production

thereby helping in the growth of the industries . This will create India as a  
♦Manufacturing

**(B) Ease of Doing Business**

- (i) Simpler tax regime with fewer exemptions;
- (ii) Reductions in the multiplicity of taxes that are at present governing our indirect tax system leading to simplification and uniformity;
- (iii) Reduction in compliance costs - No multiple record keeping for a variety of taxes - so lesser investment of resources and manpower in maintaining records;
- (iv) Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc.,
- (v) All interaction to be through the common GSTN portal- so less public interface between the taxpayer and the tax administration;
- (vi) Will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions;
- (vii) Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system;
- (viii) Timelines to be provided for important activities like obtaining registration, refunds, etc.,
- (ix) Electronic matching of input tax credits all-across India thus making the process more transparent and accountable.

**(C) Benefit to Consumers:**

- (i) Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier;
- (ii) It is expected that a relatively large segment of small retailers will be either exempted from tax or will suffer very low tax rates under a compounding scheme- purchases from such entities will cost less for the consumers;
- (iii) Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption.

### **Appointment of officers under the Central Goods and Services Tax Act**

The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.

PROVIDED that the persons appointed as officers under the State Goods and Services Tax Act of a State shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.

### **Powers of officers**

#### **Central Goods and Services Tax Act**

- (1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate its powers to any other officer subordinate to him.
- (4) Notwithstanding anything contained in this section, a First Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in section 98 of this Act.

#### **State Goods and Services Tax Act**

- (1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State Goods and Services Tax who is subordinate to him.

- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

## **Levy of, and Exemption from, Tax**

### **Levy and Collection of Central/State Goods and Services Tax**

- (1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services on the value determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding fourteen percent, on the recommendation of the Council and collected in such manner as may be prescribed.
- (2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act. (3) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods and/or services.
- (4) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services:

**PROVIDED** that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

**PROVIDED FURTHER** that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

### **Composition Levy**

- (1) Notwithstanding anything to the contrary contained in the Act but subject to subsection (3) of section 8, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than two and a half percent in case of a manufacturer and one percent in any other case, of the turnover in a State during the year:

**PROVIDED** that no such permission shall be granted to a taxable person-

- a. who is engaged in the supply of services; or
- b. who makes any supply of goods which are not leviable to tax under this Act; or
- c. who makes any inter-State outward supplies of goods; or
- d. who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56; or
- e. who is a manufacturer of such goods as may be notified on the recommendation of the Council:

**PROVIDED FURTHER** that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

(2) The permission granted to a registered taxable person under sub-section (1) shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds fifty lakh rupees.

(3) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(4) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.

### **Taxable person**

(1) Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act.

(2) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(3) An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.

### **Power to grant exemption from tax**

a. If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon with effect from the date of issue of notification or any date subsequent thereto as may be specified in the said notification.

**Explanation-** Where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

b. If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

c. The Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

d. Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall (a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein; and (b) be made available on the official website of the department of the Central or a State Government.



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SCHOOL OF MANAGEMENT STUDIES

**UNIT V - BUSINESS TAXATION - SBAA1304**

## UNIT V

GST - ASSESSMENT PROCEEDINGS - Return - Refunds - Input Tax Credit - Reverse charge Mechanism, Transitional Provisions composition under GST- Administrative structure of GST - Officers as per CGST Act - Officers as per SGST Act - Jurisdiction - Appointment Powers.

### Assessment under GST

Goods and Service Tax or GST will consolidate all indirect taxes under one umbrella and help Indian businesses become globally competitive.

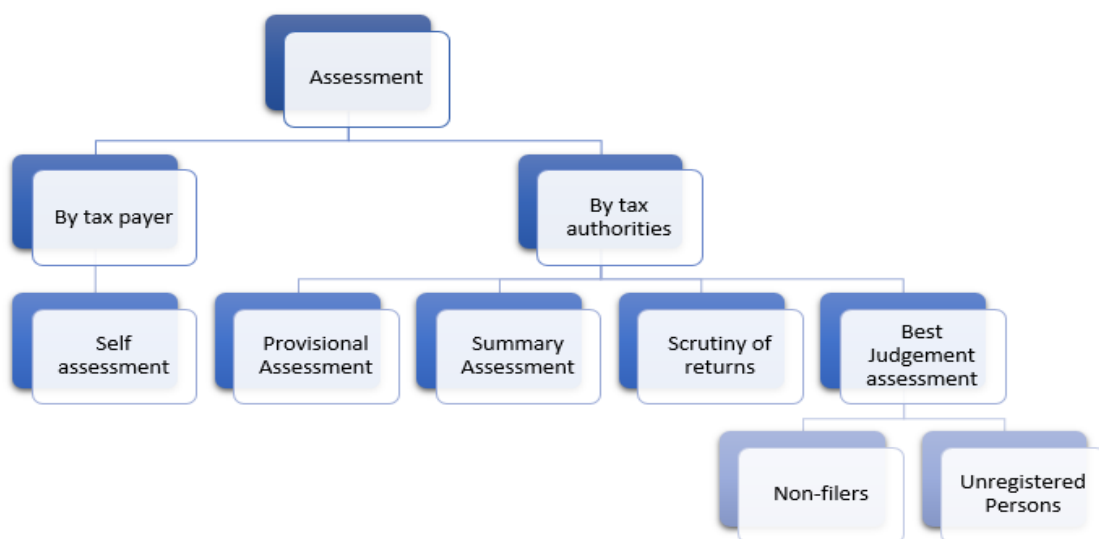
To facilitate easy calculation and payment of taxes, GST has provisions for assessments such as self-assessment.

Assessment means determination of tax liability under GST law. Below are the various types of assessment under GST.

### Types of Assessment under GST

- 1) Self-assessment
- 2) Provisional assessment
- 3) Scrutiny assessment
- 4) Best judgment assessment
  - Assessment of non-filers of returns
  - Assessment of unregistered persons
- 5) Summary assessment

Only self-assessment is done by the taxpayer himself. All the other assessments are by tax authorities





### **1. Self-Assessmentassessment under GST**

Every registered taxable person shall himself assess the taxes payable and furnish a return for each tax period. This means GST continues to promote self-assessment just like the Excise, VAT and Service Tax under current tax regime.

### **3. Provisional Assessment**

An assessee can request the officer for provisional assessment if he is unable to determine value or rate.

Requests for provisional assessments will be given in writing. The proper officer can allow paying tax on provisional basis at a rate or on a value specified by him. Order will be passed within 90 days from date of request. The taxable person has to issue a bond with a security promising to pay the difference between provisionally assessed tax and final assessed tax. Provisional assessments will be followed by final assessments. The proper officer can ask for information before final assessment.

#### **Time Limit for Final Assessments**

The final assessment will be done within 6 months of the provisional assessment. This can be extended for 6 months by the Joint/Additional Commissioner. However, the Commissioner can extend it for further 4 years as he seems fit.

#### **Interest on Additional Tax Payable and Refunds**

The tax payer will have to pay interest on any tax payable under provisional assessment which was not paid within the due date. Interest period will be calculated from the day when tax was first due on the goods/services (and not the date of provisional assessment) till the actual payment date, irrespective of payment being before or after final assessment. Rate of interest will be maximum 18%. If the tax as per final assessment is less than provisional assessment then the taxable person will get a refund. He will also get interest on refund.

Rate of interest will be maximum 6%.

#### **Scrutiny of Returns**

The proper officer can scrutinize the return to verify its correctness. It is a non-cassessment under gstompulsory pre-adjudication process. In simple words, it is not mandatory for the officer to scrutinize return. Scrutiny of returns is not a legal or judicial proceeding,i.e., no order can be passed. The officer will ask for explanations on discrepancies noticed.

#### **When Explanation is Satisfactory**

If the officer finds the explanation satisfactory then the taxable person will be informed and no further action will be taken.

#### **When Explanation is not Satisfactory**

The proper officer will take action-

If the taxable person does not give a satisfactory explanation within 30 days Or

He does not rectify the discrepancies within a reasonable time (not yet prescribed)

**The officer may-**

- Conduct audit of the tax payer u/s 65
- Start Special Audit procedure u/s 66
- Inspect and search the places of business of the tax payer
- Start Demand and Recovery provisions
- Similar provisions regarding scrutiny are existing in current excise, VAT and service tax laws.

**Scrutiny Assessment**

A GST officer can scrutinize the return to verify its correctness. The officer will ask for explanations on any discrepancies noticed in the returns.

**3. Best Judgement Assessment****1. Assessment of non-filers of returns**

If a registered taxable person does not file his return even after getting a notice, the proper officer will assess the tax liability to the best of his judgment using the available relevant material.

**2. Assessment of unregistered persons**

This assessment is done when a taxable person fails to obtain registration even though he is liable to do so.

The officer will assess the tax liability of such persons to the best of his judgement. The taxable person will receive a show cause notice and an opportunity of being heard.

**Demand and Recovery**

Demand and recovery provisions are applicable when a registered dealer has paid tax incorrectly or not paid tax at all. It is also applicable when an incorrect refund or ITC is claimed by the dealer.

The proper officer will issue a show cause notice along with a demand for payment of tax and penalty in case of fraud.

**Demands can arise in the following cases:**

1. Unpaid or short paid tax or wrong refund
2. Tax collected but not deposited with the Central or a State Government
3. CGST/SGST paid when IGST was payable and vice versa.

If demand is not paid, the GST authority starts recovery proceedings

**Advance Ruling**

Advance Ruling under GST means seeking clarifications from GST authority on certain tax matters before starting the proposed activity. This helps to reduce costly litigation.

An advance ruling is a written decision given by the tax authority to an applicant on queries related to the supply of goods/services.

Thus, most of the assessment provisions under GST are similar to the current indirect tax system. Please [click here](#) to read about best judgement assessment, scrutiny of returns, summary assessment

## **5.Summary Assessment**

Summary Assessment is done when the assessing officer comes across sufficient grounds to believe any delay in showing a tax liability can harm the interest of the revenue. To protect the interest of the revenue, he can pass the summary assessment with the prior permission of the additional/joint commissioner.

Who should file GST Returns?

In the GST regime, any regular business has to file two monthly returns and one (TWO COPY) annual return. This amounts to 26 returns in a year.

### **GSTR-1 (GOODS AND SERVICE TAX RETURN-1)**

Details of outward supplies of taxable goods and/or services affected.

Monthly submission - 11th\* of the next month with effect from October 2018 until September 2020. \*Previously, the due date was 10th of the next month.

### **GSTR-2- Suspended from September 2017 onwards**

Details of inward supplies of taxable goods and/or services effected claiming the input tax credit.

Monthly submission- 15th of the next month.

### **GSTR-3-Suspended from September 2017 onwards**

Monthly return on the basis of finalisation of details of outward supplies and inward supplies along with the payment of tax.

Monthly –submission- 20th of the next month.

**GSTR-3B** Simple return in which summary of outward supplies along with input tax credit is declared and payment of tax is affected by the taxpayer.

Monthly- Staggered^ from the month of January 2020 onwards\*

\*Previously 20<sup>th</sup> of the next month for all taxpayers.

**GSTR-4-** Return for a taxpayer registered under the composition scheme under section 10 of the CGST Act (supplier of goods) and CGST (Rate) notification no. 02/2019 dated 7th March 2020 (Supplier of services). –Annually-30th of the month succeeding a financial year.

**GSTR-5-**Return for a non-resident foreign taxable person.-Monthly

20th of the next month.

**GSTR-6-**Return for an input service distributor to distribute the eligible input tax credit to its branches.-Monthly-13th of the next month.

**GSTR-7**-Return for government authorities deducting tax at source (TDS).-Monthly  
10th of the next month.

**GSTR-8**-Details of supplies effected through e-commerce operators and the amount of tax collected at source by them.-Monthly-10th of the next month.

**GSTR-9**-Annual return for a normal taxpayer.-Annually- 31<sup>st</sup> December of next financial year.

**GSTR-9A**-Annual return to be filed by a taxpayer registered under the composition levy anytime during the year.-Annually-31st December of next financial year.

### **Late Fees for not Filing Return on Time**

If GST Returns are not filed within time, you will be liable to pay interest and a late fee.

Interest is 18% per annum. It has to be calculated by the taxpayer on the amount of outstanding tax to be paid. The time period will be from the next day of filing to the date of payment.

Late fees is Rs. 100 per day per Act. So it is 100 under CGST & 100 under SGST. Total will be Rs. 200/day. Maximum is Rs. 5,000. There is no late fee on IGST.

### **There are Various Situations for Refund under GST like:**

- Excess amount payment of tax accumulated due to mistake or misinterpretation
- Export (also deemed export) of goods/services within the claim of rebate or Refund of collected input credit of duty/tax when goods/services are exported
- Finalization of provisional assessment
- Refund of Pre-deposit for filing appeal assimilating refund coming in pursuance of an appellate authority's order
- Payment of duty/tax during the investigation but no/ less liability arises in the event of finalization of investigation/adjudication
- Refund of tax paid on purchases done by Embassies or UN bodies
- Credit collection due to output being tax exempt or nil-rated
- Credit collection due to inverted duty structure i.e. due to tax rate differential between output and inputs
- Year-end or volume based incentives provided by the supplier through credit notes
- Tax Refund for Foreign Tourists

### **There is an Official Refund Process under the GST:**

- An Application form to claim a refund can be filed through the GSTN portal
- An acknowledgement number will be given to the applicant by the means of SMS or email when the application is filed electronically
- The changes will be made to return and cash ledger and decrease the “carry-forward input tax credit” automatically
- Refund application and relevant documents presented must be scrutinized and adhered accordingly within a period of 30 days of filing the refund application
- The issue of “unjust enrichment” will be analyzed for reach refund application. In the case of non-qualification, the refund would be transferred to CWF (consumer welfare fund)
- If a refund amount stated crosses the predetermined amount of refund then the file will through the pre-audit process for sanctioning the refund
- Refund will be credited electronically to the account of an applicant via ECS, RTGS or NEFT
- NEFT – National Electronic Funds Transfer · RTGS – Real Time Gross Settlement · ECS – Electronic Clearing Services
- The application for refund can be made after every quarter
- An amount less than 1000 is not eligible for the refund.

### **Delay in Refund and its Process**

Subramanian committee suggested along with the defined GST laws and regulations, that the refund application must be entertained within the period of 90 days and must be processed in the same time period. If in any case the application could not be processed within the given time framework, there is a 6 percent of interest recommended along with the refund amount.

It was also mentioned by the Nirmala Sitharaman (finance minister) who cleared that the refund process will be done within the period of 7 days and if the process gets late for more than 2 weeks then the refund will be provided along with the interest.

It is speculated that the process of refund application will be fast and smooth due to its digital dependability. Also, the data will be uploaded electronically which depicts that the verification and the detailed analysis of the refund application will be quick.

### **What is Reverse Charge mechanism?**

Normally, the supplier of goods or services pays the tax on supply. In the case of Reverse Charge, the receiver becomes liable to pay the tax, i.e., the chargeability gets reversed.

## **When is Reverse Charge Applicable?**

### **A. Supply from an Unregistered dealer to a Registered dealer**

If a vendor who is not registered under GST, supplies goods to a person who is registered under GST, then Reverse Charge would apply. This means that the GST will have to be paid directly by the receiver to the Government instead of the supplier.

The registered dealer who has to pay GST under reverse charge has to do self-invoicing for the purchases made.

For Inter-state purchases the buyer has to pay IGST. For Intra-state purchased CGST and SGST has to be paid under RCM by the purchaser.

### **B. Services through an e-commerce operator**

If an e-commerce operator supplies services then reverse charge will be applicable to the e-commerce operator. He will be liable to pay GST.

For example, UrbanClap provides services of plumbers, electricians, teachers, beauticians etc. UrbanClap is liable to pay GST and collect it from the customers instead of the registered service providers.

If the e-commerce operator does not have a physical presence in the taxable territory, then a person representing such electronic commerce operator for any purpose will be liable to pay tax. If there is no representative, the operator will appoint a representative who will be held liable to pay GST.

### **C. Supply of certain goods and services specified by CBEC**

CBEC has issued a list of goods and a list of services on which reverse charge is applicable.

## **Composition of tax under GST**

Composition Scheme is a simple and easy scheme under GST for taxpayers. Small taxpayers can get rid of tedious GST formalities and pay GST at a fixed rate of turnover. This scheme can be opted by any taxpayer whose turnover is less than Rs. 1.5 crore\*.

A taxpayer whose turnover is below Rs 1.5 crore\* can opt for Composition Scheme. In case of North-Eastern states and Himachal Pradesh, the limit is now Rs 75\* lakh.

As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher. This amendment will be applicable from the 1st of Feb, 2019. Further, GST Council in its 32nd meeting proposed an increase to this limit for service providers on 10th Jan 2019\*.

## **Composition of tax will not be applicable to the following persons**

- Manufacturer of ice cream, pan masala, or tobacco
- A person making inter-state supplies
- A casual taxable person or a non-resident taxable person
- Businesses which supply goods through an e-commerce operator

### **How should GST payment be made by a composition dealer?**

GST Payment has to be made out of pocket for the supplies made.

The GST payment to be made by a composition dealer comprises of the following:

GST on supplies made.

Tax on reverse charge

Tax on purchase from an unregistered dealer\*

\*Only on the specified categories of goods and services and well as the notified class of registered persons with effect from 1st Feb 2019 but is yet to be notified. Hence, not applicable until then.

### **What are the returns to be filed by a composition dealer?**

A dealer is required to pay tax in a quarterly statement CMP-08 by 18th of the month after the end of the quarter. Also, a return in form GSTR-4 has to be filed annually by 30th April of next financial year from FY 2019-20 onwards. GSTR-9A is an annual return to be filed by 31st December of the next financial year. It was waived off for FY 2017-18 and FY 2019-20. Also, note that a dealer registered under composition scheme is not required to maintain detailed records.

### **Administrating structure and officers in CGST & SGST**

There are 9 classes of officers as per CGST Act, with 17 officers and a general class, whereas SGST Act contains 6 classes of officers, with a general class.

As per Model GST Law , Board i.e the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 has the power to appoint officers of CGST (Note: State laws may have similar provision)

The Commissioner of SGST under SGST law will have jurisdiction over the whole of the appropriate State. All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

The powers of the First Appellate Authority have been restricted to those specified under Section 79 of the CGST law. (Note: State laws may have similar provision)

### **Classes of officers under the Central Goods and Services Tax Act**

**There shall be the following classes of officers under the Central Goods and Services Tax Act, namely;**

- (a) Principal Chief Commissioners of CGST or Principal Directors General of CGST,
- (b) Chief Commissioners of CGST or Directors General of CGST,
- (c) Principal Commissioners of CGST or Principal Additional Directors General of CGST,
- (d) Commissioners of CGST or Additional Directors General of CGST,

- (e) First Appellate Authority,
- (f) Additional Commissioners of CGST or Additional Directors of CGST,
- (g) Joint Commissioners of CGST or Joint Directors of CGST,
- (h) Deputy Commissioners of CGST or Deputy Directors of CGST,
- (i) Assistant Commissioners of CGST or Assistant Directors of CGST, and
- (j) such other class of officers as may be appointed for the purposes of this Act.

## **State Goods and Services Tax Act (SGST)**

### **Classes of officers under the State Goods and Services Tax Act**

There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely.

- a) Commissioner of SGST,
- b) Special Commissioners of SGST,
- c) Additional Commissioners of SGST,
- d) Joint Commissioners of SGST,
- e) Deputy Commissioners of SGST,
- f) Assistant Commissioners of SGST, and
- g) such other class of officers and persons as may be appointed for the purposes of this Act.

### **Jurisdiction**

The Commissioner shall have jurisdiction over the whole of the State of All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

### **Appointment of officers under the Central Goods and Services Tax Act [ section 5 of Model GST Law]**

- (1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.
- (2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.



**Powers of officers under the Central Goods and Services Tax Act [ section 6 of Model GST Law]**

- (1) Subject to such conditions and limitations as the Board may impose, an officer of the Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services Tax who is subordinate to him.
- (3) The Board/Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate its powers to any other officer subordinate to him.
- (4) Notwithstanding anything contained in this section, a First Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in section 79 of this Act.

**Appeals to First Appellate Authority [ Section 79 of CGST Law ]**

- (1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority.
- (2) The Commissioner of GST may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any GST Officer subordinate to him to apply to the First Appellate Authority for the determination of such points arising out of the said decision or order as may be specified by the Commissioner of GST in his order.
- (3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the First Appellate Authority, such application shall be dealt with by the First Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.
- (4) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the person preferring the appeal:

Provided that the First Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.

- (5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.
- (6) No appeal shall be filed under sub-section (1) unless the appellant has deposited a sum equal to ten percent of the amount in dispute arising from the said order, in relation to which the appeal has been filed

Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –

- i. amount determined under section 46 or 47 or 48 or 51;
- ii. amount payable under rule——of the GST Credit Rules 201...; and
- iii. amount of fee levied or penalty imposed.

(7) The First Appellate Authority shall give an opportunity to the appellant of being heard, if he so desires.

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

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

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

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

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

Provided further that where the First Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 51.

(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(12) The First Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

- (13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.
- (14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.
- (15) Every order passed under this section shall, subject to the provisions of section 83, 87 or 88, be final.