Supplementary Material

Final
Group - III
[Syllabus - 2012]

The Institute of Cost Accountants of India
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Paper - 13

CORPORATE LAWS AND COMPLIANCE

List of Amended Sections under respective Acts

Name of the Act	Sections	
Companies Act, 2013	• 2(68)	Modified
	• 2(71)	Modified
	• 9	Modified
	• 11	Omitted
	• 22	Modified
	• 46	Modified
	• 76A	Inserted
	• 123	Modified
	• 124	Modified
	• 134(ca)	Inserted
	• 136	Modified
	• 143	Modified
	• 177	Modified
	• 185	Modified
	• 186	Modified
	• 188	Modified
	• 212	Modified
	• 248(b)	Omitted
	• 435	Modified
	• 436	Modified
	• 462(2)	Modified
	• 462(3) & (4)	Inserted
Securities Contracts (Regulation) Act, 1956	• 2(ac)	Modified
	• 2(bb)	Inserted
	• 2(bc)	Inserted
	• 2(ca)	Inserted
	• 2(ea)	Inserted
	• 2(k)	Inserted
	• 18A	Modified
	• 30A	Inserted
SEBI (Issue of Capital and Disclosure Regulation), 2009	• Regulation 10	Modified
	• Regulation 12	Modified
	• Regulation 58	Modified
	• Regulation 60	Modified
	• Regulation 65	Modified
	• Regulation 106W	Inserted
	• Regulation 106X	Inserted
	• Regulation 106Y	Inserted
	• Regulation 106Z	Inserted

SEBI (Issue of Capital and Disclosure Regulation), 2009	• **Regulation 106ZA**	**Inserted**
	• **Regulation 106ZB**	**Inserted**
	• **Regulation 106ZC**	**Inserted**
	• **Regulation 106ZD**	**Inserted**
	• **Regulation 106ZE**	**Inserted**
	• **Regulation 106ZF**	**Inserted**
SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	• **Regulation 1**	**Modified**
	• **Regulation 10(1)(i) & (j)**	**Inserted**
The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002	• **2(c)**	**Modified**
	• **5(5)**	**Inserted**
	• **9**	**Modified**
	• **13**	**Modified**
	• **14**	**Modified**
	• **18C**	**Inserted**
	• **23**	**Modified**
	• **26A**	**Inserted**
	• **30**	**Modified**
	• **31A**	**Inserted**
Prevention of Money Laundering Act, 2012	• **2(fa)**	**Inserted**
	• **2(ha)**	**Inserted**
	• **2(ia)**	**Inserted**
	• **2(ib)**	**Inserted**
	• **2(ja)**	**Omitted**
	• **2(l)**	**Modified**
	• **2(n)**	**Modified**
	• **2(q)**	**Modified**
	• **2(ra)**	**Modified**
	• **2(sa)**	**Inserted**
	• **2(sb)**	**Inserted**
	• **2(sc)**	**Inserted**
	• **2(v)**	**Modified**
	• **2(va)**	**Inserted**
	• **2(wa)**	**Inserted**
	• **3**	**Modified**
	• **4**	**Modified**
	• **5**	**Modified**
	• **8**	**Modified**
	• **9**	**Modified**
	• **10**	**Modified**
	• **12**	**Modified**
	• **12A**	**Inserted**
	• **13**	**Modified**

Prevention of Money Laundering Act, 2012	• **24**	**Modified**
	• **26(2)**	**Modified**
The Insurance Act, 1938	• **2(1)**	**Modified**
	• **2(1A)**	**Modified**
	• **2(5A)**	**Omitted**
	• **2(6C)**	**Inserted**
	• **2(7A)**	**Modified**
	• **2(8)**	**Omitted**
	• **2(8A)**	**Modified**
	• **2(9)**	**Modified**
	• **2(10)**	**Modified**
	• **2(11)**	**Modified**
	• **2(12)**	**Omitted**
	• **2(13)**	**Omitted**
	• **2(15)**	**Omitted**
	• **2(16)**	**Modified**
	• **2(16A)**	**Inserted**
	• **2(16B)**	**Inserted**
	• **2(16C)**	**Inserted**
	• **2(17)**	**Omitted**
	• **2CB**	**Inserted**
	• **2E**	**Omitted**
	• **3**	**Modified**
	• **3A**	**Modified**
	• **4**	**Modified**
	• **5**	**Modified**
	• **6**	**Modified**
	• **6A**	**Modified**
	• **6AA**	**Omitted**
	• **6B**	**Modified**
	• **6C**	**Omitted**
	• **7**	**Omitted**
	• **8**	**Omitted**
	• **9**	**Omitted**
	• **10**	**Modified**
	• **11**	**Modified**
	• **12**	**Modified**
	• **13**	**Modified**
	• **14**	**Modified**
	• **15**	**Modified**
	• **16**	**Omitted**

The Insurance Act, 1938	• **17**	**Omitted**
	• **17A**	**Omitted**
	• **20**	**Modified**
	• **21**	**Modified**
	• **22**	**Modified**
	• **27**	**Modified**
	• **27A**	**Modified**
	• **27B**	**Modified**
	• **27C**	**Modified**
	• **27D**	**Modified**
	• **27E**	**Inserted**
	• **28**	**Modified**
	• **28A**	**Omitted**
	• **28B**	**Omitted**
	• **29**	**Modified**
	• **30**	**Modified**
	• **31**	**Modified**
	• **31A**	**Modified**
	• **31B**	**Modified**
	• **32**	**Omitted**
	• **32A**	**Modified**
	• **32B**	**Modified**
	• **32D**	**Inserted**
	• **33**	**Modified**
	• **34B**	**Modified**
	• **34C**	**Modified**
	• **34G**	**Omitted**
	• **34H**	**Modified**
	• **35**	**Modified**
	• **36**	**Modified**
	• **37A**	**Modified**
	• **38**	**Modified**
	• **39**	**Modified**
	• **40**	**Modified**
	• **40A**	**Omitted**
	• **40B**	**Modified**
	• **40C**	**Modified**
	• **41**	**Modified**
	• **48A**	**Modified**
	• **49**	**Modified**
	• **52**	**Modified**
	• **52A**	**Modified**

The Insurance Act, 1938	• **52BB**	**Modified**
	• **52D**	**Modified**
	• **52E**	**Modified**
	• **52F**	**Modified**
	• **52G**	**Modified**
	• **52H**	**Omitted**
	• **52 I**	**Omitted**
	• **52J**	**Omitted**
	• **52K**	**Omitted**
	• **52L**	**Omitted**
	• **52M**	**Omitted**
	• **52N**	**Omitted**
	• **53**	**Modified**
	• **58**	**Modified**
	• **59**	**Omitted**
	• **64A**	**Omitted**
	• **64B**	**Omitted**
	• **64C**	**Modified**
	• **64D**	**Modified**
IRDA Act, 1999	• **2(1)(b)**	**Modified**
	• **2(1)(f)**	**Modified**
	• **3**	**Modified**
	• **16**	**Modified**

Companies Act, 2013

Section 2(68) – Modified

"**Private Company**" means a company having a minimum **paid-up share capital as may be prescribed**, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

Section 2(71) – Modified

"**Public Company**" means a company which—

(a) is not a private company;

(b) has a minimum **paid-up share capital as may be prescribed**:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

Section 9 – Modified

Effect of Registration

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession ~~**and a common seal**~~ with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

Section 11 – **Omitted**

Commencement of Business, etc.

Omitted vide Companies (Amendment) Act, 2015

Section 22 – Modified

Execution of Bills of Exchange, etc. [Section 22]

(1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

(2) A company may, by writing under its common seal, **if any**, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

Provided that in case a company does not have a common seal, the authorization under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

Section 46(1) – Modified

Certificate of Shares

(1) A certificate, issued under the common seal **if any**, of the company **or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary**, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.

Section 76A – Inserted

Punishment for contravention of section 73 or section 76

Where a company accepts or invites or allows or cause any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, -

(a) The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees, and

(b) Every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

Section 123(1) – Modified

Declaration of Dividend

(1) No dividend shall be declared or paid by a company for any financial year except—

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

Section 124(6) – Modified

Unpaid Dividend Account

(6) All shares in respect of which **dividend has not been paid or claimed for seven consecutive years or more shall** be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

Explanation – For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.

Section 134(ca) – Inserted

Financial Statement, Board's Report, etc.

(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.

Section 136 – Modified

Right of Member to Copies of Audited Financial Statement

In case of Section 8 Companies in sub section (1) of section 136, for the words "twenty one days", the words "fourteen days" shall be substituted.

Section 143(12) – Modified

Powers and Duties of Auditors and Auditing Standards

(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed.

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed.

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but nor reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.

Section 177(4) – Modified

Audit Committee

(iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

Section 185 – Modified

Loan to Directors, Etc.

(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Provided that nothing contained in this sub-section shall apply to—

(a) the giving of any loan to a managing or whole-time director—

(i) as a part of the conditions of service extended by the company to all its employees; or

(ii) pursuant to any scheme approved by the members by a special resolution; or

(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.— For the purposes of this section, the expression "to any other person in whom director is interested" means—

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) anybody corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(e) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.

(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Section 186(11) - Modified

Loan and Investment by Company

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.

Section 188(1) – Modified

Related Party Transaction

(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution.

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation.—

In this sub-section,—

(a) the expression "office or place of profit" means any office or place—

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

Section 212(6) – Modified

Investigation into Affairs of Company by Serious Fraud Investigation Office

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **offence covered under section 447** of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

Section 248(b) – Modified

Power of Registrar to Remove Name of Company from Register of Companies

(b) Omitted vide Companies (Amendment) Act, 2015.

Section 435(1) – Modified

Establishment of Special Courts [Section 435]

(1) The Central Government may, for the purpose of providing speedy trial of offences **punishable** under this Act, **with imprisonment of two years or more** by notification, establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

Section 436(1) – Modified

Offences Triable by Special Courts

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) all offences **specified under sub-section (1) of section 435** shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

Section 462 – Modified

Power to Exempt Class or Classes of Companies from Provisions of this Act

(1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.

(4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Securities Contract (Regulation) Act, 1956

Short title, extent and commencement [Section 1]

Section 2(ac) – Modified

(ac) "**derivative**" includes—

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities;

(C) commodity derivatives; and

(D) such other instruments as may be declared by the Central Government to be derivative.

Section 2(bb) – Inserted

(bb) "**goods**" mean every kind of moveable property other than actionable claims, money and securities;

Section 2(bc) – Inserted

(bc) "**commodity derivative**" means a contract –

(i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or

(ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac);

Section 2(ca) – Inserted

(ca) "**non-transferable specific delivery contract**" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are not transferable;

Section 2(ea) – Inserted

(ea) "**ready delivery contract**" means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately, or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part:

(I) by realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(II) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price therefor is dispensed with, then such contract shall not be deemed to be a ready delivery contract;

Section 2(k) – Inserted

(k) "**transferable specific delivery contract**" means a specific delivery contract which is not a non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may by notification in the Official Gazette, specify in this behalf.

Section 18A – Modified

Contracts in derivative

Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—

(a) traded on a recognised stock exchange;

(b) settled on the clearing house of the recognised stock exchange; or

(c) between such parties and on such terms as the Central Government may, by notification in the Official Gazette, specify,

in accordance with the rules and bye-laws of such stock exchange.

Section 30A – Inserted

Special Provisions related to commodity derivatives

(1) Nothing contained in this Act shall apply to non-transferable specific delivery contracts:

Provided that no person shall organise or assist in organising or be a member of any association in any area to which the provisions of section 13 have been made applicable (other than a stock exchange) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

(2) Where in respect of any area, the provisions of section 13 have been made applicable in relation to commodity derivatives for the sale or purchase of any goods or class of goods, the Central Government may, by notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of this Act shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of the opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to such class or classes of non-transferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

SEBI (Issue of Capital and Disclosure Regulation), 2009

Regulation 10 – Inserted

Fast Track Issue

(1) Nothing contained in sub-regulations (1), (2) and (3) of regulation 6 and regulations 7 and 8 shall apply to a public issue or rights issue if the issuer satisfies the following conditions:

(a) the equity shares of the issuer have been listed on any recognised stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date;

(b) the average market capitalisation of public shareholding of the issuer is at least **one thousand crore rupees in case of public issue and two hundred and fifty crore rupees in case of right issue**;

(c) the annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least two per cent of the weighted average number of equity shares listed during such six months' period :

Provided that for issuers, whose public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent of the weighted average number of equity shares available as free float during such six months' period;

(d) the issuer has redressed at/least ninety five per cent of the complaints received from the investors' till the end of the quarter immediately preceding the month of the reference date;

(e) the issuer has been in compliance with the equity listing agreement for a period of at least three years immediately preceding the reference date:

Provided that if the issuer has not complied with the provision of the equity listing agreement relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of offer document with the Registrar of Companies or designated stock exchange, as the case may be, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition:

Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation.

(f) the impact of auditors' qualifications, if any, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer document does not exceed five per cent of the net profit or loss after tax of the issuer for the respective years;

(g) no show-cause notices have been issued or prosecution proceedings initiated 3[by the Board] or pending against the issuer or its promoters or whole time directors as on the reference date;

(ga) the issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the consent or settlement mechanism with the Board during three years immediately preceding the reference date;

(h) the entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date.

(i) in case of a rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under Rule 19A of the Securities Contracts (Regulation) Rules, 1957;

(j) the equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;

(k) the annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten per cent of the weighted average number of equity shares listed during such six months' period;

(l) there shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations.

(2) The issuer shall file the offer document with the Board and the recognised stock exchanges in accordance with sub-regulations (4), (5) and (6) of regulation 6 and shall pay fees to the Board as specified in Schedule IV.

(3) The lead merchant bankers shall submit to the Board, the following documents along with the offer document:

(a) a due diligence certificate as per Form A of Schedule VI including additional confirmations as specified in Form F of Schedule VI;

(b) in case of a fast track issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI.

Explanation: for the purposes of this regulation:

(I) "reference date" means:

(a) in case of a public issue by a listed issuer, the date of registering .he red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies; and

(b) in case of a rights issue by a listed issuer, the date of filing the letter of offer with the designated stock exchange.

(II) "average market capitalisation of public shareholding" means the sum of daily market capitalisation of public shareholding for a period of one year up to the end of the quarter preceding the month in which the proposed issue was approved by the shareholders or the board of the issuer, as the case may be, divided by the number of trading days.

(III) "public shareholding" shall have the same meaning as assigned to it in the equity listing agreement.

Regulation 12 – Modified

Dispatch of issue material

The lead merchant bankers shall dispatch the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, **registrar to issue and share transfer agents, depository participants, stock brokers**, underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance.

Regulation 58 – Modified

Abridged prospectus, abridged letter of offer and ASBA

(1) The abridged prospectus shall contain the disclosures **as specified in Part D of Schedule VIII**.

(2) The abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII.

(3) The abridged prospectus and abridged letter of offer shall not contain any matter extraneous to the contents of the offer document.

(4) Every application form including ASBA form distributed by the issuer or any other person in relation to an issue shall be accompanied by a copy of the abridged prospectus or abridged letter of offer, as the case may be.

(5) In all, -

(i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;

(ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:

Provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only.

Regulation 60(3) – Modified

Public communications, publicity materials, advertisements and research reports

(3) All public communications and publicity material issued or published in any media during the period commencing from the date of filing draft offer document with the Board till the date of allotment of securities offered in the issue, shall prominently disclose that:

(a) the issuer is proposing to make a public issue or rights issue of the specified securities and has filed a draft offer document with the Board or has filed the red herring prospectus or prospectus with the Registrar of Companies or the letter of offer with the designated stock exchange, as the case may be.

(b) the draft offer document, red herring prospectus or final offer document, as the case may be, is available on the website of the Board, lead merchant bankers or lead book runners.

Provided that requirements of this sub-regulation shall not be applicable in case of product advertisements of the issuer.

Regulation 65 – Modified

Post-issue reports

(1) In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.

(2) In rights issue, the lead merchant banker shall submit post-issue reports as follows:-

(a) initial post issue report as specified in Part B of Schedule XVI, within three days of closure of the issue;

(b) final post issue report as specified in Part D of Schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.

(3) The lead merchant banker shall submit a due diligence certificate as per the format specified in Form G of Schedule VI, along with the final post issue report.

LISTING ON INSTITUTIONAL TRADING PLATFORM

Regulation 106W – Inserted

Applicability

(1) The provisions of this chapter shall apply to entities which seek listing of their specified securities exclusively on the institutional trading platform either pursuant to a public issue or otherwise.

(2) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall apply mutatis mutandis to any listing of specified securities under this Chapter:

Provided that the provisions of sub-regulation (4) of regulation 4, sub-regulations (1) and (2) of regulation 26 of these regulations shall not apply to listing of specified securities made under this Chapter.

(3) The institutional trading platform shall be accessible to institutional investors and non-institutional investors.

Regulation 106X – Inserted

Definitions

(1) In this chapter, unless the context otherwise requires,-

(a) "institutional trading platform" means the trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria specified in regulation 106Y;

(b) "institutional investor" means:

(i) qualified institutional buyer; or

(ii) family trust or systematically important NBFCs registered with Reserve Bank of India or intermediaries registered with the Board, all with net-worth of more than five hundred crore rupees, as per the last audited financial statements;

(c) "persons acting in concert" shall have the same meaning as assigned to it under regulation 2(1)(q) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(2) All other words and expressions used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

Regulation 106Y – Inserted

Eligibility

(1) The following entities shall be eligible for listing on the institutional trading platform,-

(a) an entity which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least twenty five per cent of its pre-issue capital is held by qualified institutional buyer(s) as on the date of filing of draft information document or draft offer document with the Board, as the case may be; or

(b) any other entity in which at least fifty per cent of the pre-issue capital is held by qualified institutional buyers as on the date of filing of draft information document or draft offer document with the Board, as the case may be.

(2) No person, individually or collectively with persons acting in concert, shall hold twenty five per cent or more of the post-issue share capital in an entity specified in sub-regulation (1).

Regulation 106Z – Inserted

Listing without public issue

(1) An entity seeking listing of its specified securities without making a public issue shall file a draft information document along with necessary documents with the Board in accordance with these regulations along with fee as specified in Schedule IV of these regulations.

(2) The draft information document shall contain the disclosures as specified for draft offer document in these regulations.

(3) Regulations relating to the following shall not be applicable in case of listing without public issue:

(i) allotment;

(ii) issue opening / closing;

(iii) advertisement;

(iv) underwriting;

(v) sub-regulation (5) of regulation 26;

(vi) pricing;

(vii) dispatch of issue material;

(viii) and other such provisions related to offer of specified securities to public.

(4) The entity shall obtain in-principle approval from the recognised stock exchanges on which it proposes to get its specified securities listed.

(5) The entity shall list its specified securities on the recognised stock exchange(s) within thirty days:

(a) from the date of issuance of observations by the Board; or

(b) from the expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued any such observations.

(6) The entity which has received in-principle approval from the recognised stock exchange for listing of its specified securities on the institutional trading platform, without making a public issue, shall be deemed to have been waived by the Board under sub-rule (7) of rule 19 from the requirement of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on the institutional trading platform.

(7) Provisions relating to minimum public shareholding shall not apply to entities listed on institutional trading platform without making a public issue.

(8) The draft and final information document shall be approved by the board of directors of the entity and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.

(9) The signatories shall also certify that all disclosures made in the information document are true and correct.

(10) In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made thereunder.

Regulation 106ZA – Inserted

Listing pursuant to public issue

(1) An entity seeking issue and listing of its specified securities shall file a draft offer document along with necessary documents with the Board in accordance with these regulations along with fees as specified in Schedule IV of these regulations.

(2) The minimum application size shall be ten lakh rupees.

(3) The number of allottees shall be more than two hundred.

(4) The allocation in the net offer to public category shall be as follows:

(a) seventy-five per cent to institutional investors:

Provided that there shall be no separate allocation for Anchor Investors;

(b) twenty-five per cent to non-institutional investors;

(5) Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.

(6) The allotment to institutional investors may be on a discretionary basis whereas the allotment to non-institutional investors shall be on a proportionate basis.

(7) The mode of allotment to institutional investors, i.e., whether discretionary or proportionate, shall be disclosed prior to or at the time of filing of the Red Herring Prospectus.

(8) In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than ten per cent of the issue size.

(9) The offer document shall disclose the broad objects of the issue.

(10) The basis of issue price may include disclosures, except projections, as deemed fit by the issuers in order to enable investors to take informed decisions and the disclosures shall suitably caution the investors about basis of valuation.

Regulation 106ZB – Inserted

Lock-in

(1) The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to public issue or date of listing in case of listing without public issue:

Provided that nothing contained in this regulation shall apply to:

(i) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the entity prior to the initial public offer, if the entity has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;

(ii) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor:

Provided that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

(iii) equity shares held by persons other than promoters, continuously for a period of at least one year prior to the date of listing in case of listing without public issue:

Explanation.- For the purpose of clause (ii) and (iii), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of

such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and the convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid at the time of their conversion.

(2) The specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if the pledge of specified securities is one of the terms of sanction of the loan.

(3) The specified securities that are locked-in may be transferable in accordance with regulation 40 of these regulations.

(4) All specified securities allotted on a discretionary basis shall be locked-in in accordance with the requirements for lock-in by Anchor Investors on main board of the stock exchange, as specified under clause 10(j) in Part A of Schedule XI.

Regulation 106ZC – Inserted

Trading lot

The minimum trading lot shall be ten lakh rupees.

Regulation 106ZD – Inserted

Exit of entities listed without making a public issue

(1) An entity whose specified securities are listed on the institutional trading platform without making a public issue may exit from that platform, if-

(a) its shareholders approve such exit by passing a special resolution through postal ballot where ninety per cent of the total votes and the majority of non-promoter votes have been cast in favor of such proposal; and

(b) the recognised stock exchange where its shares are listed approve of such an exit.

(2) The recognised stock exchange may delist the specified securities of an entity listed without making a public issue upon non-compliance of the conditions of listing and in the manner as specified by the stock exchange.

(3) No entity promoted by promoters and directors of an entity delisted under sub-regulation (2), shall be permitted to list on institutional trading platform for a period of five years from the date of such delisting:

Provided that the provisions of this regulation shall not apply to another entity promoted by the independent directors of such a delisted entity.

Regulation 106ZE – Inserted

Migration to main board

An entity that has listed its specified securities on a recognised stock exchange in accordance with the provisions of this Chapter may at its option migrate to the main board of that recognised stock exchange after expiry of three years from the date of listing subject to compliance with the eligibility requirements of the stock exchange.

Regulation 106ZF – Inserted

Repeal and saving

The provisions of Chapter XC and all directions, guidelines, instructions or circulars, issued by the Board as applicable to small and medium enterprises which are listed on the institutional trading platform, as on the date of commencement of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015 shall continue to remain in force for the period such companies are listed on the institutional trading platform or till such time as specified by the Board, whichever is earlier, as if Chapter XC had not been repealed.

Explanation.- Under this Chapter, the phrases 'pre-issue' and 'post-issue', wherever they occur shall be construed as 'pre-listing' and 'post-listing', respectively, in case of listing without public issue.

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

Regulation 1 – Modified

Short title, commencement and applicability

(1) These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(2) These regulations shall come into force on the thirtieth day from the date of their publication in the Official Gazette.

(3) These regulations shall apply to direct and indirect acquisition of shares or voting rights in, or control over target company.

Provided that these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the institutional trading platform of a recognised stock exchange.

Regulation 10 (1)(i) – Inserted

General exemptions

(i) Conversion of debt into equity under Strategic Debt Restructuring Scheme - Acquisition of equity shares by the consortium of banks, financial institutions and other secured lenders pursuant to conversion of their debt as part of the Strategic Debt Restructuring Scheme in accordance with the guidelines specified by the Reserve Bank of India:

Provided that the conditions specified under sub-regulation (5) or (6) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as may be applicable, are complied with.

Regulation 10 (1)(j) – Inserted

(j) increase in voting rights arising out of the operation of sub-section (1) of Section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSESTS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Section 2 (c) – Modified

(c) bank" means--

(i) a banking company; or

(ii) a corresponding new bank; or

(iii) the State Bank of India; or

(iv) a subsidiary bank; or

(iva) **a multi-State co-operative bank; or**

(v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;

Section 5(5) – Inserted

Acquisition of rights or interest in financial assets

(5) On acquisition of financial assets under sub-section (1), the securitisation company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitisation company or reconstruction company in such pending suit, appeal or other proceedings.

Section 9(g) – Inserted

Measures for assets reconstruction

(g) to convert any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

Section 13 – Modified

Enforcement of security interest

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate **within fifteen days** of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).".

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to

the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than **sixty per cent** in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956:

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 , may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529-A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

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

(a) "record date" means the date agreed upon by the secured creditors representing not less than **sixty per cent** in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Section 14 – Modified

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that –

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secdred assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made there under had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan magistrate may authorize any officer subordinate to him, -

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate **or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate** done in pursuance of this section shall be called in question in any court or before any authority.

Section 18C – Inserted

Right to lodge a caveat

(1) Where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17orsection 17A or sub-section (1) of section 18 or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1),—

(a) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1);

(b) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1).

(3) Where after a caveat has been lodged under sub-section (1), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

(4) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (1) has been made before the expiry of the said period.

Section 23 – Modified

Filing of transactions of securitisation, reconstruction and creation of security interest

The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security interest within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

Provided further that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (1) of section 20 within such period and on payment of such fees as may be prescribed.

Section 26A – Inserted

Rectification by Central Government in matters of registration, modification and satisfaction, etc.

(1) The Central Government, on being satisfied—

(a) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or

(b) that on other grounds, it is just and equitable to grant relief, may, on the application of a secured creditor or securitisation company or reconstruction company or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.

(2) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.

Section 30 – Modified

Cognizance of offence

(1) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Section 31A – Inserted

Power to exempt a class or classes of banks or financial institutions

(1) The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of banks or financial institutions; or

(b) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations, as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

THE PREVENTION OF MONEY LAUNDERING ACT, 2002

CONCEPTS AND DEFINITIONS

Section 2 of the Prevention of Money Laundering Act, 2002 defines various terms.

(1) In this Act unless the context otherwise requires,-

(a) **"Adjudicating Authority"** means an Adjudicating Authority appointed under sub-section (1) of section 6;

(b) **"Appellate Tribunal"** means the Appellate Tribunal established under **section 25**;

(c) **"Assistant Director"** means an Assistant Director appointed under sub-section (1) of **section 49**;

(d) **"Attachment"** means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

(da) **"Authorised person"** means an authorised person as defined in clause (c) of **section 2** of **the Foreign Exchange Management Act, 1999;**

(e) **"Banking company"** means a banking company or a co-operative bank to which **the Banking Regulation Act, 1949** applies and includes any bank or banking institution referred to in **section 51** of that Act;

(f) **"Bench"** means a Bench of the Appellate Tribunal;

(fa) **"beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;**

(g) **"Chairperson"** means Chairperson of the Appellate Tribunal;

(h) **"Chit fund company"** means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in **section 2** of **the Chit Funds Act, 1982**;

(ha) **"client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;**

(i) **"Co-operative bank"** shall have the same meaning as assigned to it in clause (dd) of **section 2** of the Deposit Insurance and Credit Guarantee Corporation Act, 1961;

(ia) **"corresponding law" means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;**

(ib) **"dealer" has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;';**

(j) **"Deputy Director"** means a Deputy Director appointed under sub-section (1) of section 49;

(ja) ****Omitted****

(k) **"Director"** or **"Additional Director"** or **"Joint Director"** means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49;

(l) **"Financial institution" means a financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;**

(m) **"Housing finance institution"** shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987;

(n) **"Intermediary" means. —**

(i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or

(iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or

(iv) a recognised stock exchange referred to in clause (J) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(o) **"Member"** means a Member of the Appellate Tribunal and includes the Chairperson;

(p) "money-laundering" has the meaning assigned to it in section 3;

(q) **"Non-banking financial company" shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;**

(r) **"Notification"** means a notification published in the Official Gazette;

(ra) **"Offence of cross border implications",** means –

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person **transfers in any manner** the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation:- Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money – Laundering (Amendment) Act 2009;

(rb) **"Payment system"** means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

Explanation- For the purpose of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

(rc) **"Payment system operator"** means a person who operates a payment system and such person includes his overseas principal.

Explanation- For the purpose of this clause, "overseas principal" means, -

(A) In the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(B) In the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(C) In the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;]

(s) **"Person"** includes;-

(i) an individual

(ii) a Hindu undivided family,

(iii) a company,

(iv) firm,

(v) an association of persons or a body of individuals whether incorporated or not,

(vi) every artificial juridical person not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

(sa) **"Person carrying on designated business or profession" means,—**

(i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;

(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;

(v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or

(vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;

(sb) **"Precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;**

(sc) **"Precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;**

(t) **"Prescribed"** means prescribed by rules made under this Act;

(u) **"Proceeds of crime"** means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

(v) **"Property"** means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

Explanation.— For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

(va) **"Real estate agent" means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;**

(w) **"Records"** include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

(wa) **"Reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;**

(x) **"Schedule"** means the Schedule to this Act;

(y) **"Scheduled offence"** means -

(i) the offences specified under Part A of the Schedule; or

[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or

(iii) the offences specified under Part C of the Schedule.]

(z) **"Special Court"** means a Court of Session designated as Special Court under sub-section (1) of section 43;

(za) **"Transfer"** includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

(zb) **"Value"** means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

Section 3 – Modified

Offence of money-laundering

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime **including its concealment, possession, acquisition or use and projecting or claiming** it as untainted property shall be guilty of offence of money-laundering.

Section 4 – Modified

Punishment for Money-Laundering

"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which ~~**may extend to five lakh rupees.**~~

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

Section 5(1) – Modified

Attachment of property involved in money-laundering

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Section 8 – Modified

Adjudication

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an 13 [offence under section 3 or is in possession of proceeds of crime], he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized **or frozen** under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub- section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or **record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property** or record shall—

(a) continue during the pendency of the proceedings relating to any **offence under this Act before a Court or under the corresponding law of any other country, before the competent Court of criminal jurisdiction outside India, as the case may be;** and;

(b) **become final after an order of confiscation is passed under subsection (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60 by the Adjudicating Authority**

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the **possession of the property attached under section 5 or frozen under sub-section (1-A) of section 17, in such manner as may be prescribed:**

Provided that if it is not practicable to take possession of a property frozen under sub-section (1-A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) **Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.**

(6) **Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.**

(7) **Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.**

Section 9 – Modified

Vesting of property in Central Government

Where an order of confiscation has been made under **sub-section (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60** in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the **Special Court or the Adjudicating Authority, as the case may be,** after giving an opportunity of being heard to any other person interested in the property attached under this Chapter or seized **or frozen** under Chapter V is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may,

by order, declare such encumbrances or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Section 10 – Modified

Management of properties confiscated under this Chapter

(1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under **sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60** in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 9

Section 12 – Modified

Reporting entity to maintain records

(1) Every reporting entity shall—

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.

Section 12A – Inserted

Access to information

(1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.

Section 13 – Modified

Powers of Director to impose fine

(1) The Director may, either of his own motion or on an application made by any authority, officer or person, **make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter.**

(1-A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1-B) The expenses of, and incidental to, any audit under subsection (1-A) shall be borne by the Central Government.

(2) **If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—**

(a) **issue a warning in writing; or**

(b) **direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or**

(c) **direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or**

(d) **by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure**

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

Explanation.— For the purpose of this section, "accountant" shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

Section 24 – Modified

Burden of Proof

In any proceeding relating to proceeds of crime under this Act,—

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering

Section 26(2) – Modified

(2) Any **reporting entity** aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

THE INSURANCE ACT, 1938

Insurance Act, 1938

Section 2 – Modified

In this Act, unless there is anything repugnant in the subject or context, -

(1) "actuary" means an actuary as defined in clause (a) of sub-section (1) of section 2 of the Actuaries Act, 2006;

(1–A) "Authority" means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;

(2) "policy-holder" includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;

(3) "approved securities," means-

(i) Government securities and other securities charged on the revenue of the Central Government or of the Government of a State or guaranteed fully as regards principal and interest by the Central Government or the Government of any State;

(ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town;

(iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a State as to the repayment of the principal and the payment of the divided;

(iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and

(4) "Auditor" means a person qualified under the Chartered Accountants Act, 1949 (38 of 1949), to act as an auditor of companies ;

(4A) "banking company" and "company" shall have the meanings respectively assigned in them in clauses (c) and (d) of sub-section (1) of Section 5 of the Banking Companies Act, 1949 (10 of 1949);

(5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer or a provident society as defined in Part III means certified by a principal officer of 6Esuch insurer or provident society to be a true copy or a correct translation, as the case may be;

(5A) ** Omitted**

(5B) "Controller of Insurance" means the officer appointed by the Central Government under section 2-B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956), or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act, 1999;]

(6) "Court" means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction;

(6A) "fire insurance business" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance Policies;

(6B) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them;

(6C) "health insurance business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover;

(7) "Government security" means a Government security as defined in the Public Debt Act, 1944 (18 of 1944);

(7–A)"Indian insurance company" means any insurer, being a company which is limited by shares, and,—

(a) which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015;

(b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed.

Explanation.—For the purposes of this sub-clause, the expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business;

(8) **Omitted**

(8A) "insurance co-operative society" means any insurer being a co-operative society,-

(a) which is registered on or after the commencement of the Insurance (Amendment) Act, 2002, as a co-operative society under the Co- operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State relating to Co-operative Societies or under the Multi-State Co-operative Societies Act, 1984 (51 or 1984)

(b) **having a minimum paid-up capital of rupees one hundred crore in case of life insurance business, general insurance business and health insurance business**;

(c) in which no body corporate, whether incorporated or not, formed or registered outside India, either by itself or through its subsidiaries or nominees, at any time, holds more than twenty-six per cent of the capital of such Co-operative Society;

(d) whose sole purpose is to carry on life insurance business or general insurance business **or health insurance business** in India:

(9) "insurer" means—

(a) an Indian Insurance Company, or

(b) a statutory body established by an Act of Parliament to carry on insurance business, or

(c) an insurance co-operative society, or

(d) a foreign company engaged in re-insurance business through a branch established in India.

Explanation.—For the purposes of this sub-clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members;

(10) "insurance agent" means an insurance agent ~~**licensed under sec 42**~~ who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;

(10A) "investment company" means a company whose principal business is the acquisition of shares, stocks debentures or other securities;

(10B) "intermediary or insurance intermediary" shall have the meaning assigned to it in clause (f) of sub-section 2 of the Insurance Regularoty and Development Authority Act, 1999 (41 of 1999)

(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and **benefit payable out of any fund** applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;

(12) **Omitted**

(13) **Omitted**

(13-A) "marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit, by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

(13B) "miscellaneous insurance business" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clause (6A), (11) and (13A);

(14) "prescribed" means prescribed by rules made under this Act; and

(15) **Omitted**

(16) "private company" and "public company" have the meanings respectively assigned to them in **Clauses (68) and (72) of Sec. 2 of the Companies Act, 2013**;

(16A) "regulations" means the regulations framed by the Insurance Regulatory and Development Authority of India established under the Insurance Regulatory and Development Authority Act, 1999;

(16B) "re-insurance" means the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium;

(16C) "Securities Appellate Tribunal" means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992;

(17) **Omitted**

Section 2CB – Inserted

Properties in India not to be insured with foreign insurers except with the permission of Authority

(1) No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Authority.

(2) If any person contravenes the provision of sub-section (*1*), he shall be liable to a penalty which may extend to five crore rupees."

Section 2E – **Omitted**

Section 3 – Modified

Registration

(1) No person shall, after commencement of this Act, being to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business:

Provided that in case of an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this subclause shall not operate to invalidate any contract of insurance entered into by him if before such date as may be fixed in this behalf by the Central Government by notification in the official Gazette, he has obtained that certificate:

Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made

an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act

Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application.

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act

(2) Every application for registration shall be made in such manner and shall be accompanied by such documents as may be specified by the regulations.

(2A) If, on receipt of an application for registration and after making such inquiry as he deems fit, the Authority is satisfied that—

(a) the financial condition and the general character of management of the applicant are sound;

(b) the volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;

(c) the interest of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and

(d) the applicant has complied with the provisions of Sections **2C, 5, and 31A** ~~**and 32**~~ and has fulfilled all the requirements of this section applicable to him, the Authority may register the applicant as an insurer and grant him a certificate of registration.

(2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.

(2B) Where the Authority refuses registration; he shall record the reasons for such decision and shall furnish a copy thereof to the applicant.

(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Securities Appellate Tribunal.

(2D) **Omitted**

(3) In the case of any insurer having joint venture with a person having its principal place of business domiciled outside India or any insurer as defined in sub-clause (d) of clause (9) of section 2, the Authority may withhold registration already made if it is satisfied that in the country in which such person has been debarred by law or practice of that country to carry on insurance business.

(4) The Authority may suspend or cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

(a) **if the insurer fails, at any time, to comply with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities, or**

(b) **if the insurer is in liquidation or is adjudged as an insolvent, or**

(c) **if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer without the approval of the Authority, or**

(d) **if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued thereunder, or**

(e) **if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular court of law, or**

(f) **if the insurer carries on any business other than insurance business or any prescribed business, or**

(g) **if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or**

(h) **if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 2013 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Management Act, 1999 or the Prevention of Money Laundering Act, 2002, or**

(i) **if the insurer fails to pay the annual fee required under section 3A, or**

(j) **if the insurer is convicted for an offence under any law for the time being in force, or**

(k) **if the insurer being a co-operative society set up under the relevant State laws or, as the case may be, the Multi-State Co-operative Societies Act, 2002, contravenes the provisions of law as may be applicable to the insurer.**

(5) When the Authority suspends or cancels any registration under clause (a), clause (d), clause (e), clause (f), clause (g) or clause (i) of sub-section (4), it shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as it may specify in that behalf in the notice, such date not being less than one month not more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority suspends or cancels any registration under clause (b), (c), (j) or (k) of sub-section (4), the suspension or cancellation, as the case may be, shall take effect on the date on which notice of the order of suspension or cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of subsection (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f), clause (g) or clause (i) of sub-section (4), the Authority may at its discretion revive the registration,

if the insurer within six months from the date on which the suspension or cancellation took effect complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has had an application under sub- section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.

(5D) Where lithe registration of an insurance company is cancelled under sub-section (4), the Authority may, after expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under subsection (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application under this subsection were an application under sub-section (2) of section 53, or subsection (1) of Sec. 58, as the case may be.

(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(6) **Omitted**

(7) The Authority may, on payment of such fee, not exceeding five thousand rupees, as may be determined by the regulations, issue a duplicate certificate of registration to replace a certificate lost, destroyed or multilated, or in any other case where the Authority is of opinion that the issue of duplicate certificate is necessary.

Section 3A – Modified

Payment of annual fee by insurer

(1) An insurer who has been granted a certificate of registration under section 3 shall pay such annual fee to the Authority in such manner as may be specified by the regulations.

(2) Any failure to deposit the annual fee shall render the certificate of registration liable to be cancelled.

Section 4 – Modified

Minimum limits for annuities and other benefits secured by policies of life insurance

The insurer shall pay or undertake to pay on any policy of life insurance or a group policy issued, a minimum annuity and other benefits as may be determined by regulations excluding any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.

Section 5 – Modified

Restriction on name of insurer [Section 5]

(1) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Authority.

(2) If an insurer, through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first mentioned insurer shall, if called upon to do so by the Authority on the application of the second mentioned insurer, change his name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any insurer carrying on business before the 27thday of January, 1937, under the Indian Life Assurance Companies Act, 1912 (6 of 1912):

Provided further that in the application of this section to any insurer who begins to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), the references to an insurer in existence in sub-section (1) and this subsection shall be construed as including references to a provident society (as defined in Part III in existence, whether or not the society is in course of being dissolved.

Section 6 – Modified

Requirements as to capital

(1) No insurer not being an insurer as defined in sub-clause (d) of clause (9) of section 2, carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has, —

(i) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or

(ii) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on exclusively the business of health insurance; or

(iii) a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer:

Provided that the insurer, may enhance the paid-up equity capital, as provided in this section in accordance with the provisions of the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992 and the rules, regulations or directions issued thereunder or any other law for the time being in force:

Provided further that in determining the paid-up equity capital, any preliminary expenses incurred in the formation and registration of any insurer as may be specified by the regulations made under this Act, shall be excluded.

(2) No insurer, as defined in sub-clause (*d*) of clause (9) of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore.

Section 6A – Modified

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares

(1) **No public company limited by shares having its registered office in India, shall carry on life insurance business or general insurance business or health insurance business or re-insurance business, unless it satisfies the following conditions, namely:—**

(i) **that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by the regulations;**

(ii) **that the voting rights of shareholders are restricted to equity shares;**

(iii) **that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:**

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares, the paid-up amount whereof is not the same for all of them for a period of three years from such commencement;

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paidup amount of the **equity** shares held by him.

(3) ****Omitted****

(4) **A public company as aforesaid which carries on life insurance business, general and health insurance business and re-insurance business—**

(a) **shall, in addition to the register of members maintained under the Companies Act, 2013, maintain a register of shares in which the name, occupation and address of the beneficial owner of each share shall be entered including any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;**

(b) **shall not register any transfer of its shares—**

(i) **unless, in addition to compliance being made with the provisions of section 56 of the Companies Act, 2013, the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each;**

(ii) **where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital unless the previous approval of the Authority has been obtained to the transfer;**

(iii) **where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent. of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.**

Explanation.— For the puposes of this sub-clause, the expressions "group" and "same management" shall have the meanings respectively assigned to them in the Competition Act, 2002.

(5) Every person who has any interest in any share of a company referred to in sub-section (4) which stands in the name of another person in the register of members of the company, shall, within thirty days from the commencement of the Insurance (Amendment) Act, 1950 (47 of I950), or from the date on which he acquires such interest, whichever is later, make a declaration in the prescribed form (which shall be countersigned by the person in whose name the share is registered) to the company declaring his interest in such share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or title whatsoever in that share:

Provided that nothing in this sub-section shall affect the right of a person who has an interest in any such share to establish in a court his right thereto, if the person, in whose name the share is registered, refuses to countersign the declaration as required by this subsection:

Provided further that where any share, belonging to an individual who has made any such declaration as is referred to in this subsection, is held by a company in its name in pursuance of any trust or for the purpose of safe custody or collection or realization of dividend, such individual shall, notwithstanding anything contained in the Companies Act, 2013, or in the memorandum or articles of association of the company which has issued the share, be deemed to be the holder of the said share for the purpose of exercising any voting rights under this section to the exclusion of any other person.

(6) ****Omitted****

(7) ****Omitted****

(8) ****Omitted****

(9) ****Omitted****

(10) ****Omitted****

(11) The provisions of this section, ~~**except those of sub-section (7), (8) and (9)**~~ shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business subject to the following notifications, namely:-

(i) that references in subsections (1), (3), (5) and (6) to the Insurance (Amendment) Act, 1950, (47 of 1950), shall be construed as reference to the Insurance (Amendment) Act, 1968;

(ii) ~~**References in sub section (10) to sub sections (7) and (8) shall be omitted.**~~

Explanation -For the purposes of this section, the holding of a person in the shares of a company shall be deemed to include

(i) the total paidup holding in such shares held by such person in the name of others; and

(ii) if any shares of the company are held -

(a) by a public limited company, of which such person is a member holding more than ten per cent. of the paidup capital, or

(b) by a private limited company, of which such person is a member, or

(c) by a company, of which such person is a managing director, manager, ~~**managing agent**~~ or in which he has a controlling interest, or

(d) by a firm in which such person is a partner, or

(e) by such person jointly with others,

such part of the total paidup holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paidup capital of the company, the paidup capital of the firm or the joint holding, as the case may be.

Section 6AA – **Omitted**

Section 6B – Modified

Provision for securing compliance with requirements relating to capital structure

(1) For the purpose of enabling any public company carrying on life **or general or health insurance or re-insurance** business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed in this behalf by the **Authority** may, notwithstanding anything contained in the Companies Act, 2013,—

(a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

(i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and

(ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaidup share capital;

(b) invite objections and suggestions in respect of the scheme so proposed; and

(c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable.

(2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under subsection (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the **Securities Appellate Tribunal** within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in subsection (1).

(3) The decision of the **Securities Appellate Tribunal** where an appeal has been preferred to it under subsection (2), or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.

(4) ****Omitted****

Section 6C – **Omitted**

Section 7 – **Omitted**

Section 8 – ** Omitted**

Section 9 – **Omitted**

Section 10 – Modified

Separation of accounts and funds

(1) Where the insurer carries on business of more than one of the following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance, he shall keep a separate account of all receipts and payments in respect of each such class of insurances business and where the insurer carries on business of miscellaneous insurance whether alone or in conjunction with business of another class, he shall, unless the Authority waives this requirement in writing, keep a separate account of all receipts and payments in respect of each of such subclasses of miscellaneous insurance business as may be **specified by the regulations:**

Provided that no subclass of miscellaneous insurance business shall be prescribed under this subsection if the insurance business comprised in the subclause consist of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.

(2) Where the insurer carries on the business of life insurance all receipts due in respect of such business, shall be carried to and shall form a separate tuna to be called the life insurance fund the assets of which shall, ~~**after the expiry of six months from the commencement of the Insurance (amendment) Act, 1946 (6 of 1946)**~~ be kept distinct and separate from all other assets of the insurer and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of the assets of such fund; and every insurer shall, within the time limited in subsection (1) of section 15 in regard to the furnishing of the statements and accounts referred to in section 11, furnish to the Authority a statement showing in detail such assets as at the close of every calendar year duly certified by an auditor or by a person qualified to audit ~~**under the law of the insurer's country**~~:

Provided that such statement shall, in the case of an insurer to whom section 11 applies, be set out as a part of the balancesheet mentioned in clause (a) of sub-section (1) of that section:

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department:

Provided also that the Authority may call for a statement similarly certified of such assets as at any other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for

(2A) No insurer carrying on life insurance business shall be entitled to be registered for any class of insurance business in addition to the class or classes for which he has been already registered unless the Authority is satisfied that the assets of the life insurance fund of the insurer are adequate to meet all his liabilities on policies of life insurance maturing for payment.

(2AA) Where the insurer carries on the business of insurance, all receipts due in respect of each sub-class of such insurance business shall be carried to and shall form a separate fund, the assets of which shall be kept separate and distinct from other assets of the insurer and every insurer shall submit to the Authority the necessary details of such funds as may be required by the Authority from time to time and such funds shall not be applied directly or indirectly, save as expressly permitted under this Act or regulations made thereunder

(3) The life insurance fund shall be as absolutely the security of the life policyholders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of

the insurer been only that of life insurance and shall not be applied directly or indirectly for any purposes other than those of the life insurance business of the insurer.

Section 11 – Modified

Accounts and balance sheet

(1) Every insurer, on or after the date of the commencement of the Insurance Laws (Amendment) Act, 2015, in respect of insurance business transacted by him and in respect of his shareholders' funds, shall, at the expiration of each financial year, prepare with reference to that year, balance sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations as may be specified.

(2) Every insurer shall keep separate accounts relating to funds of shareholders and policyholders.

(3) Unless the insurer is a company as defined in clause (20) of section 2 of the Companies Act, 2013, the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in case of an insurance cooperative society by the person in charge of the society and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period.

Section 12 – Modified

Audit

The balance sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall, unless they are subject to audit under the Companies Act, 2013, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 147 of the Companies Act, 2013.

Section 13 – Modified

Actuarial report and abstract

(1) **Every insurer carrying on life insurance business shall, once at least every year cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations:**

Provided that the Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

Provided further that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in such manner as may be specified by the regulations.

(2) The provisions of subsection (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or subsection (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(4) **There shall be appended to every such abstract a statement prepared in such form and in such manner as may be specified by the regulations:**

Provided that, if the investigation referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.

(5) Where an investigation into the financial conditions of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act.

(6) **The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class "Miscellaneous Insurance" and the Authority may authorise such modifications and variations of regulations as may be necessary to facilitate their application to any such sub-class of insurance business:**

Provided that, if the Authority is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.

Section 14 – Modified

Record of policies and claims

(1) Every insurer, in respect of all business transacted by him, shall maintain—

(a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice;

(b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof; and

(c) a record of policies and claims in accordance with clauses (a) and (b) may be maintained in any such form, including electronic mode, as may be specified by the regulations made under this Act.

(2) Every insurer shall, in respect of all business transacted by him, endeavour to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

Section 15 – Modified

Submission of returns

(1) The audited accounts and statements referred to in section 11 or sub- section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer.

(2) Of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing

director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

Section 16 – **Omitted**

Section 17 – **Omitted**

Section 17A – **Omitted**

Section 20 – Modified

Custody and inspection of documents and supply of copies

(1) **Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of such fee as may be specified by the regulations.**

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 ~~**or section 16**~~ shall, on the application of any shareholder or policyholder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application.

(3) A copy of the memorandum and articles of association of the insurer, if a company shall on the application of any policyholder, be supplied to him by the Insurer on payment of **such fee as may be specified by the regulations.**

Section 21 – Modified

Powers of Authority regarding returns

(1) If it appears to the Authority that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

(a) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;

(b) call upon the insurer to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;

(c) examine any officer of the insurer on oath in relation to the return;

(d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Authority may specify in the requisition and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 ~~**or section 16**~~ or section 28 or section 28A or section 28B or section 64V relating to the furnishing of returns.

(2) **The Securities Appellate Tribunal may, on the application of an insurer and after hearing the Authority, cancel any order made by the Authority under clause (d) of sub-section (1) or may direct the acceptance of such a return which the Authority has declined to accept, if the insurer satisfies the Tribunal that the action of the Authority was in the circumstances unreasonable:**

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the date when the Authority made the order or declined to accept the return.

Section 22 – Modified

(1) If it appears to the Authority that an investigation or valuation to which section 13 refers ~~**or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16**~~ does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation alas at such date as the Authority may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority and the insurer shall place at the disposal of the Actuary so appointed and approved all the material required by the Actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Authority may specify.

(2) The provisions of subsections (1) and (4) of section 13, and of sub-sections (1) and (2) of section 15 ~~**or, as the case may be, of sub-section (2) of section 16**~~, shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Authority may specify.

Section 27 – Modified

Investment of assets

(1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India, less—

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner, namely:—

(a) twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities; and

(b) the balance in any of the approved investments,

as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

(2) In the case of an insurer carrying on general insurance business, twenty per cent. of the assets in Government Securities, a further sum equal to not less than ten per cent. of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

Explanation.— In this section, the term "assets" means all the assets of insurer at their carrying value but does not include any assets specifically held against any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or miscellaneous expenditure or in respect of which the

Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

(3) For the purposes of sub-sections (*1*) and (2), any specified assets shall, subject to such conditions, if any, as may be specified, be deemed to be assets invested or kept invested in approved investments specified by regulations.

(4) In computing the assets referred to in sub-sections (*1*) and (2), any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurers in India with reference to that currency, to the extent of such excess, shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):

Provided further that the Authority may, either generally or in any particular case, direct that any investment shall, subject to such conditions as may be imposed, be taken into account, in such manner as may be specified in computing the assets referred to in sub-sections (*1*) and (2) and where any direction has been issued under this proviso, copies thereof shall be laid before each house of Parliament as soon as may be after it is issued.

(5) Where an insurer has accepted re-insurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-insurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (*1*) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.

(6) The Government securities and other approved securities in which assets are under sub-section (*1*) or sub-section (*2*) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(7) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India, be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub- section (*1*) and shall be vested in trustees resident in India and approved by the Authority, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.— This sub-section shall apply to an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India.

Section 27A – Modified

Further provisions regarding investments

(1) No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein.

(2) Notwithstanding anything contained in sub-section (*1*) or sub-section (2) of section 27, an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund or assets otherwise than in an approved investment, if—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (*1*) of section 27 or fifteen per cent. of the assets referred to in sub-section (*2*) as the case may be;

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund or assets as referred to in section 27,—

(a) invest in the shares of any one banking company; or

(b) invest in the shares or debentures of any one company, more than the percentage specified by the regulations.

(4) An insurer shall not out of his controlled fund or assets as referred to in sub-section (2) of section 27 invest or keep invested in the shares or debentures of any private limited company.

(5) All assets forming the controlled fund or assets as referred to in sub-section (2) of section 27, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with this section, shall (except for a part thereof not exceeding one-tenth of the controlled fund or assets as referred to in sub-section (2) thereof in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(6) If at any time the Authority considers any one or more of the investments of an insurer to be unsuitable or undesirable, the Authority may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Authority.

(7) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State legislature

Explanation. — In this section "controlled fund" means—

(a) in the case of any insurer carrying on life insurance business—

(i) all his funds, if he carries on no other class of insurance business;

(ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also.

Explanation. — For the purposes of sub-clauses (i) and (ii), the fund does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion, as the case may be, is regulated by the law in force of any country outside India or it would not be in the interest of the insurer to apply the provisions of this section;

(b) in the case of any other insurer carrying on life insurance business—

(i) all his funds in India, if he carries on no other class of insurance business;

(ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also; but does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Section 27B – Modified

Provisions regarding investments of assets of insurer carrying general insurance business.

(1) All assets of an insurer carrying on general insurance business shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27.

(2) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.

(3) Without prejudice to the powers conferred on the Authority by sub-section (5) of section 27A nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) of section 27 after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

Section 27C – Modified

Investment by insurer in certain cases

An insurer may invest not more than five per cent. in aggregate of his controlled fund or assets as referred to in sub-section (2) of section 27 in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations.

Section 27D – Modified

Manner and condition of investment

(1) Without prejudice to anything contained in this section, the Authority may, in the interests of the policyholders, specify by the regulations, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policyholders shall be invested in the infrastructure and social sector as may be specified by the regulations and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policyholders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

Section 27E – Inserted

Prohibition for investment of funds outside India

No insurer shall directly or indirectly invest outside India the funds of the policyholders.

Section 28 – Modified

Statement and return of investment of assets

Every insurer shall submit to the Authority returns giving details of investments made, in such form, time and manner including its authentication as may be specified by the regulations.

Section 29 – Modified

Prohibition of loans

(1) No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner:

Provided that nothing contained in this sub-section shall apply to such loans, made by an insurer to a banking company, as may be specified by the Authority:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

(2) The provisions of section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.

(3) Subject to the provisions of sub-section (1), no insurer shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as may be specified by the regulations including the loans sanctioned as part of their salary package to the full-time employees of the insurer as per the scheme duly approved by its Board of Directors;

(b) temporary advances to any insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate the renewal commission earned by him during the immediately preceding year.

(4) Where any event occurs giving rise to circumstances, the existence of which at the time of grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(5) In case of default in complying with the provisions of sub-section (4), the director, manager, auditor, actuary, officer or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of three months.

Section 30 – Modified

Liability of directors, etc. for loss due to contraventions of Sections 27, 27A, 27B, 27C, 27D or Section 29

If by reason of a contravention of any of the provisions of section 27, 27A, 27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policyholders, every director, manager or officer who is

knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

Section 31 – Modified

Assets of insurer how to be kept

(1) None of the assets in India of any insurer shall, except in so far as assets are required to be vested in trustees under sub-section (7) of section 27, be kept otherwise than in the name of a public officer approved by the Authority, or in the corporate name of the undertaking, if a company or an insurance co-operative society, as the case may be.

(2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realization of interest, bonus or dividend.

Section 31A – Modified

Provisions relating to managers, etc

(1) Notwithstanding anything to the contrary contained in the Companies Act, 2013, or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after expiry of one year from the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950),

(a) be managed by a company or a firm, or

(b) be directed or managed by, or employ as manager, or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or

(c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:

Provided that nothing in this subsection shall be deemed to prohibit-

(i) **the payment of commission to an insurance agent, in respect of insurance business procured by or through him;**

(ii) ****Omitted****

(iii) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission In respect of insurance business procured by him;

(iv) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), whichever is later;

(v) the payment of a share in the profits of general insurance business;

(vi) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration.

(2) Notwithstanding anything to the contrary contained in the Companies Act, 2013, or in the articles of association of the insurer, being a company, or in any contract or agreement, no manager, managing director or any other person concerned in the management of an insurer's business shall be entitled to nominate a successor to his office, and no person so nominated, whether before or after

the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), shall be entitled to hold or to continue in such office.

(3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provisions or **in any other law for the time being in force, be void.**

(4) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provision of this section.

Section 31B – Modified

Power to restrict payment of excessive remuneration

No insurer shall in respect of insurance business transacted by him, shall pay to any person by way of remuneration, whether by way of commission or otherwise in excess of such sum as may be specified by the regulations.

Section 32 – **Omitted**

Section 32A – Modified

A managing director or other officer of an insurer ~~**specified in sub-clause (b) of clause (9) of section 2 and**~~ carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company:

Provided that the Authority may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose of amalgamating the business of the two insurers or transferring the business of one insurer to the other.

Section 32B – Modified

Insurance business in rural or social sectors

Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the **rural or social sectors**, as may be specified, in the Official Gazette by the Authority, in this behalf.

Section 32D – Inserted

Obligation of insurer in respect of insurance business in third party risks of motor vehicles

Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by the regulations:

Provided that the Authority may, by regulations, exempt any insurer who is primarily engaged in the business of health, re-insurance, agriculture, export credit guarantee, from the application of this section.

Section 33 – Modified

Power of investigation and inspection by Authority

(1) The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person (herein referred to as "Investigating Officer") specified in the order to investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer:

Provided that the Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 210 of the Companies Act, 2013, the Investigating Officer may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be, a copy of the report on such inspection.

(3) It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may be, to produce before the Investigating Officer directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be, as the Investigating Officer may require of him within such time as the said Investigating Officer may specify.

(4) Any Investigating Officer, directed to make an investigation under sub- section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer including a service provider or contractor where the services are outsourced by the insurer or intermediary or insurance intermediary, as the case may be, in relation to his business.

(5) The Investigating Officer shall, if he has been directed by the Authority to cause an inspection to be made, make a report to the Authority on such inspection.

(6) On receipt of any report under sub-section (*1*) or sub-section (*5*), the Authority may, after giving such opportunity to the insurer or intermediary or insurance intermediary, as the case may be, to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing, —

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or

(c) direct any person to apply to the court for the winding up of the insurer or intermediary or insurance intermediary, as the case may be, if it is a company, whether the registration of the insurer or intermediary or insurance intermediary, as the case may be, has been cancelled under clause (*b*) or not.

(7) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers or intermediary or insurance intermediary, as the case may be, in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Officer to discharge satisfactorily his functions under this section.

Explanation.— For the purposes of this section, the expression "insurer" shall include in the case of an insurer incorporated in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) all its branches whether situated in India or outside India.

(8) Any insurer or intermediary or insurance intermediary aggrieved by any order made under this section may prefer an appeal to the Securities Appellate Tribunal.

(9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer or intermediary or insurance intermediary, as the case may be, shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.

Section 34B – Modified

Power of Authority to remove managerial persons from office

(1) Where the Authority is satisfied that in the public interest or for preventing the affairs of an insurer being conducted in a manner detrimental to the interests of the policyholders or for securing the proper management of any insurer it is necessary so to do, he may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any director or the chief executive officer, by whatever name called, of the insurer.

(2) No order under subsection (1) shall be made unless the director or chief executive officer concerned has been given a reasonable opportunity of making a representation to the Authority against the proposed order:

Provided that if, in the opinion of the Authority, any delay would be detrimental to the interests of the insurer or his policyholders, he may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, the director or, as the case may be, chief executive officer, shall not, with effect from the date of such order,

(a) act as such director or chief executive officer of the insurer;

(b) in any way, whether directly, indirectly, be concerned with, or take part in the management of the insurer.

(3) Where any order is made in respect of a director or chief executive officer of an insurer under subsection (1), he shall cease to be a director or as the case may be chief executive officer of the insurer and shall not, in any way, whether directly or indirectly, be concerned with, or take part in, the management of any insurer for such period not exceeding five years as may be specified in the order.

(4) **If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2), contravenes the provisions of this section, he shall be liable to a penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less.**

(5) Where an order under subsection (1) has been made, the Authority may, by order in writing, appoint a suitable person in place of the director or chief executive officer who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

(6) Any person appointed as director or chief executive officer under this section shall-

(a) hold office during the pleasure of the Authority and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Authority may specify;

(b) not incur any obligation or liability by reason only of his being a director or chief executive officer or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(7) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

Section 34C – Modified

Power of Authority to appoint additional directors

(1) **If the Authority is of opinion that in the public interest or in the interest of an insurer or his policyholders it is necessary so to do, it may, from time to time, by order in writing, appoint, in consultation with the Central Government with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:**

Provided that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.

(2) Any person appointed as additional director in pursuance of this section,—

(a) shall hold office during the pleasure of the Authority, and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Authority may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification shares of the insurer.

(3) For the purpose of reckoning any preparation of the total number of directors of the insurer, any additional director appointed under this section shall not be taken into account.

Section 34G – **Omitted**

Section 34H – Modified

Search and seizure

(1) Where the Chairperson of the Authority in consequence of information in his possession, has reason to believe that—

(a) any person who has been required under subsection (2) of Sec. 33 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents, or

(b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to an investigation under subsection (1) of Section 33 or an inspection under subsection (1A) of that section, or

(c) a contravention of any provision of this Act has been committed or is likely to be committed by an insurer, or

(d) any claim which is due to be settled by an insurer, has been or is likely to be settled at a figure higher than a reasonable amount, or

(e) any claim which is due to be settled by an insurer, has been or is likely to be rejected or settled at a figure lower than a reasonable amount,

(f) any illegal rebate or commission has been paid or is likely to be paid by an insurer, or

(g) any books, accounts, receipts, vouchers, survey reports or other documents, belonging to an insurer are likely to be tampered with, falsified or manufactured, he may authorise any subordinate officer of his, not lower in rank than **a Deputy Director or an equivalent officer** (hereafter referred to as the authorised officer) to-

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by C1ause (i) where the keys thereof are not available;

(iii) seize all or any such books, accounts or other documents found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies there from.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in subsection (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this subsection.

(4) The authonsed officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same recorded by him in writing and the approval of the Chairperson of the Authority for such retention is obtained:

Provided that the Chairperson of the Authority shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty days after all the proceedings under this Act for which the books, accounts, papers, receipts, vouchers, or other documents are relevant are completed.

(6) The person from whose custody any books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts there from, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and Idle as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports, or other documents seized under subsection (1) objects for any reason to the approval given by the Chairperson of the Authority under subsection (5), he may make an application to the **Securities Appellate Tribunal** stating therein the reasons for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports, or other documents.

(8) On receipt of the application under subsection (7) the **Securities Appellate Tribunal** may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searchers and seizures shall apply, so far as may be, to every search and seizure made under subsection (1).

(10) The Central Government may, by notification in the official Gazette, make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section.

Section 35 – Modified

Amalgamation and transfer of insurance business

(1) **Notwithstanding anything contained in any other law for the time being in force, no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.**

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Authority to approve any such scheme, notices of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason there for shall, at least two months before the application is made, be sent to the Authority and certified copies four in number, of each of the following documents shall be furnished to the Authority, and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policyholders at the principal and branch offices and chief agencies of the insurers concerned, namely:-

(a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;

(b) **balance sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in such forms as may be specified by the regulations;**

(c) **actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the regulations specified in this regard;**

(d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been, professionally connected; with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;

(e) any other reports on which the scheme of amalgamation or transfer was founded.

The balance sheets, reports and abstracts referred to in Clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if approved by the Authority is to take effect, which date shall not be more than twelve months before the date on which the application to the Authority is made under this section:

Provided that if the Authority so directs in the case of any particular insurer there may be substituted respectively for the balancesheet, report and abstract referred to in Clauses. (b) and (c) prepared in accordance with this subsection certified copies of the last balancesheet and last report and abstract prepared in accordance with Sections 11 and 13 of this Act or Sections 7 and 8 of the Indian Life Assurance Companies Act, 1912 (6 of 1912), if that balancesheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Authority is made under this section.

Section 36 – Modified

Sanction of amalgamation and transfer by Authority

When any application under sub-section (3) of section 35 is made to the Authority, the Authority shall cause, a notice of the application to be given to the holders of any kind of policy of insurer concerned along with statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and considering the objections of the policyholders and any other persons whom it considers entitled to be heard, may approve the arrangement, and shall make such consequential orders as are necessary to give effect to the arrangement.

Section 37A (4) – Modified

Power of the Authority to prepare scheme of Amalgamation

(4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may notify in this behalf in the Official Gazette:

Provided that different dates may be specified for different provisions of the scheme.

(4A) Every policyholder or shareholder or member of each of the insurers, before amalgamation, shall have the same interest in, or rights against the insurer resulting from amalgamation as he had in the company of which he was originally a policyholder or shareholder or member:

Provided that where the interests or rights of any shareholder or member are less than his interest in, or rights against, the original insurer, he shall be entitled to compensation, which shall be assessed by the Authority in such manner as may be specified by the regulations.

(4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.

(4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section (4A) may within thirty days from the publication of such assessment prefer an appeal to the Securities Appellate Tribunal:

Section 38 – Modified

Assignment and transfer of insurance policies

(1) A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.

(2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (1), where it has sufficient reason to believe that such transfer or assignment is not bona fide or is not in the interest of the policyholder or in public interest or is for the purpose of trading of insurance policy.

(3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policyholder not later than thirty days from the date of the policyholder giving notice of such transfer or assignment.

(4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where the policy is being serviced.

(6) The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims

under such instruments shall be governed by the order in which the notices referred to in sub-section (*5*) are delivered:

Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

(7) Upon the receipt of the notice referred to in sub-section (*5*), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by the regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.

(8) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (*5*), recognise the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation.— Except where the endorsement referred to in sub-section (*1*) expressly indicates that the assignment or transfer is conditional in terms of sub- section (*10*) hereunder, every assignment or transfer shall be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, shall be deemed to be the absolute assignee or transferee respectively.

(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Act, 2015 shall not be affected by the provisions of this section.

(10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that—

(a) the proceeds under the policy shall become payable to the policyholder or the nominee or nominees in the event of either the assignee or transferee predeceasing the insured; or

(b) the insured surviving the term of the policy, shall be valid:

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

(11) In the case of the partial assignment or transfer of a policy of insurance under sub-section (*1*), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policyholder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

Section 39 – Modified

Nomination by policyholder

(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policyholder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (*7*) and (*8*) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (*7*) and (*8*) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(12) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Section 40 – Modified

Prohibition of payment by way of commission or otherwise for procuring business

(1) No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations.

(2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard:

Provided that the Authority, while making regulations under sub-sections (1) and (2), shall take into consideration the nature and tenure of the policy and in particular the interest of the agents and other intermediaries concerned.

(3) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to one lakh rupees.

Section 40A – **Omitted**

Section 40B – Modified

Limitation of expenses of management in life insurance business

No insurer shall, in respect of insurance business transacted by him in India, spend as expenses of management in any financial year any amount exceeding the amount as may be specified by the regulations made under this Act.

Section 40C – Modified

Limitation of expenses of management in general, health insurance and re-insurance business

Every insurer transacting insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by the regulations made under this Act.

Section 41 – Modified

Prohibition of rebates

(1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer:

Provided that acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this subsection if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bona fide insurance agent employed by the insurer.

(2) **Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to ten lakh rupees.**

Section 48A – Modified

Insurance agent or intermediary or insurance intermediary not to be director in insurance company

No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company:

Provided that any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2015 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act:

Provided further that the Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policyholders or to avoid conflict of interest.

Section 49 – Modified

Restriction on dividends and bonuses

(1) No insurer, ~~**being an insurer specified in sub-clause (a) or sub clause (b) of clause (9)of section 2**~~ who carries on the business of life insurance or any other class or subclass of insurance business to which Sec. 13 applies, shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to policyholders or of making any payment in services of any debentures, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balancesheet in such form as may be specified by the regulations made by the Authority submitted to the Authority as part of the abstract referred to in Section 15 as a result of an actuarial valuation assets and liabilities of the

insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue account applicable to that class or subclass of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Authority under Section 15 of this Act ~~**or to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912 (6 of 1912)**~~ :

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent. of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent of any such surplus except where the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus:

Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed such sums as may be specified by the Authority and such share shall in no case exceed ten percent of such surplus in case of participating policies and in other cases the whole thereof.

(2) For the purposes of subsection (1) the actual amount of incometax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which the valuation in question is made may be added to such surplus after deducting an estimated amount for incometax on such surplus, such addition and deduction being shown in an abstract of the report of the actuary referred to in sub-section (1) of section 13.

Section 52 – Modified

Prohibition of business on dividing principle

No insurer shall commence any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policyholder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

Section 52A – Modified

When Administrator for management of insurance business may be appointed

(1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, it may, after giving such opportunity to the insurer to be heard appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.

(2) The Administrator shall receive such remuneration as the Authority may direct and the Authority may at any time cancel the appointment and appoint some other person as Administrator.

Section 52BB sub section (2) – Modified

Powers of Administrator respecting property liable to attachment under Section 106

(2) Any person aggrieved by an order made by the Administrator under subsection (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the **Securities Appellate Tribunal, and the Securities Appellate Tribunal** may pass such order thereon as it thinks fit.

Section 52BB sub section (3) – Modified

(3) An order made by the Administrator under subsection (1) shall, subject to any order made by the **Securities Appellate Tribunal** on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under subsection (1) of Sec. 106 to the Court competent to exercise jurisdiction under that subsection, and when such an application is made, the order shall, subject to any order made by that Court, continue in force as if it were an order of attachment made by that Court in proceedings under that section.

Section 52BB sub section (10) – Modified

(10) Save as provided in this section or in Section 106, and notwithstanding anything contained in any other law for the time being in force,—

(a) no suit or other legal proceeding shall lie in any Court to set aside or modify any order of the Administrator ~~**or the Central Government**~~ made under this section, and

(b) no Court shall pass any decree, grant any injunction or make any other order which shall have the effect of nullifying or affecting in any way any such order.

Section 52D – Modified

Termination of appointment of Administrator

If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of the Administrator or any other person appointed by the insurer in this behalf.

Section 52E – Modified

Finality of decision appointing Administrator

Any order or decision of the **Authority** made in pursuance of Section 52A or Section 52D shad be final and shall not be called in question in any Court.

Section 52F – Modified

Penalty for withholding documents of property from Administrator

If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers, or any other documents in his custody relating to the business of the insurer the

management of which has vested in the Administrator, or retains any property of such insurer, he shall be **liable to penalty of rupees ten thousand each day during which such failure continues or rupees ten lakh, whichever is less.**

Section 52G – Modified

Protection of action taken under Sections 52A to 52D

No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of Section 52A, Section 52B, Section 52BB or Section 52C.

No suit or other legal proceeding shall lie against the ~~**Central Government or**~~ Authority for any damage causedor likely to be caused by anything which is in good faith done or intended to be done under Section 52A, Section 52B, or Section 52D.

Section 52H – **Omitted**

Section 52 I – **Omitted**

Section 52J – **Omitted**

Section 52K – **Omitted**

Section 52L – **Omitted**

Section 52M – **Omitted**

Section 52N – **Omitted**

Section 53 – Modified

Winding up by the Court

(1) The Court may order the winding up in accordance with the Companies Act, 2013, of any insurance company and the provisions of that Act shall, subject to the provisions of this Act apply accordingly.

Explanation.— For the purpose of sections 53 to 61A, "Tribunal" means the National Company Law Tribunal constituted under sub-section (1) of section 408 of the Companies Act, 2013.

(2) In additional to the grounds on which such an order may be based, the Court may order the winding up of an insurance company

(a) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than onetenth of the whole body of shareholders and holding not less than one tenth of the whole share capital or by not less than fifty policyholders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or

(b) if the Authority, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely

(i) ****Omitted**;**

(ii) that the company having failed to comply with any requirement of this Act has continued such failure Nor having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure Nor contravention has been conveyed to the company by the Authority.

(iii) that it appears from Many returns or statements furnished under the provisions of this Act or from the results of any investigation made there under that the company is, or is deemed to be, insolvent, or

(iv) that the continuance of the company is prejudicial to the interest if the policyholders or to the public interest generally

Section 58 – Modified

Schemes for partial windingup of insurance companies

(1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the Company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed windingup) for any future rights of every class of policyholders in respect of their policies and for the manner of windingup any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Companies Act, 2013, relating to the winding up of companies.

(4) **An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall as respects the alteration have effect as if it were an order confirmed under section 4 of the Companies Act, 2013, and the provisions of sections 7 and 17 of that Act shall apply accordingly.**

Section 59 – **Omitted**

Section 64A – **Omitted**

Section 64B – **Omitted**

Section 64C – Modified

Councils of LIfe Insurance and General Insurance

On and from the date of commencement of this Act,—

(a) the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and

(b) the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance in India,

shall be deemed to have been constituted as the respective Councils under this Act.

Section 64D – Modified

It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any of its officer to act as the representative of such member at any meeting of the Council concerned.

THE INSURANCE REGULATORY & DEVELOPMENT AUTHORITY ACT, 1999

Section 2(1)(b) – Modified

"Authority" means the Insurance Regulatory and Development Authority **of India** established under sub-section (1) of section 3;

Section 2(1)(f) – Modified

"Intermediary" or "insurance intermediary" includes insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time;

Section 3 – Modified

Establishment and incorporation of Authority

(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purpose of this Act, an Authority to be called "the Insurance Regulatory and Development Authority **of India**."

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.

(4) The Authority may establish offices at other places in India.

Section 16 – Modified

Constitution of Fund

(1) There shall be constituted a fund to be called "the Insurance Regulatory and Development Authority Fund" and there shall be credited thereto-

(a) all Government grants, fees and charges received by the Authority;

(b) all sums received by the Authority from such other source as may be decided upon by the Central Government;

(c) ****Omitted****

(2) The Fund shall be applied for meeting

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

Paper - 16

TAX MANAGEMENT & PRACTICE

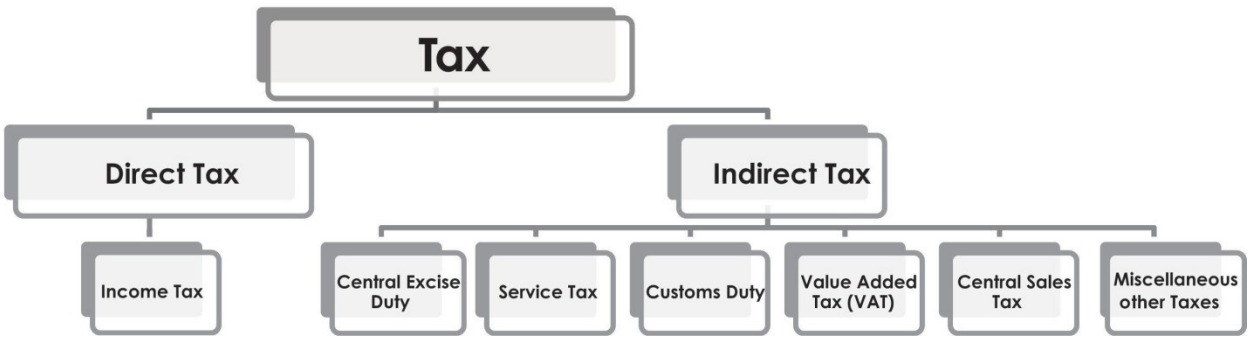
Changes are based on Study Material Second Edition — December, 2014 [as per Finance (No. 2) Act, 2014]

Study Note - 1

1st line of Point 1.1 [Basis for taxation] in Page No. 1.1 — Modified

India is a socialist, democratic and republic **country**.

Diagram under Point 1.1 [Basis for taxation] in Page No. 1.1 — Modified



Example of Point A [Direct Taxes] under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.1 — Modified

(A) Direct Taxes: They are imposed on a person's income, wealth, expenditure, etc. Direct Taxes charge is on person concern and burden is borne by person on whom it is imposed.

Example - Income Tax.

Point 'Taxable Event' in 'Direct Tax & Indirect Taxes' under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.2 — Modified

Taxable Event	Taxable Income of the Assessees.	Purchase / Sale / Manufacture of goods and provision of services.

2nd Point in 'Disadvantages of Direct taxes /Advantages of Indirect Taxes' under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.2 — Modified

Disadvantages of Direct taxes	Advantages of Indirect Taxes
Direct taxes are mainly on income of individuals, firms or corporate bodies, where millions of transactions are carried out in lakhs of places and keeping an eye over all such transactions is virtually impossible.	Indirect taxes are easier to collect as indirect taxes are mainly on goods/ commodities/services, for which record keeping, verification and control is relatively easy (at least in organized sector). Manufacturing activities are carried out mainly in organized sector, where records and controls are better.

4th Point in 'Disadvantages of Direct taxes /Advantages of Indirect Taxes' under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.3 — Modified

Disadvantages of Direct taxes	Advantages of Indirect Taxes
Collection cost of direct taxes as percentage of tax collected are higher in direct taxes compared to indirect taxes.	Collection costs of indirect taxes as percentage of tax collected are lower in indirect taxes compared to direct taxes.

6th Point in 'Disadvantages of Direct taxes /Advantages of Indirect Taxes' under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.3 — Modified

Disadvantages of Direct taxes	Advantages of Indirect Taxes
Government can judiciously use the direct taxes to support development in desirable areas, while discouraging in backward areas, infrastructure development etc.	Government can judiciously use the indirect taxes to support development in desirable areas, while encouraging it in backward areas also, e.g. reducing taxes on goods manufactured in tiny or small scale units; lowering taxes in backward areas etc.

3rd Point in 'Advantages of Direct taxes /Disadvantages of Indirect Taxes' under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.3 — Modified

Disadvantages of Direct taxes	Advantages of Indirect Taxes
Low income tax rates decrease tax revenues and tax evasion and hawala transactions.	High customs/ excise duty increases smuggling, hawala trade and mafia gangs, which is harmful in many ways. Similarly, high excise duty leads to evasion.

4th Point in 'Advantages of Direct taxes /Disadvantages of Indirect Taxes' under Point 1.2 [Direct Taxes and Indirect Taxes] in Page No. 1.3 — Modified

Disadvantages of Direct taxes	Advantages of Indirect Taxes
Direct taxes do not increase the cost of modern machinery and technology.	Higher customs duty and excise duty increases cost of modern machinery and technology.

1st part under Point 1.3 [Constitutional Validity] in Page No. 1.4 — Removed

[Central Excise is a duty on excisable goods ……. Section 3(1) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957]

'Sources and Authority of Taxes in India' under Point 1.4 [Administration and Relevant Procedures] in Page No. 1.4 — Modified

Powers of Central or State Government to levy tax		
Article	**Empowers**	**For**
246(1)	Central Government	Levy taxes in List I of the Seventh Schedule of the Constitution.
246(2)	Central or State Government	Levy taxes in List III of the Seventh Schedule.
246(3)	State Government	Levy taxes in List II of the Seventh Schedule of the Constitution.

Study Note – 2

Point 2.1 [Constitutional Background] in Page No. 2.1 — Fully changed

2.1 CONSTITUTIONAL BACKGROUND

In majority of cases, the general rate of excise duty has been increased from 12.36% (including education cess and secondary and higher education cess) to 12.50% (excluding education cess and secondary and higher education cess) [notification no. 01/2015-M&TP dated 01.03.2015]. The education cess which was levied on all excisable goods as a duty of excise has been fully exempted vide notification no. 14/2015 CE dated 01.03.2015 and secondary and higher education cess which was levied on all excisable goods as a duty of excise has also been fully exempted vide notification no. 15/2015 CE dated 01.03.2015.

To solve the practical problems regarding the calculation of excise duty, the general rate of 12.50% is considered here irrespective of the name and nature of the product. However, the product specific rates of excise duty are mentioned in CETA.

First three points with Example 2 under Point 2.4 [Duties Leviable] in Page No. 2.3 — Modified

- **Basic Excise Duty (BED)** is levied u/s 3(1) of Central Excise Act. The section is termed as 'charging section'. In majority of cases, the standard rate of basic excise duty has been increased from 12% to 12.50% (notification no. 01/2015-M&TP dated 01.03.2015). It should be mentioned here that the BED will vary productwise according to the rate mentioned in CETA.
- **Education Cess** which was earlier 2% of excise duty has been fully exempted w.e.f. 01.03.2015.
- **Secondary and Higher Education Cess** (S&H Education Cess) which was earlier 1% of the total duties of excise has also been fully exempted w.e.f. 01.03.2015.

Example 2:

Basic Excise Duty	12.50%
Add: Education Cess	—
Add: S & H Education Cess	—
Total effective rate of duty	12.50%

National Calamity Contingent Duty – A 'National Calamity Contingent Duty' (NCCD) has been imposed vide section 136 of Finance Act, 2001 on some products. NCCD of 1% has been imposed on mobile phones w.e.f. 1-3-2008.

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

Example 3 under point 2.5.1 [What is the Taxable Event?] in Page No. 2.4 — Changed

Example 3: Product X is produced on 1st February 2016 by X Ltd. On that date X is an excisable commodity with a tariff rate of **12.5%.** Subsequently on 31st March, 2016 Product X was removed from the factory. Hence, the taxable event is on 1st February 2016 and not on 31st March 2016.

Exception (i) in Point (1) [Power to Notify Exemptions in Public Interest] under Point 2.5.6 [Exemptions from Levy of Excise Duty] in Page No. 2.6 — Modified

Exceptions — However, unless specifically provided in such notification, no exemption shall apply to excisable goods, which are produced or manufactured:

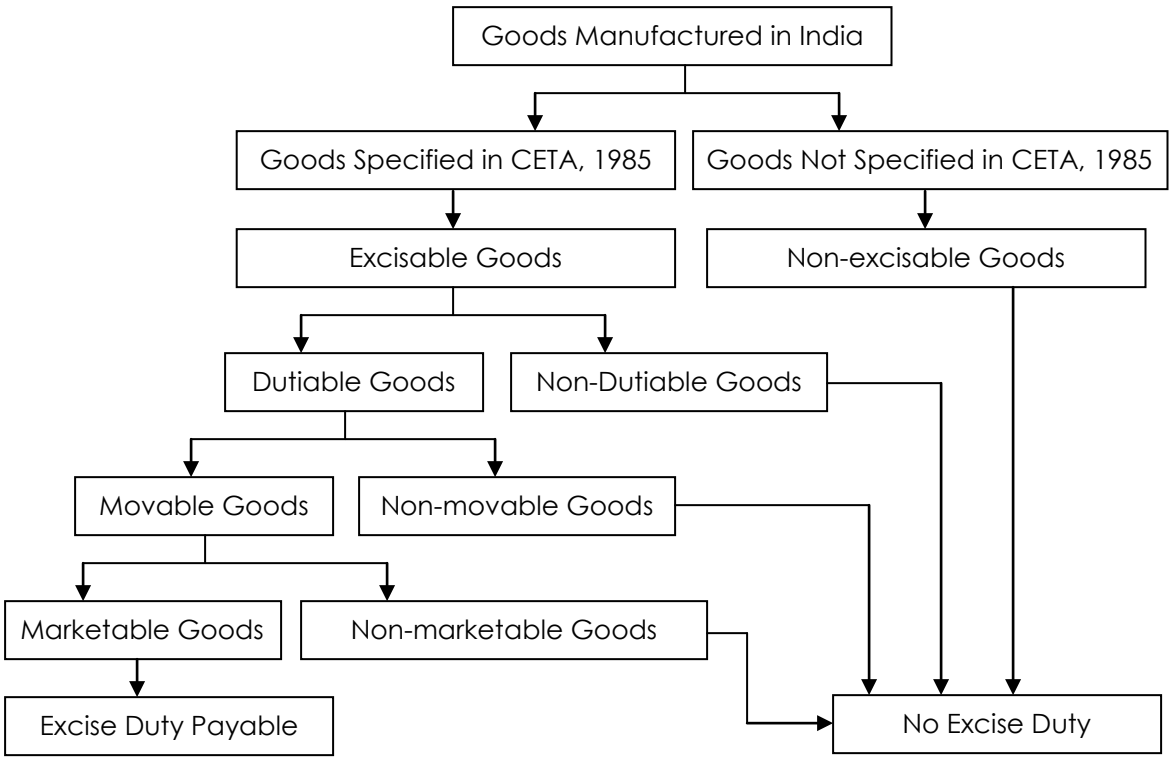
(i) in a Free Trade Zone **or a Special Economic Zone** and brought to any other place in India; or

(ii) by a hundred per cent Export Oriented Undertaking and brought to any place in India.

'Note' part under Point 2.6.3 [Excisable Goods] in Page No. 2.10 — Removed

[Note: The rate of duty of 1% ..... heading 8517]

Diagram under Point 2.6.4 [The goods must be Manufactured or Produced in India] in Page No. 2.10 — Modified



Example 8 under point 2.8 [Manufacture] in Page No. 2.13 — Modified

Example 8: X Ltd is engaged in the activity of conversion of gray cloth into embroidered dyed cloth. In the course of the various activities it gets the sizing done by S and dyeing by D. The cost of gray cloth is ₹ 50 per meter. S charges ₹ 10 per meter for sizing and D charges ₹ 30 per meter. The finished product is sold by X Ltd for ₹ 100 per meter. In the context of Central Excise Act, 1944, is there any manufacture involved? Who will be regarded as the manufacturer in this situation?

Answer:

As per the decided case law of the Supreme Court in Ujagar Paints v Union of India (1998), the end product should be one which is distinctive in name, usage and commercial character. In the given case, consequent to the value addition made to the grey cloth which is the input, the end product which emerges is commercially different with its own price structure, customs and commercial incidents. Hence, there is manufacture within the meaning of section 2(f) of the Central Excise Act, 1944.

It is not necessary that manufacturer should be the owner of the end product. Hence, in the given case, S and D will be regarded as manufacturers.

Diagram under Point 2.8.2 [Assembly or Repair or Production- Whether the same is Manufacture] in Page No. 2.14 — Removed

4th line in point (i) [Duty based on production capacity] under Point 2.11 [Valuation of Goods] in Page No. 2.30 — Modified

i. **Duty based on production capacity -** Some products (e.g. pan masala, rolled steel products) are perceived to be prone to duty evasion. In case of such products, Central Government, by notification, can issue notification specifying that duty on such notified products will be levied and collected on the basis of production capacity of the factory [section 3A(1) of **Central Excise Act** inserted w.e.f. 10th May 2008]. When such notification is issued, annual capacity will be determined by Assistant Commissioner [section 3A(2)(a) of CEA]. Factors relevant to determine production capacity will be specified by rules issued by Central Government [section 3A(2)(b)(i)].

Example 26 under point 2.11 [Valuation of Goods] in Page No. 2.31 — Modified

Example 26: The price of readymade garment is ₹ 500 per unit. Suppose the government fixes a rate of 60% for computing tariff value. In this case, the tariff value is 60% of ₹ 500 i.e. ₹ 300. If the duty rate is **12.5%,** the excise duty payable will be ₹ **300** × 12.5% **= ₹ 37.50** per unit

Example 27 under point 2.11 [Valuation of Goods] in Page No. 2.31 — Modified

Example 27: The MRP of an Air-condition Machine is ₹ 40,000 and the abatement per cent is 40%. The Excise duty is the BED rate is **12.5%** will be as under:

Maximum Retail Price	= ₹ 40,000
Less: abatement (40%)	= ₹ 16,000
Assessable Value	= ₹ 24,000
Central Excise Duty **(12.5%) = ₹ 24,000 × 12.5/100**	**= ₹ 3,000**
Total Excise Duty Payable	= ₹ 3,000

[Rest of the examples/ illustrations to be solved after considering Central Excise Duty rate @12.5% in the same manner]

Point (i) of Example 28 under point 2.11 [Valuation of Goods] in Page No. 2.32 — Modified

Example 28: (i) The rate of compounded levy in case of cold rolled Stainless Steel patties/pattas, the manufacturer has to pay ₹ **30,000** per cold rolling machine per month plus cess as applicable.

Point 2.12.4 [Service Tax on Job Work] in Page No. 2.45 — Removed

[Job work falls ..... avail Cenvat credit]

1st Part of Point 2.18.4 [Provisions Relating to Non Registration] in Page No. 2.73— Modified

2.18.4 Provisions Relating to Non Registration

As per Rule 25 of the Central Excise Rules, 2002, where registration under Central Excise is required for a manufacturer but not registered then, all such goods shall be liable to confiscation. Such manufacturer is supposed to face the punishment and penalty. **This provision is also applicable to an importer who issues an invoice on which Cenvat credit can be taken. (w.e.f. 01.03.15)**

3rd Para in Point 2.18.5 [Daily Stock Account (DSA)] in Page No. 2.74 — Modified

The first page and the last page of the DSA shall be duly authenticated by the manufacturer or his authorized person. The DSA shall be preserved for five years immediately after the financial year to which such records pertain.

The records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature. The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records.

Penalty upto the amount of duty payable can be imposed and the offending goods can be confiscated if DSA is not maintained by the manufacturer. [Rule 25(1)(b) of Central Excise Rules]

1st line and 5th line of Point (i) under Point 2.19.6 [Return of Duty paid Goods for Repairs etc. – Credit of Duty] in Page No. 2.76 — Modified

i. As per Rule 16 of the Central Excise Rules, **2002** where any duty paid goods (whether originally manufactured in the same or another factory) are subsequently returned to the factory for being remade, refined, reconditioned or for any other reason, the assessee shall record the particulars of such returned goods in his record and take Cenvat Credit of the duty paid on such goods as if they are inputs and shall utilize this credit according to the Cenvat Credit Rules, **2004**. But the goods received must be eventually returned.

2nd line of Point 2.19.10 [Action in Case of Default] in Page No. 2.77 — Modified

As per Rules 8(3) **of Central Excise Rules, 2002**, if the assessee fails to pay the amount of duty by the due date, he shall be liable to pay the outstanding amount along with interest at the rate **(at present, 18%)** specified by the Central Government vide notification under section 11AA of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

As per Rule 8(3A), if the assessee fails to pay the duty declared as payable by him in the return within a period of 1 month from the due date, then the assessee is liable to pay the penalty at the rate of 1% on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.

Point (iv) under Point 2.20.5 [Export Procedures] in Page No. 2.81 — Modified

iv. Export to **Nepal (except Bhutan)** is like export to any other country.

Point (ii) [Frequency of Audit] under Point 2.21 [Excise Audit] in Page No. 2.85 — Modified

Frequency of Audit: The frequency of audit is based on annual excise duty payment

Excise duty	**Frequency**	**Duration of audit**
< 50 lakhs	10% of units	5 working days
> 50 lakhs ≤ 100 lakhs	Once in 5 years	7 working days
> 100 lakhs ≤ 300 lakhs	Once in 2 years	7 working days
> 300 lakhs	Yearly	7 working days

About 25% of EOUs will be audited every year.

1st line of Point [Submission of Records and Books] under Point 2.21 [Excise Audit] in Page No. 2.88 — Modified

As per Rule 22(3) of the Central Excise Rules, 2002, every assessee, and **an importer who issues an invoice on which Cenvat credit can be taken and first stage and second stage dealer**, on demand make available to the officer empowered by the Principal Commissioner or Commissioner or the audit party deputed by the Principal Commissioner or Commissioner or Comptroller and Auditor General of India, or a Cost Accountant or Chartered Accountant nominated under section 14A or section 14AA of the Act, ...

Point (ix) [DEPB Scheme] under Point 2.22.1 [Export Benefits and Incentives] in Page No. 2.89 — Modified

(ix) DEPB Scheme: Duty entitlement pass book scheme patterned on the credit-debit system of Central Excise CENVAT scheme was scheduled to phase out by March 31, 2002 but is being continued till VAT comes into force. **This scheme has been abolished w.e.f. 01.10.2011 as it was said to be non- complaint of WTO requirement.**

Point (5), (6), (7) under Point 2.25.1 [Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded] omitted and Point (7A), (8), (11) and (14) modified in Page No. 2.103

(7A) Service of a statement containing details of duty not paid, short levied or erroneously refunded shall be deemed to be a Service of notice under Sub-section (1) or (3) or (4) of this section.

(8) In computing the period of one year referred to in clause (a) of subsection (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of the court or Tribunal in respect of payment of such duty shall be excluded.

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)—

(a) within six months from the date of notice in respect of cases falling under subsection (1);

(b) within one year from the date of notice in respect of cases falling under subsection (4).

(14) Where an order determining the duty of excise is passed by the Central Excise Officer under this section, the person liable to pay the said duty of excise shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

(15) The provisions of sub sections (1) to (14) shall apply, mutadis mutandis, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

(16) The provisions of this section shall not apply to a case where the liability of duty not paid or short paid is self-assessed and declared as duty payable by the assessee in the periodic returns filed by him, and in such case, recovery of non-payment or short-payment of duty shall be made in such manner as may be prescribed.

Explanation 1 — For the purposes of this section and section 11AC,—

(a) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India; (b) "relevant date" means,—

(i) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder;

(ii) in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed, the date on which such return has been filed;

(iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;

(iv) in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;

(vi) In the case where only interest is to be recovered, the date of payment of duty to which such interest relates. (c) Omitted vide FA 2015.

Explanation 2 — For the removal of doubts, it is hereby declared that any non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President, shall be governed by the provisions of section 11A as amended by the Finance Act, 2015.

Point 2.25.3 [Penalty for short levy or non-levy of duty in certain cases] in Page No. 2.104 — Modified

11AC Penalty for short-levy or non-levy of duty in certain cases. — **(1)** The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:-

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher :

Provided that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;

(b) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined;

(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of

the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

(e) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.

(2) Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11A, then, the amount of penalty payable under clause (c) of sub-section (1) and the interest payable under section 11AA shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay such amount of penalty and interest so modified.

(3) Where the amount of duty or penalty is increased by the appellate authority or tribunal or court over the amount determined under sub-section (10) of section 11A by the Central Excise Officer, the time within which the interest and the reduced penalty is payable under clause (b) or clause (e) of sub-section (1) in relation to such increased amount of duty shall be counted from the date of the order of the appellate authority or tribunal or court.

Explanation 1. — For the removal of doubts, it is hereby declared that–

(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before the date on which the Finance Bill, 2015 receives the assent of the President shall be governed by the provisions of section 11AC as amended by the Finance Act, 2015;

(ii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued but an order determining duty under sub-section (10) of section 11A has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall be eligible to closure of proceedings on payment of duty and interest under the proviso to clause (a) of sub-section (1) or on payment of duty, interest and penalty under clause (d) of sub-section (1), subject to the condition that the payment of duty, interest and penalty, as the case may be, is made within thirty days from the date on which the Finance Bill, 2015 receives the assent of the President;

(iii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where an order determining duty under sub-section (10) of section 11A is passed after the date on which the Finance Bill, 2015 receives the assent of the President shall be eligible to payment of reduced penalty under clause (b) or clause (e) of sub-section (1), subject to the condition that the payment of duty, interest and penalty is made within thirty days of the communication of the order.

Explanation 2. – For the purposes of this section, the expression "specified records" means records maintained by the person chargeable with the duty in accordance with any law for the time being in force and includes computerised records."

Study Note - 3

Example 8 under Rule 3(7) [CENVAT Credit on purchases from EOU/EHTP/STP] of Cenvat Credit Rules in Page No. 3.17 — Modified

Example 8: M/s X Ltd (a unit of 100% EOU) sold goods to M/s A Ltd. for ₹ 20 lac. BCD @10%, CVD 12.5% and Spl. CVD @4% (VAT exempted) are applicable.

Find the total duty of excise. How much Cenvat Credit allowed to M/s A Ltd.

Answer:

Particulars	Value in ₹	Workings
Assessable value Add: Basic Customs Duty 10%	20,00,000 1,00,000	 20,00,000 × 10% × 50%
Balance	21,00,000	
Add: CVD @12.5%	2,62,500	21,00,000 × 12.5%
Balance	23,62,500	
Add: 2% CESS on (₹ 1,00,000 + ₹ 2,62,500)	7,250	3,62,500 × 2%
Add: 1% SAH CESS on (₹ 1,00,000 + ₹ 2,62,500)	3,625	3,62,500 × 1%
Balance	23,73,375	
Add: SPL. CVD 4%	94,935	23,73,375 × 4%
Value of import	24,68,310	

Cenvat Credit allowed is ₹ 3,57,435 (i.e. CVD + Spl. CVD)

Last line of Point 1 under Rule 4 [Conditions for allowing CENVAT Credit] of Cenvat Credit Rules in Page No. 3.18 — Modified

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after **one year** of the date of issue of any of the documents specified in sub-rule (1) of rule 9.

Last line of Last para under Rule 4(7) [CENVAT credit in respect of Input service] of Cenvat Credit Rules in Page No. 3.19 — Modified

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after **one year** of the date of issue of any of the documents specified in sub-rule (1) of rule 9**.**

Option 1 and option 2 of Rule 6 of Cenvat Credit Rules under heading [Obligation of a Manufacturer or Producer of Final Products and a Provider of Taxable Services] in Page No. 3.23 — Modified

Rule 6: Obligation of a manufacturer or producer of final products and a provider of taxable service

Option 1: As per rule 6(2) of the CENVAT Credit Rules, 2004 (w.e.f. 1-4-2011).

If separate accounts maintained for the receipt, consumption and inventory of inputs, then the assessee shall take CENVAT credit on inputs which are used:-

in or in relation to the manufacture of dutiable final products excluding exempted goods; and for the provision of output services excluding exempted services.

If separate accounts maintained for the receipt and use of input services, then the assessee shall take CENVAT credit on input services which are used:-

- in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal; and
- for the provision of output services excluding exempted services

Cenvat reversal of non-excisable goods under Rule 6 of the Cenvat Credit Rules, 2004 [Explanation 1] [w.e.f 01.03.2015]: For the purpose of this rule, exempted goods or final products shall include non-excisable goods cleared for a consideration from the factory.

Valuation of non-excisable goods [Explanation 2]: Value of non-excisable goods –

- Invoice value;
- if invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

If separate accounts are not maintained

In this case the manufacturer or service provider has following three options:

Option 2: As per rule 6(3)(i) of the Cenvat Credit Rules, 2004, *pay an amount*:

The manufacturer of goods shall pay an amount equal to 6% of '*value*' of exempted goods (w.e.f. 1-4-2012) and the provider of output services shall pay an amount equal to **7%** (w.e.f. 01-06-2015) of '*value*' of the exempted services [notification no. 14/2015 - Central Excise (N.T.)].

Last line of Point (v) under heading [Important points with regard to Rule 6] of Cenvat Credit Rules in Page No. 3.24 — Modified

(v) If assessee opts to pay 'amount' on exempted services under 6(3)(i) of Cenvat credit Rules, 2004, the amount will be calculated on the value so exempted under abatement scheme. For example Mr. Raj provider of commercial construction services opted abatement 67%. Gross value of contract is ₹ 100 lakhs. Exempted services are ₹ 67 lakhs and taxable services are ₹ 33 lakhs. Hence, he is liable to pay service tax on ₹ 33 lakhs and 'amount' @**7%** on ₹ 67 lakhs.

Point (b) & (c) of Point (vi) under heading [Value for purpose of Rule 6(3) and 6(3A) of the Cenvat Credit Rules, 2004] of Cenvat Credit Rules in Page No. 3.24 — Modified

(b) Provider of commercial construction services opted abatement 67%. Gross value of contract is ₹ 100 lakhs. Exempted services are ₹ 67 lakhs and taxable services are ₹ 33 lakhs. Hence, he is liable to pay service tax on ₹ 33 lakhs and 'amount' @**7%** on ₹ 67 lakhs. That is value of exempted services is ₹ 67 lakhs.

(c) In case of trading goods, selling price of a product is ₹ 250 and the purchase price is ₹ 200, the difference is ₹ 50 or ₹ 20 (i.e. ₹ 200 x 10%) whichever is higher will be considered as value of exempted service for the purpose of payment of amount @**7%** or for proportionate reversal of credit.

Rule 12AAA [Power to impose restrictions in certain types of cases] of Cenvat Credit Rules in Page No. 3.30 — Modified

Rule 12AAA: Power to impose restrictions in certain types of cases

Where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provision of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer, provider of taxable service or an exporter **or a registered importer** may by notification in the Official Gazette specify the nature of restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by the Chief Commissioner of Central Excise.

7th line of Notification No. 16/2014 dated 21st March, 2014 in Page No. 3.30 — Modified

Notification No. 16/2014 dated 21st March, 2014:

[In pursuance of rule 12CCC of the Central Excise Rules, 2002, and rule 12AAA of the CENVAT Credit Rules, 2004 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 05/2012-Central Excise (N.T.), dated the 12th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, except as respects things done or omitted to be done before such supersession, the Central Government hereby declares that where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter **or a registered importer** is prima facie found to be knowingly involved in any of the following ……]

Point (5) of Explanation of Notification No. 16/2014 dated 21st March, 2014 in Page No. 3.31 — Modified

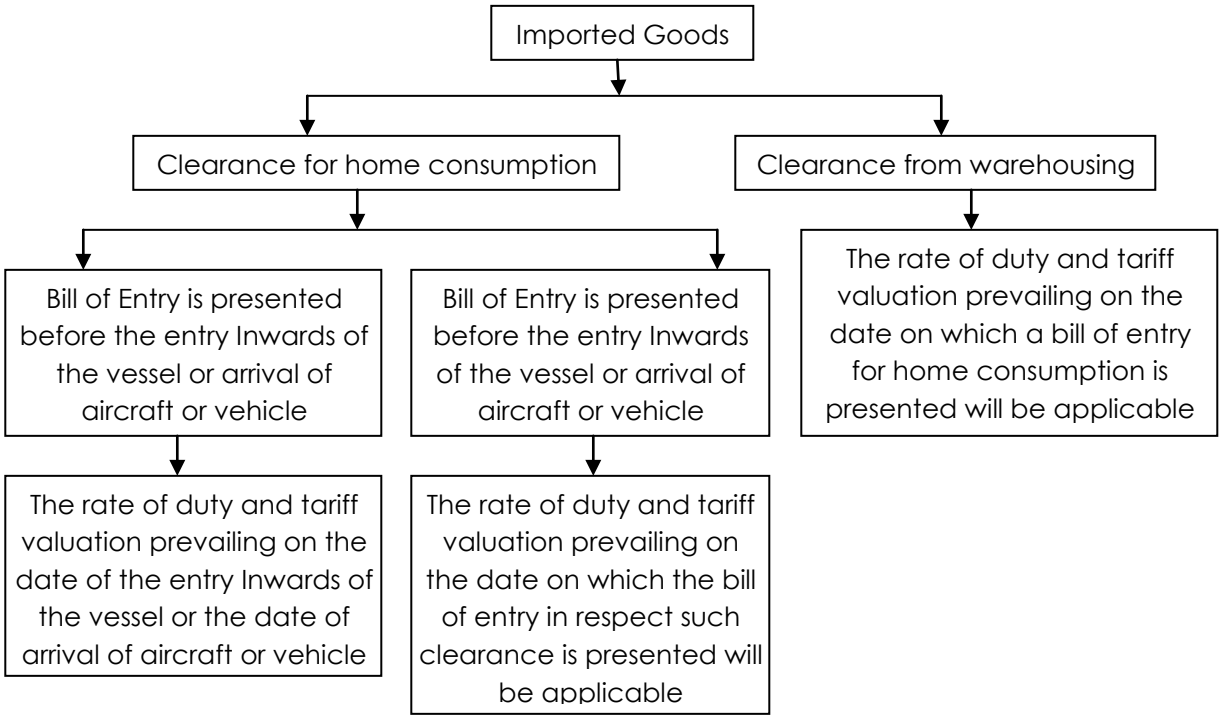
(5) If a manufacturer, first stage dealer or second stage dealer or an exporter **or an registered importer** does anything specified in clause (f) of para 1, the Chief Commissioner of Central Excise may order withdrawal of the other facility available to them.

Study Note - 4

Last line of Point (A) under Point 4.1.4 [Circumstances of Levy] in Page No. 4.9 — Modified

Provided that a bill of entry may be presented even before the delivery of such manifest or report, if the vessel or the aircraft or vehicle by which the goods have been shipped for importation into India is expected to arrive within thirty days from the date of such presentation. **In case the vessel or aircraft or vehicle does not arrive within 30 days of presentation of the bill of entry, the bill of entry so presented shall stand cancelled.**

Diagram under Point (E) [Date of determination of Rate of duty and tariff valuation for Imported Goods] in heading 4.1.4 [Circumstances of Levy] in Page No. 4.10 — Modified



Point 4.2.1 of Point 4.2 [Types of Custom Duty] in Page No. 4.13 — Modified

4.2.1 Basic customs duty is levied under section 12 of Customs Act. Normally, it is levied as a percentage of value as determined under section 14(1). The basic customs duties are 5%, 7.5%, and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions.

Assessable Value = CIF value of imported goods converted into Rupees at exchange rate specified in notification issued by CBE&C plus landing charges 1% (plus some additions often arbitrarily and whimsically made by customs).

Section 2 of the Customs Tariff Act, 1975 provides the rate of duty to be applied on the value of goods. Basically section 2 of the Customs Tariff Act, 1975 provides following:-

- First Schedule — Goods liable for import duty
- Second Schedule — Goods liable for export duty

Basic Customs Duty levied u/s 12 of Customs Act.

(i) The rate of basic customs duty is specified in Customs Tariff Act, read with relevant exemption notification. Generally, Basic Customs Duty is 10% of Non-Agricultural Goods.

(ii) CVD equal to excise duty is payable on imported goods u/s 3(1) of Customs Tariff Act. General excise duty rate is 12.5%. Consider only basic excise duty as CVD. It means CVD is equal to Basic Excise Duty(w.e.f 01-03-2015).

(iii) Special CVD (SAD) is payable @4% on imported goods u/s 3(5) of Customs Tariff Act. This is in lieu of Vat/Sales tax to provide level playing field to Indian goods.

(iv) Education Cess of customs @ 2% and SAH Education Cess of 1% is payable.

(v) NCCD has been imposed on a few articles. In addition, on certain goods, Anti-Dumping Duty, Safeguard Duty, Protective Duty etc. can be imposed.

Calculated of customs duty payable is as follows, w.e.f. 01.03.2015

Seq.	Duty Description	Duty %	Amount	Total Duty
(A)	Assessment Value ₹		20,000.00	
(B)	Basic Customs Duty	10	2,000.00	2,000.00
(C)	Sub-Total for calculating CVD '(A+B)'		22,000.00	
(D)	CVD 'C' x excise duty rate	12	2,750.00	2,750.00
(E)	Sub-total for edu cess on customs 'B+D'		4,750.00	
(F)	Edu Cess of Customs – 2% of 'E'	2	95.00	95.00
(G)	SAH Education Cess of Customs – 1% of 'E'	1	47.50	47.50
(H)	Sub-total for Spl CVD 'C+D+F+G'		24,892.50	
(I)	Special CVD u/s 3(5) – 4% of 'H'	4	995.70	995.70
(J)	**Total Duty**			**5,888.20**
(K)	Total duty rounded to	₹		5,888.00

Notes- Buyer, who is manufacturer, is eligible to avail Cenvat Credit of D and I above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'I' above.

Point ii of Point 4.2.2 [Additional Customs Duty U/S 3(1) (CVD)] in Page No. 4.15 — Modified

ii. CVD is payable equal to Excise Duty payable on like articles if produced in India. It is payable at effective rate of Excise Duty, which is generally 12.5%. It means CVD is equal to Basic Excise Duty (w.e.f 01-03-2015).

Example 4 under Point 4.2.2 [Additional Customs Duty U/S 3(1) (CVD)] in Page No. 4.15 — Modified

Example 4: An importer imported some goods for subsequent sale in India at $12,000 on CIF basis. Relevant exchange rate as notified by the Central Government and RBI was ₹ 45 and ₹ 45.50 respectively. The item imported attracts basic duty at 10%. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14%. Arrive at the Assessable value and the total duty payable thereon.

Answer:

Assessable Value	=	₹ 5,45,400
Add: Basic Customs Duty 10% x 5,45,400	=	₹ 54,540
Balance	=	₹ 5,99,940
Add: CVD 14% on ₹ 5,99,940	=	₹ 83,992
Add: Education Cess 2% on 54,540 + 83,992	=	₹ 2,771
Add: SAH 1% on 54,540 + 83,992	=	₹ 1,385
Total value of imported goods	=	₹ 6,88,088

Working Note:

CIF Value	=	12,000 US$
Total CIF in₹ @ 45.00 per US $	=	₹ 5,40,000
Add: Landing Charges @1% of CIF	=	₹ 5,400
Assessable value	=	₹ 5,45,400

Example 5 under Point 4.2.5 [Refund of Special CVD of Customs to Traders] in Page No. 4.17 — Modified

Example 5: An importer imported some goods for subsequent sale in India at $ 20,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹ 45. The item imported attracts basic duty at 10% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 12.5%. Special Additional Customs Duty is 4%. Find the total duty payable.

Answer:

	₹
CIF value USD 20,000 X 45	9,00,000
Add: Loading and unloading @1%	9,000
Assessable Value	9,09,000
Add: Basic Customs Duty @10% on ₹9,09,000	90,900
	9,99,900
Add: Additional Customs Duty [@12.5% x ₹9,99,900]	1,24,988
	11,24,888
Add: Education Cess 2% on (₹90,900 + ₹1,24,988)	4,318
Add: SAH @1% on (₹90,900 + ₹1,24,988)	2,159
	11,31,365
Add: Special Additional Customs Duty [@4% × ₹11,31,365]	45,255
Total value of imported goods	11,76,620

Therefore total duty payable is ₹ 2,67,620.

[Rest of the examples/ illustrations to be solved after considering CVD @12.5% in the same manner]

Condition 2 of Re-importation of goods under Point 4.10.8 [Duty Liability in Certain Special Circumstances] in Page No. 4.55 — Modified

Condition -2:

Goods exported for repairs abroad and reimported by the same person within 3 years (or extended period, if any) without being re-manufactured/ re-processed, and also without change in ownership between export and re-import.

Duty leviable on a value = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance and freight charges, both ways. [Notification No. 94/96-Cus., dated 16-12-1996).

Point (j) [Interest payable if goods cleared from warehouse through DEPB debit] of Point 3 [Warehousing period under customs] in Page No. 4.67 — Removed

1st line of Point "Allowance to professionals returning to India" of Point 4.17.4 [Baggage of Indian resident or foreigner residing in India] in Page No. 4.81 — Modified

An Indian passenger who was engaged in his profession abroad for **at least** three months is allowed to import following duty free goods as additional allowance ……..

Point (f) of "Conditions for TR concession" of Point 4.17.5 [Concession to persons transferring his residence (TR)] in Page No. 4.82 — Modified

(f) Jewellery upto ₹**50,000** for male passenger and ₹**1,00,000** for female passenger can be imported free of customs duty. (Rule 8 of Baggage Rules, 1998, read with Appendix F).

Point "Limit on bringing jewellery duty free" of Point 4.17.5 [Concession to persons transferring his residence (TR)] in Page No. 4.82 — Modified

Limit on bringing jewellery duty free - The jewellery allowed to be imported duty free is limited to ₹**50,000** for male passenger and ₹**1,00,000** for female passenger. This limit is not applicable if the passenger produces evidence that the jewellery was, in fact, taken out of India by the passenger or his family.

Point "Articles not allowed under TR" of Point 4.17.5 [Concession to persons transferring his residence (TR)] in Page No. 4.82 — Modified

Articles not allowed under TR - Transfer of Residence concession is not available to alcoholic liquor or wines (in excess of two litres), cigarettes (exceeding 100), cigars (exceeding 25), tobacco (exceeding 125 gms), Gold (other than ornaments), Silver (other than ornaments), fire arms and cartridges of fire arms exceeding 50 - Annex I of Baggage.

Comparison of the provision of section 74 and 75 under Drawback in Page No. 4.90 — Modified

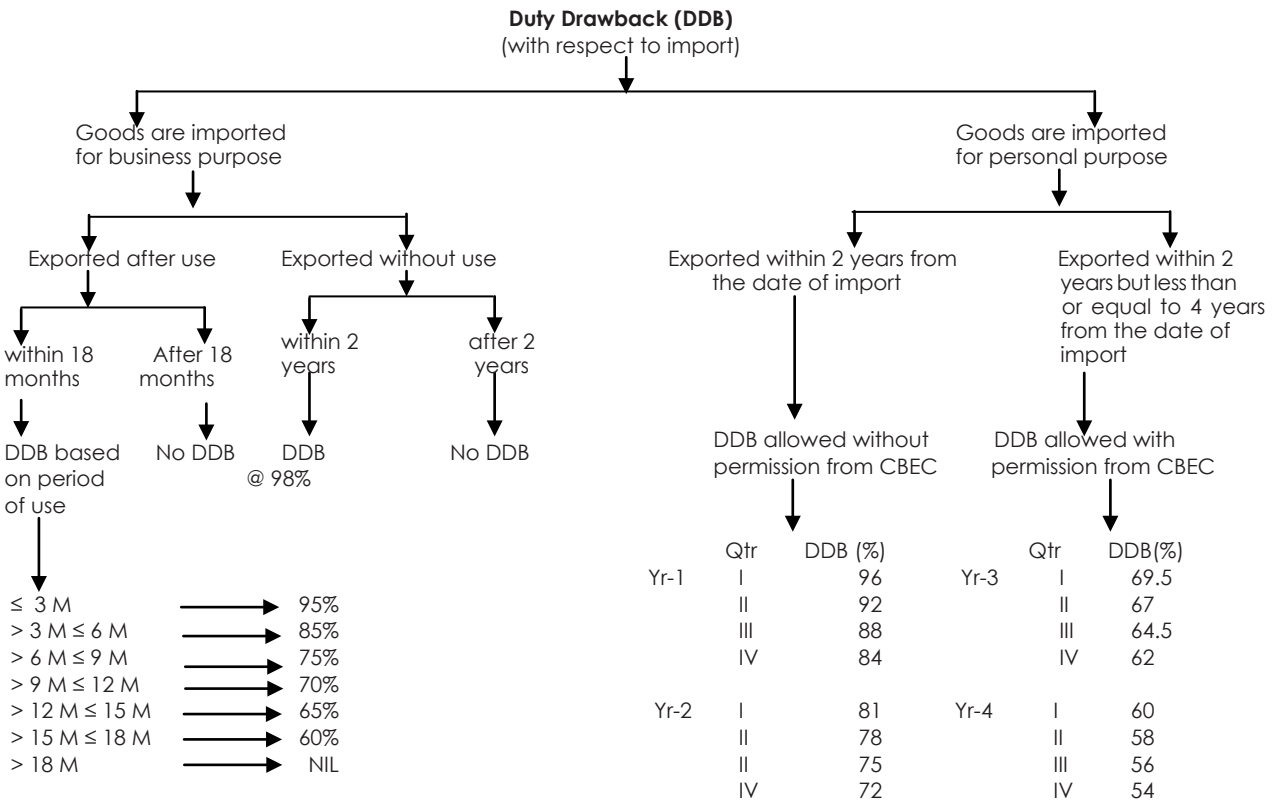
Comparison of the provision of section 74 and 75 is as follows:

Drawback allowable on re-export of duty paid goods – (Sec. 74)	**Drawback on material used in the manufacture of exported goods (sec. 75)**
(i) Drawback, in relation to any goods exported out of India, means refund of duty paid on importation of such goods in terms of section 74. Thus, drawback is allowed only if import duties of customs.	"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or fact, as the case may be, chargeable on cay imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.
(ii) The identity of the goods exported should be established as the one, which was imported on payment of duty.	The goods exported under this section one different from the inputs as the inputs are manufactured, processed or any operations are carried on then before their export.
(iii) Drawback under this section is available on all goods (Identification is the only criterion)	Drawback under this section is available only on notified goods.
(iv) The exported goods should have been imported and customs duty by paid thereon.	The goods to be exported may be manufactured or processed from imported or indigenous inputs or by utilizing input services.
(v) The rate of drawback is 98% in case the goods are exported without use. The rate of drawback on goods taken into use is separately notified depending upon the period of use, depreciation in value and other relevant factors.	Drawback is allowed at All Industry Rate or Brand Rate or Special Brand Rate, as is applicable.
(vi) The goods should be exported within two years (or extended period) from the date of payment of duty or such extended time as the board may allow.	No such restrictions.
(vii) There is no criterion of minimum value addition, which is to be fulfilled before export for claim of drawback.	It has been specifically provided that there should not be negative value addition and in case where minimum value addition is specified the same should be achieved for claim of drawback.
(viii) No provision for recovery of export sale proceeds.	The sale-proceeds in respect of such goods on which the drawback has been allowed, have to be received by the exporter or by any person on his behalf with the period as specified by RBI, except in exceptional circumstances.
(ix) The drawbacks is governed by the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995.	The drawback, in this case, is governed by the Customs, Central Excise Duties and Service Tax drawback Rules, 1995. The rules cover customs duty, central excise duty and service tax.

Table "Duty draw back allowed based on period of usage" under Point 4.18.2 [Duty Drawback on Re-Export] in Page No. 4.91 — Modified

Period between date of clearance for home consumption and date to when goods are placed under customs control for export	% of DDB on import duty
≤ 3M	95%
> 3M ≤ 6M	85%
> 6M ≤ 9M	75%
> 9M ≤ 12M	70%
> 12M ≤ 15M	65%
> 15M ≤ 18M	60%
> 18M	NIL

Diagram under Point 4.18.2 Duty Drawback on Re-Export in Page No. 4.91 — Modified



"Brand Rate of Duty Drawback" and "Special Brand Rate of duty drawback" in Page No. 4.92 — Modified

Brand Rate of Duty Drawback – It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, brand rate is fixed under rule 6 by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff

valuation under section 16 or 83, to the Principal Commissioner or Commissioner of Central Excise and Customs stating all relevant facts including the proportion in which the materials or components or input services are used in the production or manufacture of goods and the duties paid on such materials or components or service tax paid on such input services.

Special Brand Rate of duty drawback – In case if the duty drawback as per all industry rate is less than 80% of the duties or taxes paid on the materials or components or input services, then the manufacturer or exporter, except where a claim for drawback under rule 3 or rule 4 has been made, can apply for special brand rate to the Principal Commissioner or Commissioner of Central Excise and Customs by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation under section 16 or 83.

Table under point 4.18.7 [Penalties under Custom Act] in Page No. 4.100 — Modified

Imported Goods (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Minimum Penalty in (₹) (B) or (C)
Prohibited Goods	Value of prohibited goods	₹ 5,000	Whichever is higher
Dutiable goods (Other than prohibited goods)	Duty sought to be evaded on such goods x 10%	₹ 5,000	Whichever is higher
Misdeclaration of value	Value declared - Actual value = ₹ XXXX	₹ 5,000	Whichever is higher
Prohibited goods plus misdeclaration value	Value of prohibited goods or Value declared – Actual value whichever is higher	₹ 5,000	Whichever is higher
Dutiable goods plus misdeclaration of value	Duty sought to be evaded or Value declared – Actual value whichever is higher	₹ 5,000	Whichever is higher

Point 4.22.10 [Anti-dumping Application Proforma], 4.22.11 [Cost Accounting – as an aid for assessment under Anti-dumping laws in India], 4.22.12 [Generally Accepted Cost Accounting Principles], 4.22.13 [Cost Accounting Standards (CASs) - relevance and application in the light of Anti-dumping Laws in India], 4.22.14 [Companies (Cost Accounting Records) Rules 2011], and 4.22.15 [Companies (Cost Audit Report) Rules, 2011 - relevance and application in the light of Antidumping Laws in India] from Page No. 4.109 to Page No. 4.115 — Modified

4.22.10 Anti-dumping Application Proforma -

The following is an outline of application proforma under Anti-dumping laws in India:-

Part	Deals with
I	Imported Product Information
II	Indian Industry Profile
III	Evidence of Dumping 1. Estimates of Normal Value 2. Estimates of Export Price 3. Estimates of Dumping Margin
IV	Evidence of Injury

IVA	Injury Information on Domestic Industry
IVB	Country wise landed value
V	Evidence of Casual link
VI	Costing Information Format "A" – Statement of Raw Materials and Packing Materials Consumption and Reconciliation Format "B" – Statement of Raw Material Consumption Format "CI" - Statement of Cost of Production Format "CII" – Allocation and Apportionment of Expenditure Format "D" – Statement of Consumption of Utilities Format "E" – Statement of Sales Relations Format "F" – Certificate

4.22.11 Relevance of Cost Information for imposing anti dumping duty

(1) Description of the cost accounting system used by the company to record the production costs of the product concerned.

(2) Company's use of standard or budgeted costs.

(3) An explanation for allocation method used as well as for any significant or unusual cost-variances that occurred during investigation period.

(4) A list of direct and indirect cost centres.

(5) Method used to allocate cost among the company's organizational units.

(6) Description of Cost Accounting system to value the cost of sales and raw materials, WIP and finished goods inventories for the audited financial statements.

(7) A list of all costs which are valued and treated differently for cost and financial accounting purposes and the reasons treating them differently.

(8) Information regarding cost of production/trading.

4.22.12 Cost Accounting Standards (CASs) - relevance and application in the light of Anti-dumping Laws in India

The following are the Cost Accounting Standards issued by the Institute of Cost Accountants of India. Effective application of CASs brings about uniformity in the principles of measurement and valuation of goods.

CAS	Deals with
1	Classification of Cost
2	Capacity Determination
3	Overheads
4	Cost of Production for Captive consumption
5	Average (Equalized) cost of transportation
6	Material Cost
7	Employee Cost
8	Cost of Utilities
9	Packing Material Cost

10	Direct Expenses
11	Administrative Overheads
12	Repairs and Maintenance
13	Cost of Service Cost Centre
14	Pollution Control Cost
15	Selling and Distribution Overheads
16	Depreciation and Amortization
17	Interest and Financing Charges
18	Research and Development Costs
19	Joint Costs
20	Royalty and Technical Know-how Fee
21	Quality Control
22	Manufacturing Cost

4.22.13 Relevance of Cost Records

"***Cost Records*** *means books of accounts relating to utilization of material, labour and other items of cost as applicable to the production, processing, manufacturing and mining activities of the company*". It has also been clarified that such conformance to Generally Accepted Cost Accounting Principles (GACAP) and Cost Accounting Standards (CAS) are to be followed to the extent these are found to be relevant and applicable and the variations, if any, are required to be indicated and explained.

The basic purpose of maintenance of these cost records is to enable the company to exercise, as far as possible, control over the various operations and costs with a view to achieve optimum economies in utilization of resources. These records shall also provide necessary data which is required to be furnished under these rules.

4.22.14 Companies (Cost Records and Audit) Rules, 2014 - relevance and application in the light of Anti-dumping Laws in India

The following states the relevance of respective Para prescribed Cost Audit Reports and Cost Accounting Standards which may be used as reference for making an authentic assessment under Anti-dumping laws in India. Since the Cost Accounting Records are to be maintained by companies satisfying the prescribed parameters, a reference to the Cost Compliance Report or the Cost Audit Report may be an important tool for the stakeholders in ascertainment of injury margin. Further, application of generally accepted cost accounting principles and cost accounting standards would bring about a uniformity/standardization in the principles followed in measurement and valuation of cost.

Anti-dumping Application Proforma	***Reference to Para prescribed under Cost Audit Report Rules,2014*** ***(Para Reference to CRA 3)***		***Reference to relevant Cost Accounting Standards***
Format A - Statement of Raw Materials and Packing Materials Consumption and Reconciliation	Annexure 2A - Details of Materials Consumed	Item No.1 & 2 Raw Material Consumption and Process Materials	CAS 6 – Material Cost
	Annexure 2 - Abridged Cost Statement	Item No.16 and 23 – Primary Packing Cost Material and Secondary Packing Cost	CAS 9 – Packing Material Cost
Format B – Statement of Raw Material Consumption	Annexure 2A - Details of Materials Consumed		CAS – 6 – Material Cost
Format CI – Statement of Cost of Production ***(to be certified by a Cost Accountant in Practice)***	Annexure 2A - Details of Materials Consumed Annexure 1 - Quantitative information Annexure 2 - Abridged Cost Statement Annexure 2B - Details of Utilities consumed		CAS 2 – Capacity Determination CAS 6 – Material Cost CAS 7 – Employee Cost CAS 8 – Cost of Utilities CAS 9 – Packing Material Cost CAS 10 – Direct Expenses CAS 12 – Repairs & Maintenance
Format CII – Allocation and Apportionment of Expenditure	Annexure 1 - Quantitative information Annexure 2 - Abridged Cost Statement		CAS 1 – Classification of Cost CAS 2 – Capacity Determination CAS 3 - Overheads
Format D – Statement of Consumption of Utilities	Annexure 2B - Details of Utilities consumed		CAS 8 – Cost of Utilities

However, for the purpose of ascertaining the Normal Value, Non-injurious price or to determine price undercutting or price underselling, application of the specific Cost Accounting Standards in all relevant situations may be made which would be a safeguard for the stakeholders.

Illustration 1:

Example 37: FORMAT "CI" - STATEMENT OF COST OF PRODUCTION

Name of the Company: XYZ Limited

Installed Capacity			1,00,000 units					
Production in Installed capacity			65,000 units					
Capacity Utilization (%)			65%					
Production in Investigation Period			56,000 units					
Capacity Utilisation in Investigation period			56%					
Sales (quantity)			61,000 units				51,000 units	
Particulars	**Previous Accounting Year**				**Investigating Period**			
	Qty	Rate (₹)	Value (₹)	Cost per unit (₹)	Qty	Rate (₹)	Value (₹)	Cost per unit (₹)
Manufacturing Expenses:								
Raw Materials (specify the major raw materials) (MT)	10,000	100.00	10,00,000	15.38	8,000	120.00	9,60,000	17.14
Utilities			2,00,000	3.08			1,90,000	3.39
Depreciation			1,95,000	3.00			1,75,000	3.13
Others (specify nature of expenditure)								
Administrative Expenses								
Variable			1,30,000	2.00			1,12,000	2.00
Fixed			78,000	1.20			78,000	1.39
Selling & Distribution Expenses								
Variable			61,000	1.00			56,000	1.10
Fixed			40,000	0.62			40,000	0.71
Financial Expenses								
Variable			1,30,000	2.13			35,700	0.70
Fixed			21,000	0.32			21,000	0.38
Less: Miscellaneous Income (from product concerned) – Sale of Scrap raw materials			(25,000)				(20,000)	
Total Cost to make and sell			**18,30,000**	**28.15**			**16,47,700**	**29.42**
Selling Price				**35.00**				**32.00**
Profit/Loss				**6.85**				**2.58**

Note: This Statement of Cost of Production is to be authenticated by a Cost Accountant in Practice

Example 38:

One of the major reasons for this decrease in the quantity of sales is identified to be import of like/similar goods by a foreign company to India. The selling price of such goods, in Indian market, as fixed by the foreign counterpart is ₹ 23, while the same goods are normally sold at that foreign country for ₹ 35. Landed Value of Imports ₹ 25. XYZ Ltd. being deceived requested the competent authority to have a review. Ascertain the injury margin and suggest the measure suitable to safeguard the Indian Industry.

Answer:

Particulars	Amount (₹)
Price of the "Product under Consideration (PUC) or "Article under Investigation" from the Exporting Country / Export Price	23.00
Normal Value of such product, when sold in the domestic market of the exporting country	35.00
Dumping Margin or Margin of Dumping (DM) = 35.00 – 25.00	10.00
Non Injurious Price (NIP) – this is the constructed sale price of the domestic industry which will give a reasonable return on investment and if the domestic industry is able to sale its product at that price, it will not claim any injury	30.00 (say)
Landed Value of Imports (including all the expenses incurred during the course of importation upto the port including the non-creditable duties of customs	25.00
Injury Margin (IM) = Non Injurious Price (-) Landed Value of Imports = 30.00 (-) 25.00	5.00

Thus, for XYZ Ltd. the Injury Margin is ascertained at ₹ 5 per unit. Accordingly, the Authorities shall cause to initiate necessary proceedings to levy additional duty of customs (under the aegis of Anti-dumping Laws) to safeguard the domestic industry.

Example 39: Following is the relevant extract from the Trial Balance of ABC Ltd. for the year ended 31.3.2015.

Particulars	Amount (₹)	Particulars	Amount (₹)
Raw Materials	5,00,000	Sales	10,95,000
Consumable Stores and Spares (Other Inputs)	3,00,000	Other Income	3,000
Utilities (Power, Fuel, Steam, Water, etc)	1,80,000		
Direct Labour	4,00,000		
Manufacturing Overheads	1,50,000		
Research & Development	60,000		
Administrative Overheads	90,000		
Selling & Distribution Cost	50,000		
Depreciation	30,000		
Financial expenses	10,000		
Other Miscellaneous Expenses	12,000		

Company deals with two products for which necessary information is furnished:

Particulars of Expenses	Product X_1	Product X_2
Raw Materials (Ratio of utilization)	60%	40%
Consumable Stores and Spares (Other Inputs)	in proportion to raw materials	
Utilities (Power, Fuel, Steam, Water, etc)	in proportion to raw materials	
Direct Labour	₹ 2,45,000	₹ 1,55,000
Manufacturing Overheads	30%	35%
Research & Development	35%	40%
Administrative Overheads	30%	40%
Selling & Distribution Cost	35%	50%
Depreciation	45%	55%
Financial expenses	50%	30%
Other Miscellaneous Expenses	25%	25%

Prepare Statement showing Allocation and Apportionment of Expenditure for assessment under Anti-dumping laws in India for Product X_1, which is the Product under Investigation.

Answer:

Format CII

Statement Showing Allocation and Apportionment of Expenditure for Product X_1

Sl. No.	Particulars of expenses	Total applicable to product under investigation	Share applicable to product under investigation	Share not allocation/ apportionment	Basis
1	Raw Materials (Ratio of utilization)	3,00,000	3,00,000	NIL	Actual Ratio
2	Consumable Stores and Spares (Other Inputs)	1,80,000	1,80,000	NIL	Raw Material Ratio
3	Utilities (Power, Fuel, Steam, Water, etc)	1,08,000	1,02,000	6,000	CAS 8
4	Direct Labour	2,45,000	2,41,000	4,000	CAS – 7 (Actual)
5	Manufacturing Overheads	45,000	38,000	7,000	Cost Driver
6	Research & Development	21,000	15,000	6,000	Wrong Basis
7	Administrative Overheads	27,000	24,000	3,000	CAS - 11
8	Selling & Distribution Cost	17,500	16,000	1,500	CAS -15

9	Depreciation	13,500	11,500	2,000	CAS-16, Value of Asset
10	Financial expenses	5,000	5,000	NIL	CAS-17, Actual utilization of borrowed funds
11	Other Miscellaneous Expenses	3,000	3,000	NIL	Actual
12	**Total Expenditure Total of (1) to (11)**	**9,65,000**	**9,35,500**	**29,500**	
13	Sales	10,95,000	10,95,000	NIL	
14	Other Income (Sale of Scrap of Product X_1)	3,000	3,000	NIL	
15	**Total Income (13+14)**	**10,98,000**	**10,98,000**	**NIL**	
16	**Profit/Loss**	**1,33,000**	**1,33,000**		

Note:

This statement is to be certified by a Practicing Cost Accountant.

Study Note - 5

EXIM Policy has been fully changed to Foreign Trade Policy 2015-2020

GLOSSARY (ACRONYMS)

Acronym	Explanation
AA	Advance Authorisation
AANF	Appendices and Aayaat Niryaat Form
ACU	Asian Clearing Union
AEZ	Agri Export Zone
ANF	Aayat Niryaat Form
ARE-1	Application for Removal of Excisable Goods for Export (By Air/Sea/Post/Land)
ARE-3	Application for Removal of Excisable Goods from a factory or a warehouse to another warehouse
ACP	Accredited Clients Programme
AEO	Authorised Economic Operator
AES	Approved Exporter's Scheme
APEDA	Agricultural & Processed Food Products Export Development Authority
ARO	Advance Release Order
ASEAN	Association of South- East Asian Nations
ASIDE	Assistance to States for Infrastructure Development of Exports
AU	Actual User
BCD	Basic Customs Duty
BG	Bank Guarantee
BIFR	Board of Industrial and Financial Reconstruction
BOA	Board of Approval
BOT	Board of Trade
BRC	Bank Realisation Certificate
BTP	Biotechnology Park
BIS	Bureau of Indian Standards
CBEC	Central Board of Excise and Customs
CCP	Customs Clearance Permit
CEA	Central Excise Authority
CEC	Chartered Engineer Certificate
CED	Central Excise Duty
CENVAT	Central Value Added Tax
CETF	Common Effluent Treatment Facility
CFCs	Common Facility Centres
CG	Capital Goods
CIF	Cost, Insurance & Freight
CIN	Corporate Identification Number
CIS	Commonwealth of Independent States
CKD	Completely Knocked Down
CoD	Cash on Delivery
CoO	Certificate of Origin
CQCTD	Committee on Quality Complaints and Trade Disputes
CRES	Certificate of Registration as Exporter of Spices

CEPA	Comprehensive Economic Partnership Agreement
CBEC	Central Board of Excise and Customs
CSP	Common Service Provider
CECA	Comprehensive Economic Cooperation Agreement
CVD	Countervailing Duty
DA	Document against Acceptance
DBK	Drawback
DC	Development Commissioner
DDA	Diamond Dollar Accounts
DEA	Department of Economic Affairs
DEL	Denied Entity List
DES	Duty Exemption Schemes
DFIA	Duty Free Import Authorisation
DGCI&S	Director General, Commercial Intelligence & Statistics.
DIN	Director Identification Number
DPIN	Designated Partner Identification Number
DGFT	Director General of Foreign Trade
DIPP	Department of Industrial Policy & Promotion
DoBT	Department of Bio-Technology
DoC	Department of Commerce
DeitY	Department of Electronics and Information Technology
DoR	Department of Revenue
DoT	Department of Telecommunications
DRS	Duty Remission Schemes
DTA	Domestic Tariff Area
e-BRC	Electronic Bank Realisation Certificate
e-IEC	Electronic Importer-Exporter Code
ECA	Enforcement- cum-Adjudication
EDI	Electronic Data Interchange
ECGC	Export Credit Guarantee Corporation
EEFC	Exchange Earners' Foreign Currency
EFC	Exim Facilitation Committee
EFT	Electronic Fund Transfer
EGM	Export General Manifest
EHTP	Electronic Hardware Technology Park
EIC	Export Inspection Council
EO	Export Obligation
EODC	Export Obligation Discharge Certificate
EOP	Export Obligation Period
EOU	Export Oriented Unit
EPC	Export Promotion Council
EPCG	Export Promotion Capital Goods
EPO	Engineering Process Outsourcing
EXIM	Export Import
FDI	Foreign Direct Investment
FE	Foreign Exchange
FEMA	Foreign Exchange Management Act

FIEO	Federation of Indian Export Organisation
FIRC	Foreign Exchange Inward Remittance Certificate
FOB	Free On Board
FOR	Freight on Road and Rails
FT (D&R)Act	Foreign Trade (Development & Regulation) Act, 1992 (22 of 1992)
FTDO	Foreign Trade Development Officer
FTP	Foreign Trade Policy
FT(R) Rules	Foreign Trade (Regulation) Rules
FTWZ	Free Trade and Warehousing Zone
FTA	Free Trade Agreement
G&J EPC	Gems & Jewellery Export Promotion Council
GOI	Government of India
GATS	General Agreement on Trade in Services
GR	Guarantee of Realisation
HACCP	Hazard Analysis and Critical Control Process
HBP	Handbook of Procedures
HHEC	Handicraft & Handlooms Exports Corporation
ICB	International Competitive Bidding
ICD	Inland Container Depot
ICM	Indian Commercial Mission
IEC	Importer Exporter Code
ISO	International Organisation for Standardisation
IAEA	International Atomic Energy Agency
INFCIRC	International Atomic Energy Agency Information Circular
IEM	Industrial Entrepreneurial Memorandum
IMSC	Inter-Ministerial Standing Committee
IL	Industrial Licensing
ISO	International Standards Organisation
ITC (HS)	Indian Trade Classification (Harmonised System) for Export & Import Items
KVIC	Khadi and Village Industries Commission
LC	Letter of Credit
LCS	Land Customs Station
LLPIN	Limited Liability Partnership Number
LPG	Liquefied Petroleum Gas
LoC	Line of Credit
LoI	Letter of Intent
LoP	Letter of Permit
LUT	Legal Undertaking
MAI	Market Access Initiative
MDA	Market Development Assistance
MEA	Ministry of External Affairs
MEIS	Merchandise Exports from India Scheme
MRA	Mutual Recognition Agreements
MoD	Ministry of Defence
MoF	Ministry of Finance
MSME	Ministry of Micro Small and Medium Enterprises
MSMED	Micro Small and Medium Enterprises Development

MSTC	Metal Scrap Trade Corporation
NBFC	Non- Banking Financial Company
NC	Norms Committee
NFE	Net Foreign Exchange
NI	Non-Infringing
NCB	National Competitive Bidding
NOC	No Objection Certificate
PDS	Public Distribution System
PEC	Project and Equipment Corporation of India Ltd.
PIC	Policy Interpretation Committee
PRC	Policy Relaxation Committee
PAN	Permanent Account Number
PH	Personal Hearing
PTA	Preferential Trade Agreement
PSU	Public Sector Undertaking
R&D	Research and Development
RA	Regional Authority
RBI	Reserve Bank of India
RCMC	Registration-cum-Membership Certificate
REP	Replenishment
RPA	Rupee Payment Area
S/B	Shipping Bill
SAD	Special Additional Duty
SCOMET	Special Chemicals, Organisms, Materials, Equipment and Technology
SEI CMM	Software Engineers Institute's Capability Maturity Model
SEZ	Special Economic Zone
SEIS	Service Exports from India Scheme
SIA	Secretariat for Industrial Assistance
SIIC	State Industrial Infrastructure Corporation
SION	Standard Input Output Norms
SKD	Semi- Knocked Down
SLEPC	State Level Export Promotion Committee
STC	State Trading Corporation
STCL	Spices Trading Corporation Limited
STE	State Trading Enterprise
STH	Star Trading House
STPI	Software Technology Park of India
STR	State Trading Regime
SUVs	Sports Utility Vehicles
TED	Terminal Excise Duty
TEE	Towns of Export Excellence
TH	Trading House
TPO	Trade Promotion Organization
TRA	Telegraphic Release Advice

TRQ	Tariff Rate Quota
TUFS	Technology Upgradation Fund Scheme
UAC	Units Approval Committee
UN	United Nations
VA	Value Addition
WCO	World Customs Organisation
WHOGMP	World Health Organisation Good Manufacturing Practices

Foreign Trade Policy (FTP) is a set of guidelines or instructions or procedures or regularly requirements —

- issued or laid down by the Central Government
- in matters related to foreign trade viz. IMPORT/EXPORT OF GOODS OR SERVICES into, or from, India.

Need of Foreign Trade Policy: The foreign trade policy is needed to regulate the foreign trade. The FTP, in general, aims at -

(i) developing export potential,

(ii) improving export performance,

(iii) encouraging foreign trade,

(iv) creating favorable balance of payments position,

(v) improving efficiency and competitiveness of the Indian industries, etc.,

(vi) create self-reliance and self-sufficiency,

(vii) Ensure export led growth.

Legislation Governing Foreign Trade: The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 [FT (D&R) Act], which replaced the earlier Import and Export (Control) Act, 1947.

FT (D&R) Act, confers powers on the Union Ministry of Commerce and Industry, Government of India to -

(a) make provisions for facilitating and controlling foreign trade;

(b) prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;

(c) formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;

(d) appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.

The details of FTP 2015-2020 are discussed in following paragraphs.

5.1 LEGAL FRAMEWORK AND TRADE FACILITATION

A. LEGAL FRAMEWORK

Legal Basis of Foreign Trade Policy (FTP)

The Foreign Trade Policy, 2015-20, is notified by Central Government, in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992) [FT (D&R) Act], as amended.

Duration of FTP

The Foreign Trade Policy (FTP), 2015-2020, incorporating provisions relating to export and import of goods and services, shall come into force with effect from the date of notification and shall remain in force up to 31st March, 2020, unless otherwise specified. All exports and imports made upto the date of notification shall, accordingly, be governed by the relevant FTP, unless otherwise specified.

Amendment to FTP

Central Government, in exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (AANF):

Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP.

Specific provision to prevail over the general

Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision.

Transitional Arrangements

(a) Any License / Authorisation / Certificate / Scrip / any instrument bestowing financial or fiscal benefit issued before commencement of FTP 2015-20 shall continue to be valid for the purpose and duration for which such License/Authorisation/ Certificate / Scrip / any instrument bestowing financial or fiscal benefit Authorisation was issued, unless otherwise stipulated.

(b) In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction or regulation, unless otherwise stipulated. This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity available and time period of such irrevocable letter of credit. For operationalising such irrevocable letter of credit, the applicant shall have to register the Letter of Credit with jurisdictional Regional Authority (RA) against computerized receipt, within 15 days of the imposition of any such restriction or regulation.

B. TRADE FACILITATION & EASE OF DOING BUSINESS

Objective

Trade facilitation is a priority of the Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The various provisions of FTP and measures taken by the Government in the direction of trade facilitation are consolidated under this chapter for the benefit of stakeholders of import and export trade.

DGFT as a facilitator of exports/imports

DGFT has a commitment to function as a facilitator of exports and imports. Focus is on good governance, which depends on efficient, transparent and accountable delivery systems. In order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time.

Niryat Bandhu - Hand Holding Scheme for new export / import entrepreneurs

(a) DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counselling, training and outreach programmes.

(b) Considering the strategic significance of small and medium scale enterprises in the manufacturing sector and in employment generation, 'MSME clusters' have been identified, based on the export potential of the product and the density of industries in the cluster, for focussed interventions to boost exports.

(c) Outreach activities shall be organized in a structured way with the help of Export Promotion Councils as 'industry partners' and other willing 'knowledge partners' in academia and research community to achieve the objective of Niryat Bandhu Scheme. Further, in order to ensure optimum utilization of resources, efforts would be made to associate all the stakeholders, including Customs, ECGC, Banks and concerned Ministries.

Citizen's Charter

DGFT has in place a Citizen's Charter, giving time schedules for providing various services to clients.

Online Complaint Registration and Monitoring System

An EDI Help Desk is available to assist the exporters in filing online applications on the DGFT portal and resolving other EDI related issues. For assistance an email may be sent at dgftedi@nic.in or Toll Free number 1800111550 can be used. Help Desk facility is also operational at the 4 DGFT Zonal Offices (details at http://dgft.gov.in). An Online Complaint registration and monitoring system allows users to register complaint and receive status/ reply online (details are at http://dgft.gov.in).

Issue of e-IEC (Electronic-Importer Exporter Code)

(a) Importer Exporter Code (IEC) is mandatory for export/import from/to India as detailed in paragraph 2.05 of this Policy. DGFT has recently introduced the facility of issuing Importer Exporter Code in electronic form (e-IEC). For issuance of e-IEC an application can be made online on DGFT website (http//:dgft.gov.in). Applicants can upload the documents and pay the required fee through Net banking.

(b) Processing of such applications by Regional Authority (RAs) of DGFT would be done online and a digitally signed e-IEC would normally be issued/ e-mailed to the applicant within 2 working days.

(c) In case the application is incomplete or otherwise ineligible, the same shall be rejected and a Rejection letter/email (with reasons for rejection) would be sent to the applicant.

(d) Application for issue of e-IEC can also be made from eBiz platform (https://www.ebiz.gov.in).

e-BRC

One prominent initiative in recent times has been the e-BRC (Electronic Bank Realisation Certificate) project and its successful implementation by DGFT. It has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. This has facilitated the implementation of various export promotion schemes without any physical interface with the stake holders. So far more than one crore e-BRCs have been captured by this system.

MoU with State Governments for sharing of e-BRC data

MoU has been signed with state governments for sharing of e-BRC data to facilitate refund of VAT by the state governments to exporters. MoU has also been signed with Enforcement Directorate.

Exporter Importer Profile

An electronic procedure has been created to upload various documents in exporter importer profile. Once uploaded, there will be no need to submit these documents / copies of these documents to Regional Authority repeatedly with each application. It intends to reduce the transaction cost and time and is a step towards paperless processing of different applications in DGFT.

Reduction in mandatory documents required for Export and Import

The number of mandatory documents required for exports and imports of goods from/into India have been reduced to three each, as prescribed under paragraph heading, "Mandatory documents for export/import of goods from / into India."

Facility of online filing of applications

All the Regional Authorities (RA) of DGFT and extension counters have been networked with high speed internet. The applications are received and processed electronically. DGFT under the EDI initiatives has provided the facility of on line filing of applications to obtain Importer Exporter Code and various authorizations /scrips. DGFT is one of the first digital signature enabled organisation of the Government of India (GOI), which has introduced a higher level of Encrypted 2048 bit digital signature. There is a web interface for online filing of application after accessing DGFT website (http://dgft.gov.in). The application can be filed by exporter/CHA sitting at home or office in 24X7 environment. Application fee can also be paid online from linked banks. Efforts are being made to allow payment by debit/ credit cards as well. The applications are signed with a digital signature and submitted electronically to the concerned Regional Authority of DGFT, which are then processed on computer by the Regional Authority and authorisations/scrips are issued. Online filing has minimized the physical interface.

Online Inter-ministerial consultation

Presently, the exporters are required to file applications online on the website of DGFT under the Icon E-COM and are required to submit the duly signed and stamped printout of the online application along with all the necessary documents viz. technical specifications, literature etc. Now, a facility is being provided to upload copies of all the required documents including technical specifications, literature etc in PDF/JPG/JPEG/GIF format in the online filing system in respect of (a) Fixation of norms under Advance Authorisation by Norms Committees (b) Export of Restricted Items (c) Import of Restricted Items (d) SCOMET Items. The exporters would not be required to submit the hard copy of application except architectural drawings, machine drawings etc which may be difficult to scan and upload. The processing of the applications will also be done online.

Facility to upload documents by Chartered Accountant / Company Secretary / Cost Accountant

In order to move towards paperless processing, an electronic procedure is being developed to upload digitally signed documents by Chartered Accountant / Company Secretary / Cost Accountant. To start with, this facility would be created for Export From India Schemes. Such documents like Annexure Attached to ANF 3B, ANF 3C and ANF 3D, which are at present signed by these signatories, can be facilitated by this procedure. Exporter shall link digitally uploaded annexure with his online applications after creation of such facility. These facilities may be extended in phased manner to upload documents pertaining to other schemes like Advance Authorisation, DFIA and EPCG.

Electronic Data Interchange (EDI)

DGFT has put in place a robust EDI system for the purpose of export facilitation and good governance. DGFT has set up a secured EDI message exchange system for various documentation related activities including import and export authorizations established with other administrative departments, namely, Customs, Banks and EPCs. This has reduced the physical interface of exporters and importers with the Government Departments and is a significant measure in the direction of reduction of transaction cost. The endeavour of DGFT has been to enlarge the scope of EDI to achieve higher level of integration with partner departments.

Message Exchange with Community partners

Customs, Banks, Export Promotion Councils (EPCs) are major community partners of DGFT for message exchange. An effective message exchange system is in place with various community partners which is as follows:

(a) **Message Exchange with Customs**

(i) Importer Exporter Code Number.

(ii) Authorisations/Scrips for DFIA, AA, EPCG.

(iii) Shipping Bills for Duty Free Import Authorisation (DFIA), Advance Authorisation (AA), Export Promotion Capital Goods (EPCG), Reward Scrips.

(b) **Message Exchange with eBiz (https://www.ebiz.gov.in)**

(i) Application for Importer Exporter Code Number

(ii) Application for e-IEC.

(c) **Message Exchange with Banks**

(i) Application Fee

(ii) electronic Bank Realisation Certificate (e-BRC) data

(d) **Message Exchange with EPCs**

Registration cum Membership Certificate (RCMC) data.

Encouraging development of Third Party API

DGFT will encourage development of third party software for integration with its system to offer users multiple options for interfacing with the DGFT.

Forthcoming e-Governance Initiatives

DGFT is currently working on the following EDI initiatives:

(i) Message exchange for transmission of export reward scrips from DGFT to Customs.

(ii) Message exchange for transmission of Bills of Entry (import details) from Customs to DGFT.

(iii) Online issuance of Export Obligation Discharge Certificate (EODC).

(iv) Message exchange with Ministry of Corporate Affairs for CIN & DIN information.

(v) Message exchange with CBDT for PAN.

(vi) Acceptance of payment through debit / credit card for payment of application fee under FTP.

(vii) Open API for submission of e-IEC application.

(viii) Mobile Applications for FTP.

Free passage of Export consignment

Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government.

In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.

No seizure of export related Stock

No seizure shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on the basis of prima

facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.

24 X 7 Customs clearance

(a) The facility of 24 X 7 Customs clearance for specified import viz. Goods covered by 'facilitated' Bills of Entry and specified exports viz. Factory stuffed containers and goods exported under free Shipping Bills has been made available, at the 18 sea ports at : Chennai, Cochin, Ennore, Gopalpur, JNPT, Kakinada, Kandla, Kolkata, Mumbai, New Mangalore, Marmagoa, Mundra, Okha, Paradeep, Pipavav, Sikka, Tuticorin, Vishakapatnam.

(b) The facility of 24 X 7 Customs clearance for specified imports viz. Goods covered by 'facilitated' Bills of Entry and all exports viz. Goods covered by all Shipping Bills has also been made available at the 17 air cargo complexes at: Ahmedabad, Amritsar, Bangalore, Chennai, Coimbatore, Cochin, Calicut, Delhi, Goa, Hyderabad, Indore, Jaipur, Kolkata, Mumbai, Nashik, Thiruvananthapuram, Vishakhapatnam.

Single Window in Customs

(a) To facilitate trade, the importer and exporter would lodge their clearance documents at a single point only. Required permission if any, from other regulatory agencies would be obtained online without the trader having to approach these agencies. This would reduce interface with Governmental agencies, dwell time and cost of doing business.

(b) Single Window provides a common platform to trade to meet requirements of all regulatory agencies (such as Animal Quarantine, Plant Quarantine, Drug Controller, Textile Committee, etc) involved in exim trade through message exchange. Single Window Scheme 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. Benefits of Single Window Scheme include reduced cost of doing business, enhances transparency, integration of regulatory requirements at one common platform reduces duplicity and cost of compliance, optimal utilization of manpower.

Self-Assessment of Customs Duty

Self-Assessment of Customs duty by importers or exporters was introduced vide Finance Act, 2011. The system is trust based. The objective is to expedite release of imported / export goods. The system operates on an electronic Risk Management System (RMS).

Authorised Economic Operator (AEO) Programme

Based upon WCO's SAFE Framework of Standards (FoS), 'Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the international trade to reap the following benefits:

(i) Secure supply chain from point of export to import;

(ii) Ability to demonstrate compliance with security standards when contracting to supply overseas importers / exporters;

(iii) Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;

(iv) Minimal disruption to flow of cargo after a security related disruption;

(v) Reduction in dwell time and related costs; and

(vi) Customs advise / assistance if trade faces unexpected issues with Customs of countries with which India have MRA.

The AEO programmes have been implemented by other Customs administrations that give AEO status holders preferential Customs treatment in terms of reduced examination, faster clearances and other benefits. Thus, the AEO programme is expected to result in Mutual Recognition Agreements (MRA) with

these Customs administrations. MRAs would ensure export goods get due Customs facilitation at the point of entry in the foreign country. Apart from securing supply chain, the benefits include reduction in dwell time and consequent cost of doing business. Indian Customs has signed MRA with Hong Kong Customs to recognise respective AEO Programmes to enable trade to get benefits on reciprocal basis. Indian Customs is also engaged in finalising MRA with other counties such as South Korea, Taiwan, USA etc.

Prior filing facility for Shipping Bills

To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by the Customs - 7 days for air shipments & ICDs and 14 days for shipments by sea.

Cutting down delay in filing of Export General Manifest (EGM) for duty drawback

To facilitate quicker filing of EGMs and quicker rectification of EGM errors, there is a mechanism of monthly monitoring of EGMs by Chief Commissioners of Customs to ensure that facilitation does not lag on this account (Instruction No. 603/01/2011-DBK dated 31.07.2013).

Facility of Common Bond / LUT against authorizations issued under different EP Schemes

CBEC Circular 11(A)/2011-Cus dated 25.02.2011 has provided the financial year-wise facility of executing common Bond/LUT against Advance Authorization (AA)/Export Promotion Capital Goods (EPCG) Authorisation which is usable across all EDI ports/locations.

Exemption from Service Tax on Services received abroad

For all goods and services exported from India, services received / rendered abroad, where ever possible, shall be exempted from service tax.

Export of perishable agricultural Products

To reduce transaction and handling costs, a single window system to facilitate export of perishable agricultural produce has been introduced. The system will involve creation of multi-functional nodal agencies to be accredited by Agricultural and Processed Food Products Export Development Authority (APEDA), New Delhi. The detailed procedure has been notified at Appendix 1C to Appendices & ANFs.

Time Release Study (TRS)

Central Board of Excise and Customs has decided to undertake 'Time Release Study' (TRS) as per WCO guidelines at major Customs locations on six monthly basis. WCO Time Release Study (TRS) is a unique tool and method for measuring the actual performance of Customs. The underlying objectives of Time Release Study are:

(i) Identifying bottlenecks in the international supply chain / or constraints affecting Customs release.

(ii) Establishing baseline trade facilitation performance measurement.

Towns of Export Excellence (TEE)

(a) **Objective:** Development and growth of export production centres. A number of towns have emerged as dynamic industrial clusters contributing handsomely to India's exports. It is necessary to grant recognition to these industrial clusters with a view to maximize their potential and enable them to move up the value chain and also to tap new markets.

(b) Selected towns producing goods of ₹ 750 Crore or more may be notified as TEE based on potential for growth in exports. However for TEE in Handloom, Handicraft, Agriculture and Fisheries sector, threshold limit would be ₹150 Crore. The following facilities will be provided to such TEE's:

   (i) Recognized associations of units will be provided financial assistance under MAI scheme, on priority basis, for export promotion projects for marketing, capacity building and technological services.

(ii) Common Service Providers in these areas shall be entitled for EPCG scheme.

(c) Notified Towns (TEEs) are listed in Appendix 1 B of Appendices & ANFs.

Director General of Commercial Intelligence and Statistics (DGCI&S), Kolkata as the provider of trade data

DGCI&S is an ISO certified organization under the administrative control of DGFT and it is the provider of trade data which is a source of guidance and direction for export & import trade and which help the exporters and importers formulate their trade strategy. Foreign trade data is disseminated by DGCI&S through (i) Monthly & Quarterly publications in CD form and (ii) Generation of data from the Foreign Trade database as per user's request. The DGCI&S has a Priced Information System (PIS) for disseminating data except for purely Central and State Governments and United Nations bodies. DGCI&S has put in place a Data Suppression Policy. The aim of this policy is to maintain confidentiality of importer's and exporter's commercially sensitive business data. Transaction level data would not be made publicly available to protect privacy. DGCI&S trade data shall be made available at aggregate level with a minimum possible time lag on commercial criteria. DGCI&S can be visited at http://dgciskol.nic.in.

5.2 GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

Objective

The general provisions governing import and export of goods and services are dealt with in this heading.

Exports and Imports – 'Free', unless regulated

(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted' and 'STE' items can be viewed by clicking on 'Downloads' at http://dgft.gov.in.

(b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports

(a) ITC (HS) is a compilation of codes for all merchandise / goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.

(b) ITC (HS) is aligned at 6 digit level with international Harmonized System goods nomenclature maintained by World Customs Organization (http://www. wcoomd.org). However, India maintains national Harmonized System of goods at 8 digit level which may be viewed by clicking on 'Downloads' at http://dgft.gov.in.

(c) The import/export policies for all goods are indicated against each item in ITC (HS). Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule 2 of ITC (HS) details the Export Policy regime.

(d) Except where it is clearly specified, Schedule 1 of ITC (HS), Import Policy is for new goods and not for the Second Hand goods. For Second Hand goods, the Import Policy regime is given in this FTP.

Compliance of Imports with Domestic Laws

(a) Domestic Laws/ Rules/ Orders/ Regulations / Technical specifications/ environmental/ safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.

(b) However, goods to be utilized/ consumed in manufacture of export products, as notified by DGFT, may be exempted from domestic standards/quality specifications.

Authority to specify Procedures

DGFT may specify procedure to be followed by an exporter or importer or by any licensing/Regional Authority (RA) or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and FTP. Such procedure, or amendments, if any, shall be published by means of a Public Notice.

IMPORTER-EXPORTER CODE / e-IEC

Importer-Exporter Code (IEC)

(I) An IEC is a 10-digit number allotted to a person that is mandatory for undertaking any export/import activities. Now the facility for IEC in electronic form or e-IEC has also been operationalised.

(a) **Application for IEC/e-IEC:**

Application for obtaining IEC can be filed manually and submitting the form in the office of Regional Authority (RA) of DGFT. Alternatively, an application for e-IEC may be filed online in ANF 2A, on payment of application fee of ₹ 500/-, to be paid online through net banking or credit/debit card (to be operationalised shortly). Documents/ details required to be uploaded/ submitted along with the application form are listed in the Application Form (ANF 2A).

(b) When an e-IEC is approved by the competent authority, applicant is informed through e-mail that a computer generated e-IEC is available on the DGFT website. By clicking on "Application Status" after having filled and submitted the requisite details in "Online IEC Application" webpage, applicant can view and print his e-IEC.

(c) Briefly, following are the requisite details /documents (scanned copies) to be submitted/ uploaded along with the application for IEC:

(i) Details of the entity seeking the IEC:

(1) PAN of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms).

(2) Address Proof of the applicant entity.

(3) LLPIN /CIN/ Registration Certification Number (whichever is applicable).

(4) Bank account details of the entity. Cancelled Cheque bearing entity's preprinted name or Bank certificate in prescribed format ANF2A(I).

(ii) Details of the Proprietor/ Partners/ Directors/ Secretary or Chief Executive of the Society/ Managing Trustee of the entity:

(1) PAN (for all categories)

(2) DIN/DPIN (in case of Company /LLP firm)

(iii) Details of the signatory applicant:

(1) Identity proof

(2) PAN

(3) Digital photograph

(d) In case the applicant has digital signature, the application can also be submitted online and no physical application or document is required. In case the applicant does not possess digital signature, a print out of the application filed online duly signed by the applicant has to be submitted to the concerned jurisdictional RA, in person or by post.

(e) Detailed guidelines for applying for e-IEC are available at <http://dgft.gov.in/exim/2000/iec_anf/ iecanf.htm>.

(II) No Export/Import without IEC:

(i) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted.

(ii) Exempt categories and corresponding permanent IEC numbers are given in Para 2.07 of Handbook of Procedures.

(III) Only one IEC against one Permanent Account Number (PAN)

Only one IEC is permitted against on Permanent Account Number (PAN). If any PAN card holder has more than one IEC, the extra IECs shall be disabled.

Mandatory documents for export/import of goods from/into India

(a) Mandatory documents required for export of goods from India:

1. Bill of Lading/Airway Bill
2. Commercial Invoice cum Packing List*
3. Shipping Bill/Bill of Export

(b) Mandatory documents required for import of goods into India

1. Bill of Lading/Airway Bill
2. Commercial Invoice cum Packing List*
3. ill of Entry

[**Note:** *(i) As per CBEC Circular No. 01/15-Customs dated 12/01/2015. (ii) Separate Commercial Invoice and Packing List would also be accepted.]

(c) For export or import of specific goods or category of goods, which are subject to any restrictions/ policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.

(d) In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

(e) The above stipulations are effective from 1st April, 2015.

Principles of Restrictions

DGFT may, through a Notification, impose restrictions on export and import, necessary for: -

(a) Protection of public morals;

(b) Protection of human, animal or plant life or health;

(c) Protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

(d) Prevention of use of prison labour;

(e) Protection of national treasures of artistic, historic or archaeological value;

(f) Conservation of exhaustible natural resources;

(g) Protection of trade of fissionable material or material from which they are derived;

(h) Prevention of traffic in arms, ammunition and implements of war.

Export/Import of Restricted goods/Services

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the procedure prescribed in a Notification / Public Notice issued in this regard.

Export of SCOMET Items

Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), as indicated in Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items, shall be governed by the specific provisions of (i) Chapter IV A of the FT(D&R) Act, 1992 as amended from time to time (ii) Sl. No. 4 & 5 of Table A and Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items (iii) Para 2.16, Para 2.17, Para 2.18 of FTP given in this study note under the heading "Prohibition on Import and Export of Arms and related material from / its Iraq", "Prohibition on Direct or Indirect import and export from / to Democratic People's Republic of Korea" and "Prohibition on Direct or Indirect Import and Export from / to Iran" respectively and (iv) Para 2.73-2.82 of Hand Book of Procedures, in addition to the other provisions of FTP and Handbook of Procedures governing export authorizations.

Actual User Condition

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such good(s) unless actual user condition is specifically dispensed with by DGFT.

Terms and Conditions of an Authorisation

Every Authorisation shall, inter alia, include such terms and conditions as may be specified by RA along with the following:

(a) Description, quantity and value of goods;

(b) Actual User condition (as defined in Chapter 9);

(c) Export Obligation;

(d) Minimum Value addition to be achieved;

(e) Minimum export/import price;

(f) Bank guarantee/ Legal undertaking / Bond with Customs Authority/RA.

(g) Validity period of import/export as specified in Handbook of Procedures.

Application Fee

Application for IEC/ Authorisation / License / Scrips must be accompanied by application fees as indicated in the Appendix 2K of Appendices and Aayat Niryat Forms.

Clearance of Goods from Customs against Authorization

Goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently. This facility will however be not available to "restricted" items or items traded through STEs.

Authorisation - not a Right

No person can claim an Authorisation as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT (D&R) Act, Rules made there under and FTP.

Penal action and placing of an entity in Denied Entity List (DEL)

(a) If an Authorisation holder violates any condition of such Authorisation or fails to fulfill export obligation, or fails to deposit the requisite amount within the period specified in demand notice issued by Department of Revenue and /or DGFT, he shall be liable for action in accordance with FT (D&R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.

(b) With a view to raising ethical standards and for ease of doing business, DGFT has provided for self certification system under various schemes. In such cases, applicants shall undertake self certification with sufficient care and caution in filling up information/particulars. Any information /

particulars subsequently found untrue/ incorrect will be liable for action under FTDR Act, 1992 and Rules therein in addition to penal action under any other Act/Order.

(c) A firm may be placed under Denied Entity List (DEL), by the concerned RA, under the provision of Rule 7 of Foreign Trade (Regulation) Rules, 1993. On issuance of such an order, for reasons to be recorded in writing, a firm may be refused grant or renewal of a license, certificate, scrip or any instrument bestowing financial or fiscal benefits. If a firm is placed under DEL all new licences, scrips, certificates, instruments, etc will be blocked from printing / issue / renewal.

(d) DEL orders may be placed in abeyance, for reasons to be recorded in writing by the concerned RA. DEL order can be placed in abeyance, for a period not more than 60 days at a time.

(e) A firm's name can be removed from DEL, by the concerned RA for reasons to be recorded in writing, if the firm completes Export Obligation/ pays penalty/ fulfills requirement of Demand Notice(s) issued by the RA/submits documents required by the RA.

PROHIBITIONS (Country and Product Specific):

Prohibition on Import and Export of 'Arms and related material' from / to Iraq

Notwithstanding the policy on Arms and related materials in Chapter 93 of ITC(HS), the import/export of Arms and related material from/to Iraq is 'Prohibited'. However, export of Arms and related material to Government of Iraq shall be permitted subject to 'No Objection Certificate' from the Department of Defence Production.

Prohibition on Direct or Indirect Import and Export from / to Democratic People's Republic of Korea

Direct or indirect export and import of following items, whether or not originating in Democratic People's Republic of Korea (DPRK), to / from, DPRK is 'Prohibited':

All items, materials, equipment, goods and technology including as set out in lists in documents

INFCIRC/254/Rev.11/Part 1 and INFCIRC/254/ Rev.8/Part 2 (IAEA documents), S/2012/947, S/2009/364 and S/2006/853 (UN Security Council documents) and Annex III to UN Security Council resolution 2094 (2013) which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes; Luxury goods, including but not limited to the items specified in Annex IV to UN Security Council resolution 2094 (2013).

Prohibition on Direct or Indirect Import and Export from/ to Iran

(a) Direct or indirect export and import of all items, materials, equipment, goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy water related activities, or to development of nuclear weapon delivery systems, as mentioned below, whether or not originating in Iran, to/from Iran is 'Prohibited':

  (i) Items listed in INFCIRC/254/Rev.9/Part 1 and INFCIRC/254/Rev.7/Part 2 (IAEA Documents).

  (ii) Items listed in S/2006/263 (UN Security Council document).

(b) All the UN Security Council Resolutions/Documents and IAEA Documents referred to above are available on the UN Security Council website (www.un.org/Docs/sc) and IAEA website (www.iaea.org).

Prohibition on Import of Charcoal from Somalia

Direct or indirect import of charcoal is prohibited from Somalia, irrespective of whether or not such charcoal has originated in Somalia [United Nations Security Council Resolution 2036 (2012)]. Importers of charcoal shall submit a declaration to Customs that the consignment has not originated in Somalia.

IMPORT / EXPORT THROUGH STATE TRADING ENTERPRISES:

State Trading Enterprises (STEs)

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and / or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).

(b) Such STE (s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

(c) DGFT may, however, grant an authorization to any other person to import or export any of the goods notified for exclusive trading through STEs.

TRADE WITH SPECIFIC COUNTRIES:

Trade with neighbouring Countries

DGFT may issue instructions or frame schemes as may be required to promote trade and strengthen economic ties with neighbouring countries.

Transit Facility

Transit of goods through India from/ or to countries adjacent to India shall be regulated in accordance with bilateral treaties between India and those countries and will be subject to such restrictions as may be specified by DGFT in accordance with International Conventions.

Trade with Russia under Debt-Repayment Agreement

In case of trade with Russia under Debt Repayment Agreement, DGFT may issue instructions or frame schemes as may be required, and anything contained in FTP, in so far as it is inconsistent with such instructions or schemes, shall not apply.

IMPORT OF SPECIFIC CATEGORIES OF GOODS:

Import of Samples

Import of samples shall be governed by para 2.65 of Handbook of Procedures.

Import of Gifts

Import of gifts shall be 'free' where such goods are otherwise freely importable under ITC (HS). In other cases, such imports shall be permitted against an authorisation issued by DGFT.

Passenger Baggage

(a) Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.

(b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.

(c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.

Re – import of goods repaired abroad

Capital goods, equipments, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or

upgradation or standardization of technology and re-imported without an Authorisation.

Import of goods used in projects abroad

Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

Import of Prototypes

Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial licence / letter of intent for research in item for which prototype is sought for product development or research, as the case may be, upon a self- declaration to that effect, to satisfaction of customs authorities

Import through courier service

Imports through a registered courier service are permitted as per Notifications issued by DoR. However, importability / exportability of such items shall be regulated in accordance with this FTP/ ITC(HS).

IMPORT POLICY FOR SECOND HAND GOODS :

Second Hand Goods

S. No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I	Second Hand Capital Goods		
(a)	i. Personal computers/ laptops including their refurbished / reconditioned spares ii. Photocopier machines/ Digital multifunction Print & Copying Machines iii. Air conditioners iv. Diesel generating sets.	Restricted	Importable against authorization
(b)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
(c)	All other second hand capital goods {other than (a) & (b) above}	Free	
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorization

IMPORT POLICY FOR METALLIC WASTE AND SCRAPS

Import of Metallic waste and Scrap

(a) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in para 2.54 of Handbook of Procedures.

(b) The types of metallic waste and scrap which can be imported freely and the procedure of import in the shredded form; unshredded compressed and loose form, is laid down in para 2.54 of Handbook of Procedures.

Removal of Scrap/waste from SEZ

A SEZ unit/Developer/ Co-developer may be allowed to dispose of in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an authorization, on payment of applicable Customs Duty.

OTHER PROVISIONS RELATED TO IMPORTS:

Import under Lease Financing

No specific permission of RA is required for lease financed capital goods.

Execution of Legal Undertaking (LUT) / Bank Guarantee (BG)

(a) Wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT) / Bank Guarantee (BG) / Bond with the Customs Authority, as prescribed, before clearance of goods.

(b) In case of indigenous sourcing, Authorisation holder shall furnish LUT/BG/Bond to RA concerned before sourcing material from indigenous supplier/ nominated agency as prescribed in Chapter 2 of Handbook of Procedures.

Private/Public Bonded Warehouses for Imports

(a) Private/ Public bonded warehouses may be set up in DTA as per terms and conditions of notification issued by DoR. Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.

(b) Such goods may be cleared for home consumption in accordance with provisions of FTP and against Authorisation, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

(c) If such goods are not cleared for home consumption within a period of one year or such extended period as the customs authorities may permit, importer of such goods shall re-export the goods.

Special provision for Hides Skins and semi-finished goods

Hides, Skins and semi-finished leather may be imported in the Public Bonded warehouse for the purpose of DTA sale and the unsold items thereof can be re-exported from such bonded warehouses at 50% of the applicable export duty. However, this facility shall not be allowed for import under Private Bonded warehouse.

Sale on High Seas

Sale of goods on high seas for import into India may be made subject to FTP or any other law in force.

EXPORTS:

Free Exports

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC (HS) or any other provision of FTP or any other law for the time being in force. DGFT may, however, specify through a public notice such terms and conditions according to which any goods, not included in ITC (HS), may be exported without an Authorisation.

Exemption / Remission of Service Tax in DTA on goods & services exported

For all goods and services which are exported from units in DTA and units in EOU / EHTP / STP / BTP, exemption / remission of service tax levied and related to exports, shall be allowed, as per prescribed procedure in Chapter 4 of Handbook of Procedures.

Benefits for Supporting Manufacturers

For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in ARE-1 / ARE-3 / Shipping Bill / Bill of Export/ Airway Bill.

Third Party Exports

Third party exports (except Deemed Export) as defined in Chapter 9 shall be allowed under FTP. In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/ manufacturer and third party exporter(s). Bank Realisation Certificate (BRC), export order and invoice should be in the name of third party exporter.

EXPORTS OF SPECIFIC CATEGORIES

Export of Samples

Export of Samples and Free of charge goods shall be governed by provisions given in para 2.66 of Handbook of Procedures.

Export of Gifts

Goods including edible items, of value not exceeding ₹ 5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an Authorisation.

Export of Passenger Baggage

(a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption.

(b) Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

Import for export

I. (a) Goods imported, in accordance with FTP, may be exported in same or substantially the same form without an Authorisation provided that item to be imported or exported is not restricted for import or export in ITC (HS).

(b) Goods, including capital goods (both new and second hand), may be imported for export provided:

(i) Importer clears goods under Customs Bond;

(ii) Goods are freely exportable, i.e., are not "Restricted"/ "Prohibited"/ subject to "exclusive trading through State Trading Enterprises" or any conditionality/ requirement as may be required under Schedule 2 – Export Policy of the ITC (HS);

(iii) Export is against freely Convertible currency.

(c) Goods in (b) above will include 'Restricted' goods for import (except 'Prohibited' items).

(d) Capital goods, which are freely importable and freely exportable, may be imported for export on execution of LUT/BG with Customs Authority.

II. (a) Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency, unless otherwise notified by DGFT.

(b) Export of such goods to the notified countries (presently only Iran) would be permitted against payment in Indian Rupees, subject to minimum 15% value addition.

(c) However, re-export of food, medicine and medical equipments, namely, items covered under ITC(HS) Chapters 2 to 4, 7 to 11, 15 to 21, 23, 30 and items under headings 9018, 9019, 9020, 9021 & 9022 of Chapter-90 of ITC(HS) will not be subject to minimum value addition requirement for export to Iran. Exports of these items to Iran shall, however, be subject to all other conditions of FTP 2015-20 and ITC (HS) 2012, as applicable. Bird's eggs covered under ITC (HS) 0407 & 0408 and Rice covered under ITC (HS) 1006 are not covered under this dispensation, as at II (a) above.

(d) Exports under this dispensation, as at II(b) and (c) above shall not be eligible for any export incentives.

Export through Courier Service

Exports through a registered courier service are permitted as per Notification issued by DoR. However, importability / exportability of such items shall be regulated in accordance with FTP/ ITC (HS).

Export of Replacement Goods

Goods or parts thereof on being exported and found defective/damaged or otherwise unfit for use may be replaced free of charge by the exporter and such goods shall be allowed clearance by Customs authorities, provided that replacement goods are not mentioned as restricted items for exports in ITC (HS).

Export of Repaired Goods

(i) "Goods or parts thereof, except restricted under ITC (HS), on being exported and found defective, damaged or otherwise unfit for use may be imported for repair and subsequent re-export. Such goods shall be allowed clearance without an Authorisation and in accordance with customs notification.

(ii) However, re-export of such defective parts/spares by the Companies/firms and Original Equipment Manufacturers shall not be mandatory if they are imported exclusively for undertaking root cause analysis, testing and evaluation purpose."

Export of Spares

Warranty spares (whether indigenous or imported) of plant, equipment, machinery, automobiles or any other goods, [except those restricted under ITC (HS)] may be exported along with main equipment or subsequently but within contracted warranty period of such goods, subject to approval of RBI.

Private Bonded Warehouses for Exports

(a) Private bonded warehouses exclusively for exports may be set up in DTA as per terms and conditions of notifications issued by Department of Revenue.

(b) Such warehouses shall be entitled to procure goods from domestic manufacturers without payment of duty. Supplies made by a domestic supplier to such notified warehouses shall be treated as physical exports provided payments are made in free foreign exchange.

PAYMENTS AND RECEIPTS ON IMPORTS / EXPORTS

Denomination of Export Contracts

(a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

(b) However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his nonresident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.

(c) Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.

Export to Iran – Realisations in Indian Rupees to be eligible for FTP benefits / incentives

Notwithstanding the provisions contained in above para (a) above, export proceeds realized in Indian

Rupees against exports to Iran are permitted to avail exports benefits / incentives under the Foreign Trade Policy (2015-20), at par with export proceeds realized in freely convertible currency.

Non-Realisation of Export Proceeds

(a) If an exporter fails to realize export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to return all benefits / incentives availed against such exports and action in accordance with provisions of FT (D&R) Act, Rules and Orders made there under and FTP.

(b) In case an Exporter is unable to realise the export proceeds for reasons beyond his control (force-majeure), he may approach RBI for writing off the unrealised amount as per procedure laid down in para 2.87 of Handbook of Procedures.

(c) The payment realized through insurance cover, would be eligible for benefits under FTP. The procedure to be followed in such cases is laid down in para 2.85 of Handbook of Procedures.

EXPORT PROMOTION COUNCILS

Recognition of Export Promotion Councils (EPCs) to function as Registering Authority for issue of RCMC.

(a) Export Promotion Councils (EPCs) are organizations of exporters, set up with the objective to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services as given in Appendix 2T of AANF.

(b) EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members. The criteria for EPCs to be recognized as Registering Authorities for issue of RCMC to its members are detailed in para 2.92 of the Handbook of Procedures.

Registration-cum-Membership Certificate (RCMC)

Any person, applying for:

(a) An Authorisation to import/export (except items) listed as 'Restricted' items in ITC (HS)

Or

(b) Any other benefit or concession under FTP shall be required to furnish or upload on DGFT's website in the Importer Exporter Profile, the RCMC granted by competent authority in accordance with procedure specified in HBP, unless specifically exempted under FTP. Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board shall be treated as Registration-Cum-Membership Certificate (RCMC) for the purposes under this Policy.

POLICY INTERPRETATION AND RELAXATIONS:

Interpretation of Policy

(a) The decision of DGFT shall be final and binding on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS).

(b) A Policy Interpretation Committee (PIC) may be constituted to aid and advise DGFT. The composition of the PIC would be as follows:

(i) DGFT: Chairman

(ii) All Additional DGFTs in Headquarters : Members

(iii) All Joint DGFTs in Headquarters looking after Policy matters : Members

(iv) Joint DGFT (PRC/PIC) : Member Secretary

(v) Any other person / representative of the concerned Ministry / Department, to be co-opted by the Chairman.

Exemption from Policy/ Procedures

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any procedure. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the Committees as under:

Sl. No.	Description	Committee
(a)	Fixation / modification of product norms	Norms Committees
(b)	Nexus with Capital Goods (CG) and benefits under under all schemes EPCG Schemes	EPCG Committee
(c)	All other issues	Policy Relaxation Committee (PRC)

Personal Hearing by DGFT for Grievance Redressal

(a) Government is committed to easy and speedy redressal of grievances from Trade and Industry. Provision of FTP provides for relaxation of Policy and Procedures on grounds of genuine hardship and adverse impact on trade. DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC).

(b) As a last resort to redress grievances of Importers/ Exporters, DGFT may provide an opportunity for Personal Hearing (PH) before PRC. For such PH, a specific request along with the prescribed application fee has to be made to DG, if following conditions are satisfied:

(i) If an importer/exporter is aggrieved by any decision taken by Policy Relaxation Committee (PRC), or a decision/order by any authority in the Directorate General of Foreign Trade and

(ii) A request for review before the said Committee or Authority has been filed.

(iii) Such Committee or Authority has considered the request for a review, and

(iv) The exporter / importer continues to be aggrieved.

(c) The decision conveyed in pursuance to the personal hearing shall be final and binding.

(d) The opportunity for Personal Hearing will not apply to a decision/order made in any proceeding, including an adjudication proceeding, whether at the original stage or at the appellate stage, under the relevant provisions of FT (D&R) Act, 1992, as amended from time to time.

Regularization of EO default and settlement of Customs duty and interest through Settlement Commission

With a view to providing assistance to firms who have defaulted under FTP for reasons beyond their control as also facilitating merger, acquisition and rehabilitation of sick units, it has been decided to empower Settlement Commission in Central Board of Excise and Customs to decide such cases also with effect from 01.04.2005.

SELF CERTIFICATION OF ORIGINATING GOODS

Approved Exporter Scheme for Self Certification of Certificate of Origin.

(i) Currently, Certificates of Origin under various Preferential Trade Agreements [PTA], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] are issued by designated agencies as per Appendix 2B of Appendices and Aayat and Niryat Forms. A new optional system of self certification is being introduced with a view to reducing transaction cost.

(ii) The Manufacturers who are also Status Holders shall be eligible for Approved Exporter Scheme.

Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different PTAs/FTAs/CECAs/CEPAs which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the Industrial Entrepreneurial's Memorandum (IEM) / Industrial Licence (IL)/Letter of Intent (LOI) issued to manufacturers.

(iii) Status Holders will be recognized by DGFT as Approved Exporters for self-certification based on availability of required infrastructure, capacity and trained manpower as per the details in Para 2.109 of Handbook of Procedures 2015-20 read with Appendix 2F of Appendices & Aayaat Niryaat Forms.

(iv) The details of the Scheme, along with the penalty provisions, are provided in Appendix 2F of Appendices and Aayaat Niryaat Forms and will come into effect only when India incorporates the scheme into a specific agreement with its partner/s and the same is appropriately notified by DGFT.

5.3 EXPORTS FROM INDIA SCHEMES

Objective

The objective of schemes under this heading is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field.

Exports from India Schemes

There shall be following two schemes for exports of Merchandise and Services respectively:

(i) Merchandise Exports from India Scheme (MEIS).

(ii) Service Exports from India Scheme (SEIS).

Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for :

(i) Payment of Customs Duties for import of inputs or goods, except certain items.

(ii) Payment of excise duties on domestic procurement of inputs or goods, including capital goods as per DoR notification.

(iii) Payment of service tax on procurement of services as per DoR notification.

(iv) Payment of Customs Duty and fee as per paragraph heading, "Facility of payment of custom duties in case of E.O. defaults and fee through duty credit scrip." of this Policy.

Merchandise Exports from India Scheme (MEIS)

Objective

Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

Entitlement under MEIS

Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Particular Appendix [3B of Appendices and Aayat Niryat Forms or AANF] lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of

reward would be on realised FOB value of exports in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

Export of goods through courier or foreign post offices using e-Commerce

(i) Exports of goods through courier or foreign post office using e-commerce, as notified in Appendix 3C of AANF, of FOB value upto ₹ 25,000 per consignment shall be entitled for rewards under MEIS.

(ii) If the value of exports using e-commerce platform is more than ₹ 25,000 per consignment then MEIS reward would be limited to FOB value of ₹ 25,000 only.

(iii) Such goods can be exported in manual mode through Foreign Post Offices at New Delhi, Mumbai and Chennai.

(iv) Export of such goods under Courier Regulations shall be allowed manually on pilot basis through Airports at Delhi, Mumbai and Chennai as per appropriate amendments in regulations to be made by Department of Revenue. Department of Revenue shall fast track the implementation of EDI mode at courier terminals.

Ineligible categories under MEIS

The following exports categories /sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS

(i) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption.

(ii) Supplies made from DTA units to SEZ units

(iii) Export of imported goods covered under paragraph heading, 'Import for Export' of FTP;

(iv) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans shipped through India;

(v) Deemed Exports;

(vi) SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units;

(vii) Items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS), unless specifically notified in Appendix 3B of AANF.

(viii) Service Export.

(ix) Red sanders and beach sand.

(x) Export products which are subject to Minimum export price or export duty.

(xi) Diamond Gold, Silver, Platinum, other precious metal in any form including plain and studded jewellery and other precious and semi-precious stones.

(xii) Ores and concentrates of all types and in all formations.

(xiii) Cereals of all types.

(xiv) Sugar of all types and all forms.

(xv) Crude / petroleum oil and crude / primary and base products of all types and all formulations.

(xvi) Export of milk and milk products.

(xvii) Export of Meat and Meat Products.

(xviii) Products wherein precious metal/diamond are used or Articles which are studded with precious stones.

(xix) Exports made by units in FTWZ.

SERVICE EXPORTS FROM INDIA SCHEME (SEIS)

Objective

Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

Eligibility

(a) Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. Only Services rendered in the manner provided under this policy shall be eligible. The notified services and rates of rewards are listed in Appendix 3D of AANF.

(b) Such service provider should have minimum net free foreign exchange earnings of US$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US$10,000 in preceding financial year.

(c) Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E of AANF.

(d) Net Foreign exchange earnings for the scheme are defined as under:

Net Foreign Exchange = Gross Earnings of Foreign Exchange minus Total expenses / payment / remittances of Foreign Exchange by the IEC holder, relating to service sector in the Financial year.

(e) If the IEC holder is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses / payment / remittances shall be taken into account for service sector only.

(f) In order to claim reward under the scheme, Service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.

Ineligible categories under SEIS

(1) Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. Thus, other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.

(2) Following shall not be taken into account for calculation of entitlement under the scheme

(a) Foreign Exchange remittances:

I. Related to Financial Services Sector

(i) Raising of all types of foreign currency Loans;

(ii) Export proceeds realization of clients;

(iii) Issuance of Foreign Equity through ADRs / GDRs or other similar instruments;

(iv) Issuance of foreign currency Bonds;

(v) Sale of securities and other financial instruments;

(vi) Other receivables not connected with services rendered by financial institutions; and

II. Earned through contract/regular employment abroad (e.g. labour remittances);

(b) Payments for services received from EEFC Account;

(c) Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.

(d) Foreign exchange turnover by Educational Institutions like equity participation, donations etc.

(e) Export turnover relating to services of units operating under SEZ / EOU / EHTP / STPI / BTP Schemes or supplies of services made to such units;

(f) Clubbing of turnover of services rendered by SEZ / EOU /EHTP / STPI / BTP units with turnover of DTA Service Providers;

(g) Exports of Goods.

(h) Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all.

(i) Service providers in Telecom Sector.

Entitlement under SEIS

Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as given in Appendix 3D of AANF) on net foreign exchange earned.

Remittances through Credit Card and other instruments for MEIS and SEIS

Free Foreign Exchange earned through international credit cards and other instruments, as permitted by RBI shall also be taken into account for computation of value of exports.

Effective date of schemes (MEIS and SEIS)

The schemes shall come into force with effect from the date of notification of this Policy, i.e. the rewards under MEIS/SEIS shall be admissible for exports made/services rendered on or after the date of notification of this Policy.

Special Provisions

(a) Government reserves the right in public interest, to specify export products or services or markets, which shall not be eligible for computation of entitlement of duty credit scrip.

(b) Government reserves the right to impose restriction / change the rate/ceiling on Duty Credit Scrip under this chapter.

(c) Government may also notify goods in Appendix 3A of AANF which shall not be allowed for debiting through Duty Credit Scrips in case of import.

(d) Government may prescribe value cap of any kind for a product(s) or limit total reward per IEC holder under this chapter at any time.

COMMON PROVISIONS FOR EXPORTS FROM INDIA SCHEMES (MEIS AND SEIS)

Transitional Arrangement

For the goods exported or services rendered upto the date of notification of this Policy, which were otherwise eligible for issuance of scrips under erstwhile Chapter 3 of the earlier Foreign Trade Policy(ies) and scrip is applied / issued on or after notification of this Policy against such export of goods or services rendered, the then prevailing policy and procedure regarding eligibility, entitlement, transferability, usage of scrip and any other condition in force at the time of export of goods or rendering of the services, shall be applicable to such scrips.

CENVAT/ Drawback

Additional Customs duty/excise duty/Service Tax paid in cash or through debit under Duty Credit scrip shall be adjusted as CENVAT Credit or Duty Drawback as per DoR rules or notifications. Basic Custom duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.

Import under lease financing

Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing in terms of provision in paragraph heading, "Import under Lease Financing" of FTP.

Transfer of export performance

(a) Transfer of export performance from one IEC holder to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance / turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e - BRC / FIRC.

(b) However, MEIS, rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company / firm who has realized the foreign exchange directly from overseas) or by the company/ firm who has realized the foreign exchange directly from overseas.

Facility of payment of custom duties in case of E.O. defaults and fee through duty credit scrips

(a) Duty Credit Scrip can be utilised / debited for payment of Custom Duties in case of EO defaults for Authorizations issued under this Policy. Such utilization /usage shall be in respect of those goods which are permitted to be imported under the respective reward schemes. However, penalty / interest shall be required to be paid in cash.

(b) Duty credit scrips can also be used for payment of composition fee under FTP, for payment of application fee under FTP, if any and for payment of value shortfall in EO under para 4.49 of HBP 2015-20.

Risk Management System

(a) A Risk Management System shall be in operation whereby every month Computer system in DGFT Headquarters, on random basis, will select 10% of cases for each RA where scrips have already been issued, under each scheme. RA in turn may call for original documents in all such selected cases for further examination in detail. In case any discrepancy and/ or over claim is found on such examination, the applicant shall be under obligation to rectify such discrepancy and/or refund over claim in cash with interest at the rate prescribed under section 28 A A of the Customs Act 1962, from the date of issue of scrip in the relevant Head of Account of Customs within one month. The original holder of scrip, however, may refund such over claim by surrendering the same scrip whether partially utilized or fully unutilized, without interest.

(b) Regional Authority may ask for original proof of landing certificate, annexures attached to ANFs or any other document, which has been uploaded digitally at any time within three years from the date of issue of scrip. Failure to submit such documents in original would make applicant liable to refund the reward granted along with interest at the rate prescribed under section 28 A A of the Customs Act 1962, from the date of issuance of scrip. It would be the responsibility of applicant to maintain such documents, certificate etc. for a period of at least three years from the date of issuance of scrips.

Status Holder

(a) Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.

(b) All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance. An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years. The export performance will be counted on the basis of FOB value of export earnings in free foreign exchange.

(c) For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBEC, as applicable on 1st April of each Financial Year.

(d) For granting status, export performance is necessary in at least two out of three years.

Status Category

Status Category	Export Performance FOB / FOR (as converted) Value (in US $ million)
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

Grant of double weightage

(a) The exports by IEC holders under the following categories shall be granted double weightage for calculation of export performance for grant of status.

  (i) Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small & Medium Enterprises Development (MSMED) Act 2006.

  (ii) Manufacturing units having ISO/BIS.

  (iii) Units located in North Eastern States including Sikkim and Jammu & Kashmir.

  (iv) Units located in Agri Export Zones.

(b) Double Weightage shall be available for grant of One Star Export House Status category only. Such benefit of double weightage shall not be admissible for grant of status recognition of other categories namely Two Star Export House, Three Star Export House, Four Star export House and Five Star Export House.

(c) A shipment can get double weightage only once in any one of above categories.

Other conditions for grant of status

(a) Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.

(b) Exports made on re-export basis shall not be counted for recognition.

(c) Export of items under authorization, including SCOMET items, would be included for calculation of export performance.

Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

(a) Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;

(b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee;

(c) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP;

(d) Exemption from compulsory negotiation of documents through banks. Remittance/receipts, however, would be received through banking channels;

(e) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.

(f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC (website: http://cbec.gov.in).

(g) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

(h) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). Subsequently, the scheme may be extended to remaining Status Holders.

(i) Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India as per para 2.108 (d) of Hand Book of Procedures.

(j) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹ 10 lakh or 2% of average annual export realization during preceding three licencing years whichever is higher.

5.4 DUTY EXEMPTION / REMISSION SCHEMES

Objective

Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of input or duty remission.

Schemes

(a) Duty Exemption Schemes.

The Duty Exemption schemes consist of the following:

(i) Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).

(ii) Duty Free Import Authorisation (DFIA).

(b) Duty Remission Scheme.

Duty Drawback (DBK) Scheme, administered by Department of Revenue.

Applicability of Policy & Procedures

Authorisation under this Chapter shall be issued in accordance with the Policy and Procedures in force on the date of issue of the Authorisation.

Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR

(ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.

Advance Authorisation for Spices

Duty free import of spices covered under Chapter-9 of ITC (HS) shall be permitted only for activities like crushing / grinding / sterilization / manufacture of oils or oleoresins. Authorisation shall not be available for simply cleaning, grading, re-packing etc.

Eligible Applicant / Export / Supply

(a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.

(b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process (as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.

(c) Advance Authorisation shall be issued for:

(i) Physical export (including export to SEZ);

(ii) Intermediate supply; and/or

(iii) Supply of goods to the categories mentioned in paragraph named, "Categories of Supply" with point (b), (c), (e), (f), (g) and (h) of this FTP.

(iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

Advance Authorisation for Annual Requirement

(i) Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION), and it shall not be available in case of adhoc norms under (b)(ii) of paragraph heading, "Advance Authorisation" of FTP.

(ii) Advance Authorisation for Annual Requirement shall also not be available in respect of SION where any item of input appears in Appendix 4-J of AANF.

Eligibility Condition to obtain Advance Authorisation for Annual Requirement

(i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.

(ii) Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or ₹ 1 crore, whichever is higher.

Value Addition

Value Addition for the purpose of this Chapter (except for Gems and Jewellery sector for which value addition is prescribed in different heading of this study note shall be:-

$$VA = \frac{A - B}{B} \times 100, \text{ where}$$

A = FOB value of export realized / FOR value of supply received.

B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.

Minimum Value Addition

(i) Minimum value addition required to be achieved under Advance Authorisation is 15%.

(ii) Export Products where value addition could be less than 15% are given in Appendix 4D of AANF.

(iii) For physical exports for which payments are not received in freely convertible currency, value addition shall be as specified in Appendix 4C of AANF.

(iv) Minimum value addition for Gems & Jewellery Sector is given in paragraph 4.61 of Handbook of Procedures.

(v) In case of Tea, minimum value addition shall be 50%.

Import of Mandatory Spares

Import of mandatory spares which are required to be exported / supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation.

Ineligible categories of import on Self Declaration basis

(a) Import of following products shall not be permissible on self-declaration basis:

(i) All vegetable / edible oils classified under Chapter-15 and all types of oilseeds classified under Chapter-12 of ITC (HS) book;

(ii) All types of cereals classified under Chapter–10 of ITC (HS) book;

(iii) All Spices other than light black pepper (light berries) having a basic customs duty of more than 30%, classified under Chapter-9 and 12 of ITC (HS) book;

(iv) All types of fruits/ vegetables having a duty of more than 30%, classified under Chapter-7 and Chapter-8 of ITC (HS) book;

(v) Horn, hoof and any other organ of animal;

(vi) Honey;

(vii) Rough Marble Blocks/Slabs; and

(viii) Rough Granite.

(ix) Vitamins except for use in pharmaceutical industry.

(b) For export of perfumes, perfumery compounds and various feed ingredients containing vitamins, no Authorisation shall be issued by Regional Authority under paragraph 4.07 of Handbook of Procedures and applicants shall be required to apply under paragraph 4.06 of Hand Book of Procedures to the Norms Committee.

(c) Where export and/or import of biotechnology items and related products are involved, Authorisation under paragraph 4.07 of Handbook of Procedures shall be issued by Regional Authority only on submission of a "No Objection Certificate" from Department of Biotechnology.

Accounting of Input

(i) Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input [which has been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/ description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

(ii) In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.

(iii) At the time of discharge of export obligation (issue of EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill.

(iv) The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed export. Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoice / import document / document for domestic procurement/supply.

Pre-import condition in certain cases

(i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.

(ii) Import items subject to pre-import condition are listed in Appendix 4-J of AANF or will be as indicated in Standard Input Output Norms (SION).

(iii) Import of drugs from unregistered sources shall have pre-import condition.

Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable. However, Import against supplies covered under previous paragraph with point (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any.

Admissibility of Drawback

Drawback as per rate determined and fixed by Central Excise authority shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation. As per details mentioned in the application, Regional Authority shall also clearly endorse details of such duty paid inputs in the condition sheet of the Advance Authorisation.

Actual User Condition for Advance Authorisation

(i) Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

(ii) In case where CENVAT credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from either the jurisdictional Central Excise Authority or Chartered Accountant, at the option of the exporter, at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned.

(iii) Waste / scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

Validity Period for Import

(i) Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation.

(ii) Advance Authorisation for Deemed Export shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is more.

Importability / Exportability of items that are Prohibited/Restricted/ STE

(i) No export or import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited for exports or imports respectively. Export of a prohibited item may be allowed under Advance Authorisation provided it is separately so notified, subject to the conditions given therein.

(ii) Items reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA.

However those items can be procured from STEs against ARO or Invalidation letter. STEs are also allowed to sell goods on High Sea Sale basis to holders of Advance Authorisation / DFIA holder. STEs are also permitted to issue "No Objection Certificate (NOC)" for import by Advance Authorisation / DFIA holder. Authorisation Holder would be required to file Quarterly Returns of imports effected against such NOC to concerned STE and STE would submit half-yearly import figures of such imports to concerned administrative Department for monitoring with a copy endorsed to DGFT.

(iii) Items reserved for export by STE can be exported under Advance Authorisation / DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.

(iv) Import of restricted items shall be allowed under Advance Authorisation/ DFIA.

(v) Export of restricted / SCOMET items however, shall be subject to all conditionalities or requirements of export authorisation or permission, as may be required, under Schedule 2 of ITC (HS).

Free of Cost Supply by Foreign Buyer

Advance Authorisation shall also be available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input shall be added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

Domestic Sourcing of Inputs

(i) Holder of an Advance Authorisation / Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise in lieu of direct import. Such procurement can be against Advance Release Order (ARO), Invalidation Letter, Back-to-Back Inland Letter of Credit.

(ii) When domestic supplier intends to obtain duty free material for inputs through Advance Authorisation for supplying resultant product to another Advance Authorisation / DFIA / EPCG Authorisation, Regional Authority shall issue Invalidation Letter.

(iii) Regional Authority shall issue Advance Release Order if the domestic supplier intends to seek refund of duty through Deemed Exports mechanism.

(iv) Regional Authority may issue Advance Release Order or Invalidation Letter at the time of issue of Authorisation simultaneously or subsequently.

(v) Advance Authorisation holder under DTA can procure inputs from EOU / EHTP / BTP / STP / SEZ units without obtaining Advance Release Order or Invalidation Letter.

(vi) Duty Free Import Authorisation holder shall also be eligible for Advance Release Order / Invalidation Letter facility.

(vii) Validity of Advance Release Order / Invalidation Letter shall be co-terminous with validity of Authorisation.

Currency for Realisation of Export Proceeds

(i) Export proceeds shall be realized in freely convertible currency except otherwise specified. Provisions regarding realization of export proceeds are given this study note.

(ii) Export to Rupee Payment Area (RPA) (for which payments are not received in freely convertible currency) shall be subject to minimum value addition as specified in Appendix-4C of AANF.

(iii) Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit.

(iv) Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.

(v) Authorisation holder needs to file Bill of Export for export to SEZ unit / developer / co-developer in accordance with the procedures given in SEZ Rules, 2006.

Export Obligation

(i) Period for fulfilment of export obligation under Advance Authorisation shall be 18 months from the date of issue of Authorisation or as notified by DGFT.

(ii) In cases of supplies to turnkey projects in India under deemed export category or turnkey projects abroad, the Export Obligation period shall be co-terminus with contracted duration of the project execution or 18 months whichever is more.

(iii) Export Obligation for items falling in categories of defence, military store, aerospace and nuclear energy shall be 24 months from the date of issue of authorization or co-terminus with contracted duration of the export order whichever is more.

(iv) Export Obligation Period for specified inputs, from the date of clearance of each consignment, is given in Appendix 4-J of AANF.

Export Obligation Period (EOP) Extension for units under BIFR/ Rehabilitation.

A company holding Advance Authorisation and registered with BIFR / Rehabilitation Department of State Government or any firm / company acquiring a unit holding Advance Authorisation which is under BIFR / Rehabilitation, may be permitted export obligation extension for the Advance Authorisation(s) held by the acquired unit, as per rehabilitation package prepared by operating agency and approved by BIFR / Rehabilitation Department of State Government. If time-period upto which EO extension is to be granted is not specifically mentioned in the BIFR order, EO extension of two years from the date of expiry of EOP (including extended period) or the date of BIFR order, whichever is later, shall be granted without payment of composition fee.

Re-import of exported goods under Duty Exemption / Remission Scheme

Goods exported under Advance Authorisation / Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue. Authorisation holder shall also inform about such re-importation to the Regional Authority which had issued the Authorisation within one month from date of re-import.

DUTY FREE IMPORT AUTHORISATION SCHEME (DFIA)

DFIA Scheme

Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

Duties Exempted and Admissibility of Cenvat and Drawback

(i) Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty.

(ii) Additional customs duty/excise duty, being not exempt, shall be adjusted as CENVAT credit as per DoR rules.

(iii) Drawback as per rate determined and fixed by Central Excise authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. However, in case such drawback is claimed for inputs not specified in SION, the applicant should have indicated clearly details of such duty paid inputs also in the application for Duty Free Import Authorization, and as per the details mentioned in the application, the Regional Authority should also have clearly endorsed details of such duty paid inputs in the condition sheet of the Duty Free Import Authorization.

Eligibility

(i) Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified.

(ii) Merchant Exporter shall be required to mention name and address of supporting manufacturer of

the export product on the export document viz. Shipping Bill / Airway Bill / Bill of Export / ARE-1 / ARE-3.

(iii) Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

Minimum Value Addition

Minimum value addition of 20% shall be required to be achieved. For items where higher value addition has been prescribed under Advance Authorisation in Appendix 4C of AANF, the same value addition shall be applicable for Duty Free Import Authorisation also.

Validity & Transferability of DFIA

(i) Applicant shall file online application to Regional Authority concerned before starting export under DFIA.

(ii) Export shall be completed within 12 months from the date of online filing of application and generation of file number.

(iii) While doing export/supply, applicant shall indicate file number on the export documents viz. Shipping Bill / Airway Bill/ Bill of Export / ARE-1 / ARE-3, Central Excise certified Invoice.

(iv) After completion of exports and realization of proceeds, request for issuance of transferable Duty Free Import Authorisation may be made to concerned Regional Authority within a period of twelve months from the date of export or six months (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later.

(v) Applicant shall be allowed to file application beyond 24 months from the date of generation of file number as per paragraph 9.03 of Hand Book of Procedures.

(vi) Separate DFIA shall be issued for each SION and each port.

(vii) Exports under DFIA shall be made from from a single port as mentioned in paragraph 4.37 of Handbook of Procedures.

(viii) No Duty Free Import Authorisation shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

(ix) Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

Sensitive Items under Duty Free Import

Authorisation

(a) In respect of resultant products requiring following inputs, exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill:

"Alloy steel including Stainless Steel, Copper Alloy, Synthetic Rubber, Bearings, Solvent, Perfumes / Essential Oil/ Aromatic Chemicals, Surfactants, Relevant Fabrics, marble, Articles made of polypropylene, Articles made of Paper and Paper Board, Insecticides, Lead Ingots, Zinc Ingots, Citric Acid, Relevant Glass fibre reinforcement (Glass fibre, Chopped / Stranded Mat, Roving Woven Surfacing Mat), Relevant Synthetic Resin (unsaturated polyester resin, Epoxy Resin, Vinyl Ester Resin, Hydroxy Ethyl Cellulose), Lining Material".

(b) While issuing Duty Free Import Authorisation, Regional Authority shall mention technical characteristics, quality and specification in respect of above inputs in the Authorisation.

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

Import of Input

Exporters of gems and Jewellery can import / procure duty free input for manufacture of export product.

Items of Export

Following items, if exported, would be eligible:

(i) Gold jewellery, including partly processed jewellery and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above;

(ii) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;

(iii) Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.

Schemes

The schemes are as follows:

(i) Advance Procurement / Replenishment of Precious Metals from Nominated Agencies;

(ii) Replenishment Authorisation for Gems;

(iii) Replenishment Authorisation for Consumables;

(iv) Advance Authorisation for Precious Metals.

Advance Procurement/ Replenishment of Precious Metals from Nominated Agencies

(i) Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold / silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf.

(ii) The export would be subject to wastage norms and minimum value addition as prescribed in paragraph 4.60 and 4.61 respectively in the Handbook of Procedures.

Replenishment Authorisation for Gems

(i) Exporter may obtain Replenishment Authorisation for Gems from Regional Authority in accordance with procedure specified in Handbook of Procedures.

(ii) Replenishment Authorisation for Gems may be issued against export including that made against supply by Nominated Agency and against supply by foreign buyer.

(iii) In case of plain or studded gold / silver / platinum jewellery and articles, value of such Authorisation shall be determined with reference to realisation in excess of prescribed minimum value addition. Replenishment Authorisation for Gems shall be freely transferable.

(iv) Replenishment Rate and item of import will be as prescribed in Appendix 4G of AANF.

Replenishment Authorisation for Consumables

(i) Replenishment authorization for duty free import of Consumables, Tools and other items namely, Tags and labels, Security censor on card, Staple wire, Poly bag (as notified by Customs) for Jewellery made out of precious metals (other than Gold & Platinum) equal to 2% and for Cut and Polished Diamonds and Jewellery made out of Gold and Platinum equal to 1% of FOB value of exports of the preceding year, may be issued on production of Chartered Accountant Certificate indicating the export performance. However, in case of Rhodium finished Silver jewellery, entitlement will

be 3% of FOB value of exports of such jewellery. This Authorisation shall be non-transferable and subject to actual user condition.

(ii) Application for import of consumables as given above shall be filed online to the concerned Regional Authority in ANF 4H of AANF.

Advance Authorisation for Precious Metals.

(a) Advance Authorisation shall be granted on pre-import basis with 'Actual User' condition for duty free import of:

(i) Gold of fineness not less than 0.995 and mountings, sockets, frames and findings of 8 carats and above;

(ii) Silver of fineness not less than 0.995 and mountings, sockets, frames and findings containing more than 50% silver by weight;

(iii) Platinum of fineness not less than 0.900 and mountings, sockets, frames and findings containing more than 50% platinum by weight.

(b) Advance Authorization shall carry an export obligation which shall be fulfilled as per procedure indicated in Chapter 4 of Handbook of Procedures.

(c) Value Addition shall be as per previous paragraph of this study note and 4.61 of Handbook of Procedures.

Value Addition

Minimum Value Addition norms for gems and jewellery sector are given in paragraph 4.61 of Handbook of Procedures. It would be calculated as under:

A - B

VA = x 100, where

B

A = FOB value of the export realised / FOR value of supply received.

B = Value of inputs (including domestically procured) such as gold / silver / platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

Wastage Norms

Wastage or manufacturing loss for gold / silver / platinum jewellery shall be admissible as per paragraph 4.60 of Handbook of Procedures.

DFIA not available

Duty Free Import Authorisation scheme shall not be available for Gems and Jewellery sector.

Nominated Agencies

(i) Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.

(ii) Nominated Agencies are MMTC Ltd, The Handicraft and Handlooms Exports Corporation of India Ltd, The State Trading Corporation of India Ltd, PEC Ltd, STCL Ltd, MSTC Ltd, and Diamond India Limited

(iii) Four Star Export House from Gems & Jewellery sector and Five Star Export House from any sector may be recognized as Nominated Agency by Regional Authority.

(iv) Reserve Bank of India can authorize any bank as Nominated Agency.

(iv) Procedure for import of precious metal by Nominated Agency (other than those authorized by Reserve Bank of India and the Gems & Jewellery units operating under EOU and SEZ schemes) and the monitoring mechanism thereof shall be as per the provisions laid down in Hand Book of Procedures.

(v) A bank authorised by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

Import of Diamonds for Certification / Grading & Re-export

Following agencies are permitted to import diamonds to their laboratories without any import duty, for the purpose of certification / grading reports, with a condition that the same should be re-exported with the certification/grading reports, as per the procedure laid down in Hand Book of Procedures:

(1) Gemological Institute of America (GIA), Mumbai, Maharashtra.

(2) Indian Diamond Institute, Surat, Gujarat, India.

(3) International Institute of Diamond Grading & Research India Pvt Ltd., Surat, Gujarat, India.

Export of Cut & Polished Diamonds for Certification/ Grading & Re-import

List of authorized laboratories for certification / grading of diamonds of 0.25 carat and above are given in paragraph 4.74 of Handbook of Procedures.

Export of Cut & Polished Diamonds with Re-import Facility at Zero Duty

An exporter (with annual export turnover of ₹ 5 crores for each of the last three years) may export cut & polished diamonds (each of 0.25 carat or above) to any of the agencies/laboratories mentioned under paragraph 4.74 of Handbook of Procedures with re-import facility at zero duty within 3 months from the date of export. Such facility of re-import at zero duty will be subject to guidelines issued by Central Board of Customs & Excise, Department of Revenue.

Export against Supply by Foreign Buyer

(i) Where export orders are placed on nominated agencies / status holder / exporters of three years standing having an annual average turnover of Rupees five crores during preceding three financial years, foreign buyer may supply in advance and free of charge, gold / silver / platinum, alloys, findings and mountings of gold / silver / platinum for manufacture and export.

(ii) Such supplies can also be in advance and may involve semi-finished jewellery including findings / mountings / components for repairs / re-make and export subject to minimum value addition as prescribed under paragraph 4.61 of Handbook of Procedures. In such cases of export, wastage norms as per paragraph 4.60 of Handbook of Procedures shall apply.

(iii) Exports may be made by nominated agencies directly or through their associates or by status holder / exporter. Import and Export of findings shall be on net to net basis.

Export Promotion Tours/ Export of Branded Jewellery

(i) Nominated Agencies and their associates, with approval of Department of Commerce and with approval of Gem & Jewellery Export Promotion Council (GJEPC), may export gold / silver / platinum jewellery and articles thereof for exhibitions abroad.

(ii) Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles and export of branded jewellery is also permitted, subject to conditions as in Handbook of Procedures.

Personal Carriage of Export / Import Parcels

Personal carriage of gems and jewellery export parcels by foreign bound passengers and import parcels by an Indian importer/foreign national may be permitted as per the Handbook of Procedures.

Export by Post

Export of jewellery through Foreign Post Office including via Speed Post is allowed. The jewellery parcel shall not exceed 20 kgs by weight.

Private / Public Bonded Warehouse

Private / Public Bonded Warehouses may be set up in SEZ/DTA for import and re-export of cut and polished diamonds, cut and polished coloured gemstones, uncut & unset precious & semi-precious stones, subject to achievement of minimum value addition of 5% by DTA units.

Diamond & Jewellery Dollar Accounts

(a) Firms and companies dealing in purchase / sale of rough or cut and polished diamonds / precious metal jewellery plain, minakari and / or studded with / without diamond and / or other stones with a track record of at least two years in import or export of diamonds / coloured gemstones / diamond and coloured gemstones studded jewellery / plain gold jewellery and having an average annual turnover of ₹3 crore or above during preceding three licensing years may also carry out their business through designated Diamond Dollar Accounts (DDA).

(b) Dollars in such accounts available from bank finance and / or export proceeds shall be used only for:

  (i) Import / purchase of rough diamonds from overseas/ local sources;

  (ii) Purchase of cut and polished diamonds, coloured gemstones and plain gold jewellery from local sources;

  (iii) Import / purchase of gold from overseas / nominated agencies and repayment of dollar loans from the bank; and

  (iv) Transfer to Rupee Account of exporter.

  Details of this DDA Scheme are given in Handbook of Procedures.

(c) A non DDA holder is also permitted to supply cut and polished diamonds to DDA holder, receive payment in dollars and convert the same into Rupees within 7 days. Cut and polished diamonds and coloured gemstones so supplied by non-DDA holder will also be counted towards discharge of his export obligation and/ or entitle him to replenishment Authorisation.

Export of cut & polished precious and semi precious stones for treatment and re-import

Gems and Jewellery exporters shall be allowed to export cut and polished precious and semi-precious stones for the treatment and re-import as per customs rules and regulations. In case of re-export, the exporter shall be entitled for duty drawback as per rules.

Re-import of rejected Jewellery

Gems & Jewellery exporters shall be allowed to re-import rejected precious metal jewellery as per paragraph 4.91 of Handbook of Procedures.

Export and import on consignment basis

Gems & Jewellery exporters shall be allowed to export and import diamond, gemstones & jewellery on consignment basis as per Handbook of Procedures and Customs Rules and Regulations.

5.5 EXPORTS PROMOTION CAPITAL GOODS (EPCG) SCHEME

Objective

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness.

EPCG Scheme

(a) EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources. Capital goods for the purpose of the EPCG scheme shall include:

(i) Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof;

(ii) Computer software systems;

(iii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and

(iv) catalysts for initial charge plus one subsequent charge.

(b) Import of capital goods for Project Imports notified by Central Board of Excise and Customs is also permitted under EPCG Scheme.

(c) Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duty saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.

(d) Authorisation shall be valid for import for 18 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

(e) In case countervailing duty (CVD) is paid in cash on imports under EPCG, incidence of CVD would not be taken for computation of net duty saved, provided CENVAT is not availed.

(f) Second hand capital goods shall not be permitted to be imported under EPCG Scheme.

(g) Authorisation under EPCG Scheme shall not be issued for import of any Capital Goods (including Captive plants and Power Generator Sets of any kind) for

(i) Export of electrical energy (power)

(ii) Supply of electrical energy (power) under deemed exports

(iii) Use of power (energy) in their own unit, and

(iv) Supply/export of electricity transmission services

(h) Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.

(i) If the goods proposed to be exported under EPCG authorisation are restricted for export, the EPCG authorisation shall be issued only after approval for issuance of export authorisation from Exim Facilitation Committee at DGFT Headquarters.

Coverage

(a) EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers. Name of supporting manufacturer(s) shall be endorsed on the EPCG authorisation before installation of the capital goods in the factory / premises of the supporting manufacturer (s). In case of any change in supporting manufacturer (s) the RA shall intimate such change to jurisdictional Central Excise Authority of existing as well as changed supporting manufacturer (s) and the Customs at port of registration of Authorisation.

(b) Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is designated / certified as a Common Service Provider (CSP) by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence subject to provisions of Foreign Trade Policy/Handbook of Procedures with the following conditions:-

(i) Export by users of the common service, to be counted towards fulfilment of EO of the CSP shall contain the EPCG authorisation details of the CSP in the respective Shipping bills and concerned RA must be informed about the details of the Users prior to such export;

(ii) Such export will not count towards fulfilment of specific export obligations in respect of other EPCG authorisations (of the CSP/User); and

(iii) Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP.

Actual User Condition

Import of capital goods shall be subject to Actual User condition till export obligation is completed.

Export Obligation (EO)

Following conditions shall apply to the fulfilment of EO:-

(a) EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.

(b) EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding three licensing years for the same and similar products within the overall EO period including extended period, if any; except for categories mentioned in paragraph 5.13(a) of HBP. Such average would be the arithmetic mean of export performance in the preceding three licensing years for same and similar products.

(c) In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the EO stipulated.

(d) Shipments under Advance Authorisation, DFIA, Drawback scheme or reward schemes; would also count for fulfillment of EO under EPCG Scheme.

(e) Export shall be physical export. However, deemed exports as specified in points (a), (b), (e), (f) & (h) of paragraph, "Categories of Supplies" of FTP shall also be counted towards fulfillment of export obligation, alongwith usual benefits available under paragraph named, "Benefits for Deemed Exports" of FTP.

(f) EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.

(g) Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.

(h) Payment received in rupee terms for such Services as notified in Appendix 3E of AANF shall also be counted towards discharge of export obligation under the EPCG scheme.

Provision for units under BIFR /Rehabilitation

A company holding EPCG authorisation and registered with BIFR / Rehabilitation Department of State Government or any firm/ company acquiring a unit holding EPCG authorisation which is under BIFR / Rehabilitation, may be permitted EO extension for the EPCG authorisation(s) held by the acquired unit, as per rehabilitation package prepared by operating agency and approved by BIFR / Rehabilitation Department of State Government. If time-period upto which EO extension is to be granted is not specifically mentioned in the BIFR order, EO extension of 3 years from the date of expiry of EOP (including extended period) or the date of BIFR order, whichever is later, shall be granted without payment of composition fee.

LUT/Bond/BG in case of Agro units

LUT/Bond or 15% BG, as applicable, may be furnished for EPCG authorisation granted to units in Agri-Export Zones provided EPCG authorisation is taken for export of primary agricultural product(s) notified or their value added variants.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefit. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU.

Calculation of Export Obligation

In case of direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.

Incentive for early EO fulfilment

With a view to accelerating exports, in cases where Authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorisation redeemed by RA concerned. However no benefit under para 5.21 of HBP shall be permitted where incentive for early EO fulfilment has been availed.

Reduced EO for Green Technology Products

For exporters of Green Technology Products, Specific EO shall be 75% of EO. There shall be no change in average EO imposed, if any. The list of Green Technology Products is given in Para 5.29 of HBP.

Reduced EO for North East Region and Jammu & Kashmir

For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu & Kashmir, specific EO shall be 25% of the EO. There shall be no change in average EO imposed, if any.

Post Export EPCG Duty Credit Scrip(s)

(a) Post Export EPCG Duty Credit Scrip(s) shall be available to exporters who intend to import capital goods on full payment of applicable duties in cash and choose to opt for this scheme.

(b) Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s).

(c) Specific EO shall be 85% of the applicable specific EO under the EPCG Scheme. However, average EO shall remain unchanged.

(d) Duty remission shall be in proportion to the EO fulfilled.

(e) All provisions for utilization of scrips issued shall also be applicable to Post Export EPCG Duty Credit Scrip (s).

(f) All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

5.6 EXPORT ORIENTED UNITS (EOUs), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPs), SOFTWARE TECHNOLOGY PARKS (STPs) AND BIO-TECHNOLOGY PARKS (BTPs)

Introduction and Objective

(a) Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme

for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.

(b) Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

Export and Import of Goods

(a) An EOU / EHTP / STP / BTP unit may export all kinds of goods and services except items that are prohibited in ITC (HS).

(b) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of the conditions indicated in ITC (HS). In respect of an EOU, permission to export a prohibited item may be considered, by BOA, on a case to case basis, provided such raw materials are imported and there is no procurement of such raw material from DTA.

(c) Procurement and supply of export promotion material like brochure / literature, pamphlets, hoardings, catalogues, posters etc up to a maximum value limit of 1.5% of FOB value of previous years exports shall also be allowed.

(d) An EOU / EHTP / STP / BTP unit may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India, without payment of duty, all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS). Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.

(e) State Trading regime shall not apply to EOU manufacturing units. However, in respect of Chrome Ore / Chrome concentrate, State Trading Regime as stipulated in export policy of these items, will be applicable to EOUs.

(f) EOU / EHTP / STP / BTP units may import / procure from DTA, without payment of duty, certain specified goods for creating a central facility. Software EOU / DTA units may use such facility for export of software.

(g) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside bonded area.

(h) Gems and jewellery EOUs may source gold / silver / platinum through nominated agencies on loan / outright purchase basis. Units obtaining gold / silver / platinum from nominated agencies, either on loan basis or outright purchase basis shall export gold / silver / platinum within 90 days from date of release.

(i) EOU / EHTP / STP / BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance, if any.

(j) Procurement and export of spares / components, upto 5% of FOB value of exports, may be allowed to same consignee / buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.

(k) BOA may allow, on a case to case basis, requests of EOU / EHTP / STP/ BTP units in sectors other than Gems & Jewellery, for consolidation of goods related to manufactured articles and export thereof along with manufactured article. Such goods may be allowed to be imported / procured from DTA by EOU without payment of duty, to the extent of 5% FOB value of such manufactured

articles exported by the unit in preceding financial year. Details of procured / imported goods and articles manufactured by the EOU will be listed separately in the export documents. In such cases, value of procured / imported goods will not be taken into account for calculation of NFE and DTA sale entitlement. Such procured / imported goods shall not be allowed to be sold in DTA. BOA may also specify any other conditions.

Secondhand Capital goods

Second hand capital goods, without any age limit, may also be imported duty free.

Leasing of Capital Goods

(a) An EOU / EHTP / STP / BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic / foreign leasing company without payment of customs / excise duty. In such a case, EOU / EHTP / STP / BTP unit and domestic / foreign leasing company shall jointly file documents to enable import / procurement of capital goods without payment of duty.

(b) An EOU / EHTP / BTP / STP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC), subject to the following conditions:

  (i) The unit should obtain permission from the jurisdictional Deputy / Assistant Commissioner of Customs or Central Excise, for entering into transaction of 'Sale and Lease Back of Assets', and submit full details of the goods to be sold and leased back and the details of NBFC;

  (ii) The goods sold and leased back shall not be removed from the unit's premises;

  (iii) The unit should be NFE positive at the time when it enters into sale and lease back transaction with NBFC;

  (iv) A joint undertaking by the unit and NBFC should be given to pay duty on goods in case of violation or contravention of any provision of the notification under which these goods were imported or procured, read with Customs Act, 1962 or Central Excise Act, 1944, and that the lien on the goods shall remain with the Customs / Central Excise Department, which will have first charge over the said goods for recovery of sum due from the unit to Government under provision of Section 142(b) of the Customs Act, 1962 read with the Customs (Attachment of Property of Defaulters for Recovery of Govt. Dues) Rules, 1995.

Net Foreign Exchange Earnings

EOU / EHTP / STP / BTP unit shall be a positive net foreign exchange earner except for sector specific provision of Appendix 6 B of Appendices & ANFs, where a higher value addition shall be required. NFE Earnings shall be calculated cumulatively in blocks of five years, starting from commencement of production. Whenever a unit is unable to achieve NFE due to prohibition / restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA. Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the five year block period for calculation of NFE earnings may be extended by BOA for a period of upto one year, on a case to case basis.

Letter of Permission / Letter of Intent and Legal Undertaking

(a) On approval, a Letter of Permission (LoP) / Letter of Intent (LoI) shall be issued by DC / designated officer to EOU/ EHTP / STP / BTP unit. LoP / LoI shall have an initial validity of 2 years to enable the Unit to construct the plant & install the machinery and by this time the unit should have commenced production. In case the unit is not able to commence production in initial validity of 2 years, an extension of one year may be given by the DC for valid reasons to be recorded in writing. Subsequent extension of one year may be given by the Unit Approval Committee subject to condition that two-thirds of activities including construction, relating to the setting up of the Unit are complete and Chartered Engineer's certificate to this effect is submitted by the Unit. Further extension, if

necessary, will be granted by the Board of Approval. Once unit commences production, LoP / LoI issued shall be valid for a period of 5 years for its activities. This period may be extended further by DC for a period of 5 years at a time.

(b) LoP / LoI issued to EOU / EHTP / STP / BTP units by concerned authority, subject to compliance of provision in Para 6.01 above, would be construed as an Authorisation for all purposes.

(c) Unit shall execute an LUT with DC concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP / LoI / IL / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made thereunder, without prejudice to action under any other law / rules and cancellation or revocation of LoP / LoI / IL.

Investment Criteria

Only projects having a minimum investment of ₹ 1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP / STP / BTP, and EOUs in Handicrafts / Agriculture / Floriculture / Aquaculture / Animal Husbandry / Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criteria.

Applications & Approvals

(a) Applications for setting up of units under EOU scheme shall be approved or rejected by the Units Approval Committee within 15 days as per criteria indicated in Handbook of Procedures (HBP).

(b) In other cases, approval may be granted by BOA set up for this purpose as indicated in HBP.

(c) Proposals for setting up EOU requiring industrial licence may be granted approval by DC after clearance of proposal by BOA and DIPP within 45 days.

(d) Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, having an investment of ₹ 50 crores and above in plant and machinery or exporting ₹ 50 crores and above annually, shall be placed before BOA for a decision.

DTA Sale of Finished Products / Rejects / Waste/ Scrap / Remnants and By-products

Entire production of EOU / EHTP / STP / BTP units shall be exported subject to following:

(a) Units, other than gems and jewellery units, may sell goods upto 50% of FOB value of exports, subject to fulfilment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. However, units which are manufacturing and exporting more than one product can sell any of these products into DTA, upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit, as stipulated above. No DTA sale at concessional duty shall be permissible in respect of motor cars, alcoholic liquors, books, tea (except instant tea), pepper & pepper products, marble and such other items as may be notified from time to time.

Such DTA sale shall also not be permissible to units engaged in activities of packaging / labelling / segregation / refrigeration / compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa. Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Currency Account of SEZ unit. Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs). An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.

(b) For services, including software units, sale in DTA in any mode, including on line data communication, shall also be permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.

(c) Gems and jewellery units may sell upto 10% of FOB value of exports of the preceding year in DTA, subject to fulfilment of positive NFE. In respect of sale of plain jewellery, recipient shall pay concessional rate of duty as applicable to sale from nominated agencies. In respect of studded jewellery, duty shall be payable as applicable.

(d) Unless specifically prohibited in LoP, rejects within an overall limit of 50% may be sold in DTA on payment of duties as applicable to sale under Sub - para 6.08 (a) on prior intimation to Customs authorities. Such sales shall be counted against DTA sale entitlement. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.

(e) Scrap / waste / remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of concessional duties as applicable, within overall ceiling of 50% of FOB value of exports. Such sales of scrap / waste / remnants shall not be subject to achievement of positive NFE. In respect of items not covered by norms, DC may fix ad-hoc norms for a period of six months and within this period, norms should be fixed by Norms Committee. Ad-hoc norms will continue till such time norms are fixed by Norms Committee. Sale of waste / scrap / remnants by units not entitled to DTA sale, or sales beyond DTA sale entitlement, shall be on payment of full duties. Scrap / waste / remnants may also be exported.

(f) There shall be no duties / taxes on scrap / waste / remnants, in case same are destroyed with permission of Customs authorities.

(g) By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of applicable duties, within the overall entitlement of Sub - para (a) of para heading, "DTA Sale of finished products/Rejects/Waste/Scrap/Remnants and by-products. Sale of by-products by units not entitled to DTA sales, or beyond entitlements of Sub-para (a) of para heading, "DTA Sale of finished products/Rejects/Waste/Scrap/Remnants and by-products, shall also be permissible on payment of full duties.

(h) EOU / EHTP / STP / BTP units may sell finished products, except pepper and pepper products and marble, which are freely importable under FTP in DTA, under intimation to DC, against payment of full duties, provided they have achieved positive NFE. An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.

(i) In case of units manufacturing electronics hardware and software, NFE and DTA sale entitlement shall be reckoned separately for hardware and software.

(j) In case of DTA sale of goods manufactured by EOU / EHTP / STP / BTP, where basic duty and CVD is nil, such goods may be considered as non-excisable for payment of duty.

(k) In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.

(l) Units in Textile and Granite sectors shall have an option to sell goods into DTA on payment of an amount equal to aggregate of duties of excise leviable under section 3 of the Central Excise Act, 1944 or under any other law for the time being in force, on like goods produced or manufactured in India other than in an EOU, subject to the condition that they have not used duty paid imported inputs in excess of 3% of the FOB value of exports of the preceding year and they have achieved positive NFE. Once this option is exercised, the unit will not be allowed to import any duty free inputs for any purpose.

(m) Procurement of spares / components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. The same can be cleared in DTA on payment of applicable duty but

such clearances shall be within the overall entitlement of the unit for DTA sale at concessional rate of duty as prescribed in Para 6.08 (a) of FTP.

Other Supplies

Following supplies effected from EOU / EHTP / STP / BTP units will be counted for fulfilment of positive NFE. Such supplies shall not include "marble", except if such supply of marble is an inter unit supply as provided at Sub - para (c) below:

(a) Supplies effected in DTA to holders of Advance Authorisation / Advance Authorisation for annual requirement / DFIA under duty exemption / remission scheme / EPCG scheme. However, printing sector EOUs (or any other sector that may be notified in HBP), can't supply goods, where basic customs duty and CVD is nil or exempted otherwise, to holders of Advance Authorisation / Advance Authorization for annual requirement.

(b) Supplies effected in DTA against foreign exchange remittance received from overseas.

(c) Supplies to other EOU / EHTP / STP / BTP / SEZ units, provided that such goods are permissible for procurement.

(d) Supplies made to bonded warehouses set up under FTP and / or under section 65 of Customs Act and free trade and warehousing zones, where payment is received in foreign exchange.

(e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF, as may be provided in HBP.

(f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom / electronics items.

(g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

(h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, as notified by the Ministry of Petroleum and Natural Gas vide notification No. E-20029/18/2001-PP dated 28.01.2003 (hereinafter referred to as PDS Scheme) subject to the following conditions:-

  (i) Only supply of such quantity of LPG would be eligible for which Ministry of Petroleum and Natural Gas declines permission for export and requires the LPG to be cleared in DTA; and

  (ii) The Ministry of Finance by a notification has permitted duty free imports of LPG for supply under the aforesaid PDS Scheme.

Export through others

An EOU / EHTP / STP / BTP unit may export goods manufactured / software developed by it through another exporter or any other EOU / EHTP / STP / SEZ unit subject to conditions mentioned in Para 6.19 of HBP.

Entitlement for Supplies from the DTA

(a) Supplies from DTA to EOU / EHTP / STP / BTP units will be regarded as "deemed exports" and DTA supplier shall be eligible for relevant entitlements under heading 'deemed exports' of FTP, besides discharge of export obligation, if any, on the supplier. Notwithstanding the above, EOU / EHTP / STP / BTP units shall, on production of a suitable disclaimer from DTA supplier, be eligible for obtaining entitlements specified in same heading of FTP. For claiming deemed export duty drawback, they shall get brand rates fixed by DC wherever All Industry Rates of Drawback are not available.

(b) Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorisations at rates and for items mentioned in HBP.

(c) In addition, EOU / EHTP / STP / BTP units shall be entitled to following:-

(i) Reimbursement of Central Sales Tax (CST) on goods manufactured in India. Simple interest @ 6% per annum will be payable on delay in refund of CST, if the case is not settled within 30 days of receipt of complete application (as in Para 9.10 (b) of HBP).

(ii) Exemption from payment of Central Excise Duty on goods procured from DTA on goods manufactured in India.

(iii) Reimbursement of duty paid on fuel procured from Domestic Oil Companies / Depots of Domestic Oil Public Sector Undertakings as per drawback rate notified by DGFT from time to time. Reimbursement of additional duty of excise levied on fuel under the Finance Acts would also be admissible.

(iv) CENVAT Credit on service tax paid.

Other Entitlements

Other entitlements of EOU / EHTP / STP / BTP units are as under:

(a) Exemption from industrial licensing for manufacture of items reserved for SSI sector.

(b) Export proceeds will be realized within nine months.

(c) Units will be allowed to retain 100% of its export earnings in the EEFC account.

(d) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where:

(i) the unit has turnover of ₹ 5 crore or above;

(ii) the unit is in existence for at least three years; and

(iii) the unit:

(1) has achieved positive NFE / export obligation wherever applicable;

(2) has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / wilful mis-statement / suppression of facts or contravention of any of the provisions thereof;

(e) 100% FDI investment permitted through automatic route similar to SEZ units.

(f) Units shall pay duty on the goods produced or manufactured and cleared into DTA on monthly basis in the manner prescribed in the Central Excise Rules.

(g) The Units Approval Committee may consider on a case-to-case basis request for sharing of infrastructural facilities among EOUs and it shall forward its recommendation to the Board of Approval for its consideration. While accepting such proposals, the NFE obligations of the Units shall not be altered. Such facilities will be available to Units in EHTP / STP after getting approval from IMSC. However, sharing of facilities between EOUs and SEZ Units shall not be permitted.

Inter Unit Transfer

(a) Transfer of manufactured goods from one EOU / EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed with prior intimation to concerned Development Commissioners of the transferer and transferee units as well as concerned Customs authorities, following procedure of in-bond

movement of goods. Transfer of manufactured goods shall also be allowed from EOU / EHTP / STP / BTP unit to a SEZ developer or unit as per procedure prescribed in SEZ Rules, 2006.

(b) Capital goods may be transferred or given on loan to other EOU / EHTP / STP / BTP / SEZ units, with prior intimation to concerned DC and Customs authorities.

Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason without payment of duty.

(c) Goods supplied by one unit of EOU / EHTP / STP / BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

(d) In respect of a group of EOUs / EHTPs / STPs / BTP Units which source inputs centrally in order to obtain bulk discount and / or reduce cost of transportation and other logistics cost and / or to maintain effective supply chain, inter unit transfer of goods and services may be permitted on a case-to-case basis by the Unit Approval Committee. In case inputs so sourced are imported and then transferred to another unit, then value of the goods so transferred shall be taken as inflow for the unit transferring these goods and as outflow for the unit receiving these goods, for the purpose of calculation of NFE.

Sub – Contracting

(a) (i) EOU / EHTP / STP / BTP units, including gems and jewellery units, may on the basis of annual permission from Customs authorities, sub - contract production processes to DTA through job work which may also involve change of form or nature of goods, through job work by units in DTA.

(ii) These units may sub - contract upto 50% of overall production of previous year in value terms in DTA with permission of Customs authorities.

(b) (i) EOU may, with annual permission from Customs authorities, undertake job work for export, on behalf of DTA exporter, provided that goods are exported directly from EOU and export document shall jointly be in name of DTA / EOU. For such exports, DTA units will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback.

(ii) Duty free import of goods for execution of export order placed on EOU by foreign supplier on job work basis, would be allowed subject to condition that no DTA clearance shall be allowed.

(iii) Sub - contracting of both production and production processes may also be undertaken without any limit through other EOU / EHTP / STP/ BTP / SEZ units, on the basis of records maintained in unit.

(iv) EOU / EHTP / STP / BTP units may sub - contract part of production process abroad and send intermediate products abroad as mentioned in LoP. No permission would be required when goods are sought to be exported from sub - contractor premises abroad. When goods are sought to be brought back, prior intimation to concerned DC and Customs authorities shall be given.

(c) Scrap / waste / remnants generated through job work may either be cleared from job worker's premises on payment of applicable duty on transaction value or destroyed in presence of Customs / Central Excise authorities or returned to unit. Destruction shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

(d) Sub - contracting / exchange by gems and jewellery EOUs through other EOUs or SEZ units or units in DTA, shall be as per procedure indicated in HBP.

Sale of Unutilized Material

(a) In case an EOU / EHTP / STP / BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be:

(i) Transferred to another EOU / EHTP / STP / BTP / SEZ unit; or

(ii) Disposed of in DTA with approval of Customs authorities on payment of applicable duties and submission of import authorization; or

(iii) Exported.

Such transfer from EOU / EHTP / STP / BTP unit to another such unit would be treated as import for receiving unit.

(b) Capital goods and spares that have become obsolete / surplus, may either be exported, transferred to another EOU / EHTP / STP / BTP / SEZ unit or disposed of in DTA on payment of applicable duties. Benefit of depreciation, as applicable, will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed. No duty shall be payable in case capital goods, raw material, consumables, spares, goods manufactured, processed or packaged, and scrap / waste / remnants / rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities.

Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

(c) In case of textile sector, disposal of left over material / fabrics upto 2% of CIF value or quantity of import, whichever is lower, on payment of duty on transaction value, may be allowed, subject to certification of Central Excise / Customs officers that these are leftover items.

(d) Disposal of used packing material will be allowed on payment of duty on transaction value.

Reconditioning / Repair and Re - engineering

(a) EOUs shall be set up with approval of UAC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency.

(b) EHTP/STP/BTP units shall be set up with approval of IMSC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency.

Replacement / Repair of Imported / Indigenous Goods

(a) General provisions of FTP relating to export / import of replacement / repair of goods would also apply equally to EOU / EHTP / STP / BTP units. Cases not covered by these provisions shall be considered on merits by DC.

(b) Goods sold in DTA and not accepted for any reasons, may be brought back for repair / replacement, under intimation to concerned jurisdictional Customs / Central Excise authorities.

(c) Goods or parts thereof, on being imported / indigenously procured and found defective or otherwise unfit for use or which have been damaged or become defective subsequently, may be returned and replacement obtained or destroyed. In the event of replacement, goods may be brought back from foreign suppliers or their authorized agents in India or indigenous suppliers. The unit can take free of cost replacement (duty paid) from the authorized agents in India of foreign suppliers, provided the defective part is re - exported or destroyed. However, destruction shall not apply to precious and semi-precious stones and precious metals.

Exit from EOU Scheme

(a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.

(b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to

an agency nominated by DoC, at price to be determined by that agency.

(d) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit from the scheme at any time on payment of duty on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfilment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.

(e) Unit proposing to exit out of EOU scheme shall intimate DC and Customs and Central Excise authorities in writing. Unit shall assess duty liability arising out of de-bonding and submit details of such assessment to Customs and Central Excise authorities. Customs and Central Excise authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" from Customs and Central Excise authorities. On the basis of "No Dues Certificate" so issued by the Customs and Central Excise authorities, unit shall apply to DC for final de-bonding. In case there is no proceeding pending under FT(D&R) Act, as amended, DC shall issue final de-bonding order within a period of 7 working days. Between "No Dues Certificate" issued by Customs and Central Excise authorities and final de-bonding order by DC, unit shall not be entitled to claim any exemption for procurement of capital goods or inputs. However, unit can claim Advance Authorisation / DFIA / Duty Drawback. Since the duty calculations and dues are disputed and take a long time, a BG / Bond / Instalment processes backed by BG shall be provided for expediting the exit process.

(f) In cases where a unit is initially established as DTA unit with machines procured from abroad after payment of applicable import duty, or from domestic market after payment of excise duty, and unit is subsequently converted to EOU, in such cases removal of such capital goods to DTA after de-bonding would be without payment of duty. Similarly, in cases where a DTA unit imported capital goods under EPCG Scheme and after completely fulfilling export obligation gets converted into EOU, unit would not be charged customs duty on capital goods at the time of removal of such capital goods in DTA when de-bonding.

(g) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit under Advance Authorization as one time option. This will be subject to fulfilment of positive NFE criteria.

(h) A simplified procedure may be provided to fast track the De-bonding/ Exit of the STP / EHTP Unit which has not availed any duty benefit on procurement of raw material, capital goods etc.

Conversion

(a) Existing DTA units may also apply for conversion into an EOU / EHTP / STP / BTP unit.

(b) Existing EHTP / STP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will remain in bond and avail exemptions in duties and taxes as applicable.

Monitoring of NFE

Performance of EOU / EHTP / STP / BTP units shall be monitored by Units Approval Committee as per guidelines in HBP.

Export through Exhibitions / Export Promotion Tours / Showrooms Abroad / Duty Free Shops

EOU / EHTP / STP / BTP are permitted to:

(i) Export goods for holding / participating in Exhibitions abroad with permission of DC.

(ii) Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles.

(iii) Export goods for display / sale in permitted shops set up abroad.

(iv) Display / sell in permitted shops set up abroad, or in showrooms of their distributors / agents.

(v) Set up showrooms / retail outlets at International Airports.

Personal Carriage of Import / Export Parcels including through Foreign Bound Passengers

Import / export through personal carriage of gems and jewellery items may be undertaken as per Customs procedure. However, export proceeds shall be realized through normal banking channel. Import / export through personal carriage by units, other than gems and jewellery units, shall be allowed provided goods are not in commercial quantity. An authorized person of Gems & Jewellery EOU may also import gold in primary form, upto 10 Kgs in a financial year through personal carriage, as per guidelines prescribed by RBI and DoR.

Export / Import by Post / Courier

Goods including free samples, may be exported / imported by airfreight or through foreign post office or through courier, as per Customs procedure.

Administration of EOUs / Powers of DC

Details of administration of EOUs and power of DC is given in HBP.

6.25 Revival of Sick Units

Subject to a unit being declared sick by appropriate authority, proposals for revival of the unit or its take over may be considered by BOA.

Approval of EHTP / STP

In case of units under EHTP / STP schemes, necessary approval / permission under relevant paras of this Chapter shall be granted by officer designated by Ministry of Communication and Information Technology, Department of Electronics & Information Technology, instead of DC, and by Inter-Ministerial Standing Committee (IMSC) instead of BOA.

Approval of BTP

Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission under relevant provisions of this chapter will be granted by designated officer of Department of Biotechnology.

Warehousing Facilities

An EOU which intends to set up warehousing facilities outside the EOU premises and outside the jurisdiction of DC, at a place near to the port of export, to reduce lead time for delivery of goods overseas and to address unpredictability of supply orders, is permitted to do so subject to the provisions related to export warehousing as per terms and conditions of Notifications issued by the Department of Revenue.

5.7 DEEMED EXPORTS

Objective

To provide a level-playing field to domestic manufacturers in certain specified cases, as may be decided by the Government from time to time.

Deemed Exports

"Deemed Exports" refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph below shall be regarded as "Deemed Exports" provided goods are manufactured in India.

Categories of Supply

Supply of goods under following categories (a) to (d) by a manufacturer and under categories (e) to (h) by main / subcontractors shall be regarded as "Deemed Exports":

A. Supply by manufacturer:

(a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA;

(b) Supply of goods to EOU / STP / EHTP / BTP;

(c) Supply of capital goods against EPCG Authorisation;

(d) Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India within 6 months or such further period as permitted by customs;

B. Supply by main / sub-contractor (s):

(e) (i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.

(ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad.

(iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies / Funds.

(iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix 7A of AANF.

(f) (i) Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by Notification No. 12/2012 –Customs dated 17.3.2012, as amended from time to time, permits import of such goods at zero customs duty subject to conditions specified in the above said Notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.

(ii) Supply of goods required for setting up of any mega power project, as specified in the list 32A, at Sl. No. 507 of Department of Revenue Notification No. 12/2012- Customs dated 17.03.2012, as amended from time to time, shall be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification.

(iii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.

(g) Supply of goods to United Nations or International Organisations for their official use or supplied to the projects financed by the said United Nations or an International organisation approved by Government of India. List of such organisation and conditions applicable to such supplies is given in the Excise Notification No 108/95-CE, dated 28.08.1995, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B of AANF.

(h) Supply of goods to nuclear power projects provided:

(i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 33 at Sl. No. 511 of Notification No. 12/2012 – Customs dated 17.3.2012, as amended from time to time.

(ii) The project should have a capacity of 440 MW or more.

(iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.

(iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

(a) Advance Authorisation / Advance Authorisation for annual requirement / DFIA.

(b) Deemed Export Drawback.

(c) Refund of terminal excise duty, if exemption is not available.

Benefits to the Supplier /Recipient

Categories of supplies	**Benefits on supplies, whichever is applicable.**		
	Advance Authorisation	**Duty Drawback**	**Terminal Excise Duty**
(a)	Yes (for intermediate supplies against an invalidation letter)	Yes (against ARO or Back to Back letter of credit)	(i) Exemption, in case of Invalidation Letter (ii) Refund, in case of ARO or back to back letter of credit (iii) No exemption/refund against supply to DFIA as CVD is not exempted
(b)	Yes	Yes	Exemption
(c)	Yes	Yes	Refund
(d)	No	Yes	Refund
(e)	Yes	Yes	Exemption
(f)	Yes	Yes	Exemption, if supplies under ICB. Refund, if supplies under tariff based competitive bidding.
(g)	Yes	Yes	Exemption
(h)	Yes	Yes	Refund

Conditions for refund of terminal excise duty

(i) Supply of goods will be eligible for refund of terminal excise duty as per point (c) of para, "Benefits for Deemed exports" of FTP, provided recipient of goods does not avail CENVAT credit/rebate on such goods.

(ii) However, supply of goods which are exempted ab-initio from payment of Terminal Excise Duty would be ineligible to get refund of TED. Exemption from TED is available to the following:

(a) Supplies under ICB;

(b) Supplies of intermediate goods, against invalidation letter, made by an Advance Authorisation holder to another Advance Authorisation holder;

(c) Goods Procured by EOU / EHTP / STP / BTP unit from a unit in DTA; and

(d) Supply of goods to UN/International Organisation or project funded by it.

Conditions for refund of deemed export drawback

Supplies will be eligible for deemed export drawback as per para 7.03 (b) of FTP, as under:

(a) In case CENVAT credit / rebate has not been availed on the inputs / input services, by the supplier of goods, then, benefit as per Column 'A' of All Industry Rate of Duty Drawback Schedule shall be admissible.

(b) If CENVAT credit / rebate has been availed by the supplier of goods, on inputs / input services, then, no Drawback shall be admissible as per Column 'B' of All Industry Rate of Duty Drawback Schedule. However, in such cases, Basic Customs Duty paid can be claimed as Brand Rate of Duty Drawback based upon submission of documents evidencing actual payment of duties.

Common conditions for deemed export benefits

(i) Supplies shall be made directly to entities listed in the Para heading "Categories of Supply". Third party supply shall not be eligible for benefits/exemption.

(ii) In all cases, supplies shall be made directly to the designated Projects/Agencies/Units/ Advance Authorisation/ EPCG Authorisation holder. Subcontractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.

(iii) Supply of domestically manufactured goods by an Indian Sub-contractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export benefit provided name of sub-contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract. In such cases payment shall be made directly to sub-contractor by the Project Authority.

Benefits on specified supplies

(i) Deemed export benefits shall be available for supplies of 'Cement" only.

(ii) Deemed export benefit shall be available on supply of "Steel":

  (a) As an inputs to Advance Authorization/ Annual Advance Authorization/DFIA holder/ an EOU.

  (b) To multilateral/ bilateral funded Agencies.

(iii) Deemed export benefit shall be available on supply of "Fuel" provided supplies are made to:

  (a) Project listed for petroleum operations in the Customs Notification No. 12/2012–Cus. dated 17.03.2012 under Sr. No. 356, 358 to 360 and covered in Para 7.02 (f) of FTP;

  (b) EOUs;

  (c) Advance Authorization holder / Annual Advance Authorization holder.

Liability of Interest

Incomplete/deficient application is liable to be rejected. However, simple interest @ 6% per annum will be payable on delay in refund of duty drawback and terminal excise duty under the scheme, provided the claim is not settled within 30 days from the date of issue of final Approval Letter by RA.

Risk Management and Internal Audit mechanism

(a) A Risk Management system shall be in operation, wherein every month, Computer system in DGFT headquarters, on random basis, will select 10% of cases, for each RA, where benefit(s) under this chapter has/have already been granted. Such cases shall be scrutinized by an internal Audit team, headed by a Joint DGFT, in the office of respective Zonal Addl. DGFT. The team will be responsible to audit claims of not only for its own office but also the claims of all RAs falling under the jurisdiction of the Zone.

(b) The respective RA may also, either on the basis of report from Internal Audit/ External Audit Agency(ies) or suo-motu, reassess any case, where any erroneous/in-eligible payment has been made/claimed. RA will take necessary action for recovery of payment along with interest at the rate of 15% per annum on the recoverable amount.

Penal Action

In case, claim is filed by submitting mis-declaration/misrepresentation of facts, then in addition to effecting recovery under Para above, the applicant shall be liable for penal action under the provisions of F.T. (D&R) Act, Rules and orders made thereunder.

5.8 QUALITY COMPLAINTS AND TRADE DISPUTES

Objective

Exporters need to project a good image of the country abroad to promote exports. Maintaining an enduring relationship with foreign buyers is of utmost importance, and complaints or trade disputes, whenever they arise, need to be settled amicably as soon as possible. Importers too may have grievances as well.

In an endeavour to resolve such complaints or trade disputes and to create confidence in the business environment of the country, a mechanism is being laid down to address such complaints and disputes in an amicable way.

Quality Complaints/ Trade disputes

The following type of complaints may be considered:

(a) Complaints received from foreign buyers in respect of poor quality of the products supplied by exporters from India;

(b) Complaints of importers against foreign suppliers in respect of quality of the products supplied; and

(c) Complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods after confirmation of order; supplying goods other than the ones as agreed upon; non-payment; non-adherence to delivery schedules, etc.

Obligation on the part of importer/ exporter

(a) Rule 11 of the Foreign Trade (Regulation) Rules, 1993, requires that on the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents. Violation of this provision renders the exporter liable for penal action.

(b) Certain export commodities have been notified for Compulsory Quality Control & Pre-shipment Inspection prior to their export. Penal action can be taken under the Export (Quality Control & Inspection) Act, 1963 as amended in 1984, against exporters who do not conform to these standards and/ or provisions of the Act as laid down for such products.

Provisions in FT (D&R) Act & FT (Regulation) Rules for necessary action against erring exporters/ importers

Action against erring exporters can be taken under the Foreign Trade (Development and Regulation) Act, 1992, as amended and under Foreign Trade (Regulation) Rules, 1993, as follows:-

(a) Section 8 of the Act empowers the Director General of Foreign Trade or any other person authorized by him to suspend or cancel the Importer Exporter Code Number for the reasons as given therein.

(b) Section 9 (2) of the Act empowers the Director General of Foreign Trade or an officer authorised by him to refuse to grant or renew a license, certificate, scrip or any other instrument bestowing financial or fiscal benefit granted under the Act.

(c) Section 9(4) empowers the Director General of Foreign Trade or the officer authorized by him to suspend or cancel any License, certificate, scrip or any instrument bestowing financial or fiscal benefit granted under the Act.

(d) Section 11(2) of the Act provides for imposition of fiscal penalty in cases where a person makes or abets or attempts to make any import or export in contravention of any provision of the Act, any Rules or Orders made there under or the Foreign Trade Policy.

Mechanism for handling of Complaints/ Disputes

(a) **Committee on Quality complaints and Trade Disputes (CQCTD)**

To deal effectively with the increasing number of complaints and disputes, a 'Committee on Quality Complaints and Trade Disputes' (CQCTD) will be constituted in the 22 offices of the RA's of DGFT. Names of RAs, where CQCTD has been constituted and jurisdiction of CQCTD is given in Chapter 8 of the Handbook of Procedures.

(b) **Composition of the CQCTD**

The CQCTD would be constituted under the Chairpersonship of the Head of Office. The constitution of CQCTD is given in Chapter 8 of the Hand Book of Procedures.

(c) **Functions of CQCTD**

The Committee (CQCTD) will be responsible for enquiring and investigating into all Quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers, exporters and overseas buyers, preferably within three months of receipt of the complaint. Wherever required, the Committee (CQCTD) may take the assistance of the Export Promotion Councils/FIEO/Commodity Boards or any other agency as considered appropriate for settlement of these disputes.

Proceedings under CQCTD

CQCTD proceedings are only reconciliatory in nature and the aggrieved party, whether the foreign buyer or the Indian importer, is free to pursue any legal recourse against the other erring party.

Procedures to deal with complaints and trade disputes

The procedure for making an application for such complaints or trade disputes and the procedure to deal with such quality complaints and disputes is given in the Handbook of Procedures.

Corrective Measures

The Committee at RA level can authorize the Export Inspection Agency or any technical authority to assess whether there has been any technical failure of not meeting the standards, manufacturing/ design defects, etc. for which complaints have been received.

Nodal Officer

Director General of Foreign Trade would appoint an officer, not below the rank of Joint Director General, in the Headquarters, to function as the 'Nodal Officer' for coordinating with various Regional Authorities of DGFT.

5.9 DEFINITIONS

1. For purpose of FTP, unless context otherwise requires, the following words and expressions shall have the following meanings attached to them:-

2. "Accessory" or "Attachment" means a part, sub-assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions.

3. "Act" means Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) [FT (D&R) Act] as amended from time to time.

4. "Actual User" is a person (either natural or legal) who is authorized to use imported goods in his/ its own premise which has a definitive postal address.

   (a) "Actual User (Industrial)" is a person (either natural & legal) who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit which has a definitive postal address.

   (b) "Actual User (Non-Industrial)" is a person (either natural & legal) who utilizes the imported goods for his own use in:

      (i) any commercial establishment, carrying on any business, trade or profession, which has a definitive postal address; or

      (ii) any laboratory, Scientific or Research and Development (R&D) institution, university or other educational institution or hospital which has a definitive postal address; or

      (iii) any service industry which has a definitive postal address.

5. "AEZ" means Agricultural Export Zones notified by DGFT in Appendix 2V of Appendices and Aayat Niryat Forms.

6. "Appeal" is an application filed under section 15 of the Act and includes such applications preferred by DGFT officials in government interest against decision by designated adjudicating/ appellate authorities.

7. "Applicant" means person on whose behalf an application is made and shall, wherever context so requires, includes person signing the application.

8. "Authorization" means permission as included in Section 2 (g) of the Act to import or export as per provisions of FTP.

9. "Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.

   Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

10. "Competent Authority" means an authority competent to exercise any power or to discharge any duty or function under the Act or the Rules and Orders made there under or under FTP.

11. "Component" means one of the parts of a sub-assembly or assembly of which a manufactured product is made up and into which it may be resolved. A component includes an accessory or attachment to another component.

12. "Consumables" means any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end-product. Items, which are substantially or totally consumed during a manufacturing process, will be deemed to be consumables.

13. "Consumer Goods" means any consumption goods, which can directly satisfy human needs without further processing and includes consumer durables and accessories thereof.

14. "Counter Trade" means any arrangement under which exports/imports from /to India are balanced either by direct imports/exports from importing/exporting country or through a third country under a Trade Agreement or otherwise.

    Exports/ Imports under Counter Trade may be carried out through Escrow Account, Buy Back arrangements, Barter trade or any similar arrangement. Balancing of exports and imports could wholly or partly be in cash, goods and/or services.

15. "Developer" means a person or body of persons, company, firm and such other private or government undertaking, who develops, builds, designs, organises, promotes, finances, operates, maintains or manages a part or whole of infrastructure and other facilities in SEZ as approved by Central Government and also includes a co- developer.

16. "Development Commissioner" means Development Commissioner of SEZ

17. "Domestic Tariff Area (DTA)" means area within India which is outside SEZs and EOU/ EHTP/ STP/ BTP.

18. "Drawback on deemed export" in relation to any goods manufactured in India and supplied as deemed exports, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods.

19. "EOU" means Export Oriented Unit for which a letter of permit has been issued by Development Commissioner.

20. "Excisable goods" means any goods produced or manufactured in India and subject to duty of excise under Central Excise and Salt Act 1944 (1 of 1944).

21. "Export" is as defined in FT (D&R) Act, 1992, as amended from time to time.

22. "Exporter" means a person who exports or intends to export and holds an IEC number, unless otherwise specifically exempted.

23. "Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

24. "Free" as appearing in context of import/export policy for items means goods which do not need any 'Authorisation'/ License or permission for being imported into the country or exported out.

25. "FTP" means the Foreign Trade Policy which specifies policy for exports and imports under Section 5 of the Act.

26. "Import" is as defined in FT (D&R) Act, 1992 as amended from time to time.

27. "Importer" means a person who imports or intends to import and holds an IEC number, unless otherwise specifically exempted.

28. ITC (HS) refers to Indian Trade Classification (Harmonized System) at 8 digits.

29. "Jobbing" means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part of process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process.

30. "Licensing Year" means period beginning on the st st 1 April of a year and ending on the 31 March of the following year.

31. "Managed Hotel" means hotels managed by a three star or above hotel/ hotel chain under an operating management contract for a duration of at least three years between operating hotel/ hotel chain and hotel being managed. Management contract must necessarily cover the entire gamut of operations/ management of managed hotel.

32. "Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering.

Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.

33. "Manufacturer Exporter" means a person who exports goods manufactured by him or intends to export such goods.
34. "Merchant Exporter" means a person engaged in trading activity and exporting or intending to export goods.
35. "NC" means the Norms Committee in the Directorate General of Foreign Trade for approval of adhoc input –output norms in cases where SION does not exist and recommend SION to be notified in DGFT.
36. "Notification" means a notification published in Official Gazette.
37. "Order" means an Order made by Central Government under the Act.
38. "Part" means an element of a sub-assembly or assembly not normally useful by itself, and not amenable to further disassembly for maintenance purposes. A part may be a component, spare or an accessory.
39. "Person" means both natural and legal and includes an individual, firm, society, company, corporation or any other legal person including the DGFT officials.
40. "Policy" means Foreign Trade Policy (2015-2020) as amended from time to time.
41. "Prescribed" means prescribed under the Act or the Rules or Orders made there under or under FTP.
42. "Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted.
43. "Public Notice" means a notice published under provisions of paragraph 2.04 of FTP.
44. "Quota" means the quantity of goods of a specific kind that is permitted to be imported without restriction or imposition of additional Duties.
45. "Raw material" means input(s) needed for manufacturing of goods. These inputs may either be in a raw/natural/ unrefined/ unmanufactured or manufactured state.
46. "Regional Authority" means authority competent to grant an Authorisation under the Act / Order.
47. "Registration-Cum-Membership Certificate" (RCMC) means certificate of registration and membership granted by an Export Promotion Council / Commodity Board / Development Authority or other competent authority as prescribed in FTP or Handbook of Procedures.
48. "Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an authorization from the offices of DGFT.
49. "Rules" means Rules made by Central Government under Section 19 of the FT (D&R)Act.
50. "SCOMET" is the nomenclature for dual use items of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET). Export of dual-use items and technologies under India's Foreign Trade Policy is regulated. It is either prohibited or is permitted under an authorization.
51. "Services" include all tradable services covered under General Agreement on Trade in Services (GATS) and earning free foreign exchange.
52. "Service Provider" means a person providing:
    (i) Supply of a 'service' from India to any other country; (Mode1- Cross border trade)
    (ii) Supply of a 'service' from India to service consumer(s) of any other country; (Mode 2- Consumption abroad)
    (iii) Supply of a 'service' from India through commercial presence in any other country. (Mode 3 – Commercial Presence.)
    (iv) Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4- Presence of natural persons.)

53. "Ships" mean all types of vessels used for sea borne trade or coastal trade, and shall include second hand vessels.

54. "SION" means Standard Input Output Norms notified by DGFT.

55. "Spares" means a part or a sub-assembly or assembly for substitution that is ready to replace an identical or similar part or sub- assembly or assembly. Spares include a component or an accessory.

56. "Specified" means specified by or under the provisions of this Policy through Notification / Public Notice.

57. "Status holder" means an exporter recognized as One Star Export House/ Two Star Export House / Three Star Export House / Four Star Export House/ Five Star Export House by DGFT/ Development Commissioner.

58. "Stores" means goods for use in a vessel or aircraft and includes fuel and spares and other articles of equipment, whether or not for immediate fitting.

59. (a) "Supporting Manufacturer" is one who manufactures goods/products or any part/ accessories/components of a good/product for a merchant exporter or a manufacturer exporter under a specific authorization.

    (b) "Supporting Manufacturer" for the EPCG Scheme shall be one in whose premises/factory Capital Goods imported/ procured under EPCG authorization is installed.

60. State Trading Enterprises (STEs), for the purpose of this FTP, are those entities which are granted exclusive right / privileges export and / or import as per para 2.20 (a) of FTP.

61. "Third-party exports" means exports made by an exporter or manufacturer on behalf of another exporter(s).

    In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter /manufacturer and third party exporter(s). Bank Realisation Certificate, Self Declaration Form (SDF), export order and invoice should be in the name of third party exporter.

62. "Transaction Value" is as defined in Customs Valuation Rules of Department of Revenue.

63. "Wild Animal" means any wild animal as defined in Section 2(36) of Wildlife (Protection) Act, 1972.

The following annexures and appendices are required to be certified by the Cost Accountants:

Appendix -5B	Certificate of Chartered Accountant/ Cost Accountant/ Company Secretary (For Issue of EPCG Authorisation)
Appendix- 5C	Certificate of Chartered Accountant/ Cost Accountant/ Company Secretary (For Redemption of EPCG Authorization / Issuance of Post Export EPCG Duty Credit Scrip)
Annexure to Appendix 2 L	Certificate for Offsetting of Export Proceeds
Appendix -4H	Register for Accounting the Consumption and Stocks of Duty Free Imported or Domestically Procured Raw Materials, Components etc. Allowed Under Advance Authorisation / DFIA
Appendix -3B	List of products and list of markets eligible under Merchandise Exports from India Scheme (MEIS)
Appendix- 3C	List of eligible category under MEIS if exported through using E-commerce platform
Appendix- 3D	List of Services eligible under Service Exports from India Scheme (SEIS)
Appendix -3E	List of services where payment has been received in Indian rupees which can be treated as receipt in Deemed Foreign Exchange as per guidelines of Reserve Bank of India

Study Note -6

Point ii and iii under Point 6.1.1 [Statutes Governing the Levy of Service Tax] in Page No. 6.1 — Removed

Point (x) under Point 6.1.4 [Salient features of levy of service tax] in Page No. 6.3 — Modified

(x) Rate of service tax: The rate of service tax specified under section 66B is **14%** of value of taxable services. **Swachh Bharat Cess has been levied u/s 119 of Finance Act, 2015 @ 0.5% w.e.f. 15-11- 2015 on value of taxable services. Hence, effective rate of charge of service tax is 14.5% of value of taxable service.**

Point 6.1.5 [Concept of charge of service tax] in Page No. 6.4 — Modified

Charge of service tax on and after Finance Act, 2012 [Section 66B]: There shall be levied service tax at the rate of **14.5%** on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Essentials for charge of service tax: Thus, important ingredients for charge of service tax are -

(i) The service should have been provided or agreed to be provided.

(ii) The service should be provided for a consideration.

(iii) The service should be provided by one person to another person.

(iv) The service should be provided in taxable territory *(i.e.* India excluding State of Jammu & Kashmir) as per Place of Provision of Service Rules, 2012.

(v) Services must not be specified in the negative list.

(vi) Service tax is levied @ **14%** (increased by **Swachh Bharat Cess @ 0.5%**) of value of taxable service. Hence, effective rate is **14.5%** of value of taxable service.

(vii) Service tax is collected in such manner as may be prescribed (i.e. in accordance with Service Tax Rules, 1994).

Explanation 2 of Point 6.1.7 [Service] in Page No. 6.5 — Modified

Explanation 2:

(i) For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.

Point (2)(a) under Point 6.1.7 [Service] in Page No. 6.6 — Modified

Person [Section 65B(37)]: Person includes, -

- an individual,
- a Hindu undivided family,
- a company,
- a society,
- a limited liability partnership,
- a firm,
- an association of persons or body of individuals, whether incorporated or not,
- Government,

Government [Section 65B (26A), inserted by the Finance Act, 2015, w.e.f. 14.05.2015]:

"Government" means —

(i) the Departments of the Central Government,

(ii) a State Government and its Departments and

(iii) a Union territory and its Departments,

but shall not include any entity, —

(A) whether created by a statute or otherwise,

(B) the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder.

- a local authority, or
- every artificial juridical person, not falling within any of the preceding sub-clauses.

Point (1)(iv) under heading "Exclusions from the definition of Service / Activities not covered under Service" in Page No. 6.10 — Modified

(iv) Activities relating to use of money or its conversion into another form/ currency/ denomination for consideration included in definition of service [Explanation 2]:

(A) Activities relating -

- to use of money; or
- its conversion from one form, currency or denomination to another form, currency or denomination;

for which a separate consideration is charged; shall be included as 'service'.

(B) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.

Example 9 under Point 6.2.9 [Input Service Distributor] in Page No. 6.16 — Modified

X Ltd. has three units namely:

Place	Nature	Turnover for the April 2015 (₹)	Output
Chennai	Factory	2,50,000	Dutiable goods
Bangalore	Factory	1,50,000	Dutiable goods
Hyderabad	Service unit	1,10,000	Taxable service
Total		**5,10,000**	

M/s Mudra Pvt. Ltd an advertising agency provided services for ₹ 3,00,000 in the month April 2015 by charging Service Tax @14.5% to X Ltd. to promote products of Chennai and Bangalore factories. However, Hyderabad unit not received input services from M/s Mudra Pvt. Ltd.

In the given case X Ltd can distribute the CENVAT CREDIT on input service to Chennai and Bangalore factory, in respect of their turnover ratio. It means input service distributor should not distribute the CENVAT CREDIT on input service to the Hyderabad unit. Since, this unit were not received any input service.

4th line of Point (i) under Joint Charge Mechanism in Page No. 6.17 — Modified

Insurance Services: General Insurance Services or Life Insurance Services provided by the insurance agents to the insurance company. Hence, the insurance company being recipient of service is liable to pay service tax. However, an option to pay service tax at a rate other than standard rate (i.e. **14.5%)** is given an insurer carrying on life insurance business……

Point x, xi, xii inserted under List 1 - Service under Full Reverse Charge Mechanism in Page No. 6.19 — inserted

x.	Lottery agents	Selling or marketing agent of lottery tickets	Nil	100%
xi.	Manpower/ Security	Any individual/ HUF/ Firm/ LLP/ AOP located in taxable territory by way of — • supply of manpower for any purpose or, • security services	Nil [25% upto 31.03.2015]	100% [75% upto 31.03.2015]
xii.	Mutual Fund agent	Mutual Fund agent or distributor	Nil	100%

Table under List 2 - Service under Partial Reverse Charge Mechanism in Page No. 6.20 — Modified

List 2 - Service under Partial Reverse Charge Mechanism:

S. No.	Nature of Service	Description of services	Percentage of Service tax payable by the person providing service	Percentage of Service tax payable by the person receiving the service
i.	Rent-a-cab Service	Hiring of a motor vehicle designed to carry passengers (a) With abatement (i.e. 60%) (b) Without abatement	 Nil 50%	 100% 50%
ii.	Works contract service	Works contract service	50%	50%

Table under Interest on delayed payment of service tax - Section 75 of the Finance Act, 1994 in Page No. 6.22 — Modified

Sr. No.	Period	Rate of Interest
i.	Till 11-5-2001	1.5% per month
ii.	11-5-2001 to 11-5-2002	24% per annum
iii.	11-5-2002 to 10-9-2004	15% per annum
iv.	From 10-9-2004 to 31-3-2011	13% per annum
v.	From 1-4-2011	15% per annum (whose annual turnover of taxable services during the previous year is ₹ 60 lakh).
vi.	From 1-10-2014	Extent of delay for those assessees whose annual turnover exceeds ₹60 lacks in the previous year up to 6 months 18% From 6 months and upto 1 year 24% More than one year 30% Extent of delay for small assessees having annual turnover upto ₹60 lacks in the previous year up to 6 months 15% p.a. From 6 months and upto 1 year 21% p.a. More than one year 27% p.a.

Table under Point 6.6 [Rate of Service Tax] in Page No. 6.22 — Modified

The table below shows the rate of service tax applicable at the relevant period of time:

Sr. No.	Period	Rate of Service Tax	Rate of Education Cess
i.	Till 13-5-2003	5%	Nil
ii.	14-5-2003 to 9-9-2004	8%	Nil
iii.	10-9-2004	10%	2% of the S.T.
iv.	18-4-2006 onwards	12%	2% of the S.T. and 1% SAH w.e.f. 11th May 2007
v.	w.e.f. 24-2-2009	10%	2% plus 1% cess
vi.	w.e.f. 01 -04-2012	12%	2% plus 1% cess
vii.	w.e.f. 15 -11-2015	14.5% (including Swachh Bharat Cess	

Note: SAH means Secondary and Higher Education Cess.

Example 19-21 under Reverse Charge in Page No. 6.26 — Modified

Example 19: ABT transport providing goods transport services. 'A Ltd' sold goods from Mumbai to 'B Ltd' of Chennai. Freight charged by ABT transport for transporting said goods is ₹ 1,00,000 (exclusive of ST) as per consignment note, dated 1st July 2014. Freight paid by A Ltd on 15th September 2015.

You are required to answer:

(a) Name of provider of service and recipients of service?

(b) Who is liable to pay service tax and why?

(c) Due date of payment of service tax?

(d) Service Tax liability?

Answer :

(a) Service provider → 'ABT' transport services.
Service recipients → Both 'A Ltd' & 'B Ltd'.

(b) Either 'A Ltd' (or) 'B Ltd' being the recipients of the services. However, in the given case A Ltd is liable to pay service tax, since, freight paid by A Ltd.

(c) 6th October, 2014. In any other case 5th October, 2014.

(d)

Service tax liability	₹
Total amount of freight paid	1,00,000
Less: Abatement of 75% on the value of freight (₹ 1,00,000 x 75%)	(75,000)
Taxable Services	25,000

Service tax = ₹ 3,625 *(i.e.* ₹ 25,000 * 14.5/100)

Example 20: A Ltd. provided services valuing ₹ 8 lakhs during the financial year 2014-15. During 2015-2016, it has provided taxable services valuing ₹ 10 lakhs and has received payments towards payable services ₹ 8.5 lakhs. It has also received services in the nature of transport of goods by road on 1-4-2015, valuing ₹ 50,000 (exclusive of service tax), in respect of which it is the person liable to pay service tax. Freight has been paid on 10-6-2015. Compute the service tax, if any, payable by A Ltd. for the financial year 2015-2016. It is given that goods transport service is exempt to the extent of 75% of value thereof.

Answer :

Value of transport services received	=	₹ 50,000
Less: abatement 75% on ₹ 50,000	=	₹ 37,500
Taxable services		₹ 12,500
Service tax liability in the hands of A Ltd (2015-16)	=	₹ 1,812.50 (i.e. ₹ 12,500 x 14.5/100)

Note:

(i) The company is eligible for small service provider exemption during the financial year 2015-16, as the value of taxable services provided during financial year 2014-15 does not exceed ₹ 10 lakhs.

(ii) For the value of taxable services provided during the financial year 2015-16, no tax liability would arise, as the payments received or services provided do not exceed ₹ 10 lakhs. However, for goods transport agency services received, in respect of which M/s. A Ltd. is the person liable to pay service tax, the company cannot claim for small service provider exemption.

Interest

Example 21: Mr. X practicing Cost Accountant received ₹ 20,00,000 (exclusive of service tax)in the June 2015. He paid service tax on 26th July 2015. Gross receipt in the year 2014-15 is ₹ 25 lakhs.

You are required to calculate Interest on delay payment of service tax.

Answer :

Service tax @14.5% on ₹ 20,00,000 = ₹ 2,90,200.

Due date of payment of service tax = 6th July, 2015.

No. of days delay = 20 days

Interest = ₹ 2,383.56 (i.e. ₹ 2,90,000 × 15/100 × 20/365)

[Rest of the examples/ illustrations to be solved after considering service tax @14.5% in the same manner]

Point No. (5), (6), (9), (10), (11), (14) in Negative List in Page No. 6.28 — Modified

(5) Trading of goods	• Forward contracts in commodities • Commodity futures.	• Auxiliary services relating to future contracts or commodity futures provided by commodity exchanges, clearing houses or agents.	
(6) Process amounting to manufacture or production of goods	• Process for which Excise duty Exempted (i.e. Non-dutiable goods). • Excisable goods for which Central Excise Duty or State Excise are leviable.	Process do not amounting to manufacture. Alcoholic liquor for human consumption are also exempted from negative list.	Exemptions: • Job work in relation to agriculture, printing or textile processing • Cut and polished diamonds, jewellery • E.D. paid by manufacturer • Job work charges Upto ₹ 150 Lacs in relation to parts of cycles or sewing machines provided P.Y. ≤ ₹ 150 Lacs.
(9) Betting, gambling or lottery	Betting, gambling or lottery	• Auxiliary services used for organising/ promoting betting or gambling events • Discount earned by the lottery distributors/ agents • Service of promotion, marketing, organising etc. of lottery • Distributor or selling agent has option to pay S.T. at composition scheme as per Rule 6(7C) of Service Tax Rules, 1994.	Services by selling/ marketing agent of lottery tickets to a distributor or a selling agent were exempt from service tax. Now, this exemption has been withdrawn. These services are covered under 100% reverse charge and the distributor or selling agent of lottery would be liable to pay service tax.

(10) admission to entertainment events or access to amusement facilities — Not in Negative List [Service Tax leviable subject to exemptions]			
(11) Transmission or distribution of electricity by an Electricity transmission or distribution utility	Services provided by • The Central Electricity Authority • A State Electricity Board • A State Transmission Utility	Charges collected by a developer or a housing society for distribution of electricity within a residential complex Installation of gensets	
(14) Banking, financial and insurance services	I. Extending deposits, loans, or advances in so far as the consideration is represented by way of interest or discount II. Foreign currency exchange amongst banks or authorized dealers	• Interest portion of leasing or hire purchase after claiming an abatement @90%. • All other services of a banker or financial and insurance services • Foreman of chit fund liable to pay service tax without any abatement.	

1st line of Point (2) [Health Care Services] under Point 6.11.3 [Mega Exemptions] in Page No. 6.36 — Modified

Services in recognized systems of medicines in India are exempt. **Health care services included:**

(i) Health care services by a clinical establishment, an authorised medical practitioner or paramedics;

(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.

In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines ……

Point (b) of Point (4) [Services by an entity registered under section 12AA of the Income tax Act, 1961 by way of charitable activities] under Point 6.11.3 [Mega Exemptions] in Page No. 6.37 — Modified

(b) advancement of religion, spirituality **or yoga**.

Point (9) [Exemption for services provided to or by an educational institution] under Point 6.11.3 [Mega Exemptions] in Page No. 6.38 — Modified

(9) Exemption for services provided to or by an educational institution:

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of

(i) transportation of students, faculty and staff;

(ii) catering, including and mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or housekeeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution.

(9A) Any services provided by-

(i) the National Skill Development Council set up by the Government of India.

(ii) a Sector Skill Council approved by the National Skill Development Corporation;

(iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;

(iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council;

In relation to (a)the National Skill Development Programme implemented by the National Skill Development Corporation; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National Skill Development Corporation.

Point (12) [Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration] under Point 6.11.3 [Mega Exemptions] in Page No. 6.39 — Modified

Exemption is available to the services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

A. Omitted.

B. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958

C. Omitted.

D. canal, dam or other irrigation works

E. pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal

F. Omitted.

Point (16) [Services by artist in relation to folk or classical art] under Point 6.11.3 [Mega Exemptions] in Page No. 6.40 — Modified

The following services are exempted from service tax if provided by a performing artist in folk or classical

art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador; and if the consideration charged for such performance is not more than ₹ one lakh.

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are not subjected to service tax. All other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.

Point (20) [Exemption for transportation of certain goods, by rail or a vessel] under Point 6.11.3 [Mega Exemptions] in Page No. 6.41 — Modified

Services by way of transportation by rail or a vessel from one place in India to another of the following goods are exempted from service tax; -

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap

(c) defence or military equipments;

(f) newspaper or magazines registered with the Registrar of Newspapers; (g) railway equipments or materials;

(h) agricultural produce;

(i) milk, salt and food grain including flours, pulses and rice;

(j) chemical fertilizer, organic manure and oil cakes; or

(k) cotton, ginned or baled.

Point (21) [Services by transport of essential goods etc by Goods Transport Agency (GTA) & Rail/vessel] under Point 6.11.3 [Mega Exemptions] in Page No. 6.42 — Modified

Services provided by a goods transport agency by way of transportation of -

(a) Agriculture produce;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;

(d) Milk, salt, food grain including flours, pulses and rice;

(e) Chemical fertilizer, organic manure and oil cakes;

(f) Newspaper or magazines registered with the registrar of newspapers;

(g) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(h) Defense or military equipments:

(i) cotton, ginned or baled

Point (26) [Services of General insurance Business under the specified scheme] under Point 6.11.3 [Mega Exemptions] in Page No. 6.42 — Modified

Services of general insurance business provided under following schemes are exempted from service tax:

(a) Hut Insurance Scheme;

(b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

(c) Scheme for Insurance of Tribals;

(d) Janata Personal Accident Policy and Gramin Accident Policy;

(e) Group Personal Accident Policy for Self-Employed Women;

(f) Agricultural Pumpset and Failed Well Insurance;

(g) premia collected on export credit insurance;

(h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme approved by the Government of India and implemented by the Ministry of Agriculture;

(i) Jan Arogya Bima Policy;

(j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

(k) Pilot Scheme on Seed Crop Insurance;

(l) Central Sector Scheme on Cattle Insurance;

(m) Universal Health Insurance Scheme;

(n) Rashtriya Swasthya Bima Yojana; or

(o) Coconut Palm Insurance Scheme;

(p) Pradhan Mantri Suraksha Bima Yojana.

Point (26A) [Service of Life Insurance business provided under following schemes] under Point 6.11.3 [Mega Exemptions] in Page No. 6.43 — Modified

(a) Janashree Bima Yojana (JBY); or

(b) Aam Aadmi Bima Yojana (AABY).

(c) life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees.

(d) Varishtha Pension Bima Yojana

(e) Pradhan Mantri Jeevan Jyoti Bima Yojana

(f) Pradhan Mantri Jan Dhan Yojana.

Point (29) [Services by the specified persons in respective categories are exempted from service tax] under Point 6.11.3 [Mega Exemptions] in Page No. 6.43 — Modified

Services by the following persons in respective capacities -

(a) sub-broker or an authorised person to a stock broker;

(b) authorised person to a member of a commodity exchange;

(f) selling agent or a distributer of SIM cards or recharge coupon vouchers;

(g) business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding;

(ga) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in (d) above;

(gb) business facilitator or a business correspondent to an insurance company in a rural area; or

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

Point (30) [Services by way of job work] under Point 6.11.3 [Mega Exemptions] in Page No. 6.44 — Modified

Carrying out an intermediate production process as job work exempted from service tax if these services are in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1 985 (5 of 1986);

(c) any goods excluding alcoholic liquors for human consumption on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

Point (32) [Services by making telephone calls] under Point 6.11.3 [Mega Exemptions] in Page No. 6.44 — Omitted w.e.f. 01.04.2015

Point (37) [Services by way of transfer of a going concern] under Point 6.11.3 [Mega Exemptions] in Page No. 6.45 — Modified

Services by way of transfer of a going concern, as a whole or an independent part thereof; exempted from service tax. Predominant transfer of activity comprising service is not covered under exemption.

Point 43-47 under Point 6.11.3 [Mega Exemptions] in Page No. 6.45 — inserted

(43) Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;

(44) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;

(45) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;

(46) Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;

(47) Services by way of right to admission to,-

(i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;

(ii) recognised sporting event;

(iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than ₹ 500 per person.

Point (xaa) after Point (xa) under Useful Definition in Page No. 6.47 — Inserted

(xaa) "national park' has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

Point (zab) after Point (zaa) under Useful Definition in Page No. 6.47 — Inserted

(zab) "recognised sporting event" means any sporting event,-

(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country; (ii) covered under entry 11.

Point after (zh) under Useful Definition in Page No. 6.48 — Modified

(zi) "tiger reserve" has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972);

(zj) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

(zk) "wildlife sanctuary" means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

(zl) "zoo" has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972).']

Serial No. 2,3,5,7,8,10 under Point 6.11.4 [Abatement Notification – Notification No. 26/2012] in Page No. 6.48 — Modified

TABLE

Sl No.	Description of taxable service	Percentage taxable sevice payable	Conditions
(1)	(2)	(3)	(4)
2	Transport of goods by rail	30	70% abatement is allowed, if Cenvat credit on — • inputs, capital goods and input services, • used for providing the taxable service, has not been taken under the Cenvat Credit Rules, 2004

Sl No.	Description of taxable service	Percen-tage taxable sevice payable	Conditions
(1)	(2)	(3)	(4)
3	Transport of passengers, with or without accompanied belongings by rail	30	70% abatement is allowed, if Cenvat credit on — • inputs, capital goods and input services, • used for providing the taxable service, has not been taken under the Cenvat Credit Rules, 2004
5	Transport of passengers by air, with or without accompanied belongings (i) Economy class (ii) Other than economy class	 40 60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions ot the CENVAT Credit Rules, 2004.
7	Services of goods transport agency in relation to transportation of goods.	30	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit [withdrawn]		
10	Transport of goods in a vessel	30	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Rule 8A [Determination of point of taxation in case of copyrights, etc. (w.e.f 1-4-2012)] of Point of Taxation Rules in Page No. 6.57 — Modified

Rule 8A: POT in other cases [Best Judgment Assessment of POT]

1st part of Explanation to Section 67 [Following terms have been explained in Section 67 by way of an Explanation] in Page No. 6.81— Modified

Explanation — For the purposes of this section, —

(i) "Consideration" includes any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

3rd line of Point "Associated enterprises" under heading 6.15.2 [Date of determination of rate of tax, value of taxable service and value of exchange] in Page No. 6.87 — Modified

Service tax is levied at the rate of 14.5% of the value of taxable services (section 66)……..

From Point 6.15.4 [Determination of value under the Service Tax (Determination of Value) Rules, 2006 – Notification No. 12/2006-S.T., dated 19-4-2006 as amended] to Point 6.15.7 [Inclusion / exclusion of Commission, Costs etc. in Value (Rule 6)] from Page No. 6.92 — Modified

6.15.4 Determination of value under the Service Tax (Determination of Value) Rules, 2006 - Notification No. 12/2006-S.T., dated 19-4-2006 as amended :

The Service Tax (Determination of Value) Rules, 2006 has been notified vide Notification No. 12/2006-S.T., dated 19-4-2006. The said Rule has been amended from time to time. The salient features of changes made to the said Rules of 2006 are as follows :

(i) The Works Contract (Composition Scheme for Payment of Service Tax) has been merged into valuation of works contract service in rule 2A vide Notification No. 24/2012-S.T., dated 6-6-2012 and Notification No. 11/2014-S.T., dated 11-7-2014 w.e.f. 1-10-2014.

(ii) The new rule 2C is for determining the value of service involved in supply of food or any other article of human consumption or outdoor catering.

(iii) There are changes in rules 3, 5 and 6.

(iv) Rule 7 has been omitted.

(v) All notifications that prescribed the abatements for working out the taxable value from the gross amount charged have been merged into one single Notification No. 26/2012-S.T., dated 20-6-2012.

(A) Determination of value of taxable services involved in execution of works contract - Rule 2A of the Rules of 2006 as substituted vide Notification No. 24/2012-S.T., dated 6-6-2012 w.e.f. 1-7-2012 and amended Notification No. 11/2014-S.T., dated 11-7-2014 :

Rule 2A, as substituted vide Notification No. 24/2012-S.T., dated 6-6-2012, stipulates about determination of value of service portion in the execution of a works contract. Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner.

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract. When 'A' states that the gross amount charged for the works contract is ₹ 20 lakhs, the value of property in goods which is say ₹ 15 lakhs shall have to be excluded from the declared value of works contract of ₹ 20 lakhs. The explanation provides to exclude the value added tax or as the case may be sales tax from the said value of works contract but the value has to include the cost incurred in execution of works contract.

The Provisions are as below :

Explanation. - For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract; but the value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined in the manner explained supra, the person liable to pay tax on the service portion involved in the execution of the works contiact shall determine the service tax payable in the following manner, namely :-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent, of the total amount charged for the works contract;

(B) in case of works contracts, not covered under sub-clause (A), including works contract entered into for,-

(i) maintenance or repair or reconditioning or restoration or servicing of any goods,

(ii) maintenance, repair, completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of an immovable property;

Service tax shall be payable on seventy per cent, of total amount charged for the works contract.

The explanation has defined the terms 'original works', 'total amount' and not availing Cenvat credit as specified below:

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2. - For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

The non-availability of Cenvat is in relation to the work contract and not service portion of the work contract.

(B) Determination of value of service in relation to money changing - Rule 2B :

Rule 2B was inserted vide Notification No. 2/2011-S.T., dated 1-3-2011 w.e.f. 1-4-2011 and further amended by Notification No. 24/2012-S.T. omitting the words, brackets, letters and figures "referred to in sub-clauses (zm) and (zk) of clause (105) of section 65 of the Act". The value of taxable service in relation to purchase and sale of foreign currency including money changing shall be determined by the service provider in the following manner :

1. For a currency, when exchanged from or to Indian Rupees, the value shall be equal to the difference in buying rate or selling rate, as the case may be, and the Reserve Bank of India reference rate of that currency at that time, multiplied by total units of currency.
2. Where the RBI reference rate for that currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money.
3. Where neither of the currencies exchanged is Indian Rupees, the value shall be equal to 1% of lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupees on that day at the reference rate provided by RBI.

(C) Determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering - Rule 2C - Notification No. 24/2012-S.T., dated 6-6-2012 :

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table. The rule 2C provides abatement when food or any other article of human consumption is supplied as part of the activity of restaurant or catering service. The explanations clarify the connotation of 'total amount' and non-availment of Cenvat credit while rendering such service at percentage as specified in the table below :

TABLE

Sl. No.	Description	Percentage of the total amount
(1)	(2)	(3)
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60

Explanation 1. - For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon :

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2. - For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).".

(D) Manner of determination of value - Rule 3 :

Notification No. 24/2012-S.T., dated 6-6-2012 has replaced the words "where the consideration received is not wholly or partly consisting of money" by the words "where such value is not ascertainable". The value of taxable services where such value is not ascertainable shall be determined in the following manner:

(i) The value of taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration. When 'A' provides service of consultancy to 'B' free of charge, whereas for similar consultancy, 'A' charges 'C ₹ 1000, the value of ₹ 1000 is to be adopted for levy of service tax for service of consultancy provided to 'B'.

(ii) Where the value cannot be determined under clause (i) above, the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service. If the cost of providing service of testing a product is ₹ 55, the value shall not be less than ₹ 55.

(E) Rejection of declared value by the Central Excise Officer - Rule 4 :

Rule 4 of the said Rules states that notwithstanding the provisions in Rule 3 supra, the central excise officer can determine the value of taxable service after calling information, document, etc from the service provider and there after following the due process of law i.e. issue of notice and affording adequate opportunity of explaining his case by the notice shall determine the value. The instructions issued vide F. No. B-1/4/2006-TRU, dated 19-4-2006 has clarified that the department shall use this provision with extreme care and caution. Such verification shall be undertaken only after the written instructions from the divisional AC/DC. After verification of the records, if the department is of the view that the value so determined and adopted for payment of service tax warrants revision, the issue should be decided after issue of show cause notice and observing the prescribed procedure. Before issue of any show cause notice on matters relating to valuation, concurrence of '[Principal Commissioner or Commissioner] shall be obtained.

(F) Inclusion & Exclusion of expenses from value of certain expenditure or costs - Rule 5 :

Notification No. 24/2012-S.T., dated 6-6-2012 has substituted the terms "the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service has been actually provided" in place of "services specified in sub-clause (zzzx) of clause (105) of section 65 of the Finance Act, 1994, the value of taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority".

Rule 5 of the said Rules refers to inclusion or otherwise of the reimbursable expenditure. Since value as provided in Section 67 of the Act, is the gross amount received as consideration for provision of service, all expenditures or costs incurred by the service provider in the course of providing such service shall form the integral part of the taxable value and are includible in the .value irrespective of the facts whether such expenditures/costs are separately indicated in the invoice or bill issued by the service

provider to his client. The value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.

However, Rule 5(2) states that the expenditure or costs incurred by the service provider, as ***pure agent of the recipient of service*** shall be excluded from the value of service subject to fulfilment of all conditions mentioned in the said sub-rule. The conditions stipulate therein are as follows :

1. The service provider acts as pure agent of the recipient of service when he makes payment to third party for the goods or services so procured.
2. The recipient of services receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service.
3. The recipient of service is liable to make payment to the third party.
4. The recipient of service authorizes the service provider to make payment in his behalf.
5. The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by third party.
6. The payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service.
7. The service provider recovers from the recipient of service only such amount as has been paid by him to the third party.
8. The goods or services procured by the service provider from the third party as pure agent of the recipient of service are in addition to the services he provides on his account.

The explanation defines pure agent to mean a person who:

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the receiver of service;

(c) does not use such goods or services procured; and

(d) receives only the actual amount incurred to procure such goods or services.

The second explanation further states that 'the value of taxable service is the total amount of consideration consisting of all components of taxable service and it is immaterial that the details of individual components of the total consideration are indicated separately in the invoice'.

There are four illustrations as to inclusion of cost of expenditure to the gross amount. Cost of advertisement for selling property is input service and has to be included by the real estate agent. The cost incurred for traveling, postage, telecommunication etc. even if shown separately in the invoice is not reimbursable expenses as those have been incurred while rendering the service and not as pure agent. If the expenditure on food and accommodation of the driver is realized from the customer, the same has to be included for determination of gross amount.

The same service cannot be taxed twice and the provisions have been made to avoid such eventuality.

Illustration 1.

X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in newspaper. Y billed X including charges for newspaper advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. X cannot contend that Y acted as agents on his behalf when obtaining newspaper advertisement even if the cost of newspaper advertisement is mentioned separately in the bill. Such services are in the nature of input services for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Illustration 2.

To provide a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., in the course of providing a taxable service and may indicate these items separately on the invoice to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procure the inputs or input service on his own account for providing the taxable service. Merely because such expenses are shown separately in an invoice do not mean that they are reimbursable expenditure.

Illustration 3.

A contracts with B, an architect for building a house. During the course of providing the taxable service B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him effectively to perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. It is quite immaterial how the service provider computes the charges or how they break their invoice or bill down. Consideration for the service is what A pays B which is the taxable value for the purposes of levy of service tax.

Illustration 4.

To provide a taxable service of rent-a-cab, company X provides chauffeurs for overseas visitors. The chauffeur is given a lump sum amount during the tour to cover his food and overnight accommodation and any other incidental expenses such as parking fees. At the end of the tour, he returned the balance of the amount with a statement of his expenses and the relevant bills. Company X charged these amounts from the recipients of service. In such a case, the cost incurred by the chauffeur and billed to the recipient of service constituted part of the consideration for the provision of services by the company.

An explanation has been added after rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 clarifying that for the purpose of telecommunication service [Section 65(105)(zzzx)] the value shall be the gross amount paid by the person to whom the service is provided by the telegraph authority. Thus, in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority. This amendment shall come into force on 1.3.2011. Vide Notification No. 24/2012-ST, dated 6-6-2012, it has been provided that w.e.f. 1-7-2012, value of telecommunication services shall be the gross amount paid by the person to whom telecommunication service is actually provided.

On reimbursable expenditure, it has been clarified by CBEC vide Letter No. B1/4/2006 dated 19.4.2006 as under -

Value for the purpose of charging service tax is the gross amount received as consideration for provision of service. All expenditures or costs incurred by the service provider in the course of providing a taxable service forms integral part of the taxable value and are includable in the value. It is not relevant that various expenditure or costs are separately indicated in the invoice or bill issued by the service provider to his client.

The service provider in the course of providing any taxable service may incur certain expenditure or cost as a pure agent of the client. The service provider seeks to exclude such expenditure or cost incurred by him as a pure agent of his client (generally known as reimbursable expenditure) from the value of the taxable services.

There could be situations where the client of the service provider specifically engages the service provider, as his agent, to contract with the third party for supply of any goods or services on his behalf. In those cases such goods or services so procured are treated as supplied to the client rather than to the contracting agent. The service provider in such cases incurs the expenditure purely on behalf of his client in his capacity as agent of the client. Amounts paid to the third party by the service provider as a pure agent of his client can be treated as reimbursable expenditure and not includible in the taxable value. However, if the service provider acts as an undisclosed agent i.e. acting in his own name without disclosing that he is actually acting as an agent of his client, he cannot claim the expenditure incurred by him as reimbursable expenditure. Whether the expenditure or cost incurred by the service provider in his capacity as a pure agent of the client or incurred on his own account is a question of fact and law and is to be determined carefully.

Indication of different elements of the transaction in the invoice or bill could often be misleading. One has to carefully examine the exact legal nature of the transactions and other material facts before taking a view as to whether or not the expenditure sought to be excluded from the value is reimbursable expenditure. Not only the form, but also the substance of the transaction should be duly taken into account.

Rule 5 pertains to reimbursable expenditure incurred by the service provider as a pure agent of his client. Explanation (1) to rule 5(2) clearly specifies the criteria to decide whether the service provider acts as a pure agent or not in a given situation. In the case of agency function, the agent neither intends to hold nor holds any title to the goods or services and also never uses such goods or services so procured. It is also important to note that the service provider only receives the actual amount incurred to procure such goods or services.

The service provider who seeks to claim exclusion of certain value from the taxable value should also fulfill all the conditions specified in rule 5(2).

In Rolex Logistics Pvt. Ltd vs. CST Bangalore (2009) 13 STR 1471; (2009) 20 STT 431 (CESTAT, Bangalore), it was held that reimbursement of expresses are not for services rendered but expenditure incurred on behalf of client by service provider. Gross amount for service rendered means only for services rendered. It also interpreted `reimbursement' as payments made on behalf of service recipient by service provider in the course of rendering services. The gross receipt for the services rendered means only for the services rendered.

It held as follows;

What is a reimbursement? When a service provider provides service to a service receiver or a client, on behalf of his client he incurs various expenditure and these expenditure are all for different purposes. The Service Tax liability in terms of Section 67 is only on the gross amount received towards the services rendered. If the service provider in the course of rendering service has to make certain payments on behalf of the service receiver, they are known as reimbursements. The reimbursements are actually not towards the service rendered but they are only towards other expenditure incurred on behalf of the client by the service provider. Normally, the service provider incurs these expenditures in the interest of quicker service. Suppose the service provider has to first receive the money and then render the service, it would cause lot of delay. Therefore, while providing service to the client, the service provider has to incur various expenditure in order to save time and avoid delay, hence, the expenditure is incurred by the service provider and later these are reimbursed by the client. In fact, the client is supposed to pay all these amounts. For example, take the case of a Custom House Agent in the course of clearance of the goods, the importer may have to incur different expenditures towards the port, stevedoring clearances, stationery, all that. These expenditures are actually to be paid by the importer but the CHA initially incurs all these expenditure and then later collects from the client. These are reimbursements. So what is to be borne in mind is that these reimbursements are not for the services rendered. The gross receipt for the services rendered means only for the services rendered. The amount of money received only for the services rendered not for all the other expenditure which is to be incurred normally by the client."

The above judgment clearly specifies the reimbursements that can be excluded from the taxable value by citing of the example of CHA who incurs expenses such as port charges, customs duties on importation, demurrage charges payable to the wharf etc., actually payable by the client but incurred on behalf of the latter, which were reimbursed on actual basis, and qualify for abatement from the taxable value of CHA which includes his charges for clearing the goods from the customs and the above analogy also holds good for `pure agent' of the Valuation Rules, as these expenses are not related to the service rendered at all.

The Apex Court in the case of All India Federation of Tax Practitioners v. Union of India [2007] 10 STT 166 held that service tax is destination based consumption tax and that may be either performance based or property based. Economic services are provided for valuable consideration without being rendered charitable. No service which is uneconomical or commercially unviable is provided in the commercial world. Various elements of cost contribute to the provision of economic services. Expenses which are indispensable and inevitably incurred to make the economic service performable that contribute to the gross value of service. The provider of economic service recovers his entire cost involved in providing such service in the best possible manner that may be viable to him and the service recipient.

In Intercontinental Conslt. & Tech. Pvt. Ltd. v Union of India (2008) 12 S.T.R. 689 (Delhi), it was held by high court that the demand on reimbursement of expenses like air travel, hotel stay, room rent, boarding and lodging charges etc. after including such amounts in taxable value in case of consulting engineer's services can not be coerced. The petitioner contended that reimbursable expenses were not forming part of services and such amounts were also indicated separately in bills. It was held that while proceedings pursuant to SCN may continue, coercive steps need not to be taken till passing of adjudication order.

In Scott Wilson Kirkpatrick (I) Ltd. vs. Commissioner of Service Tax, (2007) 5 STR 118 (CESTAT, Bangalore), it was held that reimbursable expenses were not subject to service tax at the relevant time.

In Sri Bhagavathy Traders v CCE (2011) 24 S.T.R. 290 (CESTAT - LB, Bangalore), it was held that reimbursement arises only when person actually paying under no obligation to pay and pays amount on behalf of buyer while recovering same from buyers. Only when service recipient is having obligation, legal or contractual to pay certain amount to any third party and said amount is paid by service provider on behalf of service recipient, question of reimbursing expenses arises.

Reimbursement of expenses has been a contentious issue and actual reimhursements of expenses is not subject to levy of Service Tax; more so when these reimbursements can be substantiated by evidence. Reference can be made to following judicial pronouncements -

(i) Alathur Agencies vs, CCE & C (2007) 8 STT 204 (CESTAT, Bangalore)

(ii) Nandini Warehousing Corporation vs. CCE (2008) 12 STT 120 (CESTAT, Bangalore)

(iii) Hassan Hajee & Co vs. CCE (2007) 5 STR 397 (CESTAT, Bangalore)

(iv) M.P.R. Mercantile Syndicate vs. CCE, Cochin (2011) 22 STR 443 (CESTAT, Bangalore).

(v) Sri Sastha Agencies Pvt. Ltd. vs.Asst. Commr. of C.Ex & Cus. Palakkad [2007 (6) STR 185 (CESTAT, Bangalore)]

(vi) Bhagyanagar Services vs. CCE, Hyderabad [2006 (4) STR 22 (CESTAT, Bangalore.)]

(vii) CCE, C & ST, BBSR-I vs. M/s. Nilaiohita Enterprises [2007 (6) STR 318 (CESTAT, Kolkata)]

(viii) Sangamitra Services Agency vs. CCE, Chennai [2007 (8) STR 233 (CESTAT, Chennai)]

(ix) Apco Agencies vs. CCE, (2008) 10 STR 169 (CESTAT, Bangalore).

(x) S & K Enterprises vs. CCE (2008) 10 STR 171(CESTAT, Bangalore).

(xi) E.V. Mathai & Co. vs. CCE (2006) 3 STR 116 (CESTAT, Bangalore).

(xii) Keralam Enterprises vs. CCE (2008) 9 STR 503 (CESTAT, Bangalore).

(xiii) M/s U.M. Thariath & Company, M/s S.J.C. Pharma vs. CCE. Cochin [2007 (8) STR 161 (CESTAT, Bangalore)]

(xiv) Al -Baith Steel Pvt. Ltd. vs. CCE (2008) 10 STR 554 (CESTAT, Bangalore).

(xv) Jayalaxmi Enterprises vs. CCE Mungalore [2008 (9) STR 19 (CESTAT, Bangalore)]

(xvi) M/s. B.S. Refrigeration Ltd. vs. CST, Bangalore [2006 (4) S.T.R. 103 (CESTAT, Bangalore)]

(xvii) Rolex Logistics Pvt. Ltd. vs. CST (2009) 13 STR 147 (CESTAT, Bangalore).

(xviii) K.D. Sales Corporation vs. CCE, Belgaum [2007 (6) STR 418 (CESTAT, Bangalore)]

However, on the other hand, in the following cases, Tribunals have held that the reimbursement charges to be included in gross value of the taxable services rendered :

Sl No.	Citation	Decision
1.	Kirloskar Pneumatics Co. Ltd vs. CCE 2011 (23) S.T.R. 161(Cestat - Mumbai)	It was held that the reimbursement of the expenses incurred by service provider in connection with the services provided - Such recoveries were made under statutory invoices issued to the customers, but Service tax was not paid on expenses reimbursed by the customers - Prima facie entire amount collected by appellant from their customers would constitute gross taxable value for the purpose of payment of Service tax.
2.	Naresh Kumar & Co. Pvt. Ltd, vs. CST (2008) 11 S.T.R. 578 (Cestat - Kolkata)	It was held if an expenditure is indispensable and inevitably incurred to provide a service, such cost should essentially form part of cost of service itself and shall contribute to value of taxable service.

Thus, it is seen that the Tribunals have differed in their pronouncements on the same issue of the taxability of reimbursement of expenses and the matter refereed to larger bench.

In Harveen & Co vs. CCE, Chandigarh (2012) 26 STR 14 (CESTAT, Delhi), in a case relating to clearing and forwarding agency, it was held that expenses of dispatch inspection, octroi and detention charges are not towards any activity that would constitute service rendered by assessee. Clerkage and office telephone expenses even if billed separately to client can not be considered reimbursable expenses. In case of godown rent, if it is for discharging obligation under a contract, rent would form part of taxable value even if it is reimbursed separately by client.

(G) Inclusion of commission/brokerage/initial deposit - Rule 6(1):

The value of taxable service as stipulated in Rule 6 of the said Rules shall include the followings:

1. The commission/brokerage charged by a broker on sale of securities including the commission or brokerage paid by the broker to the sub-broker.
2. The adjustment made by provider of telecommunication service from any amount paid by the subscriber at the time of application for providing telecommunication facility but excludes the initial deposit made by the subscriber.
3. The amount of premium charged by the insurer from the policyholder.
4. The commission received by the air travel agent from the airline excluding airfare collected.
5. The commission/fee or any other sum received by an actuary or intermediary or insurance agent or intermediary from the insurer.

6. The reimbursement received by the authorized service station from the manufacturer.
7. The commission or any amount received by the rail travel agent from the railways or the customer excluding rail fare collected.
8. Remuneration/commission paid by the client to the C&F agent.
9. The commission/fee/any amount paid to agent by the insurer appointing such agent in relation to insurance auxiliary service provided by an insurance agent.
10. The amount realized as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service. This clause has been inserted by Notification No. 24/2012-S.T., dated 6-6-2012.

(H) Exclusion of deposit, fares, interest, etc., from determination of value - Rule 6(2):

The value of taxable service does not include the following :

1. Initial deposit made by the subscriber at the time of application for telecommunication service.
2. The air fare collected by air travel agent in respect of service provided by him.
3. The rail fare collected by rail travel agent in respect of service provided by him.
4. Interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable.
5. The taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket issued to the passenger.
6. Accidental damages due to unforeseen actions not relatable to the provision of service.
7. Subsidies and grants disbursed by the Government, not directly affecting the value of service.

The entries at serial Nos. 5 to 7 has been added vide Notification No. 24/2012-S.T., dated 6-6-2012

Illustration 5.

- Insurance Companies provide insurance services to the clients for which the premium is charged. The premium charged is a consideration for the insurance service provided. However, in case due to an unforeseen action, like an accident etc., a compensation is paid by the insurance company to the client then the money would not be included as part of value of taxable service as it is not relatable to the provisions of service but is only in the nature of consequence of provisions of insurance service.
- In case a landlord who has rented out his office building to a tenant receives compensation from the tenant for the damage caused to the building by an unforeseen action then such compensation would not form part of the value of taxable service related to tenant of his building as an unforeseen damage caused by the tenant is not relatable to provision of service of renting of the office building.

The exclusion entry relating to subsidies and grants disbursed by the Government, not in the nature of directly influencing the value of service has also been inserted by the Service Tax (Determination of Value) Second Amendment Rules, 2012. A subsidy influences the price directly when the price goes down proportionately to the amount of subsidy. In terms of this exclusion any subsidy or grant disbursed by the Government cannot form part of the value of taxable service unless such subsidy or grant directly influences the value of such service.

In Keeping Newcastle Warm Ltd. (2012) 36 STT 702 (ECJ), where assessee received energy advice grants for providing energy advice, it was held by the European Court of Justice that energy advice grants paid by the public authority constituted a subsidy.

Since taxable amount comprises of everything which makes up consideration for service, every advice grants were received by assessee in consideration for service provided by the assessee and hence taxable.

In Office Des Products Walloons ASBL v. Belgian State (2012) 36 STT 683 STT (ECJ), it was held that operating subsidies covering a part of running costs always affect the cost price of the goods and services supplied by the subsidised body. However, the mere fact that a subsidy may affect the price of the goods or services supplied by the subsidised body is not enough to make that subsidy taxable. For the subsidy to be directly linked to the price of such supplies, it is also necessary that it be paid specifically to the subsidised body to enable it to provide particular goods or services. Only in that case, the subsidy can be regarded as consideration for the supply of goods or services, and therefore be taxable.

Subsidy is identifiable only if there is significant relation between price and subsidy. In order to determine whether the consideration represented by the subsidy is identifiable, the Court may either compare the price at which the goods are sold in relation to their normal cost price, or examine whether the amount of the subsidy has been reduced once those goods are no longer produced. If the factors examined are significant, it must be concluded that the part of the subsidy allocated to the production and sale of the goods in question constitutes a subsidy directly linked to the price, In that regard, it is not necessary for the subsidy to correspond exactly to the diminution in the price of the goods supplied, it being sufficient if the relationship between the diminution in price and the subsidy, which may be at a flat rate, is significant.

Table under Point 6.16.3 [Option to pay an amount in case of lottery service under section 65(105)(zzzzn)] in Page No. 6.110 — Modified

S.No.	Rate	Condition
i	₹ 8,200 on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%.
ii	₹ 12,800 on every ₹ 10 lakh (or part of ₹ 10 lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%.

Example 57 under Point 6.16.3 [Option to pay an amount in case of lottery service under section 65(105)(zzzzn)] in Page No. 6.111 — Modified

Example 57: M/s Martin Pvt. Ltd. is a distributor or selling agent authorized by a State in India. Following is the details of lotteries of a distributor to be organized by the State.

Particulars	Lakhpati (Printed)	Crorepati (Online)
No. of tickets proposed	2,50,000	3,00,000
Face value of ticket	₹ 10 each	₹ 500 each
Guaranteed prize payout	@60%	@90%
No. of tickets sold	2,00,000	2,35,000

Calculate the service tax under composition scheme as per Rule 6(7C) of the Service Tax Rules, 1994.

Answer:

Lakhpati lottery tickets - Printed

No. of tickets proposed	2,50,000 tickets
Face value of ticket	₹ 10 each
Total face value	₹ 25,00,000
Guaranteed prize payout	@60%
Multiples of TEN lakhs or part of TEN lakhs	3 (i.e. ₹ 25,00,000/₹ 10,00,000)
Service tax payable for every ₹ 10 lakhs or part thereof	₹ 12,800
Total Service tax (subject to Cess)	38,400 (i.e. 3 x ₹ 12,800)

Crorepati lottery tickets –Online

No. of tickets sold	2,35,000 tickets
Face value of ticket	₹ 500 each
Total face value	₹ 11,75,00,000
Guaranteed prize payout	@90%
Multiples of TEN lakhs or part of TEN lakhs	118 (i.e. ₹ 11 ,75,00,000/₹ 10,00,000)
Service tax payable for every ₹ 10 lakhs or part thereof	₹ 8,200
Total Service tax (subject to Cess)	₹ 9,67,600 (i.e. 118 x ₹ 8,200)

Total service tax liability payable by M/s Martin Pvt. Ltd.

Particulars	(₹)
Lakhpati lottery tickets - Printed	38,400
Crorepati lottery tickets – Online	9,67,600
Total	10,06,000

Point 6.16.5 [Penalty for Non-Payment or Delayed Payment of Service Tax (Section 76 of the Finance Act, 1994)] in Page No. 6.112 — Modified

6.16.5 Penalty for Non-Payment or Delayed Payment of Service Tax (Section 76 of the Finance Act, 1994) w.e.f. 14.05.2015:

(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax:

Provided that where service tax and interest is paid within a period of thirty days of –

(i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to have been concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

(2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.]

Point 6.18.2 [Advance payment of Services Tax] in Page No. 6.113 — Modified

As per Rule 6(1A) of the Service Tax Rules, 1994

(i) The assessee may, on his own, pay Service tax in advance and adjust the amount towards future liability.

(ii) He shall intimate details of advance payment to the Jurisdiction Superintendent of Central Excise within 15 days of such payment.

(iii) He shall indicate the details of adjustment of advance payment in the returns.

1st line of Section 72A under Special Audit is modified and last part after explanation (ii) is deleted in Page No. 6.114

(1) If the Principal Commissioner of Central Excise or the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),- .....

Table under heading 6.21 [Penalties] in Page No. 6.116 — Modified

Sl. No.	Types of penalty	Penalty (prior to 8-4-2011)	Penalty (w.e.f. 8-4-2011)
i.	Non-filing of Return Section 77 of the Finance Act, 1994)	Upto ₹ 5,000	Upto ₹ 10,000
ii.	Not obtaining registration (section 77 of the Finance Act, 1944)	₹ 200 per day for every day of default or ₹ 5,000 whichever is higher.	₹ 200 per day for every day of default or ₹ 10,000 whichever is higher, starting with the first day after the due date, till the date of actual compliance;
iii.	Non-maintenance of proper books of accounts (Section 77 of the Finance Act, 1994)	Upto ₹ 5,000	Upto ₹ 10,000
iv.	Non-appearance before Officers on issue of summons (Section 77 of the Finance Act, 1994)	₹ 200 per day for every day of default or ₹ 5,000 whichever is higher	₹ 200 per day for every day of default or ₹ 10,000 whichever is higher, starting with the first day after the due date, till the date of actual compliance;
v.	Failure to pay tax electronically when so required to pay (Section 77 of the Finance Act, 1994)	Upto ₹ 5,000	Upto ₹ 10,000
vi.	Issuing incorrect invoice or not accounting invoices in books (Section 77 of the Finance Act, 1994)	Upto ₹ 5,000	Upto ₹ 10,000

Sl. No.	Types of penalty	Penalty (prior to 8-4-2011)	Penalty (w.e.f. 8-4-2011)
vii.	Section 78A – Evasion of service tax, – Isuance of invoice without provision of service, – availment of Cenvat Credit without recipt of service of goods, or – Service tax collected remaining overdue for more than 6 months.		Section 78A is being introduced, to make provision for imposition of penalty on director, manager, secretary or other officer of the company, who is in any manner knowingly concerned with specified contraventions. Penalty upto ₹ 1 Lakh
viii.	Fraud or suppression of acts (Section 78 of the Finance Act, 1994): Wrongful utilization of Cenvat credit by reason of fraud, collusion or any willful mis-statement etc. with the intent to evade the payment of service tax, the provider of service shall be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act, 1994.	A show cause notice has been issued under Section 73(1A) of the Finance Act, 1994 by demanding Minimum 100% of service tax. Maximum 200% of service tax. The penalty will be reduced to 25%, if tax, interest and penalty paid within 30 days from the date of receipt of order of Central Excise Officer.	100% of the service tax, where the true and complete details of the transactions are not recorded in the specified records. This penalty cannot be waived. Penalty reduced to 15% of tax, if tax, interest and reduced penalty also paid within 30 days of receipt of notice. Penalty reduced to 25% of tax, if tax, interest and reduced penalty also paid within 30 days of receipt of order. Penalty cannot exceed 50% of service tax in case transactions recorded in specified records between 08.04.2011 to 14.05.2015. Notices issued on or after 14.05.2015 or order passed on or after 14.05.2015, period of 30 days to be reckoned from 14.05.2015.
ix.	During the Department audit or verification of records of the assessee, they found short payment of service tax or sometimes, the amount erroneously refunded to the assessee. If all such transactions are completely recoded in the specified records (Section 73(4A) of the Finance Act, 1994 w.e.f. 8-4-2011). This provision is applicable to those assessees who have no intention to evade tax.		Omitted w.e.f 14.05.2015.

Point (ii) under Point 6.22.2 [Appeals] in Page No. 6.119 — Modified

(ii) Appeal to Tribunal - Appeal to CESTAT (Tribunal) can be made against order of Commissioner passed by him under section 73, 83A or order of Commissioner (Appeals) passed by him under section 85 [order in appeal from order of AC/DC] by assessee or the department. Appeal has to be filed within three months from date of receipt of order by assessee, Board or Commissioner as the case may be. [section 86 of Finance Act, 1994].

Tribunal can condone the delay in filing appeal on showing sufficient cause. Appeal has to be accompanied with prescribed fees, if appeal is by the assessee. Tribunal is final fact finding authority.

Where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act.

Example 61 under Practical Problems in Page No. 6.119 — Modified

Sun Academy Pvt. Ltd., is providing commercial training services since, 2009. During the year 2014-15 service tax liability arises to pay was ₹ 12,00,000. However, service tax paid was paid ₹ 8 lacs after adjustment of CENVAT CREDIT of ₹ 4 lacs. In the month of April 2015, 60 students were joined for pursing Point of Taxation Rules (from 1st April'15 to 10th April'15). Fee per student is ₹ 3,000 (inclusive of Service tax) paid by all students the month of June 2015. Service Tax @14.5% paid on 5th july 2015. Calculate the following:

(a) Point of Taxation
(b) Due Date
(c) Service Tax liability
(d) Interest if any

Answer:

(a) Point of taxation = April 2015
(b) Due date = 6th May 2015
(c) Service tax = ₹ 22,795 (i.e. 3,000 x 60 x 14.5/114.5)
(d) Interest = ₹ 586 (i.e. 19,800 x 18/100 x 60/365)

Example 68 under Practical Problems in Page No. 6.122 — Modified

A Ltd. provided Information Technology & Software services to B Ltd. in the month of July 2015. A bill inclusive of Service Tax issued in the month of July 2015. B Ltd paid ₹ 24,81,750 (after deducting TDS under sec 1 94J of the Income Tax Act, 1961 @10% towards TDS) in the month of August, 2015. You are required to calculate:

(a) Service tax liability
(b) Due date of payment of service tax.

Answer: **(Amount in ₹)**

(a) Net payment received = 24,81,750 = 90%
TDS @ 10% = 2,75,750 =10%

Total bill value 27,57,500

Service tax liability = ₹ 27,57,500 x 14.5/114.5 = 3,49,203

(b) Due date of payment of service tax in case of electronically payment through interest banking is on or before 6th of August 2015.

Due date of payment of service tax in case of other than e-payment is on or before 5th August 2015.

Example 71 under Practical Problems in Page No. 6.123 — Modified

X Ltd. is liable to pay service tax of ₹ 1,00,000 on or before 6th July 2015 but he paid it on 16th July 2015. What is the penalty for non-payment or delayed payment of service tax? Can this penalty be waived or reduced?

Answer:

(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax:

Provided that where service tax and interest is paid within a period of thirty days of –

(i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to have been concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

(2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.]

Study Note - 7

Last line of Point "Self Assessment" under Point 7.1.2 [Assessee and Assessment] in Page No. 7.2 — Inserted

In case of service tax also, Section 70(1) of Finance Act, 1994 provides that every person liable to pay service tax shall himself assess the tax due and file return. The ST-3 return filed by assessee contains a 'Self-Assessment Memorandum'. Self assessed tax remaining unpaid to be recovered along with interest.

2nd line of Point "Interest payable/receivable" under Point 7.1.5 [Provisional Assessment] in Page No. 7.3 — Modified

If differential duty is found to be payable, interest as specified in Section 11AA of the Central Excise Act will be payable by assessee from first day of the month succeeding the month *for which* such amount is determined till date of payment thereof. [Rule 7(4)] .....

Point 7.2.2 [Adjudicating Authority] in Page No. 7.4 — Modified

(i) Any authority competent to pass any order or decision under Central Excise Act.

(ii) Commissioner (appeals) and CBEC are not adjudicating authority.

(iii) If amount of duty or Cenvat credit involved is up to ₹ 5,00,000, such demand can be made by Deputy/Assistant Commissioner of Central Excise.

(iv) If amount of duty or Cenvat credit involved is above ₹ 5,00,000 and upto ₹ 50,00,000 such demand can be made by Additional Commissioner of Central Excise.

(v) Demand of duty or demand of CENVAT credit of any amount (i.e. without any upper limit) can be made by Commissioner or Commissioner of Central Excise.

(vi) Gazetted officer rank starts from Superintendent of Central Excise.

Section 11A(5) [Fraud noticed during the audit, investigation but the details are available in the specified records Section] of Central Excise Act in Page No. 7.6 — Omitted w.e.f. 14.05.2015

Section 11A(6) [Fraud noticed during the audit, investigation but the details are available in the specified records, where as dues has been paid before issue of show cause notice] of Central Excise Act in Page No. 7.6 — Omitted w.e.f. 14.05.2015

Section 11A(7) of Central Excise Act in Page No. 7.7 — Removed

Section 11A(11) of Central Excise Act in Page No. 7.7 — Modified

Under section 11A(11) the Central Excise Officer shall determine the amount of duty of excise under section 11A(10) within SIX months from the date of notice where it is possible to do so, in respect of cases falling under section 11A(1). Cases falling under section 11A(4), within ONE year from the date of notice.

Point (f) of Point (iv) [Relevant Date] under heading 'Important points' after Section 11A(15) of Central Excise Act in Page No. 7.8 — Inserted

Relevant Date: it means it may be any one of the following:

(a) date of actual filling of monthly return, or

(b) Date on which return should have been filed, when required to be filed but not filed, or

(c) If no return is required to be filed under the Central Excise, then the date of payment of duty, or

(d) In case of provisional assessment, relevant date is the date of adjustment of duty after final adjustment.

(e) In case of erroneous refund, date of such refund.

(f) **In the case where only interest is to be recovered, the date of payment of duty to which such interest relates.**

Point 7.2.7 [Omission to Give Correct Information Cannot be Construed As 'Suppression of Facts' for the Purpose of the Proviso to Section 11A(1) of The Central Excise Act, 1944] in Page No. 7.8 — Removed

Section 11AC(1)(a) [Penalty equal to the duty evaded] of Central Excise Act under Point 7.4.2 [Penalty Provisions] in Page No. 7.11 — Modified

Where any duty of excise has not been levied or paid or short levied or short paid or erroneously refunded, by any reason other than the reason of fraud or collusion or any willful miss-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty, the person who is liable to pay duty as determined under

section 11A(10) shall also be liable to pay a penalty not exceeding 10% of the duty so determined or ₹ 5,000 whichever is higher. Provisions are same even in the case of Customs Act, 1962 under section 114A.

From Section 11AC(1)(b) of Central Excise Act to Section 11AC(2) of Central Excise Act under Point 7.4.2 [Penalty Provisions] in Page No. 7.11 — Modified

11AC(1)(b): Where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent, of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

11AC(1)(c): Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined:

11AC(1)(d): Where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent, of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

11AC(2): Where the appellate authority or tribunal or court modifies the amount of duty of excise determined by the Central Excise Officer under sub-section (10) of section 11 A, then, the amount of penalty payable under clause (c) of sub-section (1) and the interest payable under section 11AA shall stand modified accordingly and after taking into account the amount of duty of excise so modified, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay such amount of penalty and interest so modified.

Point 7.4.8 [Provisional Attachment of Property (Section 11DDA of Central Excise Act, 1944 Section 28BA of Customs Act, 1962 / Section 73C of Finance Act, 1994)] in Page No. 7.14 — Modified

(1) Where during the pendency of any proceedings under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interest of revenue, it is necessary so to do, he may, with the previous approval of the Principal Commissioner of Central Excise or Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1).

2nd line of Point (1) of Section 35 [Appeals to Commissioner (Appeals)] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.16 — Modified

Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order .....

Point (5) of Section 35A [Procedure in appeal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.17 — Modified

On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise and Principal Commissioner or the Commissioner of Central Excise.

Point (a), (c) and (d) of Point (1) of Section 35B [Appeals to the Appellate Tribunal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.17 — Modified

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 Principal Commissioner of Central Excise or the Commissioner of Central Excise as an adjudicating authority;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (hereafter in this Chapter referred to as the Board) or the Appellate Principal Commissioner of Central Excise or Commissioner of Central Excise under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or Principal Commissioner of Central Excise or the Commissioner of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day .....

Proviso and explanation to Point (2) of Section 35B [Appeals to the Appellate Tribunal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.18 — Modified

The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not proper, direct any Central Excise Officer authorised by him in this behalf to appeal on its behalf to the Appellate Tribunal against such order.

Provided that where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise 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 any Central Excise Officer to appeal to the Appellate Tribunal against such order.

Explanation — For the purposes of this sub-section, "jurisdictional Chief Commissioner;" means the Principal Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter.

Point (3), (6) and (7) of Section 35B [Appeals to the Appellate Tribunal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.18 — Modified

(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 Principal Commissioner of Central Excise or the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner 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 Central Excise Officer 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 Central Excise Officer 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 Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

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

(a) in an appeal 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 Principal Commissioner of Central Excise or the Commissioner of Central Excise under this sub-section.

Point 7.5.2 [Departmental Appeals not Allowed] under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.19 — Modified

The Central Board of Excise and Customs (CBE&C) has issued instructions (vide F.No. 390/ Misc./ 163/2010-JC dated 17-8-2011) by fixing the following different minimum monetary limits for filing appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and High Court:

(i) Departmental appeals in the Tribunal (CESTAT) shall not be filed in cases where the duty involved is below ₹ 10,00,000.

(ii) Departmental appeals in the High Court should not be filed in cases where the duty involved is below ₹ 15,00,000.

(iii) Departmental appeals in the Supreme Court should not be filed in cases where the duty involved is below ₹ 25,00,000.

However, Departmental appeals in case of adverse judgments relating to the following disputes shall be allowed irrespective of the amount involved.

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.

(b) Where notification/instruction/order or Circular has been held illegal or ultra virus.

Example 10 under Point 7.5.2 [Departmental Appeals not Allowed] in Page No. 7.19 — Modified

Example 10: X Ltd. received a protective demand notice from the department on 18.12.2015 under Section 11A of the Central Excise Act, 1944 where the duty demanded is ₹ 5,00,000, in addition to interest of ₹ 10,000 and Penalty of ₹ 1,00,000. The assessee went for appeal and filed the case in the Commissioner (Appeals) on 18.01.2016. Subsequently on 30.03.2016, the Commissioner (Appeals) decided the case in favour of the assessee. The Committee of Commissioners can delegate the authority to the department officers to go for further appeal on its behalf to the Appellate Tribunal (CESTAT) against such order.

Answer:

As per the Central Board of Excise and Customs (CBE&C) instructions (vide F.No. 390/Misc./163/ 2010-JC dated 17-8-2011), in a case involving duty below ₹ 10,00,000, no appeal shall henceforth (i.e. w.e.f. 17-12-2015) be filed in the Tribunal (CESTAT).

Hence, in the given case, no appeal shall henceforth be filed in the Tribunal as the duty involved is below the monetary limit of ₹ 10,00,000.

From Point (2) to Point (4) of Section 35C [Orders of Appellate Tribunal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.20 — Modified

(2) The Appellate Tribunal may, at any time within 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 Principal Commissioner of Central Excise or the Commissioner of Central Excise or the other party to the appeal:

Provided that an amendment which has the effect of enhancing an assessment or reducing & 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.

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

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

(4) Save as provided in Section 35G or 35L orders passed by the Appellate Tribunal on appeal shall be final.

Last line of Section 35D [Procedure of Appellate Tribunal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.21 — Modified

The amount of fine or penalty involved, does not exceed **fifty lakh** rupees.

Point (1) and (2) of Section 35E [Powers of Board or Commissioner of Central Excise to pass certain orders] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.21 — Modified

(1) The Committee of Chief Commissioners of Central Excise may, of its own motion, call for and examine the record of any proceeding in which Principal Commissioner of Central Excise or a Commissioner of Central Excise 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 Chief Commissioners of Central Excise in its order.

Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise, 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, if is of the opinion that the decision or order passed by the Principal Commissioner of Central Excise or the Commissioner of Central Excise 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 Central Excise or Commissioner of Central Excise 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 Central Excise Officer 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 Central Excise or Commissioner of Central Excise in his order.

Point (1A) of Section 35EE [Revision by Central Government] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.22 — Modified

(1A) The Principal Commissioner of Central Excise or Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

Point (i) of Section 35F [Deposit of certain percentage of duty demanded or penalty imposed before filling appeal] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.23 — Modified

The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent, of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than Principal Commissioner of Central Excise or the Commissioner of Central Excise;

Section 35FF [Interest on delayed refund of amount deposited under the proviso to section 35F] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.23 — Modified

Where an amount deposited by the appellant u/s 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not

below five percent and not exceeding thirty six percent per annum as is for the time being fixed by the Central Government, by notification in the official Gazette, on such amount from the date of payment of the amount till the date of refund of such amount.

Provided that the amount deposited u/s 35F, prior to the commencement of the Finance Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act.

Point (2) of Section 35G [Appeal to High Court] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.24 — Modified

(2) The Principal Commissioner of Central Excise or the Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

Point (a) of Point (1) of Section 37C [Service of decisions, orders, summons, etc.] of Central Excise Act under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.28 — Modified

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, —

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement due, or by sped post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 to the person for whom it is intended or his authorised agent, if any;

Section 84 [Appeals to Commissioner of Central Excise (Appeals)] of Finance Act, 1994 under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.29 — Modified

(1) The Principal Commissioner of Central Excise or the Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter 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 Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Principal Commissioner of Central Excise or the Commissioner of Central Excise in his order.

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

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub- section

(1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation. — For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to the Principal Commissioner of Central Excise or the Commissioner of Central Excise immediately before the commencement of clause (C) of section 113 of the Finance (No. 2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.

Point (1) and (3A) of Section 85 [Appeals to the Commissioner of Central Excise (Appeals)] of Finance Act, 1994 under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.29 — Modified

(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

Point (1), (1A), (2), (2A), (3),(4) and (6A) of Section 86 [Appeals to Appellate Tribunal] of Finance Act, 1994 under heading 7.5 [Appeal Provisions under Central Excise, Service Tax And Customs] in Page No. 7.30 — Modified

(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A, or an order passed by a Principal Commissioner of Central Excise or a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

(1A) (i) The Board may, by order, constitute such Committees as may be necessary for the purposes of this Chapter.

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

(2) The Committee of Principal Chief Commissioner of Central Excise or Chief Commissioners of Central Excise may, if it objects to any order passed by the Principal Commissioner or 'Commissioner of Central Excise under section 73 or section 83A, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

Provided that where the Committee of Principal Chief Commissioners or Chief Commissioners of Central Excise differs in its opinion against the order of the Principal Commissioner or the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that

the order passed by the Principal Commissioner or the Commissioner of Central Excise is not legal or proper, direct the Principal Commissioner or the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

(2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order.

Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner or Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

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

(3) Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Principal Chief Commissioner or Chief Commissioners or, as the case may be, the Committee of Commissioners.'

(4) The Principal Commissioners or the Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Principal Commissioner or the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Principal Commissioner or the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), 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).

(6A) Every application made before the Appellate Tribunal, —

(a) in an appeal 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 the Principal Commissioner of Central Excise or the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.

Matter before Section 31 [Definitions] of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.31 — Removed

Part 'Remanded proceedings- Not pending proceedings' of Section 31(C) of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.32 — Modified

However, when any proceeding is referred back by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication/ decision, then such proceeding shall not be deemed to be a 'Proceeding Pending' for the purposes of the above. Therefore, no settlement application can be filed in respect of cases remanded for fresh adjudication.

Proviso part to Section 32 [Customs and Central Excise Settlement Commission] of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.33 — Removed

Section 32C [Power of Chairman to transfer cases from one Bench to another] of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.34 — Modified

On the application of the assessee or the Principal Chief Commissioner the Chief Commissioner 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.

Point (II) and (III) under Point 7.6.3 [Section 32E (Corresponding Customs Section 127B)] of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.35 — Modified

(II) Cases for which no settlement application can be made: The Settlement Commission cannot entertain the following cases -

(a) cases pending with the Appellate Tribunal or any Court;

(b) cases involving the interpretation of the classification goods under the Customs/Excise Tariff;

(c) every application shall be accompanied by such fees as may be prescribed.

(d) An application made under this section shall not be allowed to be withdrawn by the applicant.

(III) Fees for filing an application : An application to Settlement Commission shall be made in prescribed form with a fee of ₹ 1,000 and cannot withdrawn by the applicant.

Point (i), (ii), and (iv) of Section 32F [(corresponding Customs section 127C) provides for the following procedure to be followed by the Settlement Commission for disposal of a case] of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.35 — Modified

(i) Acceptance or Rejection of Application: On receipt of an application for settlement, the Settlement Commission shall, within 7 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. After taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of 14 days from the date of the notice, pass an order either allowing the application to be proceeded with, or rejecting the application. In case of rejection, the proceedings before the Settlement Commission shall abate on the date of rejection.

However, 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.

A copy of every such order shall be sent to applicant and to the Principal Commissioner or the Commissioner having jurisdiction.

(ii) Calling of Report from Principal Commissioner or Commissioner when Application Allowed: Where an application is allowed or deemed to have been allowed to be proceeded with, the Settlement Commission shall, within seven days from the date of order allowing the application, call for a report along with relevant records from the Principal Commissioner or the Commissioner having jurisdiction and the Commissioner shall furnish the report within 30 days of receipt of communication from the Settlement Commission.

However, if the Commissioner does not furnish the report within 30 days as aforesaid, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(iv) Passing of Final Order: After examination of the records and the report the Principal Commissioner or the Commissioner of Central Excise/Customs including the report of the Commissioner(Investigation) if any, and after giving an opportunity of being heard both to the applicant and to the Principal Commissioner or the Commissioner and examining such other evidence as may be placed before it, the Settlement Commission shall pass final order as it thinks fit in accordance with the provisions of the Act.

The order shall be passed only 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 or the Commissioner or Commissioner (Investigation).

Section 32H [Power of Settlement Commission to reopen completed proceedings] of Central Excise Act under heading 7.6 [Settlement Commission] in Page No. 7.38 — Omitted w.e.f. 14.05.2015

Point 7.6.7 [Bar on subsequent application for settlement in certain cases [Section 32-O (Customs Section 127L)] and 7.6.8 [Adjudicating Authority Can Track Information Submitted in the Office of Settlement Commission] in Page No. 7.39 — Modified

(i) an order of settlement provides for the imposition of a penalty on the person who made the application for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of settlement in relation to a case, as aforesaid, such person is convicted of any offence under this Act in relation to that case; or

Explanation — In this clause, the concealment of particulars of duty liability relates to any such concealment made from the Central Excise Officer.

(iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L then, applicant shall not be entitled to apply for settlement in relation to any other matter.

Point (b) of Section 96A [Definitions] of Finance Act, 1994 in Page No. 7.40 — Modified

(b) "applicant" means —

(i) (a) a non-resident setting up a joint venture in India in collaboration with a non- resident or a resident; or

(b) a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who or which, as the case may be, proposes to undertake any business activity in India;

(ii) a joint venture in India; or

(iii) resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,

and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C;

Explanation. — For the purposes of this clause, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a nonresident having substantial interest in such arrangement;

Point (1), (3) and (7) of Section 96D [Procedure on receipt of application] of Finance Act, 1994 in Page No. 7.41 — Modified

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Principal Commissioner of Central Excise or the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records :

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Principal Commissioner of Central Excise or the Commissioner of Central Excise.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Principal Commissioner or the Commissioner of Central Excise.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner or the Commissioner of Central Excise, as soon as may be, after such pronouncement.

Point (c) of Point (1) of Section 96E [Applicability of advance ruling] of Finance Act, 1994 in Page No. 7.42 — Modified

(c) on the Principal Commissioner or the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

Section 96F [Advance ruling to be void in certain circumstances] of Finance Act, 1994 in Page No. 7.42 — Modified

(1) Where the Authority finds, on a representation made to it by the Principal Commissioner or the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Principal Commissioner or the Commissioner of Central Excise.

Explanation to Point (c) of Section 23A [(Definitions] of Central Excise Act in Page No. 7.43 — Modified

Explanation.— For the purposes of this clause, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders are a non-resident having substantial interest in such arrangement;

Point 7.7.1 [As Per Section 23A(C) of the Central Excise Act, an Application for Advance Ruling can be Made by any of the following if they Propose to Undertake any business activity in India] in Page No. 7.43 — Modified

(i) A Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident.

(ii) A resident setting up a joint venture in India in collaboration with a non-resident.

(iii) A wholly owned subsidiary Indian company, of which the holding company is a foreign company, such holding company proposes to undertake any business activity in India.

(iv) A joint venture in India in which at least one of the participants, partners, or equity share holders is a non-resident having substantial interest in the joint venture.

(v) As may be specified by the Central Government of India by issuing a notification.

Point (1) and (7) of Section 23D [(Procedure on receipt of application] of Central Excise Act in Page No. 7.45 — Modified

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Principal Commissioner of Central Excise or the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Principal Commissioner of Central Excise or the Commissioner of Central Excise.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to Principal Commissioner or the Commissioner of Central Excise, as soon as may be, after such pronouncement.

Point (c) of Point (1) of Section 23E [Applicability of advance ruling] of Central Excise Act in Page No. 7.46 — Modified

(c) on the Principal Commissioner or the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

Study Note - 8

Point 8.3 [Forms under CST] in Page No. 8.16 — Modified

Form A	This form is prescribed for application to get registered u/s 7 of CST Act. Details such as name, status, place of business, warehouses, nature of business, nature and purpose of goods to be dealt, goods to be bought from outside the state etc., are required to be furnished.
Form B	Certificate of registration shall be issued by the authority in this form. The certificate of registration should be kept in the principal place of business an copies thereof in the branches inside the appropriate state
Form C	Registered dealers are entitled to certain exemptions under CST Act, 1956 Form C is used by a purchasing dealer to get the goods at confessional rate of duty and is issued in favour of the dealer who effects interstate sale. It is obtained from the sales tax authorities in the state in which the purchasing dealer is registered. It contains particulars such as name of purchasing dealer, sales tax registration no., its validity, details of goods obtained (whether for resale, manufacture, processing or as packing material), name and address of the seller etc.
Form D	Abolished w.e.f. 1.4.2007
Form EI & E II	In case of subsequent sale in the course of Interstate sale, the dealer effecting subsequent sale can avail exemption by submitting Form C issued by his customer and by submitting Form E-1, issued by his seller. Form, E-I & E-II etc. are printed by the Sales Tax department and are supplied to the registered dealer for their use. Form E-II will have to be issued, in case there are more than one subsequent sale. Thus, it should be noted that Form E-I can be issued by the first seller alone. Form E-II & E-III will have to be submitted by those selling dealer (other than the first dealer) to their purchaser, who can avail of the exemption under section 6(2), subject to the condition that Form C is submitted as well.
Form F	Form by branch/consignment agent for goods received on stock transfer
Form G	Indemnity bond when C form lost
Form H	Certificate of Export
Form I	Certificate by SEZ unit

Study Note 9: Assessment of Varies Entities & Tax Planning

(1) Section 115JB has been amended and also revised for better understanding of 6th para of page no. 9.29

"Book Profit" means the net profit as shown in the profit as shown in the Profit and Loss Account, as increased by –

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves, by whatever name called, other than a reserve specified under section 33AC; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed ; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 *(other than the provisions contained in clause (38) thereof) or* section 11 *or* section 12 *apply; or*

Following clauses (fa), (fb) and (fc) shall be inserted after clause (f) in Explanation 1 below sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016 :

(fa) the amount or amounts of expenditure relatable to, income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or

(fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, it is a rate less than the rate specified in sub-section (1); or

(fc) the amount representing notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 *or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of*section 47; or

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

Following clause (k) shall be inserted after clause (j) in Explanation 1 below sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016:

(k) the amount of gain on transfer of units referred to in clause (xvii) of section 47 *computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be;*

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account.

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or

(ii) the amount of income to which any of the provisions of section 10 *(other than the provisions contained in clause (38) thereof) or* section 11 *or* section 12 *apply, if any such amount is credited to the profit and loss account; or*

(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or

Following clauses (iic), (iid), (iie) and (iif) shall be inserted after clause (iib) in Explanation 1 below sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016 :

(iic) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the profit and loss account; or

(iid) the amount of income accruing or arising to assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if such income is credited to the profit and loss account and the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or

(iie) the amount representing,—

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of units referred to in clause (xvii) of section 47,

if any, credited to the profit and loss account; or

(iif) the amount of loss on transfer of units referred to in clause (xvii) of section 47 *computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be;*

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or

(iv) to (vi) **[***]Omitted**

(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.

Explanation 2.—For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

(i) any tax on distributed profits under section 115-O *or on distributed income under* section 115R;

(ii) any interest charged under this Act;

(iii) surcharge, if any, as levied by the Central Acts from time to time;

(iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and

(v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

Explanation 3.—For the removal of doubts, it is hereby clarified that for the purposes of this section, the assessee, being a company to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, has, for an assessment year commencing on or before the 1st day of April, 2012, an option to prepare its profit and loss account for the relevant previous year either in accordance with the provisions of Part II and Part III of Schedule VI to the Companies Act, 1956 or in accordance with the provisions of the Act governing such company.

Following Explanation 4 shall be inserted after Explanation 3 to sub-section (2) of section 115JB by the Finance Act, 2015, w.e.f. 1-4-2016:

Explanation 4.—For the purposes of sub-section (2), the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 *or sub-section (3) of* section 32A *or clause (ii) of sub-section (1) of* section 72 *or* section 73 *or* section 74 *or sub-section (3) of* section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 *or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of* section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

(5A) The provisions of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B.

(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.

Provided that the provisions of this sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012.

Provided that the provisions of this sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012.

(2) Second para of the page no. 9.70 has been revised for better understanding.

To avail the facility of the above extended period of application of income, the trust has to excise such option before the expiry of the time allowed under section 139(1) for furnishing the return of Income in such form or manner as may be prescribed.

(3) Second para of the page no. 9.70 has been revised for better understanding.

Exemption under section 11(2) shall be allowed subject to the following conditions being satisfied:

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year.

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Study Note 11: Return of Income & Assessment Procedure

(4) Point no. 6 of page no. 11.1 has been amended and revised for better understanding.

(6) Compulsory filing of return in relation to assets, etc. located outside India [Fourth proviso to section 139(1)] [W.e.f. A.Y. 2016-17]

A person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under this sub-section and who at any time during the previous year,—

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Provided also that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India when income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act.

Note:-

"Beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

"Beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

(5) Point no. 11.1.9 of page no. 11.6 has been amended and revised for better understanding.

11.1.9 Return of Income of Research Associations etc. [Section 139(4C)]

Every—

(a) research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiab) or sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiac) or sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10;

(ea) Mutual Fund referred to in clause (23D) of section 10;

(eb) securitisation trust referred to in clause (23DA) of section 10;

(ec) venture capital company or venture capital fund referred to in clause (23FB) of section 10;

(f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10;

(g) body or authority or Board or Trust or Commission (by whatever name called) referred to in clause (46) of section 10;

(h) infrastructure debt fund referred to in clause (47) of section 10,

shall, if the total income in respect of which such research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund [or Mutual Fund or securitisation trust or venture capital company or venture capital fund] is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

(6) Provision relating to section 153C has been inserted after section 153A and before section 153D of page no. 11.45.

Assessment of income of any other person [Section 153C]

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153Ashall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the

previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

Study Note – 12: Search and Seizure

(7) Insert point no. (ix) in the page no. 12.12

(ix) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.

(8) Section 153C has been amended and modified for better understanding of page no. 12.12

Assessment of income of any other person [Section 153C]

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the

Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

Study Note – 15: Deduction in Computing Total Income

(9) The para 1 of page no. 15.7 has been amended and revised

IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT [SEC. 80CCD]

1	Eligible Assessee	Individual
2	Condition	Investment or application of funds during the Previous Year
3	Maximum Deduction	Up to 10% of his salary or gross total Income subject to maximum of ₹ 1,50,000 u/s 80CCD(i)
4	Special Provisions	Withdrawal of deductions for certain premature exit from certain investments or application of funds

(10) The para 3 of page no. 15.7 has been revised for better understanding

Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-Section (1) or sub-Section (1B).

(a) No rebate with reference to such amount shall be allowed under Section 88 for any Assessment Year ending before the 1st day of April, 2006;

(b) No deduction with reference to such amount shall be allowed under Section 80C for any Assessment Year beginning on or after the 1st day of April, 2006.

(11) The para 4 of page no. 15.7 has been revised for better understanding

Tax benefits for New Pension System - extended also to "any employee or self-employed", and tax treatment of savings under this system as "exempt-exempt-taxed" [Section 10(44), 115-O,197A and 80CCD W.r.e.f. A.Y. 2009-10]

New Pension System has been extended to employee as well as self- employed Individual.

Further, in the case of an employee of Central Government or of any other employer, the deduction of employees' contribution shall be limited to 10% of his salary. Whereas in the case self-employed persons, it shall be limited to 10% of his Gross Total Income in the Previous Year.

For the purposes of the said Section the assessee shall be deemed not to have received any amount in the Previous Year if such amount is used for purchasing an annuity plan in the same Previous Year.

(12) Last para of page no. 15.8 has been amended & revised for better understanding

Essential conditions for claiming deduction under this section: Deduction is permissible, under this section, only to an individual or HUF.

Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme or such other scheme as may be notified by the Central Government in this behalf or any payment made on account of preventive health check-up of the assessee or his family as does not exceed in the aggregate ₹ 25,000; **and**

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee or any payment made on account of preventive health check-up of the parent or parents of the assessee as does not exceed in the aggregate ₹25,000.

However, where the amounts referred to in clauses (a) and (b) above are paid on account of preventive health check-up, the deduction for such amount shall be allowed to the extent it does not exceed in the aggregate ₹ 5,000.

Following clauses (c) and (d) shall be inserted after clause (b) of sub-section (2) of section 80D by the Finance Act, 2015, w.e.f. 1-4-2016.

Deduction on account of medical expenditure incurred (instead of sum paid to effect any insurance of the health) to be allowed in case of very senior citizen;

(c) the whole of the amount paid on account of medical expenditure incurred on the health of the assessee or any member of his family as does not exceed in the aggregate ₹ 30,000; **and**

(d) the whole of the amount paid on account of medical expenditure incurred on the health of any parent of the assessee, as does not exceed in the aggregate ₹ 30,000:

Provided that the amount referred to in clause (c) or clause (d) is paid in respect of a very senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person.

Provided further that the aggregate of the sum specified under clause (a) and clause (c) or the aggregate of the sum specified under clause (b) and clause (d) shall not ₹ 30,000.

Explanation.—For the purposes of clause (a), "family" means the spouse and dependant children of the assessee.

Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees.

For the purposes of deduction under sub-section (1), the payment shall be made by—

(i) any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(ii) any mode other than cash in all other cases not falling under clause (i).

Following sub-section (3) shall be substituted for the existing sub-section (3) of section 80D by the Finance Act, 2015, w.e.f. 1-4-2016 :

Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1), shall be the aggregate of the following, namely:—

(a) whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate ₹ 25,000; and

(b) the whole of the amount paid on account of medical expenditure incurred on the health of any member of the Hindu undivided family as does not exceed in the aggregate ₹30,000.

Provided that the amount referred to in clause (b) is paid in respect of a very senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person.

Provided further that the aggregate of the sum specified under clause (a) and clause (b) shall not exceed ₹ 30,000.

Additional deduction of ₹ 5,000: Where the sum specified in the above para of quantum of deduction is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, an additional deduction of ₹ 5,000 shall be allowed.

(13) Old Illustration no. 8 of study note 15 has been deleted and accordingly numbers of the subsequent sums has been changed.

Study Note-16: Settlement of Cases

(14) First para of the page no. 16.1 has been amended and revised for better understanding.

16.1.1 Meaning of Case [Section 245A(b)]

"Case" means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application under sub-section (1) of section 245C is made.

Explanation.—For the purposes of this clause—

(i) a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced—

  (a) from the date on which a notice under section 148 is issued for any assessment year;

  (b) from the date of issuance of the notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under section 139 or in response to a notice under section 142;

(ii) a proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment shall be deemed to have commenced from the date on which such order, setting aside or cancelling an assessment was passed;

(iii) a proceeding for assessment or reassessment for any of the assessment years, referred to in clause (b) of sub-section (1) of section 153A in case of a person referred to in section 153A or section 153C, shall be deemed to have commenced on the date of issue of notice initiating such proceeding and concluded on the date on which the assessment is made;

(iv) a proceeding for assessment for any assessment year, other than the proceedings of assessment or reassessment referred to in clause (i) or clause (iii) or clause (iiia), shall be deemed to have

commenced from the date on which the return of income for that assessment year is furnished under section 139 or in response to a notice served under section 142 and concluded on the date on which the assessment is made; or on the expiry of two years from the end of relevant assessment year, in case where no assessment is made.

(15) The below point has been amended and revised for better understanding of the page no. 16.10

16.1.18 Bar on subsequent application for settlement in certain cases [Section 254K]

(1) Where—

(i) an order of settlement passed under sub-section (4) of section 245D provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income; or

(ii) after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case; or

(iii) the case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June, 2002,

then, he or any person related to such person (herein referred to as related person) shall not be entitled to apply for settlement under section 245C in relation to any other matter.

(2) Where a person has made an application under section 245C on or after the 1st day of June, 2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 245D, such person or any related person shall not be subsequently entitled to make an application under section 245C.

Study Note – 17: Grievances Redressal Procedure

(16) The below point has been amended and revised for better understanding of the page no. 17.5

17.3.1 Appealable orders before Commissioner (Appeals) [Section 246A]

(1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(aa) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab) an order of assessment or reassessment under section 115WG;

(b) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 150;

(ba) an order of assessment or reassessment under section 153A except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA;

(bb) an order of assessment or reassessment under sub-section (3) of section 92CD;

(c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections [except an order referred to in sub-section (12) of section 144BA;

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

(e) an order made under sub-section (2) or sub-section (3) of section 170;

(f) an order made under section 171;

(g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;

(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;

(ha) an order made under section 201;

(hb) an order made under sub-section (6A) of section 206C;

(i) an order made under section 237;

(j) an order imposing a penalty under—

(A) section 221; or

(B) section 271, section 271A, section 271AAA, section 271AAB, section 271F, section 271FB, section 272AA or section 272BB;

(C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

(ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;

(k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;

(l) an order imposing a penalty under sub-section (2) of section 158BFA;

(m) an order imposing a penalty under section 271B or section 271BB;

(n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E;

(o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Explanation.—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.

(1A) Every appeal filed by an assessee in default against an order under section 201 on or after the 1st day of October, 1998 but before the 1st day of June, 2000 shall be deemed to have been filed under this section.

(1B) Every appeal filed by an assessee in default against an order under sub-section (6A) of section 206C on or after the 1st day of April, 2007 but before the 1st day of June, 2007 shall be deemed to have been filed under this section.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day.

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

Explanation.— For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.

(17) The below point has been amended and revised for better understanding of the page no. 17.14

17.3.7 Appeals to the Appellate Tribunal [Section 253]

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271Aor section 272A; or

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

(c) an order passed by a Principal Commissioner or Commissioner under section 12AA or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 272A; or

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order;

Following clause (e) shall be inserted after clause (d) of sub-section (1) of section 253 by the Finance Act, 2013, w.e.f. 1-4-2016 :

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Principal Commissioner or Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order;

(f) an order passed by the prescribed authority under sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.

(2) The Principal Commissioner or Commissioner may, if he objects to any order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(2A) The Principal Commissioner or] Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or Commissioner, as the case may be.

Provided that in respect of any appeal under clause (b) of sub-section (1), this sub-section shall have effect as if for the words "sixty days", the words "thirty days" had been substituted.

(3A) Every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of section 144C.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), 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) or sub-section (3A).

(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.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

(a) Where the total income is ≤ ₹1,00,000	Fee ₹ 500
(b) Where the total income is > ₹1,00,000 ≤₹2,00,000	Fee ₹ 1,500
(c) Where the total income is > ₹2,00,000	Fee of 1% of the assessed income (Maximum of ₹ 10,000)
(d) Where the subject matter of an appeal is not covered under (a), (b) and (c) above	Fee ₹ 500
(e) Application for stay of demand	Fee ₹ 500

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).

(18) The last para of the page no. 17.25 has been amended and revised for better understanding.

For the purposes of this section, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

Study Note – 18: Penalty and Prosecution

(19) Column no. 4 of page no. 18.3 has been revised for better understanding.

272A(2)	Failure to comply with a notice u/s 94, 176(3), 133, 206, 206C, 285B, 134 to furnish return of Income u/s 139(4A) or 139(4C) or to delivery in due time a declaration mentioned in section 197A or 206C(1A), to furnished certificate u/s 203 or 206C	₹ 100 for every day during the failure continues but restricted to amount of tax.	₹ 100 for every day during the failure continues but restricted to amount of tax.

Study Note – 21: Wealth Tax

(20) Levy of Wealth Tax under the Wealth Tax Act has been abolished with effect from the Assessment year 2016-17.

Study Note – 22: Taxation of International Transactions

(21) Last para of page no. 22.7 has been revised for better understanding.

Power of Board to make Safe Harbour Rules [Section 92CB]

The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbor rules.

Further as per section 92CB(2), the Board may, for the purposes of section 92CB(1), make rules for safe harbor.

Explanation.- For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Safe hourbour rules for international transactions have since been notified by the CBDT by Notification No. 73/2013, dated 18-9-2013 which contain rules 10TA to 10TG.

INCOME COMPUTATION AND DISCLOSURE STANDARDS

Central Government vide **Notification No. 32/2015, dated 31-3-2015** has notifies the "Income Computation and Disclosure Standards" as specified below to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head **"Profit and Gains of Business or Profession"** or **"Income from Other Sources"**. This notification shall come into force with effect from 1st day of April, 2015, and shall accordingly apply to the assessment year 2016-17 and subsequent assessment years.

List of Standards are as follows:

(1) Income Computation and Disclosure Standard I relating to accounting policies Preamble

(2) Income Computation and Disclosure Standard II relating to valuation of inventories

(3) Income Computation and Disclosure Standard III relating to construction contracts

(4) Income Computation and Disclosure Standard IV relating to revenue recognition Preamble

(5) Income Computation and Disclosure Standard V relating to tangible fixed assets Preamble

(6) Income Computation and Disclosure Standard VI relating to the effects of changes in foreign exchange rates

(7) Income Computation and Disclosure Standard VII relating to government grants Preamble

(8) Income Computation and Disclosure Standard VIII relating to securities Preamble

(9) Income Computation and Disclosure Standard IX relating to borrowing costs Preamble

(10) Income Computation and Disclosure Standard X relating to provisions, contingent liabilities and contingent assets

(1) Income Computation and Disclosure Standard I relating to accounting policies Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard deals with significant accounting policies.

2. Fundamental Accounting Assumptions

The following are fundamental accounting assumptions, namely:—

(a) Going Concern

"Going concern" refers to the assumption that the person has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future.

(b) Consistency

"Consistency" refers to the assumption that accounting policies are consistent from one period to another.

(c) Accrual

"Accrual" refers to the assumption that revenues and costs are accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the previous year to which they relate.

3. Accounting Policies

The accounting policies refer to the specific accounting principles and the methods of applying those principles adopted by a person.

4. Considerations in the Selection and Change of Accounting Policies

Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation. For this purpose,—

(i) the treatment and presentation of transactions and events shall be governed by their substance and not merely by the legal form; and

(ii) marked to market loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other Income

5. Computation and Disclosure Standard

An accounting policy shall not be changed without reasonable cause.

6. Disclosure of Accounting Policies

All significant accounting policies adopted by a person shall be disclosed.

7. Any change in an accounting policy which has a material effect shall be disclosed. The amount by which any item is affected by such change shall also be disclosed to the extent ascertainable. Where such amount is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted and also in the previous year in which such change has material effect for the first time.

8. Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.

9. If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, specific disclosure is not required. If a fundamental accounting assumption is not followed, the fact shall be disclosed.

10. Transitional Provisions

All contract or transaction existing on the 1st day of April, 2015 or entered into on or after the 1st day of April, 2015 shall be dealt with in accordance with the provisions of this standard after taking into account the income, expense or loss, if any, recognised in respect of the said contract or transaction for the previous year ending on or before the 31st March, 2015.

(2) Income Computation and Disclosure Standard II relating to valuation of inventories

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of Business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of Income Tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard shall be applied for valuation of inventories, except:

(a) Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the Income Computation and Disclosure Standard on construction contracts;

(b) Work-in-progress which is dealt with by other Income Computation and Disclosure Standard;

(c) Shares, debentures and other financial instruments held as stock-in-trade which are dealt with by the Income Computation and Disclosure Standard on securities;

(d) Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realizable value;

(e) Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular, shall be dealt with in accordance with the Income Computation and Disclosure Standard on tangible fixed assets.

2. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Inventories" are assets:

(i) held for sale in the ordinary course of business;

(ii) in the process of production for such sale;

(iii) in the form of materials or supplies to be consumed in the production process or in the rendering of services.

(b) "Net realisable value" is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

2(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

3. Measurement

Inventories shall be valued at cost, or net realisable value, whichever is lower.

4. Cost of Inventories

Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

5. Costs of Purchase

The costs of purchase shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase.

6. Costs of Services

The costs of services in the case of a service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.

7. Costs of Conversion

The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods. Fixed production overheads shall be those indirect costs of production that remain relatively constant regardless of the volume of production. Variable production overheads shall be those indirect costs of production that vary directly or nearly directly, with the volume of production.

8. The allocation of fixed production overheads for the purpose of their inclusion in the costs of conversion shall be based on the normal capacity of the production facilities.

Normal capacity shall be the production expected to be achieved on an average over a number of periods or seasons under normal circumstances, taking into account the loss of capacity resulting from planned maintenance. The actual level of production shall be used when it approximates to normal capacity. The amount of fixed production overheads allocated to each unit of production shall not be increased as a consequence of low production or idle plant. Unallocated overheads shall be recognised as an expense in the period in which they are incurred. In periods of abnormally high production, the amount of fixed production overheads allocated to each unit of production is decreased so that inventories are not measured above the cost. Variable production overheads shall be assigned to each unit of production on the basis of the actual use of the production facilities.

9. Where a production process results in more than one product being produced simultaneously and the costs of conversion of each product are not separately identifiable, the costs shall be allocated between the products on a rational and consistent basis. Where by-products, scrap or waste material are immaterial, they shall be measured at net realisable value and this value shall be deducted from the cost of the main product.

10. Other Costs

Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.

11. Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the Income Computation and Disclosure Standard on borrowing costs.

12. Exclusions from the Cost of Inventories

In determining the cost of inventories in accordance with paragraphs 4 to paragraphs 11, the following costs shall be excluded and recognised as expenses of the period in which they are incurred, namely:—

(a) Abnormal amounts of wasted materials, labour, or other production costs;

(b) Storage costs, unless those costs are necessary in the production process prior to a further production stage;

(c) Administrative overheads that do not contribute to bringing the inventories to their present location and condition;

(d) Selling costs.

13. Cost Formulae

The Cost of inventories of items—

(i) that are not ordinarily interchangeable; and

(ii) goods or services produced and segregated for specific projects shall be assigned by specific identification of their individual costs.

14. 'Specific identification of cost' means specific costs are attributed to identified items of inventory.

15. Where there are a large numbers of items of inventory which are ordinarily interchangeable, specific identification of costs shall not be made.

16. First-in First-out and Weighted Average Cost Formula

Cost of inventories, other than the inventory dealt with in paragraph 13, shall be assigned by using the First-in First-out (FIFO), or weighted average cost formula. The formula used shall reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition.

17. The FIFO formula assumes that the items of inventory which were purchased or produced first are consumed or sold first, and consequently the items remaining in inventory at the end of the period are those most recently purchased or produced. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average shall be calculated on a periodic basis, or as each additional shipment is received, depending upon the circumstances.

18. Retail Method

Where it is impracticable to use the costing methods referred to in paragraph 16, the retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price.

19. Net Realisable Value

Inventories shall be written down to net realisable value on an item-by-item basis. Where 'items of inventory' relating to the same product line having similar purposes or end uses and are produced and marketed in the same geographical area and cannot be practicably evaluated separately from other items in that product line, such inventories shall be grouped together and written down to net realisable value on an aggregate basis.

20. Net realisable value shall be based on the most reliable evidence available at the time of valuation. The estimates of net realisable value shall also take into consideration the purpose for which the inventory is held. The estimates shall take into consideration fluctuations of price or cost directly relating to events occurring after the end of previous year to the extent that such events confirm the conditions existing on the last day of the previous year.

21. Materials and other supplies held for use in the production of inventories shall not be written down below the cost, where the finished products in which they shall be incorporated are expected to be sold at or above the cost. Where there has been a decline in the price of materials and it is estimated that the cost of finished products will exceed the net realisable value, the value of materials shall be written down to net realisable value which shall be the replacement cost of such materials.

22. Value of Opening Inventory

The value of the inventory as on the beginning of the previous year shall be—

(i) the cost of inventory available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and

(ii) the value of the inventory as on the close of the immediately preceding previous year, in any other case.

23. Change of Method of Valuation of Inventory

The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause.

24. Valuation of Inventory in Case of Certain Dissolutions

In case of dissolution of a partnership firm or association of person or body of individuals, notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value.

25. Transitional Provisions

Interest and other borrowing costs, which do not meet the criteria for recognition of interest as a component of the cost as per para 11, but included in the cost of the opening inventory as on the 1st day of April, 2015, shall be taken into account for determining cost of such inventory for valuation as on the close of the previous year beginning on or after 1st day of April, 2015 if such inventory continue to remain part of inventory as on the close of the previous year beginning on or after 1st day of April, 2015.

26. Disclosure

The following aspects shall be disclosed, namely:—

(a) the accounting policies adopted in measuring inventories including the cost formulae used; and

(b) the total carrying amount of inventories and its classification appropriate to a person.

(3) Income Computation and Disclosure Standard III relating to construction contracts

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard should be applied in determination of income for a construction contract of a contractor.

2. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Construction contract" is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes:

(i) contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects;

(ii) contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.

(b) "Fixed price contract" is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which may be subject to cost escalation clauses.

(c) "Cost plus contract" is a construction contract in which the contractor is reimbursed for allowable or otherwise defined costs, plus a mark up on these costs or a fixed fee.

(d) "Retentions" are amounts of progress billings which are not paid until the satisfaction of conditions specified in the contract for the payment of such amounts or until defects have been rectified.

(e) "Progress billings" are amounts billed for work performed on a contract whether or not they have been paid by the customer.

(f) "Advances" are amounts received by the contractor before the related work is performed.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. A construction contract may be negotiated for the construction of a single asset. A construction contract may also deal with the construction of a number of assets which are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.

4. Construction contracts are formulated in a number of ways which, for the purposes of this Income Computation and Disclosure Standard, are classified as fixed price contracts and cost plus contracts. Some construction contracts may contain characteristics of both a fixed price contract and a cost plus contract, for example, in the case of a cost plus contract with an agreed maximum price.

5. Combining and Segmenting Construction Contracts

The requirements of this Income Computation and Disclosure Standard shall be applied separately to each construction contract except as provided for in paragraphs 6, 7 and 8 herein. For reflecting the substance of a contract or a group of contracts, where it is necessary, the Income Computation and Disclosure Standard should be applied to the separately identifiable components of a single contract or to a group of contracts together.

6. Where a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when:

(a) separate proposals have been submitted for each asset;

(b) each asset has been subject to separate negotiation and the contractor and customer have been able to accept or reject that part of the contract relating to each asset; and

(c) the costs and revenues of each asset can be identified.

7. A group of contracts, whether with a single customer or with several customers, should be treated as a single construction contract when:

(a) the group of contracts is negotiated as a single package;

(b) the contracts are so closely interrelated that they are, in effect, part of a single project with an overall profit margin; and

(c) the contracts are performed concurrently or in a continuous sequence.

8. Where a contract provides for the construction of an additional asset at the option of the customer or is amended to include the construction of an additional asset, the construction of the additional asset should be treated as a separate construction contract when:

(a) the asset differs significantly in design, technology or function from the asset or assets covered by the original contract; or

(b) the price of the asset is negotiated without having regard to the original contract price.

9. Contract Revenue

Contract revenue shall be recognised when there is reasonable certainty of its ultimate collection.

10. Contract revenue shall comprise of:

(a) the initial amount of revenue agreed in the contract, including retentions; and

(b) variations in contract work, claims and incentive payments:

(i) to the extent that it is probable that they will result in revenue; and

(ii) they are capable of being reliably measured.

11. Where contract revenue already recognised as income is subsequently written off in the books of accounts as uncollectible, the same shall be recognised as an expense and not as an adjustment of the amount of contract revenue.

12. Contract Costs

Contract costs shall comprise of:

(a) costs that relate directly to the specific contract;

(b) costs that are attributable to contract activity in general and can be allocated to the contract;

(c) such other costs as are specifically chargeable to the customer under the terms of the contract; and

(d) allocated borrowing costs in accordance with the Income Computation and Disclosure Standard on Borrowing Costs. These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains, that is not included in contract revenue.

13. Costs that cannot be attributed to any contract activity or cannot be allocated to a contract shall be excluded from the costs of a construction contract.

14. Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the final completion of the contract. Costs that are incurred in securing the contract are also included as part of the contract costs, provided

(a) they can be separately identified; and

(b) it is probable that the contract shall be obtained.

When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period.

15. Contract costs that relate to future activity on the contract are recognised as an asset. Such costs represent an amount due from the customer and are classified as contract work in progress.

16. Recognition of Contract Revenue and Expenses

Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.

17. The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.

18. The stage of completion of a contract shall be determined with reference to:

(a) the proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or

(b) surveys of work performed; or

(c) completion of a physical proportion of the contract work.

Progress payments and advances received from customers are not determinative of the stage of completion of a contract.

19. When the stage of completion is determined by reference to the contract costs incurred upto the reporting date, only those contract costs that reflect work performed are included in costs incurred upto the reporting date. Contract costs which are excluded are:

(a) contract costs that relate to future activity on the contract; and

(b) payments made to subcontractors in advance of work performed under the subcontract.

20. During the early stages of a contract, where the outcome of the contract cannot be estimated reliably contract revenue is recognised only to the extent of costs incurred. The early stage of a contract shall not extend beyond 25 % of the stage of completion.

21. Changes in Estimates

The percentage of completion method is applied on a cumulative basis in each previous year to the current estimates of contract revenue and contract costs.

Where there is change in estimates, the changed estimates shall be used in determination of the amount of revenue and expenses in the period in which the change is made and in subsequent periods.

22. Transitional Provisions

Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2015 but not completed by the said date, shall be recognised as revenue and costs respectively in accordance with the provisions of this standard. The amount of contract revenue, contract costs or expected loss, if any, recognised for the said contract for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising revenue and costs of the said contract for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.

23. Disclosure

A person shall disclose:

(a) the amount of contract revenue recognised as revenue in the period; and

(b) the methods used to determine the stage of completion of contracts in progress.

24. A person shall disclose the following for contracts in progress at the reporting date, namely:—

(a) amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;

(b) the amount of advances received; and

(c) the amount of retentions.

D. Income Computation and Disclosure Standard IV relating to revenue recognition Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

(1) This Income Computation and Disclosure Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from

(i) the sale of goods;

(ii) the rendering of services;

(iii) the use by others of the person's resources yielding interest, royalties or dividends.

(2) This Income Computation and Disclosure Standard does not deal with the aspects of revenue recognition which are dealt with by other Income Computation and Disclosure Standards.

2. Definitions

(1) The following term is used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Revenue" is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

3. Sale of Goods

In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.

4. Revenue shall be recognised when there is reasonable certainty of its ultimate collection.

5. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.

6. Rendering of Services

Revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transactions costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutatis mutandis apply to the recognition of revenue and the associated expenses for a service transaction.

7. The Use of Resources by Others Yielding Interest, Royalties or Dividends

Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.

8. Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.

9. Dividends are recognised in accordance with the provisions of the Act.

10. Transitional Provisions

The transitional provisions of Income Computation and Disclosure Standard on construction contract shall mutatis mutandis apply to the recognition of revenue and the associated costs for a service transaction undertaken on or before the 31st day of March, 2015 but not completed by the said date.

11. Revenue for a transaction, other than a service transaction referred to in Para 10, undertaken on or before the 31st day of March, 2015 but not completed by the said date shall be recognised in accordance with the provisions of this standard for the previous year commencing on the 1st day of April, 2015 and subsequent previous year. The amount of revenue, if any, recognised for the said transaction for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising revenue for the said transaction for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.

12. Disclosure

Following disclosures shall be made in respect of revenue recognition, namely:—

(a) in a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;

(b) the amount of revenue from service transactions recognised as revenue during the previous year;

(c) the method used to determine the stage of completion of service transactions in progress; and

(d) for service transactions in progress at the end of previous year:

  (i) amount of costs incurred and recognised profits (less recognised losses) upto end of previous year;

  (ii) the amount of advances received; and

  (iii) the amount of retentions.

E. Income Computation and Disclosure Standard V relating to tangible fixed assets Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard deals with the treatment of tangible fixed assets.

2. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Tangible fixed asset" is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.

(b) "Fair value" of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

3. Identification of Tangible Fixed Assets

The definition in clause (a) of sub-paragraph (1) of paragraph 2 provides criteria for determining whether an item is to be classified as a tangible fixed asset.

4. Stand-by equipment and servicing equipment are to be capitalised. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised.

5. Components of Actual Cost

The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.

6. The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of—

(i) price adjustment, changes in duties or similar factors; or

(ii) exchange fluctuation as specified in Income Computation and Disclosure

7. Standard on the effects of changes in foreign exchange rates.

Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset.

Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset.

8. The expenditure incurred on start-up and commissioning of the project, including the expenditure

incurred on test runs and experimental production, shall be capitalised. The expenditure incurred after the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as revenue expenditure.

9. Self-constructed Tangible Fixed Assets

In arriving at the actual cost of self-constructed tangible fixed assets, the same principles shall apply as those described in paragraphs 5 to 8. Cost of construction that relate directly to the specific tangible fixed asset and costs that are attributable to the construction activity in general and can be allocated to the specific tangible fixed asset shall be included in actual cost. Any internal profits shall be eliminated in arriving at such costs.

10. Non-monetary Consideration

When a tangible fixed asset is acquired in exchange for another asset, the fair value of the tangible fixed asset so acquired shall be its actual cost.

11. When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.

12. Improvements and Repairs

An Expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance is added to the actual cost.

13. The cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is to be added to its actual cost. Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated as separate asset.

14. Valuation of Tangible Fixed Assets in Special Cases

Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets. Details of such jointly owned tangible fixed assets shall be indicated separately in the tangible fixed assets register.

15. Where several assets are purchased for a consolidated price, the consideration shall be apportioned to the various assets on a fair basis.

16. Transitional Provisions

The actual cost of tangible fixed assets, acquisition or construction of which commenced on or before the 31st day of March, 2015 but not completed by the said date, shall be recognised in accordance with the provisions of this standard. The amount of actual cost, if any, recognised for the said assets for any previous year commencing on or before the 1st day of April, 2014 shall be taken into account for recognising actual cost of the said assets for the previous year commencing on the 1st day of April, 2015 and subsequent previous years.

17. Depreciation

Depreciation on a tangible fixed asset shall be computed in accordance with the provisions of the Act.

18. Transfers

Income arising on transfer of a tangible fixed asset shall be computed in accordance with the provisions of the Act.

19. Disclosures

Following disclosure shall be made in respect of tangible fixed assets, namely:—

(a) description of asset or block of assets;

(b) rate of depreciation;

(c) actual cost or written down value, as the case may be;

(d) additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of—

(i) Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004;

(ii) change in rate of exchange of currency;

(iii) subsidy or grant or reimbursement, by whatever name called;

(e) depreciation Allowable; and

(f) written down value at the end of year.

F. Income Computation and Disclosure Standard VI relating to the effects of changes in foreign exchange rates

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard deals with:

(a) treatment of transactions in foreign currencies;

(b) translating the financial statements of foreign operations;

(c) treatment of foreign currency transactions in the nature of forward exchange contracts.

2. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Average rate" is the mean of the exchange rates in force during a period.

(b) "Closing rate" is the exchange rate at the last day of the previous year.

(c) "Exchange difference" is the difference resulting from reporting the same number of units of a foreign currency in the reporting currency of a person at different exchange rates.

(d) "Exchange rate" is the ratio for exchange of two currencies.

(e) "Foreign currency" is a currency other than the reporting currency of a person.

(f) "Foreign operations of a person" is a branch, by whatever name called, of that person, the activities of which are based or conducted in a country other than India.

(g) "Foreign currency transaction" is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person:—

(i) buys or sells goods or services whose price is denominated in a foreign currency; or

(ii) borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or

(iii) becomes a party to an unperformed forward exchange contract; or

(iv) otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency.

(h) "Forward exchange contract" means an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract or another financial instrument of a similar nature;

(i) "Forward rate" is the specified exchange rate for exchange of two Currencies at a specified future date;

(j) "Indian currency" shall have the meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999;

(k) "Integral foreign operation" is a foreign operation, the activities of which are an integral part of the operation of the person;

(l) "Monetary items" are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. Cash, receivables, and payables are examples of monetary items;

(m) "Non-integral foreign operation" is a foreign operation that is not an integral foreign operation;

(n) "Non-monetary items" are assets and liabilities other than monetary items. Fixed assets, inventories, and investments in equity shares are examples of non-monetary items;

(o) "Reporting currency" means Indian currency except for foreign operations where it shall mean currency of the country where the operations are carried out.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

Foreign Currency Transactions

3. Initial Recognition

(1) A foreign currency transaction shall be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction.

(2) An average rate for a week or a month that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.

4. Conversion at Last Date of Previous Year

At last day of each previous year:—

(a) foreign currency monetary items shall be converted into reporting currency by applying the closing rate;

(b) where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the closing rate being unrealistic and it is not possible to effect an exchange of currencies at that rate, then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year; and

(c) non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction.

5. Recognition of Exchange Differences

(i) In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognised as income or as expense in that previous year.

(ii) In respect of non-monetary items, exchange differences arising on conversion thereof at the last day of the previous year shall not be recognised as income or as expense in that previous year.

6. Exceptions to Paragraphs 3,4 and 5

Notwithstanding anything contained in paragraph 3, 4 and 5; initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be.

Financial Statements of Foreign Operations

7. Classification of Foreign Operations

(1) The method used to translate the financial statements of a foreign operation depends on the way in which it is financed and operates in relation to a person. For this purpose, foreign operations are classified as either "integral foreign operations" or "non-integral foreign operations".

(2) The following are indications that a foreign operation is a non-integral foreign operation rather than an integral foreign operation:—

(a) while the person may control the foreign operation, the activities of the foreign operation are carried out with a significant degree of autonomy from the activities of the person;

(b) transactions with the person are not a high proportion of the foreign operation's activities;

(c) the activities of the foreign operation are financed mainly from its own operations or local borrowings;

(d) costs of labour, material and other components of the foreign operation's products or services are primarily paid or settled in the local currency;

(e) the foreign operation's sales are mainly in currencies other than Indian currency;

(f) cash flows of the person are insulated from the day-to-day activities of the foreign operation;

(g) sales prices for the foreign operation's products or services are not primarily responsive on a short-term basis to changes in exchange rates but are determined more by local competition or local government regulation;

(h) there is an active local sales market for the foreign operation's products or services, although there also might be significant amounts of exports.

8. Integral Foreign Operations

The financial statements of an integral foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.

9. Non-integral Foreign Operations

(1) In translating the financial statements of a non-integral foreign operation for a previous year, the person shall apply the following, namely:—

(a) the assets and liabilities, both monetary and non-monetary, of the non-integral foreign operation shall be translated at the closing rate;

(b) income and expense items of the non-integral foreign operation shall be translated at exchange rates at the dates of the transactions; and

(c) all resulting exchange differences shall be recognised as income or as expenses in that previous year.

(2) Notwithstanding anything stated in sub-paragraph 1, translation and recognition of exchange difference in cases referred to in section 43A of the Act or Rule 115 of Income-tax Rules, 1962 shall be carried out in accordance with the provisions contained in that section or that Rule, as the case may be.

10. Change in the Classification of a Foreign Operation

(1) When there is a change in the classification of a foreign operation, the translation procedures applicable to the revised classification should be applied from the date of the change in the classification.

(2) The consistency principle requires that foreign operation once classified as integral or non-integral is continued to be so classified. However, a change in the way in which a foreign operation is financed and operates in relation to the person may lead to a change in the classification of that foreign operation.

11. Forward Exchange Contracts

(1) Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change. Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.

(2) The provisions of sub-para (1) shall apply provided that the contract:

(a) is not intended for trading or speculation purposes; and

(b) is entered into to establish the amount of the reporting currency required or available at the settlement date of the transaction.

(3) The provisions of sub-para (1) shall not apply to the contract that is entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. For this purpose, firm commitment, shall not include assets and liabilities existing at the end of the previous year.

(4) The premium or discount that arises on the contract is measured by the difference between the exchange rate at the date of the inception of the contract and the forward rate specified in the contract. Exchange difference on the contract is the difference between:

(a) the foreign currency amount of the contract translated at the exchange rate at the last day of the previous year, or the settlement date where the transaction is settled during the previous year; and

(b) the same foreign currency amount translated at the date of inception of the contract or the last day of the immediately preceding previous year, whichever is later.

(5) Premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognised at the time of settlement.

12. Transitional Provisions

(1) All foreign currency transactions undertaken on or after 1st day of April, 2015 shall be recognised in accordance with the provisions of this standard.

(2) Exchange differences arising in respect of monetary items or non-monetary items, on the settlement thereof during the previous year commencing on the 1st day of April, 2015 or on conversion thereof at the last day of the previous year commencing on the 1st day of April, 2015, shall be recognised in accordance with the provisions of this standard after taking into account the amount recognised on the last day of the previous year ending on the 31st March,2015 for an item, if any, which is carried forward from said previous year.

(3) The financial statements of foreign operations for the previous year commencing on the 1st day of April, 2015 shall be translated using the principles and procedures specified in this standard after taking into account the amount recognised on the last day of the previous year ending on the 31st March, 2015 for an item, if any, which is carried forward from said previous year.

(4) All forward exchange contracts existing on the 1st day of April, 2015 or entered on or after 1st day of April, 2015 shall be dealt with in accordance with the provisions of this standard after taking into account the income or expenses, if any, recognised in respect of said contracts for the previous year ending on or before the 31st March, 2015.

G. Income Computation and Disclosure Standard VII relating to government grants Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In case of conflict between the provisions of the Income Tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc.

2. This Income Computation and Disclosure Standard does not deal with:—

(a) Government assistance other than in the form of Government grants; and

(b) Government participation in the ownership of the enterprise.

3. Definitions

(1) The following terms are used in the Income Computation and Disclosure Standard with the meanings specified:

(a) "Government" refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international.

(b) "Government grants" are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

4. Recognition of Government Grants

(1) Government grants should not be recognised until there is reasonable assurance that (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.

(2) Recognition of Government grant shall not be postponed beyond the date of actual receipt.

5. Treatment of Government Grants

Where the Government grant relates to a depreciable fixed asset or assets of a person, the grant shall be deducted from the actual cost of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.

6. Where the Government grant relates to a non-depreciable asset or assets of a person requiring fulfillment of certain obligations, the grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income.

7. Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so received, shall be deducted from the actual cost of the asset or shall be reduced from the written down value of block of assets to which the asset or assets belonged to.

8. The Government grant that is receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs, shall be recognised as income of the period in which it is receivable.

9. The Government grants other than covered by paragraph 5, 6, 7, and 8 shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.

10. The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost.

11. Refund of Government Grants

The amount refundable in respect of a Government grant referred to in paragraphs 6, 8 and 9 shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.

12. The amount refundable in respect of a Government grant related to a depreciable fixed asset or assets shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate.

13. Transitional Provisions

All the Government grants which meet the recognition criteria of para 4 on or after 1st day of April, 2015 shall be recognised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount, if any, of the said Government grant recognised for any previous year ending on or before 31st day of March, 2015.

14. Disclosures

Following disclosure shall be made in respect of Government grants, namely:—

(a) nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;

(b) nature and extent of Government grants recognised during the previous year as income;

(c) nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and

(d) nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

H. Income Computation and Disclosure Standard VIII relating to securities Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard deals with securities held as stock in-trade.

2. This Income Computation and Disclosure Standard does not deal with:

(a) the bases for recognition of interest and dividends on securities which are covered by the Income Computation and Disclosure Standard on revenue recognition;

(b) securities held by a person engaged in the business of insurance;

(c) securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013.

3. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Fair value" is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

(b) "Securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956, other than Derivatives referred to in sub-clause (Ia) of that clause.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

4. Recognition and Initial Measurement of Securities

A security on acquisition shall be recognised at actual cost.

5. The actual cost of a security shall comprise of its purchase price and include acquisition charges such as brokerage, fees, tax, duty or cess.

6. Where a security is acquired in exchange for other securities, the fair value of the security so acquired shall be its actual cost.

7. Where a security is acquired in exchange for another asset, the fair value of the security so acquired shall be its actual cost.

8. Where unpaid interest has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost.

9. Subsequent Measurement of Securities

At the end of any previous year, securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value at the end of that previous year, whichever is lower.

10. For the purpose of para 9, the comparison of actual cost initially recognised and net realisable value shall be done categorywise and not for each individual security. For this purpose, securities shall be classified into the following categories, namely:

(a) shares;

(b) debt securities;

(c) convertible securities; and

(d) any other securities not covered above.

11. The value of securities held as stock-in-trade of a business as on the beginning of the previous year shall be:

(a) the cost of securities available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and

(b) the value of the securities of the business as on the close of the immediately preceding previous year, in any other case.

12. Notwithstanding anything contained in para 9, 10 and 11, at the end of any previous year, securities not listed on a recognised stock exchange; or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised.

13. For the purposes of para 9, 10 and 11 where the actual cost initially recognised cannot be ascertained by reference to specific identification, the cost of such security shall be determined on the basis of first-in-first-out method.

I. Income Computation and Disclosure Standard IX relating to borrowing costs Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. **Scope**

(1) This Income Computation and Disclosure Standard deals with treatment of borrowing costs.

(2) This Income Computation and Disclosure Standard does not deal with the actual or imputed cost of owners' equity and preference share capital.

2. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Borrowing costs" are interest and other costs incurred by a person in connection with the borrowing of funds and include:

(i) commitment charges on borrowings;

(ii) amortised amount of discounts or premiums relating to borrowings;

(iii) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;

(iv) finance charges in respect of assets acquired under finance leases or under other similar arrangements.

(b) "Qualifying asset" means:

(i) land, building, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;

(iii) inventories that require a period of twelve months or more to bring them to a saleable condition.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

3. Recognition

Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation shall be determined in accordance with this Income Computation and Disclosure Standard. Other borrowing costs shall be recognised in accordance with the provisions of the Act.

4. For the purposes of this Income Computation and Disclosure Standard, "capitalisation" in the context of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2means addition of borrowing cost to the cost of inventory.

5. Borrowing Costs Eligible for Capitalisation

To the extent the funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.

6. To the extent the funds are borrowed generally and utilised for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula namely:—

$$A \times \frac{B}{C}$$

Where

A = borrowing costs incurred during the previous year except on borrowings directly relatable to specific purposes;

B = (i) the average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year;

(ii) in case the qualifying asset does not appear in the balance sheet of a person on the first day or both on the first day and the last day of previous year, half of the cost of qualifying asset;

(iii) in case the qualifying asset does not appear in the balance sheet of a person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, other than those qualifying assets which are directly funded out of specific borrowings; or

C = the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings;

7. Commencement of Capitalisation

The capitalisation of borrowing costs shall commence:

(a) in a case referred to in paragraph 5, from the date on which funds were borrowed;

(b) in a case referred to in paragraph 6, from the date on which funds were utilised.

8. Cessation of Capitalisation

Capitalisation of borrowing costs shall cease:

(a) in case of a qualifying asset referred to in item (i) and (ii) of clause (b) of subparagraph (1) of paragraph 2, when such asset is first put to use;

(b) in case of inventory referred to in item (Hi) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such inventory for its intended sale are complete.

9. When the construction of a qualifying asset is completed in parts and a completed part is capable of being used while construction continues for the other parts, capitalization of borrowing costs in relation to a part shall cease:—

(a) in case of part of a qualifying asset referred to in item (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such part of a qualifying asset is first put to use;

(b) in case of part of inventory referred to in item (Hi) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such part of inventory for its intended sale are complete.

10. Transitional Provisions

All the borrowing costs incurred on or after 1st day of April, 2015 shall be capitalized for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount of borrowing costs capitalised, if any, for the same borrowing for any previous year ending on or before 31st day of March, 2015.

11. Disclosure

The following disclosure shall be made in respect of borrowing costs, namely:—

(a) the accounting policy adopted for borrowing costs; and

(b) the amount of borrowing costs capitalised during the previous year.

J. Income Computation and Disclosure Standard X relating to provisions, contingent liabilities and contingent assets

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

1. Scope

This Income Computation and Disclosure Standard deals with provisions, contingent liabilities and contingent assets, except those:

(a) resulting from financial instruments;

(b) resulting from executory contracts;

(c) arising in insurance business from contracts with policyholders; and

(d) covered by another Income Computation and Disclosure Standard.

2. This Income Computation and Disclosure Standard does not deal with the recognition of revenue which is dealt with by Income Computation and Disclosure Standard - Revenue Recognition.

3. The term 'provision' is also used in the context of items such as depreciation, impairment of assets and doubtful debts which are adjustments to the carrying amounts of assets and are not addressed in this Income Computation and Disclosure Standard.

4. Definitions

(1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:

(a) "Provision" is a liability which can be measured only by using a substantial degree of estimation.

(b) "Liability" is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits.

(c) "Obligating event" is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation.

(d) "Contingent liability" is:

(i) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person; or

(ii) a present obligation that arises from past events but is not recognised because:

A. it is not reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; or

B. a reliable estimate of the amount of the obligation cannot be made.

(e) "Contingent asset" is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person.

(f) "Executory contracts" are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent.

(g) "Present obligation" is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain.

(2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Recognition

5. Provisions

A provision shall be recognised when:

(a) a person has a present obligation as a result of a past event;

(b) it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and

(c) a reliable estimate can be made of the amount of the obligation.

If these conditions are not met, no provision shall be recognised.

6. No provision shall be recognised for costs that need to be incurred to operate in the future.

7. It is only those obligations arising from past events existing independently of a person's future actions, that is the future conduct of its business, that are recognised as provisions.

8. Where details of a proposed new law have yet to be finalised, an obligation arises only when the legislation is enacted.

9. Contingent Liabilities

A person shall not recognise a contingent liability.

10. Contingent Assets

A person shall not recognise a contingent asset.

11. Contingent assets are assessed continually and when it becomes reasonably certain that inflow of economic benefit will arise, the asset and related income are recognised in the previous year in which the change occurs.

Measurement

12. Best Estimate

The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the previous year. The amount of a provision shall not be discounted to its present value.

13. The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising at the end of the previous year. The amount and related income shall not be discounted to its present value.

14. Reimbursements

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when it is reasonably certain that reimbursement will be received if the person settles the obligation. The amount recognised for the reimbursement shall not exceed the amount of the provision.

15. Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs.

16. An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties.

17. Review

Provisions shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.

18. An asset and related income recognised as provided in para 11 shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an inflow of economic benefits will arise, the asset and related income shall be reversed.

19. Use of Provisions

A provision shall be used only for expenditures for which the provision was originally recognised.

20. Transitional Provisions

All the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2015.

21. Disclosure

(1) Following disclosure shall be made in respect of each class of provision, namely:

(a) a brief description of the nature of the obligation;

(b) the carrying amount at the beginning and end of the previous year;

(c) additional provisions made during the previous year, including increases to existing provisions;

(d) amounts used, that is incurred and charged against the provision, during the previous year;

(e) unused amounts reversed during the previous year; and

(f) the amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.

(2) Following disclosure shall be made in respect of each class of asset and related income recognised as provided in para 11, namely:—

(a) a brief description of the nature of the asset and related income;

(b) the carrying amount of asset at the beginning and end of the previous year;

(c) additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and

(d) amount of asset and related income reversed during the previous year.