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Direct and Indirect Taxes – Features of Indirect Taxes - Genesis of GST in India – Concept of GST – Need for GST in India – Framework of GST as introduced in India – Benefits of GST

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UNIT I

Definition of Tax
Introduction
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Definition of Tax:

Tax is defined as a financial obligation, it is a fee levied by the government of the respective country on income, goods, and activity. The main reason for imposing taxes is that they are the main source of revenue to the government. Taxes are broadly classified as a direct tax and indirect tax, wherein the former is charged directly on the income or wealth of the person, while the latter is imposed on the price of goods and services.

INTRODUCTION

Indirect Tax is a tax collected by an individual by 'indirect means in a pecuniary term on his sale and purchase by the authority of law under Indian constitution. Indirect tax is one of the branches of tax laws and another is direct tax. Indirect tax is also known as consumption tax because they are based on the ability to pay principle which means a tax which is not levied directly on the incomes of earner or consumer. Collection of indirect was custom earlier then afterwards it becomes a law under which state obliges us to pay the tax. For this collection of tax (whether direct or indirect tax) is collected either by government

which is authority of law under constitution of India. All these collected tax is utilized for the development of country as a whole by its distribution based on needof that central, state or local authority's laws to carry on all his activities. Indirect tax is also known as consumption tax because they are based on the ability to pay principle which means a tax which is not levied directly on the incomes of earneror consumer. Collection of indirect was custom earlier then afterwards it becomesa law under which state obliges us to pay the tax.

Indirect Tax and Direct Tax

In case of direct tax, tax is to be collected in pecuniary term by an individualdirectly out of income they have earned. But in case of indirect tax, tax is paid indirectly by the consumer out of rest of amount of income earned. In case ofdirect tax, assesses is bound to pay the tax whether his willingness is there or nor but in case of indirect tax, consumer pays the tax voluntarily. Assessee can only be a person who earns his income under income tax act whereas, in case of indirect tax, a 5 year old child can also be the consumer who pays the tax indirectly. In caseof direct tax, assesses pays the tax @ x at income earned and he may not pay the tax if he is exempted from paying tax in that financial year under tax slabs whereasin case of indirect tax no exemption if provided by the authority of law and consumer has to pay the tax separately from the amount of actual cost of the product which makes the product more costlier.

Paid tax can be claimed back or adjusted in income tax where as normally it is not always possible in all indirect tax cases. In direct tax, assesses assess his tax to be paid at the end of financial year whereas in case of indirect tax, consumer pays the tax at the time of purchase or sell or rendering of services. As assess directly pays the pays the tax, there is no question of shifting of burden of tax in future but in case of indirect tax , if the goods are transferred from one consumer to the another, the burden of tax is shifted to the subsequent consumer. Indirect tax isa wider concept with regard to direct tax. Indirect tax affects only an individual which does not affect the price or demand of goods directly whereas in case of indirect tax it affects the whole country as well as global market and if the price of goods is increased, the demand of that good may fall down which will indirectly hinder the healthy development of country. Tax evasion is more in direct tax whereas it is comparatively very low in indirect taxation.

In the case of a **direct tax**, the taxpayer is the person who bears the burden of it. Conversely, in the case of an **indirect tax**, the taxpayer, shifts the burden on the consumer of goods and services and that is why the incidence falls on different persons. Come, let’s take a read of the article, which gives you a clear understanding of the difference between a direct tax and indirect tax.

Features of Indirect Tax

Here are the key features of indirect taxes:

- **Tax liability:** The service provider or seller pays indirect taxes to the government, and the liability is transferred to the consumer.

- **Payment of tax:** The seller pays indirect taxes to the government and the sameis transferred to the consumer.
- **Nature:** Indirect taxes were initially regressive in nature, but thanks to theimplementation of the Goods and Services Tax, they are now pretty progressive.
- **Saving and investment:** Indirect taxes are generally growth-oriented considering the fact that they encourage consumers to save and invest.
- **Evasion:** It is difficult to evade indirect taxes because they are now implemented directly through products and services.

Genesis of GST in India:

1. It has now been more than a decade since the idea of national Goods and Services Tax (GST) was mooted by Kelkar Task Force in 2004. The Task Force strongly recommended fully integrated 'GST' on national basis.
2. Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Central Budget (2006-2007), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlinesand continued to be shrouded by the clouds of uncertainty.
3. 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 19th 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.
4. In the following year, on 27th March, 2017, the Central GST legislations – Central Goods and Services Tax Bill, 2017, Integrated Goods and Services 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. 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 topass their respective State GST laws.

5. 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.
6. 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 the most transparent andneutral manner.

CONCEPT OF GST IN INDIA:

Now, let's understand the basic theme, the basic concept on which whole GST Law is framed. A normal business owner must only understand the basic concepts of the tax. If you can understand the basic concept, you can correctly comply with the Law. If you don't understand the basic concept, you will make mistakes.

GST – "One Nation One Tax"

Government of India is rigorously promoting GST as *"One Nation One Tax"*.

This is correct to an extent.GST will replace all major Indirect Taxes applicable in India.GST will also make both the "Goods and Services" at par. Technically, there will be no difference between supply of Goods and supply of Services.The date on which GST becomes applicable following taxes will no longer be charged in India.

Taxes that are going to end

- Excise Duty
- Service Tax
- GST
- CVC, SAD
- VAT
- Entry Tax
- Luxury Tax
- Purchase Tax
- Entertainment tax

However, some taxes are still going to haunt you even after introduction of GST.Taxes that are not going to end:

- Basic Custom Duty
- Stamp Duty
- Electricity Duty
- State Excise Duty

GST – "One Nation One Tax" is also a "Myth".Saying that GST is "One Nation One Tax" is also a myth. The complete story is "One Nation Four Taxes". This is how it works. Due to federal structure of Indian Constitution, the 4 layers of GST are introduced. This is done out of compulsion, not out of choice. Our constitution does not permit the concept of "One nation one Tax" as prevalent in most of the countries.

NEED FOR GST IN INDIA:

India ranks 130 out of 189 countries in ease of doing business. This ranking clearly indicates that India needs transformation rather than a small change. There are flaws in the current policies which makes doing business so difficult in India. Hence, a new system is based on the glitches of the existing system.

As said, GST is the solution to the flaws in the current taxation policy. It is expected that GST will revamp the whole indirect tax structure in India and it will provide a boost to the ease of doing business.

Here are some important tribulations for which GST is the way out.

- **The multiplicity of taxes:** GST is set to subsume all the major indirect taxes currently prevailing in the country. Whether it is Service tax or excise or VAT or Central Sales Tax, each of these taxes will no longer be valid once GST is levied. Further, it is easy to comply with only one tax, then to follow up with many.

- **Cascading effect:** This is one of the important reasons for which GST has been introduced. Removal of cascading effect. Cascading effect means the tax on tax. An example would be a better way of understanding this problem:

  Suppose, a service provider uses one product worth Rs.100 (VAT @10%) while providing his main service. The value of service provided is Rs.1000 (Service tax @ 15%). Assume GST rate of 20%.

Under current System: VAT credit is not available to the service provider. Hence, the cost of output service shall be as follows: Value of Service Rs.900 + Value of input Rs.110 = 1010 + 15% Service tax.The final Cost price inclusive of service tax is Rs.1161.50/-

Under GST Regime: After GST regime, only one tax shall be applicable, i.e. GST. Input tax credit of all inputs shall also be available. Hence, the cost of output Value of Service Rs.900 + Value of Input 100 = Rs.1000 +20% GST.

GST on Output service will be Rs.200. Input credit available is Rs.20 (20% of Rs.100). Final tax to be paid to the government shall be Rs.180/-. You can see from the above example that under the current system, there was a tax on tax. But when we move to GST regime, tax rate increase but there was no cascading.

Litigations over disputes: As per the Constitution of India, Central Government can levy and collect taxes on services and state government enjoys full autonomy when it comes to goods. There are some transactions on which VAT and service tax both are applicable. This amount to double taxation ultimately leads to disputes. As per the recent report, an estimated of 5.5 lakh crore is stuck in litigations. Litigation is a scourge for the tax-friendly regime and hence, it has tobe curtailed down to provide efficiency to the system. Under GST regime, it is expected that various sources of litigations will come to an end

Increased Tax Revenue: India's tax to GDP ratio is low as compared to the world or other Asian countries. It signifies that taxation policy is not ideal in comparison to the world. Look where India stands in comparison to the world regarding tax to GDP ratio;

Country	**Tax % of GDP**
Australia	25.8
Canada	32.2
China	22.0
India	17.7
USA	26.9

From the above, it can be seen that India is far behind in tax to GDP ratio. Under GST, it is expected that tax revenue shall increase because of the wider tax base and lesser exemptions. The government is expecting higher revenue due to the following reason:

1. **Increased Tax Base:** Presently, there are different threshold limit for each indirect tax law. Under excise it is 150 Lakh, under Service tax, it is 10 Lakh, and under VAT, it differs from 5 Lakhs to 20 Lakhs.

   Under GST, the exemption is proposed to be fixed at 25 Lakh. Hence, there are thousands to an assessee who do not pay excise due to threshold exemption will directly come under the ambit of GST. This will enlarge thetax base and tax revenues.

2. **Governance**: Currently, indirect tax laws are very complex to administer and thus increases the related cost. Further, disputes among the tax laws only make it worst. Hence, GST will prove a boon to the tax collectors nationwide. By focusing on only one tax law, the government will get the time to kerb the malpractices and to get more people under the tax net.

3. **More tax on Services:** Around 60% of GDP is contributed by the service sector. The current rate of service tax is 15% (inclusive of Krishi Kalyan Cess and Swachh Bharat Cess). The proposed GST rate will be around 18 to 20%, i.e. more than the current service tax rate.

   Hence, it is now very clear, that government revenue is set to increase.

- **Boost to Investment:** Under the current scenario, there are many instances where inputs of taxes are not allowed against each other. E.g. A service provider is not eligible of VAT paid on capital goods. Since the input tax credit is not available, the tax amount is added to the cost of the product, which makes capital goods or other products costlier. However, under proposed GST Regime, seamless credit will be available as only the common law and taxes will prevail, this will ultimately result in cheaper capital goods, more demand, and more investment, in turn, will drive more growth.

.8 FRAMEWORK OF GST IN INDIA:

- **Dual GST:** India has adopted a **Dual GST model** in view of the federal structure of the country. Consequently, Centre and States simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the State of Jammu and Kashmir.

- **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 Services Tax (CGST) – levied and collected by Central Government, State Goods and Services Tax (SGST) – levied and collected by State Governments/Union Territories with State Legislatures and Union Territory Goods and Services Tax (UTGST) – levied and collected by Union Territories without State Legislatures, on intra-State supplies of taxable goods and/or services. Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Services Tax (IGST). IGST is approximately the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.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 taxand the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

1.9 Benefits of GST in India:

The Goods & Services taxes aim to reduce the number of indirect taxes and unify the Indian Market. Though it was implemented midway in the financial year, it is a fair share of proponents and critics. Here is a look at thebenefits of GST:

1. It has bought together a number of indirect taxes under one umbrella,simplifying taxation for service and commodity businesses.
2. It is believed that cost of products and services will be reduced in the long run with the introduction of GST. This is because the cascading effect of services of VATs and taxes has now been erased.
3. Service provider companies with a turn over lower than Rs.20lakhsare exempt from paying GST. In case of North Eastern states, the threshold is at 10 lakh. This will help the small businesses avoid lengthy taxation procedures.
4. Companies with turnover up to Rs. 75 lakh under the GST taxation process can benefit from composition schemes and pay only 1% tax on their turnover. This will help them to follow a simplified taxationprocess.
5. GST is aimed at reducing corruption and sales without receipts.
6. GST reduces the need for small companies to comply with excise,service tax and VAT.
7. GST brings accountability and regulation to unorganized sectors such as textile industry.
8. With GST replacing multiple state and central taxes, the tax collectedis likely to be distributed across the country, providing funds for development to the development to the underdeveloped pockets of India.
9. GST brings uniformity in the taxation process and allows centralized registration. This gives a chance to small businesses to file their tax returns every quarter via an easy online mechanism. This reduces the multiplicity of taxes as they do not have the resources to hire tax experts.
10. GST reduces logistics cost by eliminating border taxes and resolving check-post discrepancies. A 20% price drop in logistics cost for non-bulk goods is clearly an expected outcome.
11. GST points towards a positive impact on India's GDP. It is expectedto increase by at least 80% within the next couple of years.
12. The possibility of tax evasion is minimized completely with GST coming into action.

UNIT II SUPPLY

Concept of Supply (Section 7 of CGST Act)

Elements of Supply

Composite and Mixed Supplies (Section 8 of CGST Act)

Interstate Supply (Section 7 of IGST Act)

Intra State Supply (Section 8 of the IGST Act)

Time of Supply (Section 12 & 13 of CGST Act)

Value of Supply (Section 15 of CGST Act.)

Concept of Supply

Under GST, Supply is considered a taxable event for charging tax. The liability to pay tax arises at the 'time of supply of goods or services'. Thus, determining whether or not a transaction falls under the meaning of supply is important to decide GST's applicability.

Concept before GST

Under the erstwhile indirect tax regime, there was no concept of Supply. The stage at which indirect taxes were levied varied under different tax laws. The 'excise duty' was charged on goods manufactured when they were taken out of the factory.'Service Tax' was levied based on certain rules known as the 'point of taxation' rules, for services rendered. A VAT would arise on the value of the sale of goodsor provision of services. The present system has merged all taxes to maintain a single taxable event.

What is supply under GST?

Supply includes sale, transfer, exchange, barter, license, rental, lease and disposal. If a person undertakes either of these transactions during the course or furtherance of business for consideration, it will be covered under the meaning of Supply underGST.

Elements of Supply

Supply has two important elements:

- ✓ Supply is done for a consideration
- ✓ Supply is done in course of furtherance of business

If the aforementioned elements are not met with, it is not considered as a sale.Examples:

Mr. A buys a table for Rs.10,000 for his personal use and sells it off after 10 months of use to a dealer. This is not considered as supply under CGST as this is not done by Mr A for the furtherance of business

Mrs. B provides free coaching to neighbouring students as a hobby. This is not considered as supply as this act is not performed for a consideration.

However, as specified in Schedule I of GST Act, certain activities are considered as supply even if it is made without consideration.

Classification of supply and types

Composite supply and Mixed Supply:

There are a few supplies which are made together with two or more items. Such supplies are further classified into Composite Supply and Mixed Supply.

A supply comprising of two or more goods/services, which are necessarily supplied in conjunction with each other as per frequent business practices followed in that area. In other words, these items cannot be supplied individually. There is a principal supply and a secondary supply in the whole transaction. In such cases, the tax rate on principal supply will apply to the entire supply. E.g. Buying a Dry Fruit Gift Box for Diwali. It includes dry fruits, a box, and a wrapper. Box and wrapper cannot be sold individually without the main content which is dry fruit. This is a composite supply.

A supply comprising of two or more goods/services, wherein the supplies are independent of each other and are not necessarily required to be sold together is called a mixed supply. The first condition to be met for mixed supply is that 'it should not be a composite supply'. In such cases, the tax rate that is higher of the two supplies will be applicable to the entire supply. E.g Buying a Christmas package consisting of cakes, aerated drinks, chocolates, Santa caps, and other gift items. Each of these items can be sold separately and are not dependent on each other. This is a mixed supply.

Interstate Supply (Sec 7):

Inter-state transactions under GST Laws:

By introduction of the GST Laws there has been few major change in the field of indirect

taxation. GST is principally a destination based taxation system and tax moves with the goods and services. In case of intra- state supply of goods SGST and CGST is collected and the SGST goes to the coffer of State Government and the CGST goes to the coffer of Central Government. Whereas in case of inter-state supply of goods or services or both the tax is collected by centre and by state in which the location of supplier is located. SGST part of the said amount goes to the credit of the State where goods ultimately reaches.

In order to ensure that the credit of SGST goes to the proper State, two points must be determined properly:-

1. Whether the supply is inter-state or intra-state?
2. If it is inter-state supply, which state is liable to get the credit of SGST.

Though there has been a paradigm shift in taxation policy, but even after the Constitution (101st Amendment) Act, the power to formulate principles to determine whether a supply is in course of inter-state trade or commerce or not is vested with the parliament. The parliament is also authorised to formulate the principles for determining the place of supply.

Accordingly, as in the case of earlier provision of inter-state sales or purchases where Parliament had enacted section 3 of the Central Sales Tax Act, 1956 to formulate such principles, it has now enacted sections 7 of the IGST Act, 2017 for the said purpose. Sections 10,11,12, and 13 of the IGST Act are enacted by the parliament in order to define the term "place of supply"

The scope of this write-up is limited to analysing and understanding the principles to determine the inter-state or intra-state character of domestic supply of goods, which are covered by section 7(1) and section 10 of the Act. Let us begin by first analysing the provisions of sub-section (1) of section 7 of the IGST Act and for this purpose the relevant text of the said sub-section is reproduced herein below:-

Section 7(1): IGST Act

"Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce."

On plain reading of the provisions, it becomes clear that the sub-section formulates a clear principle that if the *location of supplier of goods* and *place of supply of goods* are not in the same state or union territory, the supply will be treatedas *inter-state* supply. Accordingly in order to understand the principles, these two terms i.e. *place of supply of goods* and *location of supplier of goods* need to be understood properly.

Intra-State Supply:

Section 8 of IGST Act, 2017 says when supply of goods and/or services will be treated as intra-state supply. As per section 8, supply of **goods** will be treated as Intra-state supplies if the location of the supplier and the place of supply of goods are in the same state or same union territory.

Here are three exceptions to the above provisions-

- Supply of goods to SEZ developers or SEZ units
- Supply of goods by SEZ developers or SEZ units
- Goods imported to the territory of India till they cross the customs frontiers ofIndia.
- Supplies made to a tourist referred to in section 15. As per explanation to section 15, a tourist is a person who is not normally resident in India, whoenters India for a stay of not more than 6 months for legitimate non immigrants purpose.

In the above exceptional cases, supplies of goods and/or services shall not be treated as intra-state supply even though the location of supplier and place of supply are in the same state or same union territory. Supplies falling under the above exceptional list are to be treated as inter-state supply instead of intra-statesupply.

Intra-State Supply of Services:

As per section 8(2) of IGST Act, 2017, supply of **services** shall be treated as intra-state supply where the location of the supplier and the place of supply of services are in the same state or

same union territory. However, when supply of services is to or by a special economic zone developer or a special economic zone unit, then supply of services shall not be treated as intra-state supply. Instead, it will be treated as an inter-state supply.

Time of Supply:

Time of supply refers to that point of time when goods and services are considered supplied or sold. The time of supply helps a seller identify the due date for payment of his GST liability. The seller must pay CGST/SGST and IGST at the time of supply. The provisions to determine the time of supply are different for goods and services.

The **time of supply of goods** is the earliest of the following dates:

- Date of issue of invoice
- Date of receipt of payment/advance
- Last date by which an invoice should have been issued

For instance, Mr Raj sold goods worth Rs 50,000 to Ms Puja. He issued an invoiceon the 15th of May 2020 and received payment for the same on the 31st of May 2020. The goods were supplied to Ms Puja on the 20th of May.

According to the provisions mentioned above, the time of supply of goods, in thiscase, will be earlier of the following dates:

1. Date of issue of invoice – 15th May
2. Date of receipt of payment – 31st May
3. Last date by which an invoice should have been issued – 20th MayTherefore,

the time of supply of such goods is the 15th of May 2020.

Value of supply under GST

The amount collected by a seller in exchange for any goods supplied or servicesprovided is referred to as 'Value of Supply'. If the value is not determined accurately, the GST amount will eventually be calculated incorrectly.

To generate GST-compliant invoices and file your GST returns accurately, you can use Razor pay Invoices and share those invoices with your customers to receive your payment timely.

If you're wondering how to include profit margins and to get real-time GST inclusive and exclusive rates you can check out our free GST calculator.

Levy and collection of CGST & IGST

Composition levy

Input Tax Credit

Eligibility and conditions

Registration

Persons liable for registration

Compulsory registration

3.8Procedure for registration

3.9Amendment of registration

Cancellation of registration.

Tax invoice

Credit and Debit Notes

Section 9 of CGST Act/SGST Act and Section 5 of IGST Act are the Charging Sections for the purposes of levy of GST.

CGST and SGST shall be levied on all intra-state supplies of goods and/or services and IGST shall be levied on all inter-state supplies of goods and/or services respectively.

3.1 Levy and Collection of CGST and IGST:

Levy and Collection of GST under CGST Act. (Section 9)

1. Levy of central goods and service tax [Section 9(1)]:

Under CGST Act, central tax called as the central goods and services tax (CGST) shall be levied on all intra-State supplies of goods or services or both, except onthe supply of alcoholic liquor for human consumption.

It shall be levied on the value determined under section 15 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendations ofthe Council and collected in such manner as may be prescribed and shall be paid by the taxable person. [Similar rates have been prescribed under SGST/UTGST]

2. Central tax on petroleum products to be levied from the date to be notified [Section 9(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 onthe recommendations of the Council.

3. Tax payable on reverse charge basis [Section 9(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 bepaid on reverse charge basis by the recipient of such goods or services or both.

Further, 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. Tax payable on reverse charge if the supplies are made to a registered person byunregistered person [Section 9(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. [Section 9(4) has been deferred till 30.6.2018]

5. Tax payable on intra-State supplies by the electronic commerce operator on notified services [Section 9(5)]

As per section 2(45) of the CGST Act, 2017, "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Further, "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network.

Thus, Electronic Commerce Operators (ECO), like flipchart, uber, makemy-trip, display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal. The consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to theconsumer. The price/consideration for the product/service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

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 (ECO), if such services are supplied through it.

Further, all the provisions of this Act shall apply to such electronic commerce operator (ECO) as if he is the supplier liable for paying the tax in relation to the supply of such services.

However, where an electronic commerce operator (ECO) does not have a physical presence in the taxable territory, any person representing such electronic commerce operator (ECO) for any purpose in the taxable territory shall be liable to pay tax.

Where an electronic commerce operator (ECO) 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.

The Government wide Notification No. 17/2017 CT (R) dated 28.06.2017 has notified the following categories of services supplied through ECO for this purpose—

1. services by way of transportation of passengers by a radio-taxi, motorcab, maxi cab and motor cycle;
2. Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service throughelectronic commerce operator is liable for registration under section 22(1) ofthe CGST Act.

Levy and Collection of GST Under IGST Act. (Section 5):

The provisions under section 5 of the IGST Act are similar to section 9 of CGST Act except—

1. the word CGST has been substituted by IGST under IGST Act
2. Under IGST Act, tax called integrated tax is to be levied on all interstate supplies and on goods imported into India.
3. maximum rate under section 5(1) of the IGST Act is 40% (i.e. 20% CGST + 20% UTGST).

As per Section 10(1) of CGST Act, 2017 A registered person whose aggregate turnover in the previous financial year did not exceed 1.5 crore (As amended by the Notification No. 14/2019 – Central Tax New Delhi, the 7th March, 2019.) The limits for special category states [(i) Arunachal Pradesh (ii) Uttarakhand
(iii) Manipur (iv) Meghalaya (v) Mizoram (vi) Nagaland (vii) Sikkim (viii) Tripura] remains 75 lakhs.

Activities or transactions specified in Schedule III of CGST Act are to be treated asneither good nor services and turnover of these will not be includible in 'aggregate turnover'.

As per section 2(6) of CGST Act 2017, "Aggregate Turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable on reverse charge basis), exempt supplies, export of goods or services or both and interstate supplies of persons having the same PAN to be computed on all India basis but excludes (CGST,SGST,UTT,IGST,CESS).

It has been clarified vide order No. 01/2017 date 13 October 2017 that for computing the aggregate turnover for eligibility for the scheme, the turnover of exempted services, including services by way of extending deposits, loans oradvances in so far as the consideration is represented by way of interest or discount, supplied by a taxpayer will not be included.*(explanation* 1 to section 10of CGST Act, inserted vide Finance (No. 2) Act, 2019).

For the purposes of computing aggregate turnover of a person for determining the eligibility to pay tax under section 10 of CGST Act The expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date ***when he becomes liable*** for registration under this Act, but shall not include the value of supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

For Example, aggregate turnover in a state of Mr. Y for the financial year 2019-20was Rs 38 Lakhs. His aggregate turnover as on 8th May 2020 has become Rs 42 Lakhs .He becomes liable for registration under GST on 8th May 2020. He is also engaged in extending loan, deposits, advances etc and interest received from such loan as on 8th May 2020 is Rs 110 lakhs. He is eligible for composition scheme as interest on loans, deposits etc. will not be considered for in computing aggregate turnover in order to determine eligibility for composition scheme. (Removal of Difficulties Order No. 1/2019-CT dated 1-2-2019) .

The supply of goods by job worker after completion of job work treated as a supply of goods by the principal as per section 143 of CGST Act 2017 and value ofsuch goods shall not be included in the calculation of Aggregate Turnover of job worker but it will be included Aggregate Turnover of principal.

3. 2 Supply of services under Composition Scheme :

The composition scheme is not available to supplier of services, *except* supply of food for human consumption. A trader under composition scheme was not allowed to provide any service till 01.02.2019.

Second *proviso* to section 10(1) of CGST Act has been inserted *vide* **CGST (Amendment) Act, 2018** w.e.f. 1-2-2019.

Accordingly, a person who opts for composition scheme may supply services of value not exceeding ten per cent, of ***turnover in a State*** in the preceding financial year or five lakh rupees, whichever is higher .

As per the **CGST (Amendment) Act, 2018**, a composition dealer can also supply services to an extent of 10% of turnover, or `5 Lakhs, whichever is higher. This amendment is applicable from the 1st of Feb, 2019.

A new sub-**section** (**2A**) has been inserted in **section 10** of the **CGST Act** *vide* Notification No. 2/2019-CT(Rate) dated 7-3-2019. to bring in an alternative **composition scheme** for supplier of services or mixed suppliers (**not** eligible for the earlier **composition scheme**) having an annual turnover in preceding financial year up to ₹ 50 lakhs.

This simplified scheme is introduced i.e. 1-4-2019 for small service providers (and those who are supplier of goods as well as services exceeding 10% of turnover within State/UT) whose aggregate turnover during previous financial year did not exceed Rs. 50 lakhs.

Persons not entitled to avail Composition Scheme

(a) A taxable person is engaged in making any supply of goods which are notleviable to tax under this act.

This condition means that if a registered person is engaged in supply of something not leviable to tax under CGST Act, he shall not be eligible for this scheme. “Not leviable to tax” under this Act does not mean exempted goods. It refers to goods which cannot be taxed under this Act. Thus, a person who is engaged in supply of alcoholic liquor for human consumption or a restaurant serving alcoholic liquor cannot opt for this scheme.

(b) A taxable person is engaged in making any interstate outward supplies of goods(one state to another state)

(c) A taxable person is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under Section 52 of the Act.

(d) A taxable person is not a manufacturer of such goods as may be notified by the Government on the recommendation of the GST.

Following manufacturers of goods will not be eligible for Composition Levy[**Notification No. 8/2017-CT dated 27-6-2017**]. [see also FAQ on GST Chapter 2 Q No. 20 issued by CBI&C on 15-12-2018.

(a) Ice cream and other edible ice, whether or not containing cocoa.

(b) Pan masala

(c) Tobacco and manufactured tobacco substitutes

(e) Where more than one registered person is having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme unless all such registered persons are eligible under composition scheme and opt to pay tax under the scheme.

Conditions & Restrictions for GST Composition Levy

(As per Rule 5 of Chapter II of the CGST

The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely:-

(a) he is neither a casual taxable person nor a non-resident taxable person;

(b) the goods held in stock by him on the appointed day have not been purchasedin the course of inter-State trade or commerce or imported from a place outside India or received from his

branch situated outside the State or from his agent or principal outside the State, where the option is exercised by a dealer migrating to GST scheme starting from appointed day;

(c) the goods held in stock by him have not been purchased from an unregistered supplier.

(d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;

(e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (1)of section 10, during the preceding financial year;

(f) he shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and

(g) he shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of "

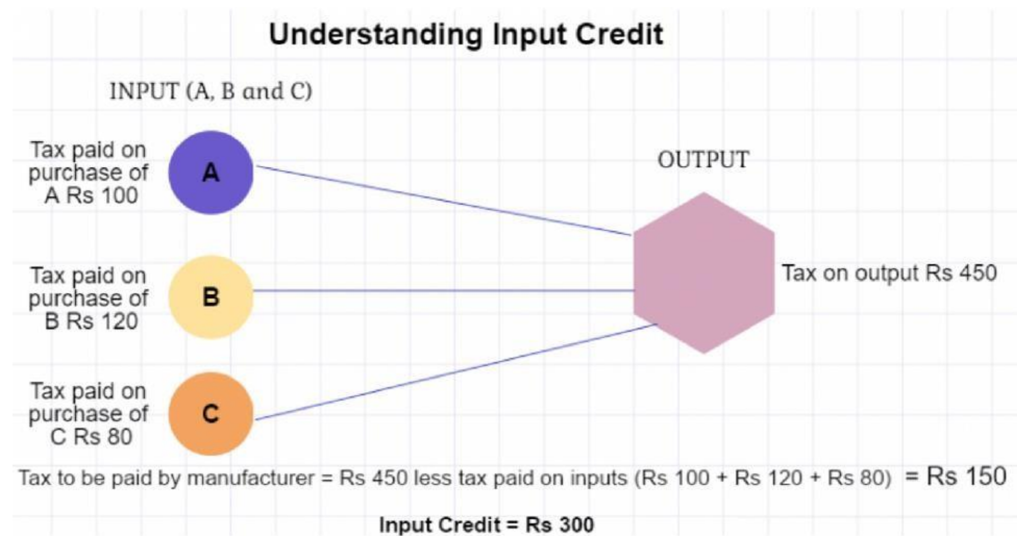
A casual taxable person or a non-resident taxable person is not eligible for composition scheme.

Composition scheme can be opted on the condition that goods held in stock by the person opting for the scheme on the appointed day has not been purchased incourse of inter-state trade, or imported from outside India. Further goods held in stock have not been purchased from unregistered dealer.

Input Tax Credit:

Input credit means at the time of paying tax on output, you can reduce the tax you have already paid on inputs. Say, you are a manufacturer – tax payable on output (FINAL PRODUCT) is Rs 450 tax paid on input (PURCHASES) is Rs 300 You can claim INPUT CREDIT of Rs 300 and you only need to deposit Rs 150 in taxes.

Input Credit in GST Input Credit Mechanism is available to you when you are covered under the GST Act. This means if you are a manufacturer, supplier, agent, e-commerce operator, aggregator or any of the persons mentioned here,



registered under GST, You are eligible to claim INPUT CREDIT for tax paid byyou on your purchases.

Eligibility and Conditions for claiming Input Tax Credit

- You must have a **tax invoice(of purchase) or debit note** issued byregistered dealer

Note: Where goods are received in lots/installments, credit will be available against the tax invoice upon receipt of last lot or installment.

- You should have **received the goods/services**

Note: Where recipient does not pay the value of service or tax thereon within 3 months of issue of invoice and he has already availed input credit based on the invoice, the said credit will be added to his output tax liability along with interest.

- The **tax charged on your purchases** has been **deposited/paid** to the government by the supplier in cash or via claiming input credit
- **Supplier has filed GST returns**

Possibly the most path breaking reform of GST is that input credit is ONLY allowed if your supplier has deposited the tax he collected from you. So every input credit you are claiming shall be matched and validated before you can claim it. Therefore, to allow you to claim input credit on Purchases all your suppliers must be GST compliant as well. There's more you should know about input credit

- It is possible to have unclaimed input credit. Due to tax on purchases being higher than tax on sale. In such a case, you are allowed to carry forward or claim a refund.

If tax on inputs > tax on output –> carry forward input tax or claim refund If tax onoutput > tax on inputs –> pay balance No interest is paid on input tax balance by the government

- Input tax credit cannot be taken on purchase invoices which are more than one year old. Period is calculated from the date of the tax invoice.
- Since GST is charged on both goods and services, input credit can be availed on both goods and services (except those which are on theexempted/negative list).
- Input tax credit is allowed on capital goods.

- Input tax is not allowed for goods and services for personal use.
- No input tax credit shall be allowed after GST return has been filed for September following the end of the financial year to which such invoice pertains or filing of relevant annual return, whichever is earlier.

Registration

A person who has applied for registration within 30 days from the date on which he is liable for registration is allowed to take input tax credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax.

Persons Liable for Registration:

- All registered person are allowed to take input tax credit other than personwho are paying tax under composition scheme.
- A person who has applied for registration within 30 days from the date onwhich he is liable for registration is allowed...
- A person who hast taken voluntarily registration is allowed to take input taxcredit in respect of inputs held in stock...
- A person who has ceased to pay tax under composition scheme is entitled totake credit of input tax.

Compulsory Registration:

In case of Compulsory registration, input tax credit can be availed on (a) stocks held on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, provided application for registration is filed within 30 days from the due date (b) stocks held on the day immediately preceding the date of grant of registration under the provisions of this Act. (c) stocks held on the day immediately preceding the date of application of registration under the provisions of this Act. (d) None of the above.

Procedure for Registration:

A person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be

entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Amendment of Registration:

'Provided that input tax credit on account of the State tax shall be utilized towards the payment of the integrated tax only where the balance of the input tax credit on account of the central tax is not available for payment of integrated tax.'

The above provison, in simple terms, means that before utilizing the balanceof input tax credit of SGST for the payment of integrated tax, the input taxcredit balance of CGST should be NIL i.e. input tax credit of CGST needs to befirst fully used only then the balance of SGST can be used for payment of IGST.

AMENDMENT TO SECTION 49 (5) (d) –

Following provison has been inserted to section 49 (5) (d) –

'Provided that the input tax credit on account of the union territory tax shall be utilized towards the payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment ofintegrated tax.'

Putting the above proviso, in simple terms, it means that before utilizing the balance of **input tax credit** of UTGST for the payment of integrated tax, the **input tax credit** balance of CGST should be NIL i.e. **input tax credit** of CGST needs to be first fully used only then the balance of UTGST can be used for payment of IGST.

NEWLY INTRODUCED SECTION 49A –

Entirely new section 49A has been introduced and the same is reproduced hereunder for ready reference –

'Notwithstanding anything contained in section 49, the **input tax credit** on account of central tax, state tax or union territory tax shall be utilized towards the payment of integrated tax, central tax, state tax or union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized fully towards such payment.'

The gist of the above newly introduced section is that before utilizing the balance of input tax credit of CGST, SGST or UTGST, the balance of input tax credit of IGST should be NIL i.e.

the balance of input tax credit of IGST shouldbe used first towards payment of IGST, CGST, SGST or UTGST.

NEWLY INTRODUCED SECTION 49B –

Entirely new section 49B has been introduced and the same is reproduced hereunder for ready reference –

'Notwithstanding anything contained in the Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the council, prescribe the order and manner of utilization of the input tax credit on account of integrated tax, central tax, state tax or union territory tax, as the case may be, towards the payment of any such tax.'

Section 49B is self-explanatory and the same means that the Government can amend the order and manner of utilization of input tax credit.

Cancellation of Registration:

A registered Taxpayer can file an application for cancellation of GST registration on the occurrence of any of the following events:

1. Discontinuance of business or closure of business.
2. Taxable person ceases to be liable to pay tax.
3. Transfer of business on account of amalgamation, merger, de-merger, sale, leased or otherwise.
4. Change in constitution of business leading to change in PAN.
5. Registered voluntarily, but did not commence any business within specifiedtime.
6. Taxable person no longer liable to be registered under GST Act.
7. Death of sole proprietor

The registered person whose registration is cancelled shall pay an amount, by wayof debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

Tax Invoice

GST requires that a tax invoice or bill of supply to be issued before or on the occurrence of certain event or within a prescribed time. Therefore, an invoice is required for every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal.

GST allows seamless flow of Input Tax Credits (ITC) across the supply chain. One of the fundamental pillars of GST is checking the Input Tax Credit (ITC) Claims, for which data of all Invoices to be uploaded and matched. GST system is backed

up by strong IT support from Goods and Services Tax Network (GSTN) formatching such data. GSTN seeks all registered dealers shall file Invoice wise details in order to do such matching

Every registered taxable person under GST supplying Goods or services is requiredto issue a tax invoice for all supplies effected. The word "Every registered Taxable person" clearly specifies that issuing Tax Invoice is compulsory under GST law. However, government may notify some other document for certain category of services. Eg. Bus ticket, Bank Voucher etc.,

Dredit and Credit Notes

Debit note furnished by a supplier only will be considered for revision in the values of an invoice. The same has to be accepted by the recipient for the corresponding impact on input tax credit on the supply. The details of credit notes issued in a month should be furnished by suppliers in Form GSTR-1.

The credit note contains all the applicable particulars as specified in Rule 53 (1A) of the CGST Rules, 2017. The GST Law mandates that a registered supplier may issue one or more debit notes for supplies made in a financial year through one or more tax invoices which has been issued by him earlier.

UNIT IV:

The Customs Act, 1962

Definitions

Territorial Waters of India

High Seas

Indian Customs Water

Levy and Collection of Customs duty

Types of Custom Duties

Valuation of goods

Introduction to Custom Law :

Custom Duty Customs law is a duty or tax which is levied by the Central Government on import of goods into and export of goods from India. Quantum ofCustoms duty depends upon the provisions of Customs Act 1962 and Customs Tariff Act 1975 and related Customs Rules, Notifications, Circulars, case Laws and Annual Union Finance Acts. Customs Act 1962 is the main Act governing custom duty. Customs Tariff Act 1975 contains two Schedules. Schedule 1 gives classification and rates of duties for imports of goods into India. Schedule 2 givesclassification and rates of duties for export of goods from India. Section 156 of Customs Act empowers the Central Government to make rules in this regard consistent with provisions of the Act.

Important Definitions:

Goods:

Vessels, aircrafts and vehicles

- Stores
- Baggage
- Currency and negotiable instruments
- Any other kind of movable property

Baggage:

Includes unaccompanied baggage but does not include motor vehicles.

Coastal goods:

Goods other than imported goods transported in a vessel from one port to the other.

India: India includes the territorial waters of India (portion of sea which is adjacent to the shores of India, 12 nautical miles from base line. Sovereignty of India extends to the territorial waters and to the seabed and subsoil underlying andthe air space over the waters

Exclusive Economic Zone: It extends up to 200 nautical miles from the base line. In this Zone India has exclusive rights to exploit it for economic purposes.

Territorial Waters of India:

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

High Sea:

Beyond 200 nautical miles, the area is known as high sea. All counties haveequal rights to high sea.

Indian Custom Waters:

According to Section 2(28) of Customs Act 1962, Indian Customs waters mean water extending into sea up to the limit of exclusive economic zone. It will thus include, continental shelf, exclusive economic zone and other Maritime Zones Act 1976 and includes any bay, gulf, harbor, creek or tidal river(vide Amendment in Customs Act through Finance Act 2018).

Levy of an Exemption from Customs Duties:

Dutiable goods: (1) Except as otherwise provided in this act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 [5] or 1975 or any other law for the time being in force, on goods imported into or exported from India. (2) Theprovisions of sub-section (1) shall apply in respect

of all the goods belonging to Government as they apply in respect of goods not belonging to Government. 196 Duty on pilfered goods If any imported goods are pilfered after unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty livable on such goods except where such goods are restored to the importer after pilferage.

Types of Customs Duty:

The various types of Customs Duties are :

(a)Basic Customs Duty:

Basic Customs Duty is levied under section 12 of the Customs Act. The rates at which duties of customs shall be levied under the Customs Act, 1962 are specified in the First and Second Schedules to the Customs Tariff Act, 1975. The first Schedule enlists the goods liable to import duty and the Second Schedule enlists the goods liable to export duties. 192 There are two types of rates of Basic Customs Duty, namely : (a) Standard Rates; and (b) Preferential Rates. Standard Rates of Duty : Standard rates of duty are applicable at the rate specified in Column 4 of the Tariff Schedule against each item/article specified in Column 3. In absence of any Notification for application of preferential rates of duty based on the country of origin, the standard rates of customs duty are invariably applied.

Preferential Rates of Duty : The Government is empowered under section 25 of theCustoms Act to prescribe by issuing Notification, preferential rate duty in respect of imports from certain preferential areas. As per section 4(3) of the Customs Tariff Act, "Preferential area" means any country or territory, which the Central Government may, by notification in the Official Gazette, declare to be such area.

(b) Additional Customs Duty

Section 3 of the Customs Tariff Act empowers the Central Government to levy additional duty equal to excise duty. Accordingly, any article, which is imported into India shall, in addition to standard rate of duty, be liable to an additional duty equal to the excise duty for the time being leviable on a like article,if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article. However, in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the official gazette, specify the rate of

additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different states or if a like alcoholic liquor is not produced or manufactured in any state, then, having regard to excise duty which would be leviable for the time being in different states on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

(c) Special Customs Duty

Special Additional Duty is levied under section 3A of the Customs Tariff Act. Accordingly, any article which is imported into India shall, in addition, be liable to a special additional duty, which shall be levied at a rate to be specified by the Central Government, by notification in the Official Gazette, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on a like article on its sale or purchase in India. However, until such rate is specified by the Central government, the special additional duty shall be levied andcollected at the rate of eight per cent of the value of the article imported into India. The duty chargeable under section 3A shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(d) Protective Duties:

Section 6 of the Customs Tariff Act empowers the Central Government to levy a protective duty based on a recommendation made by the Tariff Commission established under the Tariff Commission Act 1951. The Central Government may upon receiving such recommendation, if it is satisfied that circumstances exist warranting to take immediate action to provide for the protection of the interests of any industry established in India, it may impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit. The duty so imposed on any goods is deemed to have been specified,in the first schedule as the duty leviable in respect of such goods.

(e) Safeguard Duty:

The Agreement on Safeguards has come into existence on 1st January, 1995, which authorises importing countries to provide protection to their domestic producers against serious injury caused or threatened to be caused to them by increased imports. The safeguard measures are intended to be applied only for a short duration with a view to allowing an opportunity to the domestic producers to adjust to the new situation of competition offered by the increased

imports. In India, the Agreement on Safeguards has been implemented recently by introducing a new section 8B in the Customs Tariff Act, 1975 on 1st March, 1997. The Safeguard Duty Rules have been notified on 29th July, 1997.

(f) Countervailing Duty:

Countervailing Duty can be imposed under section 9 of the Customs Tariff Act, 1975 to offset any adverse effect of subsidies granted on any goods exported to India. Section 9 of Customs Tariff Act provides that where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture orproduction therein or the exportation thereform of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been charged in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose countervailing duty not exceeding the amount of such subsidy. The countervailing duty chargeable under section 9 shall be in addition to any other duty imposed under this Act or any other law for the time being in force. Conditions for levy of CVD : The countervailing duty shall not be levied unless it is determined that— (a) The subsidy relates to export performance; (b) The subsidy relates to the use of domestic goods over imported goods in the export article; or (c) The subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article, unless such a subsidy is for— (i) Research activities conducted by or on behalf of persons engaged in the manufacture, production or export; (ii) Assistance to disadvantaged regions within the territory of the exporting country; or (iii) Assistance to promote adaptation of existing facilities to new environmental requirements

(g) Anti-Dumping Duty:

Dumping means export of an article from any country or territory of India at less than its normal value i.e., when the prices at which the goods are exported to India are less than the comparable price for the like product when destined for consumption in the domestic market of the exporting country. Antidumping duty is imposed for offsetting the adverse effects of increased imports, subsidized imports or dumped imports. The Central Government can impose anti-dumping duty only if the imports of dumped article into India cause and threaten material injury to any established industry in India and materially retards the establishment of any

industry in India. If the domestic industry has evidence to show dumping and material injury caused to it by dumped imports, it may make an application to the Director-General (Anti-dumping and Allied duties) in the Ministry of Commerce for an investigation in the matter.

(h) Export Duty:

Section 8 of Customs Tariff Act provides for emergency powers to the Central Government to increase or levy export duties. Accordingly, where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied and that circumstances exist which render itnecessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct and amendment of the Second Schedule to be made, so as to provide for an increase in the export duty leviable or as the case may be, for the levy of an export duty on the article.

Valuation of Goods:

For the purpose of the Customs Act 1975 [51 of 1975] or any other law for the time being in force where under a duty of customs is chargeable on any goods by Reference to their value, the value of such goods shall be deemed to be the price atWhich such or like goods are ordinarily sold, or offered for sale for delivery at thetime of importation or exportation as the case may be in the course of internationalTrade where—

(a) The seller and the buyer have no interest in the business of each other; or

(b) One of them has no interest in the business of the other, and the price is the Sole consideration for the sale or offer for sale}

Power not to recover duties not levied or short levied as a result of general practice:

(1) Notwithstanding anything contained in this Act, if the Central Government is

satisfied—

(a) That a practice was or is generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into or exported from India; and

(b) That such goods were or are liable—

(i) To duty in cases where according to the said practice the dutywas not or is being levied; or

(ii)

(iii) To a higher amount of duty than what was or is being levied according to the said practice.

Then, the Central Government may, by notification in the Official Gazettedirect that the whole of the duty payable on such goods by for the said practice shall not be required to be paid in respect of the goods on which the duty was notor is not being levied or was or is being short-levied in accordance with the said practice.

UNIT V

Customs Procedures

Import and Export Procedures

Baggage

Rules & Exemptions

5.1 Customs Procedures:

In line with Government's policy "Ease of Doing Business " the Central Board of Excise and Customs has taken-up the various measures to facilitate tradeand commerce to bring hassle free working environment as well as reduction of transaction costs of goods and services to make them competitive in the domesticand international market. The various initiatives taken up by the Government of India on Customs front are summarized as under:

1. Facility 24×7 Customs Clearance: In order to faster Customs clearance of imported and export goods to reduce dwell time and lower the transaction cost, CBE & C, vide **Circular No. 19/2014-Customs, dated 31.12.2014** has made facility of 24×7 Customs Clearance for specified imports, namely, goods under 'facilitated "Bills of Entry and specified exports, namely factory stuffed containers and goods exported under free shipping Bills have made available in 18 sea ports. Similarly, facility of 24×7 Customs clearance for specified imports, namely, goods covered by facilities Bills of Entry and all exports viz. goods covered by all shipping Bills has been extended at 17 air cargo complexes.

2. Single Window project-online message exchange: With effect from 01.04.2015 an electronic online message exchange facility has been established between Customs and the Food Safety and Standards Authority of India and the Department of Plant Protection, Plant

Quarantine, Animal Quarantine, Drug Controller, Textile Committee and other regulatory agencies through message exchange. It is basically a network of cooperating facilities bound by trust and set of agreed interface specifications in which trade has seamless access to regulatory services delivered through electronic means to reduced costs, enhanced transparency, reduced duplicity and cost of compliance and optimal utilization of resources . The seamless online exchanged of information among the regulatory agencies has been started vide CBE & C, **Circular No. 9/2015-Customs, dated 31.03.2015**.

3. **Special Notified Zone for trading of rough diamonds :**With Prime Minister's announcement of make India programme and read with CBE&C , **Circular No. 17/2015-Customs, dated 26.05.2015**, a hub for trading of rough diamonds, a "Special Notified Zone" has been operationalised at Bharat Diamond Bourse at Mumbai. The procedure envisages major diamond mining companies brining in rough diamonds for display and / or auctions to be conducted within the Customsarea and re-exporting the unsold consignments.

4. **Adoption of Digital Signature** :- With effect from 1.04.0215 the facility of "Digital Signature " has been introduced for importers, exporters , airlines, shipping lines etc vide CBE&C, **Circular No. 10/2015-Customs, dated 31.03.2015**. The introduction of digital signature will maintain data integrity, reduce cost of compliance, no requirement of physical submission of documentsand encourage paper less working.

5. **Reduction in mandatory documents for Customs clearances:** To facilitate trade and simplify procedures. The number of mandatory documents has been reduced and only three mandatory export and import documents have been prescribed for Customs clearances. CBE&C, **Circular No. 1/2015-customs, dated12.01.2015**.

6. **Setting up of Customs Clearance Facilitation Committee (CCFC)**: To ensure expeditious clearance of export and import goods a high level administrative Committee i.e. CCFC has been put in place at every major Customs seaport and airport under the Chairmanship of Chief Commissioner of Customs/ Commissioner of Customs. The CCFC is maintained to focus primarily on ensuing and monitoring expeditious clearance of export and import goods in accordance with the time line specified by the parent ministry /Department concerned, identifying and resolving bottlenecks, if any, in the clearance procedure of imported and export goods, and resolving grievances of members of the trade and industry in regard to clearance process of imported and export goods. Similarly, at

Central level, a "Central Customs Clearance Facilitation Committee" has also been set up under the Chairmanship of Revenue Secretary to address the issue relating to Customs clearance and infrastructure impacting clearances of goods.

7. **Rationalization of penal provision:** Penalty provisions in Customs have been rationalized to encourage compliance and early dispute resolution under Section 82, 83, 84 of the Finance Act, 2015.

Import and Export procedures:

Typically, the procedure for import and export activities involves ensuring licensing and compliance before the shipping of goods, arranging for transport and warehousing after the unloading of goods, and getting customs clearance as well as paying taxes before the release of goods. Below, we outline the steps involved in importing of goods.

1. **Obtain IEC:** Prior to importing from India, every business must first obtain an Import Export Code (IEC) number from the regional joint DGFT. The IEC is a pan-based registration of traders with lifetime validity and is required for clearing customs, sending shipments, as well as for sending or receiving money in foreign currency. The process to obtain the IEC registration takes about 10-15 days.

2. **Ensure legal compliance under different trade laws:** Once an IEC is allotted, businesses may import goods that are compliant with Section 11 of the *Customs Act (1962)*, *Foreign Trade (Development & Regulation) Act (1992)*, and
the *Foreign Trade Policy, 2015-20*.

However, certain items – restricted, canalized, or prohibited, as declared and notified by the government – require additional permission and licenses from the DGFT and the federal government.

3. **Procure import licenses:**

An import license may be either a general license or specific license. Under a general license, goods can be imported from any country, whereas a specific or individual license authorizes import only from specific countries. Import licenses are used in import clearance, renewable, and typically valid for 24 months for capital goods or 18 months for raw materials components, consumables, and spareparts.

4. File Bill of Entry and other documents to complete customs clearingformalities

After obtaining import licenses, importers are required to furnish import declaration in the prescribed Bill of Entry along with permanent account
number (PAN) based Business Identification Number (BIN), as per Section 46 of the Customs Act (1962). A Bill of Entry gives information on the exact nature, precise quantity, and value of goods that have landed or entered inwards in the country. If the goods are cleared through the Electronic Data Interchange (EDI) system, no formal Bill of Entry is filed as it is generated in the computer system. However, the importer must file a cargo declaration after prescribing particulars required for processing of the entry for customs clearance. If the Bill of Entry is filed without using the EDI system, the importer is required to submit supporting documents that include certificate of origin, certificate of inspection, bill of exchange, commercial invoice cum packing list, among others. Once the goods areshipped, the customs officials examine and assess the information furnished in the bill of entry and match it with the imported items. If there are no irregularities, the officials issue a ‘pass out order’ that allows the imported goods to be replaced fromthe customs.

5. Determine import duty rate for clearance of goods: India levies basic customs duty on imported goods, as specified in the first schedule of the *Customs tariff Act, 1975*, along with goods-specific duties such as anti-dumping duty, safeguard duty, and social welfare surcharge. In addition to these, the government levies an integrated goods and services tax (IGST) under the new GST system. TheIGST rates depend on the classification of imported goods as specified in Schedules notified under Section 5 of the IGST Act (2017).

Export procedures

Just as for imports, a company planning to engage in export activities is required toobtain an IEC number from the regional joint DGFT. After obtaining the IEC, the exporter needs to ensure that all the legal compliances are met under different tradelaws. Further, the exporter must check if an export license is required, and accordingly apply for the license to the DGFT. An exporter is also required to register with the Indian Chamber of Commerce (ICC), which issues the Non-Preferential Certificates of Origin certifying that the exported goods are originated in India.

Import and export documents

Businesses are required to submit a set of documents for carrying out export and import activities in India. These include commercial documents – the ones exchanged between the

buyer and seller, and regulatory documents that deal with various regulatory authorities such as the customs, excise, licensing authorities, as well as the export promotion bodies that help avail export import benefits. The *Foreign Trade Policy, 2015-2020* mandates the following commercialdocuments for carrying out importing and exporting activities:

- Bill of lading or airway bill;
- Commercial invoice cum packing list;
- Shipping bill or bill of export, or bill of entry (for imports).

Additional documents like certificate of origin and inspection certificate may berequired as per the case. The important regulatory documents include:

GST return forms (GSTR 1 and GSTR 2);

- Exchange Control Declaration;
- Bank Realization Certificate; and
- Registration cum Membership Certificate (RCMC)

Baggage:

The term 'Baggage' means luggage of the passenger and it refers to all dutiable goods imported by a passager or a member of a crew in his baggage. Statutory Meaning: As per section 2 (3) of Customs Act, 1962 Baggage includes:

(b) But does not include motor vehicles.

Statutory Meaning: As per section 2(3) of Customs Act, 1962 Baggage includes:

Unaccompanied Baggage: Unaccompanied means the baggage not carried by apassenger at the time of his arrival, but sent before or after the arrival of passengers. On the basis of all the provisions of Customs Act, the baggage can beclassified as followings:

1. Applicable Goods:- All Dutiable Goods
2. Non-Applicable Goods
   - Motor Vehicles
   - Alcoholic Drinks
   - Goods Imported through Courier

3. It is impracticable to ask every passenger to declare the contents of his baggage in detail. For this purpose, the two channels are provided as Greenand Red Channel.

4. (a) **Green Channel:** If a person does not have any dutiable goods, he can go through Green Channel without undergoing any check along with baggage.

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5. (b) **Red Channel:** If the person is carrying dutiable goods, he should pass through Red Channel and should submit the declaration and his baggage can be inspected by the customs authorities.

6. It may be noted that if a person adopts a green channel, technically it is a declaration that he is not carrying any dutiable goods. It means carrying dutiable goods. It means carrying dutiable goods and going through the green channel will tantamount to the false declaration and the person may bepenalized.

Rules and Exemptions:

The statutory provisions relating to Baggage are covered by sections 77 to 81 ofthe Customs Act.

1. **Declaration by owner of Baggage [Section 77]**

   The owner of the baggage shall make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as the *Baggage Declaration Form.* The declaration of the packing list is a sufficient declaration.

2. **Rate of duty and tariff valuation in respect of baggage [Section 78]**

   The rate of duty and tariff valuation, if any applicable to baggage shall be the rate of and valuation in force on the date on which a declaration is madein respect of such baggage under section 77. The following are the relevant points:

   (a) **Rate:** The rate of duty on baggage is 35% ad valorem plus 10% Social Welfare Surcharge (w.e.f. 2nd February 2018). Thus effective rate is 38.5%.

   (b) **Not Applicable:** The rate of 35% duty is not applicable to:

   Firearms, cartridges of firearms exceeding 50, Cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and Goods imported through a courierservice

Duty exemption to Baggage [Section 79]:

Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer may, subject to Baggage Rules, pass free of duty

(a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a *bona fide gift* or souvenir provided that the value of each such article and the total value of all such article does not exceed such limits as may be specified in the rule.

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