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DEPARTMENT OF COMMERCE (ACCOUNTING & FINANCE)

SUBJECT NAME: INDIRECT TAX

SEMESTER: IV

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INDIRECT TAXATION

understand the concepts of Indirect taxation, types and Assessment procedures.

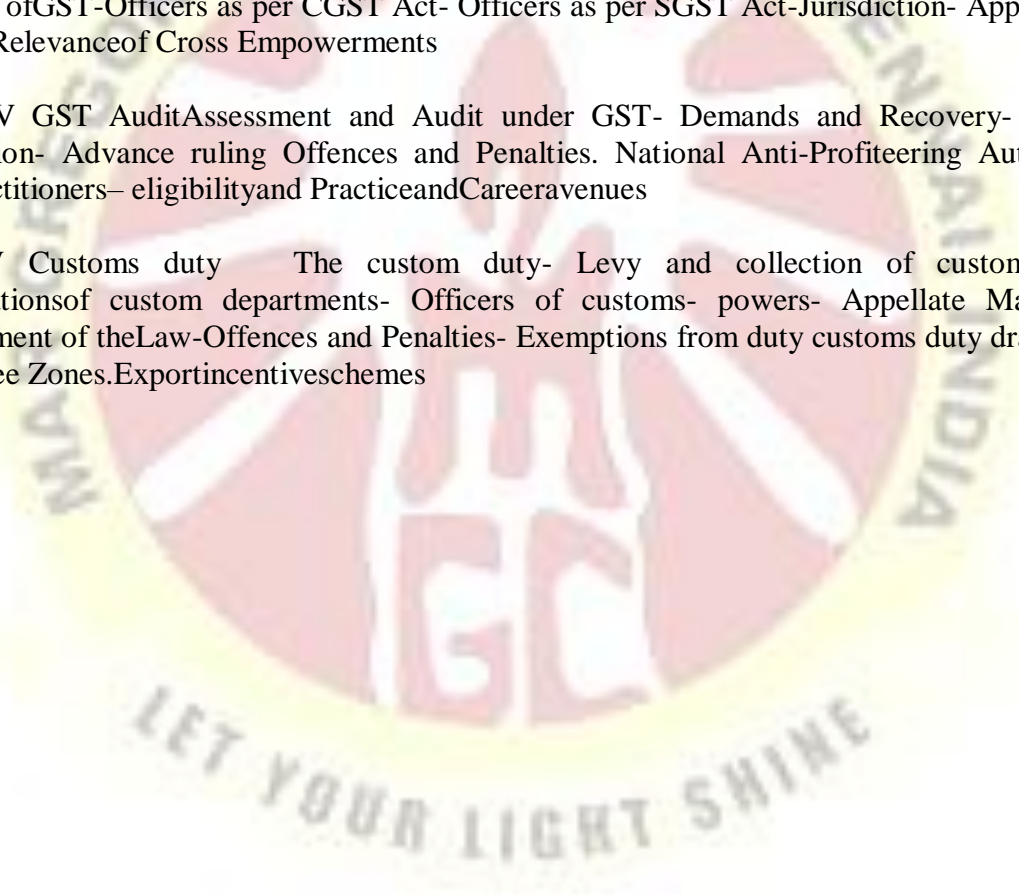
UNIT – I Introduction History and Objectives of Taxation – Tax System in India- Direct & Indirect Taxes – Meaning and Types – Powers of Union and State to levy taxes. Constitutional Amendments leading to introduction of GST and their importance

UNIT – II GST – Overview & Concepts Background behind implementing GST- The need for GST- objectives of 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. Types of Supplies – Composite and Mixed Supplies – Composition Levy.

UNIT – II GST Taxation/ 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. Relevance of Cross Empowerments

UNIT-IV GST Audit Assessment and Audit under GST- Demands and Recovery- Appeals and revision- Advance ruling Offences and Penalties. National Anti-Profitteering Authority – GST Practitioners – eligibility and Practice and Career avenues

UNIT-V Customs duty The custom duty- Levy and collection of customs duty- Organisation of custom departments- Officers of customs- powers- Appellate Machinery- Infringement of the Law- Offences and Penalties- Exemptions from duty customs duty draw back- duties free Zones. Export incentives schemes



UNIT I

TAX.

“A compulsory contribution from the person to the state to defray the expenses incurred in the common interest of all without any reference to the special benefits conferred.”

Definition of Tax: “Taxes are compulsory contribution of wealth levied upon persons, natural or corporate, to defray the expenses incurred in conferring a common benefit upon the residents of the state”.

Canon of taxation:

Taxation is one of the sensitive issues for the govt. it requires a balanced strategy to be adopted so as to avoid its negative effects on the socio-economic activities. Taxation, if brings revenue to the govt. on one hand, it may decrease investment on the other hand.

Adam Smith's canon of taxation:

1. Canon of equality of ability:

According to Adam Smith “the subjects of every state ought to contribute towards the support of the government as really as possible, in proportion to their respective abilities, i.e. in proportion to the revenue which they respectively enjoy under the protection of the state”.

2. Canon of certainty:

According to Adam Smith “the tax which each individual has to pay ought to be certain and not arbitrary. The time of payment, the amount to be paid, ought to be clear and plain to the contributor and to every other person”. The individual should know exactly, what, when and how he is to pay the tax, otherwise, it causes unnecessary suffering. Similarly, the state should also know how much it would receive from tax.

3. Canon of convenience:

Adam Smith wrote “every tax ought to be levied at the time or in the manner in which it is most convenient to pay”. In this canon, the two elements, time and manner of payment, must be convenient for the taxpayers so that he is able to pay his taxes in due time.

4. Canon of economy:

Adam Smith said “every tax ought to be so contrived as both, to take out and 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”. This canon implies that the expenses of collection of taxes should not be excessive. They should be kept as little as possible, consistent with the administrative efficiency.

Objectives of Taxation

- a. **Raising revenue:** The basic and primary objective of taxation is raising revenue. Enormous amount needed by modern governments for National defence, creation of infrastructure and social upliftment schemes
- b. **Regulatory consumption:** State can discourage consumption of harmful and undesirable goods by levying prohibitive rates of tax.
- c. **Regulatory production:** Production may be encouraged by exempting new industries from tax for some time, reducing tax on capital goods, increasing tax on imported goods to encourage local production, etc.
- d. **Regulating effects of inflation, depression etc:** Raising tax rates can reduce consumption of goods and the demand in general
- e. **Economic development:** Economic development is measured in terms of Gross National Product i.e. the output achieved in all the major sections of the economy i.e. Agriculture, Industry and Services
- f. **Capital formation:** Indian household savings rate is around 26%, one of the highest in the world. Savings can be channeled into Investment
- g. **Increasing employment opportunities:** Small and medium enterprise usually have maximum potential for employment, industrial estates, special economic zones, export oriented parks, etc.
- h. **Reducing Inequalities in economic disparities:** Income levels of individuals vary wildly in India. It is claimed that rich are becoming richer and the poor are becoming poorer every year by year
- i. **Reduction in regional imbalances:** Economic development is measured in terms of Gross National Product i.e. the output achieved in all the major sections of the economy i.e. Agriculture, Industry and Services.

TAXATION SYSTEM:

The taxation system in India traces its roots to ancient texts like Manusmriti and Arthashastra. As prescribed by these texts, artisans, farmers, and traders hundreds of years ago would pay taxes in the form of silver, gold and agricultural produce. Taking clues from these texts and with some added tweaks, the basis for the modern tax system in India was laid by the British when Sir James Wilson introduced income tax in 1860. At the time of independence, the newly-formed Indian Government cemented the system to catalyze the economic progress of the country and also to eradicate income and wealth disparity.

Since then, the tax structure in India has undergone a revival with abolitions and amendments as well as additions of new reforms. Let's have a look at the current aspects of the taxation system in India.

Definition and Main Highlights of the Tax Structure in India

Tax can be defined in very simple words as the government's revenue or source of income. The money collected under the taxation system is put into use for the country's development through several projects and schemes.

- The Indian Constitution authorizes the Central and the State Government to levy taxes.
- The Parliament passes laws to approve taxes collected by the Central Government. In the case of the State Governments, the State Legislature holds this power.
- Also, the local governing and civic bodies too have the right to levy certain taxes.

TYPES OF TAXES

There are two ways to classify different types of taxes in India:

Taxes Levied by the Central Government and State Governments

1. By the Central Government: These include income taxes, CGST, (the exception being the tax on agricultural income), customs duties, corporation taxes, excise duties, estate duty and more
2. By the State Government: Taxes on agrarian incomes, SCST, electricity consumption and sales taxes, land revenues, tolls and more
3. By the Local Civic Bodies: Municipal corporations and other local governing bodies collect taxes like property taxes

DIRECT AND INDIRECT TAXES

Direct Taxes: The individuals directly pay these taxes to the respective governments.

The most notable examples include income tax, capital gains tax, perquisite tax, corporate tax, and securities transaction tax.

Indirect Taxes: These taxes are not directly paid to the governments but are collected by the intermediaries who sell or arrange products and services. GST, customs duty, value-added tax, and excise duty are some of the top examples.

FEATURES OF DIRECT TAXES.

1. **Directly paid** by the person on whom it is legally imposed
2. **Impact** is on the same persons who pay the tax
3. **Tax burden** cannot be shifted to other persons and the consumer directly pays the tax to the local Government, State government, Center Government.
4. **Examples:** Income tax, house property tax, land and estate tax or service tax
5. It is a **progressive Rate system**
6. There is a **Certainty of Revenue**
7. It is **economic** as the tax is directly paid
8. It is a **revenue** to Central Govt.

FEATURES OF INDIRECT TAXES.

1. **Indirectly paid** by the other persons
2. **Impact** is on many persons
3. **Tax burden** can shift to the other ----- persons (other than the payee).
5. It is a **Fixed Rate system**
6. Its **Main source** is to Govt.
7. It is **flexible**. In case of Natural calamities, Tax rate can be increased

Difference between Direct Tax from Indirect Taxes

No.	Base	Direct Tax	Indirect Tax
1	Payment	Directly paid by the persons on whom it is legally imposed	Indirectly paid by the other persons
2	Impact	Impact is on the same persons who pay the tax	Impact is on many persons.
3	Shiftability	Tax burden cannot be shifted to other persons Examples: Income tax, house property tax,	Tax burden can shift to the other persons Examples: GST, Customs duty
4	Tax Rate	It is progressive Rate	Fixed Rate
5	Certainty	There is a Certainty of Revenue	There is no certainty
6	Flexibility	It is rigid in nature	It is flexible . In case of Natural calamities, Tax rate can be increased
7	Role in Economy	It has no role in Economic fluctuations	It is used to control the Economic fluctuations
8	Economy	It is economic as it is directly paid	It is very expensive
9	Tax Evasion	Tax evasion is possible	Tax evasion is not possible

10	Convenience	It is inconvenient to the taxpayers	It is convenient to the taxpayers
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MERITS AND DEMERITS OF DIRECT TAXES

MERITS:

1. Equity:

Progressive direct taxation can reduce income inequalities and bring about adequate social & economic justice.

2. Certainty:

As far as direct taxes are concerned, the taxpayer is certain as to how much he is expected to pay, as the tax rates are decided in advance.

3. Relatively Elastic:

The direct taxes are relatively elastic. With an increase in income and wealth of individuals and companies, they yield from direct taxes will also increase.

4. Creates Public Consciousness:

They have educative value. In the case of direct taxes, the taxpayers are made to feel directly the burden of taxes and hence take keen interest in how public funds are spent.

5. Economical:

Direct taxes are generally economical to collect. For instance, in the case of personal income tax, the tax can be deducted at source from the income or salaries of the individuals.

6. Anti-inflationary:

The direct taxes can help to control inflation. During inflationary periods, the government may increase the tax rate. With an increase in tax rate, the consumption demand may decline, which in turn may reduce inflation.

DEMERITS:

1. Unpopular:

Direct Taxes are generally not shifted and are paid in lump sum for the whole year. Hence it is unpopular.

2. Possibility of Evasion:

It can be evaded through fraudulent practices.

3. Inconvenience:

Tax payers have to submit statement of Income along with the source of income, thus revealing their private affairs. Moreover, payment of lump sum amount at a time may also be inconvenient.

4. Arbitrariness:

Tax rates are generally arbitrary, because there are no scientific principles to determine them.

5. Complexity:

Direct Tax laws are usually complex with a lot of exemptions, procedures and provisions which are not understandable by common man.

6. Possibility of injustice:

It is difficult to assess the income of all classes accurately. So, direct tax may not fall with equal weight on all classes. It is making injustice to different sections of citizens.

MERITS AND DEMERITS OF INDIRECT TAXES

ADVANTAGES

1. **Psychological advantage** to pay tax
2. **Easier** to collect
3. **Less** tax evasion
4. **Lower collection cost**
5. **Control over wasteful expenditure**
6. **Channelise industrial growth**
7. **High revenue** [71% of tax revenue]

DISADVANTAGES

- **Taxes uniform** whether purchased by rich or poor
- **Reduces demand** of goods
- **Increases project cost**
- **Smuggling**
- **Inflationary**

SOURCES OF REVENUE FOR UNION GOVERNMENT AND POWERS

The sources of Revenue of the Union Government are as follows:

- Income (except tax on agricultural income), Corporation Tax & Service Tax
- Currency, Coinage, legal tender, Foreign Exchange
- Custom duties (except export duties)
- Excise on tobacco and other goods.
- Estate Duty (except on agricultural goods) (Kindly note that it is mentioned in the constitution but Estate duty was abolished in India in 1985 by Rajiv Gandhi Government)
- Fees related to any matter in Union list except Court Fee
- Foreign Loans
- Lotteries by Union as well as State Governments.
- Post Office Savings bank, Posts, Telegraphs, Telephones, Wireless Broadcasting, other forms of communication
- Property of the Union
- Public Debt of the Union
- Railways
- Stamp duty on negotiable instruments such as Bills of Exchange, Cheques, Promissory notes etc.

- Reserve Bank of India
- Capital gain taxes, Taxes on capital value of assets except farmland
- Taxes other than stamp duties on transactions in stock exchanges and future markets
- Taxes on the sale and purchase of newspapers and advertisements published therein.
- Terminal Taxes on Goods and passengers, carried by Railways and sea or air.

(i) SOURCES OF REVENUE FOR STATE GOVERNMENTS

The following are sources of revenue for State Governments.

- Taxes and duties related to agricultural lands
- Capitation Taxes
- Excise on liquors, opium etc.
- Fees on matters related to state list except court fee
- Land Revenue, Land and buildings related taxes
- Rates of Stamp duties in respect of documents other than those specified in the Union List
- Taxes on mineral rights subject to limitations imposed by the parliament related to mineral development
- Taxes on the consumption or sale of electricity
- Sale tax on goods (other than newspapers) for consumption and use within state.
- Taxes on advertisements except newspaper ads.
- Taxes on goods and passengers carried by road or on inland waterways
- Taxes on vehicles, animals and boats, professions, trades, callings, employments, luxuries, including the taxes on entertainments, amusements, betting and gambling.
- Toll Taxes.

(ii) Certain Taxes levied as Concurrent Powers

Please note that the Union and the State Governments have the concurrent powers to fix the principles on which taxes on motor vehicles shall be levied and to impose stamp duties on non-judicial stamps. The property of the Union is exempted from State Taxation; and the property of the states is exempted from the Union Taxation. But the parliament of India can pass legislation for taxation by Union Government of any business activities / trade of the state which are not the ordinary functions of the state.

1) Residuary Power of Taxation

Union Government has exclusive power to impose taxes which are not specifically mentioned in the state or concurrent lists. Some taxes imposed using these powers include Gift tax, wealth tax and expenditure tax.

(iii) *State's power Regarding Sales Tax*

The sales tax on consumer goods such as toothpastes, soaps, daily use items, electronic items etc. are imposed, collected and appropriated by state governments.

However, newspapers and newspaper ads are exception to this. Further, there are four restrictions to this power of the state. These include:

- A state cannot impose a sales tax if a good is produced there but is sold outside the state.
- A state cannot impose a sales tax if the sale and purchase is taking place for items due for export.
- A state cannot impose a tax on interstate trade and commerce of goods
- A state cannot impose a tax on a good that has been declared of special importance by parliament.

(iv) *Other facts about levying and appropriation of Taxes*

- Sales tax is imposed, levied, collected, appropriated by states as mentioned above
- Income tax, Corporation Tax, Service tax are levied and collected by Centre but are appropriated by both states and centres as per distribution formula recommended by Finance Commission. This formula is NOT binding upon the parliament.
- However, states have no share in surcharges, cesses on these taxes.
- Stamp duties on negotiable instruments and excised duties on medicinal and toilet preparations that have use of alcohol and narcotics are levied by Centre. But these taxes don't make a part of consolidated fund of India. They are assigned to respective states only, which appropriate these taxes.

CONSTITUTIONAL AMENDMENTS LEADING TO INTRODUCTION OF GST AND THEIR IMPORTANCE

The Constitution contains the Union List and the State List within which the power to levy separate taxes is given to the Centre and States respectively. GST was to be levied in such a way that both the Centre and the States received the power to levy and collect it. Further, the legislation had to remain consistent across the Centre and the various State/Union Territory Legislatures. To provide for this, an amendment in the Constitution was necessary.

Constitution (101st Amendment) Act, 2016

In order to suitably implement the GST legislation, this Act resulted in the insertion, deletion and amendment of certain Articles of the Constitution. The following matters were dealt with as a result of these changes:

The delineation of power to levy and make laws with respect to GST

The applicability and scope of the GST law

The manner of apportionment of revenue from

GST among Centre and States

The constitution, powers and duties of the GST Council

The discontinuation of existing taxes to give way for GST

The manner of providing compensation to States for loss of revenue on account

of the introduction of GST

Article 246A: Special Provision for GST

This Article was newly inserted to give power to the Parliament and the respective State/Union Legislatures to make laws on GST respectively imposed by each of them. However, the Parliament of India is given the exclusive power to make laws with respect to inter-state supplies. The IGST Act deals with inter-state supplies. Thus, the power to make laws under the IGST Act will rest exclusively with the Parliament. Further, the article excludes the following products from the scope of GST until a date recommended by the GST Council:

Petroleum
Crude High-Speed
Diesel Motor
Spirit Natural Gas
Aviation Turbine Fuel

Article 269A: Levy and Collection of GST for Inter-State Supply

While Article 246A gives the Parliament the exclusive power to make laws with respect to inter-state supplies, the manner of distribution of revenue from such supplies between the Centre and the State is covered in Article 269A. It allows the GST Council to frame rules in this regard.

Import of goods or services will also be called as inter-state supplies. This gives the Central Government the power to levy IGST on import transactions. Import of goods was subject to Countervailing Duty (CVD) in the earlier scheme of taxation. IGST levy helps a taxpayer to avail the credit of IGST paid on import along the supply chain, which was not possible before.

Article 279A: GST Council

This Article gives power to the President to constitute a joint forum of the Centre and States called the GST Council. The GST Council is an apex member committee to modify, reconcile or to procure any law or regulation based on the context of Goods and Services Tax in India.

Article 286: Restrictions on Tax Imposition

This was an existing article which restricted states from passing any law that allowed them to collect tax on sale or purchase of goods either outside the state or in the case of import transactions. It was further amended to restrict the passing of any law in case of services too. Further, the term 'supply' replaces 'sale or purchase'.

Article 366: Addition of Important definitions

Article 366 was an existing article amended to include the following definitions:

Goods and Services Tax means the tax on supply of goods, services or both. It is important to note that the supply of alcoholic liquor for human consumption is excluded from the purview of GST.

Services refer to anything other than goods. State includes Union Territory with legislative power. Compensation to States Under GST

This Act also contains a provision to provide for relief to states on account of the revenue loss to the states arising due to the implementation of GST. It has a validity period of five years. The Goods and Services Tax (Compensation to States) Act, 2017 was born as a result.

What does the Seventh Schedule State?

The Seventh Schedule to Article 246 contains three lists, which contain the matters under which the Union and the State Governments have the authority to make laws.

List-I: Union List

It contains the matters with respect to which the Parliament (Central Government) has the exclusive right to make laws.

List-II: State List

It contains the matters in respect of which the state government has the exclusive right to make laws.

List-III: Concurrent List

It contains the matters in respect of which both the Central and State Governments have the power to make laws. The relevant entries in this list were readjusted in such a way as to provide for the following:

To continue the levy of excise duty by the Centre on manufacture/production of five petroleum products namely: petroleum crude, high-speed diesel, motor spirit, natural gas, and aviation turbine fuel. In addition to the above, excise duty is also levied on tobacco and tobacco products. As a result, tobacco and tobacco products are subject to both excise duty and GST. The power to levy taxes on the five petroleum products was given to the states too. Entertainment tax was abolished except where it is levied by local bodies.

Unit II

GST TAX

GST is a single uniform indirect tax which was introduced to replace Central and State indirect taxes such as VAT, CENVAT, and others. GST applies on all types of businesses, small or large.

History of the GST

The implementation of the Goods and Services Tax (GST) in India was a historical move, as it marked a significant indirect tax reform in the country. The amalgamation of a large number of taxes (levied at a central and state level) into a single tax is expected to have big advantages. One of the most important benefit of the move is the mitigation of double taxation or the elimination of the cascading effect of taxation. The initiative is now paving the way for a common national market. Indian goods are also expected to be more competitive in international and domestic markets post GST implementation.

From the viewpoint of the consumer, there would be a marked reduction in the overall tax burden that is currently in the range of 25% to 30%. The GST, due to its self-policing and transparent nature, is also easier to administer on an overall scale.

History of GST in India

- **2000:** In India, the idea of adopting GST was first suggested by the Atal Bihari Vajpayee Government in 2000. The state finance ministers formed an Empowered Committee (EC) to create a structure for GST, based on their experience in designing State VAT. **2004:** A taskforce that was headed by Vijay L. Kelkar the advisor to the finance ministry, indicated that the existing tax structure had many issues that would be mitigated by the GST system.
- **February 2005:** The finance minister, P. Chidambaram, said that the medium-to-long term goal of the government was to implement a uniform GST structure across the country, covering the whole production-distribution chain. This was discussed in the budget session for the financial year 2005-06.
- **February 2006:** The finance ministers set 1 April 2010 as the GST introduction date.
- **November 2006:** Parthasarthy Shome, the advisor to P. Chidambaram, mentioned that states will have to prepare and make reforms for the upcoming GST regime.
- **February 2007:** The 1 April 2010 deadline for GST implementation was retained in the union budget for 2007-08.

- **February 2008:** At the union budget session for 2008-09, the finance minister confirmed that considerable progress was being made in the preparation of the roadmap for GST. The targeted timeline for the implementation was confirmed to be 1 April 2010.
- **July 2009:** Pranab Mukherjee, the new finance minister of India, announced the basic skeleton of the GST system. The 1 April 2010 deadline was being followed then as well.
- **November 2009:** The EC that was headed by Asim Dasgupta put forth the First Discussion Paper (FDP), describing the proposed GST regime. The paper was expected to start a debate that would generate further inputs from stakeholders.
- **February 2010:** The government introduced the mission-mode project that laid the foundation for GST. This project, with a budgetary outlay of Rs. 1,133 crore, computerised commercial taxes in states. Following this, the implementation of GST was pushed by one year.
- **March 2011:** The government led by the Congress party puts forth the Constitution (115th Amendment) Bill for the introduction of GST. Following protest by the opposition party, the Bill was sent to a standing committee for a detailed examination.
- **June 2012:** The standing committee starts discussion on the Bill. Opposition parties raise concerns over the 279B clause that offers additional powers to the Centre over the GST dispute authority.
- **November 2012:** P. Chidambaram and the finance ministers of states hold meetings and set the deadline for resolution of issues as 31 December 2012.
- **February 2013:** The finance minister, during the budget session, announces that the government will provide Rs. 9,000 crore as compensation to states. He also appeals to the state finance ministers to work in association with the government for the implementation of the indirect tax reform.
- **August 2013:** The report created by the standing committee is submitted to the parliament. The panel approves the regulation with few amendments to the provisions for the tax structure and the mechanism of resolution.
- **October 2013:** The state of Gujarat opposes the Bill, as it would have to bear a loss of Rs. 14,000 crore per annum, owing to the destination-based taxation rule.
- **May 2014:** The Constitution Amendment Bill lapses. This is the same year that Narendra Modi was voted into power at the Centre.
- **December 2014:** India's new finance minister, Arun Jaitley, submits the Constitution (122nd Amendment) Bill, 2014 in the parliament. The opposition demanded that the Bill be sent for discussion to the standing committee.
- **February 2015:** Jaitley, in his budget speech, indicated that the government is looking to implement the GST system by 1 April 2016.
- **May 2015:** The Lok Sabha passes the Constitution Amendment Bill. Jaitley also announced that petroleum would be kept out of the ambit of GST for the time being.
- **August 2015:** The Bill is not passed in the Rajya Sabha. Jaitley mentions that the disruption had no specific cause.
- **March 2016:** Jaitley says that he is in agreement with the Congress's demand for the GST rate not to be set above 18%. But he is not inclined to fix the rate at 18%. In the future if the Government, in an unforeseen emergency, is required to raise the tax rate, it would have to take the permission of the parliament. So, a fixed rate of tax is ruled out.

- **June 2016:** The Ministry of Finance releases the draft model law on GST to the public, expecting suggestions and views.



- **August 2016:** The Congress-led opposition finally agrees to the Government's proposal on the four broad amendments to the Bill. The Bill was passed in the Rajya Sabha.
- **September 2016:** The Honourable President of India gives his consent for the Constitution Amendment Bill to become an Act.
- **2017:** Four Bills related to GST become Act, following approval in the parliament and the President's assent:
 - Central GST Bill
 - Integrated GST Bill
 - Union Territory GST Bill
 - GST (Compensation to States) Bill

THE NEED FOR GST:

VAT rates and regulations differ from state to state. And it has been observed that states often resort to slashing these rates for attracting investors. This results in loss of revenue for both the Central as well as State government.

On the other hand, GST brings in uniform tax laws across all the states spanning across diverse industries. Here, the taxes would be divided between the Central and State government based on a predefined and pre-approved formula. In addition, it would become much easier to offer services and goods uniformly across the nation, since there won't be any additional state-levied tax.

GST rollout missed several deadlines due to disagreement among many states over certain important issues on the new tax reform. However, as per recent reports, GST is scheduled for a nation-wide rollout on April 1, 2016.

GST STRUCTURE

Decision taken by GST Council

Some of the major decisions taken by the GSTC so far are:

- There would be four tax rates under the GST regime, i.e., 5%, 12%, 18%, and 28%. Some goods and services were also classified as exempt from tax.
- Access above the peak rate of 28% would be levied on certain sin and luxury goods.
- The administrative control over 90% of taxpayers with turnover less than Rs. 1.5 crore would be with the State tax administration. 10% of control would be with the Central tax administration.
- Administrative control over taxpayers having turnover above Rs. 1.5 crore would be equally divided between the State and Central tax administration.

GST Rate revision in 37th GST Council meeting

GST Council had its 37th meeting held at Goa on Friday (20th September 2019).
Read all the highlights on 37th GST Council Meeting.

The following are the rate cuts announced at the 36th GST Council meeting:

GST Rate Revision effective from 1 October 2019

Item	Current Rate	New Rate
Plates and cups made of flowers, leaves and bark	5%	Nil
Caffeinated Beverages	18%	28% + 12% cess
Supplies of Railways wagons & coaches (without refund of accumulated ITC)	5%	12%
Outdoor Catering (without ITC)	18%	5%
Diamond Job work	5%	1.50%
Other Job work	18%	12%
Hotels (Room Tariff of Rs. 7501 or above)	28%	18%
Hotels (Room Tariff from Rs 1,001 to Rs 7,500)	18%	12%
Woven/Non-woven Polyethylene Packaging bags	18%	12%
Marine fuel	18%	5%
Almond Milk		18%
Slide fasteners	18%	12%
Wet grinders (consisting of stone as a grinder)	12%	5%
Dried Tamarind	5%	Nil
Semi-precious stones-cut & polished	3%	0.25%
Specified goods for petroleum operation under H ELP*	Applicable Rate	5%

*Hydrocarbon Exploration Licensing Policy

Item	Current Rate	New Rate
Cess on Petrol Motor Vehicles (Capacity of 10-13 passengers)	15%	1%
Cess on Diesel Motor Vehicles (Capacity of 10-13 passengers)	15%	3%

TAXABLE PERSONS UNDER GST

GST registration is mandatory for:

- a. Any business whose turnover in a financial year exceeds Rs 20 lakhs (Rs 10 lakhs for North Eastern and hill states)
- b. An input service distributor or an E-commerce operator or aggregator. A person who supplies via e-commerce aggregator. Here is a complete list of taxable persons under GST.

DIFFERENT TYPES OF GST

Types of GST

As per the newly implemented tax system, there are 4 different types of GST:

1. Integrated Goods and Services Tax (IGST)
2. State Goods and Services Tax (SGST)
3. Central Goods and Services Tax (CGST)
4. Union Territory Goods and Services Tax (UTGST)

Additionally, the government has fixed different taxation rates under each, which will be applicable to the payment of tax for goods and/or services rendered.

1. Integrated Goods and Services Tax or IGST

The Integrated Goods and Services Tax or IGST is a tax under the GST regime that is applied on the interstate (between 2 states) supply of goods and/or services as well as on imports and exports. The IGST is governed by the IGST Act. Under IGST, the body responsible for collecting the taxes is the Central Government. After the collection of taxes, it is further divided among the respective states by the Central Government. For instance, if a trader from West Bengal has sold goods to a customer in Karnataka worth Rs. 5,000, then IGST will be applicable as the transaction is an interstate transaction. If the rate of GST charged on the goods is 18%, the trader will charge Rs. 5,900 for the goods. The IGST collected is Rs. 900, which will be going to the Central Government.

2. State Goods and Services Tax or SGST

The State Goods and Services Tax or SGST is a tax under the GST regime which is applicable on intrastate (within the same state) transactions. In case of intrastate supply of goods and/or services, both State GST and Central GST are levied. However, the State GST or SGST is levied by the state on the goods and/or services that are purchased or sold within the state. It is governed by the SGST Act. The revenue earned through SGST is solely claimed by the respective state government. For instance, if a trader from West Bengal has sold goods to a customer in West Bengal worth Rs. 5,000, then the GST applicable on the transaction will be partly CGST and partly SGST. If the rate of GST charged is 18%, it will be divided equally in the form of 9% CGST and 9% SGST. The total amount to be charged by the trader, in this case, will be Rs. 5,900. Out of the revenue earned from GST under the head of SGST, i.e. Rs. 450, will go to the West Bengal state government in the form of SGST.

3. Central Goods and Services Tax or CGST

Just like State GST, the Central Goods and Services Tax or CGST is a tax under the GST regime which is applicable on intrastate (within the same state) transactions. The CGST is governed by the CGST Act. The revenue earned from CGST is collected by the Central Government.

As mentioned in the above instance, if a trader from West Bengal has sold goods to a customer in West Bengal worth Rs.5,000, then the GST applicable on the transaction will be partly CGST and partly SGST. If the rate of GST charged is 18%, it will be divided equally in the form of 9% CGST and 9% SGST. The total amount to be charged by the trader, in this case, will be Rs.5,900. Out of the revenue earned from GST under the head of CGST, i.e. Rs.450, will go to the Central Government in the form of CGST.

4. Union Territory Goods and Services Tax or UTGST

The Union Territory Goods and Services Tax or UTGST is the counterpart of State Goods and Services Tax (SGST) which is levied on the supply of goods and/or services in the Union Territories (UTs) of India. The UTGST is applicable on the supply of goods and/or services in Andaman and Nicobar Islands, Chandigarh, Daman Diu, Dadra and Nagar Haveli, and Lakshadweep.

CALCULATION OF GST USING A GST CALCULATOR

Taxpayers are now aware of the amount of tax charged at each point of supply for products and services thanks to the implementation of GST. When calculating GST, taxpayers must be aware of the GST rates applicable to different categories. Under the new tax structure, the rates applicable are 5%, 12%, 18% and 28%.

a. GST Calculation Formula

The below mentioned formula is for calculating GST by taxpayer

Formula for GST calculation:

- **Add GST:**

$$\text{GST Amount} = (\text{Original Cost} \times \text{GST}\%) / 100$$

$$\text{Net Price} = \text{Original Cost} + \text{GST Amount}$$
- **Remove GST:**

$$\text{GST Amount} = \text{Original Cost} - [\text{Original Cost} \times \{100 / (100 + \text{GST}\%)\}]$$

$$\text{Net Price} = \text{Original Cost} - \text{GST Amount}$$

b. Example of GST Calculation

In case a product is sold for Rs.2,000 and the GST rate applicable to it is 12%, then net price of the product will be Rs.2,000 + 12% of Rs.2,000 = Rs.2,000 + Rs.240 = Rs.2,240.

MERITS AND DEMERITS OF GST

ADVANTAGES OF GST

1. GST eliminates the cascading effect of tax
2. Higher threshold for registration
3. Composition scheme for small businesses
4. Simple and easy online procedure
5. The number of compliances is lesser
6. Defined treatment for E-commerce operators
7. Improved efficiency of logistics
8. Unorganized sector is regulated under GST

DISADVANTAGES

1. Increased costs due to software purchase
2. Being GST-compliant
3. GST will mean an increase in operational costs
4. GST came into effect in the middle of the financial year
5. GST is an online taxation system
6. SMEs will have a higher tax burden
7. Explain the differences between different types of GST

1. Difference between different types of GST

Types of GST	Authority which is benefited	Priority of Tax Credit use	Who is it collected by ?	Transactions which are applicable (Goods and Services)
CGST	Central Government	CGST IGST	Central Government	Within a single state, i.e. intrastate
SGST	State Government	SGST IGST	State Government	Within a single state, i.e. intrastate
IGST	Central Government and State Government	IGST CGST SGST	Central Government	Between two different states or a state and a Union Territory, i.e. interstate
UTGST/UGST	Union Territory (UT) Government	UTGST IGST	Union Territory (UT) Government	Within a single Union Territory (UT)

Scope and Coverage Scope of supply-

Meaning and scope of supply

Supply includes

- all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
- importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and
- a supply specified in Schedule I, made or agreed to be made without a consideration. Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

2A. Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.

Subject to sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

1. a supply of goods and not as a supply of services; or
2. a supply of services and not as a supply of goods; or
3. neither a supply of goods nor a supply of services.

LEVY AND COLLECTION AS PER CGST ACT, 2017

(a) U/s 9(1) of CGST Act, 2017 there shall be levied a tax – z Called the Central Goods and Services Tax (CGST); z On all the intra-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption; z On the value determined u/s 15; and z At such a rate (maximum 20%,) as notified by the Central Government on recommendation of GST Council; and z Collected in such a manner as may be prescribed; and ↓ ↓ 96 z Shall be paid by the taxable person

UNIT III

GST PAYMENTS, RETURNS AND REFUNDS

GST Returns.

GST is the single indirect tax that is levied on the supply of goods and services between different entities. GST returns are the tax return forms that are required to be filed by these entities with the Income Tax authorities of India.

All individuals registered under the GST Act has to furnish the details of the sales and purchases of goods and services along with the tax collected and paid. This can be done by filing online returns. GST Returns are the Goods and Services Tax Return forms that taxpayers of all types have to file with the income tax authorities of India under the new GST rules.

Implementation of a comprehensive Income Tax system like GST in India will ensure that taxpayer services such as registration, returns, and compliance are transparent and straightforward.

Filing of GST Returns Online

From manufacturers and suppliers to dealers and consumers, all taxpayers have to file their tax returns with the GST department every year. Under the new GST regime, filing tax returns has become automated. GST returns can be filed online using the software or apps provided by Goods and Service Tax Network (GSTN) which will auto-populate the details on each GST return forms. Listed below are the steps for filing GST returns online:

1. Visit the **GST portal** (www.gst.gov.in).
2. A 15-digit GST identification number will be issued based on your state code and PAN number.
3. **Upload invoices** on the GST portal or the software. An invoice reference number will be issued against each invoice.
4. After uploading invoices, outward return, inward return, and cumulative monthly **return have to be filed online.**
5. **File the outward supply returns in GSTR-1** form through the information section at the GST Common Portal (GSTN) on or before 10th of the following month.
6. Details of outward supplies furnished by the supplier will be made available in GSTR-2A to the recipient.
7. Recipient has to verify, validate, and modify the details of outward supplies, and also file detail of credit or debit notes.
8. Recipient has to furnish the details of inward supplies of taxable goods and services in GSTR-2 form.
9. The supplier can either accept or reject the modifications of the details of inward supplies made available by the recipient in GSTR-1A.

GST REFUND

A **tax refund** is a reimbursement to a taxpayer of any excess amount paid to the federal government or a state government.

Allowable Refunds

1. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
2. Refund of tax paid on export of services with payment of tax;
3. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
4. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
5. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
6. Refund to supplier of tax paid on deemed export supplies;
7. Refund to recipient of tax paid on deemed export supplies;
8. Refund of excess balance in the electronic cash ledger;
9. Refund of excess payment of tax;
10. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;

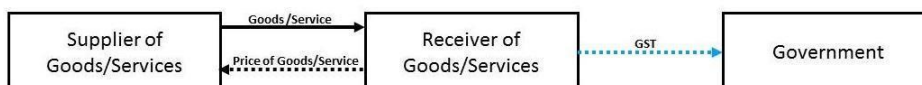
REVERSE CHARGE UNDER GST

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.

NORMAL GST PAYMENT PROCESS



GST PAYMENT IN CASE OF REVERSE CHARGE



TIME OF 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. **INPUT TAX CREDIT**

Under the IGST Act, **input tax** is defined as IGST, CGST or SGST charged on any supply of goods and/or services.

In simple words, **Input Tax Credit** means reducing the taxes paid on **inputs** from taxes to be paid on output.

INPUT CREDIT AND CLAIMING THE ITC

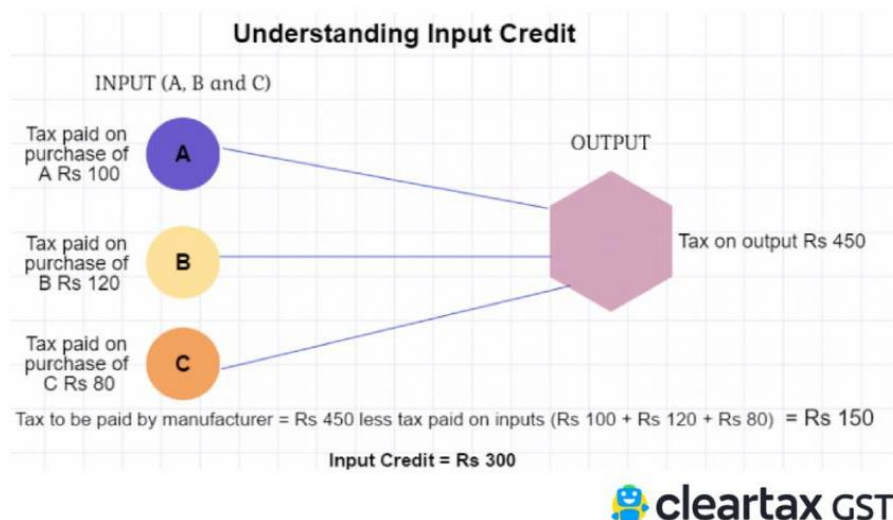
Input credit means at the time of paying tax on output, you can reduce the tax you have already paid on inputs and pay the balance amount.

Here's how -

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

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

and you only need to deposit Rs 150 in taxes.



Who can claim ITC?

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

- a. The dealer should be in possession of tax invoice
- b. The said goods/services have been received
- c. Returns have been filed.
- d. The tax charged has been paid to the government by the supplier.
- e. When goods are received in installments ITC can be claimed only when the last lot is received.

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

What can be claimed as ITC?

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

How to claim ITC?

All regular taxpayers must report the amount of input tax credit (ITC) in their monthly GST returns of Form GSTR-3B. The table 4 requires the summary figure of eligible ITC, ineligible ITC and ITC reversed during the tax period. The format of the Table 4 is given below:

REVERSAL OF INPUT TAX CREDIT

ITC can be availed only on goods and services for business purposes. If they are used for non-business (personal) purposes, or for making exempt supplies, ITC cannot be claimed. Apart from these, there are certain other situations where ITC will be reversed.

ITC will be reversed in the following cases-

1) Non-payment of invoices in 180 days– ITC will be reversed for invoices which werenotpaid within 180 daysofissue.

2) Credit note issued to ISD by seller– This is for ISD. If a credit note was issued by theseller to theHO then theITC subsequentlyreduced will bereversed.

3) Inputspartlyforbusinesspurposeandpartlyforexemptedsuppliesorforpersonaluse –Thisisforbusinesseswhichuseinputsforbothbusinessandnon-business (personal) purpose. ITC used in the portion of input goods/services used for thepersonalpurpose must bereversed proportionately.

4) Capitalgoodspartlyforbusinessandpartlyforexemptedsuppliesorforpersonaluse – This issimilar to above except that it concerns capital goods.

5) ITC reversed is less than required- This is calculated after the annual return is furnished. If total ITC on inputs of exempted/non-business purpose is more than the ITC actually reversed during the year then the difference amount will be added to output liability. Interest will be applicable.

ADMINISTRATIVE STRUCTURE OF GST AND POWERS

Key Points:-

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 1** i.e. the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 has the power to appoint officers of CGST (Note: State law 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)

Administrative structure of CGST

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.

Administrative structure of 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.

[List is indicative]

Powers of Officers

Under the Model GST Law, the various powers have been granted to the Central Goods and Service Tax (CGST)/State Goods and Service Tax

(SGST) officers to implement the provisions of the CGST Act as well as SGST Act smoothly and efficiently

1. Section 60: **Power of inspection, search and seizure**
2. Section 61: **Inspection of goods in movement**
3. Section 62: **Power to Arrest**
4. Section 63: **Power to summon persons to give evidence and produce documents**
5. Section 64: **Access to business premises**

Relevance of Cross Empowerments

It is stated that the GST Council in its **9th meeting** held on **16.01.2017** had discussed and it is clarified that the officers of both Central tax and State tax are authorized to initiate intelligence-based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. However, what is intelligence-based enforcement is not clarified leaving the option open for both Central & State offices to initiate the proceedings irrespective of allocated jurisdiction.

The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action. It may so happen that while investigation is ongoing, the taxpayers may be getting notices from another office. In this regard, it is stated that there cannot be two parallel proceedings under the State Act as well as the Central Act. As per **clause (b) of sub-section (2) of section 6** of the Goods and Services Tax Act, 2017 ("**CGST Act, 2017**") it is provided that where a proper officer under CGST Act, 2017 has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under that Act on the same subject matter.

First, it would be better to see the requisite provisions provided under GST law in this regard irrespective of power of officer and authorisation of officers.

Section 5 of the CGST Act, 2017 provides for powers of officers to discharge functions under this Act. The commissioner may delegate his powers to any other officer who is subordinate to him. An Appellate Authority shall not exercise the powers and discharge the duties conferred on any other officer of Central Tax. **Vide Notification No. 2/2017-Central Tax, dt 19-06-2017, w.e.f. 22.06.2017**, the Central Board of Excise and Customs appoints certain officers to exercise powers and discharge the duties under this Act.

The provisions of **Section 5** of the CGST Act, 2017 may be read as under:

"Section 5: Powers of Officers—

- (1) Subject to such conditions and limitations as the **Board** may impose, an officer of **Central tax** may exercise the powers and discharge the duties conferred or imposed on him under this Act.*
- (2) An officer of **Central tax** may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central 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 who is subordinate to him.*
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of **Central tax**.*

UNIT IV

Tax Assessment

Under GST, the term “**assessment**” means determination of **tax** liability **under** this Act and includes **self-assessment**, **re-assessment**, **provisional assessment**, **summary assessment** and **best judgment assessment**.

PROCESS OF ASSESSMENT

Assessment under GST means the determination of tax liability under GST. Assessment under GST has been divided into 5 types:

i. SELF ASSESSMENT

Under GST, every registered taxable person shall assess the taxes payable by them on their own, and furnish a return for each tax period. This is called self-assessment.

ii. PROVISIONAL ASSESSMENT

A registered dealer can request the officer for provisional assessment if he is unable to determine the value of goods or rate of tax. The proper officer can allow the assessee to pay tax on a provisional basis at a rate or a value specified by him.

iii. SCRUTINY ASSESSMENT

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

iv. 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.

v. 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 judgment** using the available relevant material.

best

of his

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.

3. 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.

Demand 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 State Government
3. CGST/SGST paid when IGST was payable and vice versa.

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

a. 4. 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.

Audit under GST is the process of examination of records, returns and other documents maintained by a taxable person. The purpose is to verify the correctness of turnover declared, **taxes** paid, refund claimed and input **tax** credit availed, and to assess the compliance with the provisions of **GST**.

AUDIT BY TAX AUTHORITIES

- ♣ Commissioner of CGST /SGST or any officer authorized;
- ♣ Audit of any registered person for a particular period, at particular frequency and in particular manner;
- ♣ At the place of business of registered person or in their office;
- ♣ Notice to registered person at least 15 working days prior to audit [Form GST ADT-01];
- ♣ Audit to be completed within 3 months (can be extended further by 6 months by Commissioner);
- ♣ Registered person to provide the required information and facility;
- ♣ Result of audit to be intimated within 30 days [Form GST ADT-02] and further action will be taken.

RECORDS MUST BE MAINTAINED UNDER GST

- Production or manufacture of goods.
- Inward and outward supply of goods or services or both.
- Stock of goods
- Input tax credit availed.

- Output tax payable and paid and.
- Other particulars as may be prescribed

Tax Appeal

A person unhappy with the judgment made by the GST Officers can appeal **within 3 months** (extendable up to 1 month) from the date of the order in FORM GST APL-01.

BENEFITS OF REGISTERING UNDER GST

A. For normal registered businesses:

1. Take input tax credit
2. Make interstate sales without restrictions
3. To know more about the Benefit of GST

B. For Composition dealers:

1. Limited compliance
2. Less tax liability
3. High working capital
4. To know more about composition scheme

C. For businesses that voluntarily opt-in for GST registration (Below Rs. 40 lakhs*)

1. Take input tax credit
2. Make interstate sales without restrictions
3. Register one-commerce websites
4. Have a competitive advantage compared to other businesses

To know more about voluntary registrations. *CBIC has notified the increase in threshold turnover from Rs 20 lakh to Rs 40 lakhs. The notification will come into effect from 1st April 2019.

DEMAND AND RECOVERY UNDER GST

The **Income Tax department** uses demand and recovery procedures when the tax liability and the actual tax amount paid do not match. After conducting audit and assessment of the taxpayer, the tax official sends a **notice to the taxpayer** demanding payment of the taxes owed. This can happen in the following cases:

GST law authorizes the proper officer to determine and demand the following amounts:

1. Tax not paid (S. 73 & S. 74)
2. Tax short paid (S. 73 & S. 74)
3. Tax erroneously refunded (S. 73 & S. 74)
4. Input Tax Credit Wrongly Availed (S. 73 & S. 74)
5. Input Tax Credit Wrongly Utilized (S. 73 & S. 74)

6. Tax Collected but not paid (S.76)

7. Tax Collected under Wronghead (S.77)

DOCUMENTS REQUIRED FOR REGISTRATION OF GST

Documents Required for GST Registration

- PAN of the Applicant
- Aadhaar card
- Proof of business registration or Incorporation certificate
- Identity and Address proof of Promoters/Director with Photographs
- Address proof of the place of business
- Bank Account statement/Cancelled cheque
- Digital Signature
- Letter of Authorization/Board Resolution for Authorized Signatory

5. Explain the types of Audit by GST Tax Authorities

General Audit: The commissioner or on his orders an officer may conduct an audit of any registered dealer.

Special Audit: The department may conduct a special audit due to the complexity of the case and considering the interest of revenue. The CA or a CMA will be appointed to conduct the audit.

Register for Composition scheme under GST

This scheme is a lucrative option for all SMEs who want lower compliance and lower rates of taxes under GST.

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

Turnover of all businesses registered with the same PAN should be taken into consideration to calculate turnover.

**CBIC has notified the increased threshold turnover for opting into the Composition Scheme from Rs 1 crore to Rs 1.5 crores. The notification will be effective from 1st April 2019. Learn the Rules about Composition scheme & Know the pros & cons of being a composition dealer.

Composition dealers will pay nominal tax rates based on the type of business:

- a. Composition dealers are required to file only one quarterly return (instead of three monthly returns filed by normal taxpayers).
- b. They cannot issue taxable invoices, i.e., collect tax from customers and are required to pay the tax out of their own pocket.

- c. Businesses that have opted for Composition Scheme cannot claim any Input Tax Credit.

Composition scheme is not applicable to:

- a. Service providers
- b. Inter-state sellers
- c. E-commerce sellers
- d. Supplier of non-taxable goods
- e. Manufacturer of Notified Goods

Obtain GST registration and file CMP-02 to opt-in for the scheme.

OFFENCES & PENALTIES UNDER GST

Penalty

An offender not paying tax or making short payments must pay a **penalty** of 10% of the tax amount due subject to a minimum of Rs. 10,000. Consider — **in** case tax has not been paid or a short payment is made, a minimum **penalty** of Rs 10,000 has to be paid. The maximum **penalty** is 10% of the tax unpaid

Offences

1. There are 21 offenses under GST. We have mentioned a few here. For the entire list of 21 offenses please go to our main article on offenses.
2. The major offenses under GST are:
3. Not registering under GST, even though required by law. (Read our article for the list of those who have to register mandatorily under GST)
4. Supply of any goods/services without any invoice or issuing a false invoice
5. The issue of invoices by a taxable person using the GSTIN of another bonafide taxpayer
6. Submission of false information while registering under GST
7. Submission of fake financial records/documents or files, or fake returns to evade tax
8. Obtaining refunds by fraud
9. Deliberate suppression of sales to evade tax
10. Opting for composition scheme even though a taxpayer is ineligible

i. Penalty

If any of the offenses are committed then a penalty will have to be paid under GST. The principles on which these penalties are based are also mentioned by law.

ii. For late filing

Late filing attracts penalty called late fee. The late fee is Rs. 100 per day per Act. So it is 100 under CGST & 100 under SGST. Total will be Rs. 200/day*. The maximum is Rs. 5,000. There is no late fee on IGST in case of delayed filing.

Along with late fee, interest has to be paid at 18% per annum. It has to be calculated by the taxpayer on the tax to be paid. The time period will be from the next day of filing to the date of payment.

*Subject to changes announced via Notifications. [Checkout for updates here](#)

iii. For not filing

If you don't file any GST return then subsequent returns cannot be filed. For example, if GSTR-2 return of August is not filed then the next return GSTR-3 and subsequent returns of September cannot be filed. Hence, late filing of GST return will have a cascading effect leading to heavy fines and penalty (see below).

iv. For the 21 offenses with no intention of fraud or tax evasion

An offender not paying tax or making short payments must pay a penalty of **10%** of the tax amount due subject to a **minimum** of Rs. 10,000.

Consider — in case tax has not been paid or a short payment is made, a minimum penalty of Rs. 10,000 has to be paid. The maximum penalty is 10% of the tax unpaid.

v. For the 21 offenses with the intention of fraud or tax evasion

An offender has to pay a penalty amount of tax evaded/short deducted etc., i.e., **100%** penalty, subject to a minimum of Rs. 10,000.

Additional penalties as follows-

Tax amount involved	100-200 lakhs	200-500 lakhs	Above 500 lakhs
Jail term	Upto 1 year	Upto 3 years	Upto 5 years
Fine	In all three cases		

Cases of fraud also face penalties, prosecution, and arrest.

f. Inspection Under GST

The Joint Commissioner of SGST/CGST (or a higher officer) may have **reasons to believe** that **in order to evade tax**, a person has suppressed any transaction or claimed excess input tax credit etc. Then the Joint Commissioner can authorize any other officer of CGST/SGST (in writing) to inspect places of business of the suspected evader.

g. Search & Seizure Under GST

The Joint Commissioner of SGST/CGST can order for a search. He will order a search on the basis of results of inspection (or other reason) if he has *reasons to believe*—

- There are goods which might be confiscated
- Any documents or books or other things which are hidden somewhere. Such items can be useful during proceedings

Such incriminating goods and documents can be seized.

h. Goods in Transit

The person in charge of a vehicle carrying goods exceeding Rs. 50,000 is required to carry the following documents:

- Invoice or bill of supply or delivery challan
- Copy of e-way bill (hard copy or via RFID)

The proper officer has the power to intercept goods in transit and inspect the goods and the documents.

If the goods are in contravention of the GST Act then the goods, related documents, and the vehicle carrying them will be seized. The goods will be released only on payment of tax and penalty.

Before confiscating the goods, the tax officer shall give an option of paying a fine instead of confiscation.

i. Compounding of Offences Under GST

Compounding of offenses is a shortcut method to avoid litigation. In case of prosecution for an offense in a criminal court, the accused has to appear before the Magistrate at every hearing through an advocate. This becomes expensive and time-consuming.

In compounding, the accused is not required to appear personally and can be discharged on payment of compounding fee which cannot be more than the maximum fine as applicable under GST.

Compounding will save time and money. However, compounding under GST is not available for cases where the value involved exceeds 1 crore.

j. Prosecution Under GST

The prosecution is conducting legal proceedings against someone in respect of a criminal charge.

A person committing an offense with the **deliberate intention of fraud**, becomes liable to prosecution under GST, i.e., face criminal charges. A few examples of these offenses are—

1. Issue of an invoice without supplying any goods/services - thus taking input credit or refund by fraud
2. Obtaining refund of any CGST/SGST by fraud
3. Submitting fake financial records/documents or files, and fake returns to evade tax
4. Helping another person to commit fraud under GST

k. Arrest Under GST

If the Commissioner of CGST/SGST **believes** a person has committed a certain offense, he can be arrested under GST by any authorized CGST/SGST officer (click here for the list of offenses for which one can be arrested).

The arrested person will be informed of the grounds for his arrest. He will appear before the magistrate within 24 hours in case of a cognizable offense (Cognizable offenses are those where the police can arrest a person without an arrest warrant. They are serious crimes like murder, robbery, counterfeiting).

l. Appeals

- A person unhappy with any decision or order passed against him under GST can appeal against such decision.
- The first appeal against an order by an adjudicating authority goes to the First Appellate Authority.
- If the taxpayer is not happy with the decision of the First Appellate Authority, they can appeal to the National Appellate Tribunal, then to the High Court, and finally to the Supreme Court.

APPOINTMENT OF GST AUDITOR:

A proprietor, partner or Board of Directors in case of a company should appoint a GST Auditor at the beginning of the financial year.

Accounts to be reviewed by

viewed by GST Auditor:

Following are important accounts or records for review:

- Sales Register
- Stock Register
- Purchase Register and Expenses ledgers
- Input tax credit availed and utilized
- Output tax payable and paid
- E-way bills generated during the period under Audit, if in compliance with rules.

(b) FORMS FOR ANNUAL RETURN AND GST AUDIT:

Type of taxpayer	Form to be filed
Whether or not applicable to GST Audit	
A Regular taxpayer filing GSTR 1 and GSTR 3B	GSTR-9
A Taxpayer under Composition Scheme	GSTR-9A
E-commerce operator	GSTR-9B
Applicable for GST Audit	
Taxpayers whose turnover exceeds Rs. 2 crores in FY	GSTR-9C

Review of comments by GST Auditor:

The Auditor must report any tax liability pending for payment by the taxpayer, identified through the reconciliation exercise and observations made on GST audit. Taxpayers can settle taxes as recommended by the auditor in Form DRC-03.

Submission of GST Audit report & Annual return:

The finalized GSTR-9C can be certified by the same CA who conducted the GST audit or it can also be certified by any other CA who did not conduct the GST audit for that particular GSTIN.

The following must be **reported and certified by the GST Auditor** or the certifier:

1. Whether or not all the requisite accounts or records are maintained.
2. Whether or not the Financial Statements are prepared as per the books of accounts maintained at the principal place of business or additional place of business of the taxpayer.

NATIONAL ANTI-PROFITEERING AUTHORITY

The National Anti-profiteering Authority (NAA) was established under section 171 of the Central Goods and Services Tax Act, 2017. The NAA was set up to monitor and to oversee whether the reduction or benefit of input tax credit is reaching the recipient by way of appropriate reduction in prices. National Anti-profiteering Authority (NAA) is therefore primarily constituted by the central government to analyse whether input tax credits availed by any registered person or the reduction in the tax is passed onto the consumer and he/she is protected from random price increase for self-interests in the name of GST.

SPECIAL POWERS OF NAA

NAA has the authority to deregister an entity or business if it fails to pass on the benefit of lower taxes under GST to the customer.

Deregistering a business will be the last course of action and extreme step against any violator. NAA will recommend the return of undue profit which a business earned from not passing on reduction and benefit of tax to consumers along with a 18 per cent interest. It can also impose a penalty if it sees it necessary.

ANTI-PROFITEERING MECHANISM UNDER GST REGIME

Complaints are based on jurisdiction, complaints that are local in nature will be first sent to a state-level committee for screening.

Complaints at a national level will be marked directly to the standing committee.

In case the incident of profiteering relates to an item of mass consumption with an "all India ramifications", the application may be directly made to the Standing Committee.

If complaints have merit, respective committees will refer cases for further investigation to the Directorate General of Safeguards.

The DG Safeguards will generally take about 3 months to complete investigation and send the report to NAA.

If the NAA finds that the company has not passed on GST benefits, it will either direct the entity to pass on benefits to consumers, or if the beneficiary cannot be identified, it will ask the company to transfer the amount to 'consumer welfare fund' within a specified timeline.

GST PRACTITIONERS –

ELIGIBILITY AND PRACTICE AND CAREER AVENUES FOR GST PRACTITIONER

GST law is a new and evolving indirect tax law in India. Thus, it is bound to raise doubts in the mind of taxpayers concerning registrations, return filings, refund claims and other compliances under GST. Understanding this, the Government has introduced the concept of **GST practitioner** to assist taxpayers in GST compliances.

A GST practitioner is a person **approved by the Central Government or State Government** to perform one or more of the activities mentioned below, on behalf of the taxpayers:

- **Registration:** A GST practitioner can assist in making an application for GST registration on behalf of the taxpayer or make amendments in/cancellation of GST registration.
- **Returns:** A GST practitioner can assist in filing monthly/quarterly/annual GST returns such as Form GSTR- 3B, Form GSTR-1 & Form GSTR- 9.
- **Refunds/Payment:** GST practitioner can file refund claims or pay taxes on behalf of the registered persons.
- **Authorised representative:** GST practitioner would be allowed to appear as an authorised representative before any officer of the GST Department, Appellate authority and the Tribunal.

- **The provisions relating to GST Practitioners are contained in Section 48 of the Central GST Act, 2017 read with Rule 24 of GST Return Rules, 2017. As per these provisions, the following person shall be eligible as GST Practitioner:-**

- (1) Chartered Accountant holding COP
- (2) Company Secretary holding COP
- (3) Cost and Management Accountant holding COP
- (4) Advocate
- (5) Graduate or Postgraduate degree in Commerce
- (6) Graduate or Postgraduate degree in Banking
- (7) Graduate or Postgraduate degree in Business Administration
- (8) Graduate or Postgraduate degree in Business Management
- (9) Degree examination of any recognized Foreign University

UNIT- V

CUSTOMS DUTY

Customs duty refers to the tax imposed on goods when they are transported across international borders. In simple terms, it is the tax that is levied on import and export of goods. The government uses this duty to raise its revenues, safeguard domestic industries, and regulate movement of goods.

The rate of Customs duty varies depending on where the goods were made and what they were made of.

Custom duty in India is defined under the Customs Act, 1962, and all matters related to it fall under the Central Board of Excise & Customs (CBEC).

TYPES OF CUSTOMS DUTY

1. Additional Duty (Countervailing Duty) (CVD):

This additional duty is levied under section 3(1) of the Custom Tariff Act and is equal to excise duty levied on a like product manufactured or produced in India. For Example: If the customs value of goods is Rs. 5000 and rate of basic customs duty is 10% and excise duty on similar goods produced in India is 20%, CVD will be Rs. 1100/-.

2. Anti-dumping Duty:

Sometimes, foreign sellers abroad may export into India goods at prices below the amounts charged by them in their domestic markets in order to capture Indian markets to the detriment of Indian industry. This is known as dumping. In order to prevent dumping, the Central Government may levy additional duty equal to the margin of dumping on such articles, if the goods have been sold at less than normal value. Pending determination of margin of dumping, such duty may be provisionally imposed.

3. Duty on Bounty Fed Articles:

In case a foreign country subsidises its exporters for exporting goods to India, the Central Government may import additional import duty equal to the amount of such subsidy or bounty.

4. Export Duty:

Such duty is levied on export of goods. At present very few articles such as skins and leather are subject to export duty. The main purpose of this duty is to restrict exports of certain goods.

5. Basic Duty:

- This is the basic duty levied under the Customs Act on all the imported items. Other duties are added on this duty to complete the customs duty liable on a particular commodity. The rate varies for different items from 5% to 40%.

6. Protective Duty:

If the Tariff Commission set up by law recommends that in order to protect the interests of Indian industry, the Central Government may levy protective anti-dumping duties at the rate recommended on specified goods.

PENALTIES UNDER CUSTOMS ACT

Provisions of penalties and offences are quite similar to Excise Law. Like Excise, Customs Law envisages two types of punishments i.e. (a) **Civil Liability** : Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods. (b) **Criminal Liability** : Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Both penalty and punishment can be imposed for same offence. Penalties are imposed on any person who, in relation to any goods, does or omits to do an act which renders such goods liable for confiscation. Hence, it is necessary to first understand what are goods liable for confiscation. Broadly, goods are liable for confiscation in case of improperly importing goods or improperly attempting to export goods. Section 111 provides goods liable for confiscation for improper imports while section 113 contains details of goods liable for confiscation for attempt of improper export.

Smuggling—Smuggling, in relation to any goods, means any act or omission which will render such goods liable for confiscation under section 111 or 113. [section 2(39)].

Thus, * improper importation * attempting improper importation or * attempting improper export will amount to 'smuggling'. Thus, 'smuggling' is much broader term than we normally understand. **Since 'smuggling' has been specifically defined, normal dictionary meaning is not applicable.** – *N K Bapnav. UOI – 1992 (60) ELT 13 (SC) = (1992) 75 Comp. Cas. 745 (SC).*

Improper imports – As per section 111, goods improperly brought in India from a place outside India are liable to confiscation. In brief, importing or attempting to import prohibited goods, avoiding duty payment, mis-declaring goods or violating rules regarding movement, storage, unloading or use of imported goods will make them liable for confiscation under section 111. This is covered in the definition of 'smuggling'.

Prohibited goods—Section 2(33) of Customs Act defines – 'prohibited goods means any goods the import or export of which is prohibited under Customs Act

oranyotherlaw forthetime



being in force, but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Improper exports–

As per section 113, 'goods attempted to be improperly exported' are liable to confiscation. In brief, attempting to export goods in violation of law, mis-declaring goods, export under false claim of duty drawback or violating rules regarding movement, storage or loading of export goods will make them liable for confiscation under section 113. This is all covered in the definition of 'smuggling'.

Non-dutiable and non-prohibited goods can also be confiscated – Section 113 earlier provided for confiscation only in case of 'dutiable or prohibited' goods. Now these words have been deleted w.e.f. 14-5-2003. Hence, attempt to export any goods illegally or mis-declaring any goods (whether dutiable or prohibited or not) shall be liable to confiscation.

Over Invoicing / mis-declaration for export – Some times, exports are made at inflated prices to avail export benefits.

In *Om Prakash Bhatia v. CC* 2001(127) ELT 81 (CEGAT 5 member bench), it was held that over invoicing for export is an offence under Customs Act. [Appeal of importer admitted by SC, but no stay. – (2002) 141 ELT A278].

Persons who can be penalised – Customs authorities are empowered to impose (a) monetary penalty (b) confiscation of goods, conveyance etc. These are separately provided as, if, the smuggled goods are abandoned, smuggler may not be traceable. In such cases, it is not possible to impose penalty, but goods can be confiscated. Penalty can be imposed for improper import as well as attempt to improperly export.

Penalty for Improper Import – Section 112 of Customs Act provides that penalty can be imposed on any person : (a) who does or omits to do any act which act or omission would render such goods liable for confiscation under section 111 of Customs Act or who abets in doing or omission of such act (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

Liability of Ship Owner/Airlines – If goods are unloaded without including in 'Import manifest' or loaded without entering in 'export manifest', the shipper is liable. The 'mens rea' is not relevant. Thus, when five packages were sent to New York without entering in 'Export manifest', penalty was imposed on *Air India*.

Monetary Penalty in Customs – The Customs Act provides for following monetary penalties.

Improper Imports – Section 112 provides penalties for improper imports : (i) Not exceeding the value of goods or Rs 5,000 whichever is greater, if these are prohibited for imports under

Customs Act or any other law (ii) Not exceeding the duty sought to be evaded in case of dutiable goods, which are not prohibited goods or Rs 5,000 whichever is greater (iii) If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage, not exceeding the difference in actual value and declared value or Rs 5,000 whichever is greater (iv) If the goods are prohibited and the value is mis-declared, penalty not exceeding the value of goods *or* the difference between actual value and declared value, or Rs 5,000, *whichever is higher*. (v) If the goods are not prohibited but duty is sought to be evaded and the value is mis-declared, penalty not exceeding the duty sought to be evaded *or* the difference between actual value and declared value, or Rs 5,000 *whichever is higher*.

In each case, minimum penalty is Rs. 5,000/-.

Attempt to improperly export – Section 114 provides for penalty for attempt to improper export (i) If goods are prohibited for export under any law, not exceeding the value of goods or Rs 5,000 whichever is higher (ii) if goods are liable to export duty but not prohibited goods, penalty not exceeding duty sought to be evaded or Rs 5,000 whichever is higher (iii) In case of other goods, penalty not exceeding the value of goods, as declared by exporter, or as value determined under Customs Act, whichever is greater.

The last clause i.e. (iii) is amended w.e.f. 14-5-2003, to cover cases where export value is inflated. The export value is inflated, so that exporter is entitled to higher export benefits. [The excess amount collected in invoice is sent back through *havala*]. – In case of (i) or (ii), minimum penalty is Rs. 5,000.

Residual Penalty – Section 117 of Customs Act provides general penalty to a person who contravenes any provision of the Act or abets in contravention and *if no penalty has been prescribed*, the penalty would be up to Rs. 10,000.

Penalty is mandatory – Sections 112, 114 and 117 use the words ‘shall be liable to penalty’. In *Indo-China Steam Navigation v. Jasjit Singh* 1983 (13) ELT 1392 = 1984 ECR 467 (SC), it was held that if the word used is ‘shall’, some penalty must be imposed, though amount can be lower if there are extenuating circumstances. – followed in *CC v. Swastik Woollen Mills* – 1999 (112) ELT 156 (CEGAT).

Procedure for imposing penalty – Section 124 of Customs Act provides that before imposing a penalty, show cause notice must be issued to the person, informing grounds for confiscation and he should be given opportunity to make representation and be heard. *Such notice and representation can be oral at the request of the person concerned*. [This provision has been made to speed up the clearing process].

Penalty for shortlanding – If the goods were loaded for importation in India, but they were not unloaded in India – partly or fully – the Shipping Agent must explain the reason for deficiency. If it is not satisfactorily explained, Assistant Commissioner can impose penalty up to twice the amount of duty normally payable on the imported goods, under section 116. The penalty is

payable by the 'person in charge of conveyance' i.e. carrier of goods. This provision is to make sure that carrier unloads goods at authorised places only and that there is no smuggling with connivance of the carrier.

Confiscation of Goods

In addition to penalty on the person liable, some goods can be confiscated. 'Confiscation' means the goods become property of Government and Government can deal with it as it wants. On the other hand 'seizure' means goods are in custody of Government, but the property of goods remains with the owner.

Goods that can be confiscated – Goods improperly imported – (Goods liable for confiscation under section 111 of Customs Act) and goods attempted to be improperly exported (Goods liable for confiscation under section 113 Customs Act) can be confiscated. In addition, following can be confiscated – * conveyance for transport of smuggled goods * packages * Goods used for concealing * sale proceeds of contravening goods. The proceedings of confiscation are *in rem* against goods. Procedure for confiscation, effect of wrong confiscation and provisions of redemption fine in lieu of confiscation are identical to provisions under Central Excise Act. These aspects are already discussed under Central Excise.

Confiscation of goods after clearance from port – It is permissible to take action under section 28 of Customs Act and confiscate the goods, even after goods are cleared from customs. This can be done by issuing a show cause notice cum demand.

Re-export of offending goods

Often it is found that goods are not eligible for import as per Import Policy. In such cases, re-export of such goods is permitted as per EXIM Policy. However, in such cases, penalty and redemption fine is payable. In *CC v. Elephanta Oil* 2003 (152) ELT 257 (SC), it was held that even if goods are confiscated and goods are allowed to be re-exported, penalty can be levied. Power to levy penalty u/s 112 is different from power of confiscation of goods u/s 125 and giving option to pay fine in lieu of confiscation.

Permission for re-export in such cases may be given – *Collector v. N Patel* – 1992 (62) ELT 674 (GOI). In *Kusumbhai Dahyabhai Patel v. CC (P)* – 1995 (79) ELT 292 (CEGAT) also, it was held that even if goods are allowed to be re-exported, redemption fine can be imposed. In *K&K Gems v. CC* 1998 (100) ELT 70 (CEGAT), it was held that fine in lieu of confiscation i.e. redemption option can be imposed.

Prosecution for Offences

Customs Law provides stiff punishments of imprisonment and fines for violation of Customs Act. These can be imposed only by *Court of Law* and these are independent of

monetary penalties and confiscation of goods that can be ordered by Customs Authorities through



departmental adjudication. Hon. Supreme Court have held that both can be imposed simultaneously for same offence.

Evasion of Duty and prohibited goods – Main penal provision contained in section 135 of Customs Act is in respect of evasion of duty and breaking prohibitions under the Act.

Who can be punished – The punishment is imposable on a person (a) who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty or of any prohibition imposed on the imports/export of such goods (b) who acquires possession or is in any way concerned with carrying, harbouring, keeping, concealing, selling or purchasing, or otherwise dealing with goods which he knows or has reason to believe are liable to confiscation under section 111 i.e. improper imports or under section 113 i.e. attempt to improperly export (c) who attempts to export any goods which he knows or has reason to believe are liable to confiscation u/s 113. [section 135(1)]

Punishment that can be imposed – Punishment imposable is (a) **Goods under section 123** : In case of goods covered under section 123 (i.e. gold, watches, synthetic yarn and metallised yarn, fabrics of synthetic yarn, electronic calculators, zip fasteners and silver bullion) : imprisonment upto seven years and fine (without limit) except in exceptional cases, the imprisonment cannot be less than three years (b) **In other cases** : three years or with fine or both [second part of section 135(1)] (c) **repeat conviction** : a person already convicted for offence under Customs Act is convicted again, the imprisonment punishment can be seven years and fine and in absence of special and adequate reasons, the punishment shall not be less than one year. [section 135(2)]

Publication of Name – If a person is convicted under this Act, Court can order publication of names, place of business or residence, nature of contravention etc., under section 135B. Such publication will be at the cost of accused and in newspaper or otherwise as directed by Court.

Other minor Offences – Other minor offences under Customs Act are as follows.

False declaration – Person making, signing or using any statement, declaration or document knowing or having reason to believe that such statement, declaration or document is false in any material particular, shall be punishable with imprisonment upto six months or fine or both (section 132 of Customs Act).

Obstruction of officers of customs – If any person intentionally obstructs any officer of Customs in exercise of any powers conferred under the Customs Act, he shall be punishable with imprisonment upto six months or fine or both (section 133 of Customs Act).

Refusal to be X-rayed – If any person refuses to take X-ray picture of his body in accordance with order of Magistrate or refuses to allow suitable action to be taken to bring out goods from his body under supervision of a doctor, he shall be punishable with imprisonment upto six months or fine or both (section 134 of Customs Act). This provision is mainly in

respect of person smuggling goods by hiding the same in their body.



Preparation for improper export – Attempting to make exports in contravention of Customs Act is punishable with imprisonment upto three years or fine or both.

Offence in case of Company – Though Company is an independent legal person, it works through Managing Directors, directors and employees. Personal penalty can be imposed on person in-charge or responsible to pay customs duty. If an employee is involved in fraud, penalty can be imposed on him. In case of Company or partnership firm, every person who was in-charge of or was responsible to affairs of the Company/firm is deemed to be guilty [section 140 (1) of Customs Act]. Normally, a Managing Director (partner in case of firm) or other person specially authorised is deemed to be in-charge. However, such person can prove that offence was committed without his knowledge or he had taken due care to prevent the offence. In addition, if it is proved that the offence in relation to Company is committed with consent or connivance of, or due to neglect on part of any director, Manager or Secretary or other officer of Company, such person shall be deemed to be guilty [section 140 (2) of Customs Act]. Difference between provisions of section 140 (1) and 140 (2) is that in former case, the person in charge is deemed to be guilty and burden of proof is on him to prove that he had no knowledge; while in later case, burden of proof is on prosecution to prove that offence was committed with knowledge or connivance of the director, manager, secretary or other officer.

Offence by Officers of Customs – If an Officer of Customs enters into any agreement to do or abstains from doing or permits any act or connives at any act or thing, whereby any fraudulent export is effected, or by which duty of customs is evaded or prohibited goods are allowed to enter India or go out of India, he shall be punishable with imprisonment upto a term of three years or with fine, or both. [section 136(1)].

If any customs officer (a) requires a person to be searched for goods without any reason to believe that he has such goods (b) Arrests a person without any reason to believe that he has committed an offence u/s 135 or (c) Searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place; he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. [section 136(2)].

If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. Of course, he can disclose the information in discharge of his duties on in compliance with any law in force. [section 136(3)].

The prosecution can be launched in Court only with previous sanction of Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required. [section 137(2)]

CLASSES OF CUSTOM'S OFFICERS AND THEIR POWERS.

Administrative Setup of Central Excise Department

- **C.B.E. & C Board: (Central Board of Excise & Customs)**

i) H.Q. New Delhi

ii) Consists of 6 to 7 members

iii) Board appoints officers & exercises following powers:

a) To issue instructions & direction to C.E. officers

b) To ensure uniformity in classification of goods

c) To ensure uniformity in levy of E.D

B) Chief Commissioner of Central Excise

Country is divided into 34 zones.

Each zone is under supervision & control of chief commissioners & commissioners (Appeals) within his zone.

C) Commissioner of Central Excise:

- Each zone covers various commission rates & he is in-charge of the commissionerate. At present there are 92 commissioners & 71 commissioner (Appeals) they have unlimited powers of adjudication

D) Additional Commissioner of Central Excise

There can be one or more & they report to commissioners. They have limited powers of adjudication

E) Joint/Deputy/Assistant Commissioner:

They have same power

Each commissionerate is divided into divisions & he is in charge of one division.

F) Superintendent: (Gazetted)

Each division is divided into several ranges & he is in-charge of one range.

G) Inspector: (Non-gazetted)

Lowest in rank. Here report to superintendent.

Appeal against commissioner's order lies with CESTAT.

Appeal against order by officer up to rank additional commissioner – lies with commissioner (Appeals)

Powers

- ❖ To inspect the spot of manufacturing
- ❖ To stop/inspect the conveyance
- ❖ To search for the details
- ❖ To seize the goods
- ❖ To get an explanation

EXEMPTED FROM CUSTOMS DUTY WITH THE EXAMPLES.

Types of exemptions

1. Exemption by Notification:

Exemption by notification by the Govt. only in the public interest.

2. Exemption by special order:

The central Govt. can grant exemption in respect of:

- a. Life-Saving drugs or equipments
- b. Articles of utility imported by disabled and handicapped persons.
- c. Instruments imported for fairs/Exhibitions
- d. Imports by Indian Navy
- e. Equipment imported by Police dept. and Ministry of defence.

3. General exemptions:

General Exemptions are existing exemptions to specified goods being extended to public-funded research institutions.

4. Exemption to ONGC/OIL:

Specified capital goods and consumables imported by ONGC or Indian Oil

5. Other Exemptions:

- a) Goods of strategic Nature
- b) Goods of Secret Nature
- c) Goods for Charitable purposes)

REASONS FOR WHICH IMPORTS/EXPORTS CAN BE PROHIBITED

- Maintenance of Security of India
- Maintenance of Public Order and decency
- Preventing of smuggling
- Prevention of shortage of Goods
- Conservation of Foreign Exchange
- Safeguarding of payments
- Prevention of surplus of any agricultural products
- Establishment of any Industry
- PREVENTION OF serious Injury to Domestic Production of goods
- Protection of Human, animal or plant Life/Health
- Conservation of Exhaustible Natural Resources
- Protection of Patents, Trade Marks and Copy Rights

DUTY FREE ZONES

Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment. The private sector has been actively associated with the development of SEZs. The SEZs require special fiscal and regulatory regime in order to impart a hassle free operational regime encompassing the state of the art infrastructure and support services. The proposed legislation on SEZs to be enacted in the near future would cover the concepts of the developer and co-developer, fiscal concessions under the Income Tax and Customs Act, provide for Offshore Banking Units (OBUs) etc. A brief on the facilities available under the SEZ scheme is given as under:

Eligibility	7.1	<p>(a) Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.</p> <p>(b) Goods and services going into the SEZ area from DTA shall be treated as exports and goods coming from the SEZ area into DTA shall be treated as if these are being imported.</p> <p>(c) SEZ units may be set up for manufacture of goods and rendering of services.</p>
Export and Import of Goods.	7.2	<p>(a) SEZ units may export goods and services including agro-products, partly processed goods, sub-assemblies and components except prohibited items of exports in ITC (HS). The units may also export by-products, rejects, waste scrap arising out of the production process. Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfillment of the conditions indicated in the ITC (HS) Classification of Export and Import Items.</p> <p>SEZ units, other than trading/service units, may also export to Russian Federation in Indian Rupees against repayment of State Credit/Escrow Rupee Account of the buyer, subject to RBI clearance, if any.</p> <p>(b) SEZ unit may import/procure from the DTA without payment of duty all types of goods and services, including capital goods, whether new or second hand, required by it for its activities or in connection</p>

therewith, provided they are not prohibited items of imports in the ITC(HS). However, any permission required for import under any other law shall be applicable. Goods shall include raw material for making capital goods for use within the unit. The units shall also be permitted to import goods required for the approved activity, including capital goods, free of cost or on loan from clients.

- (c) SEZ units may procure goods required by it without payment of duty, from bonded warehouses in the DTA set up under the Policy and/or under Section 65 of the Customs Act and from International Exhibitions held in India.
- (d) SEZ units, may import/procure from DTA, without payment of duty, all types of goods for creating a central facility for use by units in SEZ. The Central facility for software development can also be accessed by units in the DTA for export of software.
- (e) Gem & Jewellery units may also source gold/silver/platinum through the nominated agencies.
- (f) SEZ units may import/procure goods and services from DTA without payment of duty for setting up, operation and maintenance of units in the Zone.