

EXAMINATION

NOTES

SUBJECT- GST & CUSTOM DUTY
CLASS- B.COM.6TH SEM PASS COURSE

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Lesson 1 – An Overview on Goods and Services Tax “GST”

- GST is one of the most demanding reforms in the field of indirect taxation. GST is an indirect tax which has replaced many indirect taxes like excise duty, service tax, VAT, CST and many other central and state level taxes.
- In order to make this reform there was a need to amend constitution so that Central and State Government can have power to tax on both goods and services.
- Taxable event for GST is supply. If any business makes a supply that will be subject to GST provided other conditions are fulfilled.
- Supply is of two types- intra-state supply and inter-state supply. Supply within same state, there will be two taxes being CGST and SGST and in case of inter-state supply only one tax will be levied that is IGST. Thus, in India we have followed Dual GST Model.
- Generally, liability to pay GST is on the supplier but in certain circumstances liability to pay GST has been put on Recipient of Supply. This is known as Reverse Charge Mechanism (RCM).
- In order to provide comfort to small dealers from the complexities of GST a concept known as composition scheme has been introduced (though not new it also existed in earlier laws). Small dealers have been identified on the basis of turnover made by them during the preceding financial year.

- Central Government has been granted power to grant exemptions either generally or specially in respect of supply of goods or services or both.

Lesson 2 – Supply

- **Taxable Event:** The taxable event under GST shall be the supply of goods or services or both made for consideration in the course or furtherance of business. The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as ‘supply’.
- **Scope of supply:** Ans. The term ‘supply’ is wide in its import covers all forms of supply of goods or services or both that includes sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes import of service. The GST law also provides for including certain transactions made without consideration within the scope of supply.
- **Taxable supply:** A ‘taxable supply’ means a supply of goods or services or both which is chargeable to goods and services tax under the GST Act.
- **Composite supply** is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the ordinary course of business and where one of which is a principal supply. For example, when a consumer buys a

television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary

- Mixed Supply means two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. For example, a supply of package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juice when supplied for a single price is a mixed supply. Each of these items can be supplied separately and it is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.
- Treatment of composite supply and mixed supply: Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.
- Time of supply: The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST/SGST Act provides separate time of supply for goods and services.
- Supply of goods: Section 12 of the CGST/SGST Act provides for time of supply of goods. The time of supply of goods shall be the earlier of the following namely,
 1. the date of issue of invoice by the supplier or the last date on which he is required under Section 31, to issue the invoice with respect to the supply; or

2. the date on which the supplier receives the payment with respect to the supply.

However, vide Notification No. 66/2017-Central Tax dated 15.11.2017, liability to pay tax at the time of receipt of advance has been relaxed in case of goods.

- Supply of services: Section 13 of the CGST/SGST Act provides for time of supply of services. The time of supply of services shall be the earlier of the following namely,
 1. the date of issue of invoice by the supplier if the invoice is issued within the period prescribed under section 31(2) or the date of receipt of payment whichever is earlier; or
 2. the date of provision of service, if the invoice is not issued within the period prescribed under section 31(2) or the date of receipt of payment whichever is earlier.
 3. the date on which the recipient shows the receipt of services in his books of account, in case where the provisions of clause (a) and (b) do not apply;
- Value of taxable supply: The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST/SGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions before or at the time of supply.
- Job work means undertaking any treatment or process by a person on goods belonging to another registered taxable

person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called 'principal'. This definition is much wider than the one given in Notification No. 214/86 – CE dated 23rd March, 1986. In the said notification, job work has been defined in such a manner so as to ensure that the activity of job work must amount to manufacture. Thus the definition of job work itself reflects the change in basic scheme of taxation relating to job work in the proposed GST regime.

- Electronic Commerce has been defined to mean the supply of goods or services or both, including digital products over digital or electronic network. Electronic Commerce Operator has been defined to mean any person who owns, operates or manages digital or electronic facility, or platform for electronic commerce. The benefit of threshold exemption is not available to e-commerce operators and they would be liable to be registered irrespective of the value of supply made by them.
- Tax Collection at source: The e-commerce operator is required to collect an amount calculated at the rate not exceeding one percent of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS). However, Section 52 of the CGST Act, 2017 which deals with TCS has not come into force as of yet and GST Council has recommended to keep this provision in abeyance till 31.03.2018.

Lesson 3 – Input Tax Credit and Computation of GST Liability

- Taxes paid on inward supply of inputs, capital goods and services are called input taxes which include Integrated GST, Central GST, State GST or Union Territory GST
- The credit of these taxes is called input tax credit
- Under GST, a seamless flow of credit throughout the value chain is available removing the cascading effect of taxes
- The office of the company which distributes the credit to the beneficiary units on the basis of their previous year turnover is called input service distributor
- Input tax credit (ITC) is a provision of reducing the tax already paid on inputs, to avoid the cascading effect of taxes
- It is one of the cutting-edge features available under the GST Law, unavailable in previous regime of indirect taxation
- Certain conditions need to be fulfilled in order to avail the Input Tax Credit
- Basic condition for availing Input Tax Credit amounts to payment of GST by the supplier
- When another person (job worker) undertakes the work of a manufacturer, to whom the goods belong (Principal), is known as job work
- GST law lays down the conditions for ITC in the case of a job worker
- There is no offset of ITC available between the CGST and the SGST.

- General exemption is granted by notification and is available to all persons which may be absolute or conditional and may be total or partial.
- Specific, also known as ad hoc exemption is granted to persons under circumstances of an exceptional nature by a special order communicated to the party seeking exemption.

Lesson 4 – Procedural Compliance under GST

- **Registration:** In terms of Section 22 of the CGST/SGST Act 2017, every supplier (including his agent) who makes a taxable supply of goods and / or services which are leviable to tax under GST law, and his aggregate turn over in a financial year exceeds the threshold limit of twenty lakh rupees shall be liable to register himself in the State or the Union territory, as the case may be, from where he makes the taxable supply.

In case of eleven special category states (as mentioned in Art.279A(4)(g) of the Constitution of India), this threshold limit for registration liability is ten lakh rupees.

- **Aggregate Turnover:** It includes the aggregate value of all taxable supplies, all exempt supplies, exports of goods and/or service and all inter-state supplies of a person having the same PAN.
- **Compulsory Registration:** The following categories of persons are required to be registered compulsorily irrespective of the threshold limit:
 1. persons making any inter-State taxable supply, except persons making inter-state supply of certain handicraft goods, and services;
 2. casual taxable persons except persons making supply of certain handicraft goods;
 3. persons who are required to pay tax under reverse charge;

4. persons who are required to pay tax under sub-section (5) of section 9;
 5. non-resident taxable persons making taxable supply;
 6. persons who are required to deduct tax under section 51;
 7. persons who make taxable supply of goods or services on behalf of other registered taxable persons whether as an agent or otherwise;
 8. Input service distributor (whether or not separately registered under the Act);
 9. persons who supply goods, other than supplies specified under Section 9(5), through such e-commerce operator who is required to collect tax at source under section 52;
 10. every electronic commerce operator;
 11. every person supplying online information and data base retrieval services from a place outside India to a person in India, other than a registered person.
- Time Limit is within thirty days from the date on which he becomes liable to registration.
 - An e-way bill is a document required to be carried by a person in charge of the conveyance carrying any consignment of goods of value exceeding fifty thousand rupees as mandated by the Government in terms of Section 68 of the Goods and Services Tax Act read with Rule 138 of the rules framed thereunder. It is generated from the GST Common Portal for eWay bill system by the registered persons or transporters who cause movement of goods of consignment before commencement of such movement.
 - TCS: The e-commerce operator is required to collect an amount calculated at the rate not exceeding one percent of

the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS). However, Section 52 of the CGST Act, 2017 which deals with TCS has not come into force as of yet and GST Council has recommended to keep this provision in abeyance till 31.03.2018.

- Filing of Return: Every person registered under GST will have to file returns in some form or other. A registered person will have to file returns either monthly (normal supplier) or quarterly basis (Supplier opting for composition scheme). An ISD will have to file monthly returns showing details of credit distributed during the particular month. A person required to deduct tax (TDS) and persons required to collect tax (TCS) will also have to file monthly returns showing the amount deducted/collected and other specified details. A non-resident taxable person will also have to file returns for the period of activity undertaken.
- "Refund" includes, (a) any balance amount in the electronic cash ledger so claimed in the returns, (b) any unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), (c) tax paid by specialized agency of United Nations or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries on any inward supply.

- The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST/SGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions before or at the time of supply.
- Audit: There are three types of audit prescribed in the GST Act(s) as explained below:
 1. Audit by Chartered Accountant or a Cost Accountant: Every registered person whose turnover exceeds Rs. Two crore, shall get his accounts audited by a chartered accountant or a cost accountant. (Section 35(5) of the CGST/SGST Act)
 2. Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST/SGST Act)
 3. Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, department may order special audit by chartered accountant or cost accountant, nominated by department. (Section 66 of the CGST/SGST Act).

Lesson 5 – Demand and Recovery, Advance Ruling, Appeals and Revision

- The liability for payment of GST lies on the taxpayer and it is payable on self-assessment basis.
- If such liability is determined wrongly, subsequent to its identification, demand may be raised.
- Section 73 deals with without fraud misstatement of facts and section 74 deals with wilful or fraud misstatement of facts
- In section 73, proper officer can issue notice within 3 years of the due date of furnishing the annual return whereas in section 74, he can issue notice within 5 years of due date of furnishing of annual return.
- If the service of notice or issuance of order is stayed by an order of Court or Appellate Tribunal, the period of stay will be excluded in computing the period 3 years or 5 years – the time limit for issue of notice or adjudication.
- Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person

- A taxpayer can approach Authority of Advance Ruling to get clarification for any specific matter related to supply of goods & services.
- The main objective of Advance Ruling is to provide certainty in advance for tax liability and to reduce litigation and other disagreements.
- The taxpayer has the right to make an appeal against the order passed by proper officer.
- Appeal Mechanism – Appellate Authority > Tribunal > High Court > Supreme Court.
- The taxpayer seeking appeal has to pre-deposit specified amount before filing an appeal.

Lesson 6 – Inspection, Search, Seizure, Offences & Penalties

- Inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following:
 - suppressed any transaction of supply;
 - suppressed stock of goods in hand;
 - claimed excess input tax credit;
 - contravened any provision of the CGST/SGST Act to evade tax;
 - a transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.
- Search and Seizure: An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.
- Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if

he has sufficient cause to believe that thing but not otherwise.” ‘Reason to believe’ contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

- Confiscation of Goods: As per section 130 of SGST/SGST Act, goods become liable to confiscation when any person does the following:
 - supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;
 - does not account for any goods on which he is
 - liable to pay tax under this Act;
 - supplies any goods liable to tax under this Act
 - without having applied for the registration;
 - contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax.

Document required to be carried during transport of taxable goods?

- Under section 68 of CGST /SGST Act, a person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount may be required to carry a prescribed document as prescribed in the E way Bill Rules.

- Arrest of the person: The Commissioner of CGST/SGST can authorize a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or Sec 132(2) of the CGST/SGST Act. This essentially means that a person can be arrested only where the tax evasion is more than 2 crore rupees or where a he has been convicted earlier under CGST Act.

Lesson 7 – Compliance Rating, Anti-profiteering, GST Practitioners, Authorised Representative, Professional Opportunities

- Compliance Rating in GST seeks to bring transparency to the entire GST compliances and administration by way of assigning compliance ratings.
- All registered taxpayers will be publically rated according to how they comply with GST regulations.
- If there is reduction in rate of tax on the supply of goods or services or benefit of input tax credit is available under GST, then, a registered person must pass on the benefit by reduction in prices to the consumer.
- Anti-profiteering measure would obligate the businesses to pass on the cost benefit arising out of GST implementation to their customers.
- Government has notified anti-profiteering authority (APA) which will check any undue increase in prices of products of companies under GST.
- It will work in a three-tier structure – a Standing Committee on Anti-profiteering as well as State-level Screening Committees.
- GST Practitioner is a professional who can prepare returns and perform other activities on the basis of the information furnished to him by a registered person.

Lesson 8 – Integrated Goods and Services Tax (IGST)

- IGST means tax is on the supply of any goods and/ or services in the course of inter-State trade or commerce.
- A supply of goods and/or services in the course of inter-State trade or commerce shall be treated where the location of the supplier and the place of supply are in different States, two different union territory or in a state and union territory. Further import of goods and services, supplies to SEZ/SEZD shall not be treated as an intra state supply.
- Imports/exports shall be treated as inter-state supplies. Exports of goods and services will be zero rated. Similarly, the supplies to SEZ units or developer shall be zero rated.
- The GST is the destination-based tax i.e. at the point of consumption place. So, place of supply provision determines the place i.e. taxable jurisdiction where the tax should reach.
- The place of supply determines whether a transaction is intra-state or inter-state. The place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Lesson 9 – Union Territory Goods and Services Tax (UTGST)

- In case of intrastate supply within a Union Territory a tax shall be levied known as UTGST; in addition to it, CGST will also be levied at an equal rate.
- UTGST Act, 2017 has been divided into 9 chapters containing 26 sections. Central Government has also notified various Rules for different Union Territories.
- Section 8 empowers Central Government to grant exemption from GST on supply of Goods or Services or both, either generally or specifically and either absolutely or subject to conditions.
- Section 9 provides manner of utilisation of credit of IGST, UTGST and CGST.
- Section 3 to 6 and 11 to 13 are sections relating to administrative power of Central Government for enforcement of UTGST Act, 2017.
- Further Section 14-16 deals with Advance Ruling and appeal against advance ruling.
- Since GST has replaced old indirect taxes so there was a need to make provisions for migrating from existing law to new law. Section 17 to 20 makes provisions for transitional arrangements.
- Section 21 specifically provides that provisions of CGST Act, 2017 relating to certain matters will be applicable in case of UTGST.

Lesson 10 – GST Compensation to States

- Goods and Services Tax (Compensation to States) Act, 2017 was enacted to levy Compensation cess for providing compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force (01/07/2017), for a period of five years or for such period as may be prescribed on the recommendations of the GST Council.
- The compensation cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.
- Compensation Cess will not be charged on goods exported by an exporter under bond and the exporter will be eligible for refund of input tax credit of Compensation Cess relating to goods exported.
- Compensation cess shall not be leviable on supplies made by a taxable person who has decided to opt for composition levy.
- The input tax credit in respect of compensation cess on supply of goods or services can be utilised only towards payment of the compensation cess on supply of goods or services.
- In case the compensation cess is chargeable on any supply of goods or services or both with reference to their value,

then for each such supply, the value has to be determined under section 15 of the Central Goods and Services Tax Act, 2017.

- Laws and Rules applicable: The provisions of the Central Goods and Services Tax Act, 2017 and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall apply in relation to the levy and collection of the cess on the intra-State supply of goods and services.
- In case of inter-State supplies the provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder will apply.
- The compensation cess will be collected on the supply of goods and or services or both, specified in the Schedule to the Act, till 1st July 2022. The cess will compensate the states for any revenue loss on account of implementation of GST.
- A Fund Known as GST Compensation Fund will be set up to which amount of cess levied and collected u/s 8 of the Act and other sums will be credited. This fund will be used to pay compensation to the States losing Revenue on account of implementation of GST Laws.
- GST (Compensation to States) Act, 2017 also makes provision for calculating loss of revenue to the States on account of implementation of GST. Base year has been assumed to be 2015-16 and projected growth rate for calculating projected revenue is 14% p.a.

Lesson 11 – Industry/ Sector Specific Analysis

- Services of medical consultancy and health care including regular checks- up and treatments with and without admitting a patient in a hospital are considered as health care services and are exempted from the levy of GST.
- Medical services not for the purpose of curing disease but for the purpose of enhancement of beauty or physical appearance of the person shall be liable to GST.
- Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST.
- Artificial limbs are liable to 5% GST.
- Outdoor Catering Services are liable to GST @ 18%.
- Tax rate for all AC and non-AC restaurants is 5% without ITC except in starred hotels where the tariff is Rs 7,500 or more. The rate for restaurants in starred hotel will remain 18 per cent along with the benefit of input tax credit.
- Input tax paid on “food and beverages and outdoor catering” shall be allowable only if the same are used for making taxable “outward supply”.
- ‘Education services’ which are generally exempt have been defined as services by way of –
 - Pre-school education and education up to higher secondary school or equivalent;
 - Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; or

- Education as a part of an approved vocational education course.
- GST exemption on input services is available only to schools (from pre-school upto higher secondary school or its equivalent).
- The scope of 'service' in GST regime is very wide as it has been defined as 'anything other than goods is service'. Thus, if it is not a 'good', it is a service.
- Goods is defined in section 2(52) of the CGST Act, 2017 as every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
- Zero rated supply' means any of the following taxable supply of goods and/or services, namely –
 - export of goods and/or services, or
 - supply of goods and/or services to a SEZ developer or an SEZ unit.
- Export of goods means taking goods out of India to a place outside India.
- Export of services means the supply of any service when:
 - the supplier of service is located in India,
 - the recipient of service is located outside India,
 - the place of supply of service is outside India,
 - the payment for such service has been received by the supplier of service in convertible foreign exchange, and

- the supplier of service and recipient of service are not merely establishments of a distinct person.
- Supply of goods and/or services to the SEZ units or Developers would be considered as zero-rated supply but on other hand, supply of goods and/or services by the SEZ units or Developers from SEZ to DTA would be covered under the normal course of supply. Accordingly, such unit or developer will have to pay GST at the prescribed rates.

Chapter 1

INTRODUCTION TO CUSTOMS DUTY

Brief Background of Customs Law

1.1 Customs duty is on import into India and export out of India. As per ancient custom, a merchant entering a kingdom with his goods had to make a suitable gift to the King. In the course of time, this 'custom' was formalised into 'Customs Duty'. This is collected on imports (and occasionally on exports too). The word 'Customary' is derived from 'customs', which indicates that it is a very old tax. Taxes on goods were levied on various goods right from the *Veda* period.

Customs Duty as we understand today has its origin in British period. British established its first Board of Revenue in 1786 at Calcutta. New Board of Trade was established in 1808. A uniform Tariff Act was introduced in 1859 all over India. General rate of import duty was 10%, which was reduced to 7.5% in 1864. Customs duty in India is linked with history of textile industry. British manufacturers wanted to export their products to India and due to their pressure, duty on coarser varieties of cotton goods was abolished in 1877. In the meanwhile, Sea Customs Act was passed in 1878. In 1882, all import duties were abolished, but re-introduced in 1894 at general rate of 5%. Indian Tariff Act was passed in 1894. Import duty on cotton goods @ 5% was introduced in 1894. At the same time, excise duty on Indian cotton goods was imposed, which was bitterly resented in India and it was finally abolished in 1925. General rate of customs duty was later increased to 7.5%. Land Customs Act was passed in 1924. Air Customs was covered by making some rules under Indian Aircraft Act, 1911. After independence, manufacturing industry grew and trade expanded. Customs Act, 1962 was passed to consolidate Sea Customs Act, Land Customs Act and provisions for air customs.

GATT, WTO and India

1.1-1 World Trade Organisation was formed on 1-1-1995 in place of GATT.

World Trade Organisation - WTO (World Trade Organisation) has been formed on 1st January, 1995, based at Geneva, to replace GATT. After World Bank and IMF, this is the third biggest international organisation in finance and trade matters. It is a permanent body with global status similar to IMF & World Bank. It provides permanent forum for trade negotiations. WTO is the legal and institutional foundation of multilateral trading system. Its basic principle is equal treatment to products and services of all other WTO

countries. (Of course, there are concessions and let-outs). Its scope is much wider than that of GATT. GATT focused primarily on trade in goods, while WTO covers multilateral trading system and commercial activities like trade in services, intellectual property protection also.

The four main WTO guidelines are - (i) Trade without discrimination (ii) Predictable and growing market access (iii) Promoting fair competition and (iv) Encouraging development and economic reforms.

WTO has full time representatives from member countries. It works on the basis of one member one vote principle, not weighed on basis of country's position in global trade. Decisions are arrived on basis of consensus among members, but matters can be decided by voting also.

TRIPS - TRIPS means Trade Related Intellectual Property Rights. It was agreed as follows - (i) Product Patents should be introduced in drugs, food products and chemicals in place of process patents as at present (India introduced product patents w.e.f. 1-1-2005). (ii) Patent and copyright period should be 20 years (Implemented by India) (iii) Agricultural hybrid seeds should be allowed to be patented (Not implemented). - - However, Government can undertake compulsory licensing for non-commercial public use and to prevent inadequate supply or exorbitant pricing.

GATT - General Agreement on Tariffs and Trade (GATT) was a trade pact and an organisation formed in Geneva in 1947. It was a forum for international bargaining to increase world trade and reduce trade barriers. 117 countries were its members, including India. First round of discussions was held in Havana in 1947. The 8th i.e. last round called 'Uruguay Round' started in 1986 and ended in December 1993. (The draft for agreement was prepared by Mr. Dunkel and hence it was called 'Dunkel Draft'). The agreement was signed in April 1994 at Marrakesh. The agreement was with view to boost world trade. GATT was replaced by WTO on 1-1-1995.

WCO - World Customs Organisation (WCO) [earlier known as Customs Coordination Council] is an international body to develop coordination among customs offices in various countries. WCO has HQ at Brussels. WCO is organisation of 179 Customs Administrations. It is headed by Secretary General who is appointed for five years at a time.

WCO was established in 1952. 26th January is observed every year as International Customs Day as WCO was formed on that day.

WCO has implemented - (a) Harmonised System of Nomenclature of goods (b) Kyoto Convention on harmonization and simplification of customs procedures. The draft has been adopted in June, 1999 (c) ATA convention.

Scope and coverage of Customs Law

1.1-2 Section 1(2) of Customs Act (as amended w.e.f. 29-3-2018), states that the Customs Act, 1962 extends to whole of India *and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.* [The words in italics inserted w.e.f. 29-3-2018].

The extension of scope outside India is only for purpose of offences and not for any other purposes.

Liability of customs duty - Section 12(1) of Customs Act is the charging section, which provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, *on goods imported into, or exported from, India*. The rate of duty is as prescribed in Customs Tariff Act, 1975, read with relevant exemption notifications. Import duty is levied on almost all items, while export duty is levied only on a few limited products, where Indian goods are in commanding position.

Imports by Government - Section 12(2) of Customs Act makes it clear that customs duty is payable by Government also. Thus, there is no general exemption to goods imported by Government. However, various exemption notifications have been issued and Imports by Indian Navy, specific equipment required by Police, Ministry of Defence, Coastal Guard etc. are fully exempt from customs duty. However, if there is no such exemption notification, duty will be payable even if goods are imported by Central/State Government.

Overview of Customs Act

1.1-3 Raising revenue for Central Government is the main but not the only purpose of Customs Act. Customs Act is used to (a) regulate imports and exports (b) protect Indian industry from dumping (c) collect revenue of customs duty. In addition, provisions of Customs Act are used for other Acts like Foreign Trade (Development and Regulation) Act, Foreign Exchange Management Act (FEMA) etc. Customs Law is covered under various Acts, rules, regulations and notifications, as follows :

Customs Act, 1962 - This is the main Act, which provides for levy and collection of duty, import/export procedures, prohibitions on importation and exportation of goods, penalties, offences etc.

Customs Tariff Act, 1975 - The Act contains two schedules - Schedule 1 gives classification and rate of duties for imports, while Schedule 2 gives classification and rates of duties for exports. In addition, the CTA (Customs Tariff Act) makes provisions for duties like additional duty (CVD), preferential duty, anti-dumping duty, protective duties etc.

Rules under Customs Act - Under section 156 of Customs Act, 1962, Central Government has been empowered to make rules, consistent with provisions of the Act, to carry out the purposes of the Act. Various rules have been framed under these powers.

Regulations under Customs Act - Under section 157 of Customs Act, 1962, Board (CBI&C) has been empowered to make regulations, consistent with provisions of the Act, to carry out the purposes of the Act. Various regulations have been framed under these powers. Major among these are : *Project Import Regulations, 1986* : procedures for project imports; Customs House Agents Licensing Regulations: Regulation of CHA. **Other regulations** regarding transshipment of goods, Import and Export report, Import and Export manifest, manufacture in warehouse, shipping bill and bill of export (form) etc. have been made.

In *Sukhdev Singh v. Bhagatram Sardar Singh* (1975) 1 SCC 421 = AIR 1975 SC 1331 (SC Constitution Bench), it was held that regulations framed under statutory provisions would have the force of law.

Notifications under Customs Act - Various sections authorise Central Government to issue notifications. The main are : section 25(1) to grant partial or full exemption from

duty and section 11 to prohibit import or export of goods. *Others are* : - specifying notified goods (section 11B), specifying specified goods (section 11-I) etc.

Board Circulars - CBI&C is empowered u/s 151A of Customs Act to issue, for purpose of uniformity in classification of goods or with respect to the levy of duty thereon, issue such instructions and directions to officers of customs and they are required to observe and follow such orders, instructions and directions of Board. CBI&C issues circulars giving various instructions/prescribing various procedures etc. Normally, these instructions should be followed.

Customs Manual, 2018 - Customs Manual, 2018 has been released by CBI&C. Subsequently, there is no update and does not contain changes since December 2018. The Manual gives an overview of Customs Law and Procedures. The instructions in Customs Manual are not legally binding, but should normally be followed.

Functions of Customs Department

1.1-4 Indian Customs handle various tasks, important among them are as follows - *Chapter 1 Para 1.2 of CBI&C's Customs Manual, 2015.*

- ◆ Collection of Customs duties on imports and exports as per basic customs laws.
- ◆ Enforcement of various provisions of Customs Act governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessel, aircrafts etc.
- ◆ Discharge of various agency functions and enforcing various prohibitions and restrictions on imports and exports under Customs Act and other allied enactments.
- ◆ Prevention of smuggling including interdiction of narcotics drug trafficking.
- ◆ International Passenger clearance.

Common aspects of Customs and CGST

1.1-5 There are some common or similar provisions in Customs and CGST.

- ◆ Both are Central Acts and derive power of levy from Constitution.
- ◆ Both are under administrative control of one Board (Central Board of Indirect Taxes and Customs) (CBI&C) under Ministry of Finance.
- ◆ Departmental organizational hierarchy is same from top upto Assistant Commissioner level.
- ◆ Classification Tariffs of CGST and customs are based on HSN and principles of classification are identical.
- ◆ Principles of deciding 'Assessable Value' are similar i.e. both are principally based on 'transaction value'.
- ◆ Concept of 'related person' for valuation purposes appears in Customs as well as CGST. Principle of 'piercing of corporate veil' can apply in both cases.
- ◆ Provisions of refund, including principle of 'unjust enrichment' are similar. Provisions for interest for delayed payment are also similar.
- ◆ Provisions of raising demand for short levy, non-levy or erroneous refund are similar. Provisions in respect of recovery, mandatory penalty etc. are also similar.
- ◆ Provisions for granting exemptions from duty - partial or full - conditional or unconditional are similar.

- ◆ Powers of search and seizure are quite similar.
- ◆ CGST and customs law make provisions of arrests and prosecution of offences.
- ◆ Provisions in respect of Authority for Advance Ruling are similar.
- ◆ Appeal provisions are similar in some aspects.

Extension of time limits prescribed under Customs Act and Customs Tariff Act due to Corona

1.1-6 In view of the spread of pandemic COVID-19 (Corona) across many countries of the world including India, lockdown was declared in India first as *janata curfew* on 22-3-2020 and then general lockdown upto 14-4-2020 [now extended upto 17-5-2020].

Due to lockdown and curfew, normal working of companies and Government was completely disturbed. Hence, it had become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws.

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 has been issued on 31-3-2020 for this purpose.

As per section 6 of the Ordinance, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20-3-2020 to the 29-6-2020 or such other date after the 29-6-2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as—

- (a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or
- (b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions under clause (a) or clause (b).

Changes in Customs Law made vide Finance Act, 2020

1.1-7 Nirmala Sitharaman, Minister of Finance, Government of India, presented Budget 2020-21 on 1-2-2020. Finance Bill, 2020 was also presented. Finance Bill, 2000 has been passed by Parliament and became Finance Act, 2020 on 27-3-2020, after receiving assent of President. The amendments in respect of Customs are effective from 27-3-2020, except those relating to safeguard duty.

The changes in Customs Act w.e.f. 27-3-2020 are as follows.

Power of Central Government to prohibit import or export of goods - Section 11(2)(f) of Customs Act is amended to provide that Central Government can prohibit import or export of any goods for the prevention of injury to the economy of the country by uncontrolled import or export of any goods.

The wording is too broad, but such restrictions should fit WTO norms. Further, DGFT also has similar powers.

Demand notices issued prior to 29-3-2018 will be governed by provisions of section 28 as it stood prior to 29-3-2018 - Section 28(8) of Customs Act was amended w.e.f. 29-3-2018 to provide that if proper officer fails to determine amount of duty and interest within specified period, the proceedings shall stand concluded as if no demand notice was issued.

Explanation 4 has been inserted to section 28 of Customs Act to provide that demand notices issued prior to 29-3-2018 will be governed by provisions of section 28 as it stood prior to 29-3-2018, notwithstanding any order of or judgment of Court or Tribunal.

Recovery of duties if authorisation or duty credit obtained by misstatement or suppression of facts - Section 28AAA of Customs Act is amended to provide that if an instrument (like authorisation or duty credit) has been obtained by a person by means of collusion, wilful misstatement or suppression of facts for purposes of any law or scheme of Central Government, the duty shall be recovered from such person.

Administration of Rules of Origin under Trade Agreement - Imports are allowed at concessional customs duty under Trade Agreements with various countries. The importer has to submit certificate of country of origin. It seems the facility is misused. Hence, section 28DA of Customs Act has been introduced [Chapter VA], casting responsibility on the importer to provide prescribed details. Mere submission of certificate of origin will not be sufficient. Proper officer can verify the claim and Principal Commissioner/Commissioner of Customs can disallow the claim of preferential rate of customs duty and suspend the claim.

Section 111(q) of Customs Act has been added to provide for confiscation of goods if imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA [section 28DA of Customs Act] and rules made thereunder.

Duty Credit Ledger - A provision is being made to pay customs duty through Ledger of Duty Credit, in lieu of remission of duty or financial benefit. Section 51B of Customs Act has been introduced for this purpose.

Safeguard measures where imports are causing serious injury to domestic industry - Section 8B of Customs Tariff Act empowers Central Government to impose 'safeguard duty' on specified imported goods if Central Government is satisfied that the goods are being imported in large quantities and under such conditions that they are causing or threatening to cause serious injury to domestic industry. This section is proposed to be recast.

Provisions relating to safeguard duty, as contained in section 8B of Customs Tariff Act, are being substituted with new provisions vide section 116 of Finance Act, 2020. The changes will be effective from date to be notified.

Many of provisions are similar to earlier provisions, In addition, the recast section 8B makes provisions for tariff-rate quota as safeguard measure. It is also provided that the safeguard duty will not apply to goods imported by EOU and SEZ, unless specifically made applicable or goods are diverted in DTA.

Health Cess - Section 141 of Finance Act, 2020 [corresponding Clause 139 of Finance Bill, 2020] makes provisions to imposed health cess of 5% on imported medical devises falling under headings 9018, 9019, 9020, 9021 and 9022. The health cess is effective from 2-2-2020 itself. The 'value' for health cess will be 'value' as determined under section 14 of Customs Act.

The health cess is in addition to other duties of customs. All provisions of Customs Act in relation to refund, exemption, offences and penalty shall apply to health cess.

Health cess will be exempt for medical devices which are exempt from basic customs duty. Inputs/parts used in manufacture of medical devices shall also be exempt - Notification No. 8/2020-Cus dated 2-2-2020.

The proceeds of health cess shall be used for financing health infrastructure and services.

Amendments to Anti Dumping and Countervailing Duty Rules - The rules are amended to make them more comprehensive and wider. Provisions of circumvention of anti-dumping duty and countervailing duty have been strengthened.

Nature of Customs Duty

1.2 Entry 83 to List I - (Union List) of Seventh Schedule to Constitution reads 'Duties of customs including export duties'. Thus, import and export duty is a Union subject and power to levy is derived from Constitution. Section 12 of Customs Act, often called *charging section*, provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, *on goods imported into, or exported from, India*.

Section 3 of Customs Tariff Act has also been held as 'charging section' (for levy of CVD - additional customs duty) - *Jain Brothers v. UOI* AIR 1999 SC 2550 = 112 ELT 5 = 1999 AIR SCW 2718 (SC 3 member bench).

Customs Duty is leviable on free replacements and free supplies also - Customs duty is payable on replacement of parts provided free of cost during warranty period even if duty was paid on parts originally supplied - *New Video Ltd. v. CC* - (1996) 87 ELT 509 (CEGAT).

Free replacements during warranty period are exempt under notification 80/70-Cus dated 29-8-1970, if the articles are private personal property of importer. This exemption is not available to imports of free replacements during warranty for commercial purpose - MF(DR) circular No. 1/2005-Cus dated 11-1-2005 - relying on *Echjay Industries v. UOI* 1994(52) ECR 366 (Bom HC).

Import should be for 'home consumption', if goods imported for repairs and return, customs duty not payable - Import should be for 'home consumption', if goods imported for repairs and return, customs duty not payable, as import is not for home consumption - *CC v. Aban Loyd Chiles Offshore Ltd.* (2017) 3 SCC 211 = 60 GST 207 = 78 taxmann.com 25 (SC).

Taxable Event for Import duty

1.2-1 Goods become liable to import duty or export duty when there is '*import into, or export from India*'.

As per section 2(18), 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

As per section 2(23) of Customs Act, 'import' with its grammatical variations and cognate expressions, means bringing into India from a place outside India. In *Gramophone Company of India v. Birendra Bahadur Pandey* - AIR 1984 SC 667, it was held that 'import' included goods imported for transit across to Nepal.

In *Indian Airlines v. CC* 2005 (180) ELT 502 (CESTAT), Indian Airlines had international flights. After return from international flight, the fuel (ATF) was used for domestic run. It was held that fuel left in the fuel tank after termination of international run is 'import' and liable to customs duty.

Section 2(27) of Customs Act defines 'India' as inclusive of territorial waters. Hence, it was thought that 'import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters. There were conflicting judgments of High Courts.

Finally, in *Kiran Spinning Mills v. CC* 1999(113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench), it has been held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters. In the case of goods which are in the warehouse the customs barrier would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

In *Garden Silk Mills Ltd. v. UOI* 1999 AIR SCW 4150 = 1999(113) ELT 358 = AIR 2000 SC 33 [SC 3 member bench - same bench which passed judgment in *Kiran Spinning Mills (Supra)*], it was held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed.

Though there is slight contradiction between the SC judgments, it can be said that 'mixing up with mass of goods in the country' after crossing customs barrier is the 'taxable event' for customs duty on imports.

Taxable event in case of warehoused goods - In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse - confirmed in *UOI v. Apar P Ltd.* 1999 AIR SCW 2676 = 112 ELT 3 = 1999(6) SCC 118 = AIR 1999 SC 2515 (SC 3 member bench).- followed in *Kiran Spinning Mills v. CC* 1999(113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench), where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters.

This was followed in *LML v. CCE* 2002(142) ELT 273 (SC 3 member bench). In this case, there was no 'Special Additional Duty' (SAD) when goods were imported, but SAD was imposed later. It was held that SAD is payable when goods are cleared from customs bonded warehouse as removal from customs bonded warehouse is the taxable event and rate of duty as applicable on that day applies - followed in *CC v. SJK Steel Corporation* (2004) 168 ELT 194 (CESTAT). [Note that SAD has been abolished w.e.f. 9-1-2004].

This was also followed in *Mangalore Refinery v. CCE* 2002(141) ELT 247 (CEGAT), where it was held that customs duty is payable only on the quantity which is cleared from warehouse [and not the quantity which had entered the territorial waters].

Sale in duty free shop at international airports before goods crossed customs frontier is not subject to sales tax as it is sale in course of import - *Hotel Ashoka v. ACCT* (2012) 3 SCC 204 = 276 ELT 433 = 48 VST 443 (SC). In this case, it was held that transfer of documents of title to goods is one of the methods. Transfer can be by physical delivery also. [sales tax issue but principle applies to customs also]

In *State Trading Corporation v. State of Tamilnadu* 2003 (129) STC 294 (Mad HC DB), it was held that if documents of title of goods are transferred before clearance of goods from customs bonded warehouse, it is 'sale during import' and hence exempt from sales tax, as sale takes place before goods cross customs frontier of India.

Taxable event when goods cross customs barrier - In *CC v. HPCL* 2000(121) ELT 109 (CEGAT), it was held that the 'bulk liquid cargo' would be considered to have crossed