

# **MAR GREGORIOS COLLEGE OF ARTS & SCIENCE**

**Block No.8, College Road, Mogappair West, Chennai – 37**

**Affiliated to the University of Madras  
Approved by the Government of Tamil Nadu  
An ISO 9001:2015 Certified Institution**



## **DEPARTMENT OF BUSINESS ADMINISTRATION**

**SUBJECT NAME: BUSINESS TAXATION**

**SUBJECT CODE: MAM6K**

**SEMESTER: VI**

**PREPARED BY: PROF.BABITA PREM**

## **BUSINESS TAXATION**

### **Unit I:**

Objectives Of Taxation – Canons Of Taxation – Tax System In India – Direct And Indirect Taxes – Meaning And Types.

### **Unit II:**

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

### **Unit III:**

The Customs duty – Levy and Collection of customs duty – Organisation of the customs department – Officers of the customs – Powers – Appellate machinery – Infringement of the law – offences and penalties – Exemption from duty – customs duty drawback – duties free zones.

### **Unit IV:**

Central Sales Tax Act – Levy and Collection of CST - Liability of Tax – Registration of dealers – Goods of Special Importance – Offences and penalties - Value added tax – objectives – Levy of VAT – Arguments in favour of VAT – Difficulties in administering VAT

### **Unit V:**

Definition of GST – Administrative structure of GST – Officers as per CGST Act - Officers as per SGST Act – Jurisdiction – Appointment- Powers- Procedure for Registration – Amendment of registration – Cancellation of registration.

### **REFERENCE BOOKS:**

1. V.S.Datey, Central Excise, JBA Publishers, Edition 2013. Reddy .T.S and Y. hari Prasad reddy, Business Taxation ( Goods & Services TAX - GST),Margam Publication, Edition 2019.
2. Srinivasan N.P and Priya Swami. M , Business Taxation, Kalyani publishers Edition 2013
3. Pagaredinkar, Business Taxation, Sultan Chand and Sons, 2012.
4. Senthil and Senthil, Business Taxation, Himalaya Publication, 4th Edition.
5. Vinodk.Singania, Indirect Tax, Sultan Chand and Sons, Edition 2013.
6. Dr. Vinodk.Singania and Dr. Monica Singhanian, Students Guide to Income Tax (including service tax, vat) , JBA Publishers, Edition 2013.

## UNIT – 1

### **Taxation**

Taxation refers to the practice of a government collecting money from its citizens to pay for public services. Without taxation, there would be no public libraries or parks. Taxation is the practice of collecting taxes (money) from citizens based on their earnings and property.

### **Business taxation**

Under corporate sector, a business is carried on by floating a company duly registered with appropriate authority. Corporate taxation refers to taxation of companies (as defined under Income Tax Act, 1961) and is a major source of revenue to the Government.

### **Importance of taxation in business**

The thing with business is, filing taxes is really important. Every business must file their respective taxes to government at both central and state level of all the places your business is thriving. Failure in tax payment on time can lead to penalties and fees.

### **The 3 principles of taxation**

These are: (1) the belief that **taxes** should be based on the individual's ability to pay, known as the ability-to-pay principle, and (2) the benefit principle, the idea that there should be some equivalence between what the individual pays and the benefits he subsequently receives from governmental activities.

### **The concept of taxation**

Taxation, imposition of compulsory levies on individuals or entities by governments. Taxes are levied in almost every country of the world, primarily to raise revenue for government expenditures, although they serve other purposes as well.

### **3 types of taxes**

Tax systems in the U.S. fall into three main categories: Regressive, proportional, and progressive.

- A regressive tax system levies the same percentage on products or goods purchased regardless of the buyer's income and is thought to be disproportionately difficult on low earners.
- A proportional tax applies the same tax rate to all individuals regardless of income.
- A progressive tax imposes a greater percentage of taxation on higher income levels, operating on the theory that high-income earners can afford to pay more.

### **The main objectives of taxation**

- The primary goal of a national tax system is to generate revenues to pay for the expenditures of government at all levels. Because public expenditures tend to grow at

least as fast as the national product, taxes, as the main vehicle of government finance, should produce revenues that grow correspondingly.

### **The features of taxation**

The main characteristic features of a tax are as follows: (1) A tax is a compulsory payment to be paid by the citizens who are liable to pay it. Hence, refusal to pay a tax is a punishable offence. (2) There is no direct quid-pro-quo between the tax payers and the public authority.

### **The purpose and objectives of taxation**

The primary purpose of taxation is to raise revenue to meet huge public expenditure. Most governmental activities must be financed by taxation. But it is not the only goal. In other words, taxation policy has some non-revenue objectives.

1. Economic Development
2. Full Employment
3. Price Stability
4. Control of Cyclical Fluctuations
5. Reduction of BOP Difficulties
6. Non-Revenue Objective

#### **Objective # 1. Economic Development:**

One of the important objectives of taxation is economic development. Economic development of any country is largely conditioned by the growth of capital formation. It is said that capital formation is the kingpin of economic development. To overcome the scarcity of capital, governments of these countries mobilize resources so that a rapid capital accumulation takes place. To step up both public and private investment, government taps tax revenues. Through proper tax planning, the ratio of savings to national income can be raised.

#### **Objective # 2. Full Employment:**

Second objective is the full employment. Since the level of employment depends on effective demand, a country desirous of achieving the goal of full employment must cut down the rate of taxes. Consequently, disposable income will rise and, hence, demand for goods and services will rise. Increased demand will stimulate investment leading to a rise in income and employment through the multiplier mechanism.

**Objective # 3. Price Stability:**

Thirdly, taxation can be used to ensure price stability—a short run objective of taxation. Taxes are regarded as an effective means of controlling inflation. By raising the rate of direct taxes, private spending can be controlled. Naturally, the pressure on the commodity market is reduced.

But indirect taxes imposed on commodities fuel inflationary tendencies. High commodity prices, on the one hand, discourage consumption and, on the other hand, encourage saving. Opposite effect will occur when taxes are lowered down during deflation.

**Objective # 4. Control of Cyclical Fluctuations:**

Fourthly, control of cyclical fluctuations—periods of boom and depression—is considered to be another objective of taxation. During depression, taxes are lowered down while during boom taxes are increased so that cyclical fluctuations are tamed.

**Objective # 5. Reduction of BOP Difficulties:**

Fifthly, taxes like custom duties are also used to control imports of certain goods with the objective of reducing the intensity of balance of payments difficulties and encouraging domestic production of import substitutes.

**Objective # 6. Non-Revenue Objective:**

Finally, another extra-revenue or non-revenue objective of taxation is the reduction of inequalities in income and wealth. This can be done by taxing the rich at higher rate than the poor or by introducing a system of progressive taxation.

**MAIN FEATURES OF TAX - DEFINITION**

The main characteristic features of a tax are as follows:

- (1) A tax is a compulsory payment to be paid by the citizens who are liable to pay it. Hence, refusal to pay a tax is a punishable offence.
- (2) There is no direct quid-pro-quo between the tax payers and the public authority.
- (3) A tax is levied to meet public expenditure incurred by the government in the general interest of the nation.
- (4) A tax is payable regularly and periodically as determined by the taxing authority.

(5) A tax is a legal correction.

## **OBJECTIVES AND SIGNIFICANCE OF TAXATION - DEFINITION**

Objectives and significance of taxation are as under:

1. Raising revenue
2. Equal distribution of income
3. Regulation
4. Higher growth
5. Pushing up rates of savings and investments

## **CHARACTERISTICS OF A GOOD TAX SYSTEM - DEFINITION**

A good tax system should possess characteristics such as:

1. It should ensure maximum social advantage. Fund of taxation should be used to finance public service.
2. In a good tax system, the allocation of taxes among tax payers is made according to the ability to pay.
3. It should contain a predominance of good taxes satisfying most of the canons of taxation.

### **The importance of taxation**

Taxation not only pays for public goods and services; it is also a key ingredient in the social contract between citizens and the economy. How taxes are raised and spent can determine a government's very legitimacy.

### **The types of taxation**

#### **Types of Taxes**

- **Consumption Tax.** A consumption tax is a tax on the money people spend, not the money people earn.
- **Progressive Tax.** This is a tax that is higher for taxpayers with more money.
- **Regressive Tax.**

- **Proportional Tax.**
- **VAT or Ad Valorem Tax.**
- **Property Tax.**
- **Capital Gains Taxes.**
- **Inheritance/Estate Taxes.**

### **Scope of taxation**

- Scope of the taxing power To give a more meaningful power, power of taxation is essentially unlimited and plenary. This means that the state can tax on anything, anytime, anywhere, and at any amount. Example is the issue on taxing short messaging (SMS or commonly known as text message through mobile phones) .

### **Need to pay income tax**

- By law, taxpayers must file an income tax return annually to determine their tax obligations. Income taxes are a source of revenue for governments. They are used to fund public services, pay government obligations, and provide goods for citizens.

### **The 7 types of taxes**

- Income taxes. Income taxes can be charged at the federal, state and local levels.
- Sales taxes. Sales taxes are taxes on goods and services purchased.
- Excise taxes.
- Payroll taxes.
- Property taxes.
- Estate taxes.
- Gift taxes.

### **4 types of taxes**

There are 12 specific taxes, four within each main category—earn: individual income taxes, corporate income taxes, payroll taxes, and capital gains taxes; buy: sales taxes, gross receipts taxes, value-added taxes, and excise taxes; and own: property taxes, tangible personal property taxes, estate and inheritance.

- **NATURE OF THE POWER OF TAXATION:**

1. It is inherent in sovereignty – the power of taxation exists independent of any legislation. Taxation is the life-blood of government. 2. It is legislative in character - But in the exercise of that power, that power is assigned to the law making body.

### **Types of Direct Taxes**

- Income tax. It is based on one's income.
- Transfer taxes. The most common form of transfer taxes is the estate tax.
- Entitlement tax. This type of direct tax is the reason why people enjoy social programs like Medicare, Medicaid, and Social Security.
- Property tax.
- Capital gains tax.

## Benefit theory of taxation

- The Benefits Received Principle, which is a theory of income tax fairness that says people should pay taxes based on the benefits they receive from the government.

## The two aspects of taxation

- The two stages or aspects of taxation are: 1. Levy – This refers to the enactment of a law by Congress imposing a tax 2. Assessment and collection – This is the act of administration and implementation of the tax law by the executive department through the administrative agencies

Tax is levied on income from many sources:

- Wages (selling labor)
- Interest, dividends, and gains from investment (selling capital)
- Self-employment (operating a business or selling a good or service)
- Property rental.
- Royalties (rental of intellectual property)
- “Other” income such as alimony, gambling winnings, or prizes.

## Four characteristics of a good tax

A good tax system should meet five basic conditions: fairness, adequacy, simplicity, transparency, and administrative ease.

## The basic principles of taxation

In *The Wealth of Nations* (1776), Adam Smith argued that taxation should follow the four principles of fairness, certainty, convenience and efficiency. Fairness, in that taxation should be compatible with taxpayers' conditions, including their ability to pay in line with personal and family needs.

## The features of direct tax

The salient features are likely to be pronounced under the new direct tax Law.

- Single Destination for all Direct Tax laws. ...
- Digitalization in legal prosecution. ...
- Easy to Amend.
- No dividend distribution Tax. ...
- Simplified language. ...
- Stable Tax rates.

## Direct tax

- **Definition:** Direct tax is a type of tax where the incidence and impact of taxation fall on the same entity. These are largely taxes on income or wealth. Income tax, corporation tax, property tax, inheritance tax and gift tax are examples of direct tax.

A direct tax is a tax that you directly pay to the authority imposing the tax. For instance, income tax is imposed by the government, and you pay it directly to the government. These taxes cannot be transferred to any other entity or person.



### **Equity principle of taxation**

This theory requires that individuals should be asked to pay taxes according to their ability to pay. According to the concept of horizontal equity, equals should be treated equally, that is, persons with the same ability to pay should be made to bear the same amount of tax burden.

### **The theory and basis of taxation**

The power of taxation proceeds upon the theory that the existence of the government is a necessity, that it cannot continue without means to pay its expenses and that for this means it has a right to compel all its citizens and property within its limits to contribute.

### **The ability to pay principle of taxation**

The ability-to-pay philosophy of taxation maintains that taxes should be levied according to a taxpayer's ability to pay. The idea is that people, businesses, and corporations with higher incomes can and should pay more in taxes.

### **Administrative functions of taxation**

The primary purpose of taxation is to raise revenue to finance government expenditure. With stable tax revenue, governments are able to provide a wide range of public goods and services such as maintaining security, constructing social infrastructure, and providing welfare services.

### **Essential elements of a tax**

- It is an enforced contribution.
- It is generally payable in money.
- It is proportionate in character.
- It is levied on persons, property, or the exercise of a right or privilege.
- It is levied by the State which has jurisdiction over the subject or object of taxation.

**Sources of government revenue include charges, fees and earnings, fines and debt, regulatory taxes and general taxes.**

- Charges, Fees and Earnings.
- Charges and fees are levied for publicly provided commodities (i.e. goods and services) which are not (pure or nearly pure) public goods.

Revenue streams are the various **sources** from which a business earns money from the sale of goods or the provision of services.

### **The 6 major sources of tax revenue**

- TOTAL REVENUES.
- INDIVIDUAL INCOME TAX.
- CORPORATE INCOME TAX.
- SOCIAL INSURANCE (PAYROLL) TAXES.
- FEDERAL EXCISE TAXES.

- OTHER REVENUES.
- SHARES OF TOTAL REVENUE.

### **Equality in terms of taxation**

Equality is a fundamental principle of taxation. Equality in taxation is achieved when no higher rate in proportion to value is imposed on one individual or his or her property than on other people or property in similar circumstances.

### **Advantages of direct tax**

A direct tax has elasticity. It can be varied according to the needs of the government and changes in the income of the people. When the income of the people goes up, the rate of income tax can also be increased. If the income of the people falls, the rate of income tax can also be lowered.

### **Importance of direct tax**

Direct tax helps to reduce disparities in the wealth and income of people. Economical because the collection cost is very low for the government. Some extent of economic and social justice is achieved because the direct tax is based on the ability to pay.

### **Equality in terms of taxation**

Equality is a fundamental principle of taxation. Equality in taxation is achieved when no higher rate in proportion to value is imposed on one individual or his or her property than on other people or property in similar circumstances. ...

### **Direct tax and indirect tax with examples**

Direct taxes include tax varieties such as income tax, corporate tax, wealth tax, gift tax, expenditure tax etc. Some examples of indirect taxes are sales tax, excise duty, VAT, service tax, entertainment tax, custom duty etc.

### **Difference between direct and indirect tax**

A **direct tax** is one that the taxpayer pays directly to the government. These **taxes** cannot be shifted to any other person or group. An **indirect tax** is one that can be passed on-or shifted-to another person or group by the person or business that owes it.

Basis	Direct Taxes	Indirect Taxes
<b>1. Meaning</b>	If a tax levied on the income or wealth of a person is paid by that person (or his office) directly to the Government, it is called direct tax.	If tax is levied on the goods or services of a person is collected from the buyers by another person (seller) and paid by him to the Government it is called indirect tax.
<b>2. Incidence and Impact</b>	Falls on the same person. Imposed on the income of a person and paid by the same person.	Falls on different persons. Imposed on the sellers but collected from the consumers and paid by sellers.
<b>3. Burden</b>	More income attracts more income tax. Tax burden is progressive on people.	Rate of tax is flat on all individuals. Therefore more income individuals pay less and lesser portion of their income as tax. Tax burden is regressive.
<b>4. Evasion</b>	Tax evasion is possible.	Tax evasion is more difficult
<b>5. Inflation</b>	Direct tax helps in reducing the inflation.	Indirect tax contributes to inflation.
<b>6. Shiftability</b>	Cannot be shifted to others	Can be shifted to others
<b>7. Examples</b>	Income Tax, Wealth Tax, Capital Gains Tax, Securities Transaction Tax, Perquisites Tax.	GST. Excise Duty.

## CANONS OF TAXATION

A good system of taxation must satisfy certain general principles. Adam Smith laid down the following four canons of taxation.

### (1) Canon Of Equality:

This is the most important canon of taxation. Equality or equity means that every tax payer should contribute towards the support of the government according to his ability to pay. This does not mean that all people rich or poor should pay equal tax or at equal rate. Equality means equality of sacrifice. The equality of sacrifice can only be maintained when the rich are required to pay tax at a greater rate than the poor people.

### (2) Canon of certainty:

This canon says that everything about a tax should be definite and certain. According to this canon there must be certainty about the time of payment, the manner of payment and the quantity to be paid. It will give greater confidence to the government about its estimates and that the tax payer will also feel certain about his budget. Uncertainty encourages corruption.

### (3) Canon of convenience:

This canon implies that every tax ought to be levied at the time or in the manner in which it is likely to be most convenient for the contributor to pay it. If a tax is convenient, the payer will pay it at the proper time without reminder. For example a person drawing a monthly salary like to pay at the time of receiving his salary every month.

### (4) Canon of economy:

This canon implies two things. Firstly, the cost of collection of a tax should be small in proportion to yield. Secondly, the tax must not obstruct in any manner the

economic development of the country. If a tax is contrary to these two principles it is regarded as costly and uneconomical.

### **OTHER CANONS :**

Besides these canons of taxation, there are four other important principles of taxation. They have been added by later economists. They are as follows:

#### **(5) Canon of Productivity:**

It means that taxes should yield sufficient revenue to the government. A few taxes which are fairly productive are much better than a large number of taxes which are not so productive.

#### **(6) Canon of elasticity:**

This principle means that the tax system should be capable of expansion and reduction according to the requirements of the state. Taxes which in case of need can be conveniently increased in amount without any additional cost of collection are considered to be good taxes. Income tax is a very good example of an elastic tax.

#### **(7) Canon of Simplicity:**

A tax system must not be complex. It must be simple so that every tax payer can understand it without any difficulty.

#### **(8) Canon of Diversity:**

It states the principle of multiple taxation, so that all sections of the society can be brought under the taxation network. Too much diversity in taxes may cause an increase in the cost of tax collection.

#### **(9) Canon of Uniformity:**

It refers to uniformity in imposition of tax, assessment of tax and realization of tax.

#### **(10) Canon of Expediency or Desirability:**

A tax must be desirable. A tax payer must be given justification as to why he is paying a particular tax.

#### **(11) Canon of Coordination:**

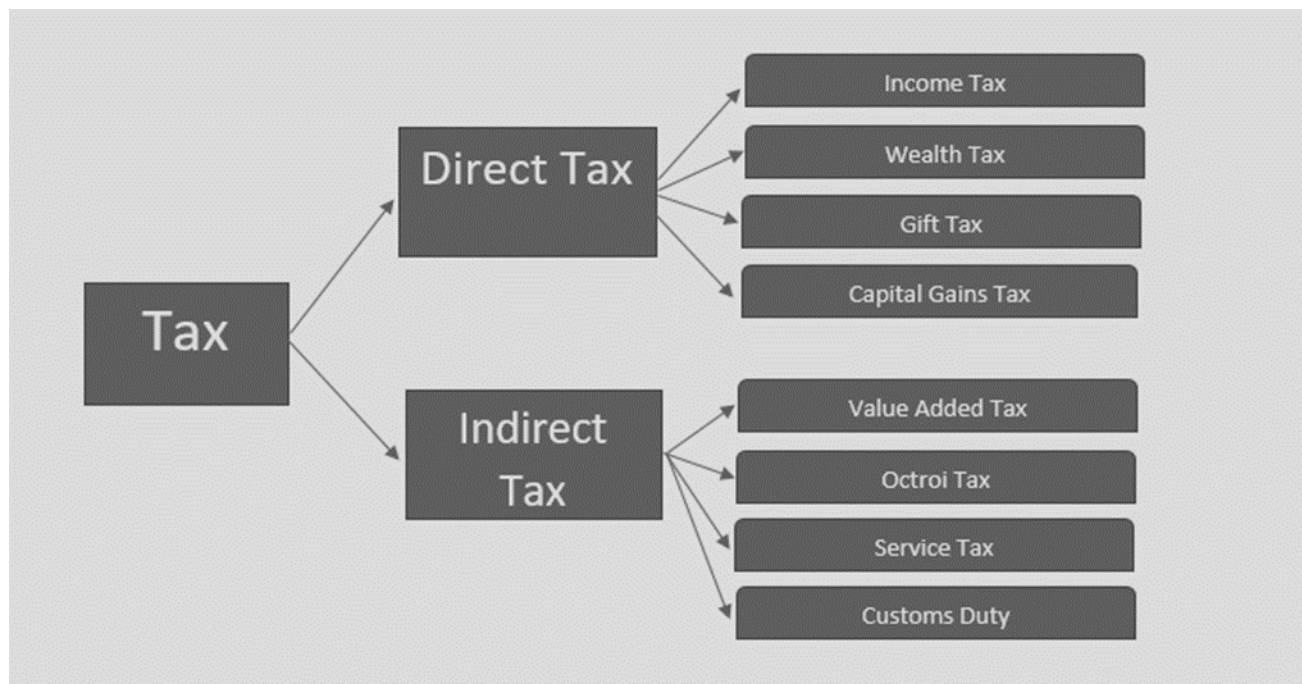
It states that tax authorities must be well coordinated.

### **Indian Tax Structure**

Tax structure in India is a three-tier federal structure. The central government, state governments, and local municipal bodies make up this structure. Article 256 of the constitution states that "No tax shall be levied or collected except by the authority of law". Hence, each and every tax that is collected needs to be backed by an accompanying law.

Tax System in India:

The **tax system in India** allows for two types of taxes—Direct and Indirect Tax.



The tax system in India for long was a complex one considering the length and breadth of India. Post GST implementation, which is one of the biggest tax reforms in India, the process has become smoother. It serves as an all-inclusive indirect tax which has helped in eradicating the cascading effect of tax as a whole. It is simpler in nature and has led to upgraded the productivity of logistics.

### **Direct Tax:**

Direct Tax is levied directly on individuals and corporate entities. This tax cannot be transferred or borne by anybody else. Examples of direct tax include income tax, wealth tax, gift tax, capital gains tax.

Income tax is the most popular tax within this section. Levied on individuals on the income earned with different tax slabs for income levels. The term ‘individuals’ includes individuals, Hindu Undivided Family (HUF), Company, firm, Co-operative Societies, Trusts.

### **Indirect Tax:**

Indirect taxes are taxes which are indirectly levied on the public through goods and services. The sellers of the goods and services collect the tax which is then collected by the government bodies.

- **Value Added Tax (VAT)**– A sales tax levied on goods sold in the state. The rate depends on the government.

- **Octroi Tax**– Levied on goods which move from one state to another. The rates depend on the state governments.
- **Service Tax**– Government levies the tax on service providers.
- **Customs Duty**– It is a tax levied on anything which is imported into India from a foreign nation.

#### **Tax Collection Bodies:**

The three bodies which collect the taxes in India have clearly defined the rules on what type of taxes they are permitted to collect.

- **The Central Government:** income tax, custom duties, central excise duty.
- **The State Governments:** tax on agricultural income, professional tax, value- added tax, state excise duty, stamp duty.
- **Local Bodies:** property tax, water tax, other taxes on drainage and small services.

#### **GST:**

In India, the three government bodies collected direct and indirect taxes until 1 July 2017 when the Goods and Services Act (GST) was implemented. GST incorporates many of the indirect taxes levied by states and the central government.

Some of the taxes GST replaced include:

- Sales Tax
- Central Excise Duty
- Entertainment Tax
- Octroi
- Service Tax
- Purchase Tax

It is a multi-stage destination-based tax. Multi-stage because it is levied on each stage of the supply chain right from purchase of raw material to the sale of the finished product to the end consumer whenever there is value addition and each transfer of ownership.

Destination-based because the final purchase is the place whose government can collect GST. If a fridge is manufactured in Delhi but sold in Mumbai, the Maharashtra government collects GST.

A major benefit is the simplification of taxation in India for government bodies.

GST has three components:

- **CGST**: Stands for Central Goods and Services Act. The central government collects this tax on an intrastate supply of goods or services. (Within Maharashtra)
- **SGST**: Stands for State Goods and Services Tax. The state government collects this tax on an intrastate supply of goods or services. (Within Maharashtra)
- **IGST**: Stands for Integrated Goods and Services Tax. The central government collects this for inter-state sale of goods or services. (Maharashtra to Karnataka)

#### **Other Government Bodies:**

For a smooth implementation of the Indian tax system, there are bodies dedicated to it. Popularly known as the revenue authorities.

- **CBDT**: The Central Board of Direct Taxes is a part of the revenue department under the Ministry of Finance. It has a two-fold role. One, it provides important ideas and inputs for planning and policy with regard to direct tax in India. Second, it assists the Income Tax department in the administration of direct taxes.
- **CBEC**: The Central Board of Excise and Customs deals with policy formulation with regard to levy and collection of customs and central excise duties and service tax.
- **CBIC**: Post GST implementation, the CBEC has been renamed as the Central Board of Indirect Taxes & Customs (CBIC). The main role of CBIC is assisting the government in policy-making matters related to GST.

#### **Benefits of Taxes:**

While paying taxes may not be a pleasant feeling, however, it is prudent to understand that tax paid by every single individual contributes towards the country's administration and resources required for its economic progress.

- It promotes savings as well as investments. If an individual makes certain set of investments, a part amount of the same would be tax exempted, thereby enabling him or her to pay reduced amount of taxes.
- Paying tax also works as a proof that are not only disciplined in filing tax returns but also helps at the time of loan application. This is because at the time of purchasing a home loan, the bank requires proof of whether the applicant has filed his or her taxes regularly.

## UNIT - 2

**Central Excise duty** is an indirect tax levied on goods manufactured in India. Therefore its meaning is borrowed from the constitution and from the sale of goods Act and understood as per the decisions of the apex court.

### Central excise duty and its features

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

### Central excise duty levying authority

Excise duty is levied by the central government except on some items such as narcotics and alcohol. 3- Has GST subsumed excise duty? Yes, excise duty has been subsumed by the Goods and Service Tax (GST) along with other indirect taxes. However, excise duty is still levied on certain items like petroleum and liquor.

### The objectives of central excise duty

Its objective is to generate additional revenue for some specified object. It is applicable at the rates specified in schedule second to Central Excise Tariff Act, 1985.

### Difference between VAT and excise duty

VAT is the tax added on goods as it moves from the initial stage of manufacturing to the point of sale while excise duty is the tax added on the manufacturing of goods. VAT is paid by the consumers who buy the product whereas excise duty is paid by the company who is making the product.

### The different types of excise duties:

- **Basic Excise Duty:** Basic Excise Duty is levied under Section 3 of the Central Excises and Salt Act, 1944.



- **Special Excise Duty:** Central Excise Duty is charged under Section 37 of the Finance Act, 1978.
- **Education Cess on Excise Duty:** it is 1% of the calculated excise duty.

### **Excise duty calculated**

Basic Excise Duty (BED) is 16% on Assessable value for excise. Additional Excise Duty (AED) is 4% calculated on assessable value for excise and BED. Special Excise Duty (SED) is 4% calculated on assessable value for excise and BED.

### **Basic excise duty**

Basic excise duty is also known as the Central Value Added Tax (CENVAT). This category of excise duty was levied on goods that were classified under the first schedule of the Central Excise Tariff Act, 1985. This duty applied on all goods except salt.

### **Union excise duty**

**Definition:** Union excise duty is a type of indirect tax on goods manufactured in India.  
**Description:** Union excise duties are levied in accordance with the rates mentioned in Schedule I and II of the Central Excise Tariff Act, 1985. The taxable event here is the 'Manufacture'.

### **Central excise clearance**

As soon as goods are ready for despatch to the port of shipment, exporter has to apply to the central excise authority for excise clearance of the cargo. The exporter has, now an option to remove the goods with inspection by the central excise or remove the goods without inspection.

### **The role of excise inspector**

The Excise Inspectors are the officers who deal with Excise Duty related matters and work under Central Board of Excise and Customs (CBEC). ... The government revenue depends largely in the revenue generated by the department through the excise and custom taxes.

### **VAT and excise duty**

An excise, or excise tax, is any duty on manufactured goods that is levied at the moment of manufacture rather than at sale. ... Excises are typically imposed in addition to an indirect tax such as a sales tax or value-added tax (VAT).

### **Payment of VAT on excise duty**

VAT is payable based on the value of the goods imported, including any customs or excise duty that is due. This means that when paying VAT on excise goods, the trader pays VAT on the excise duty as well as VAT on the cost of the goods. ... The standard rate VAT is 20%.

### **GST AND VAT**

1500 ) as unlike VAT, GST has the facility to deduct the tax paid on supplies from the output tax liability on services rendered. In view of the key difference between GST and VAT, the implementation of GST on goods and services has proved to be more efficient in many ways.

## Excise Duty

Excise duty is a kind of indirect tax charged on the sale of certain products. The customer does not pay excise duty directly to the authorities, but it is added to the cost of the product by the producer or merchant and then passed on to the consumer by way of increased prices. The Excise Duty Act, 1944 governs the regulations related to excise duty in India and the tax is administered by the Central Board of Excise and Customs.

### Types of Excise Duty

Here are the different types of excise duties:

- **Basic Excise Duty:** Basic Excise Duty is levied under Section 3 of the Central Excises and Salt Act, 1944. Under this section, all excisable products apart from salt, manufactured or produced in India, are subject to Basic Excise Duty. Central Value Added Tax or CENVAT, as it is also called, is charged at the rates mentioned in the Central Excise Tariff Act.
- **Special Excise Duty:** Central Excise Duty is charged under Section 37 of the Finance Act, 1978. It is levied on all excisable products that are subject to Basic Excise Duty under Section 3 of the Central Excises and Salt Act, 1944. The rate at which Special Excise Duty is charged is mentioned in the Second Schedule to Central Excise Tariff Act, 1985.
- **Education Cess on Excise Duty:** According to Section 93 of Finance (No. 2) Act, 2004, Education Cess is an excise duty that must be computed on the aggregate of all excise duties including special excise duty or other excise duties, but not including Education Cess of excisable goods.
- **Natural Calamity Contingent Duty:** Section 136 of the Finance Act, 2001, has imposed the Natural Calamity Contingent Duty under clause 129 of the Finance Bill, 2001. The Natural Calamity Contingent Duty is charged on cigarettes, chewing tobacco, and pan masala.
- **Excise Duty in case of clearances by Export Oriented Units:** The Export Oriented Units have an obligation to export all the goods produced by them. However, if their final product is cleared in a domestic tariff area, the rate at which excise duty is charged will be the same as customs duty on a similar article if imported in India.
- **Duties under other Acts:** Certain duties as well as cesses are charged on manufactured goods under other Acts. The taxes, however, are collected under the administrative machinery of central excise. The rules and provisions of the Central Excise Act are responsible for the levy as well as collection of these duties and/or cesses/
- **Additional Duty on Goods of Special Importance:** Additional Excise under Additional Duties of Excise (Goods of Special Importance) Act, 1957 is levied on certain goods of special importance. The 'Additional Duty' is charged along with excise duty. The Additional Duty on Goods of Special Importance scheme was implemented due to the suggestions made to the Government by manufacturers. The suggestions were made to avoid multiple taxes and duties at different levels. The levy of all taxes as well as their collection at one stage by one authority was expected to make it convenient to not only pay the tax, but to also administer it. Therefore, the Central and State Governments agreed to charge additional duty on certain items instead of charging sales tax. The additional duty was distributed among different states, and the State Government share the revenue from this duty based on the percentages specified in the second schedule of the Act.
- **Additional Customs Duty commonly known as Countervailing Duty (CVD):** This duty is charged on imports.

- **Additional Duty on Mineral Products:** Under the Mineral Products (Additional Duties of Excise and Customs) Act, 1958, additional duty must be paid on mineral products such as motor spirit, furnace oil, diesel and kerosene.
- **Duty on Medical and Toilet Preparations:** Under the Medical and Toilet Preparations (Excise Duties) Act, 1955, excise duty is charged on medical preparations.
- **Special Additional Duty of Customs:** Special Additional Duty of Customs is charged on items that are bound under the Information Technology Agreement (apart from information technology software), and also on certain raw materials or inputs for the manufacture of IT or electronic products.

### Who Should Pay Excise Duty?

Considering the fact that excise duty is charged on the manufacture/production of goods, the producer/manufacturer of goods is liable to pay excise duty to the government. The three parties that must pay excise duty include the following:

- The individual or entity that manufactured or produced the goods
- The individual or entity that was responsible for the manufacture of goods by way of hiring labour
- The individual or entity responsible for the manufacture of goods by other parties

### When to Pay Excise Duty?

Excise duty must be paid at the time of removal of goods. Assesseees must pay the excise duty on the manufacture or production of goods. Under Rule no. 8 of the Central Excise (Amendment) Rules, 2002, excise duty should be paid on the fifth day of the following month from the date on which the goods were removed from the warehouse or factory for the purpose of sale. In case excise duty is paid online through netbanking, the due date to make the payment is the sixth day of the following month. However, if the payment is made in March, it must be done before March 31.

### How to Pay Excise Duty

The Central Board of Excise and Customs launched the Electronic Accounting System in Excise and Service Tax (EASIEST) in 20017 as a web-based payment gateway so that assesseees could pay service tax and Central excise duties online. The Central Board of Excise and Customs, from 1 October 2014, has made it compulsory to pay service tax and excise duties online via netbanking for all Service Tax and Central Excise assesseees.

### Differences Between GST and Excise Duty

Here are the key differences between the Goods and Services Tax and Excise Duty:

- **Tax base:** Excise duty is levied on the manufacture of products, while GST is charged at every stage of the supply chain, from manufacture till the sale of the products.
- **Point of taxation:** Excise duty is charged at the time of the removal of products, while GST is charged at the time of supply of products and services.
- **Tax rate:** The rates applicable to excise duty are specified as per the central excise tariff rules. At the moment, excise duty is charged at 12.36% but it varies based on the kind of products. GST, on the other hand, has standard rates at 0%, 5%, 12%, 18%, and 28% depending upon the kind of product.

- **Filing of returns:** When it comes to the filing of returns, excise duty returns must be filed on a monthly basis, and a yearly return must be filed before April 30. Under GST, returns must be filed on a monthly basis and a yearly return must be filed before September 30.
- **Invoice matching:** Under excise duty, there is no concept of invoice matching and the taxpayer can claim input tax credit based on self-assessed returns. Under GST, credit can be availed based on invoice number matching.
- **Input tax credit:** When it comes to input tax credit, credit under excise duty can be availed on the tax levied on input goods and services. Under GST, credit can be taken too but the SGST credit cannot be adjusted against CGST credit and vice versa. However, IGST credit can be taken against SGST, CGST, or IGST.

### How has GST affected Excise Duty?

After the implementation of the Goods and Services Tax, the taxes that have been replaced by the new tax regime are as follows:

#### At the State Level:

- State VAT/Sales Tax
- Octroi and Entry Tax
- Entertainment Tax
- Luxury Tax
- Purchase Tax
- Fat Tax (in Kerala)
- Taxes on gambling, lottery and betting

#### At the Central Level:

- Central Excise Duty
- Service Tax
- Additional Excise Duty
- Special Additional Duty of Customs
- Additional Customs Duty commonly known as Countervailing Duty

Excise duty is charged on the production of goods and charged at the time of removal of products. GST, on the other hand, is charged on the supply of products and services. Central GST has replaced excise duty as excise is charged by the Central Government and it also collects the revenue from Central GST.

### Penalty for not Paying Excise Duty

In case you fail to pay excise duty or commit an offence related to any excisable product, the duty chargeable thereon exceeds Rs.50 lakh and the defaulter may face imprisonment for a term that may extend up to 7 years. Fine will also be charged to the defaulter. Sometimes, the imprisonment term could extend up to 3 years, with or without fine, depending on the case.

Under Section 11A(4), the reasons for punishment for not paying or underpaying excise duty could be fraud, wilful misstatement, collusion, or suppression of facts. Here are the penalties for the various offences related to Excise Duty:

- In case excise duty was not levied, or not paid, or was short-levied, or was short-paid, or incorrectly refunded due to collusion, fraud, suppression of facts, or wilful misstatement, the assessee will be subject to a penalty equal to 50% of the duty so determined.

- In case the details pertaining to a transaction in the records reveal that any excise duty was not levied, or not paid, or was short-levied, or was short-paid, or was incorrectly refunded, the assessee will be subject to a penalty equal to 50% of the duty so determined.
- In case the interest payable in addition to an excise duty is paid within 30 days from the date on which the same was communicated with the assessee, the penalty will be 25 of the duty so determined.
- In case a person who is associated with the transporting, depositing, concealing, removing, selling, purchasing or keeping of any excisable products that he/she knows are liable to confiscation as per the law, will be liable to a penalty equal to the duty applicable to the goods or Rs.20,000, whichever is more.
- In case a person makes/issues an excise duty invoice or another document claiming the removal of goods when said goods have not been delivered will be liable to a penalty equal to the amount of such benefit or Rs.5,000, whichever is more.

### Small Scale Industry Exemption Under Central Excise

Under the regulations of the **Central Excise Act**, a **Small Scale Industry** is one whose **aggregate value of Turnover** does not go beyond Rs.150 Lakhs made on or after the 1st day of April in any **financial year**. During 1st March 2003, the government had given an exemption notification for the **small scale industry** (SSI) under the **central excise law**. It intends to provide few relaxations towards **small scale industries**. As per this notification, an incentive is offered to SSI for the development of the economy, even though exemptions to **small scale industries** cannot be applied to every one of the products and the benefits are restricted.

### Eligibility for SSI exemption

For a business towards availing the exemptions, it must be registered with the State Directorate of industry and it should produce the certificate at the time of obtaining the exemptions. If the turnover of the prior year is to 400 lakhs, and it manufactures the goods specified in the notification issued then it is qualified for the exemption.

### Rate of duty

The Indian Government gives an exemption from duty if the turnover is Rs. 150 lakhs in the **financial year**. It implies the excise duty shall be payable if the turnover is above 150 lakhs, likewise if the SSI entity had started up the commerce in a current fiscal year, then it is allowed to the benefit of the exemption for the present year as its previous **financial year** clearances are NIL, even with the fact that the business has not started the operations.

The rate of duty shall be NIL if the first clearance **aggregate value** is less than Rs. 150 lakhs made on or after the 1st of April in any **financial year**.

The rate of duty shall be NIL if the clearance of the stated products is utilized as inputs for further manufacture of any specified products within the factory for the production of the specified products in the notification issued for exemption.

## **Applicability of SSI Exemption**

### **SSI Exemption Under Central Excise is available in:**

- products manufactured in Rural areas.
- Raw materials utilized by manufacturers.
- Packing Material, Account books, Registers as well as Writing pads.
- Production of components, parts of any machinery or equipment for usage as original equipment in the factory.
- Merchandises having the **brand name** of NSIC, KVIC, SSIDC.
- House Mark in respect of medicinal preparations.

### **Non-applicability of SSI Exemption.**

**Small Scale Industry Exemption under Central Excise** is not applicable to the manufacturers of the following goods:

- Products manufactured by an SSI under the **Brand Name** of others are not eligible for SSI Concession.
- Tea/Coffee.
- Stainless Steel and Aluminum Circles.
- Pan Masala, Unbranded Chewing Tobacco.
- Tractors, Motor Vehicles, Cars, Chassis, Motorcycles & Mopeds.
- Sandalwood Oil.
- Ice-Cream.
- Matches.
- Watches.
- Goods covered under the compounded levy scheme.
- Ceramic tile excluding those subjected to the procedure of decorating and printing.
- Photographic Plates and Films.

- Refined Copper and Copper alloys.
- Revolvers, Pistols, and Firearms.
- Travel Sets for personal toilets.
- Power Driver Pumps for water not conforming to Bureau of Indian Standards (BIS).

### **Clubbing of Clearances**

The main idea behind this is to avoid the creation of dummy units for obtaining the benefits **under central excise** for every such unit. This limit would be deliberated by considering the clearances of one manufacturer from a factory or more factories or a factory through more manufacturers.

### **Availability of Cenvat Credit**

#### **Cenvat Credit**

A **cenvat credit** is a credit regarding **central excise** on inputs acquired for the manufacture or duty paid for the manufacture of the final good. The service provider would not avail the **cenvat credit** of the tax paid on any input or input services utilized for providing the service for which the exemption was availed. The service provider would not avail the **cenvat credit** on capital goods received in the course of the period in which the exemption was availed.

#### **The aggregate value of turnover**

The **aggregate value** not more than Rs. 10 lakhs means that the total of first following payments received during a **financial year** towards the gross amount asset under Section. 67. This doesn't include payments received which are exempted from whole of the service tax under any other service tax exemption notification.

Likewise, if the service provider offers one or more services from one or more premises, the exemption would apply to the **aggregate value** of every of such services and from every of such premises and not separately for each premise or service.

#### **Items Excluded from Calculation of Limit for Exemption.**

The items that are excluded while calculating the **aggregate value** of Rs. 150 Lakhs are:

- Clearances are bearing the **brand name** or trade name of another individual is ineligible for this benefit.
- Clearance exempts from the whole of the excise duty under any additional notification.
- Clearance of intermediate merchandises or products captivity consumed in case the final product is eligible for **SSI Exemption**.

- Export clearances.

The items that are excluded when calculating the **aggregate value** of Rs.400 Lakhs:

- Clearances are bearing the **brand name** or trade name of another individual is ineligible for this benefit.
- Clearances to FTZ, SEZ, 100% EOU, HTP, STP, UNO or International organization.
- Clearance of intermediate merchandises or products captivity consumed in case the final product is eligible for **SSI Exemption**.
- Export Clearances.

### **Registration Details**

- SSI whose turnover is below Rs. 150 lakhs are exempted from registration. When the turnover limits go beyond, the unit must be registered with **Central Excise** Authorities.
- SSI whose turnover is above the specified limit (presently Rs. 90 Lakhs), but below exemption limit (that is, Rs. 150 lakhs) have to file a declaration in a set form.

### **Filing of Returns**

The assessee must file quarterly return in ER3 format on or before 10th of the below-mentioned month from the end of the relevant quarters.

### **The due date for Payment**

- When the turnover goes beyond the exemption limit, **Small Scale Industry** (SSI) are responsible to pay ED.
- The due date for payment of duty is 5th of the following month from the end of relevant quarters for clearances during April-February and 31st March for clearances during March.
- SSI units are legally responsible to pay ED on a quarterly basis. This relaxation is obtainable for the entire year even if the SSI unit crosses the limit of Rs. 400 Lakhs.

### **Rebate and Refund:**

Refund of any duty of excise is governed by Section 11B of the Central Excise Act, 1944. By definition, refund includes rebate of duty paid on goods exported out of India or on materials used in the manufacture of goods exported out of India. The refund claim can be filed within one year from the relevant date in the specified Form [for the time being the format R-1 specified under rule 173S of the erstwhile Central Excise Rules, 1944] by an assessee or even a person



who has borne the duty incidence, to the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacture.

1.2 The "relevant date" has been defined in the said section and refund of duty paid can be sought provided the manufacturer has not passed on the burden of duty. In case the burden of duty has been passed on, the refund can be claimed by the person who has actually paid the duty or, in the alternative, the amount can be deposited in the Consumer Welfare Fund created by the statute.

1.3 The Central Excise Act also provided for payment of interest on delayed payment of refund. As per Section 11BB, if any duty ordered to be refunded under Section 11B has not been refunded within three months from the date of receipt of the refund application in the prescribed manner and form along with the supporting documentary evidence as laid down in the relevant rules, interest at the rate notified by the Government shall have to be paid on such duty from the date immediately after the expiry of three months from the date of receipt of application till the date of refund of such duty.

### **1. Presentation of refund claim**

2.1 Any person, who deems himself entitled to a refund of any duties of excise or other dues, or has been informed by the department that a refund is due to him shall present a claim in proper Form, along with all the relevant documents supporting his claim and also the copies of documents/records supporting his declaration that he has not passed on the duty incidence.

2.2 The claim will be filed with the Deputy/Assistant Commissioner of Central Excise with a copy to the Range Officer.

2.3 The claim shall be presented in duplicate and shall be duly signed by the claimant or by a duly authorised person on his behalf and shall be pre-receipted (with revenue stamp on original copy, where necessary).

2.4 It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant is not in disadvantageous position with respect to limitation period.

### **Scrutiny of refund claim and sanction**

3.1 The Range Officer will complete the scrutiny of the papers within 2 weeks from the date of receipt of the claim in the Range Office and send a report to their scrutiny to the Divisional Deputy/Assistant Commissioner of Central Excise.

3.2 The Divisional Office will scrutinise the claim, in consultation with Range, and check that the refund application is complete and is covered by all the requisite documents. This should be done, as far as possible, the moment refund claim is received and in case of any deficiency, the same should be pointed out to the applicant with a copy to the Range Officer within 15 days of receipt.

3.3 In the Divisional Offices, final processing of refund claims after the receipt of Range Officer's report should be completed including the verification of the fact whether the assessee has passed on the duty incidence to their buyer (in cases where the refund claim is filed by a manufacturer or owner of warehoused goods). The types of cases to which this provision will not be attracted are already specified in section 11B itself. Where the duty incidence has been passes on, the duty refund, if otherwise admissible, will be ordered in file, but will also be ordered to be credited to the Consumer Welfare Fund. The burden of proving that the duty incidence has not been passes on, is on the claimant and the latter may be required to submit sufficient documentary proof for this purpose. It is clarified that the question of unjust enrichment has to be looked into case by case. There cannot be a general instruction indicating the documents and /or record, which the claimant should produce as a proof that he has not, passes on the duty incidence to any other person.

3.4 Claim for refund of less than Rs. 100 shall not entertained in respect of all excisable commodities.

### **Payment of refund**

4.1 Where the claim has been admitted whether in part or in full, and claimant is eligible for refund, the Deputy/Assistant Commissioner of Central Excise should ensure that payment is made to the party within 3 days of the order passed after due audit, if any.

4.2 All claims shall be paid to the applicant by a cheque on the authorised bank with which the sanctioning authority maintains account.

4.3 On receipt of sanctioning claims from the dealing hands, the cheque shall be written out by the cashier (or his assistant) and simultaneously an entry made in the cash book. The Assistant Commissioner shall sign the cheque as well as the entry in the cashbook simultaneously. A receipt of the cheque should be obtained from the payee and placed on file.

4.4 After the cheque has been signed, it shall either be delivered to the claimant or his authorised representative personally when the next calls for it or sent to him by Registered Post 'Acknowledgement Due' at Government cost.

## Post Audit

5.1 All refund claim papers should be sent by the Divisional Deputy/Assistant Commissioner to the Commissionerate Headquarters (to the Additional/Joint Commissioner–Audit) within a week after the payment thereof irrespective of the amount involved. At the Commissionerate Headquarters, a special cell comprising Deputy/Assistant Commissioner (Audit) – for immediate supervision – one superintendent, one Inspector and two Deputy Office Superintendents may be created out of the sanctioned strength of the audit staff in the Commissionerate for post -audit of these claims.

5.2 This cell may undertake examination on merits of each such claim where the amount of refund granted is Rs. 5 lakh or more. In regard to the remaining refund claims involving amounts below Rs. 5 lakh, post audit may be undertaken on the basis of random selection by the Deputy/Assistant Commissioner (Audit). This post audit may be completed before the expiry of three months from the date of payment and where ever the grant of refund is not found to be correct, action should be taken in terms of provisions contained in Section 35E of the Central Excises Act, 1944, this special Cell may work directly under the charge of Additional/Joint Commissioner (Audit).

## Monitoring and control for timely disposal of refunds

6.1 The Commissioner of Central Excise should devise appropriate control to ensure that the refund/rebate claims are expeditiously sanctioned within the time limit stipulated above.

Central Excise Settlement Commission. — (1) The Central Government shall, by notification in the Official Gazette, constitute a Commission to be called the [Customs, Central Excise and Service Tax Settlement Commission] for the settlement of cases under this Chapter and Chapter XIVA of the Customs Act, 1962 (52 of 1962).

(2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters.

(3) The Chairman, Vice-Chairman and other Members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws :

SECTION 32A. Jurisdiction and powers of Settlement Commission. — (1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the presiding officer shall be the principal Bench and other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to

discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

(5) The principal Bench shall sit at Delhi and the Central Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.

(6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench :

Provided that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

[Provided further that at any stage of the hearing of any such case or matter, referred to in the first proviso, the Chairman may, if he thinks that the case or matter is of such a nature that it ought to be heard by a Bench consisting of three Members, constitute such Bench and if Vice-Chairman is not one of the Members, the senior among the Members shall act as the presiding officer of such Bench.]

(7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a special Bench consisting of more than three Members.

(8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

**SECTION 32B.** Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances. — (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, [the member] as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, [the member] as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

**SECTION 32C.** Power of Chairman to transfer cases from one Bench to another. — On the application of the assessee or the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise] or [Principal Commissioner of Central Excise or Commissioner of Central Excise] and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

**SECTION 32D.** Decision to be by majority. — If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a

majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

**SECTION 32E. Application for settlement of cases.** — [(1) An assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or Cenvat credit [or otherwise] and any such application shall be disposed of in the manner hereinafter provided :

**Provided** that no such application shall be made unless, —

- (a) the applicant has filed returns showing production, clearance and Central excise duty paid in the prescribed manner;
- (b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- (c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and
- (d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under [Section 11AA] :

[**Provided** further that the Settlement Commission, if it is satisfied that the circumstances exist for not filing the returns referred to in clause (a) of the first proviso to sub-section (1), may after recording the reasons therefor, allow the applicant to make such application :

**Provided** also that] no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any court :

**Provided** also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

[(5) Any person other than an assessee, may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the assessee which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be prescribed.]

**SECTION [32F. Procedure on receipt of an application under section 32E.** — (1) On receipt of an application under [\* \* \*] section 32E, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in

writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection :

**Provided** that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the [Principal Commissioner of Central Excise or Commissioner of Central Excise] having jurisdiction.

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the [Principal Commissioner of Central Excise or Commissioner of Central Excise] having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission :

**Provided** that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case :

**Provided** that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

After examination of the records and the report of the [Principal Commissioner of Central Excise or Commissioner of Central Excise] received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the [Principal Commissioner of Central Excise or Commissioner of Central Excise] having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the [Principal Commissioner of Central Excise or Commissioner of Central Excise] and Commissioner (Investigation) under sub-section (3) or sub-section (4).

[(5A) The Settlement Commission may, at any time within three months from the date of passing of the order under sub-section (5), amend such order to rectify any error apparent on the face of record, either *suo motu* or when such error is brought to its notice by the

jurisdictional Principal Commissioner of Central Excise or Commissioner of Central Excise or the applicant :

**Provided** that no amendment which has the effect of enhancing the liability of the applicant shall be made under this sub-section, unless the Settlement Commission has given notice of such intention to the applicant and the jurisdictional Principal Commissioner of Central Excise or Commissioner of Central Excise as the case may be, and has given them a reasonable opportunity of being heard.]

An order under sub-section (5) shall not be passed in respect of an application filed after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

[**Provided** that the period specified under this sub-section may, for reasons to be recorded in writing, be extended by the Settlement Commission for a further period not exceeding three months.]

Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D shall apply.

The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts :

**Provided** that the amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the assessee within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.]

**SECTION 32G. Power of Settlement Commission to order provisional attachment to protect revenue.** — (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.

Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date, the sums due to the Central Government for which

such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

**SECTION 32-I. Powers and procedure of Settlement Commission.** — (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

Where an application made under section 32E has been allowed to be proceeded with under section 32F, the Settlement Commission shall, until an order is passed under sub-section [(5)] of section 32F, have, subject to the provisions of sub-section [(4)] of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

**SECTION 32J. Inspection, etc., of reports.** — No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

**Provided** that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

**SECTION 32K. Power of Settlement Commission to grant immunity from prosecution and penalty.** — (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 32E has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act [and also either wholly or in part from the imposition of any penalty and fine] under this Act, with respect to the case covered by the settlement :

**Provided** that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 32E.

An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under [sub-section (5) of section 32F within the time specified in such order] or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted. An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person



had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

**SECTION 32L. Power of Settlement Commission to send a case back to the Central Excise Officer.** — (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

For the purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him.

For the purposes of the time limit under section 11A and for the purposes of interest under section 11BB, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 32E and ending with the date of receipt by the Central Excise Officer of the order of the Settlement Commission sending the case back to the Central Excise Officer shall be excluded.

**SECTION 32M. Order of settlement to be conclusive.** — Every order of settlement passed under sub-section [(5)] of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

**SECTION 32N. Recovery of sums due under order of settlement.** — Any sum specified in an order of settlement passed under sub-section [(5)] of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person

### UNIT – 3

What is Custom Duty?

Custom duty is a variant of Indirect Tax and is applicable on all goods imported and a few goods exported out of the country. Duties levied on import of goods are termed as import duty while duties levied on exported goods are termed as export duty. Countries around the world levy custom duties on import/export of goods as a means to raise revenue and/or shield domestic institutions from predatory or efficient competitors from other countries.

Customs duty is levied as per the value of goods or dimensions, weight and other such criteria according to the goods in question. If duties are based on the value of goods, then they are called

as ad valorem duties, while quantity/weight based duties are called specific duties. Compound duties on goods are a combination of value as well as various other factors.

### Custom Duty in India

Custom duty in India is defined under the Customs Act, 1962 and enables the government to levy duty on exports and imports, prohibit export and import of goods, procedures for importing/exporting and offences, penalties etc. All matters related to custom duty fall under the Central Board of Excise & Customs (CBEC). The CBEC, in turn, is a division of the Department of Revenue of the Ministry of Finance. CBEC formulates policies that concern collection or levying of custom duties, custom duty evasion, smuggling prevention and administrative decisions related to customs formations.

CBEC has various divisions that take care of the field work including Commissionerate of Customs, Customs, Customs (preventive and Central Excise Zones, Central Revenues Control Laboratory and Directorates etc. CBEC also oversees proper tax administration for foreign and inland travel.

### Custom Duty Update in Union Budget 2021

The Finance Minister Nirmala Sitharaman has recently announced the Union Budget 2021 on 1 February 2021. In the latest budget speech, the Finance Minister has announced a few changes in relation to custom duty. The following proposals have been made:

- The elimination of outdated exemptions through the rationalisation of the structure of customs duty.
- Decrease in the custom duty charged on precious metals like gold and silver. The rate has been cut down to 7.5% from the current rate of 12.5% for both the metals.

### Types of Custom Duty

Custom duties are levied almost universally on all goods imported into the country. Export duties are levied on a few goods as specified under the Second Schedule. Import duties are not levied on a few items including lifesaving drugs/equipment, fertilizers, food grains etc. Import duties are further divided into basic duty, additional customs duty, true countervailing duty, protective duty, education cess and anti-dumping duty or safeguard duty.

- **Basic Custom Duty:**  
Basic custom duty is applicable on imported items that fall under the ambit of Section 12 of the Customs Act, 1962. These duties are levied at the rates prescribed in First Schedule to Customs Tariff Act, 1975, under the terms specified in Section 2 of the act. The levied rates may be standard or preferential as per the country of import.
- **Additional Customs Duty (Countervailing Duty (CVD)):**  
This duty is levied on imported items under Section 3 of Customs Tariff Act, 1975. It is equal to the Central Excise Duty that is levied on similar goods produced within India. This duty is calculated on the aggregate value of goods including BDC and landing charges.
- **Protective Duty:**  
Protective duty may be imposed to shield the domestic industry against imports at a rate recommended by the Tariff Commissioner.
- **Education Cess:**

This duty is levied at 2% and higher education cess at another 1% of aggregate of customs duties.

- **Anti-dumping Duty:**

Anti-dumping duty may be imposed if the good being imported is at below fair market price, and is limited to the difference between export and normal price (dumping margin).

- **Safeguard Duty:**

Safeguard duty is levied if the government feels that a sudden increase in exports can potentially damage the domestic industry.

### Custom Duty Calculations

Custom duties are calculated on specific or ad valorem basis, i.e. on the value of goods. The value of goods is determined by Rule 3(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. This rule pegs the value of imported goods at the transaction value that has been adjusted according to the provisions under Rule 10.

In case there are no quantifiable or objective data regarding the valuation factors, valuation conditions aren't satisfied, or there are doubts regarding the accuracy or truth of declared value as per Rule 12 of Valuation Rules 2007, valuation of items has to be done through other means as per the following hierarchy,

- Comparative Value Method which compares the transaction value of similar items (Rule 4)
- Comparative Value Method which compares the transaction value of similar items (Rule 5)
- Deductive Value Method which uses the sale price of item in importing country (Rule 7)
- Computed Value Method which uses the costs related to fabrication, materials and profit in production country (Rule 8)
- Fallback Method which is based on the earlier methods with higher flexibility (Rule 9)

### Online Custom Duty

Online custom duty is available from ICEGATE or Indian Customs Electronic Commerce/Electronic Data Interchange (EC/EDI) Gateway. This portal allows E-Filing services to clients of Customs Department including trade and cargo carriers, collectively known as Trading Partner. ICEGATE offers services such as electronic filing of Bill of Entry, Shipping Bills, and other related messages between customs and the trading partner through e-mail, FTP and web-upload.

Shipping and airline agents can file manifests through this portal, while cargo logistics and custodians are able to interact with customs EDI for logistics and cargo related information. Apart from e-filing, this portal allows e-payment, document tracking, online registration for IPR, IE code status, verification of DEPB/EPCG/DES licenses, PAN based CHA data etc. There is a 24x7 helpdesk for all the trading partners to solve issues and collect information.

### Custom Duty Payment Online

Custom duty can be paid online by following the steps given below:

- Access the ICEGATE e-payment portal
- Enter Import/Export code or login credential supplied by ICEGATE

- Click on e-payment
- All the unpaid challans are seen in the name
- Select the challan to pay and select a bank or payment method
- After been redirected to the particular bank's payment gateway
- Make the payment
- After been redirected to ICEGATE portal, click print to save payment copy

### eSanchit

eSanchit stands for e-storage and Computerised Handling of Indirect Tax Documents. It was launched by the Central Board of Indirect Taxes and Customs (CBIC) in a bid to digitise the taxation system in India.

It streamlines trading across borders by facilitating customs-related documentation online. It allows for uploading of supporting documents and paperless processing of customs documents. Importers and exporters in India who are registered users of ICEGATE can use the eSanchit facility. They can do this by visiting the eSanchit portal on the ICEGATE website (<https://www.icegate.gov.in/eSANCHIT.html>). ICEGATE is the Indian Customs and Central Excise Electronic Commerce /Electronic Data Interchange (EC/EDI) Gateway. This offers e-filing services to the Customs and Central Excise Department's clients.

The CBIC has extended the eSanchit facility to Participating Government Agencies too (PGA) so that they can provide the necessary clearances to importers and exporters in the certificate format through the facility of uploading documents online.

eSanchit eliminates the need for submitting hard copies of documents to assessing officers. Not only is the speed with which clearances are given optimized, but the physical interface between traders and customs agencies is minimised as well.

### Custom Duty Calculator

The custom duty calculator in the ICEGATE portal can be accessed by entering the HS Code (CTH Code) of the good planned to import. Enter description within 30 characters and select the country of origin (for antidumping or preferential duty). Click on Search and see a list of goods that match the search criteria. Select one and would be able to access a chart with all information related to the custom duty on selected item. This is a dynamic chart and can enter values to check the exact custom duty liable to pay.

### **The departments in customs**

#### **Associated agencies**

- Directorate of Revenue Intelligence.
- Directorate General of GST Intelligence.
- Central Economic Intelligence Bureau.
- Financial Intelligence Unit (FIU- India)
- Directorate General of Performance Management.
- National Academy of **Customs**, Indirect Taxes & Narcotics (NACIN)
- Directorate General of Vigilance.

### **The role of CBIC**

- It deals mainly with the tasks of formulation and implementation of policy concerning to the levy and collection of Customs **duties**, Central Excise **duties** and Goods & Services tax, prevention of smuggling and administration of matters relating to Customs, Central Excise, Central Goods and Service Tax (CGST)

#### **CBDT and CBIC**

- The Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC) signed a memorandum of understanding for data exchange between the two organisations.

#### **APPEALS AND REVISION SECTION 128.**

Appeals to 2[Commissioner (Appeals)]. - (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a 3[Principal Commissioner of Customs or Commissioner of Customs] may appeal to the 2[Commissioner (Appeals)]4[within sixty days] from the date of the communication to him of such decision or order:

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

6[(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

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

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

SECTION 128A. Procedure in appeal. - (1) The 2[Commissioner (Appeals)] shall give an opportunity to the appellant to be heard if he so desires.

(2) The 2[Commissioner (Appeals)] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the 7[Commissioner (Appeals)] is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) The 8[Commissioner (Appeals)] shall, after making such further inquiry as may be necessary, pass such order, as he thinks 9[just and proper,—

- (a) confirming, modifying or annulling the decision or order appealed against; or
- (b) referring the matter back to the adjudicating authority with directions for fresh adjudication or decision, as the case may be, in the following cases, namely:—

(i) where an order or decision has been passed without following the principles of natural justice; or

(ii) where no order or decision has been passed after re-assessment under section 17; or

(iii) where an order of refund under section 27 has been issued by crediting the amount to Fund without recording any finding on the evidence produced by the applicant.] :

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

Provided further that where the 7[Commissioner (Appeals)] is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 28 to show cause against the proposed order.

(4) The order of the 7[Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

10[(4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.]

(5) On the disposal of the appeal, the 7[Commissioner (Appeals)] shall communicate the order passed by him to the appellant, the adjudicating authority<sup>11</sup>], the<sup>12</sup>[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] and the <sup>13</sup>[Principal Commissioner of Customs or Commissioner of Customs]].

SECTION 129. Appellate Tribunal. - (1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and <sup>14</sup>[Service Tax] Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

15[(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the <sup>16</sup>[Indian Legal Service] and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

Explanation. - For the purposes of this sub-section, -

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he

became an advocate.]  
 17[(2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of 3[Principal Commissioner of Customs or Commissioner of Customs] or Central Excise or any equivalent or higher post for at least three years.]

18[(3) The Central Government shall appoint –

(a) a person who is or has been a Judge of a High Court; or

(b) one of the members of the Appellate Tribunal,

to be the President thereof.]

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.

19[(4A)] Omitted

(5) 20[A Vice-President] shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

21[(6) On ceasing to hold office, the President, Vice-President or other Member shall not be entitled to appear, act or plead before the Appellate Tribunal.]

22[(7) Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President or other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.]

**SECTION 129A. Appeals to the Appellate Tribunal. -** (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the 17[Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority;

(b) an order passed by the 23[Commissioner (Appeals)] under section 128A;

(c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;

(d) an order passed by the Board or the 24[Principal Commissioner of Customs or Commissioner of Customs], either before or after the appointed day, under section 130, as it stood immediately before that day :

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

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder :

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

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

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

(iii) the amount of fine or penalty determined by such order, does not exceed 26[two lakh rupees].

27[(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under section 129DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.]

28[(1B) (i) The Board may, 29[by order], constitute such Committees as may be necessary for the purposes of this Act.

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

(2) 30[The Committee of Commissioners of Customs may, if it is] of opinion that an order passed by the Appellate 31[Principal Commissioner of Customs or Commissioner of Customs]



under section 128, as it stood immediately before the appointed day, or by the 32[Commissioner (Appeals)] under section 128A, is not legal or proper, direct the proper officer to appeal 33[on its behalf] to the Appellate Tribunal against such order:

34[Provided that where the Committee of 35[Principal Commissioners of Customs or Commissioners of Customs] differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional 36[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

Explanation.-For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the 36[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] having jurisdiction over the adjudicating authority in the matter.]

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the 37[Principal Commissioner of Customs or Commissioner of Customs], or as the case may be, the other party preferring the appeal.

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

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

38[(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, -

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

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

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

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

(7) Every application made before the Appellate Tribunal, -

- (a) in an appeal 39[\* \* \*] for rectification of mistake or for any other purpose; or
- (b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees :

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the 40[Principal Commissioner of Customs or Commissioner of Customs] under this sub-section.

SECTION 129B. Orders of Appellate Tribunal.- (1) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

41[(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

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

(2) The Appellate Tribunal may, at any time within 42[six months] from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the 43[Principal Commissioner of Customs or Commissioner of Customs] or the other party to the appeal:

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

44[(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed :  
45[\*\*\*\*\*]]

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the 46[Principal Commissioner of Customs or Commissioner of Customs] and the other party to the appeal.

(4) Save as otherwise provided in section 130 or section 130E, orders passed by the Appellate Tribunal on appeal shall be final.

SECTION 129C. Procedure of Appellate Tribunal. - (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in 47[sub-section (4)], a Bench shall consist of one judicial member and one technical member.

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

(a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or

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

(c) the amount of fine or penalty involved, does not exceed [fifty lakh rupees].

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.]

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

SECTION 129D. Powers of [Committee of [Principal Chief Commissioner of Customs or Chief Commissioner of Customs]] or [Principal Commissioner of Customs or Commissioner of Customs] to pass certain orders.- (1) The [Committee of [Principal Chief Commissioner of Customs or Chief Commissioner of Customs]] may, of its own motion, call for and examine the record of any proceeding in which a [Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such [Commissioner][or any other Commissioner] to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the [Committee of [Principal Chief Commissioners of Customs or Chief Commissioners of Customs]] in its order.\*

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

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

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

[Provided that the Board may, on sufficient cause being shown, extend the said period by another thirty days.]

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Principal Commissioner of Customs or Commissioner of Customs], makes an application to the Appellate Tribunal or the Commissioner (Appeals)] within a period of 64[one month] from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the [Commissioner (Appeals)], as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129A shall, so far as may be, apply to such application.\*

### **Offences and Penal Provisions**

Persons involved in import or export activity in violation of prohibitions or restrictions in vogue or with the intent to evade duties or fraudulently claim export incentives are liable for strict penal action under the Customs Act, 1962. The offending goods can be confiscated and heavy fines and penalties imposed on the persons concerned. In fact, sensitive goods like narcotics, FICN, arms and ammunitions, etc. are absolutely confiscated. There are also provisions for arrests and prosecution to deter smuggling or commercial fraud, which seriously affects the economic security.

1.2 In the context of penal provisions under the Customs Act, 1962 the term “smuggling” has vast connotations and means “any act or omission which will render such goods liable for confiscation under Sections 111 or 113 of the said Act.

1.3 In general terms, the word “penalty” means punishment under the law, i.e., such punishment as is provided in penal laws. It also means the sum payable as a punishment for a default. The Customs Act, 1962 contains specific provisions for imposition of penalty in case of contraventions of the legal stipulations.

### **2. Seizure of offending goods:**

2.1 In terms of Section 110 of the Customs Act, 1962 an officer of Customs can seize any goods, if he has reason to believe that the goods are liable to confiscation under the said Act. If it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. The proper officer may also seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the said Act. The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs.

2.2 The person from whom the goods are seized is issued Show Cause Notice, usually within 6 months, otherwise the goods shall be returned to the person from whose possession they were seized. However, Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend the time period to further period, for issue of Show Cause Notice, for a period not exceeding 6 months and inform the person from whom such goods were seized before the expiry of the period so specified. Further, where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply. Further, Section 110 of Customs Act, also provides for the proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. However, the person from whose custody any documents are

seized shall be entitled to make copies hereof or take extracts there from in the presence of an officer of customs. In case the seized goods are perishable or hazardous in nature or prone to depreciate in value over time or for reasons of constraints in space, or for any other relevant consideration, the Central Government can specify the goods or class of goods by notification such goods which shall as soon as may be after seizure be disposed by the proper officer before the conclusion of the proceedings in such manner as determined by the Central Government after following the procedure specified.

### **3. Confiscation of seized goods:**

3.1 The word “confiscation” implies appropriation consequential to seizure. The essence and the concept of confiscation is that after confiscation, the property of the confiscated goods vests with the Central government.

3.2 The adjudicating authority makes the decision regarding confiscation of goods. The specific/ different categories of violations under which the import or export goods are liable to confiscation, are enumerated in Section 111 and 113 of the Customs Act. In general, any goods imported which are unloaded or attempted to be unloaded at any place other than appointed under clause (a) of section 7 for the unloading of such goods; or any goods imported through any routes other than notified under clause (c) of Section 7 of the Customs Act, 1962; also the goods which are imported or attempted to be imported or brought into Indian customs waters, contrary to any prohibition imposed by or under Customs Act, 1962 or any other law for the time being in force; also any dutiable or prohibited goods attempted to be cleared by way of concealment, undeclared in arrival manifest or import manifest, mis-declaration in quantity, description or value etc. are liable to be confiscated. The imported or export goods are also liable to confiscation if there is an intention to evade Customs duty or to fraudulently avail the exemption / benefits available subject to any condition or under various export promotion schemes, such as Drawback, EOU etc. Also liable to confiscation are goods entered for exportation which does not correspond in respect of value or in any material particular with the entry made or in the case of baggage with the declarations made under Section 77 of the Customs Act, 1962.

3.3 Smuggled goods may be confiscated even if its form has been changed. In case the smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, then the whole of goods are liable to be confiscated as per Section 120 of the Customs Act, 1962.

### **4. Confiscation of conveyances/packages etc.:**

4.1 In addition to confiscation of goods, the conveyances, i.e., any vessel or any aircraft which is or has been within Indian customs waters / in India or any vehicle, which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be liable to confiscation; also any conveyance or animal used, as a means of transport/ or in the carriage, in the smuggling of any goods shall be liable to confiscation; also any conveyance from which any warehouse goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer are liable to confiscation as per Section 115 of the Customs Act, 1962. As per Section 118 of the Customs Act, 1962, in case where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation; Also in case where any goods are brought in a package within the limits of customs

area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.

4.3 The goods used for concealing smuggled goods are liable to confiscation as per Section 119 of the Customs Act, 1962. [in this section “goods” do not include a conveyance used as a means of transport.]

4.4 Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale proceeds thereof shall be liable to confiscation as per Section 121 of the Customs Act, 1962.

## **5. Penalties in respect of improper importation of goods:**

5.1 In terms of Section 112 of the Customs Act, 1962 any person, who, in relation to any goods, does or omits to do any act which act or omission would renders such goods liable to confiscation under Section 111 or abets the doing or omission of such an act, or, 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, shall be liable to penalties as follows:-

- (i) In the case of goods in respect of which any prohibition is in force under the Customs Act, 1962 or any other law for the time being in force, to a penalty not exceeding the value of the goods or Rs.5,000/-, whichever is the greater;
- (ii) In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent (10%) of the duty sought to be evaded or Rs.5,000/-, whichever is higher; provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined.
- (iii) In the case of goods in respect of which the value declared is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or Rs.5, 000/-, whichever is the greater;
- (iv) In the case of goods falling both under (i) and (iii) above, i.e goods in respect of which any prohibition is in force and the value stated / declared is higher than the value thereof, to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the highest; and
- (v) In the case of goods falling both under clauses (ii) and (iii) above, to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the highest.

6.1 In terms of Section 114 of the Customs act, 1962 any person, who, in relation to any goods, does or omits to do any act which act or omission would renders such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shall be liable to penalties as follows:

(i) In the case of goods in respect of which any prohibition is in force under Customs Act, 1962 or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under the Customs Act, 1962, whichever is the greater;

(ii) In the case of dutiable goods, other than prohibited goods, to a penalty not exceeding ten percent (10%) of the duty sought to be evaded on such goods or Rs.5,000/-, whichever is higher; PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined. (iii) In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Customs Act, 1962, whichever is the greater.

### **7. Mandatory penalty in certain cases:**

7.1 Section 114A of the Customs Act, 1962 deals with imposition of mandatory penalty in certain cases. Thus, in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under Section 28(8) of the Customs Act, 1962 shall also be liable to pay a penalty equal to the duty or interest so determined. If such duty or interest, as the case may be, as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person under this section shall be 25% of the duty or interest, as the case may be, so determined. Further if the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso.

7.2 If the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate tribunal or, as the case may be, the Court, then for the purpose of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account. The duty or interest determined to be payable is increased by the Commissioner (Appeals), The Appellate tribunal or, as the case may be, the Court, then, the benefit of reduced penalty shall be available under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon, and 25% of the consequential increase in penalty have also been paid within 30 days of the communication of the order by which such increase in the duty or interest takes effect. If penalty has been levied under section 114A, no penalty shall be levied under Sections 112 or 114 of the said Act.

Any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

### **8. Other penalties:**

8.1 If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, 1962, then in



terms of Section 114AA of the said act, such person shall be liable to a penalty not exceeding five times the value of goods.

8.2 In terms of Section 116 of the Customs Act, 1962 if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of the said Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and, if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant/ Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable: (i) In the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of the Customs Act, 1962 to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported; (ii) In the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

8.3 Any person who contravenes any provision of the Customs Act, 1962 or abets any such contravention or who fails to comply with any provision of this Act, with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding Rs.1 lakh.

### **9. Adjudication of confiscations and penalties:**

9.1 The Customs Act, 1962 enjoins quasi-judicial proceedings to be followed before any penalties are imposed and any confiscation action etc., initiated against any offending goods. Apart from issuing Show Cause Notice under Section 124 of the said Act, the persons concerned are required to be given opportunity of representation in writing and personal hearing in the matter. The notice and the representation may be at the request of the person concerned be made oral. Besides issue of notice under section 124, the proper officer may issue a supplementary notice under circumstances or manner prescribed by the Board. The adjudication authority is then required to pass final order taking due note of all evidences brought on record.

9.2 As per Section 122 of the Customs Act 1962, in every case, in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged:-  
(a) Without limit, by a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner of Customs;

**Arrest:** To effectively tackle the menace of smuggling and other serious economic offences including commercial frauds, apart from penal action in Departmental adjudication, the Customs Act, 1962 provides for criminal prosecution in a Court of law. Prosecution action can also be taken for providing false documents/declaration to the Customs and for obstructing Customs officers in their work.

I. Imprisonment for a term not exceeding 7 years (and in any case ordinarily not less than 1 year) in the case of an offence relating to: a) Any goods the market price of which exceeds Rs.1 crore; or b) The evasion or attempted evasion of duty exceeding Rs.50 lakhs; or c) Such categories of prohibited goods as the Central Government may, by notification, specify; or d) Fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to above, if the amount of drawback or exemption from duty exceeds Rs.50 lakhs. II. In any other case, with imprisonment for a term not exceeding 3 years or with fine, or with both.

### **Duty Free Zones**

These Special Economic Zones are: (i) SEEPZ Special Economic Zone, Mumbai; (ii) Kandla Special Economic Zone, Kandla ; (iii) Cochin Special Economic Zone, Cochin; and (iv) Surat Special Economic Zone, Surat.

The SEZ units are allowed to import and export through port, airport, land customs station, ICD, CFS, courier mode (as per courier rules) and post parcel. The software development units can import and export through data communication and telecommunication links. In the case of exports through data communication and telecommunication links, the SEZ units follow the same procedure and practice as is followed in case of EPZ/STP units. As for imports of software through above modes, the units are required to file the Bill of Entry within 24 hours of such import alongwith bank attested invoice and other relevant documents for obtaining notional 'out of charge'. The documents such as invoice etc. in respect of such import are required to be routed through the banks. The value of such software is certified by the Director of the STP/Development Commissioner of SEZ. Further, in case of such software imports, instructions issued by RBI, if any, are also required to be followed.

## **UNIT – 4**

### **Central Sales Tax Act**

An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-state trade of commerce or outside a State or in the course of imports into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-state trade of commerce and to declare certain goods to be of special importance in inter-state or commerce and specify the restrictions and conditions to which state laws imposing taxes on the sale or purchase of such goods of special importance shall be subject

The following are the salient features of central sales tax act ,1956 :-

- 1.Scope** – The central sales tax act extends to the whole of India .
- 2. Levied by Central Govt.-:** The CST is levied by the Central Govt. but it is collected by State Govt. from where goods have been sold.
- 3. No Exemption Limit-:** CST is levied on turnover and there is no exemption limit on turnover.
- 4. Administered by State Govt.-:**The sales tax authorities of State Govt. are authorities for the purpose of CST.

**5. Concessional Rates:-** Concessional rates of CST is applicable if declaration in Form C is issued by purchaser who is a registered dealer.

**6.Sales are exempted:-** Certain sales are exempt under CST if:-

- a)Sale is within state as it subject matter of VAT
- b)Subsequent sale is there
- c)Sale or purchase in the course of exports and imports.

**7. Types of good** – under the act, goods have been divided into declared goods and other goods. On Declared goods CST is charged at the rate not more than 5% and not more than once, while tax charged on other goods is Local State Sale tax.

### **Levy of CST**

Section 6 (1) provides that the dealer who sells goods, other than electrical energy, in the course of inter-State trade or commerce is liable to pay CST. However, no tax is payable on sale in the course of export of goods. Tax shall be collected from the selling dealer by State Government from where the movement of goods has commenced. CST not to be levied in the following cases

1. Sales or purchase within the State- Section 4(1)
2. Sale in the course of Import or Export – Section 5(1)
3. Purchase of aviation turbine fuel for designated Indian carriers for purpose of international flight- section 5 (5)
4. Penultimate sales subject to conditions – Proviso to section 5(3) read with Section6 (1)
5. Subsequent inter-State sales subject to conditions – Section 6(2)
6. Sales to foreign missions/ UN as specified subject to conditions – Section 6(3)
7. Sales to SEZ developers and units on production of Form I 8. Sale of goods which are exempt from tax

### **Liability of CST for Purchases**

Purchase is the other side of sale and is important. In CST the sale or purchase within the State is not liable to tax. However, when goods are received in the course of inter-State trade unless they are exempted, they would be liable. The circumstances when there is no liability for purchase are as under :

1. Purchases in the course of import from out of India
2. Purchases in the course of or export out of India
3. Purchase of goods from new industries exempt under notification

### **Circumstances/ situations when purchaser is liable for CST**

1. Procurement of goods meant for resale from unregistered dealers/ individuals/ growers within State. There is no concept of unregistered person [URD] in CST.
2. Procurement of goods meant for manufacture of goods for sale outside State from unregistered dealers within State.
3. Purchase of old jewelry locally for making new jewelry sold inter-State.
4. Purchase of goods done locally meant for resale to exporter unless in course of export.
5. Sale of Iron and Steel in the course of constructing a building by dealer who is under composition scheme. Thus it can be concluded that if the consideration for the transfer is not money, cheque and similar instruments but some other valuable consideration, it may amount to exchange or barter but not a sale. When goods are given as replacement or a credit note issued, it may not be treated as a consideration in money, in which case CST will not be applicable.

**Collection of CST:** Section 9 Section 9(1) of CST Act, 1956 sets out that the tax payable by any dealer under this Act on sales of goods made by him in the course of inter-State trade or commerce, shall be levied by the Government of India and the tax so levied shall be collected by the Government.

### **Offences and Penalties**

Though CST is levied by Central Government and tax is collected and administered by State Government. assessment for Central sales tax is done by the State sales tax officer who does assessment of local sales tax. The CST Act provides for penalties and punishments for the offences like nonfiling, late filing etc. There are three types of punishments which can be imposed under CST Act. They are-

- (a) Imprisonment and fine- which can be imposed only by a Court of Law
- (b) Compounding of offences – by Sales Tax Authorities
- (c) Penalty –which can be imposed by Sales Tax authorities No court shall take the cognizance of any offence punishable under this Act or rules unless it is specified by Government by general order or by special order in this behalf. Court not below the rank of a Presidency Magistrate or Magistrate of First class shall try such offences All offences punishable under this Act shall be cognizable and bailable.

### **OFFENCES WHICH ARE PUNISHABLE**

A person who has committed an offence under section 10 of this Act shall be punishable with simple imprisonment for not more than 6 months or with fine or both. If the offence is a continuing offence, then fine shall be imposed on daily basis which may extend to Rs 50 for every day during which the offence continues. The offences which attracts the section 10 are as follows

- (a) Knowingly giving of false declaration in forms C, E-I, E-II, For H

(b) Not registering under CST Act when he is liable or required to be registered or not furnishing security

(c) Falsely representing as a registered dealer though he is not registered

(d) After purchasing goods at a concessional rate under C, D, E-I, /E-II, H OR I form, making use of goods for other purposes without showing a reasonable cause

(e) Having in possession C forms, D forms, E-I/E-II forms, H forms or I forms which are not obtained as per the provisions of the Act.

(f) Collecting any amount by way of Central Sales Tax in contravention of the provisions contained in section 9-A. In this context, If C Forms issued in respect of purchase which are covered by the Certificate of Registration on the date when the purchase is made, though the form is issued subsequently when the Registration Certificate is amended, the offence is committed. It is for the assessee thereafter to satisfy that there was a reasonable cause

### **PENALTY IN LIEU OF PROSECUTION**

CST Act authorises imposition of penalty in lieu of punishment by way of imprisonment in respect of offences regarding- (i) Obtaining goods which is not included in the Registration certificate by making false representation (ii) Purchasing of the goods by falsely representing himself as a registered dealer (iii) Without a reasonable cause, using of goods for the different purpose other than for which it is being purchased For the above offences penalty can be levied upto one and a half times of the tax which is payable.

### **Central Sales Tax Transaction Forms**

Manufacturers, dealers, brokers, exporters and industrialists, during the course of business deal, have to provide certain statements in the agreed format to the wholesalers and consumers. These forms are printed and delivered by sales tax officials and has to be drafted in three copies.

#### **Some essential forms are listed below:**

1. Form D: Every sale made to the Government is taxed at the rate of four percent or pertinent sales tax rate for the specific sale within the state, whichever is lesser. To enjoy this discount on CST, Form D is provided by the government department that buys those products.
2. Form I: This form is provided by the businessman or dealer living or operating in a Special Economic Zone (SEZ). This form offers rebate on the Central Sales Tax as there are no taxes imposed when the deal is made to a dealer from SEZ.

### **Procedure to get Central Sales Tax Registration**

**Steps involved in registering for central sales tax (CST) is exactly the same as that of VAT.**

First thing to do is to get your TIN registration number. TIN stands for Taxpayer Identification Number and is a unique 11-digit number issued by the Department for Commercial Tax of corresponding states. This has to be specified in every VAT dealing and business correspondence. TIN number is also a way to categorize merchants and brokers registered under VAT. It is a single number and is allocated to the traders to register for each of the three taxes, namely, CST, VAT and Service Tax. The first two digits of TIN denote the state from which it is availed. But the purpose of the remaining nine digits of the TIN number usually vary for each

state. It is applicable whether the commercial operations are intrastate or inter-state. Under the Indian Income Tax.

### **Documentation for Central Sales Tax**

Mandatory documents required to apply for a TIN registration are:

- ID Proof: Copy of PAN Card, Driving License, Passport, Voter's ID, Aadhaar Card or any government photo-bearing ID issued by government
- Residence proof: Copy of any of the above (except PAN Card), Ration Card, Rental/ Lease Agreement, any of your recent utility bill
- Four to six passport sized photos
- Address proof of the business establishment
- First sale or purchase invoice
- Duplicate copy of LR / GR and proof of payment along with bank statement
- Guarantee, security and / or reference letter
- Nevertheless, the documentation procedure varies from state to state because state government has the liberty to frame the rules and guidelines and amend them for their people.

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

A value-added tax (VAT) is a consumption tax placed on a product whenever value is added at each stage of the supply chain, from production to the point of sale. The amount of VAT that the user pays is on the cost of the product, less any of the costs of materials used in the product that have already been taxed.

VAT is a multipoint levy of sales tax that enables the person to claim set off of tax which he pays on the purchases. The system of VAT is so designed that the final levy and burden of the tax on the goods is borne by the final consumer of the goods.

### **LEVY OF VAT**

VAT is levied at every stage of production. It is levied only on the value added by the last seller. The seller is accordingly liable to pay tax on the net value added to the gross value as reduced by the value of intermediate materials purchased. VAT means a tax on sale of goods at every stage when it changes hands with the provision of credits for input tax paid at the time of purchase of goods (intended for resale, to be used as raw material for the purpose of manufacturing or for packing) or capital goods for the purpose of manufacturing. Firstly, tax liability on sale made by the dealer will be calculated on similar lines as is presently being done under the Sales tax Act and thereafter tax paid on purchases will be deducted and the net amount will be paid/claimed for refund will be made by the dealer. The procedure can be summarized as under: 1. Calculate the tax liability of sales, i.e. gross turnover x rate of tax. 2. Less: Tax paid on purchase of goods, capital goods to be used for purpose of manufacturing.

### **OBJECTIVES OF VAT**

The primary objective of VAT is to remove the cascading effect of taxes and levies, which

is generally prevailing in other types and manner of levy. The VAT concept is simple, transparent, and consistent in its form, content, structure and approach.

It further ensures revenue neutrality and mechanism must be self regulated.

### **ADVANTAGES OF VAT**

The cases under VAT are more likely to be accepted as such and only limited cases would be taken for scrutiny. The method would be more or less identical to the one followed under the Excise law. There are minimum exemptions and hence reduced complications and complexities. The cost of compliance by the dealer is less and is transparent. There are limited possibilities of litigation and the protracted litigation can be avoided.

It is easy to administer the levy of VAT due to its simplicity.

The possibility of tax evasion is less, as the dealer is liable only for part of the amount of tax. Hence, one may not indulge into tax evasion techniques for a small amount. Further, the dealer would not indulge into purchase of goods out of books since otherwise he would not get any set off tax paid. The VAT does not have a cascading effect. The cost of purchase reduces, as the dealer is able to claim set off tax paid on purchase against tax payable on sales.

### **LIMITATIONS OF VAT**

There could be cases where the VAT is collected by the dealer, but not paid to the Government. As a result, the set off of such VAT paid by the purchaser may not be allowed to the purchasers. A mechanism has to be devised to tackle such situations. A situation of refund would arise is no VAT is payable on the final sale. As a result, the set off cannot be availed. In such cases, the tax paid becomes the cost or the same has to be claimed as refund. Hence, the mechanism of refund has to be framed. VAT would also contain multiple rates of tax due to multiple types of items. In countries such as India where in there exist sales taxes already covering a wide range of commodities, replacement of those taxes by a revenue neutral value added tax should lead to no inflationary consequences. The dealers will now be required to maintain upto date records of purchase and sales in order to claim set off. Many small dealers maintain only primitive accounts, which were accepted by the department. Since Central Sales Tax Act continues to remain in force, there can be conflict between the VAT and CST.

## **UNIT – 5**

GST is the biggest reform for indirect taxes in India in the post independence period. It simplified indirect taxation, reduced tax complexities, removed the cascading effect and led to one nation and one tax regime in India. Experts believe that GST will have a huge positive impact on business and change the way the economy functions. In this chapter we shall have a brief introduction on new GST regime introduced in India since July, 2017. Before we are introduced to the system of GST in India let us know the concepts of Direct and Indirect taxes.

### **Evolution of GST in India:**

France was the first country to implement GST in the year 1954. Within 62 years of its advent, about 160 countries across the world have adopted GST because this tax has the capacity to raise revenue in most transparent and natural manner.

**Kelkar Task Force 2004 :** The Finance Ministry of Government of India set up a Task Force under the chairmanship Mr. Vijay Kelkar in 2004 on the implementation of Fiscal Responsibility and Budget Management. It made recommendations to bring about a radical transformation of the Indian Tax System. It disagreed with the existing approach of the government to reduce government expenditure to achieve the fiscal consolidation. It has advised to go for a Revenue-led Approach which focuses on enhancing the revenues instead of compressing the expenditure. It went further to suggest that the Government should enhance capital expenditure in order to counterbalance the contraction effects of fiscal consolidation. The Goods and Service Tax is an outcome of the recommendations of the Task Force under the chairmanship of Mr. Vijay Kelkar. In India the draft of Goods and Service Tax ( GST) was presented in the parliament in August, 2009.

**Initiative of NDA Government:** Subsequently, the then Union Finance Minister, Shri P. Chidambaram announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty. The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution. (122nd Amendment) Bill, 2014 on GST in the Parliament on 19 th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution. (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became Constitution (101st Amendment) Act, 2016, which paved the way for introduction of GST in India. In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017 integrates Goods and Service Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted.

**State GST Laws:** The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws GST is a path breaking indirect tax reform which will create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

**Concept of GST:** GST is a single value added tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.



## Features of GST:

**Value Added Tax:** GST is a single value added tax on the supply of goods and services levied by the government of India. Under GST, tax is levied only on the value added at each stage in the supply chain from producer to the ultimate consumer. For example, if a business house purchases the goods of Rs. 1,000 and sells it for Rs. 1500 by adding Rs. 500 to the initial cost (consisting of say business overheads Rs. 200 and Profits of Rs. 300) he will have to pay GST only on the value addition of Rs. 500 and not on the total cost of Rs. 1500.

**Comprehensive:** GST subsumes all the prevailing indirect taxes. Moreover, by bringing in a unified taxation system across the country, it ensures that there is no more arbitrariness in tax rates.

**Multi-stage:** GST is levied at each stage in the supply chain from manufacturer to the ultimate consumer where the transaction takes place. GST offers comprehensive and continuous chain of tax credits from the producer's point or service provider's point up to the retailer's level or consumer's level thereby taxing only the value added at each stage of supply chain.

**Credit of GST paid on Purchases:** The supplier at each stage is permitted to avail credit of GST paid on purchase of goods and or services and can set-off this credit against the GST payable on supply of goods and services to be made by him. Thus only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all previous stages.

**Destination based consumption:** GST is collected at the point of consumption. The tax authority with appropriate jurisdiction in the place where the goods / services are finally consumed will collect the tax. For example let us say that the cotton garments are shipped from Gujarat to Maharashtra. Gujarat is producer state and Maharashtra is the consumer state. Tax revenue under GST shall be collected by GST authorities in Maharashtra.

**No Cascading Effect:** Since only the value added at each stage is taxed under GST, there is no tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus the two are taxed at a single rate.

**Rates of GST:** Currently there are four slabs of GST on the various categories of goods and services. They are 5%, 12%, 18% and 28%.

**Registration under GST:** Every supplier who makes a taxable supply of goods and / or services liable to get himself registered in the state from where he supplies. Threshold limit (computed on all India basis) – Special category states – Rs.10 lakhs – Other states –Rs.20 lakh. Online application for registration has to be made within 30 days. PAN based Registration has to be done. Following persons have to obtain registration irrespective of their threshold limit: (a) Persons making inter-state taxable supply (b) Casual taxable persons and (c) Non-resident taxable persons

**GST for sale within the state:** In case the buyer and seller of goods or service are from the same state transaction would be taxed simultaneously under Central GST (CGST) and State GST (SGST). The Central GST and the State GST would be levied simultaneously on every

transaction of supply of goods and services except the exempted goods and services. Further, both would be levied on the same price or value. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, however, SGST would be chargeable only when the supplier and the recipient are both located within the State.

**GST for Inter-state Sale :** Integrated Goods and Service Tax (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. The GST on supplies in the course of Inter-State trade or commerce shall be levied and collected by the Government of India. Such tax shall be apportioned between the Union and the States in the manner as may be provided by the law

### **Framework of GST as introduced in India**

#### **Dual GST**

India has adopted a dual GST system, which was imposed concurrently by the Centre and States as CGST & SGST. Centre has the power of tax intra-state sales and states are empowered to tax services. Now GST has extend to all over the India.

**CGST/SGST/UTGST/IGST;-** GST is a destination based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Service Tax (CGST) – levied and collected by Central Government, State Goods and Service Tax (SGST) – levied and collected by State Governments/Union Territories with State Legislatures and Union Territory Goods and Service Tax. (UTGST)-levied and collected by Union Territories without State Legislatures, on intra-State supplies of taxable goods and/or services. (IGST)- Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Service Tax. IGST is approximately the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.

**Legislative Framework:** There is single legislation – CGST Act, 2017 – for levying CGST. Similarly, Union Territories without State legislatures [Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh] are governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [Delhi and Puducherry] have their own GST legislation for levying SGST. Though there are multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

**Classification of Goods and Services;-** HSN (Harmonized System of Nomenclature) code is used for classifying the goods under the GST. A new Scheme of Classification of Services has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff). Chapters referred are the Chapters of the First Schedule to the Customs Tariff Act, 1975.

**Manner of utilization of ITC:-** Input Tax Credit (ITC) of CGST and SGST/UTGST is available throughout the supply chain, but cross-utilization of credit of CGST and SGST/UTGST is not possible, i.e. CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST

credit cannot be utilized for payment of CGST. However, cross utilization is allowed between CGST/SGST/UTGST and IGST, i.e. credit of IGST can be utilized for the payment of CGST/SGST/UTGST and vice versa.

**Registration** Every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds ` 20 lakh during a FY.

### **GST Rates**

- Rates: 0%( on essential items, rice/wheat)
- 5%: ( on items of mass consumption )
- 12%/18%:(standard rates covering most manufactured items and Services)
- 28% : ( on Consumer Durable Goods, Pan masala, tobacco and aerated drinks etc)
- Basic philosophy behind these rates are that, to the extent possible, the current combined rate of tax levied on individual goods by the Central and the State Governments should be maintained in GST
- Uniform GST rate not possible at this stage as luxury goods and goods consumed by poorer sections of society cannot be taxed at the same rate
- Rates will be notified by Government on recommendations of GST Council.

### **Mandatory Registration (irrespective of threshold)**

- ♣ Persons making inter-State taxable supply
  - ♣ Persons required to pay tax under reverse charge
  - ♣ Casual and non-resident taxable persons
- ♣ E-Commerce operator /Those required to collect TDS
- ♣ Persons supplying goods through e-commerce operator
- ♣ Persons making supplies on behalf of a registered taxable person
  - ♣ Input Service Distributer
- ♣ Every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person• Registration ( GSTIN)to be granted State-wise.
- PAN mandatory for GSTIN (except for NRTP- here Passport)
- Separate registration permitted for multiple business verticals in a State.

—Registration deemed to be granted if objection by way of Notice is not communicated within the time of 3 working days.

### Transitional Provisions

- Existing taxpayers to be issued Provisional Registration valid for 6 months (extendible) → Upon furnishing of prescribed information, final RC to be granted
- Cenvat credit/VAT carried forward in return allowed as ITC under GST
- Un-availed Cenvat/VAT credit on capital goods, not carried forward in return, shall also be allowed as ITC under GST
- Eligible duties and taxes in respect of inputs held in stock permissible as credit to registered persons
- Eligible duties and taxes in respect of inputs held in stock available as credit to taxable person switching over from compounding
- Transitional credit available generally only if both laws permit and invoice is not more than 12 months old
- No tax payable on goods removed/despatched earlier but returned within 6 months after the introduction of GST
- Proceedings under earlier law to be conducted under old law

### Features of Tax Returns in GST

→ Based on transactions – Invoice based → Designed for system based matching of Input Tax Credit and other details (import, export etc.) → Auto-population from details of outward supplies → Auto-reversal of ITC in case of mismatch → Concepts of ledgers – cash, ITC and liability → No revised returns – changes through rectifications and reported in the return for the month in which error detected

### Structure of GST

There are four categories of indirect taxes under GST:

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

**Central Goods and Services Tax (CGST)** GST levied by the Centre on intra-State supply of goods or services or both is called CGST. It is levied under Central Goods and Services Tax (CGST) Act, 2017 which makes provisions for the levy and collection of tax on intra-State supply of goods or services or both by the Central Government. The Act is divided into 21 chapters which deal with matters connected with the levy, collection and administration of GST.

As regards the levy and collection of the tax, Section 9 of the Act reads as follows:

“(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

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

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

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

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax: Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.”

**State Goods and Services Tax (SGST)** GST levied by the States on intra-State supply of goods or services or both under their respective SGST Acts is called SGST. Union territories with legislature (Delhi and Puducherry) are covered.

**The benefits of GST:** can be summarized as under:

#### **For business and industry**

**Easy compliance:** A robust and comprehensive IT system would be the foundation of the GST regime in India. Therefore, all tax payer services such as registrations, returns, payments, etc. would be available to the taxpayers online, which would make compliance easy and transparent.

**Uniformity of tax rates and structures:** GST will ensure that indirect tax rates and structures are common across the country, thereby increasing certainty and ease of doing business. In

other words, GST would make doing business in the country tax neutral, irrespective of the choice of place of doing business.

**Removal of cascading:** A system of seamless tax-credits throughout the value-chain, and across boundaries of States, would ensure that there is minimal cascading of taxes. This would reduce hidden costs of doing business.

**Improved competitiveness:** Reduction in transaction costs of doing business would eventually lead to an improved competitiveness for the trade and industry.

**Gain to manufacturers and exporters:** The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing the compliance cost.

### **For Central and State Governments**

**Simple and easy to administer:** Multiple indirect taxes at the Central and State levels are being replaced by GST. Backed with a robust end-to-end IT system, GST would be simpler and easier to administer than all other indirect taxes of the Centre and State levied so far.

**Better controls on leakage:** GST will result in better tax compliance due to a robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an inbuilt mechanism in the design of GST that would incentivize tax compliance by traders.

**Higher revenue efficiency:** GST is expected to decrease the cost of collection of tax revenues of the 3 Government, and will therefore, lead to higher revenue efficiency.

### **For the consumer**

**Single and transparent tax proportionate to the value of goods and services:** Due to multiple indirect taxes being levied by the Centre and State, with incomplete or no input tax credits available at progressive stages of value addition, the cost of most goods and services in the country today are laden with many hidden taxes. Under GST, there would be only one tax from the manufacturer to the consumer, leading to transparency of taxes paid to the final consumer.

**Relief in overall tax burden:** Because of efficiency gains and prevention of leakages, the overall tax burden on most commodities will come down, which will benefit consumers.

**Challenges in implementing GST:** While the desirability of the reform was undoubted, making a transition to GST involved not only considerable work but also formidable challenges.

**Understanding between Center and States:** Unlike in many other countries where GST is a centralized tax, in India it is to be executed by both central and state governments, according to the proposals. This implies that both the structure and administration of the levy had to emerge after detailed negotiations and bargaining between the centre, 29 states and the two Union Territories with legislatures. Given the sharp differences in the structure of the economy and

sales tax revenue (as a ratio of gross state domestic product, or GSDP) across states, the interests of the states did not always coincide. Hence considerable effort was needed to persuade them to adopt a uniform or even a broadly harmonized structure and administrative system for the tax.

**Information Technology Platform:** For ensuring seamless input tax credit, they had agreed on a mechanism wherein the tax levied at the stage of interstate sale was to be collected and pooled separately and transferred to the destination state through a clearing house. They had also established the GST Network (GSTN), a special purpose vehicle with equity contributions from the technology partner (NSDL), and central and state governments to erect the information technology (IT) platform to administer GST.

**Issue of compensation for the loss of revenue:** The 13th Finance Commission's recommendation that states should levy "flawless" GST to be eligible to receive compensation for any loss of revenue put the entire negotiation process on the back burner. The problem was compounded by the central government's refusal to pay compensation for the loss of revenue arising from the reduction in central sales tax (CST). CST is the sales tax levied on inter-state transactions. The tax which was levied at 4% by the exporting state was reduced to 2% in 2007 in preparation for the introduction of GST. The central government had agreed to pay compensation for the loss of revenue to the states until 2010, when the GST was to be implemented. When the central government refused to compensate the states after 2010, a huge trust deficit was created and the entire negotiation process virtually broke down. The new finance minister has promised to clear the backlog of dues to the states and the states have resumed the negotiation process. The finance minister has also announced that the Constitution Amendment Bill will be placed in the winter session of Parliament. These developments bode well.

**Contentious issues and negotiation process:** There are a number of issues on which negotiations are necessary to reach a consensus between the centre and the states and among the states themselves. The first issue relates to the inclusion of taxes within the ambit of GST. The bone of contention relates to inclusion of purchase taxes on foodgrain, taxes on motor spirit and high-speed diesel (GSD), and octroi or entry tax in lieu thereof. The foodgrain surplus states have been levying the purchase tax, the burden of which is exported to non-residents. The states were reluctant to bring motor spirit and high speed diesel within the ambit as presently the tax is levied at a floor rate of 20% and the states derive about 35% of their sales tax collections from these petroleum products.

**Determination of Revenue Neutral Rate:** Another issue to be decided is the rates of central and state GSTs to be levied. It was expected that the tax rates would be revenue neutral. This implies that in the short term, there would not be any revenue loss or gain, but over time the revenue productivity is expected to increase due to better compliance of the tax and increased productivity of the economy. However, estimation of revenue-neutral rate required consensus on the exemption list, number of tax rates to be levied and the list of goods and services to be included in different rate categories. Revenue-neutral rates had to be estimated for the centre and for each of the states. Furthermore, when there was a preference for two rates— one for essential goods and services consumed by common people and another general rate—the estimation of revenue-neutral rates becomes further complicated.

**Setting up of an administrative system:** Another area where a lot of work is needed is the setting up of an administrative system for GST and working out the transitional arrangements. Ideally, from the viewpoint of reducing compliance cost, a unified administration would be desirable. However, that is not likely to happen as each state would like to control the administration of its GST. In this situation, harmonization of administrative processes with uniform systems, forms and procedures would be necessary. This would also require additional training of tax collectors in the administration and enforcement of the tax. Equally important is the dissemination of information about the tax to taxpayers.

### **Meaning of cancellation of GST registration**

Cancellation of GST registration simply means that the taxpayer will not be a GST registered person any more. He will not have to pay or collect GST or claim input tax credit and accordingly, need not file GST returns.

### **Consequences of GST registration cancellation**

The taxpayer will not pay GST anymore

For certain businesses, registration under GST is mandatory. If the GST registration is cancelled and business is still continued, it will mean an offence under GST and heavy penalties will apply

### **Cancellation of GSTIN for Migrated Taxpayers**

Every person who was registered under erstwhile indirect tax laws had to mandatorily migrate to GST. Many such persons may have not been liable to be registered under GST. For example, the threshold under VAT in most states was Rs.5 lakhs whereas it is Rs.20 lakh\* under GST. However, they had to make sure you are not making inter-state supplies since registration is mandatory for inter-state suppliers except for service providers.

Rs.40 lakh in case of supply of only goods in some states or Rs.10 lakh in certain special category states/Union Territories. Such a taxpayer had to submit an application electronically in form GST REG-29 at the GST portal.

The proper officer shall, after conducting an enquiry as required would cancel the registration

### **Cancellation by taxpayer**

The business has been discontinued

The business has been transferred fully, amalgamated, demerged or otherwise disposed —The transferee (or the new company from amalgamation/ demerger) has to get registered. The transferor will cancel its registration if it ceases to exist

There is a change in the constitution of the business

### **Cancellation by tax officer**

The registration can be cancelled, if the taxpayer

- (a) Does not conduct any business from the declared place of business
- (b) Issues invoice or bill without supply of goods/services (i.e., in violation of the provisions)



- (c) Violates the anti-profiteering provisions (for example, not passing on benefit of ITC to customers)
- (d) Utilisation of ITC from electronic credit ledger to discharge more than 99% of the tax liability for specified taxpayers violating – with the total taxable value of supplies exceeding Rs.50 lakh in the month, with some exceptions
- (e) (e) A taxpayer who cannot file GSTR – 1 due to GSTR-3B not being Filed for more than two consecutive months (one quarter for those who opt into the QRMP scheme)
- (f) (f) Avails input tax credit in violation of the provisions of section 16 of the Act or the rules

\*\*\*\*\*

