

Indirect taxes

Flow charts

May 2015 exams

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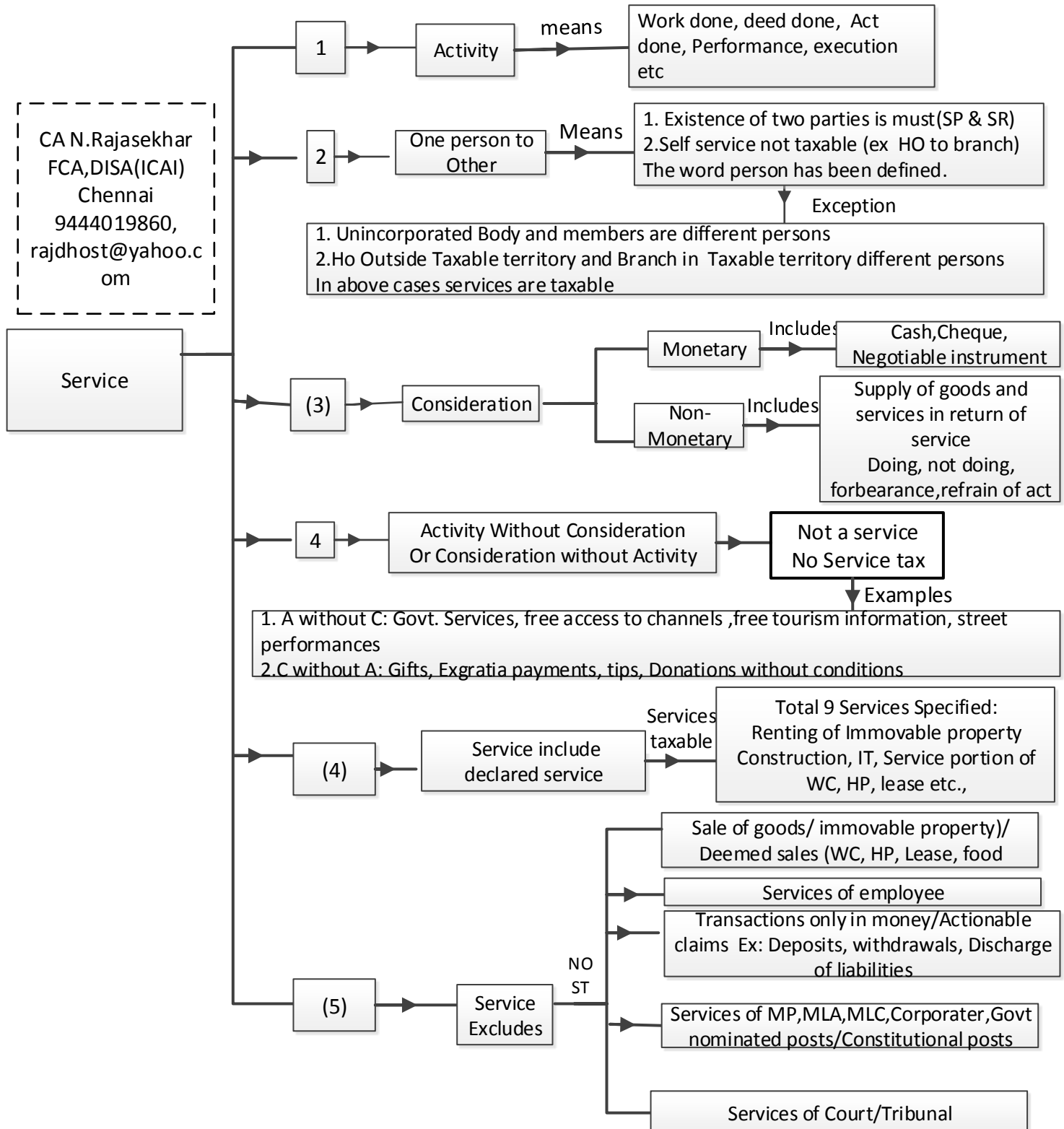
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Service Definition

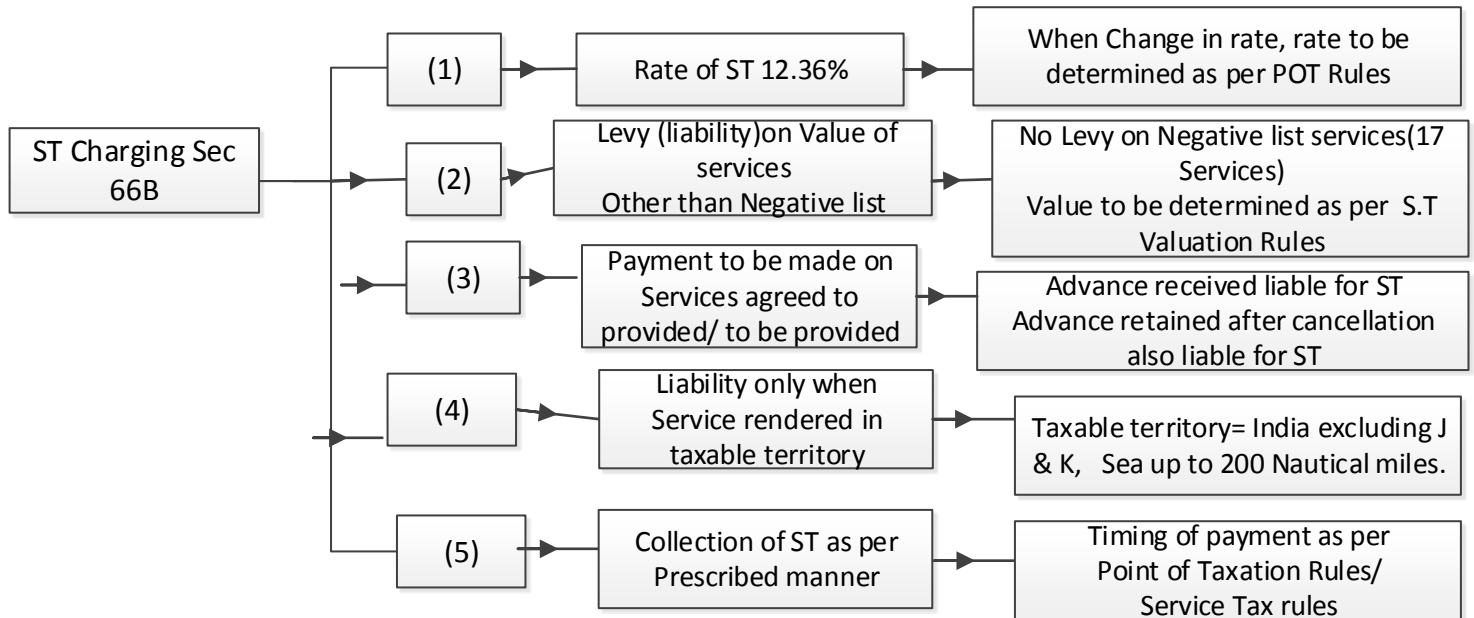
Service Tax - Basics 1

Sec 65B (44)

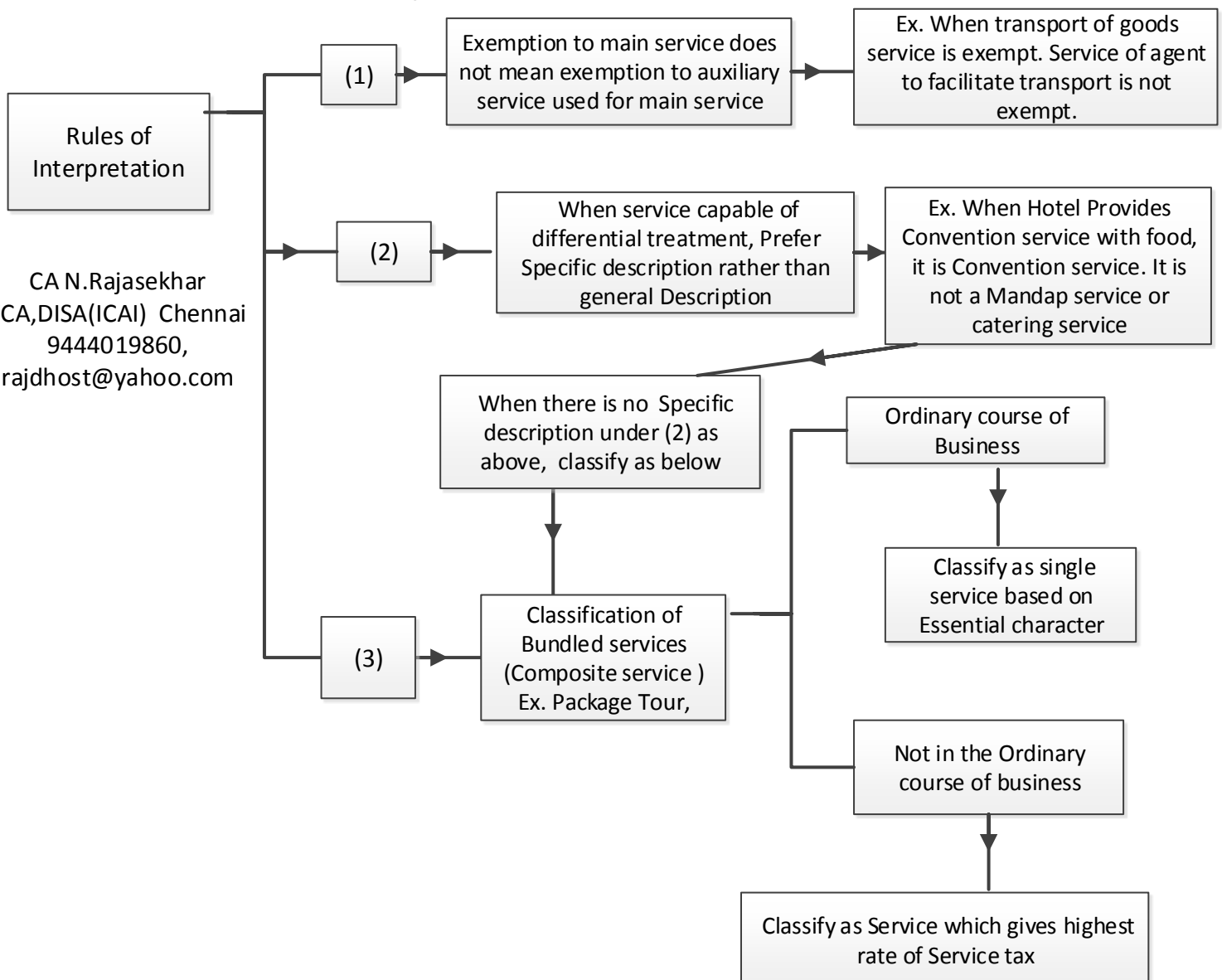
- Activity for consideration From one person to other
- Service include Declared Service
- Service exclude
 - Sale transaction (both movable and immovable)
 - Deemed sale transaction (lease, Hp, Material portion of works contract etc)
 - Services of employee
 - Transactions only in money
 - Services of MP, MLA, MLC, Govt. Nominated persons /Constitution posts,
 - Services of tribunal court (appeal fee is not a consideration)



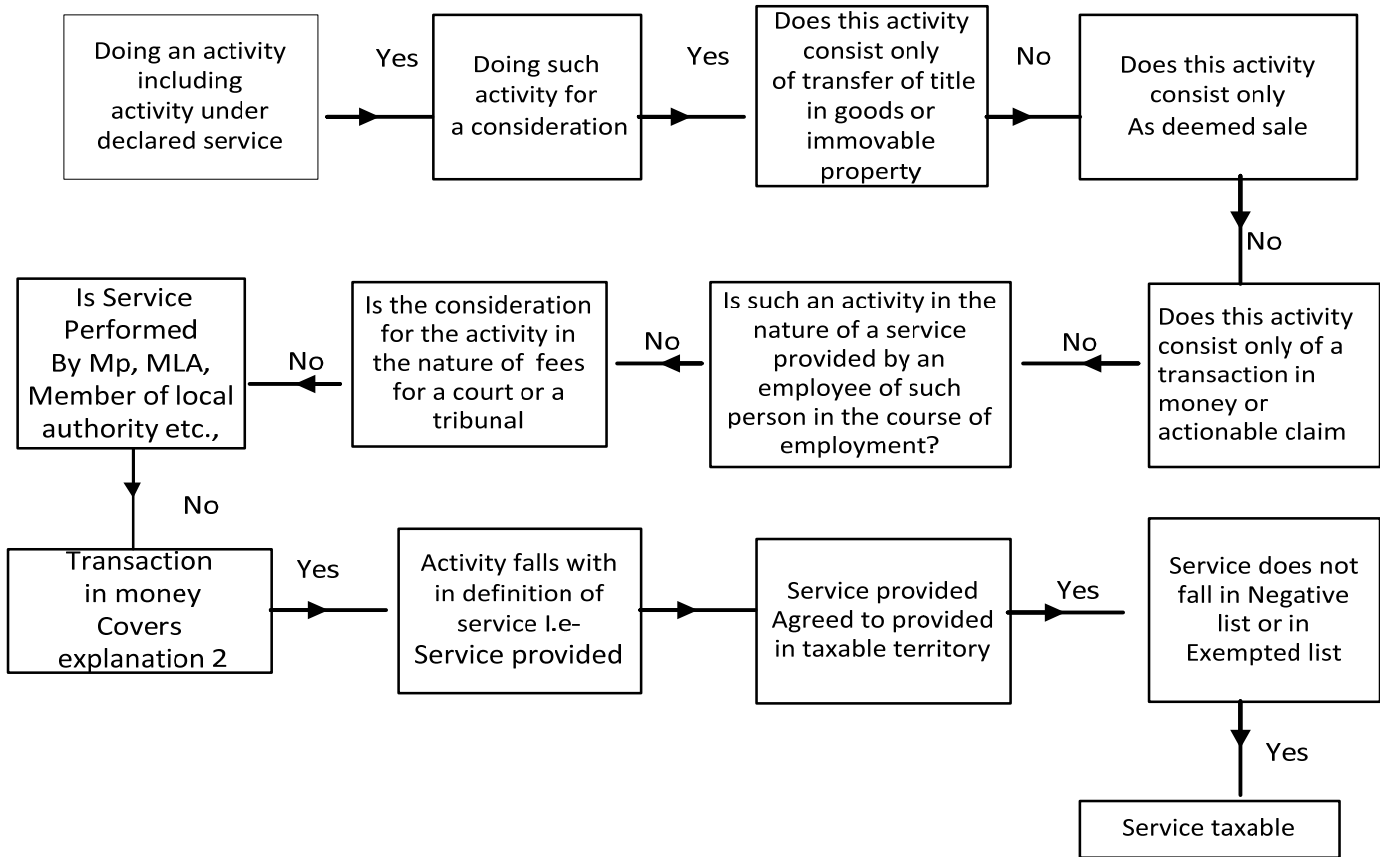
Service Tax Charging Section



ST- Interpretation /Classification- Sec 66 F

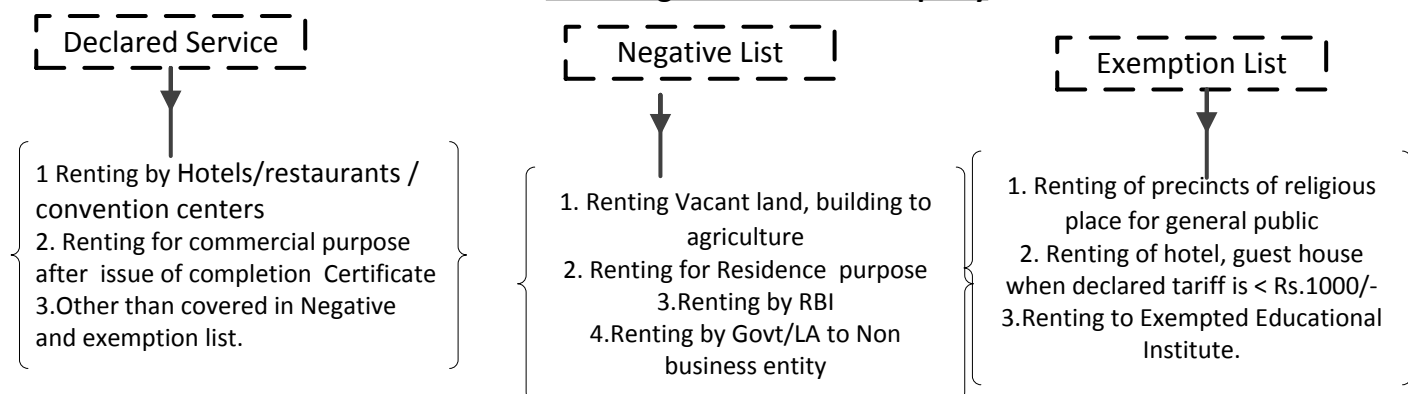


Determination of provision of service and taxability



Declared Services/Negative List/Exempted Services

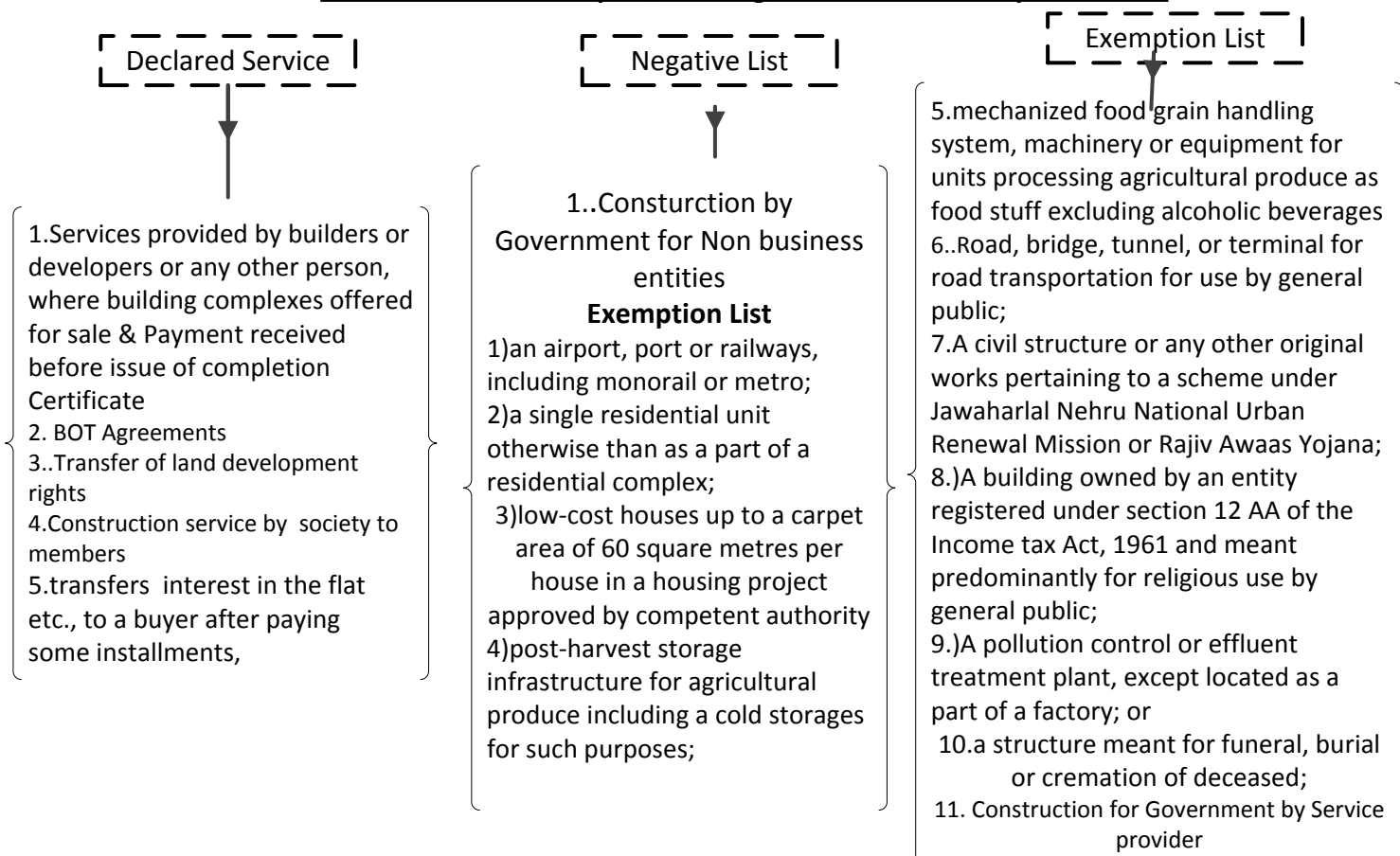
I. Renting of Immovable Property



Case Studies

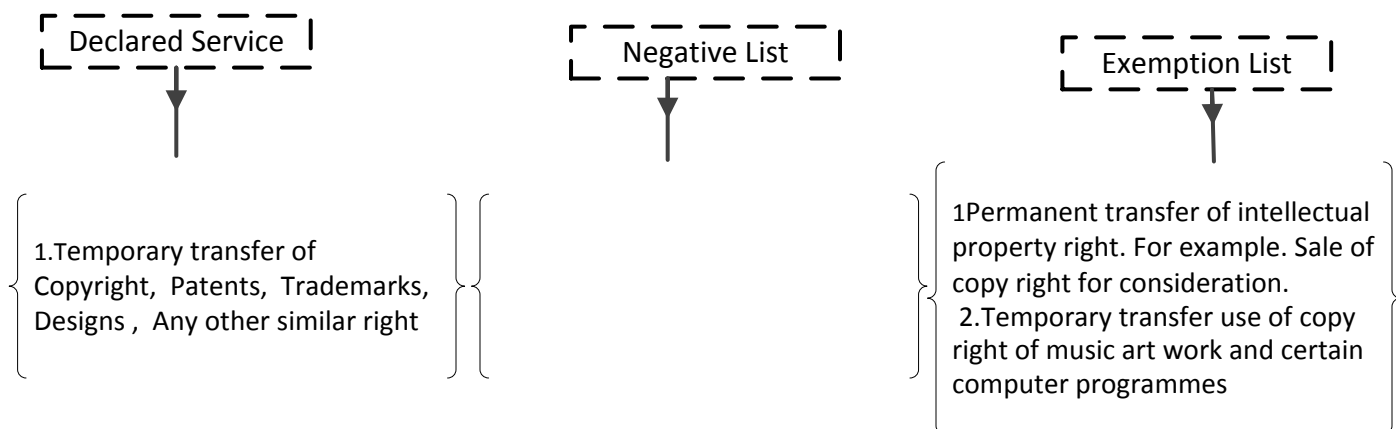
Description	Nature of service	Taxability
Renting of property to an educational body	Exempted service if education body is exempted service	Not taxable
Renting of vacant land for animal husbandry or floriculture	Negative list	Not taxable
Permitting use of immoveable property for placing vending/dispensing machines	Declared Service	Taxable
Allowing erection of a communication tower on a building for consideration	Declared Service	Taxable
Renting of land or building for entertainment or sports	Declared Service	Taxable
Renting of theatres by owners to film distributors (including under a profit-sharing arrangement)	Declared Service	Taxable
Letting out their halls, rooms etc. for social, official or business functions or letting out of halls for cultural function	Declared Service	Taxable

2. Construction of a complex, building, civil structure or a part thereof



Declared Services/Negative List/Exempted Services

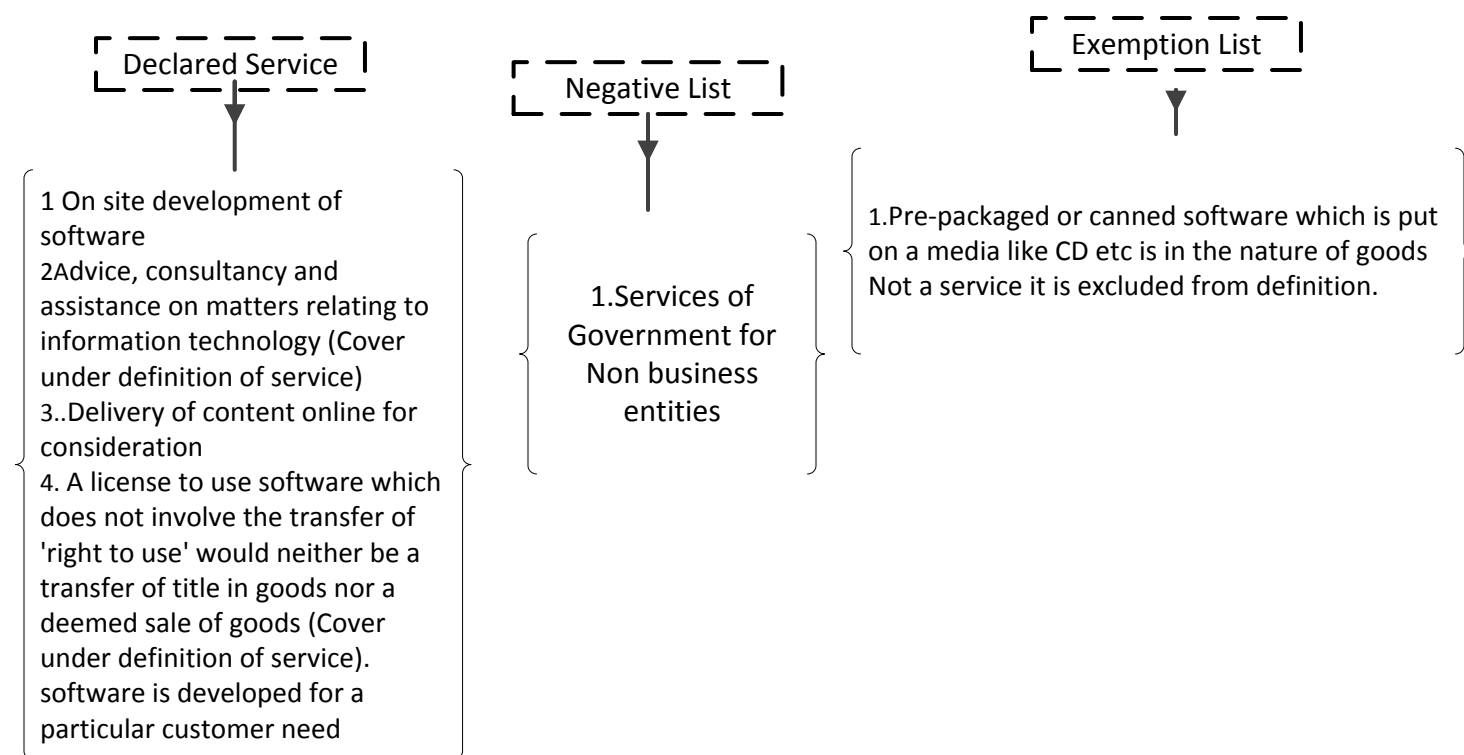
3.. Temporary transfer or permitting the use or enjoyment of any intellectual property right



Case Studies

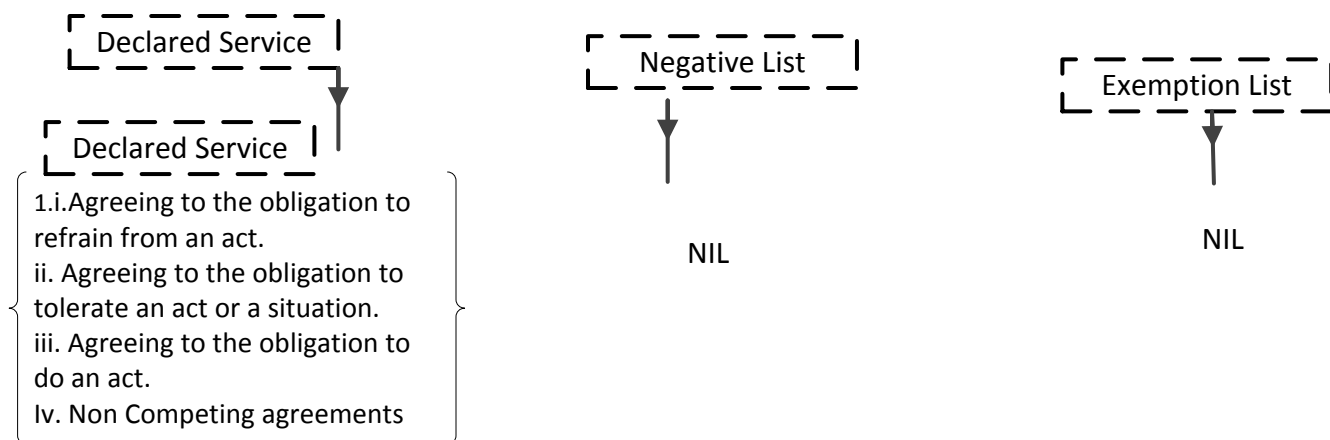
Description	Nature of service	Taxability
music company having the copyright of music sound recording transfers its right temporarily of distributing music	Declared service. falls under Sec 13(1) (c) of Copy right	Taxable
A composer of a song having the copyright for his own song. He allows the recording of the song on payment of some royalty by a music company for further distribution	Exemption list falls under Sec 13(1) (a) of Copy right	Not taxable
Mr. Raj an author, having copy right of an Indirect tax book. He received royalty from the M/s CH publishers for publishing the book written by him	Exemption list falls under Sec 13(1) (a) of Copy right	Not taxable
M/S RR Moviemakers having a copy right of a cinematographic film	Exemption list falls under Sec 13(1) (b) of Copy right	Not taxable

.4. Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software

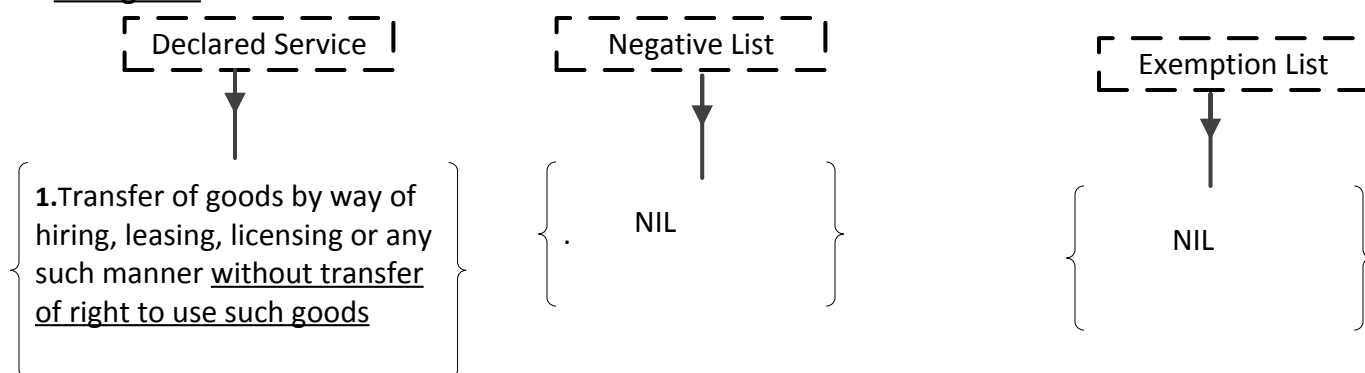


Declared Services/Negative List/Exempted Services

Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act



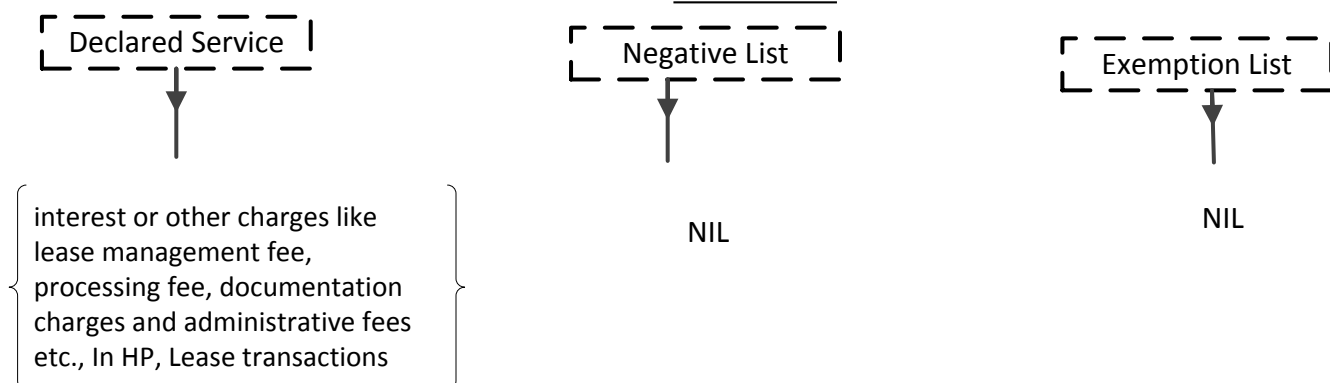
Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods



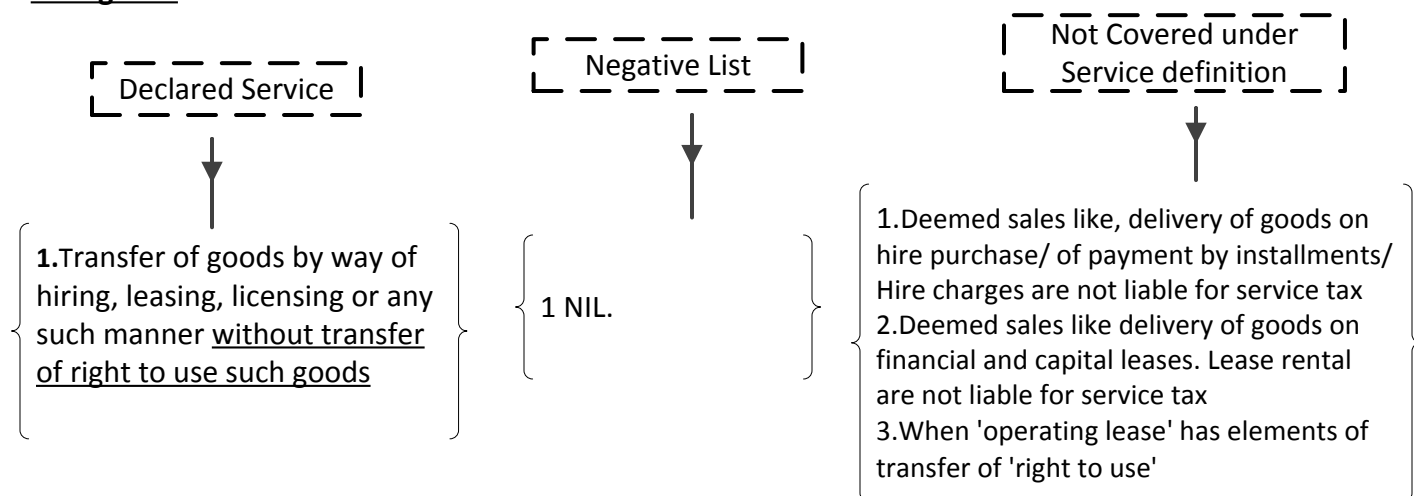
S.No.	Nature of transaction	Whether transaction involves transfer of right to use	Taxability
1.	A car is given in hire by a person to a company along with a driver on payment of charges on per month/mileage basis	Right to use is not transferred. The service is, therefore covered in the declared list entry.	Taxable
2.	Supply of equipment like excavators, wheel loaders, dump trucks, cranes, etc for use in a particular project where the person to whom such equipment is supplied is subject to such terms and conditions in the contract relating to the manner of use of such equipment return of such equipment after a specified time, maintenance and upkeep of such equipment.	The transaction will not involve transfer of right to use such equipment as in terms of the agreement the possession and effective control over such equipment has not been transferred even though the custody may have been transferred along with permission to use such equipment..	Taxable
3.	Hiring of bank lockers	The transaction does not involve the right to use goods as possession of the lockers is not transferred to the hirer).	Taxable
4.	Hiring out of vehicles where it is The responsibility of the owner to abide by all the laws relating to motor vehicles	No transfer of right to use goods as effective control and possession is not transferred (Allahabad High Court judgement in <i>Ahuja Goods Agency v. State of UP</i> [(1997)106STC540] refers)	Taxable
5.	Hiring of audio visual equipment where risk is of the owner	No transfer of right to use goods as effective control and possession is not transferred	Taxable

Declared Services/Negative List/Exempted Services

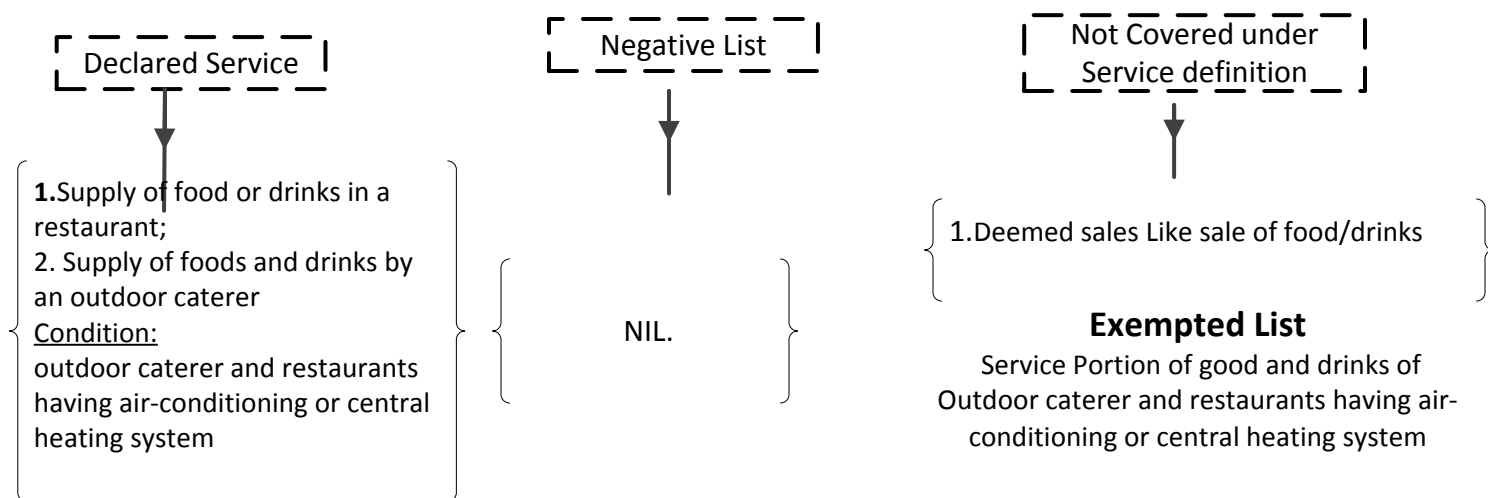
. Activities in relation to delivery of goods on hire purchase or any system of payment by installments



Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods



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 part of the activity



Declared Services/Negative List/Exempted Services

Service portion in execution of a works contract

Declared Service



Contracts for repair or maintenance of motor vehicles
Contracts for construction of a pipe line or conduit
Contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise
C
Contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring

Negative List



NIL

Exemption List



NIL

Exempted Services 1

Educational services from 11.07.2014

Services provided BY an educational institution to students, faculty and staff

Services provided to an educational institution in respect of education exempted from service tax,

Educational institution means an institution where services provided in the negative list specified.

S No	Service provider	Service receiver	Transaction	Taxability
1	Educational institution	Students, faculty and staff	(a) Consideration from Services auxiliary education services from (a) to (e) above (b) Consideration from renting of immovable property	Exempt
2	Any person	Educational institution	Consideration from (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution	Exempt

Renting of immovable property service received by educational institutions is now taxable

New Exempted services

Services provided by common bio-medical waste treatment facility operators to clinical establishments **exempted from 11.07.2014.**

(IRDA approved life micro-insurance schemes with sum assured not exceeding Rs. 50,000 exempted **from 11.07.2014.**

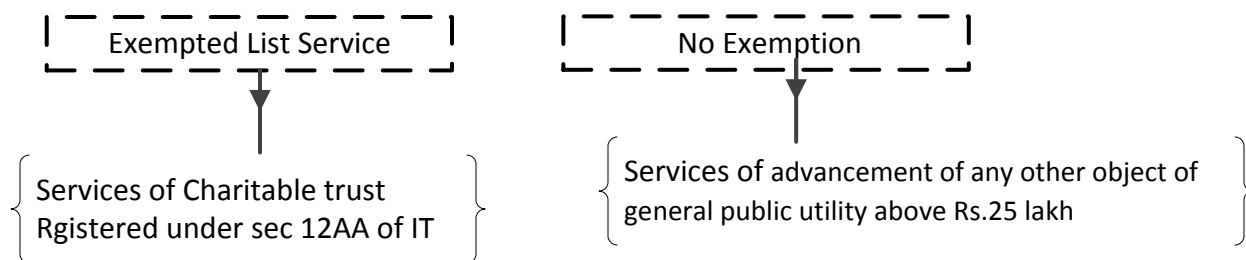
Loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), **of cotton - ginned or baled – exempted from 11.07.2014.**

Services received by RBI from outside India in relation to management of foreign exchange reserves **from 11.07.2014.**

Services provided by Indian tour operators to foreign tourists in relation to a tour wholly conducted outside India exempted

Exempted Services 1

Charitable activities



Advocate or Arbitral Tribunals' Services

Coverage of exemption

I. Service provider is arbitral tribunal

S No	Service receiver who is	Taxability
1	any person other than a business entity	Exempt
2	business entity with a turnover up to rupees ten lakh in the preceding financial year;	Exempt
3	business entity with a turnover exceeding rupees ten lakh in the preceding financial year;	No exemption. Taxable

II. Service Provider who is of Individual advocate/Firm of advocates

S No	Service receiver who is	Taxability
1	Individual advocate/Firm of advocates	Exempt
2	any person other than a business entity	Exempt
3	business entity with a turnover up to rupees ten lakh in the preceding financial year;	Exempt
4	business entity with a turnover exceeding rupees ten lakh in the preceding financial year;	No exemption. Taxable

II. Service provider is of person representing arbitral tribunal

S No	Service receiver who is	Taxability
1	arbitral tribunal	Exempt

Educational services

S no	Service provider	Service receiver	Transaction	Taxability
1	Exempted educational institute(where educational service is exempted)	Any person	a) Consideration from auxiliary education services from (a) to (e) above (b)Consideration from renting of immovable property	Taxable
2	Any person	Exempted educational institute(where educational service is exempted)	a) Consideration from auxiliary education services from (a) to (e) above (b)Consideration from renting of immovable property	Exempt

Exempted Services 2

Services provided to a recognized sports body

S no	Service provider	Service receiver	Transaction	Taxability
1	individual as a player, referee, umpire, coach or team manager	recognised sports body	Participation in a sporting event organized by a recognized sports body	Exempt
2	recognised sports body	recognised sports body	Any service	Exempt
3	individuals such as selectors, commentators, curators, technical experts	recognised sports body	participation in a sporting event organized by a recognized sports body	Taxable
4	individual as a player, referee, umpire, coach or team manager	IPL	participation in a sporting event	Taxable

Construction Services - Services provided to the Government or local authority

Service Provider	Any person
Service receiver	Government, Local authority, Governmental body
Nature of service	construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of the description of (a) to (f) below
Taxability	Service is exempt.

❖ 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 of-

- a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- c) a structure meant predominantly for use as
 - (i) an educational,
 - (ii) a clinical, or
 - (iii) an art or cultural establishment;
- 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; or
- f) a residential complex predominantly meant for self-use or the use of their employees or MPs., MLAs., Members of local authority

Exempted Services 3

Specified Construction services

- ❖ Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
- a road, bridge, tunnel, or terminal for road transportation for use by general public;
 - a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
 - a building owned by an entity registered under section 12 AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;
 - a pollution control or effluent treatment plant, except located as a part of a factory; or
 - a structure meant for funeral, burial or cremation of deceased;

Coverage

Service Provider	Any person
Service receiver	Any person
Nature of service	construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of the description of (a) to (e) above
Taxability	Service is exempt.

Construction Services - Original works – Others

Scope of Exempt Service –

- ❖ Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
- an airport, port or railways, including monorail or metro;
 - a single residential unit otherwise than as a part of a residential complex;
 - low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

Service Provider	Any person
Service receiver	Any person
Nature of service	construction, erection, commissioning, or installation of original works of the description of (a) to (e) above
Taxability	Service is exempt.

Renting of a hotel, inn, guest house, club, campsite or other commercial places

Service	Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes
Exemption	When declared tariff <=Rs.1000/-

Serving of food or beverages by a restaurant, eating joint or a mess

Service provider	Restaurant, eating joint or a mess,
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Service	Serving of food or beverages
Taxability	service is exempt
Exemption not available(Taxable)	(i) Restaurant, eating joint or a mess has the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year and (ii) Restaurant, eating joint or a mess has a licence to serve alcoholic beverages. Both AC and Non AC Taxable.

Exemption for Factory canteen having AC wef 22.10.2013

Services provided, in relation to serving of food or beverages, by a canteen have been exempted from service tax provided such canteen:-

is maintained in a factory covered under the Factories Act, 1948, and

(ii) has the facility of air-conditioning or central air-heating at any time during the year.

Clarification on issues pertaining to restaurant service CBEC, vide Circular No.173/8/2013 – ST dated 07.10.2013

A: Services provided (in relation to serving of food or beverages) by air-conditioned as well as non-air-conditioned restaurants, eating joints or mess, operating in a complex

- ❖ In a complex, air conditioned as well as non-air conditioned restaurants are operational. These restaurants are clearly demarcated and separately named, but food is sourced from a common kitchen.
- ❖ In such a case, services provided in relation to serving of food/beverages restaurant having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year is liable to service tax. However, such services provided in a non air-conditioned or non centrally air- heated restaurant will be treated as exempted service and thus, will not be liable to service tax.

B. Services are provided by a 'specified restaurant' in other areas e.g. swimming pool or an open area attached to the restaurant

- ❖ Services provided by restaurant having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year, in other areas of the hotel are liable to service tax.

C. Service tax on goods sold on MRP basis across the counter as part of the Bill/invoice

If goods are sold on MRP basis (fixed under the Legal Metrology Act), they have to be excluded from total amount for the determination of value of service portion.

Goods transport agency

Service provider	Goods transport agency
Service	Transportation of goods fruits, vegetables, eggs, milk, food grains or pulses
Taxability	Service is exempt.

Coverage 2.

Service provider	Goods transport agency
Service	Transportation of any goods
Value based exemption	gross amount charged single goods carriage <=Rs.1500/- gross amount charged for all goods of single consignee <=Rs.750/-

|| Renting of Motor Vehicle for transportation of passengers and goods

Scope of Exempt Service –

- ❖ Services by way of giving on hire-

- a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- b) to a goods transport agency, a means of transportation of goods

Transport of passengers

Service Provider	Any person
Service	Transportation of passengers with or without belongings
Transport through	By air from and to North eastern states, Bagdogra of West Bengal
	Contract carriage Excluding tourism, conducted tour, charter or hire ropeway, cable car or aerial tramway
Taxability	Service exempt

Motor vehicle parking to general public Exemption withdrawn now taxable from 01.04.2013

Service	vehicle parking to general public
Taxability	Service is taxable

Coverage 2

Service	Leasing of land for providing parking facility
Taxability	Service is taxable.

Service by a club/association/society to own members

Coverage 1:

Service Provider	Registered trade union
Service	To its own members by way of reimbursement of charges or share of contribution
Taxability	Exempt

Coverage 2:

Service Provider	Registered unincorporated body or a non- profit entity
Service	To its own members by way of reimbursement of charges or share of contribution, for the provision of carrying out any activity which is exempt from the levy of service tax
Taxability	Exempt

Coverage 3:

Service Provider	Registered unincorporated body or a non- profit entity
Service	To its own members by way of reimbursement of charges or share of contribution provided by Resident welfare Association.
Taxability	Exempt up to an amount of Rs.5000/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex

Classification on Clarification regarding exemption available to services provided by a Resident Welfare Association (RWA) to its own members CBEC vide Circular No.175/01/2014 – ST dated 10.01.2014, has clarified these doubts as follows:

S. No.	Doubt	Clarification
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1.	<p>(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.].</p> <p>Is service tax leviable on the same?</p> <p>(ii) If the contribution of a member(s) of a RWA exceeds ` 5,000 per month, how should the service tax liability be calculated?</p>	<p>Exemption in mega exemption notification is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members.</p> <p>However, a monetary ceiling has been prescribed for this exemption, calculated in the form of ` 5,000 per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members.</p> <p>If per month per member contribution of any or some members of a RWA exceeds ` 5,000, entire contribution of such members whose per month contribution exceeds ` 5,000 would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members.</p>
2.	<p>(i) Is Small Service Provider's (SSP) exemption under Notification No. 33/2012-ST available to RWA?</p> <p>(ii) Does 'aggregate value' for the purpose of threshold exemption, include the value of exempt service?</p>	<p>SSP exemption under Notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification.</p> <p>Under this notification, taxable services of aggregate value not exceeding ` 10 lakh in any financial year is exempted from service tax. As per the definition of 'aggregate value' provided in explanation of the notification, aggregate value does not include the value of services which are exempt from service tax.</p>
3.	<p>If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of SSP exemption or exemption provided under mega exemption notification?</p>	<p>In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the said rule.</p> <p>For example, where the payment for an electricity bill raised by an electricity</p>
		<p>transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in</p>

4.	Is CENVAT credit available to RWA for payment of service tax?	RWA may avail CENVAT credit and use the same for payment of service tax, in accordance with the CENVAT Credit Rules, 2004.
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services provided by person located in a non- taxable territory

Service provider	Service receiver	Taxability
Person located in Nontaxable territory	Government, a local authority, a governmental authority	Exempt
Person located in Nontaxable territory	Individual receiving service for personal purpose	Exempt
Person located in Nontaxable territory	Person located in Nontaxable territory	Exempt

Health Care services

Coverage (Exempted and not taxable)

- Health care Services rendered by doctors, hospitals, clinics, sanatoriums, paramedics, labs for diagnosis, treatment for illness, injury, deformity, abnormality and pregnancy.
- Plastic/Cosmetic Surgery when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma

Not covered (taxable)

Health care services of hair transplant or cosmetic or plastic surgery

Renting of precincts of a religious place or conduct of any religious ceremony

Scope of Exempt Service –

Services by a person by way of-

Renting of precincts of a religious place *meant for general public*; or conduct of any religious ceremony

Clarification as to whether “agricultural produce” includes rice and benefits available in respect of rice under mega exemption notification

CBEC vide Circular No.177/03/2014 – ST dated 17.02.2014, has clarified that the definition paddy include rice, wherever ever exemption available to paddy also available to rice.

Exempted Services 4

Training or coaching in recreational activities

Scope of Exempt Service –

- Services by way of training or coaching in recreational activities relating to arts, culture or sports.

Coverage

- a) Services by way of training or coaching.
- b) Coaching should be in recreational activities (Activity of entertainment, enjoyment, refreshment).
- c) Such coaching relating to arts, culture or sports.

Copyright

Coverage:

Service Provider	Any person
Service receiver	Any person
Nature of service	Temporary transfer or permitting the use or enjoyment of a copyright (a)original literary, dramatic, musical, artistic works or cinematograph films or (b)cinematograph films
Taxability	Service is exempt

Services by a performing artist in folk or classical art forms

S No	Service provider	Service receiver	Service	Taxability
1	Artist of folk music, folk dance and folk theatre	Any person	Performance in folk music, folk dance/Folk theatre	Exempt
2	Artist of Classical music, Classical dance and Classical theatre	Any person	Performance in Classical music, Classical dance/ Classical theatre	Exempt
3	Above (1) and (2) as a brand ambassador	Any person	Performance in above(1) and (2)	Taxable
4	Artist of Western music, mimicry, modern theatre, magic shows	Any person	Performance	Taxable
5	Artists of cinema, television	Any person	Performance	Taxable
6	Artists of Painting, sculpture	Any person	Performance	Taxable

Some other exempted services for examination

Services provided by NSDC or by an approved SSC/assessment agency/training partner exempted

Services provided by:-

- (i) the National Skill Development Corporation (NSDC) set up by the Government of India;
- (ii) a Sector Skill Council (SSC) approved by the NSDC;
- (iii) an assessment agency approved by the SSC or the NSDC; (iv) a training partner approved by the NSDC or the SSC

in relation to:-

- (a) the National Skill Development Programme implemented by the NSDC; or
- (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
- (c) any other Scheme implemented by the NSDC

have been exempted from service tax.

Services provided by cord blood banks by way of preservation of stem cells exempted

Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation have been exempted from service tax. *[Notification No. 04/2014-ST dated 17.02.2014]*

(d) Loading/unloading/packing/storage/warehousing of rice exempted

Services by way of loading, unloading, packing, storage or warehousing of rice have been exempted from service tax. *[Notification No. 04/2014-ST dated 17.02.2014]*

(e) Scope of definition of 'Governmental authority' widened

The definition of "Governmental authority" has been substituted with the following new definition:-

"Governmental authority" means an authority or a board or any other body; (i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Thus, the scope of the definition has been enhanced. Henceforth, an authority or a board or any other body established by Government with 90% or more participation by way of equity or control need not be set up under an Act of Parliament or a State Legislature to qualify as Governmental authority.

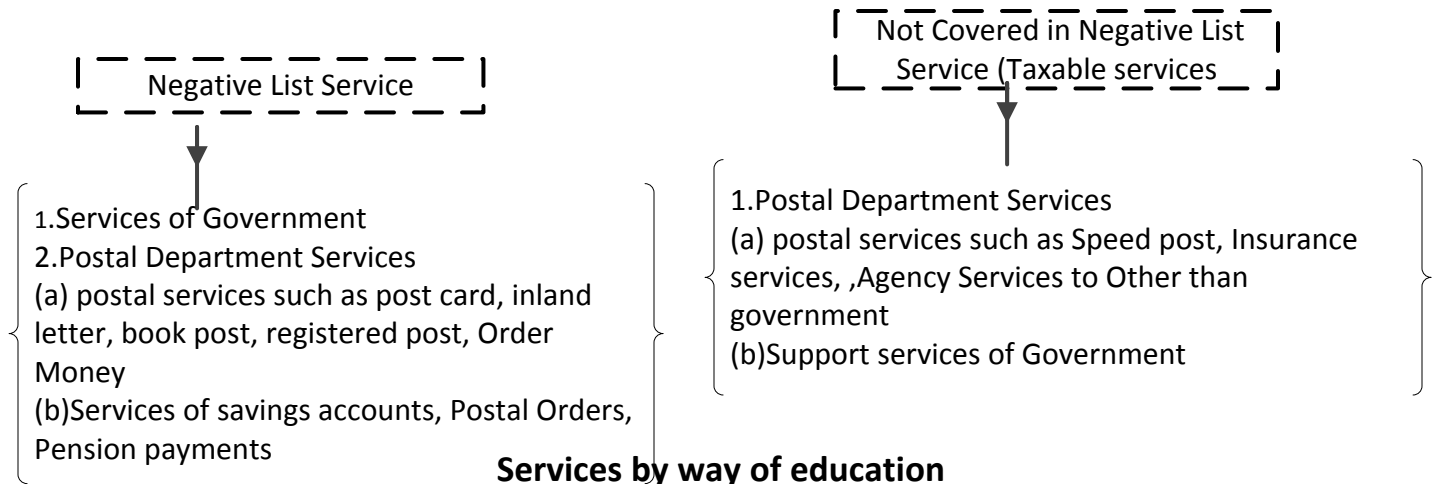
[Notification No. 02/2014-ST dated 30.01.2014]

(f) Expansion in the scope of exemption of services provided by way of sponsorship of sports events

Hitherto, services provided by way of sponsorship of sporting events organized by a national sports federation, or its affiliated federations were exempt from service tax where the participating teams or individuals represent any district, State or zone. The said exemption has been extended even in a case where the participating teams or individuals represent any **COUNTRY**.

Negative list of Services

Services by Government or a local authority



Services by way of education



Coverage under this entry (Not taxable)

- ❖ Service of preschools
- ❖ Service of higher secondary school (may or may not be recognised)
- ❖ Services of Post school education as a part of curriculum for obtaining a qualification recognized by law. Services of colleges/universities of academic, Technical, medical, management where the certificates issued were recognised by Indian law will be covered under this entry. Coaching classes conducted by ICAI, ICWAI and ICSI also covered under this entry.
- ❖ Services of institutes such as "ITI" conducted by approved vocational educational course under apprentice act such as fitter, turner, dress maker, boiler attendant, painter, carpenter etc.,
- ❖ Services of institutes which offer training for Modular Employable Skill Course approved by NCVT such as Automotive repairs, banking, electronic etc.,
- ❖ Services of institutes which offer training in promotion of skill and excellence which is affiliated to NSDC
- ❖ Some other services of educational institutions not covered under this entry, are exempted such as auxiliary educational services etc., For details refer chapter exempted services.

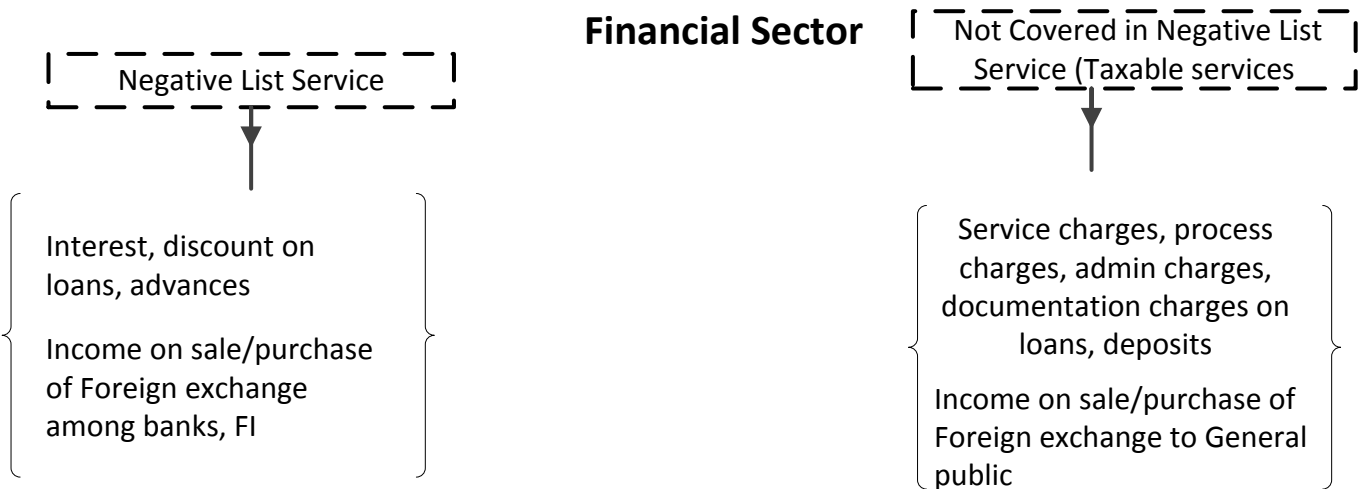
- ❖ Services of private coaching institutes. as such training does not lead to grant of a recognized qualification.
- ❖ Private tutorship.

Services by way of renting of residential dwelling for use as residence

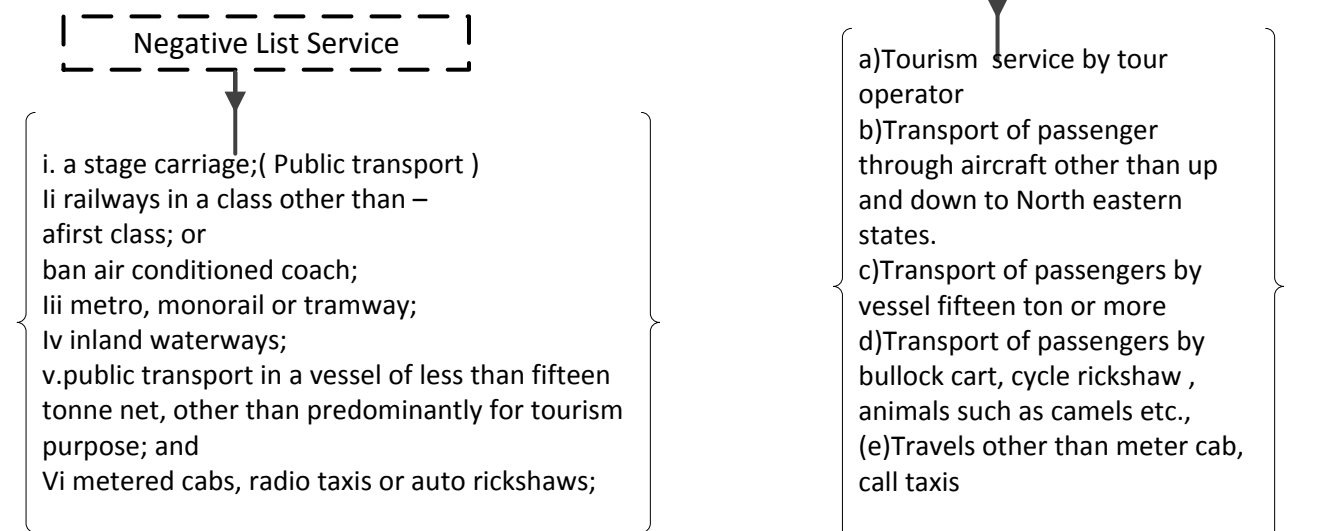


- ❖ Services by way of renting of residential dwelling for use as residence

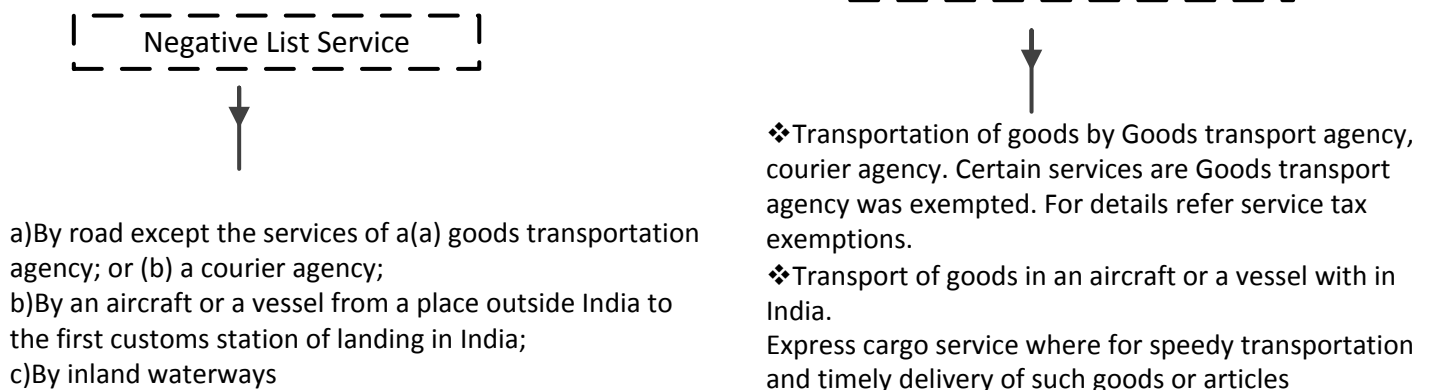
Accommodation in hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay where declared tariff > Rs.1000/-



Service of transportation of passengers



Services by way of transportation of goods



Negative list of Services

Services relating to agriculture

Services relating to agriculture by way of :

- a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
- b) supply of farm labour;
- c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
- d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use ;
- e) loading, unloading, packing, storage or warehousing of agricultural produce;
- f) agricultural extension services;
- g) services by any Agricultural Produce Marketing Committee or Board or
- h) Services provided by a commission agent for sale or purchase of agricultural produce.

All the above services from (a) to (h) in relating to agriculture are covered in the negative list and they are not liable for service tax.

The benefits available to agricultural produce in the negative list for paddy [Section 66D(d)] are not available to rice. *Circular No.177/03/2014 – ST dated 17.02.2014*

However certain other services relating to rice like GTA, packing and job work will continue to exempt under exempted services

Selling of space for advertisements in print media

Selling of space for advertisements in print media is only cover under negative list

Service tax payable to other segments like online and mobile advertising, advertisements on internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, automated teller machines, commercial publications, aerial advertising, etc.

Service of ad agencies is taxable. Commission received by ad agents is taxable. Canvas of ads is also taxable

Negative list of Services

entertainment events and access to amusement facilities

Negative List Service

(Entry to entertainment events
(Access to amusement
facilities
Standalone ride set up
in a mall
Entry to video parlors
exhibiting movies
played on a DVD player
and displayed through a
TV screen

Not Covered in Negative List Service (Taxable services)

Cultural programme,
drama or a ballet held in
an open garden
Membership of a club/
Auxiliary services for
organizing an
entertainment event

Service of transportation of passengers

Negative List Service

i. a stage carriage;(Public transport)
li railways in a class other than –
a first class; or
ban air conditioned coach;
lii metro, monorail or tramway;
Iv inland waterways;
v. public transport in a vessel of less than fifteen
tonne net, other than predominantly for tourism
purpose; and
Vi metered cabs, radio taxis or auto rickshaws;

Not Covered in Negative List Service (Taxable services)

a) Tourism service by tour
operator
b) Transport of passenger
through aircraft other than up
and down to North eastern
states.
c) Transport of passengers by
vessel fifteen ton or more
d) Transport of passengers by
bullock cart, cycle rickshaw ,
animals such as camels etc.,
(e) Travels other than meter cab,
call taxis

Services by way of transportation of goods

Negative List Service

a) By road except the services of a (a) goods transportation
agency; or (b) a courier agency;
b) By an aircraft or a vessel from a place outside India to
the first customs station of landing in India;
c) By inland waterways

Not Covered in Negative List Service (Taxable services)

❖ Transportation of goods by Goods transport agency,
courier agency. Certain services are Goods transport
agency was exempted. For details refer service tax
exemptions.
❖ Transport of goods in an aircraft or a vessel with in
India.
Express cargo service where for speedy transportation
and timely delivery of such goods or articles

Place of provision rules at glance

Service is taxable only when it is rendered in taxable territory. Whether the service is rendered in taxable territory or not is to be determined as per Place of provision rules as below.

Rule	Applicability	Place of provision of service shall be
3	General rule/ Hiring of means of transport like Aircrafts and Vessels yachts more than one month (From 01.10.2014)	location of the recipient of service
4	<p>In case where services are provided in respect of goods that are required to be made physically available to the service provider Example: Repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, dry cleaning</p> <p>In case of services which require the physical presence of the receiver or the person acting on behalf of the receiver, with service provider Example: Cosmetic surgery beautician services, class room teaching, fitness services</p>	<p>location where the services are actually performed Exception: if goods are temporarily imported to India for service, for repairs and are exported after the repairs without being put to any use in the taxable territory ie Rule 4 not applicable. Rule 3 applicable</p>
5	<p>In case of services provided directly in relation to an immovable property Ex: Construction, real estate agent, renting, survey, land property management,</p>	Place where the immovable property is located or intended to be located.
6	<p>In case of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission. Ex: Musical programmers, exhibitions, road show, fashion show</p>	The place where the event is actually held.
7	Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory	location in the taxable territory where the greatest proportion of the service is provided
8	<p>Where the location of the service provider well as that of service receiver is in the taxable territory Ex: Service performed outside India on deputation where both service receiver and service provider is india.</p>	location of the recipient of service

9	In case of (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) Online information and database access or retrieval services; (c) Intermediary services; (d) Service consisting of hiring of means of transport of yachts up to a period of one month. From 01.10.2014	location of the service provider
10	The place of provision of services of transportation of goods, other than by way of mail or courier the place of provision of services of goods transportation agency	place of destination of the goods the location of the person liable to pay tax.
11	In respect of a passenger transportation service	place where the passenger embarks on the conveyance for a continuous journey
12	In case of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	the first scheduled point of departure of that conveyance for the journey
13	In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.	
14	Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.	

Determination of location of service Provider/Service Receiver. Rule 2(h)(i)

The location of service receiver will be determined as below:

A.	Where the service provider/service receiver has obtained a single registration, whether centralized or otherwise,	The premises for which such registration has been obtained
B	(i) Where the service provider/service receiver is not covered under point A. above	The location of his business establishment
	(ii) <i>Where the services are provided from/used at a place other than the business establishment, that is to say, a fixed establishment elsewhere,</i>	The location of such establishment
	(iii) <i>Where services are provided from/used at more than one establishment, whether business or fixed</i>	The establishment most directly concerned with the provision/use of the service;
	(iv) In the absence of such places (i ,ii & iii)	The usual place of residence of the service provider/service receiver.

Reverse Charge

The following table provides a combination of service provider and service receiver where the reverse charge of service tax is applicable. Any other combination of service provider or service receiver, if the service is not exempted or not covered in service list, the service tax is payable by service provider. For example, in the case of a goods transport agency, if the service receiver is an individual, the service tax is payable by the service provider goods transport agency.

1. Services of insurance agent

S. No	Particulars	Particulars
1	Service provider	Insurance Agent
2	Service Receiver	Insurance Company/ Any other person
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

2. Services of Goods Transport Agency (GTA)

S. No	Particulars	Particulars
1	Service provider	GTA
2	Service Receiver	Consignor or consignee who is (a) factory, society, registered dealer of excisable goods, body corporate, partnership firm, AOP and (b) who pays or is liable to pay freight either himself or through his agent for transportation of such goods in goods carriage.

S. No	Particulars	Particulars
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%
5	Explanation	The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification. i.e., If such a person is located in a non-taxable territory, the provider of service shall be liable to pay service tax.

3. Sponsorship service

S. No	Particulars	Particulars
1	Service provider	Any person
2	Service Receiver	Anybody corporate or partnership firm located in the taxable territory
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

4. Services of Arbitral tribunal

S. No	Particulars	Particulars
1	Service provider	Arbitral tribunal
2	Service Receiver	Business entity
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

5. Services of Legal Services of Advocate or Advocate Firms

S. No	Particulars	Particulars
1	Service provider	Individual Advocate/ Advocate firm
2	Service Receiver	Business entity turnover more than Rs.10 lakh during previous financial year
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

6. Services of director to company/Body Corporate

S. No	Particulars	Particulars
1	Service provider	Director
2	Service Receiver	Company/Body Corporate
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

7. Support Services by Government or Local Authority excluding renting of immovable property and Postal, port, airport and railway services

S. No	Particulars	Particulars
1	Service Provider	Government or Local Authority
2	Service Receiver	Business entity located in taxable territory
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

8. Service of Renting or hiring of motor vehicle designed to carry passengers to any person who is not in the similar line of business

S. No	Particulars	Particulars
1	Service provider	Individual, HUF, Proprietor, partnership firm, AOP located in taxable territory.
2	Service Receiver	Business entity registered as body corporate located in the taxable territory
3	Service tax liability of service provider	NIL in case of abated value, 50% in case of Non abated value
4	Service tax liability of service receiver	100 % in case of abated value, 50% in case of Non abated value

8 A Service of Recovery Agent from 11.07.2014

S. No	Particulars	Particulars
1	Service provider	Recovery
2	Service Receiver	Banking Company/Financial Institution
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100 %

9 Services received from non-taxable territory (Import of Service)

S. No	Particulars	Particulars
1	Service provider	Person located in Nontaxable territory
2	Service Receiver	Person located in Taxable territory
3	Service tax liability of service provider	NIL
4	Service tax liability of service receiver	100%

Partial Reverse Charge

10. Services of Supply of Manpower or security service for any purpose

S. No	Particulars	Particulars
1	Service provider	Individual, HUF, Proprietor, partnership firm, AOP located in taxable territory.
2	Service Receiver	Business entity of a registered body corporate located in taxable territory

3	Service tax liability of service provider	25%
4	Service tax liability of service receiver	75%

11. Service portion in execution of Works Contract

S. No	Particulars	Particulars
1	Service provider	Individual, HUF, Proprietor, partnership firm, AOP located in taxable territory.
2	Service Receiver	Business entity of a registered body corporate located in taxable territory
3	Service tax liability of service provider	50%
4	Service tax liability of service receiver	50%
5	Explanation	In works contract services, where both service provider and service recipient is the person liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

	Service tax Abatements			
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for non Availment of cenvat credit
1	<p>Services in relation to financial leasing including hire purchase</p> <p>The gross amount charged for this service will be sum total of the following-</p> <ul style="list-style-type: none"> ◆ 10% of the amount forming or representing interest; and ◆ Other charges such as lease management fees, processing fees, documentation charges and administrative fees. 	90%	10%	NIL
2	Transport of goods by rail	70%	30%	NIL
3	Transport of passengers, with or without accompanied belongings by rail	70%	30%	NIL
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	30%	70%	Goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act
5	Transport of passengers by air, with or without accompanied belongings	60%	40%	Inputs, capital goods
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	40%	60%	Inputs, capital goods
7	Services of goods transport agency in relation to transportation of goods	75%	25%	Inputs, capital goods, input service not taken by Service Provider

	Service tax Abatements			
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for non Availment of cenvat credit
8	Services provided in relation to chit	30%	70%	Inputs, capital goods, input service
9	Renting of any motor cab vehicle designed to carry passengers not more than six excluding driver	60%	40%	No CC on Inputs, capital goods,/ But CC on input service for renting motor can be availed (1.10.2014)
9A	Renting of any vehicle other than motor cab designed to carry passengers from 1.10.2014	60%	40%	CC on Inputs, capital goods, input service
10	Transport of goods in a vessel 01.10.2014	50% 60%	50% 40%	Inputs, capital goods, input service
11	Services by a tour operator in relation to: (i) a package tour <u>Condition:</u> The bill issued for this purpose indicates that it is inclusive of charges for such a tour.	75%	25%	Inputs, capital goods, input service
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person <u>Conditions:</u> (i) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (ii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.	60%	40%	No CC Inputs, capital goods, But CC input service for the service paid to other tour operated can be taken 01.10.2014
	(iii) services other than those specified in (i) and (ii) above	90%	10%	Inputs, capital goods, input service
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority. <u>Condition:</u> The value of land is included in the amount charged from the service recipient.			Inputs

	Service tax Abatements			
S. No.	Nature of Service	Abatement Allowed	Taxable Value	Conditions for non Availment of cenvat credit
	(a) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore;	75%	25%	
	(b) for others	70%	30%	

1.Explanation to the above Notification of abatements

Determination of gross amount:

In respect of Service of (Supply of food, pandal, convention together with renting of premises mentioned at serial No 4), the value should be as below

Particulars	Amount
Total of the gross amount charged	xxxxxxx
Add: the fair market value of all goods and services supplied whether or not under Same contract	xxxxxxx
	xxxxxxx
Less:the amount charged for such goods or services supplied to the service provider, if any	xxxxxxx
Less: the value added tax or sales tax, if any, levied thereon	xxxxxxx
Gross amount charged	xxxxxxx

Determination of gross amount:

In respect of Service of construction of complex at serial No 12, the value should be as below

Particulars	Amount
Total of the gross amount charged	xxxxxxx
Add: the fair market value of all goods and services supplied to therecipient(s)in/inrelation to the service,whether or not under Same contract	xxxxxxx
Less:the amount charged for such goods or services supplied to the service provider, if any	xxxxxxx
Less: the value added tax or sales tax, if any, levied thereon	xxxxxxx
Gross amount charged	xxxxxxx

Service tax Valuation

Section 67(1)

Situation	Value
(i) Where total consideration is monetary consideration	Taxable Value = Gross amount charged exclusive of ST
(ii) Where consideration is wholly in kind [non-monetary consideration]	<i>Service Tax (Determination of Value) Rules, 2006, Rule 3(a):</i> Taxable Value = Gross amount charged by service provider for similar service provided to third party If value cannot be determined as above then Taxable Value = Monetary equivalent of "non-monetary consideration"
Where consideration is partly in kind [non-monetary consideration]	<i>Service Tax (Determination of Value) Rules, 2006, Rule 3(b):</i> Taxable Value = [Monetary Consideration + Market Value of Non-monetary Consideration] (but it shall not be less than the cost of provisioning of service)
Where consideration is "not-quantifiable"	Taxable Value = Value determined in prescribed manner No manner has been prescribed so far but it is practically best judgment assessment
Sec 67(2)	ST not collected/not charged –Value to calculate backwards
Sec 67(3)	Gross amount includes part payment/advance payment received/ suspense account
Rule 4	Rejection of Value by CEO : If assessee does not determine value as per sec 67 and SVR he can reject value, issue SCN, give opportunity and determine value
Rule 5	Inclusions of certain expenses/ Reimbursement of expenses not includible in value if act as a pure agent.

Rule 2A - Valuation in case of works contract

- This valuation rule is the subject the provisions of section 67 with regard to valuation.
- The value in case of works contract is:

Gross amount charged excluding Vat on transfer of property on goods	Xxxx
Less: Value of transfer of property in goods involved in execution of contract	Xxxx
Value of works contract service	<u>Xxxx</u>

Exclusions in the gross amount charged

VAT/sales tax paid on transfer of property in goods involved in execution of contract

Inclusions in the gross amount charged

- Labour charges for execution of the works;
- Amount paid to a sub-contractor for labour and services;
- Charges for planning, designing and architect's fees;
- Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- Cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- Cost of establishment of the contractor relatable to supply of labour and services;
- Other similar expenses relatable to supply of labour and services; and
- Profit earned by the service provider relatable to supply of labour and services.

Value of transfer of property in goods involved in execution of contract

- ❖ Turnover adopted for local state vat laws can be considered as Value of transfer of property in goods

When the value of goods involved in the works contract is not ascertainable or not available, the value can be determined on the slab rate system as below:

Where works contract is for...	Value of the service portion shall be...
(A) execution of original works	40% of the total amount charged for the works contract
(B) maintenance or repair or reconditioning or restoration or servicing of any goods & (C) in case of other works contracts, not included in serial nos. above, including contracts for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings.	70% of the total amount charged for the works contract With effect from 01.10.2014

Total amount means

S. No.	Particulars	AMOUNT (in Rs.)
1	Gross amount received excluding taxes	xxxxxxxxx
2	Fair market value of goods supplied by the service receiver excluding taxes	xxxxxxxxx
3	Amount charged by service receiver for 2	xxxxxxxxx
4	Total amount charged (1 +2-3)	xxxxxxxxx
5	Value of service portion(40% of 4 in case of original works)	xxxxxxxxx

Rule 2B - Determination of value with regard to money changing

In case	Value of taxable service
(i) Currency is exchanged from, or to, Indian Rupees (INR)	Difference in Buying rate/selling rate and RBI reference rate for that currency at that time* × Total units of currency * Where the RBI reference rate for a 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
(ii) Neither of the currencies exchanged is Indian Rupee	1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI

Rule 2C Determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering.-

Sl. No.	Description	Value -Percentage of total amount
1.	Service involved in the supply of food or any other article of human consumption or any drink at a restaurant	40
2.	Service involved in the supply of food or any other article of human consumption or any drink as outdoor catering service	60

Total amount means

Particulars	Amount
Total of the gross amount charged	xxxxxxx
Add: the fair market value of all goods and services supplied whether or not under Same contract	xxxxxxx
	xxxxxxx
Less: the amount charged for such goods or services supplied to the service provider, if any	xxxxxxx
Less: the value added tax or sales tax, if any, levied thereon	xxxxxxx
Gross amount charged	xxxxxxx

Point of taxation rules

Note: Individuals, partnership firms this POT rules not applicable when previous FY aggregate taxable services is ≤ 50 L (details refer ST rule 6)

Rule 3 Point of taxation in normal cases

Rule	Event	Point of taxation
3(a)	If Invoice is issued within 30 days of completion of service	Date/Time of invoice
3(a) proviso	If Invoice not issued within 30 days of completion of service	Date of completion of service
3(b)	If any payment is received (including advance) before the date of completion of service or date of invoice.	Date of receipt of payment. (POT will be up to the extent of payment received)

Examples

Case	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation	Remarks
1	April 1 st 2014	April 30 th 2014	May 2 nd 2014	April 30 th 2014	Invoice issued within 30 days
2	April 1 st 2014	May 1 st 2014	August 20, 2013 May 2 nd 2014	April 1 st 2014	Invoice not issued within 30 days
3	April 1 st 2014	April 20 th 2014	April 16 th 2014	April 16 th 2014	Payment received after the date of completion of service and before date of invoice.
4	April 20 th 2014	April 30 th 2014	Part payment received on April 10 th 2014	April 10 th 2014 to the extent of Part payment.	Payment received before the date of Completion of service

Determination of point of taxation in case of continuous supply of service

❖ Same as above except, invoice is to be raised from the date of completion of an event

Meaning of Date of payment

1	Normal cases	Date of entry in books or date of crediting in bank account, Whichever earlier.
2	Special cases in case of Change in effective rate of tax	
(a)	Rate changes between entry in books and credited in bank account	Payment is credited within 4 days from the effective date of new rate- date of entry in the books is the date of payment Otherwise, date of Crediting in the bank account is the date of payment
(b)	New service brought in to service tax between entry in books and credited in bank account	Same as above

Rule 4 - Determination of point of taxation in case of change in effective rate of tax (CERT)

1	Date of provision of service	Any two Before change in rate- Old rate
2	Date of issue of invoice	
3	Date of receipt of payment	Any two after change in rate- New rate

Rule 5 – Point of tax in cases of new services (New service brought under tax net)

Rule	Event	Point of taxation
5(a)	Invoice issued <i>and</i> payment received before service became taxable	No service tax
(b)	Payment received before service became taxable and invoice issued after service became taxable within 14 days	No service tax

Rule 7 - Determination of point of taxation in case of specified services or persons under Reverse Charge
other than the cases of Rule 5 point of tax in case of new services

Rule	Event	Point of taxation
7	Receipt of service & Payment made in advance or within 3 months from the date of invoice of service provider WEF 1.10.2014	Date of payment
proviso	Payment not made in advance or within 3 months from the date of invoice of service provider for invoices issued from 01.10.2014	Date immediately following the period of 3 months
Rule 10	Receipt of service, Payment not made within 3 months from the date of invoice of service provider for invoice issued before 01.10.2014	As per Rule 3, 4, or 8, as the case may be

Service received from associated enterprise when service provider is located outside India

Rule 7	Event	Point of taxation
Second proviso	Providing of service	Date of credit in books of account of person receiving service or Date of making payment whichever is earlier

Rule 8 - Intellectual Property Service (copyright, trade mark, design or patent), where consideration not ascertainable at the time of service

Rule 8	Event	Point of taxation
8	Providing of service	Receipt of payment by service provider or Date of Invoice issued by service provider whichever is earlier

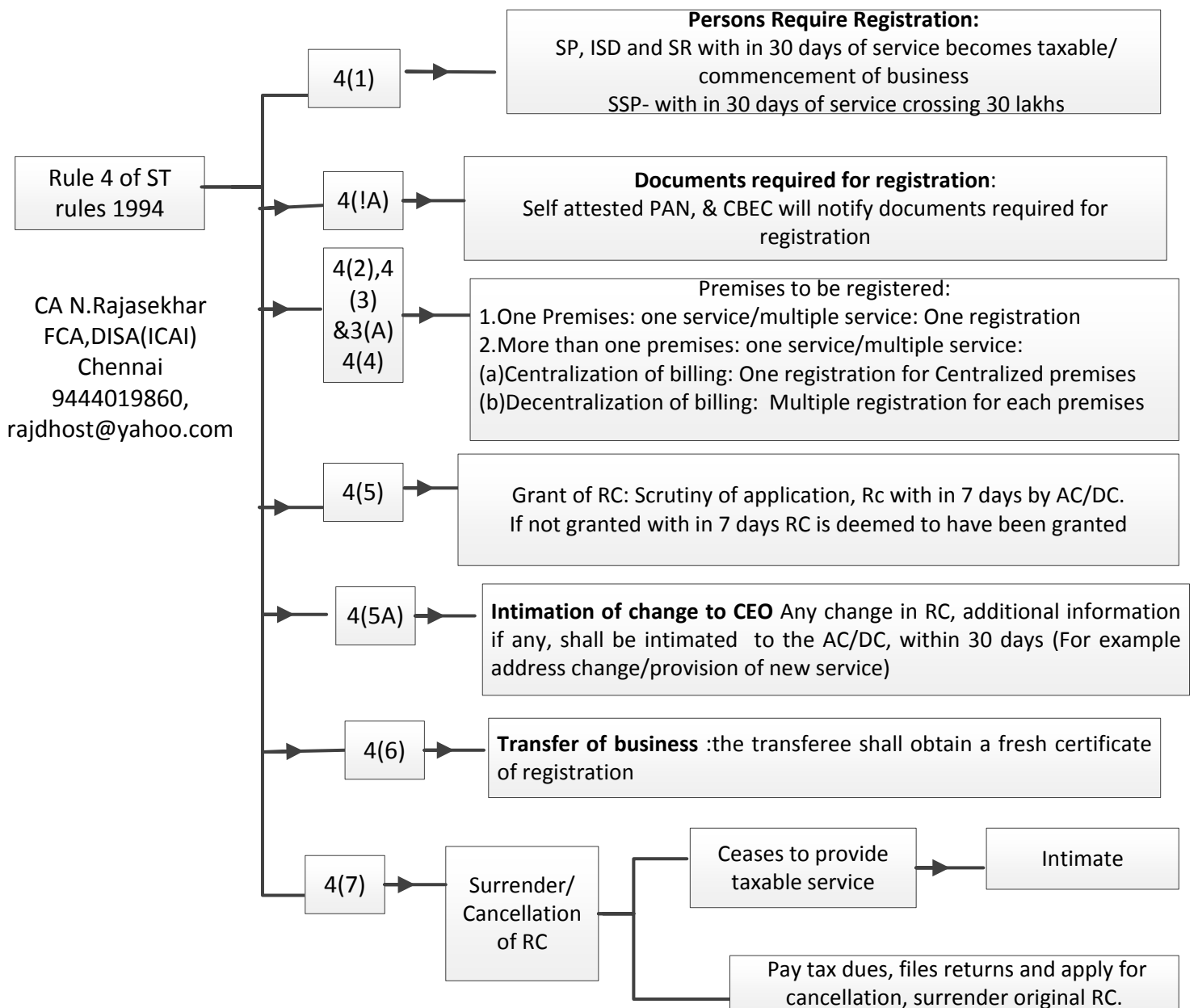
Note: If the consideration is ascertainable at the time of service Rule 3 is applicable

Rule 8A Determination of point of taxation in other cases Best of judgment rule

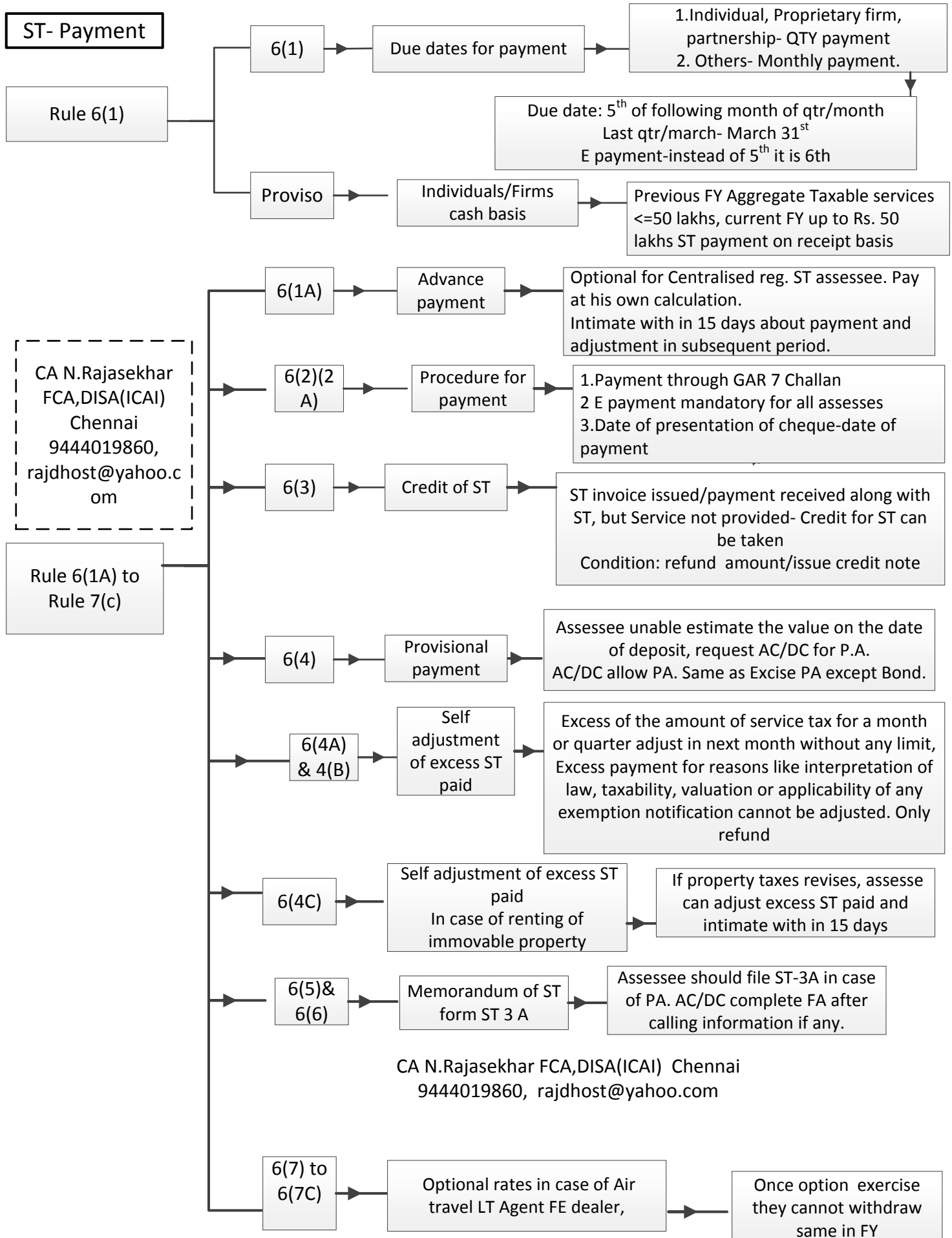
- POT cannot be determined as per these rules
- Date of invoice or the date of payment or both are not available,
- CEO, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary
- After taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing,
- after giving an opportunity of being heard, determine the point of taxation to the best of his judgment

Service tax Registration

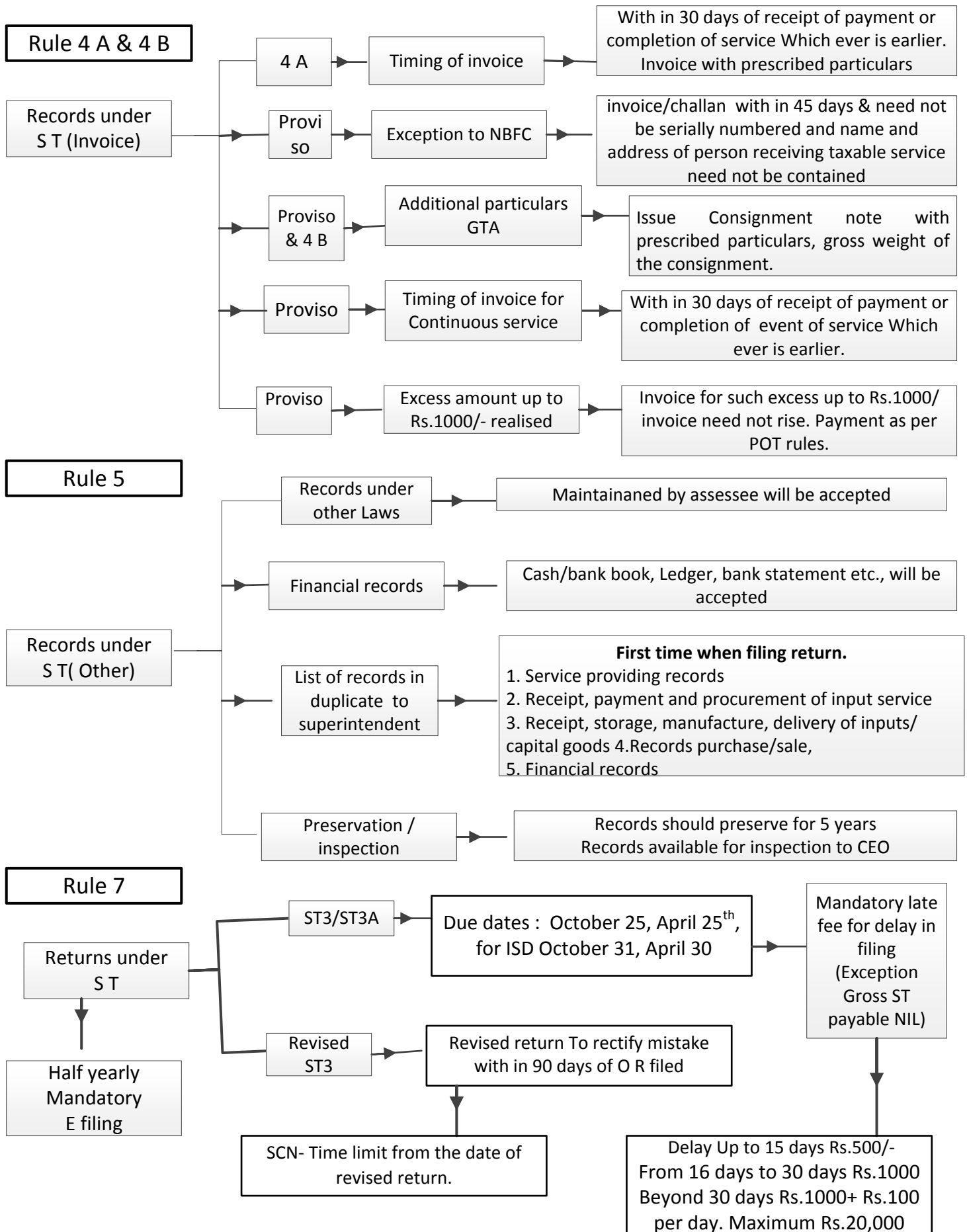
Service tax procedures -1



Service tax procedures -2



Service tax procedures -3



Interest/Penalties under Service tax

Sec 75 interest for delay for payment of Service tax from 1.10.2014

Extent of delay	Simple interest rate per annum
Up to 6 months	18%
More than 6 months & up to 1 year	18% for first 6 months, and 24% for the period of delay beyond 6 months
More than 1 year	18% for first 6 months, 24% for second 6 months, and 30% for the period of delay

Concessional rate of 3% is available for assessee whose receipts in previous PY is less than 60 lakhs

S. No.	Section	Nature of Violation	Penalty
1.	76	Failure to pay Service tax	Not less than Rs.100 per day of default or 1% per month of tax whichever is higher. In no case penalty can exceed the 50% of tax.
2.	77(1)(a)	Failure to get registration	Rs.10,000 or Rs.200 per day from the first day after due date, whichever is higher. date till the day of actual compliance.
3.	77(1)(b)	Failure to maintain books of accounts.	Maximum Rs.10,000
4.	77 (1)(c)	Failure to furnish information called by Central Excise Officer	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
5.	77(1)(c)	Failure to appear before the Central Excise Officer when issued with a summon for appearance to give evidence or to produce document.	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
6.	77 (1)(d)	Fails to pay tax through e-payment	Maximum Rs.10,000
7.	77(1)(e)	Issue invoice with incorrect details, fails to account invoice in books	Maximum Rs.10,000
8.	77(2)	Contravention of law Where no penalty is mentioned	Maximum Rs.10,000
9.	78(1)	Suppression of Value (fraud cases)	Equal to the amount of tax. Penalty is reduced to 50% service tax if true and complete details of the transactions are available in the specified records

- Section 78A

a	Providing/receiving taxable service without issue invoice
b	Avails and utilizes credit of taxes or duty without actual receipt of taxable service or

	excisable goods either fully or partially	Up to Rs. 1,00,000/-
c	Maintains false books of account or fails to supply any information/supply false information	
d	Service tax collected but not paid within 6 months from the due date. This is cognizable offence when the amount is Rs. 50 lakh or more, the police can empowered to arrest, investigate without court warrant. It is not non bailable offence	

Section 80 - Waiver of Penalty

No penalty will be levied under sections 76, 77 and 78 A if the assessee proves that there is a reasonable and sufficient cause for failure to comply.

Central Excise Officer has no power to waive the said 50% penalty for non/short levy or non/short payment or erroneous refund of service tax by reason of fraud, collusion etc u/s 78(1). From 06.08.2014

Prosecution provisions (Criminal Penalties) Sec 89

Category 'A' offences are:

- (a) willful evasion of payment of service tax; or
- (b) availment and utilization of credit of service tax / excise duty without actual receipt of taxable service / excisable goods either fully or partially in violation of the rules made under the provisions of Chapter V; or
- (c) maintenance of false books of account or failure to supply any information which a person is required to supply or knowingly supplying false information.

Category 'B' offence

is collection of any amount as service tax but failure to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due [Sub-section (1)].

Term of imprisonment Category A Offence

If any person is convicted of an offence under this section for the:		
First time	In the case of an offence where the amount is	Term of imprisonment
	(i) up to `50 lakh	Up to 1 year
	(ii) more than `50 lakh	6 months to 3 years
Second and every subsequent time	Irrespective of the amount of tax, The term of imprisonment shall be 6 months to 3 years	
Such imprisonment shall be for a term of less than six months if there are special and adequate reasons to be recorded in the judgment of the Court.(this provision same as central excise)		

Term of imprisonment Category B Offence

If any person is convicted of an offence under this section for the:
--

First time	In the case of an offence where the amount is	Term of imprisonment
	(i) up to `50 lakh	Up to 1 year
	(ii) more than `50 lakh	6 months to 7 years
Second and every subsequent time	(i) up to `50 lakh	6 months to 3 years
	(ii) more than `50 lakh	6 months to 7 years
Such imprisonment shall be for a term of less than six months if there are special and adequate reasons to be recorded in the judgment of the Court.(this provision same as central excise)		

A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.

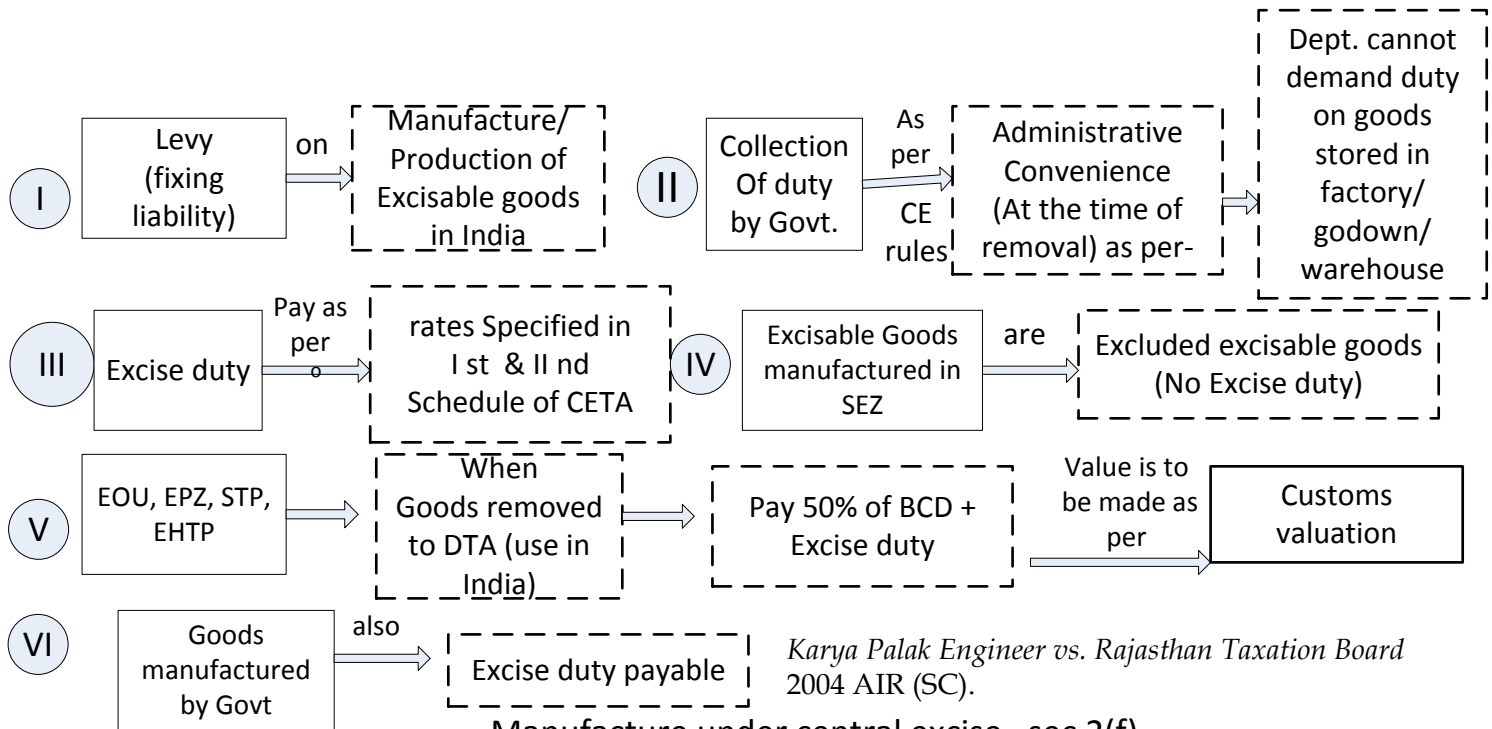
Sec 90: Cognizance of offences

- ❖ Collects any amount as service tax but fails to pay beyond a period of six months from the date on which such payment becomes due, where the amount is exceeding Rs. 50 lakhs shall be cognizable. And arrest can be made without warrant.
- ❖ All A category offence and B Category below Rs, 50 lakhs is be non-cognizable and bailable

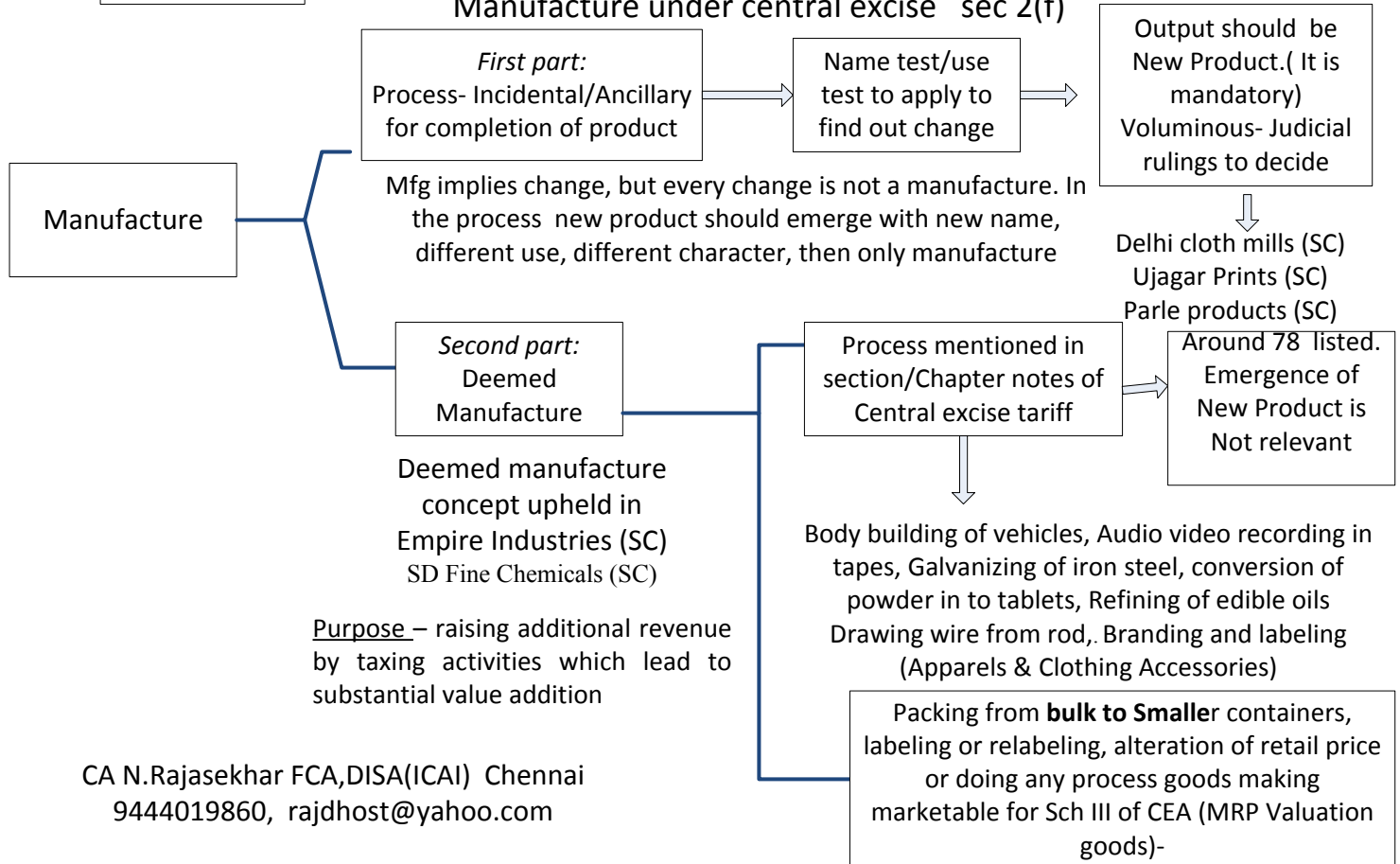
Sec 91: Power to Arrest

- ❖ If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified sec 89(1) where the amount is exceeding Rs.50 lakhs he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.
- ❖ Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.
- ❖ In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.
- ❖ All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

Excise Charging section. Sec. 3 of CEA



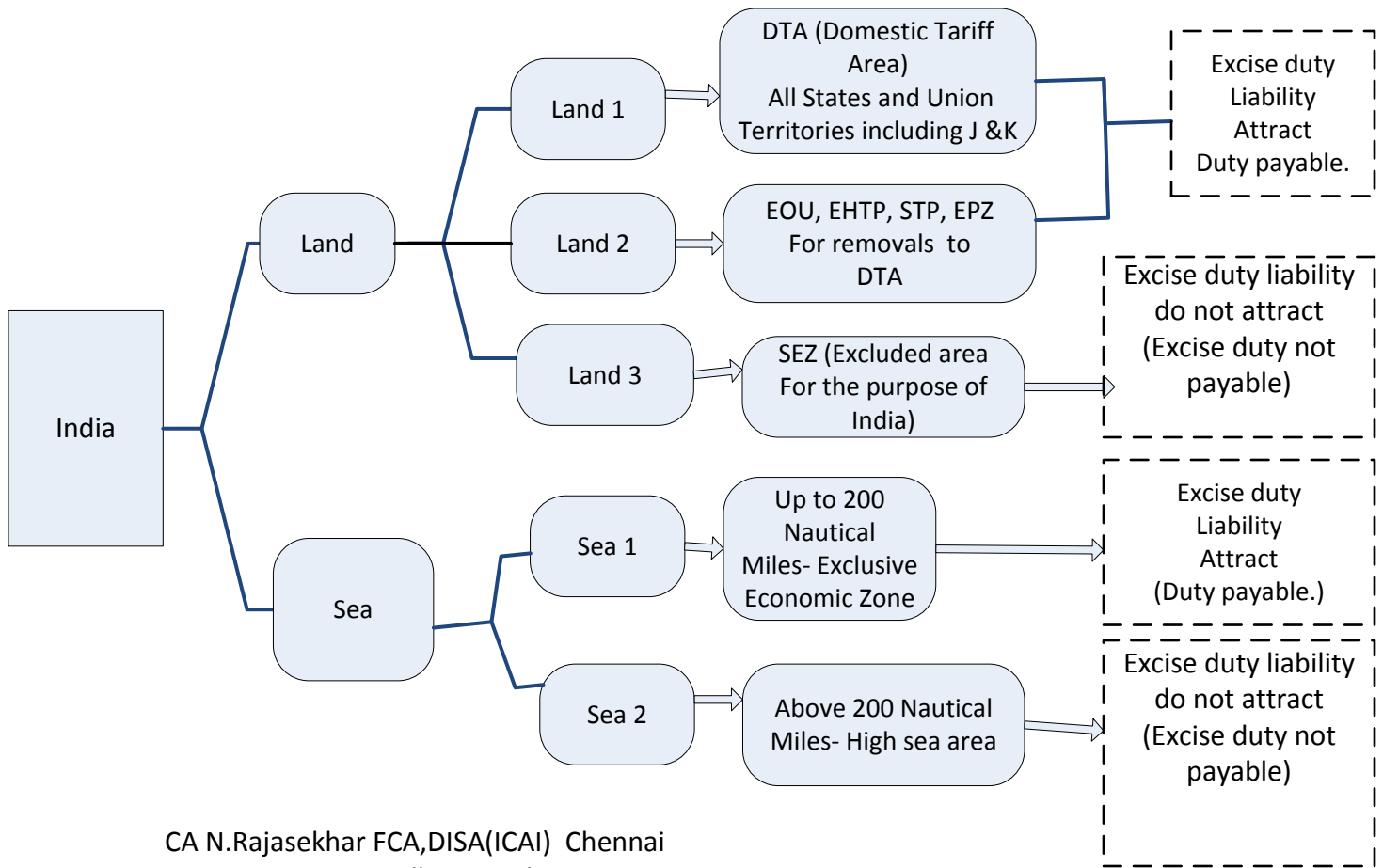
Manufacture under central excise sec 2(f)



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1. Value addition in the packing activity is mandatory to call as deemed manufacture and levy of ED.
2. If goods are already marketable, mere packing and repacking them is not a manufacture.
3. Labeling/relabeling should include declaration or alteration of retail sale price. mere labeling or relabeling will not be 'deemed manufacture' *Mumbai vs. BOC (I) Ltd.* 2008 (226) ELT 323 (SC)

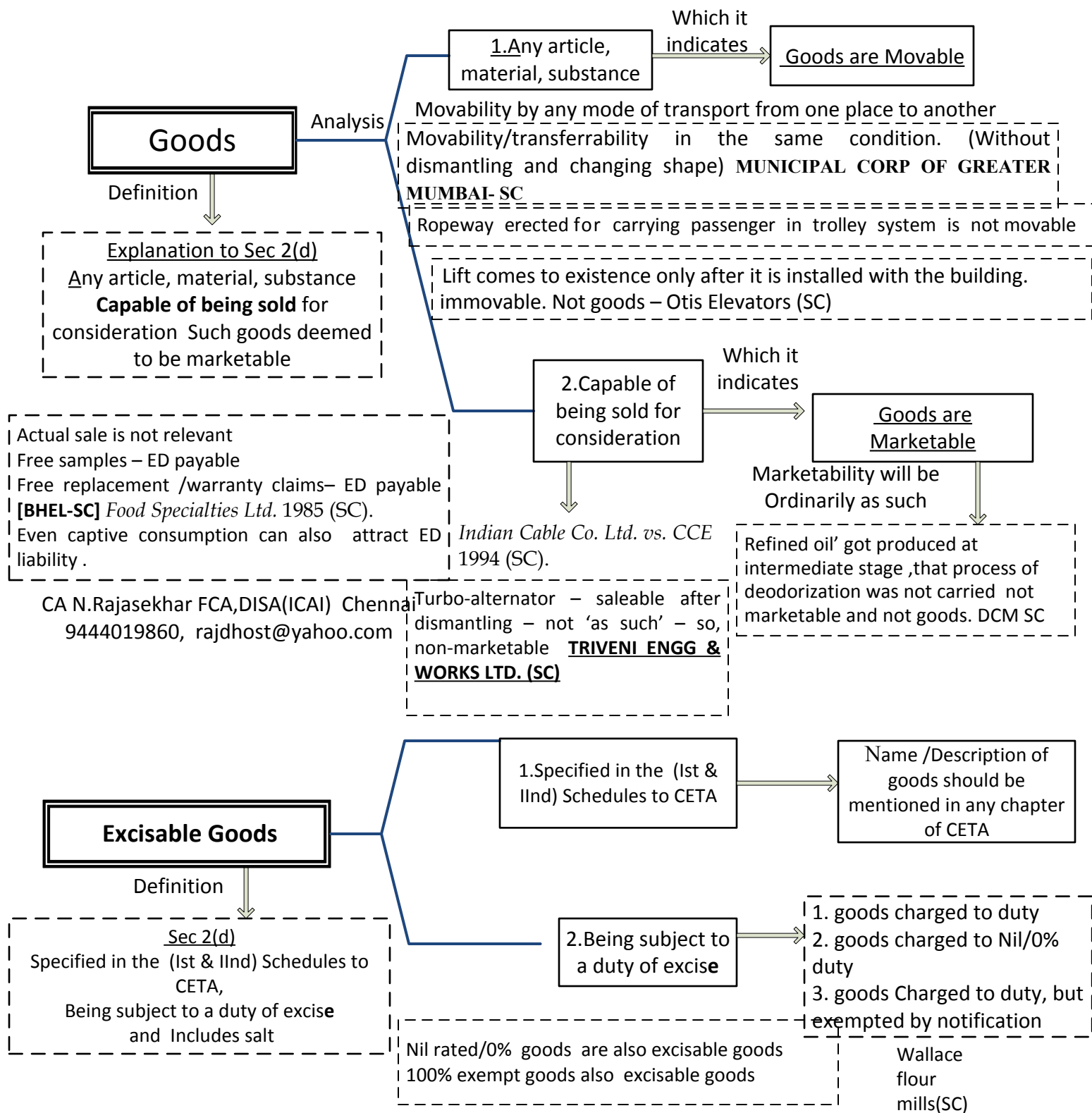
India for the purpose of Excise duty



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Goods and Excisable goods



Specification in Schedule is not determinative or conclusive as to marketability

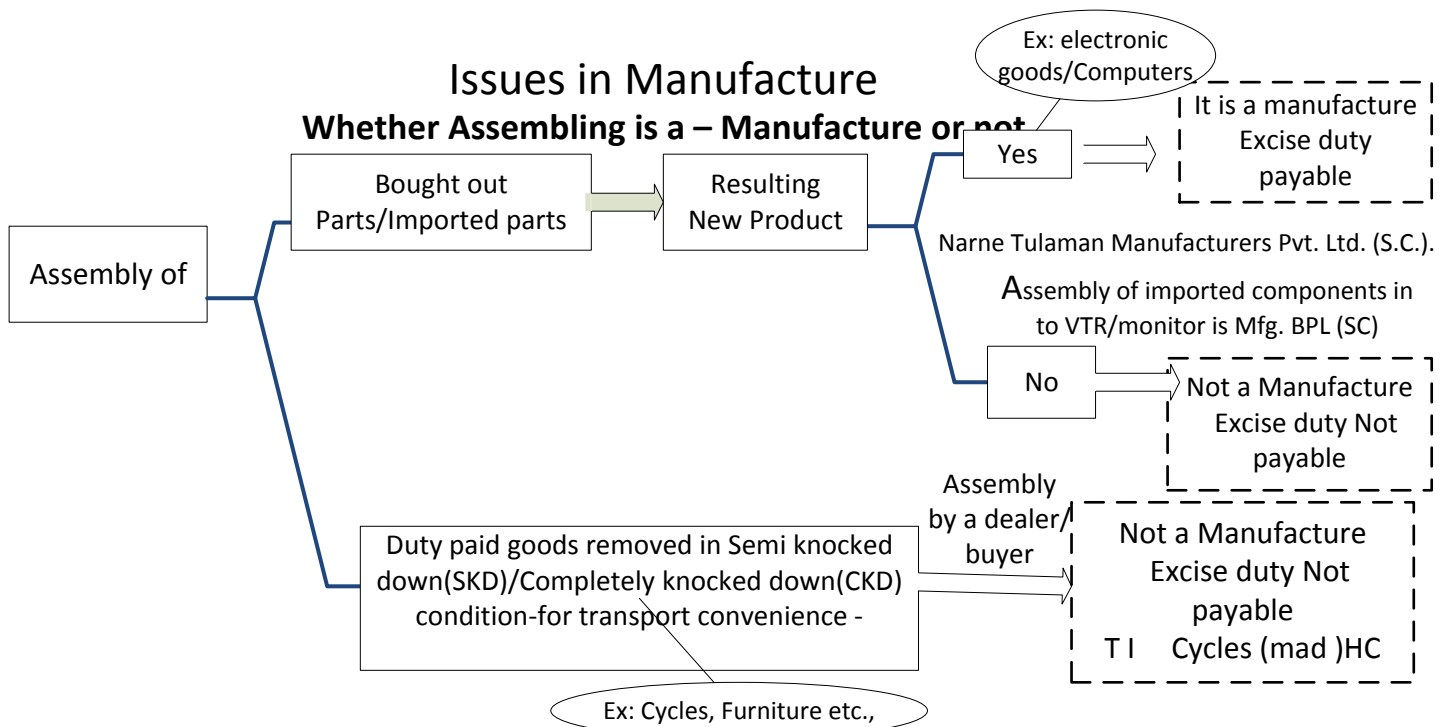
Item specified in Schedule – but not proved to be marketable --- not excisable – (as marketability is the decisive test)

Conclusion:

In order to attract excise duty liability, goods should be movable, marketable and excisable
Bhor industries Ltd (Sc)
Ion exchange Ltd (SC)

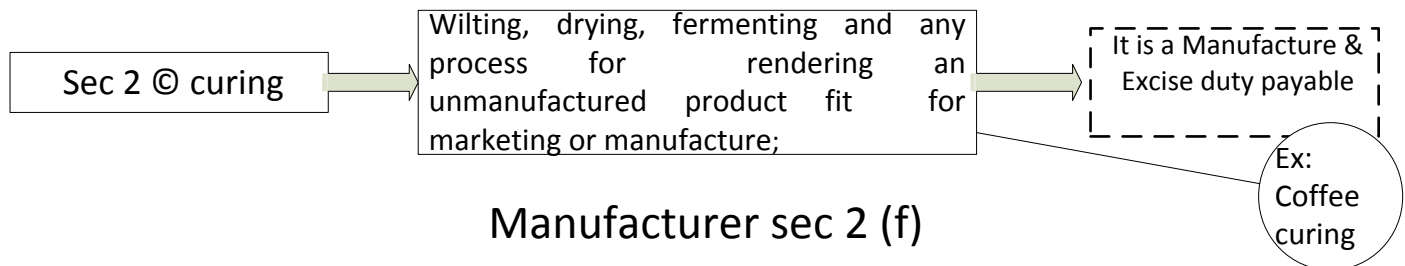
Issues in Manufacture

Whether Assembling is a – Manufacture or not

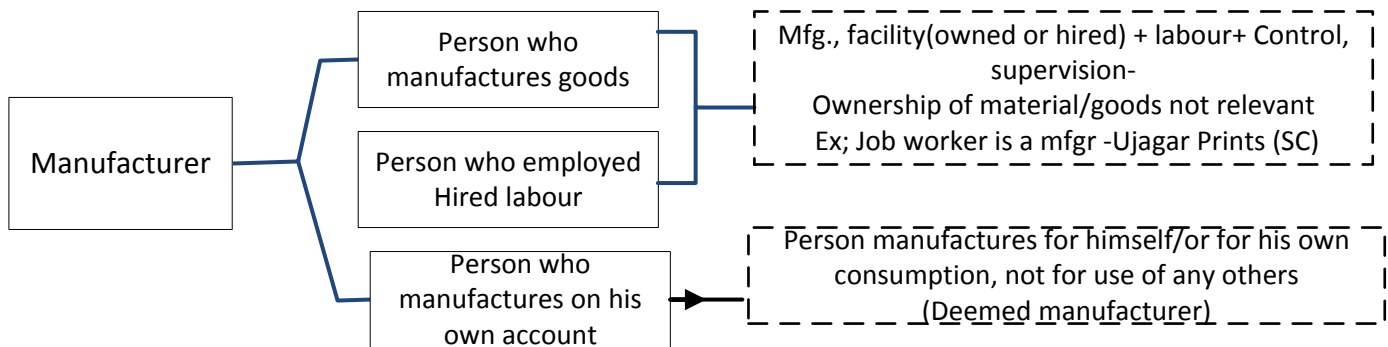


Assembly of components of air conditioner in car does not amount to manufacture - CBE&C Circular dt. 17-8-1999.

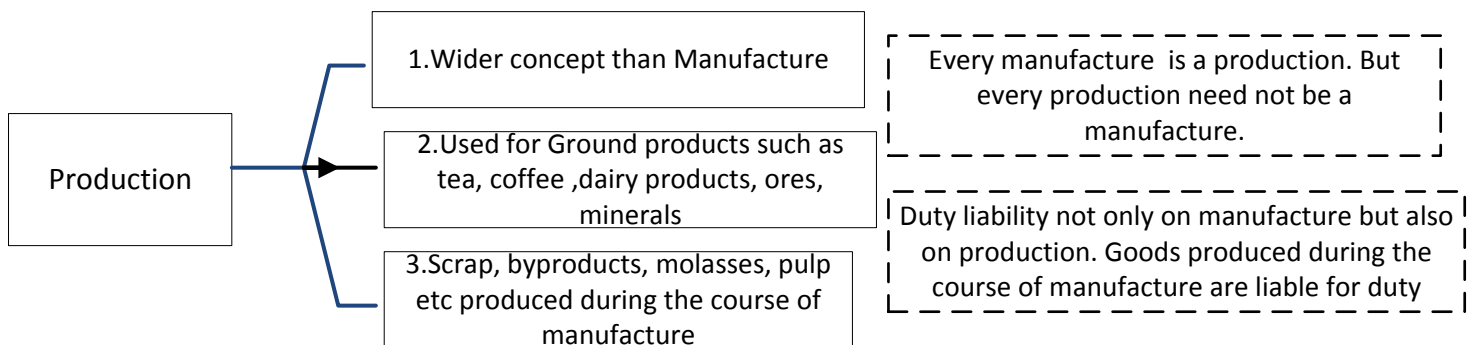
Whether Curing is a Manufacture or not



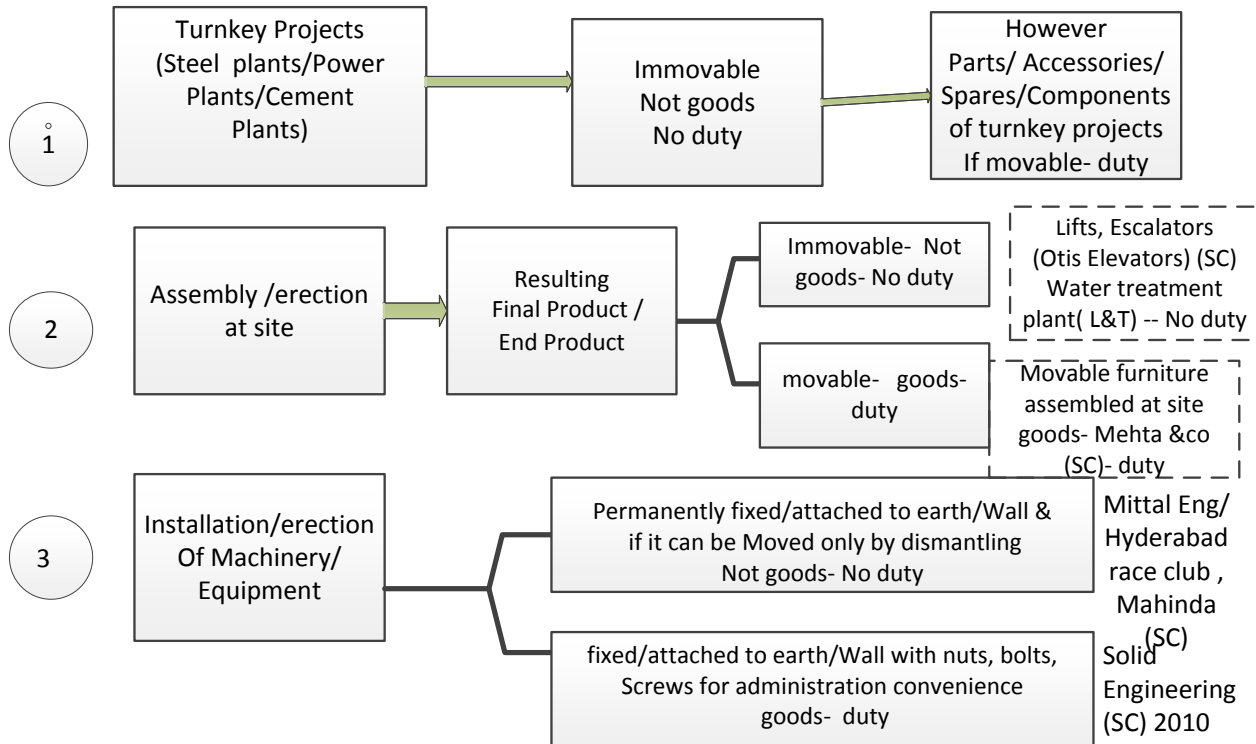
Manufacturer sec 2 (f)



RM Supplier, brand name owner, loan licensee are not manufacturer
Cibatul Ltd. vs. UOI 1978 (SC)/Philips India Ltd. vs. UOI (All HC)Food Specialties Ltd. 1985 (SC)

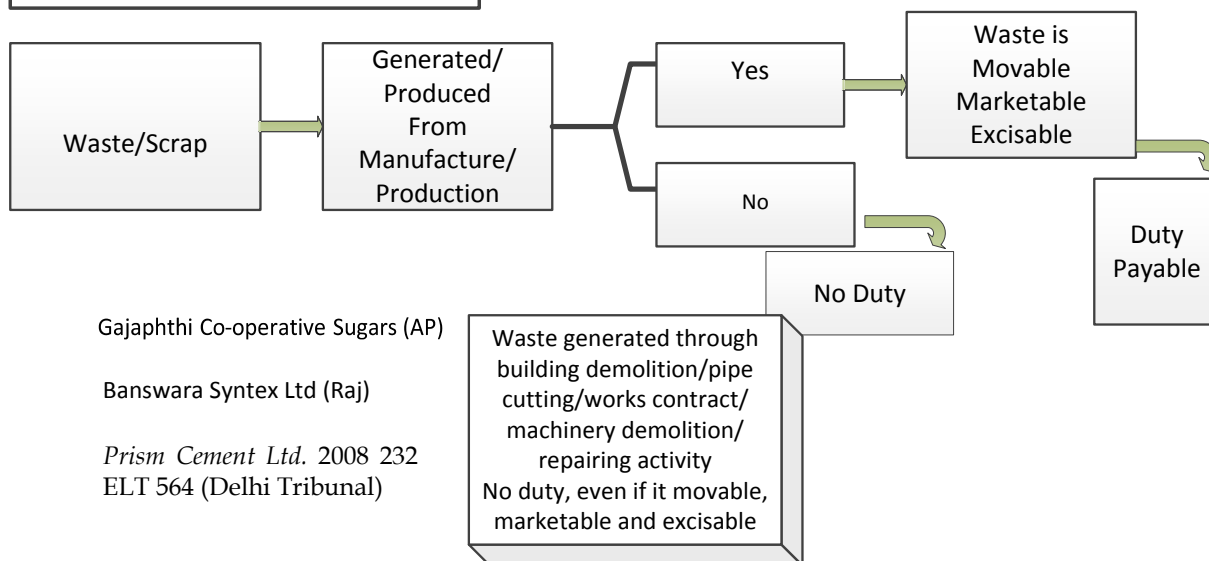


Dutiability of site related activities/ Structures, erections, assembly at site



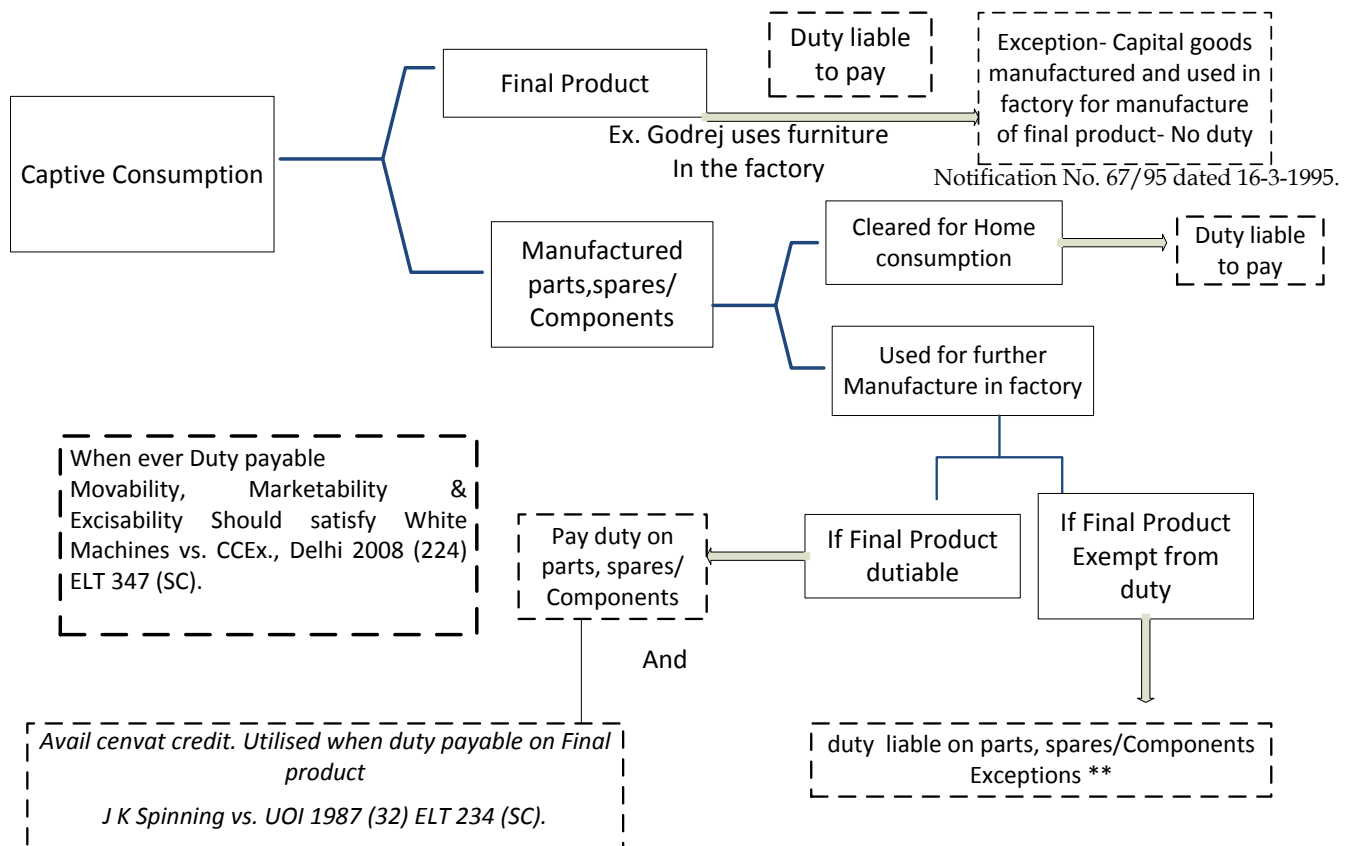
Khandelvalmetal Metal Engineering (SC)
Indian Aluminum Co (SC)

Dutiability of Waste/Scrap

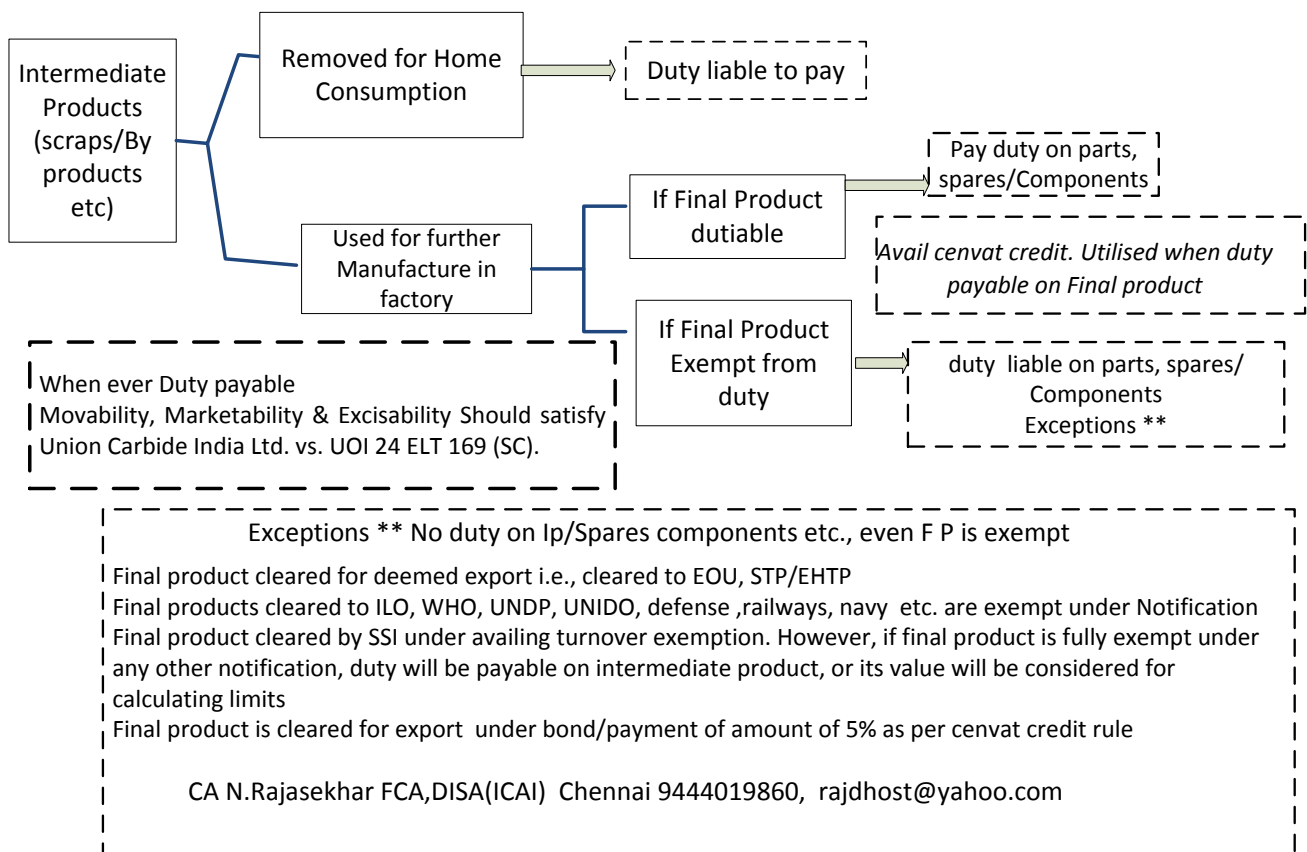


Gajaphthi Co-operative Sugars (AP)
Banswara Syntex Ltd (Raj)
Prism Cement Ltd. 2008 232
ELT 564 (Delhi Tribunal)

Duty liability on Captive Consumption



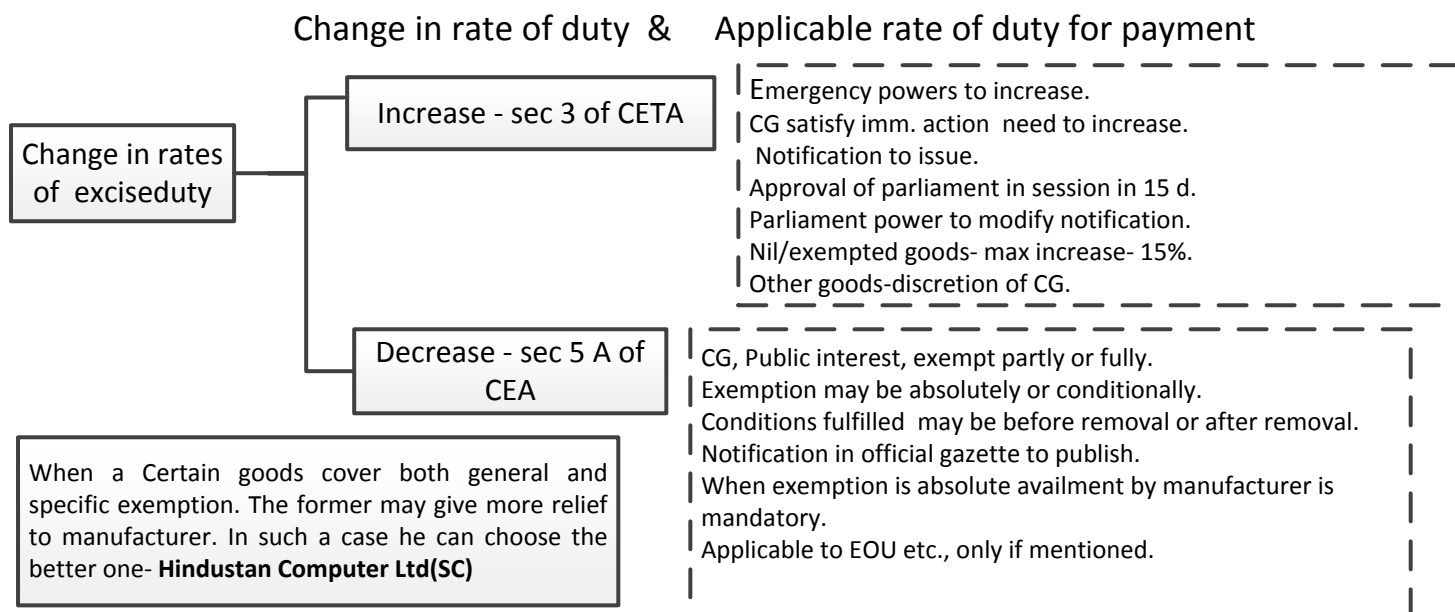
Duty liability on Intermediate products



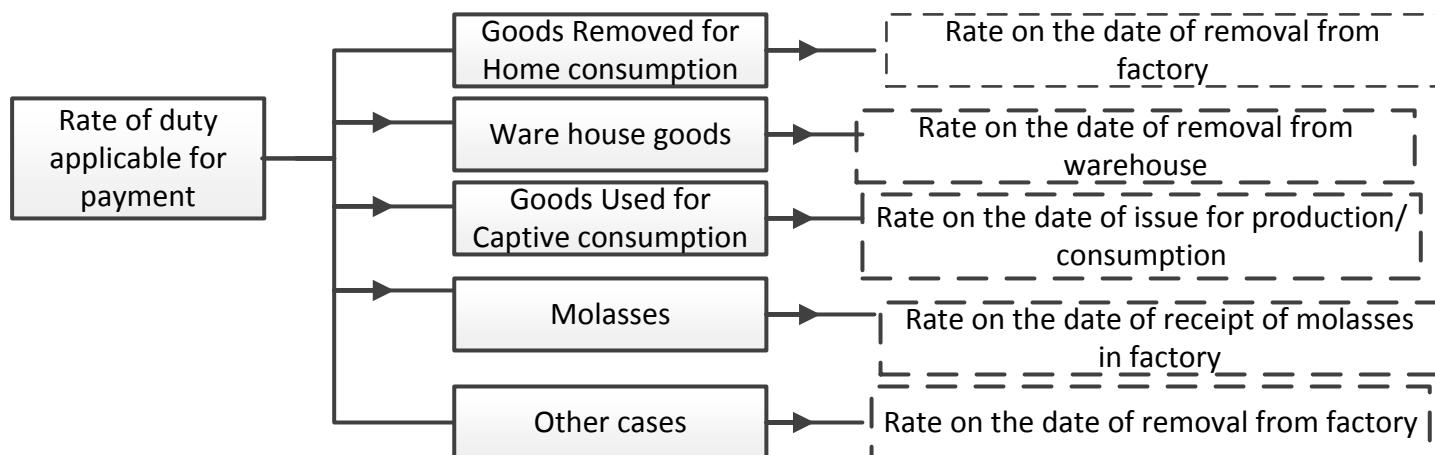
Exceptions ** No duty on Ip/Spares components etc., even F P is exempt

- Final product cleared for deemed export i.e., cleared to EOU, STP/EHTP
- Final products cleared to ILO, WHO, UNDP, UNIDO, defense ,railways, navy etc. are exempt under Notification
- Final product cleared by SSI under availing turnover exemption. However, if final product is fully exempt under any other notification, duty will be payable on intermediate product, or its value will be considered for calculating limits
- Final product is cleared for export under bond/payment of amount of 5% as per cenvat credit rule

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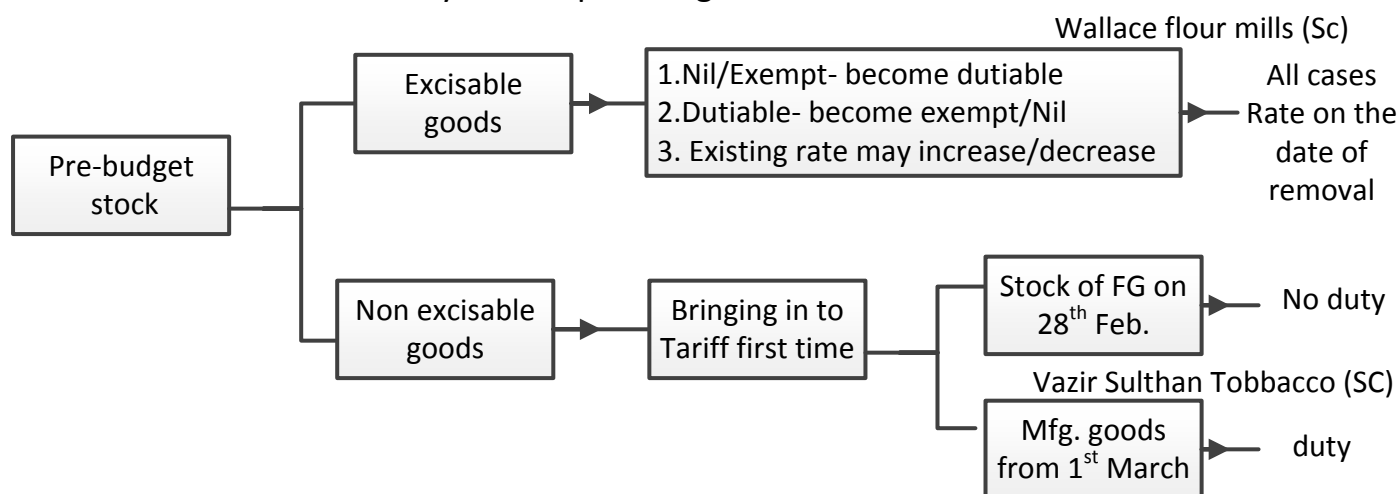


Rate of duty applicable for payment/ Taxable event- Rule 5



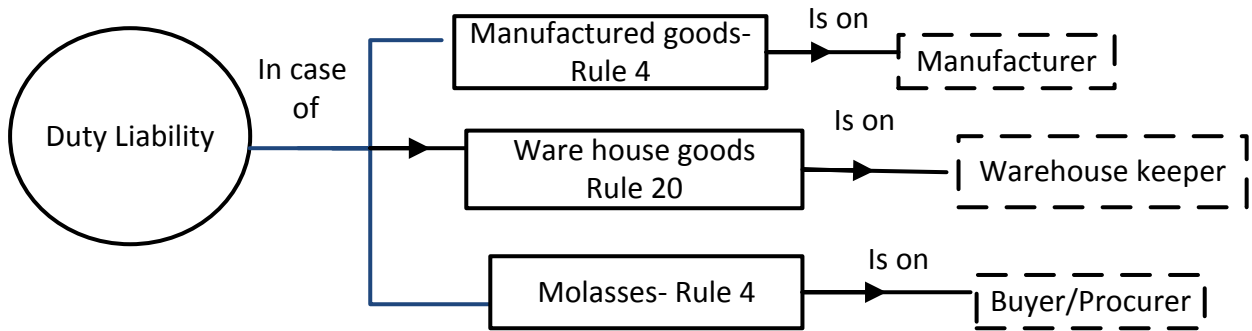
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Rate of duty in case pre budget stock- Taxable event



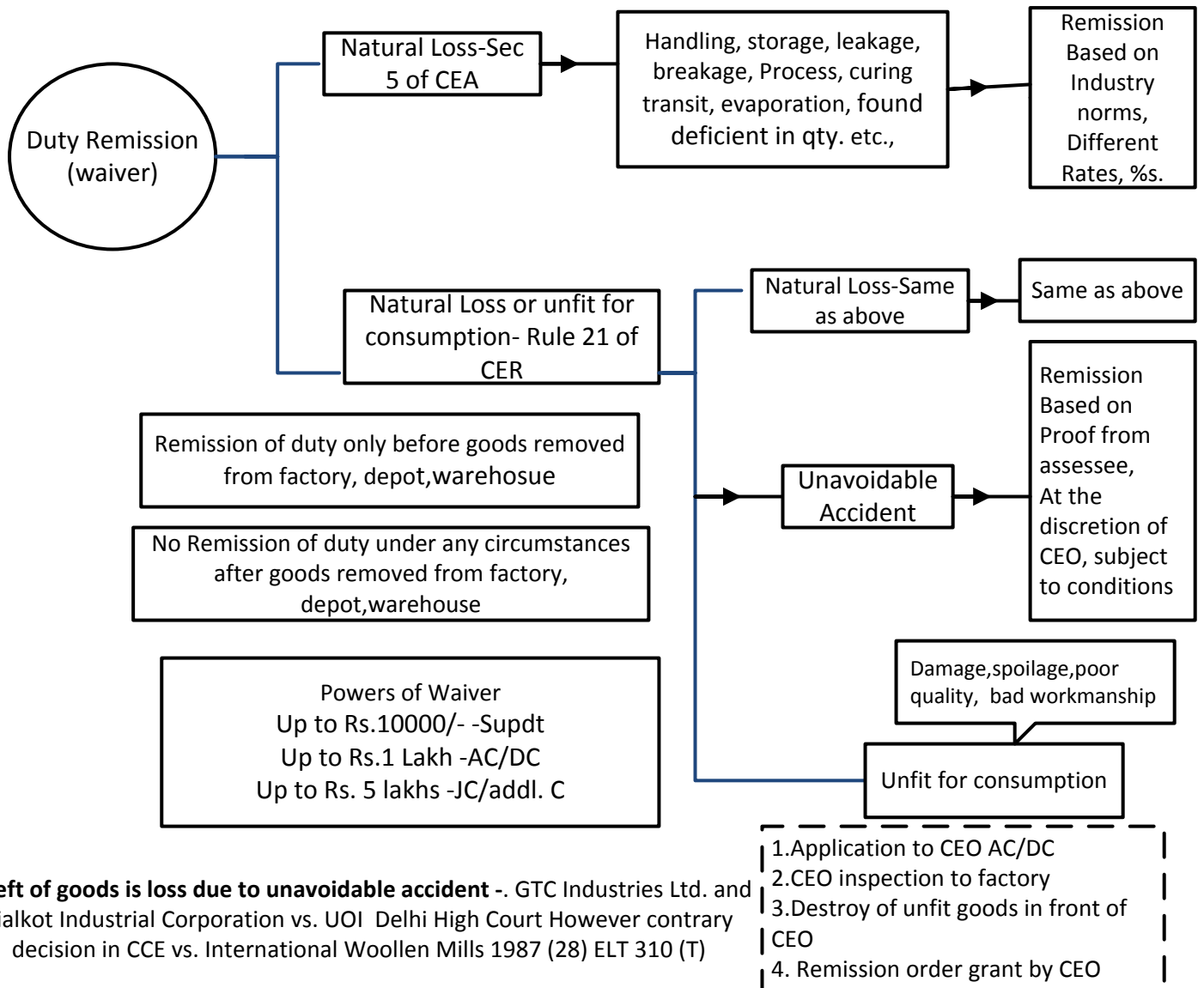
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Duty liability & duty Remission(waiver)



Ownership of goods is not relevant for payment of duty -Morioku UT India P Ltd (SC)./Hindustan General Industries (CEGAT) and Mahindra & Mahindra (CEGAT).

Duty payable even if is not charged or collected- in such case it is cum duty price (price inclusive of duty)- Maruti Udyog (SC)

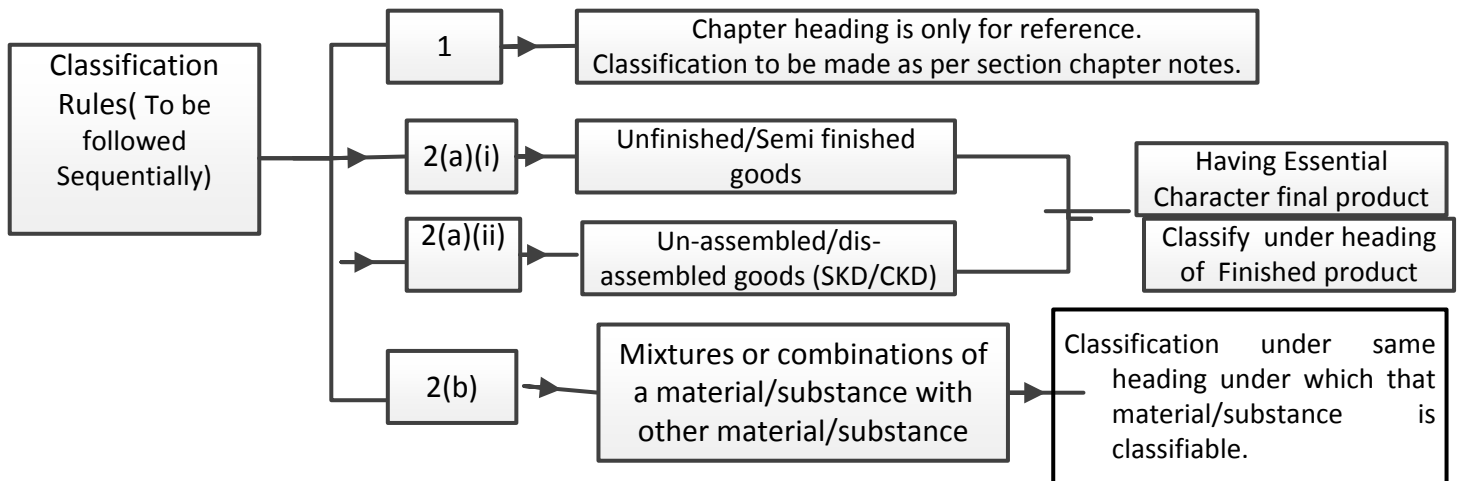


Theft of goods is loss due to unavoidable accident -. GTC Industries Ltd. and Sialkot Industrial Corporation vs. UOI Delhi High Court However contrary decision in CCE vs. International Woollen Mills 1987 (28) ELT 310 (T)

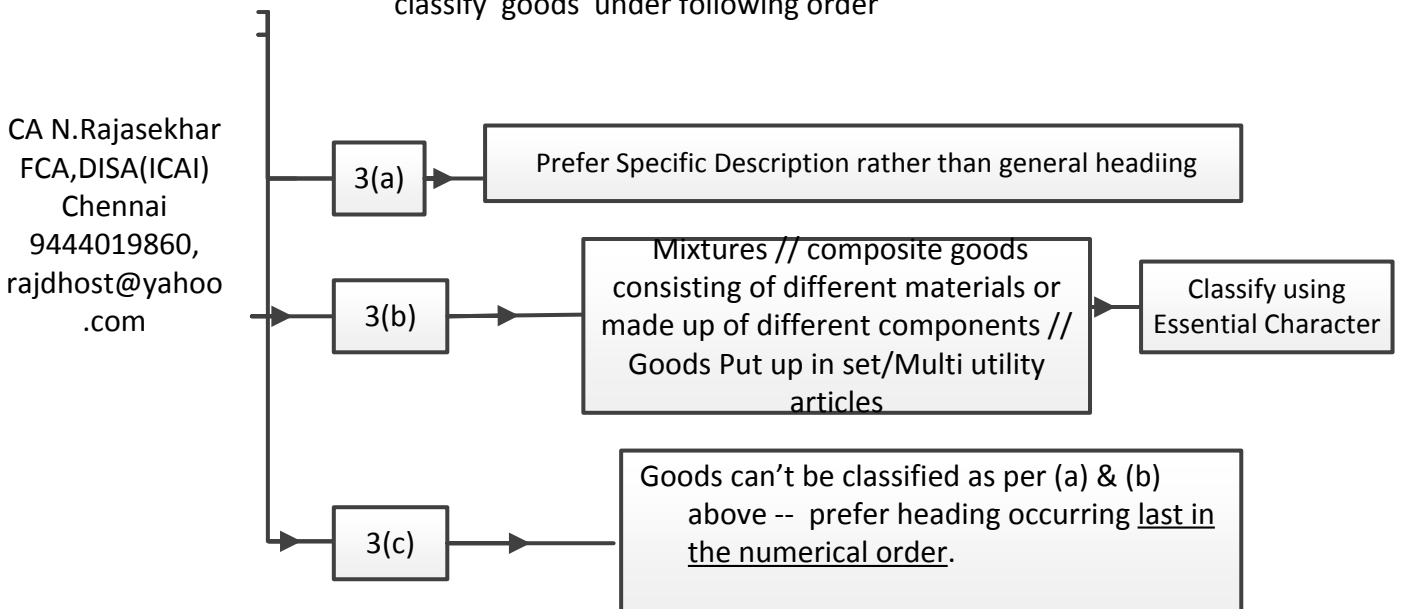
Excise Classification 1

Classification implies, Grouping and subgrouping of goods under various chapter for rate of duty purpose.

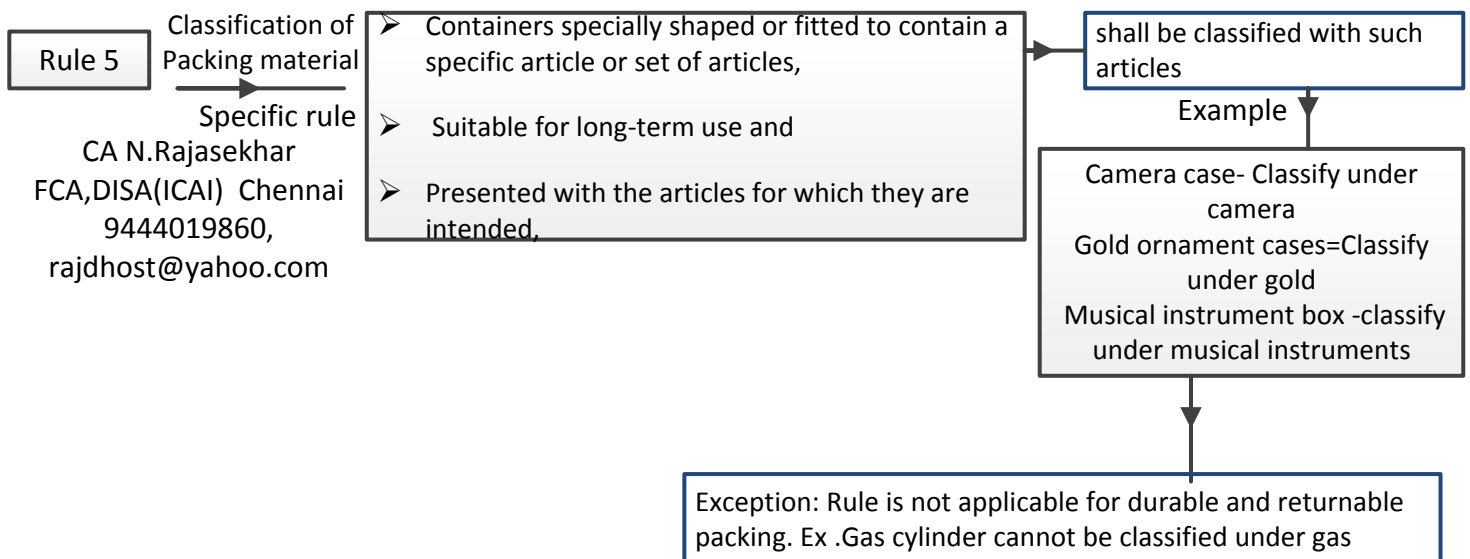
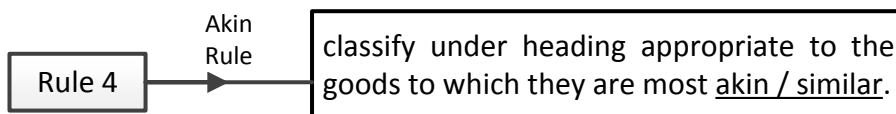
Coverage- CETA- Schedule I – Basic excise duty & Schedule II- special excise duty



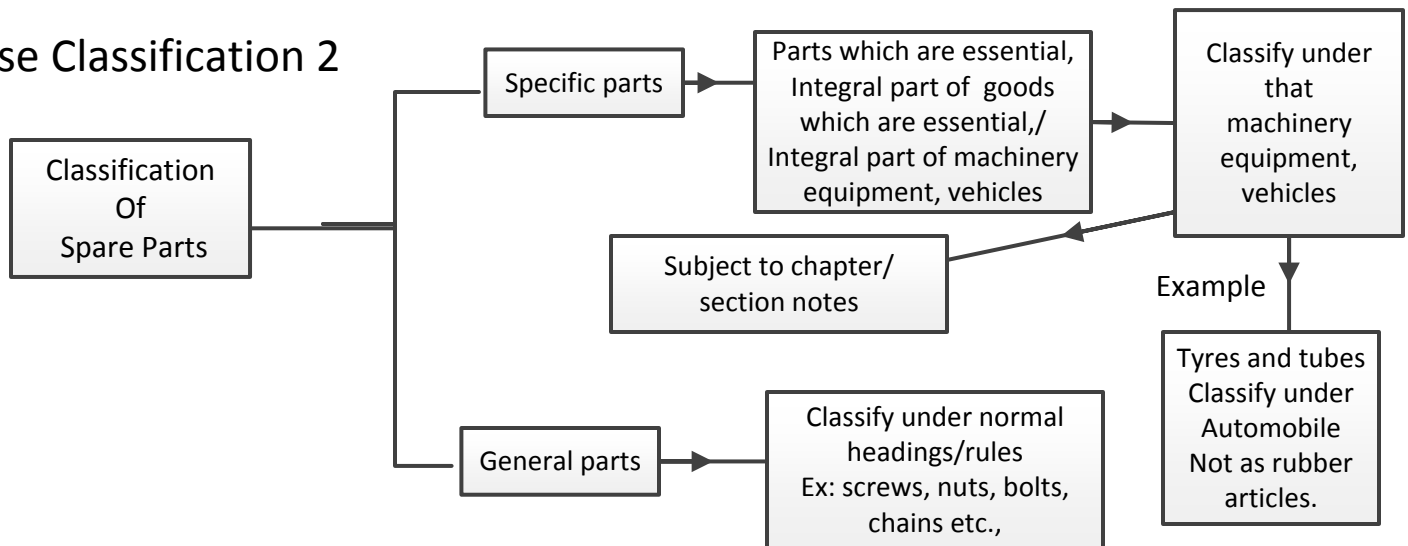
If goods are classifiable under two or more heading as per rule 2(b) or under any other reason classify goods under following order



Goods not classifiable as per Rule 1 to 3(c) above, Classify under rule 4



Excise Classification 2



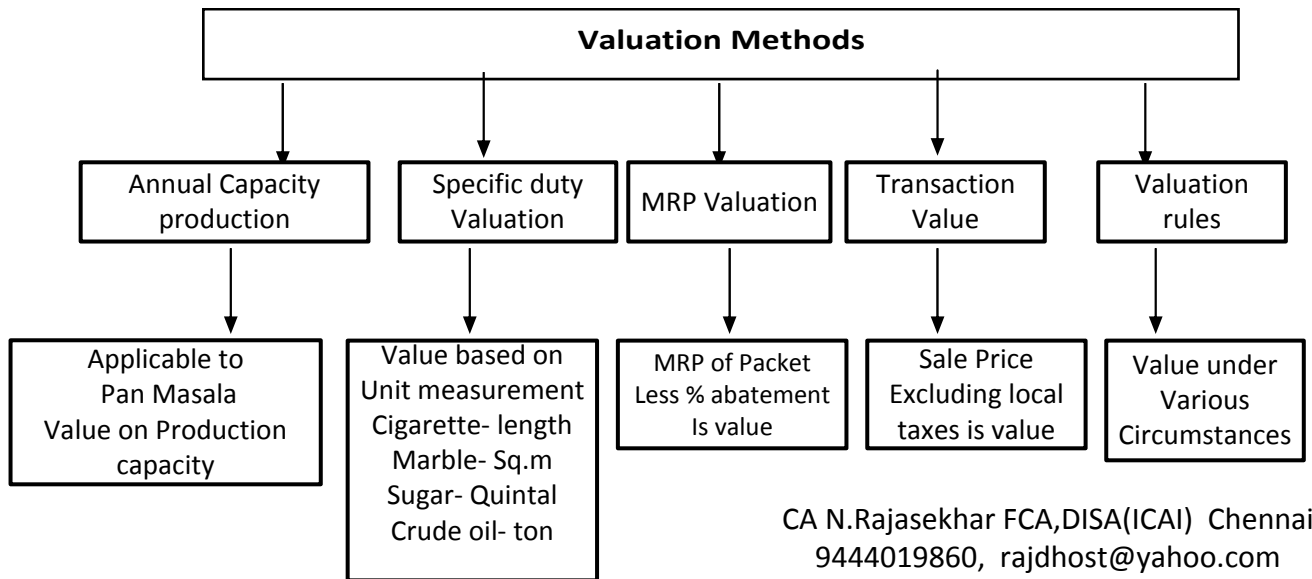
Non Statutory Classification rule

Trade parlance Theory/Common Man theory of classification

Applicable only when classification is not possible under rule 1 to 5
Words used in CETA but not defined separately, to be understood according to the common commercial understanding.
The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification - *Atul Glass Industries (P.) Ltd. vs. CCE (1986) (SC)*.
Classification has to be made based on customer use and identity of a product.

Example

- Lal Dant Manjan (Red Tooth Powder) cannot be classified as a Medicine. It is tooth powder only.
- Mineral Water cannot be classified as a beverage.
- Mirror cannot be classified as glass article. It is cosmetic item only.
- Plastic torch cannot be classified as plastic article.
- Windscreen cannot be classified as glass article. It is automobile part only.
- Prickly heat powder cannot be classified as toiletry preparations and should be classified as medicines



Meaning of MRP:

MRP Valuation

Maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer

MRP includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding

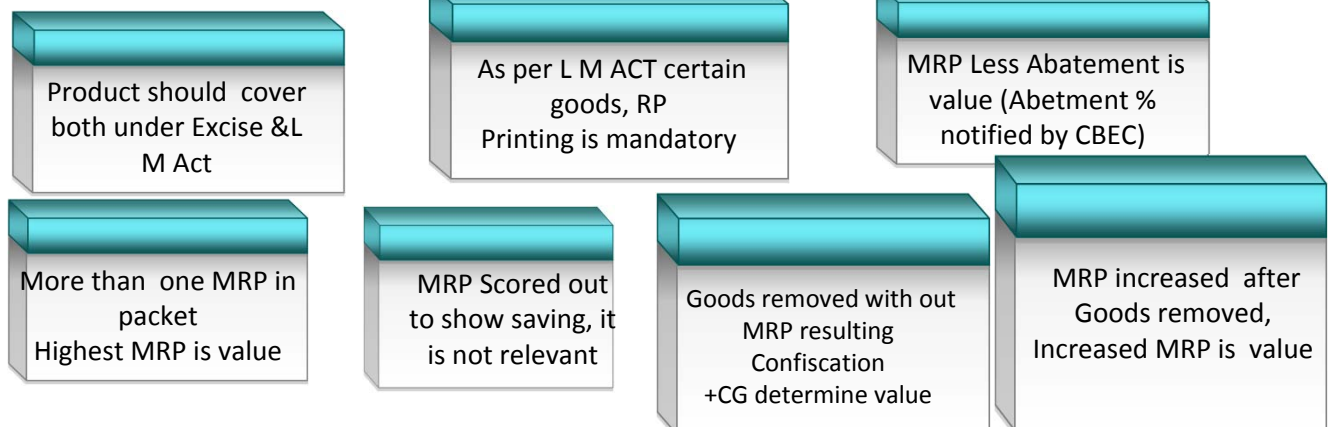
Example

A detergent bar 50 grams is manufactured in Pondicherry And supplied to Andhra Pradesh

Total Cost Rs. 6.00	+	Profit Rs. 1.00	+	Excise & CST Rs. 0.75	+	Dealer Commission Rs.0.50	+	Advt etc. Other Exp Rs.1.00	+	A. P Vat Rs. 0.75
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Total= 6.00+1.00+0.75+0.50+1.00+0.75= Rs. 10.00 == MRP Printed on Soap

MPP Provision salient features



MRP Valuation not applicable in case of

Goods supplied to Industry(except cement), sold in bulk which are not for resale, +1, +2 free items ,sale to defense, pack less than 10 g & 10 ml , packed food items

Carton boxes containing 500 Sachets of Shampoo cannot be considered as Multi-piece Package for retail sale. MRP Valuation not applicable - *Kraftech Products* 2008 (224) ELT 504 (SC).

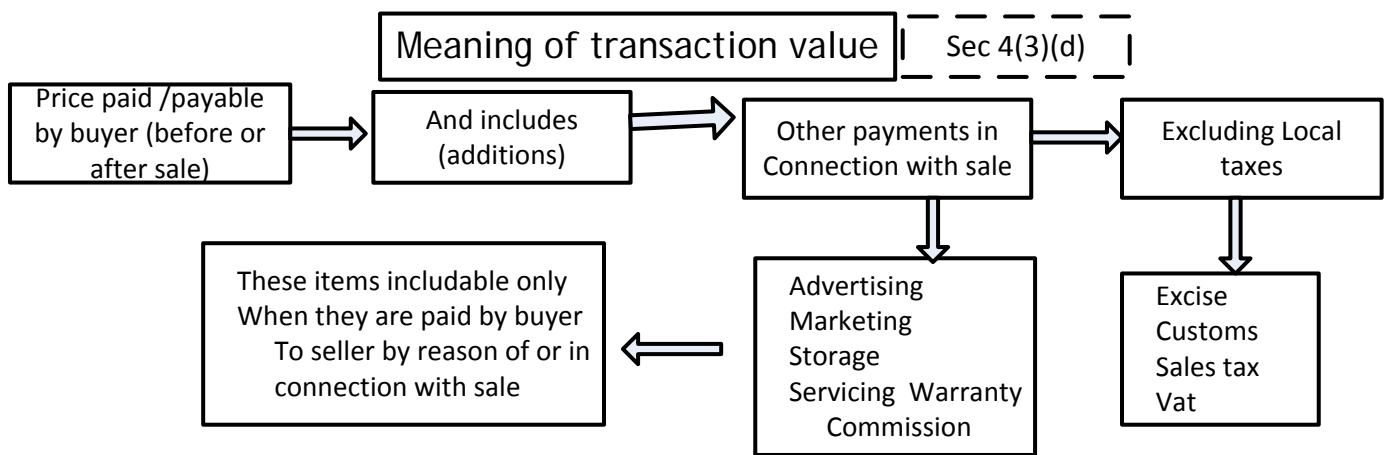
MRP Valuation applicable only When declaration of MRP is required under law *Makson Confectionary Ltd* (SC) 2010

MRP Valuation not applicable: When ice cream sold in bulk/

, selling Kit Kat chocolates to Pepsi, these were distributed as a free gift along with a Pepsi bottle . *Jayanti Food Processing*(SC),

When goods covered in MRP, CVD is payable on Imports on MRP Basic.

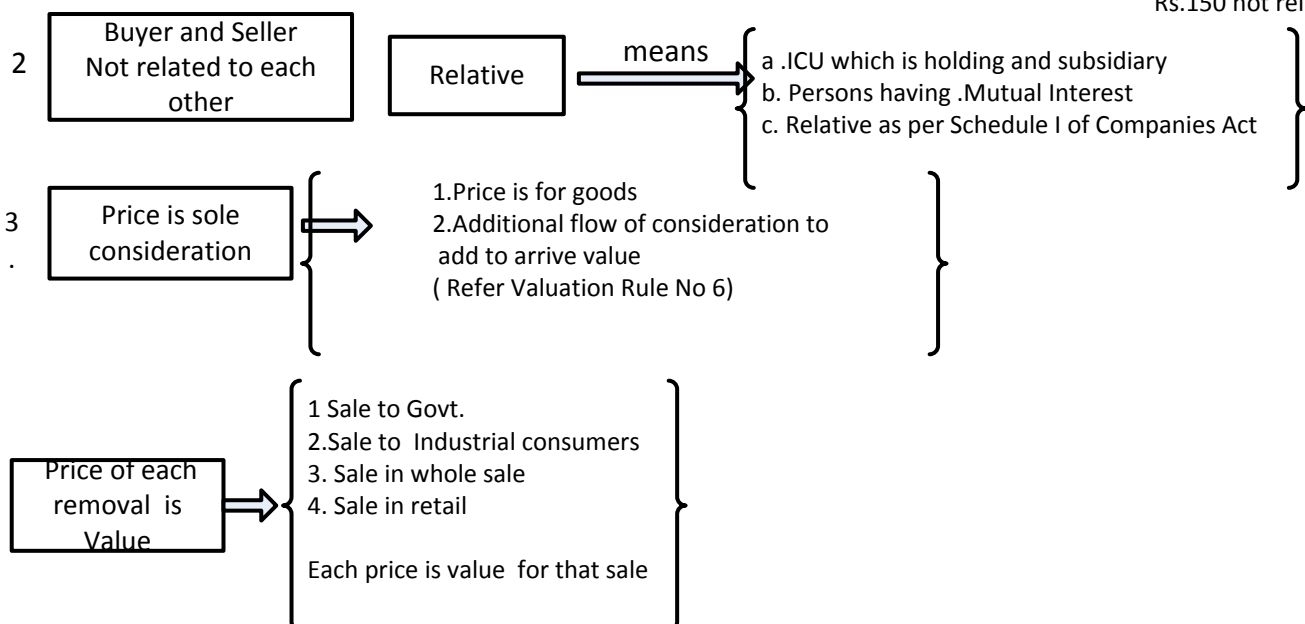
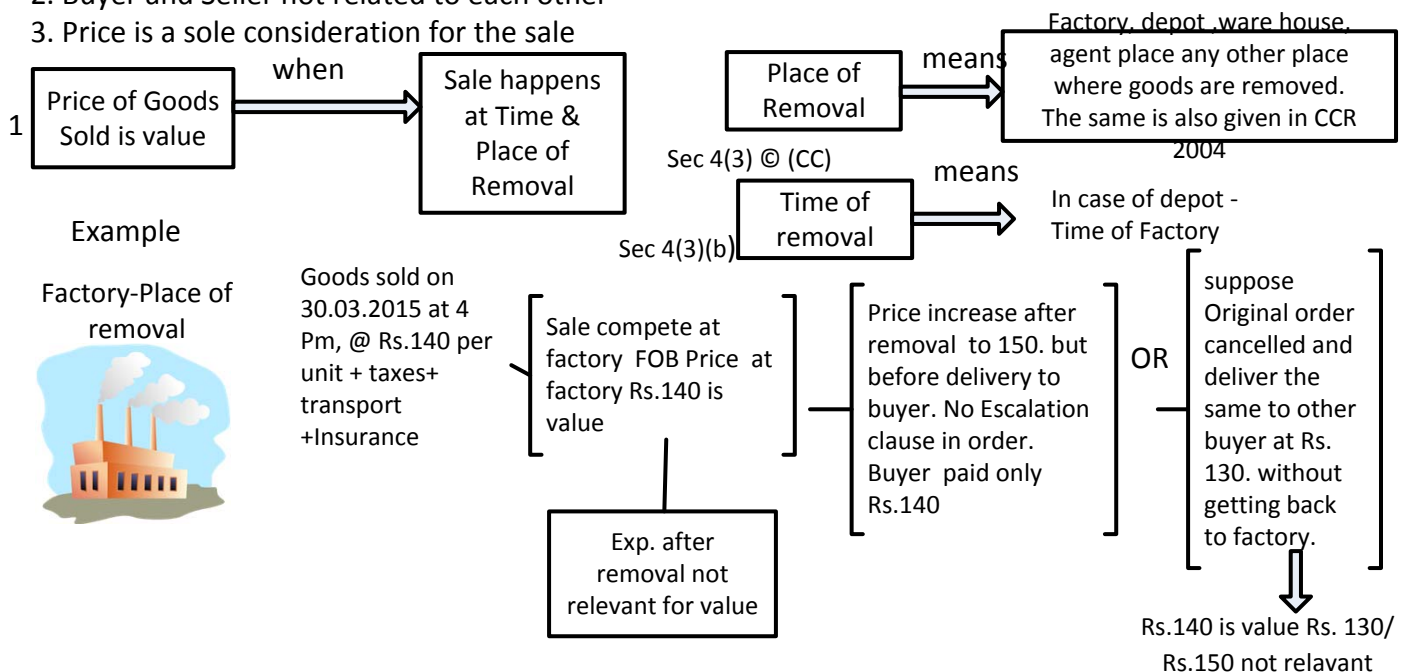
When goods covered in MRP,imported used for process, CVD payable on T V basis



Transaction Value valuation Sec 4(1) (a)

Conditions

1. Price of the goods sold at the time and place of removal(Sale and delivery at the place of removal)
2. Buyer and Seller not related to each other
3. Price is a sole consideration for the sale



Inclusions and Exclusions in Valuation

Sec 4(3)(d) of CEA

Sale Price for goods	XXX
+ Addl. Recoveries	XXX
Less	
Sales Tax	(XX)
- Other Taxes	(XX)
- Excise Duty	(XX)
Transaction Value	XXXX

Inclusions in Value

1. Exp. Incurred with in place of removal-loading coolie et
2. Packing(Primary),
2. Secondary, special Packing, if goods are removed from factory in that packing for whole sale trade. National leather (SC)
3. Salesman commission
4. Warranty, after sales service.(Optional extended warranty Not incudable- Maruthi udyog (SC)
5. Inspection charges- if mandatory before sale
5. Instllation & Erection in case of movable goods not removed from factory and installation bring in to existence of goods (Ex. Movable furniture assembled at site)
6. consultancy charges for Manufacturing
7. Design, drawing and Engineering of goods
8. Hire charges for D & R packing

Include all above only if they are not included in price

Exclusions in Value

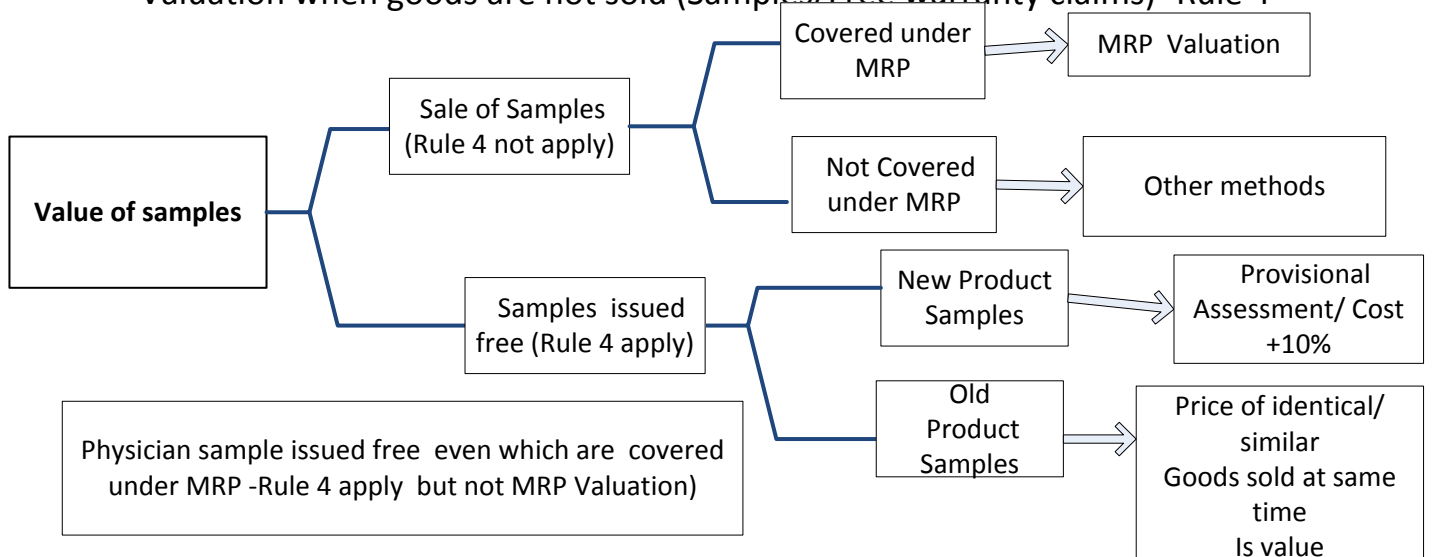
1. Installation& erection
2. All discounts if pass to buyer.
3. Prorate cost of durable packing if inbuilt in price
4. Notional Int. on deposits. if not affect price
5. Int., on receivables, bank charges
6. All Local taxes
7. Freight, insurance from place of removal to buyer place.
8. Advt, Sales promotion by buyer on his own
9. Subsidy received from Government (from buyer is includible)
10. Security deposit for D & R Packing
11. Other charges if no diversion of genuine price.

Exclude all above only if they are included in price

Excise Valuation Rules

Value under Rules applicable only When any 3 conditions of T V is not fulfilled
For example (1. Goods not sold at the time and place of removal 2. Price is not sole consideration 3. Buyer and seller is relative)

Valuation when goods are not sold (Samples/Free warranty claims)- Rule 4



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Value can be made at Whole sale price/, price of highest qty sold

If not available Price at the nearest time/
date subject to adjustment for time and
delivery is value

Rule 5- Value when goods sold at place other than the place of removal (Free on Road Contract)

Value will be calculated by deducting freight from place of removal to the place of delivery

Example 1

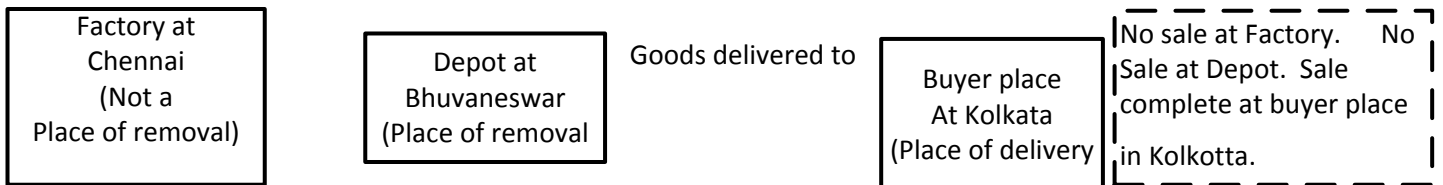


In this example, No sale at Factory. Sale will complete at buyer place, when buyer receives and acknowledges goods

If, FO R price from Chennai to Bangalore is Rs. 120 per unit and freight from Chennai to Bangalore per unit Rs. 10, Value per unit will be Rs. 110 (120-10)

Freight deduction on actual basis or average basis (Explanation 1)

Example 2



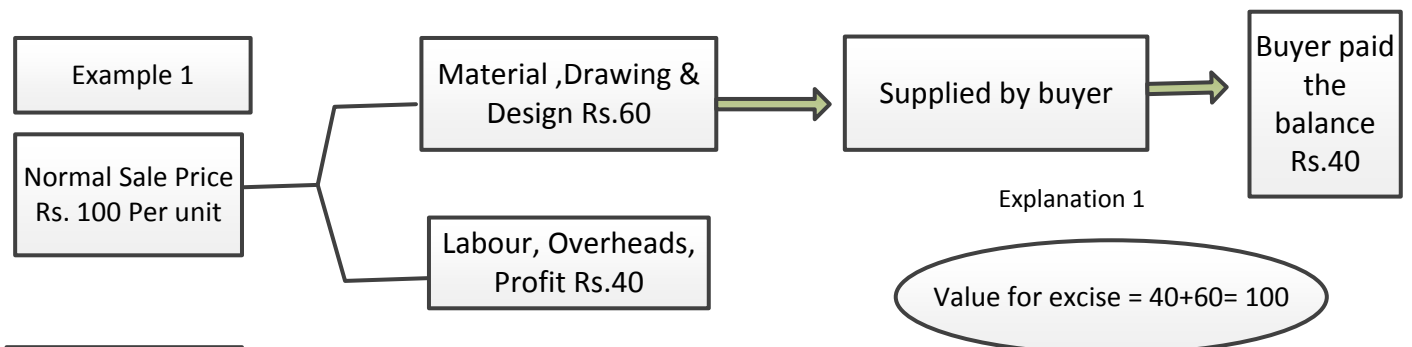
No sale at Factory. No Sale at Depot. Sale complete at buyer place in Kolkotta.

If, FO R price from Chennai to Kolkata is Rs. 200 per unit and freight from Chennai to Bhuvanewar is per unit Rs. 20, and freight from Bhuvanewar to Kolkotta is Rs. 10 Per unit Value per unit will be Rs. 190 (200-10)

No deduction for freight from Chennai to bhuvanewar as Chennai is not a place of place of removal (Explanation 2)

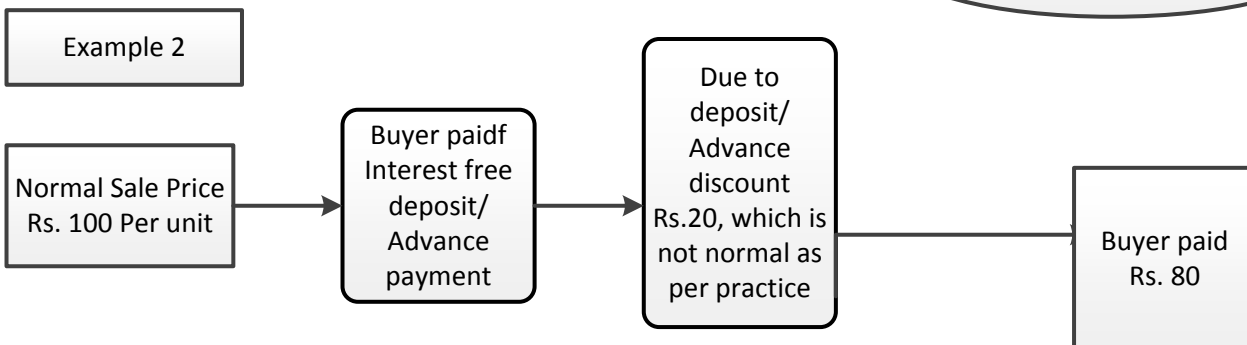
Rule- 6 Value, When the Price is not Sole consideration

Value = Amount paid by buyer + Additional Consideration flown to seller



Explanation 1

Value for excise = 40+60= 100



Explanation 2

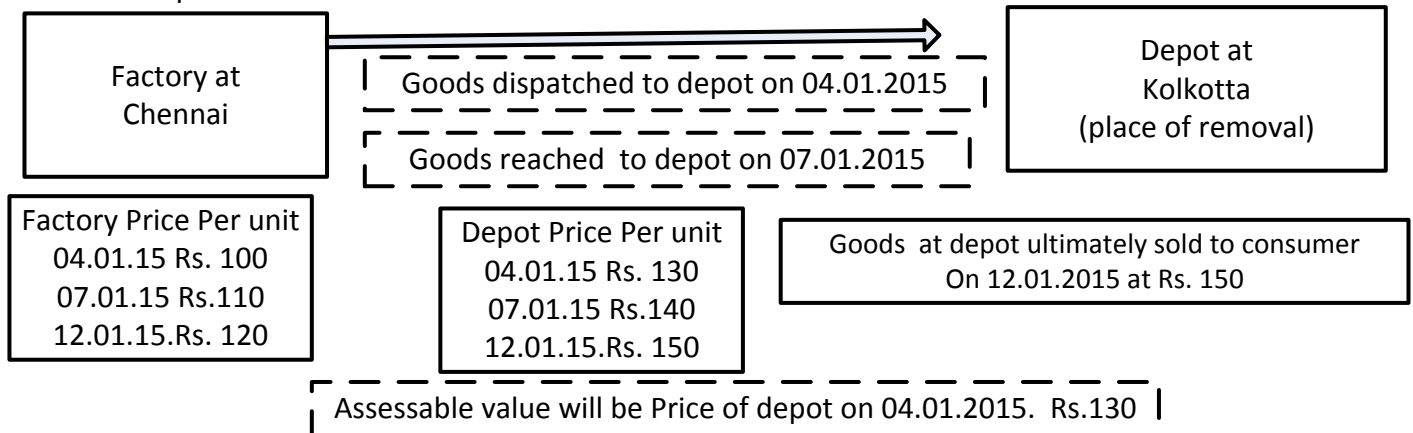
Value for excise = 80+20= 100

When the goods are sold at less than the manufacturing cost and if no additional consideration is passed from buyer to seller, it is considered as transaction value *Notification No.20/2014 CE (NT) dated 11.07.2014*, This amendement makes fiat india case is ineffective.

Valuation Rule No 7- Valuation in case of depot sale(goods transported from factory to depot/Other place & sold to buyer from that place of removal goods)

Value: Normal transaction value (price of Highest qty., sold) of depot on the date of removal from factory

Example



Note:

- 1.No deduction for freight from factory to depot
- 2.Freight and insurance from depot onwards is not includible in value.
3. Price at which such goods are subsequently sold to buyer from the depot is not relevant for purpose of excise valuation

Valuation Rule No 8- Valuation in case of Captive Consumption

Captive consumption means excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles

Value = Cost of production + 10% or 110% of cost of production:
Cost of production is to be calculated as per CAS 4

Cost of production as per CAS 4

- 1.Material consumed (net of tax)
- 2.Direct wages/ salaries
- 3Direct Expenses
- 4.Works OH
- 5.Quality control Cost
- 6.R & D cost
- 7.Admn.overheads relating to Production
- Less: Recoveries from Waste/Scrap
8. Packing cost

When part of the goods are consumed for captive consumption and part are sold, Part of the goods are to valued as per rule 8 and remaining part should be valued on transaction value

Ignore Selling and distribution costs

Valuation Rule No 9 & 10- Value when the goods are sold to Relative

Applicable only

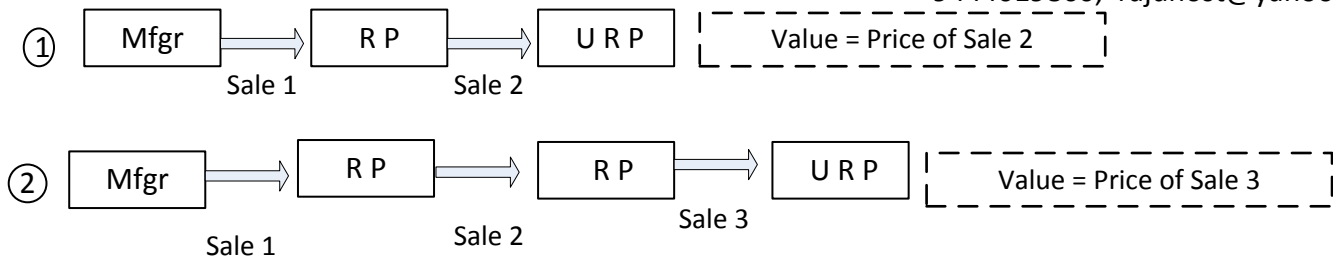
1. When all goods or part of the goods are sold to Relative person or through relative person

Not Applicable

1. When the price at which goods sold relative person at normal price which is similar to unrelated person

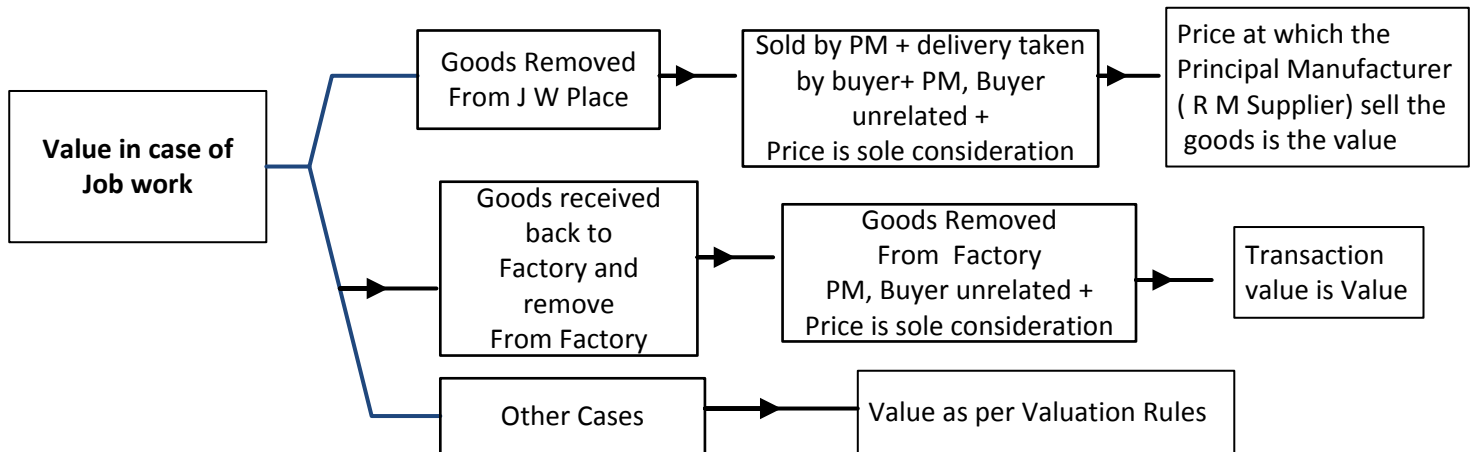
Value: Price at which the related person sells to unrelated person.

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Where R P does not sell(Captively consumes) , Value is as per rule 8 -110% CPO of Mfgr.,

Valuation Rule No 10A. Valuation in case of job work



If goods manufactured by Job worker covered under MRP, Valuation will be on MRP basis not under Job work basis

When part of the goods are sold to relative/through ICU and part are sold to unrelative person, Part of the goods are to valued as per rule 9/10 and remaining part should be valued on transaction value

Valuation Rule No 11. best of judgment method

Applicable

1. When all other rules not applicable

Value: Combination of TV and all other rules with the available information.

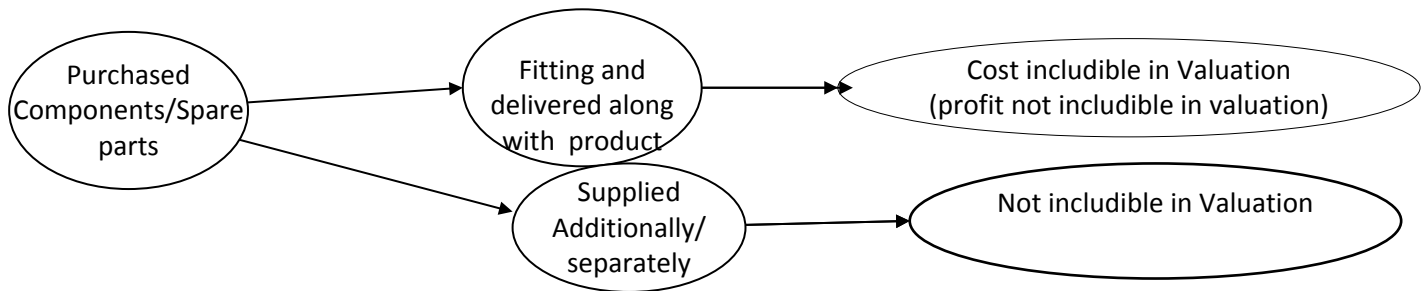
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Valuation Miscellaneous Topics

Valuation in case of computer
Acer India (SC)

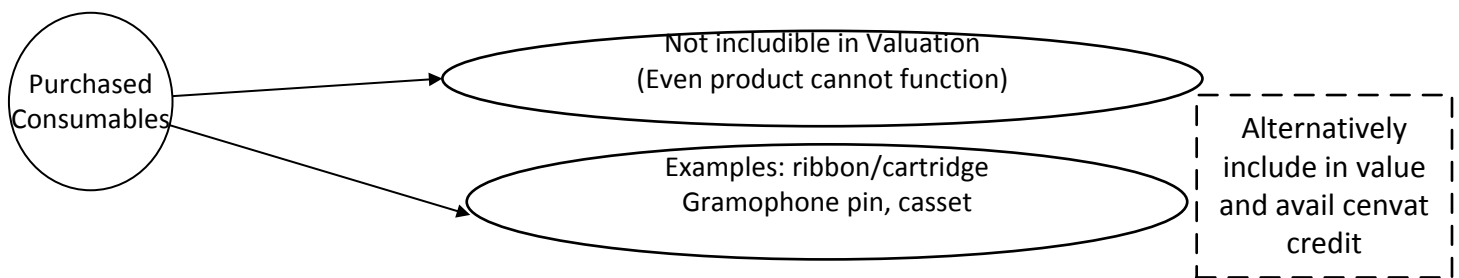
- Value of preloaded operational software not includible in valuation in case of computer
- Not includible even computer cannot function without software.
- Software is not a part of Computer
- Computer is complete without software. CCE Vs Acer India Ltd (2004) (SC) 172ELT289

Valuation in case of Purchased parts and components



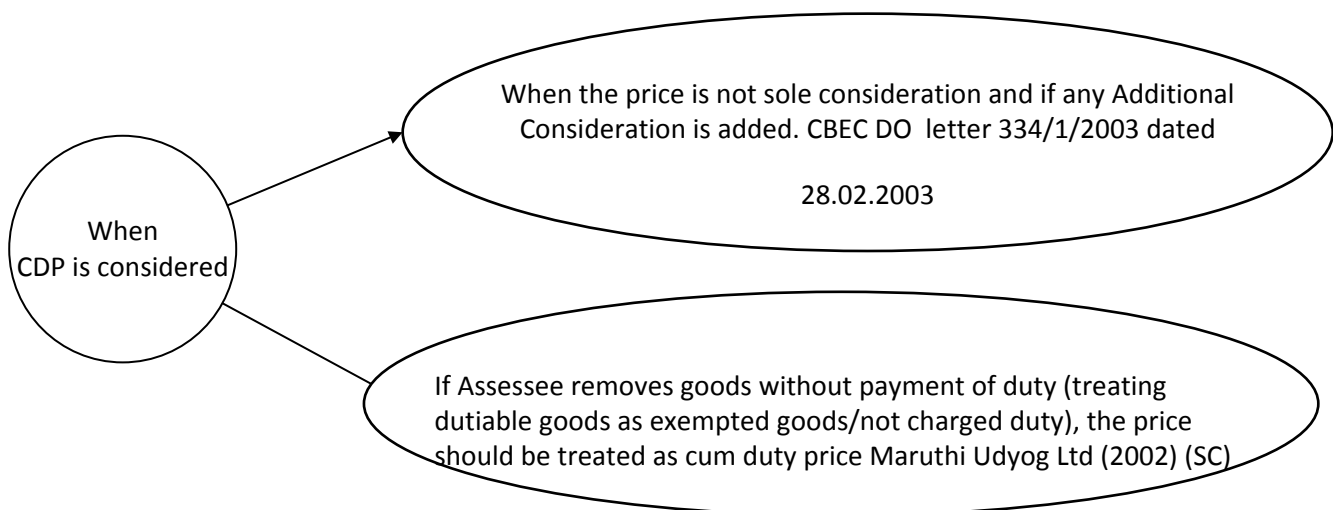
Valuation in case of
Consumables

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Accessories Which are optional not includible in Valuation

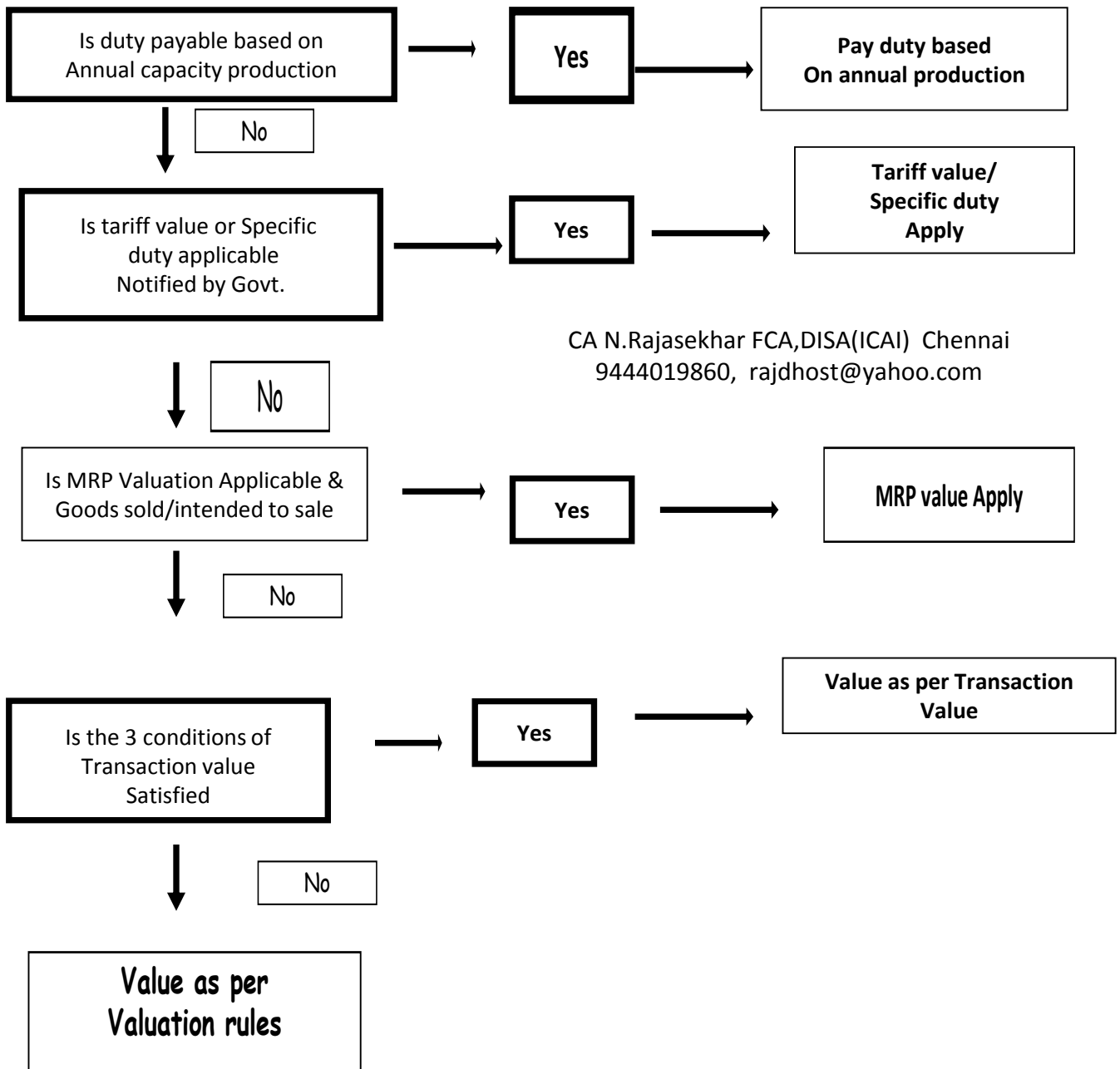
Cum duty Price (Price inclusive of duty)



Av in case of CDP = $CDP \times 100 / 100 + \text{rate of duty incl. ec}$

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Valuation Application/Order to follow

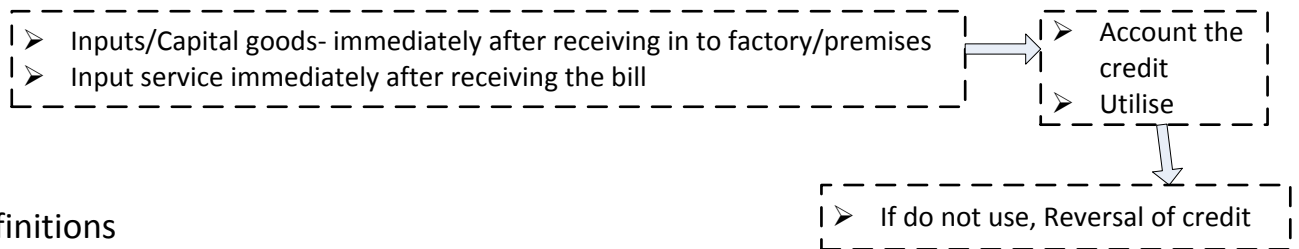


Cenvat Credit Basics

CENVAT Credit System

- Coverage CENVAT Credit Rules, 2004
- Rules provide integration of central excise and service tax.
- Credit can be taken by both manufacturer and service provider.
- Manufacturer can take credit for payment of excise duty and service tax.
- Service provider can also take credit for payment of service tax and excise duty.
- Credit is available for duty paid on inputs, Capital goods and service tax paid on input services used for manufacturing final product/ providing output services.
- The input should be used with in factory directly or in relation to manufacture.
- No input credit is available if final product/output service is exempt from duty / service tax.
- CENVAT Credit Rules do not require input-output correlation to be established.
- Credit is available for specified duties.
- Credit of excise duty and/or service tax can be availed only on the basis of documents.
- Records need to be maintained and returns need to be furnished.

Timing of credit



Imp Definitions

Exempted goods means:

- Excisable goods which are fully exempted from duty;/NIL duty goods
- 1% duty goods as per notification No 1/2011 if benefit availed & .
- Goods at serial numbers 67 and 128 of Notification No. 12/2012 & 21/2012 (Bitumen, fertilisers not used as a fertilizer)-.

Exempted service means:

- Negative list of Services where no service tax payable;
- Taxable services wholly exempted from tax;
- Taxable services whose part of value is exempted (Abatement applicable services)
- Exempted service shall not include a service which is exported in terms of rule 6A of the Service Tax

Rules, 1994.

Output service means:

Any service provided by a provider of service located in the taxable territory Output service shall not include a service,-

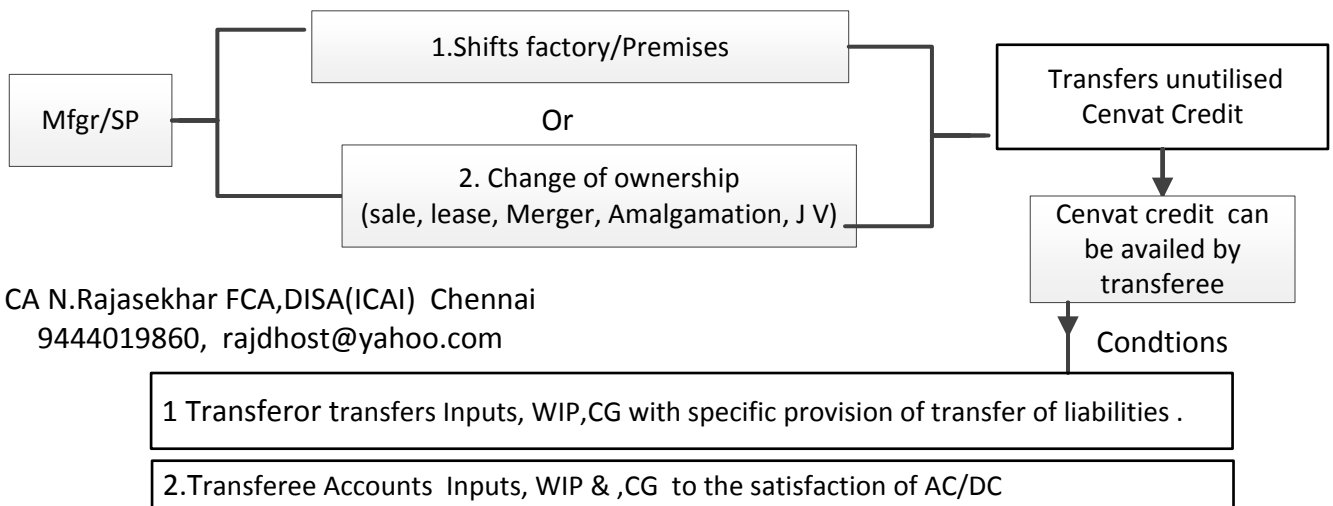
(i) Negative list of services specified in Sec 66D of Finance Act 1994

(ii) Where the whole of service tax is liable to be paid by the recipient of service.

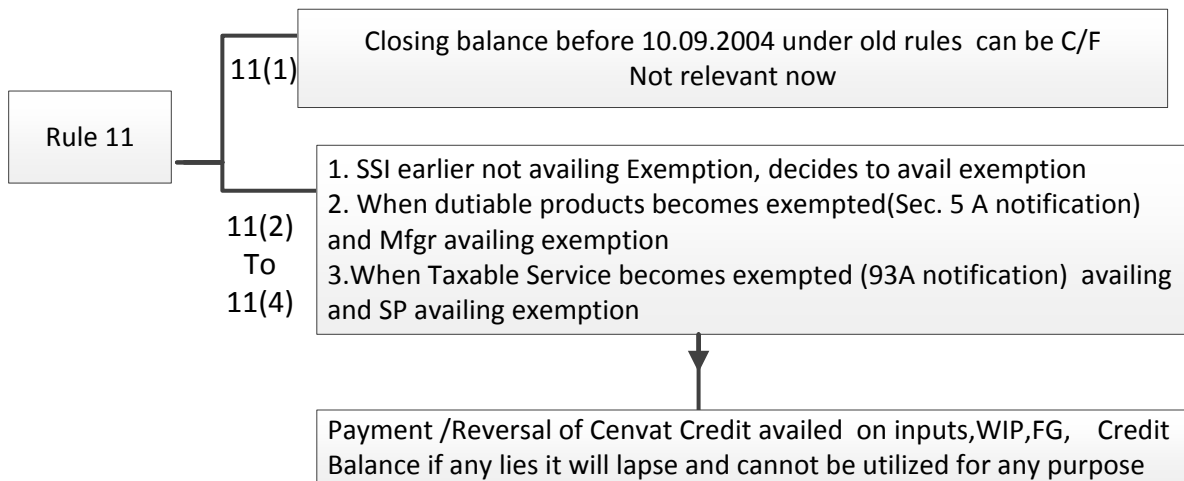
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Place of removal-Definition same as given in transaction value Sec 4

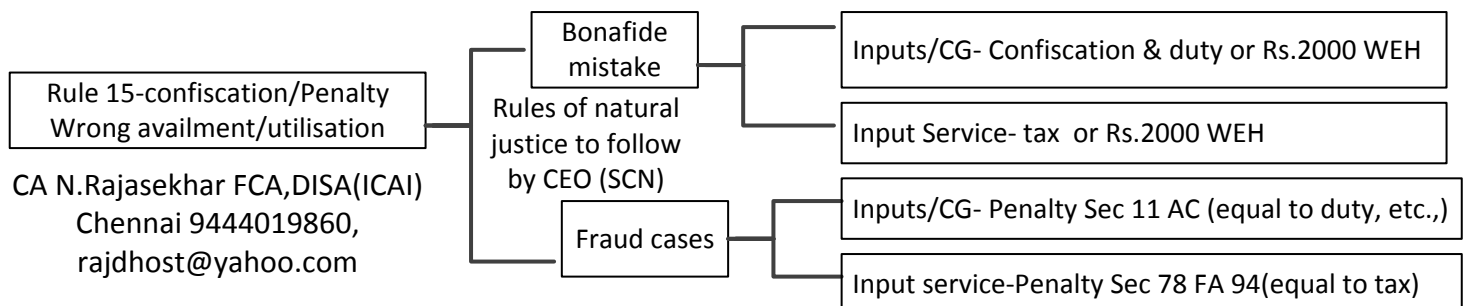
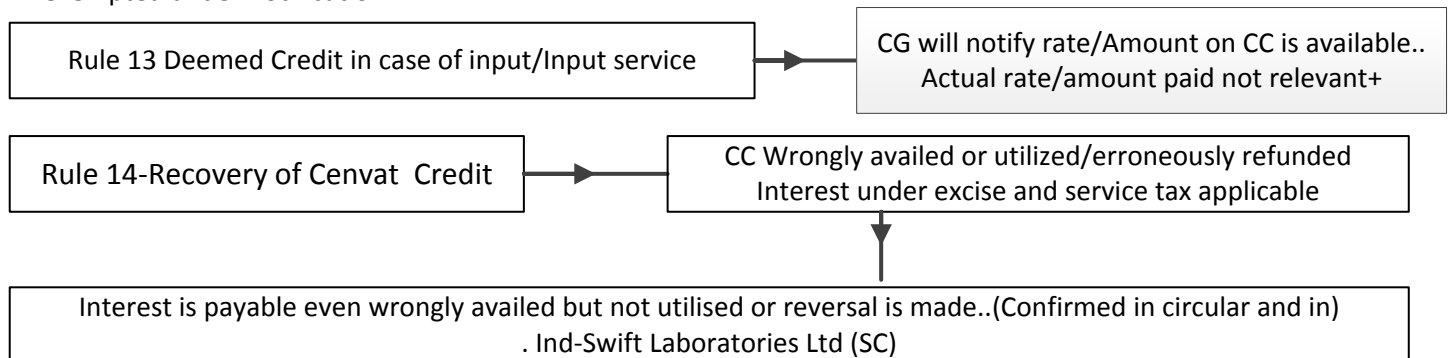
Rule 10- Transfer of Cenvat Credit



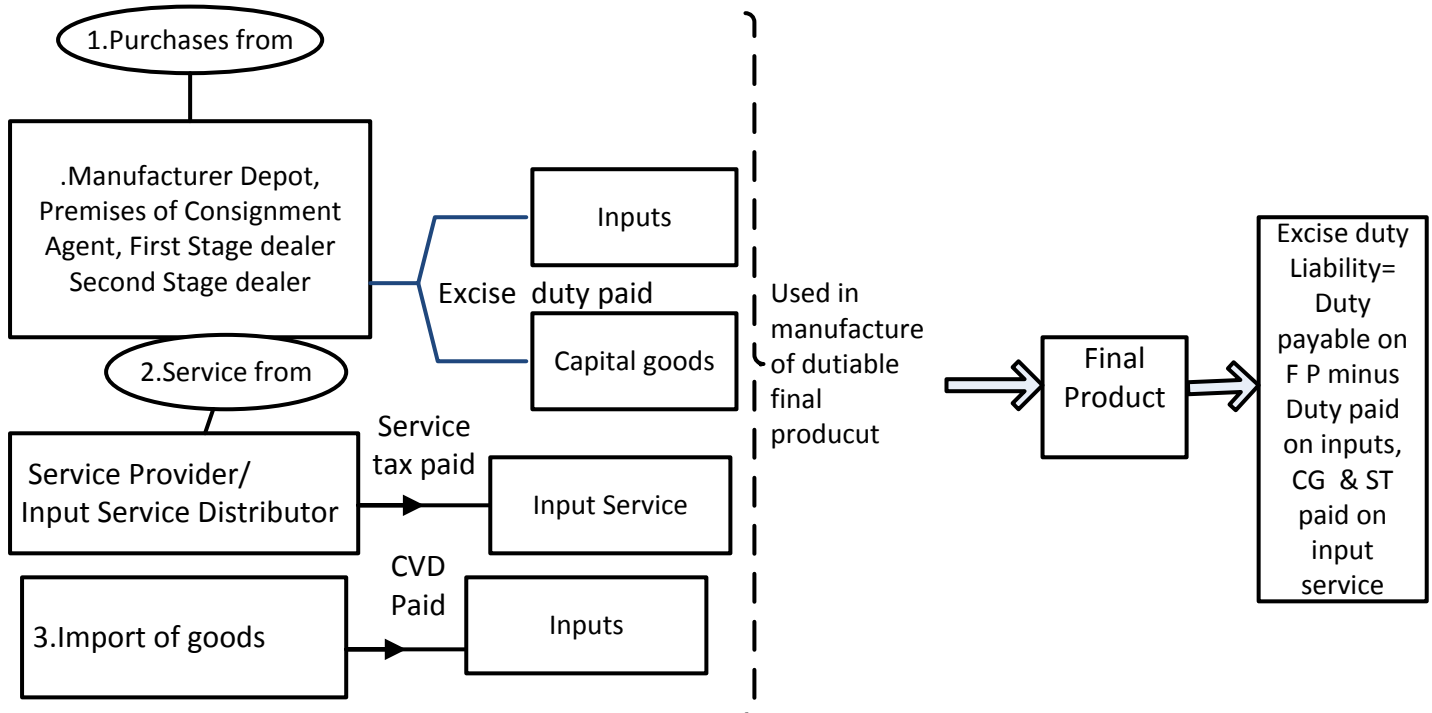
Rule 11- Transitional provisions of Cenvat Credit



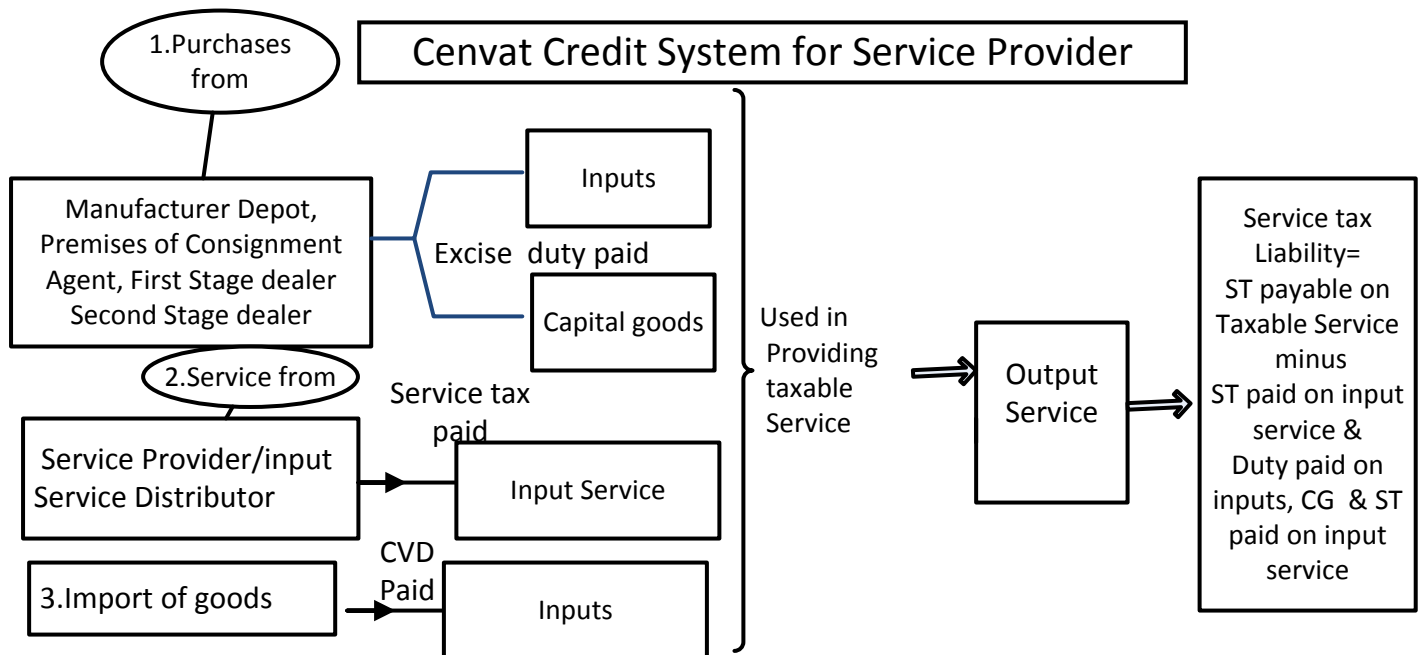
Rule 12- Full CC, if goods(inputs, CG) purchased from NE, J & K, Kutch in Gujarat, even duty partly exempted under notification



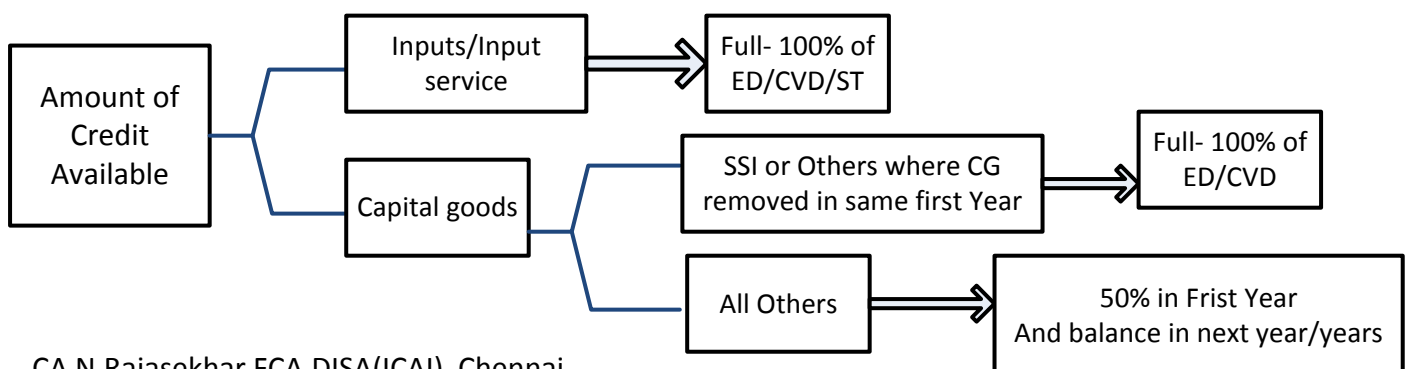
Cenvat Credit System for Manufacturer



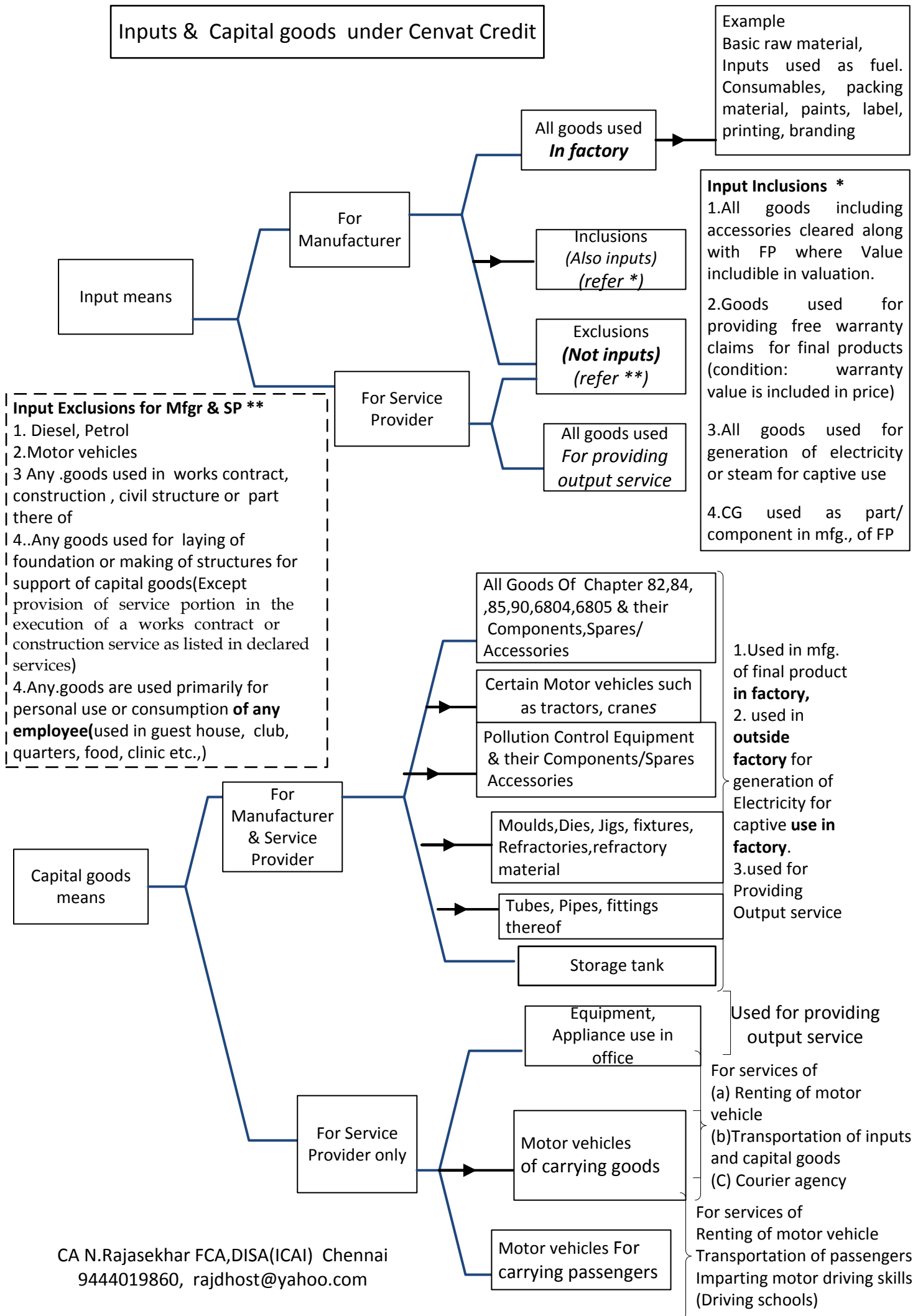
Cenvat Credit System for Service Provider

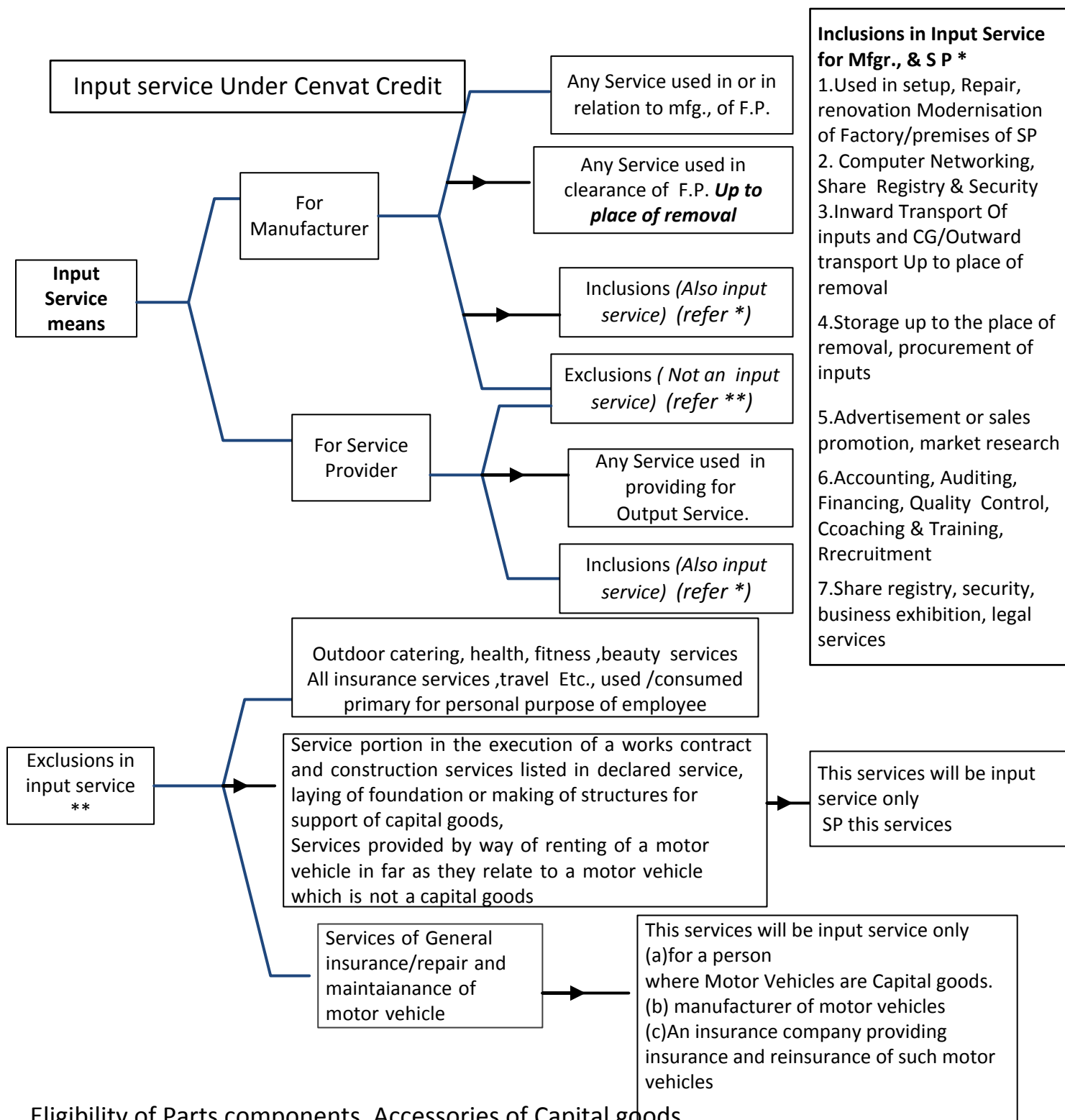


Quantum of Credit (Amount of Credit) Available

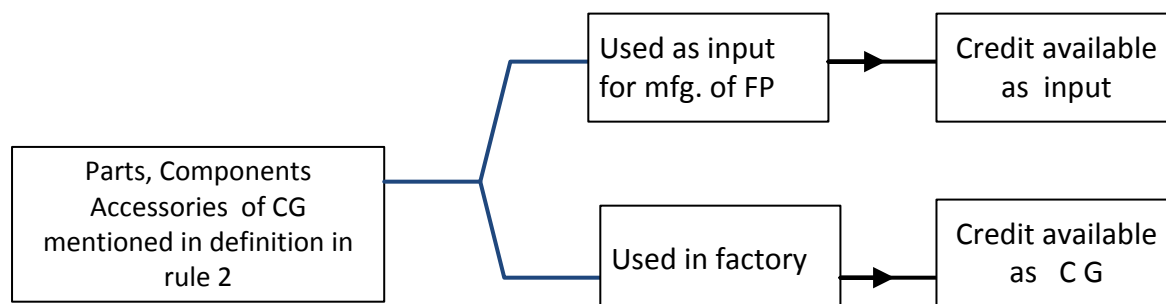


Inputs & Capital goods under Cenvat Credit



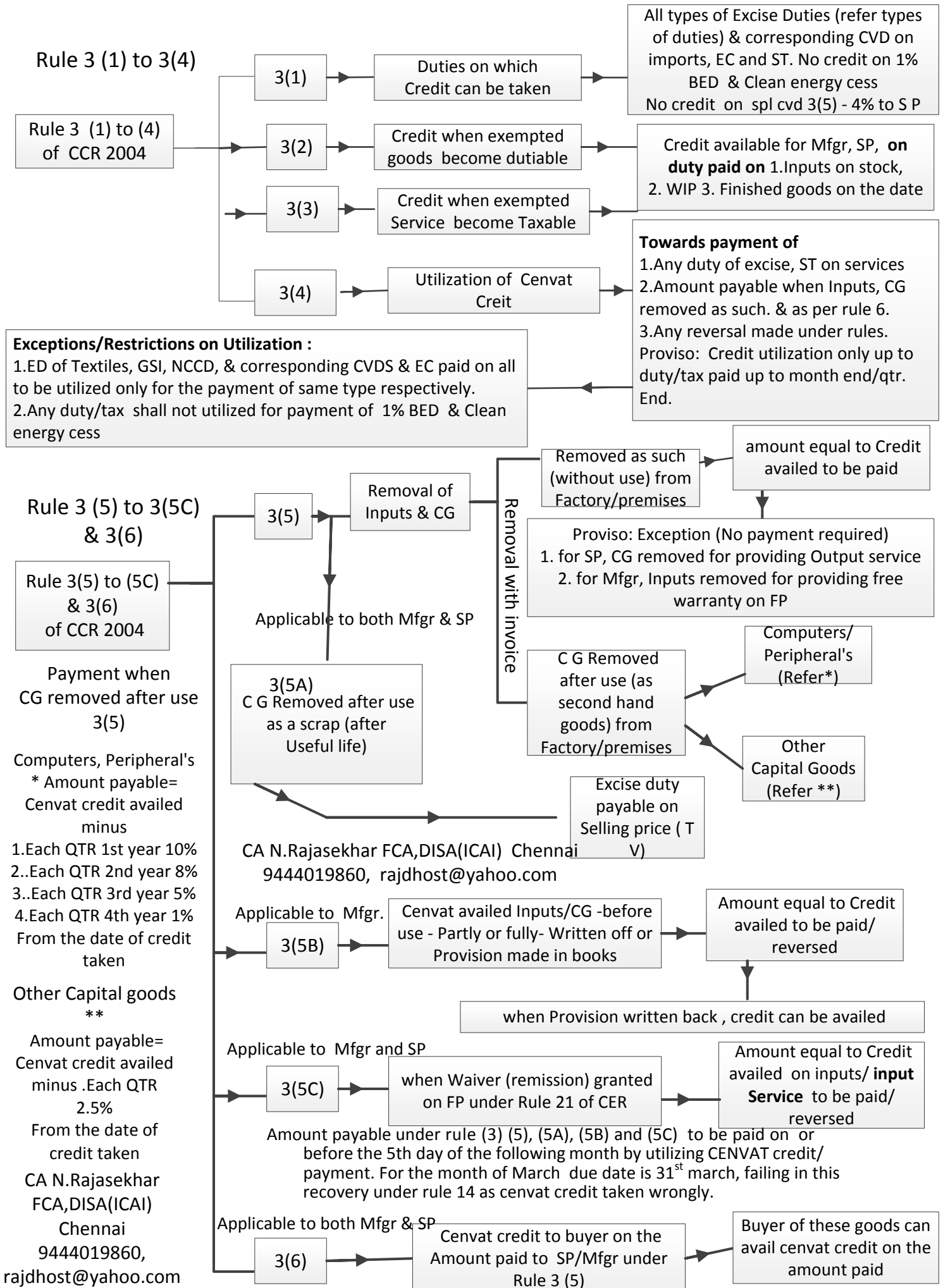


Eligibility of Parts components, Accessories of Capital goods

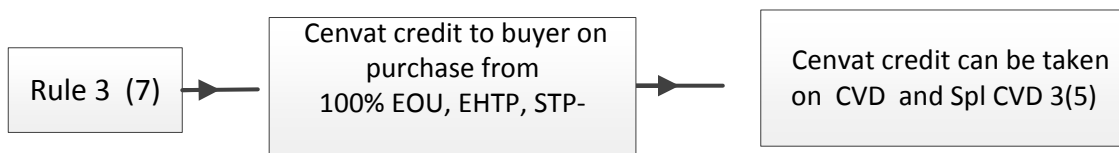


Parts, Components Accessories of CG not mentioned in definition in rule 2 if they are *Used as input for mfg. of FP* Credit available as input if it not in exclusion list.,

Cenvat Credit Rule No 3



Cenvat credit Rule 3(7) & 4



Rule 4 Conditions for allowing Cenvat Credit

Credit on inputs, available immediately after receiving in to factory of Mfgr/Premises of SP. In case of Jewellery after Inputs received in to principal Mfgr factory

4(1) → **Credit should be availed with in 6 months from the date of invoice.**
No credit after 6 months WEF 01.09.2014

Rule 4 (1) to 4 (7) of CCR 2004 → **4(2)** → Credit on Capital goods, available immediately after receiving in to factory of Mfgr/Premises of SP. Amount of Credit 50% in first year and balance in next year. Incase of SSI, CG removed in same year-100% in first year

Applicable to both
Mfgr & SP

4(3) & (4) → Credit on Capital goods available even, Capital goods acquired on hire purchase lease or finance .
No cenvat credit when depreciation under IT, claimed on duty amount.

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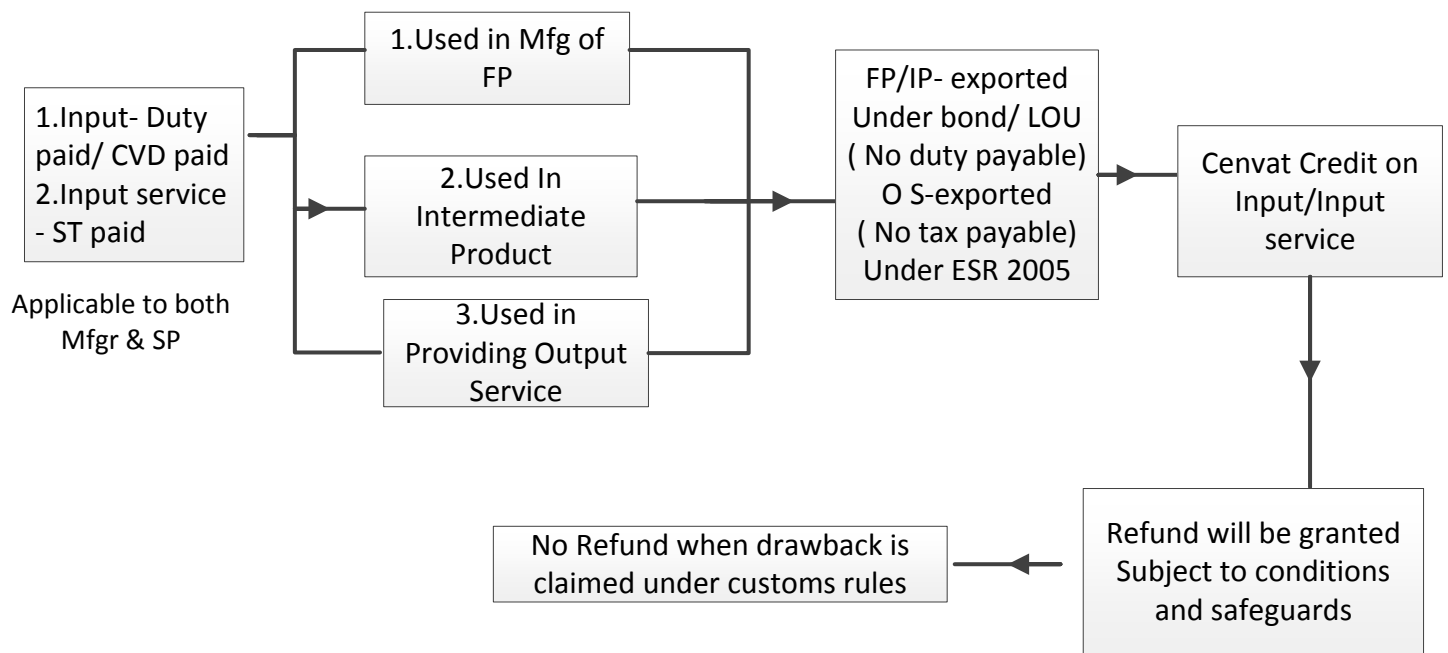
4(5) & (6) → Cenvat Credit in case Of inputs send to Jobwork for any purpose →
1. No need to reverse cenvat credit at the time of sending
2. Proof from records that they return with in 180 days
3.If does not return with in 180 days reversal of credit availed is required
4.Jigs, fixtures, moulds, and, dies . No need to return in 180 days. No reversal

When goods removed directly from Job worker place-
Permission of AC/DC-one year Valid, Subject to conditions

4(7) → Cenvat Credit in case Of input Service →

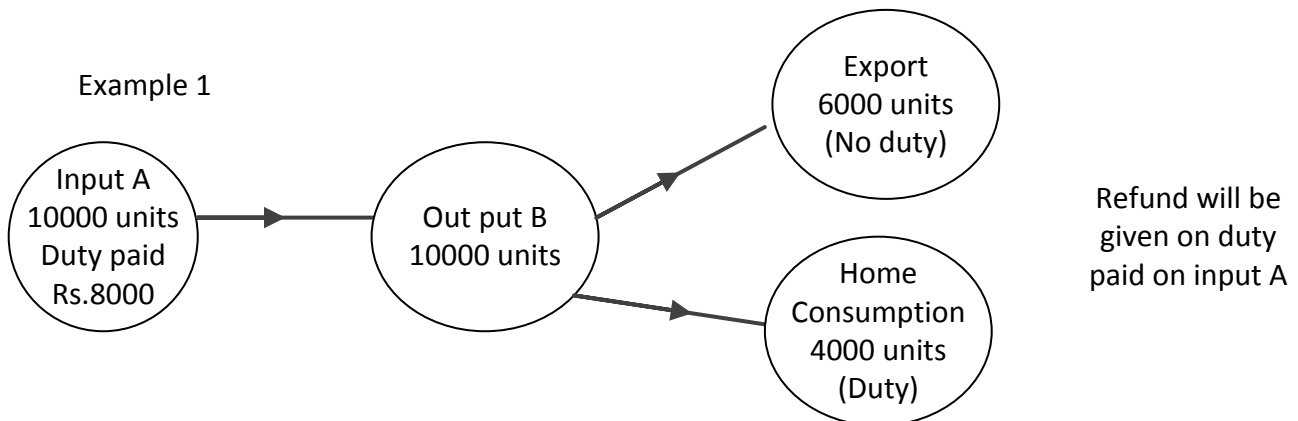
- in case of **Full Charge** → After service tax in the bill paid
- in case of **Partial Reverse Charge** → After input service and Service tax in bill is paid
- Other Cases **ie 100% ST is paid by SP** → with in 6 months from date of bill or invoice is received
 - If ST on the bill is not paid with in 3 months from the date of invoice, reversal of credit is required. Credit can be availed after bill is paid.
 - in case of Input service, where ST paid, is refunded/credit note is received by Mfgr, SP reversal of credit is required.

Rule 5 of Cenvat Credit Rules 2004-Refund of Cenvat Credit



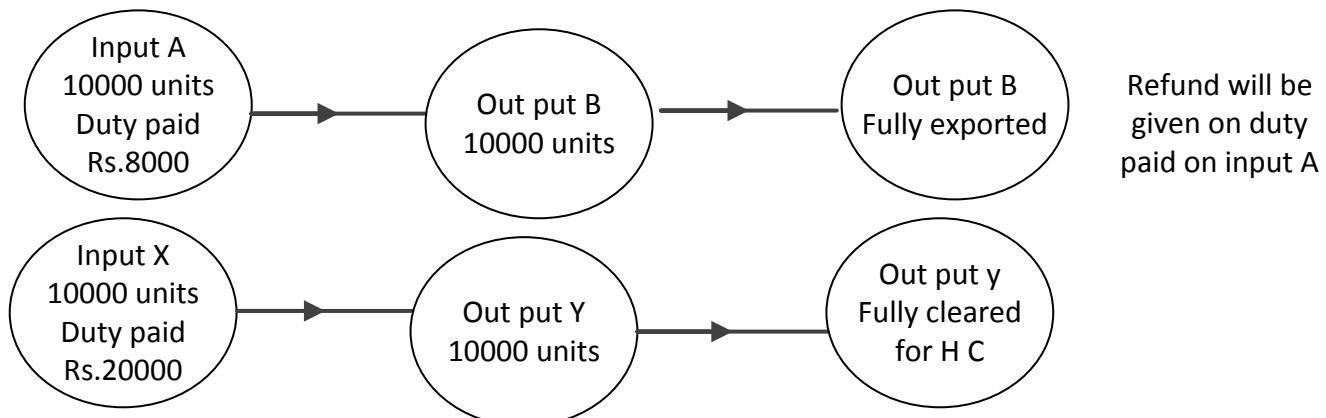
$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

Example 1



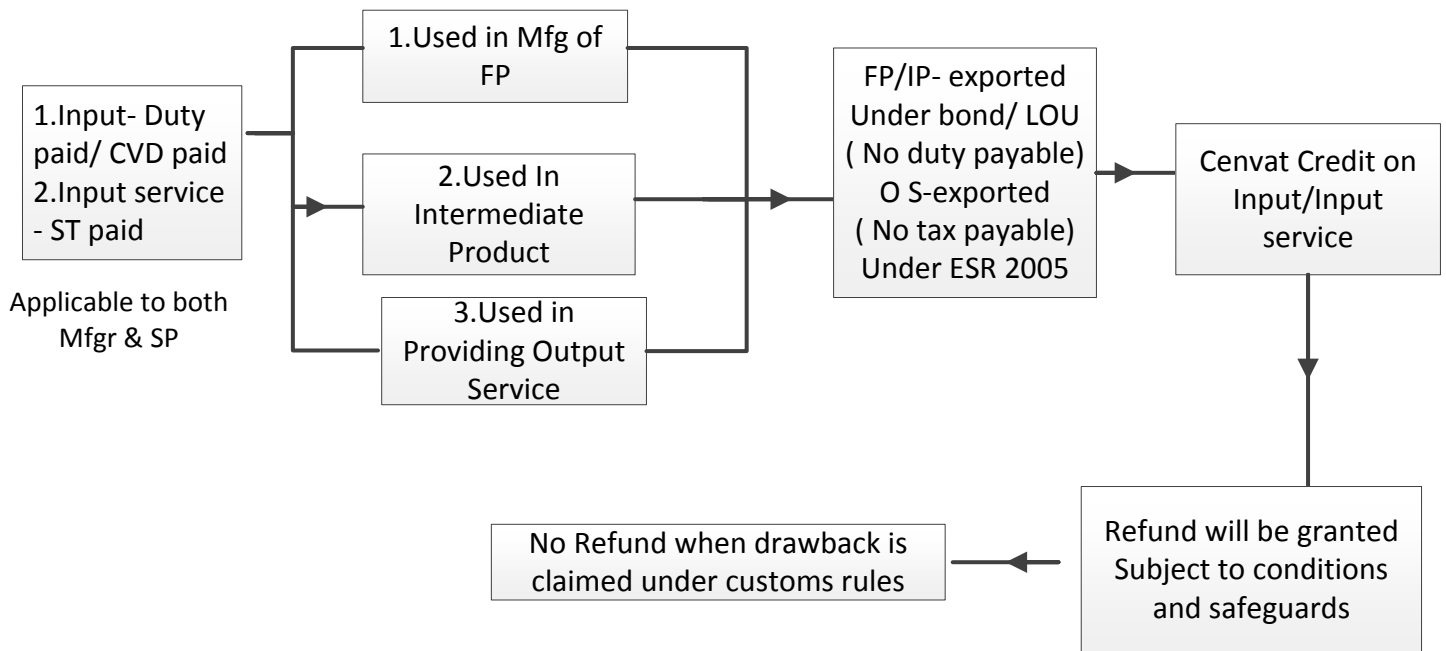
Example 2

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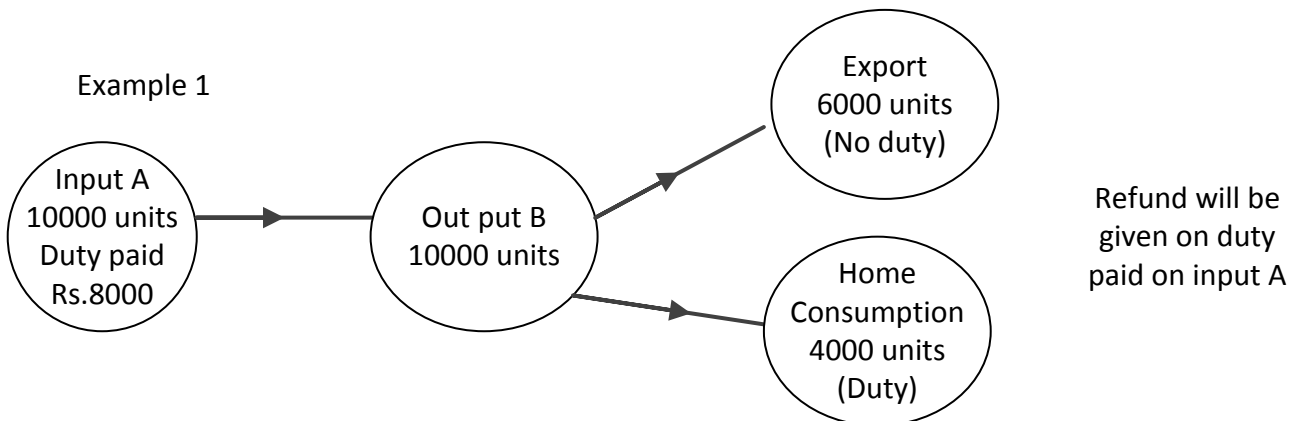
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Rule 5 of Cenvat Credit Rules 2004-Refund of Cenvat Credit



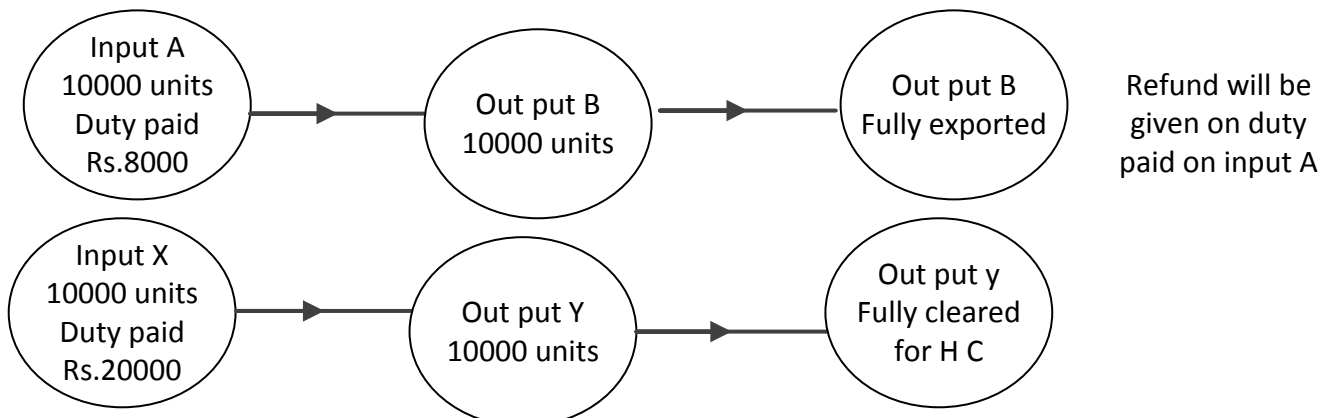
$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services})}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

Example 1



Example 2

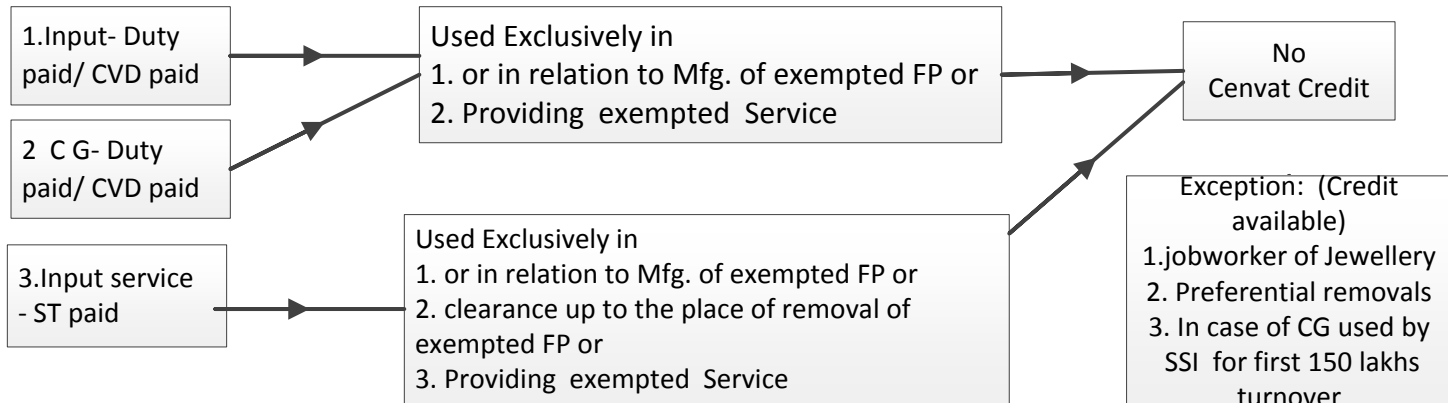
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Rule 6 CCR 2004-Obligation of a manufacturer or producer of final products and a provider of taxable service(Common inputs/input services for dutiable and exempted goods& taxable and exempted services)

Rule 6(1) & (4)

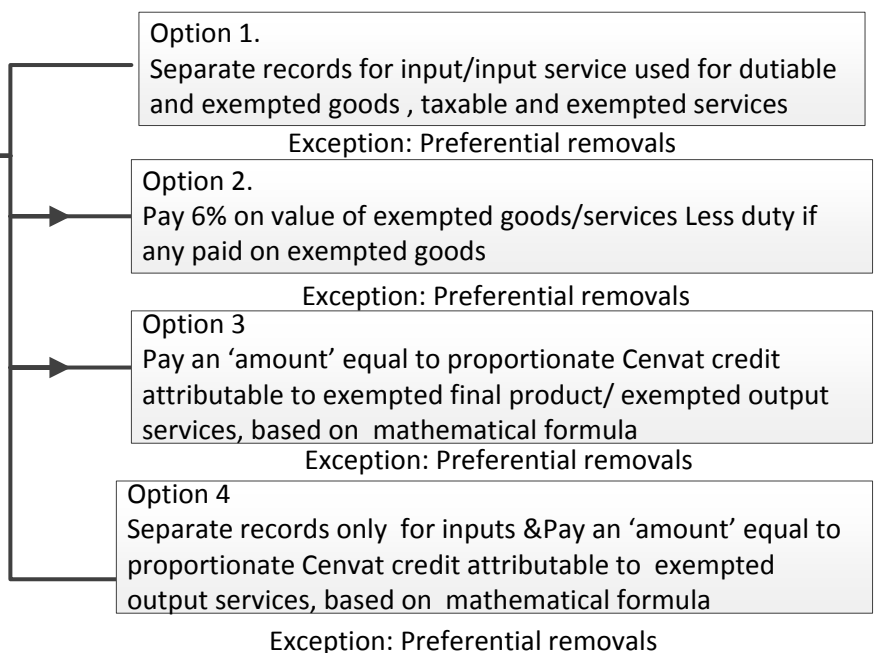


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Common Inputs/input service for
1. dutiable and exempted goods or
2. taxable and exempted services)
Rule 6(2) to 6(6)

Option 3 & 4 should be informed in writing to CEO for all exempted goods/all exempted service. Once option is exercised, it cannot be withdrawn during financial year

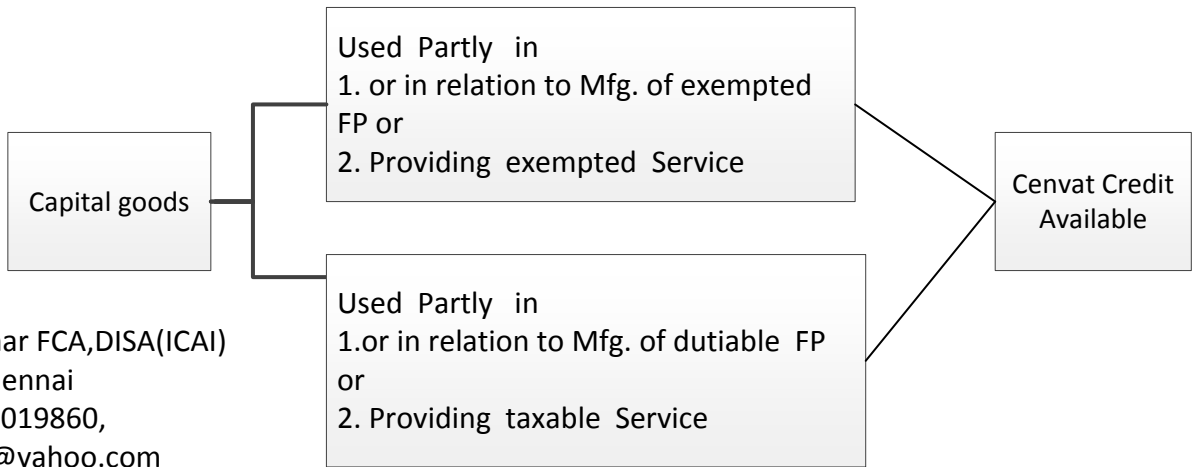
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Preferential Removals :

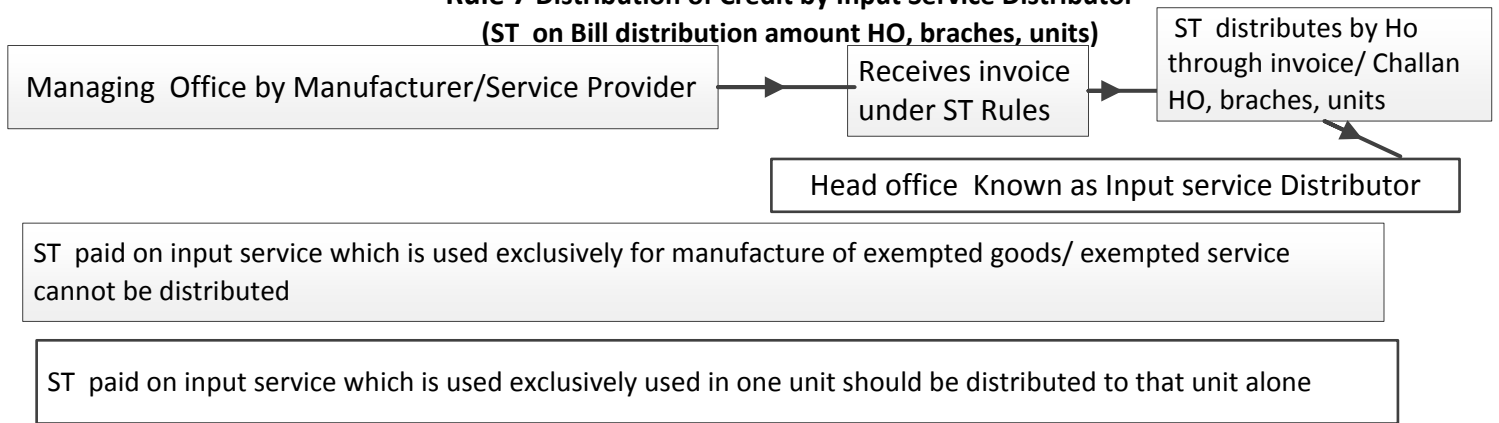
- Final product is dispatched to SEZ unit or developer of SEZ unit, EOU, EHTP or STP/UNO, International Organization.
- When final product is exported under bond without payment of duty
- Gold or silver arising in course of manufacture of copper or zinc by smelting.
- Goods supplied against International Competitive Bidding
- Supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents
- In case of taxable services provided , without payment of Service tax to SEZ or developer of SEZ for their authorized operation Rule 6(6A)-
- All goods which are exempt from customs BCD/CVD u/s 3(1)
 - (a) against International Competitive Bidding; or
 - (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
 - (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006

Rule 6(4)



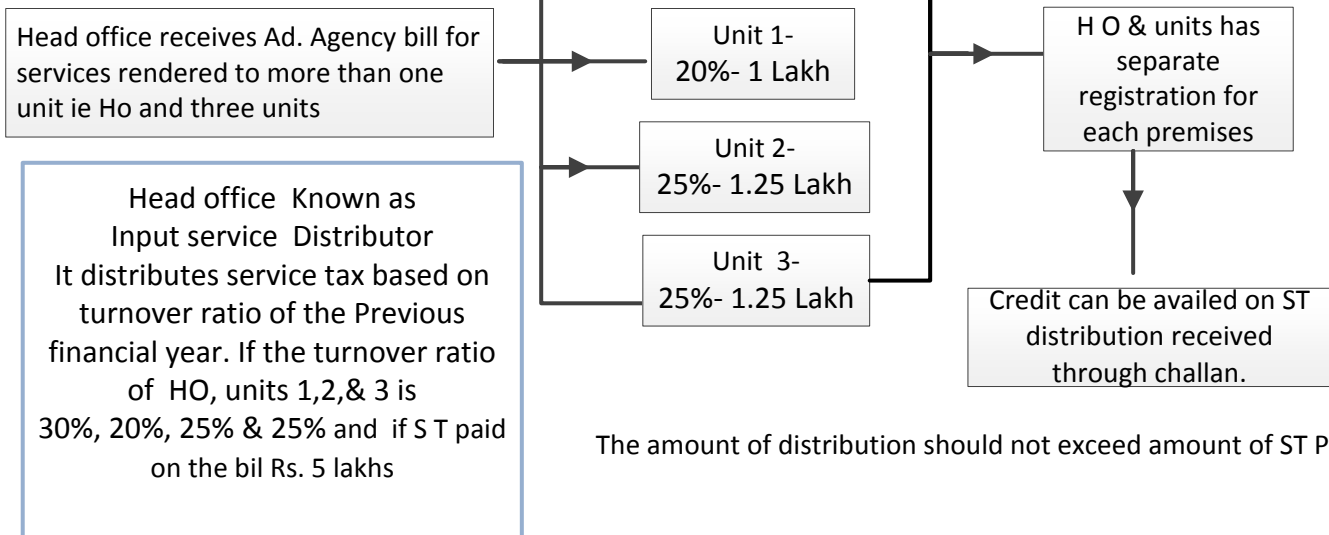
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**Rule 7 Distribution of Credit by Input Service Distributor
(ST on Bill distribution amount HO, braches, units)**



ST paid on input service which is used used in more than one unit should be distributed as below

Example



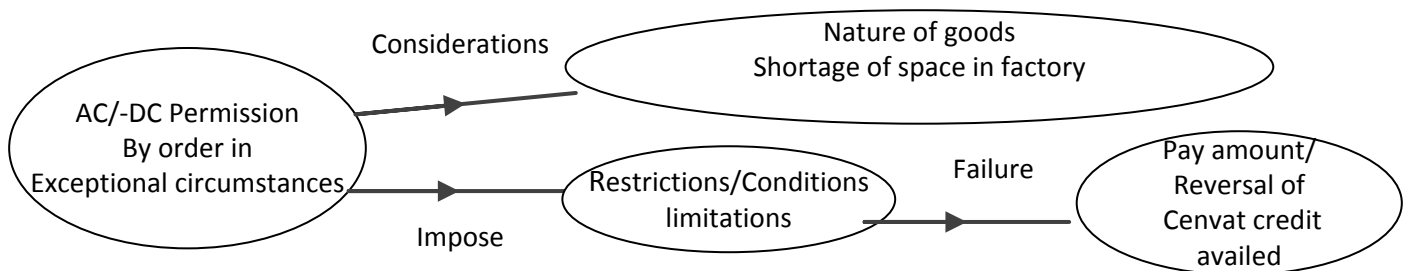
The amount of distribution should not exceed amount of ST Paid

Same as Rule 7 instead of ST, it is ED paid on inputs/Capital goods
Through invoice under rule 11 of CER

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**Rule 7 A Distribution of Credit of inputs/Capital goods by Input Service Distributor
(Excise on Bill distribution amount HO, braches, units same as above)**

Rule 8 of CCR 2004 Storage of inputs outside factory



Rule 9 of CCR 2004- Documents and Accounts under Cenvat Credit

Documents for availing cenvat credit Rule 9(1)

For Excise/CVD

- An invoice of the manufacturer factory/deport/consignment agent place
- An invoice of the importer
- An invoice of the First / Second Stage Dealer
- A supplementary Invoice
- A bill of entry
- A certificate issued by an appraiser of customs in case of goods imported through post office

Priviso:

No credit on CVD 3(5)-4% if invoice/supplementary invoice indicate no Credit available (When importer sell the goods paid Vat and want to claim refund of CVD)

Credit can also be availed on Any duplicate copy of invoice Photo copy of invoice/Any other document evidencing for duty or tax which is certified by CEO

For Service tax

- Invoice / bill / challan of the service provider
- Invoice / bill / challan of the input service distributor
- Supplementary invoice by Service provider except tax payable under extended period limitation cases
- Challan evidencing payment of service tax in case of reverse charge of ST

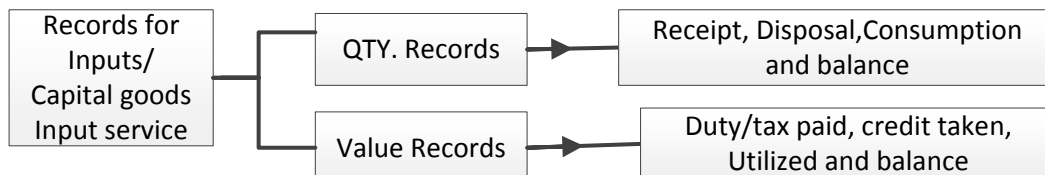
Particulars of documents 9(2)

1. All as per Rule 11 of CER
2. **Minimum Mandatory Particulars :**
 - If AC/DC satisfied goods/service received and accounted
 - a) Name and address of issuer of invoice
 - b) RC No.
 - c) Description of goods/service
 - d) value, Duty, tax

Cenvat Credit on FSD/SSD invoice Rule 9(4)

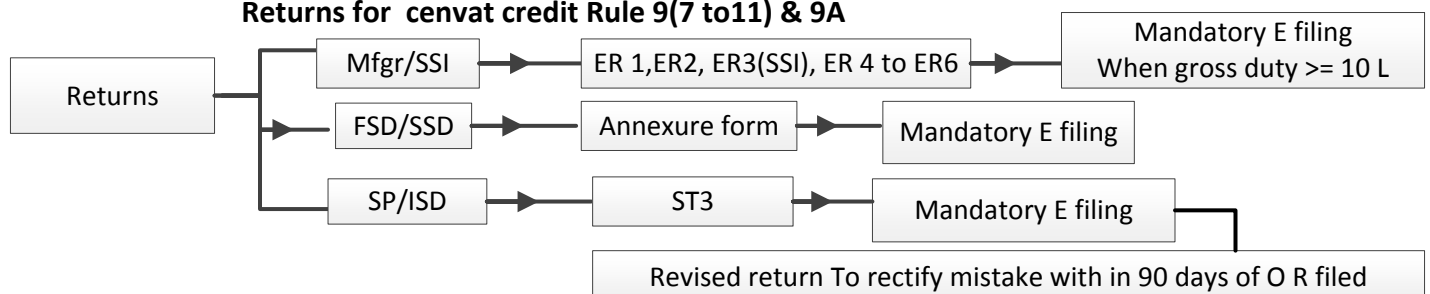
The invoice should indicate duty suffered or prorate duty suffered in case proportionate stock is sold

Records for cenvat credit Rule 9(5&6)



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Returns for cenvat credit Rule 9(7 to 11) & 9A



Excise Registration

Excise laws contain various elaborate procedures. The intent behind such elaborate procedures is to keep a check and control on production activity undertaken across the country and prevent evasion of duty on goods.

Excise procedures include:

- Registration;
- Maintenance of proper production and stock registers;
- Procedures, to be followed at the time of removal of goods and payment of duty;
- Filing of returns; and
- Special procedure for large tax payer.

Coverage of excise procedures

The procedures are covered in:

- Central Excise Rules, 2002
- CENVAT Credit Rules, 2004
- Central Excise Manual, 2001
- Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001
- Excise Circulars and Notifications

In this chapter we are going to study about the various important procedures contained in the excise laws.

Registration of factory/warehouse Section 6 and Rule 9 (Notification Nos. 35 & 36/2001)

Persons requiring registration

- Every manufacturer of excisable goods (including Govt., autonomous corporations) on which excise duty is leviable
- An **importer**/dealer who desires to issue Cenvatable invoices
- Persons holding private warehouses
- Persons who obtain excisable goods for availing end-use based exemption notification
- Exporters manufacturing or processing export goods intending to claim rebate of such duty
- EOU units procuring goods from DTA or supplying goods to DTA

Persons exempted from obtaining registration (Notification No. 36/2001, dt.26.6.2001)

- Persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification.
- SSI units availing the slab exemption based on value of clearances under a notification. Only declaration when the value of their clearances touches Rs. 90 lakhs.
- Job-workers of readymade garments/jewellery need not get registered if the principal manufacturer gets registered and undertakes to discharge the duty liability.
- Persons manufacturing excisable goods can be exempted by following the warehousing procedure under section 65 of the Customs Act.
- The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in CENVAT Credit Rules, 2004).

- 100% EOU/SEZ, licensed under the provisions of the Customs Act, is exempted from obtaining registration.
- Unregistered premises used solely for affixing lower ceiling prices on pharmaceutical products to comply with DPCO, 2013

Procedure for registration

- Application in form A-1, duly filled up and signed, along with a self-attested copy of PAN, should be submitted to Jurisdictional AC/DC.
- For an EOU located in port towns, application should be submitted to DC/AC Customs.
- If PAN is not available, a copy of the application made for PAN should be submitted.
- AC/DC will scrutinize the application.
- Registration certificate will be granted within 7 working days.
- Registration No. is based on 15 digit PAN (ECC No.)
- Range Officer and Sector Officer shall verify the address within 5 working days after registration.

Other provisions with regard to registration

- Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory.
- Registration certificate may be granted to minors if guardians conduct business.
- Registration is not transferable.
- Any change in constitution to be intimated within 30 days of change. No fresh registration is required in such a case.
- If there is any change in information given in form A-1, the change should be informed in a fresh form A-1

Procedure to be followed in case of closure of business

- Assessee will have to apply for de-registration, surrender the original Registration Certificate and pay duty up to the date of closure of business.
- Registration can also be revoked or suspended if manufacturer or his employee breach any of the provisions of Central Excise Act or Rules or has been convicted under section 161 of Indian Penal Code.

Penalty for non-registration

- Up to the duty payable on contravening goods or Rs. 2,000 whichever is higher.
- In addition, the goods can also be confiscated.
- It is also an offence under section 9 of the CEA. Imprisonment up to seven years (minimum 6 months) can be imposed.

Factory' under Central Excise - Section 2(e)

It is important to know the meaning of word 'Factory' as it is the place to be registered for excise purpose.

- Factory means any premises, including the precincts thereof, wherein or in any part of which, excisable goods are manufactured.
- Precincts refer to the area enclosed by compound wall. A canteen, a recreation club, a shed and a cycle stand, located inside the compound wall will come under the definition of a precinct.
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured.
- It is not necessary that factory should be registered under the Factories Act.

Excise returns

Periodical returns - Rule 12

The following are the various returns which are to be filed by the assessee. The returns are required to be filed in quintuplicate, and the assessee will have sixth copy as his record copy.

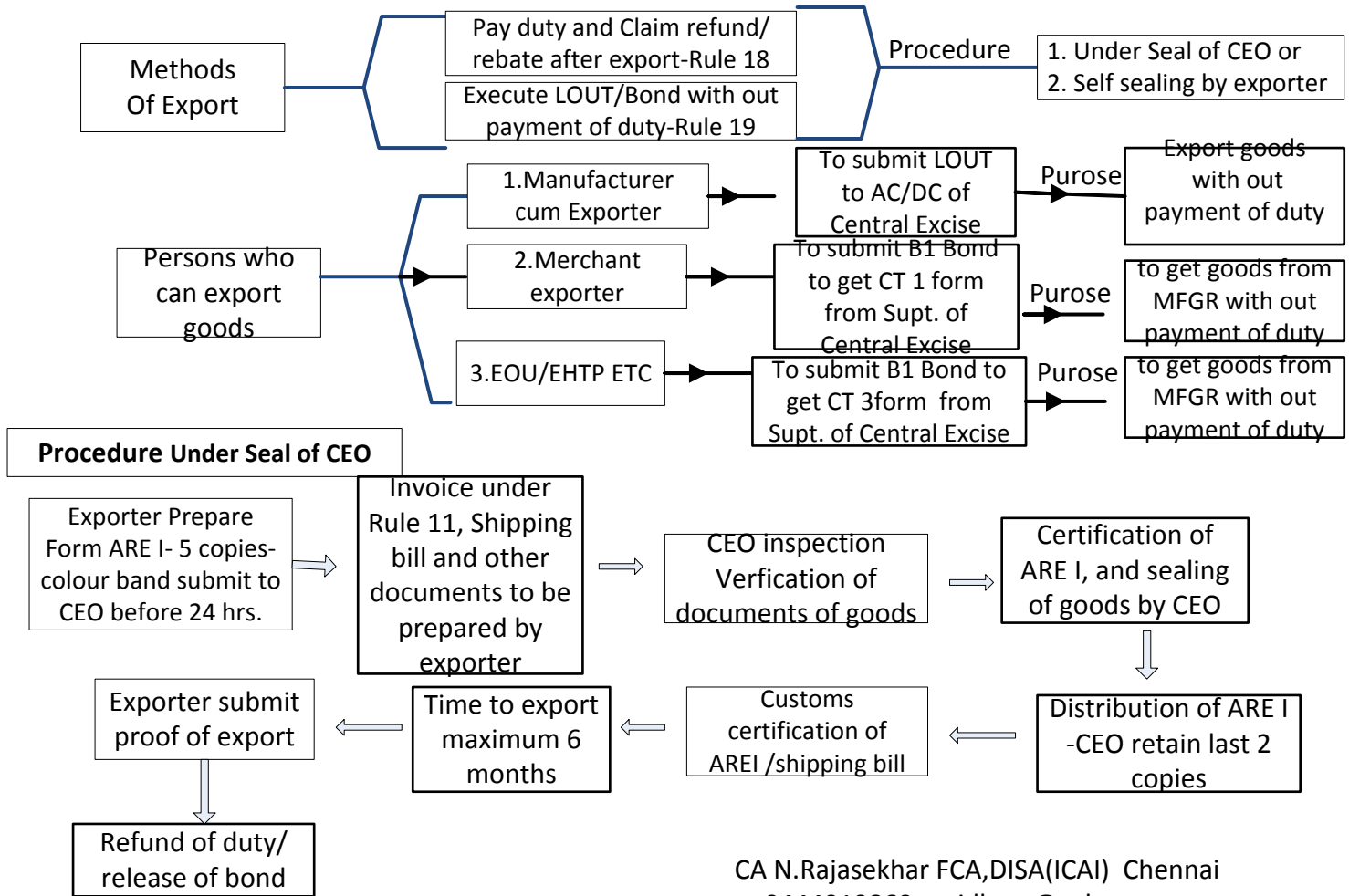
Form of Return	Description	Who is required to file	Due date for filing return
ER-1 [Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER-2 [Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3	Quarterly Return by SSI	Assessee availing SSI concession	10th of following month of a quarter
ER-4 [Rule 12(2) of Central Excise Rules]	Annual Financial Information Statement	Assessee paying duty of Rs. one crore or more per annum through PLA	Annually by 30th November of succeeding year
ER-5 [Rules 9A(1) and 9A(2) of CENVAT Credit Rules]	Information relating to Principal Inputs	Assessee paying duty of Rs. one crore or more per annum through PLA and manufacturing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30-4-2010).
ER-6 [Rule 9A(3) of CENVAT Credit Rules]	Monthly return of receipt and consumption of each of principal Inputs	Assessee required to submit ER-5 return	10th of following month
ER-7 [Rule 9A(4) of CENVAT Credit Rules]	Annual Installed Capacity production Statement	Assessee required to submit ER-5 return	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30.04.2010).
Dealer/Importer return	Quarterly Return	Dealer/Importer who issue cenvat invoice	10th of following month of a quarter
Quarterly return	Quarterly Return	Manufacturer of 1%,2% goods	10th of following month of a quarter
Financial information Sec 15 a FA 2014 From 06.08.2014	Annual Return	Specified persons like bank, Sub registrar, assessee	Section is similar to section 285BA Annual Finance information under Income tax At

Exemption from ER-7

Certain Manufacturers are exempt from filing of Annual Installed Capacity production return such as biris manufactured without the aid of machines, matches manufactured without the aid of power & reinforced cement concrete pipes (Notification dated 26/2009, dt.18.11.2009).

E filing of returns : E-filing of returns is mandatory when the gross duty liability is Rs.10 lakhs or more

Procedure for Export of goods -Rule No18 & Rule No 19



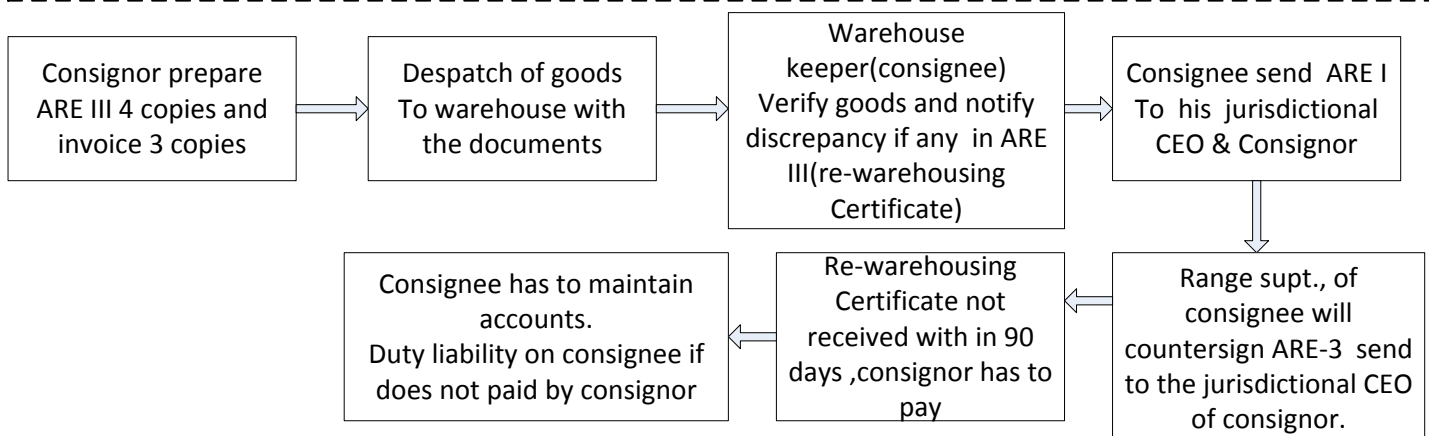
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Procedure Under self Seal By Exporter

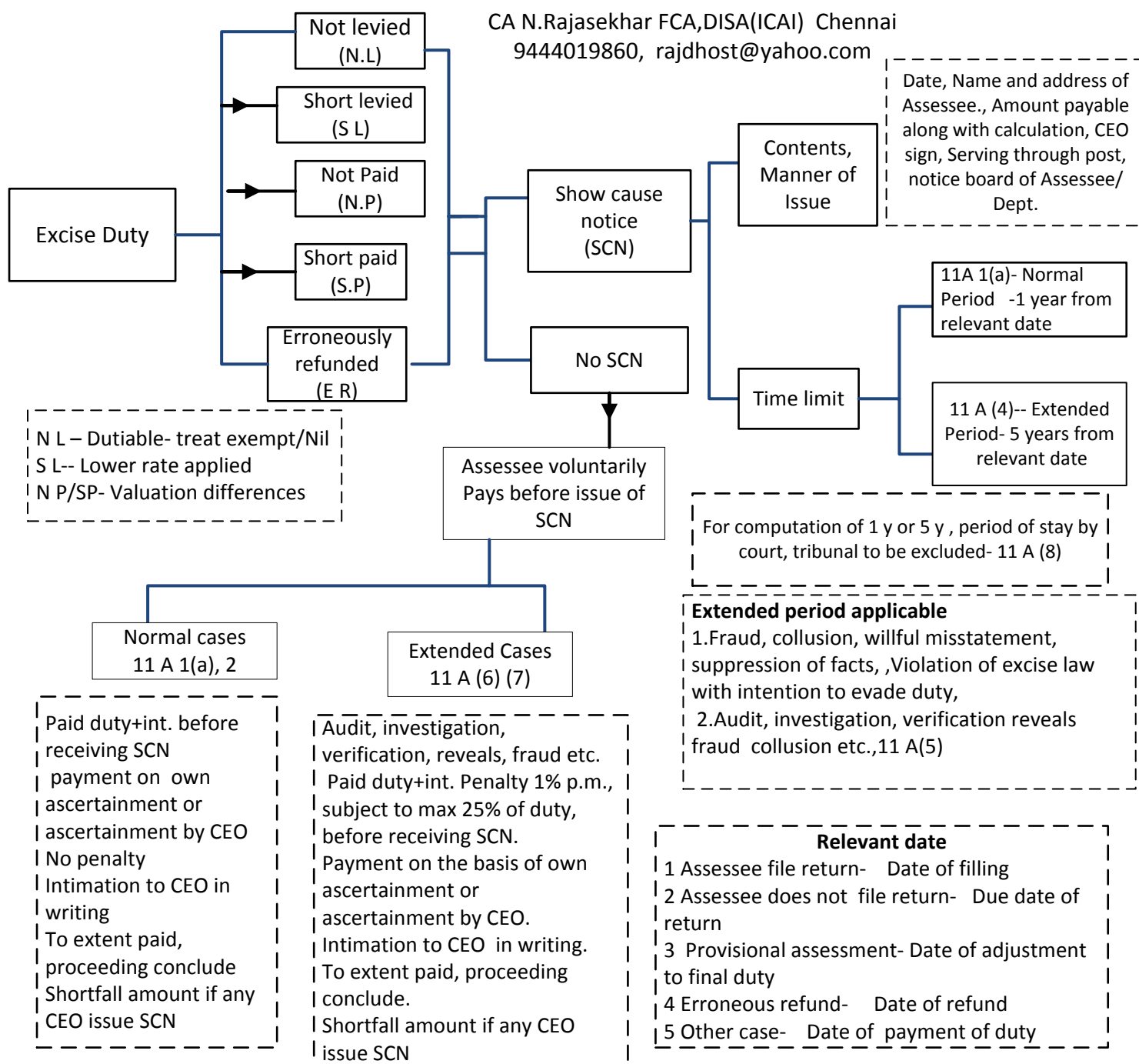
- Same as above except
1. ARE I to be submitted to CEO after 24 hours of export
 2. Self sealing by exporter instead of CEO verification and certification in ARE I

Procedure for ware house goods -Rule No 20

Not all excise goods can be stored, Ware house registered under excise. Maximum period of storage 90 days.



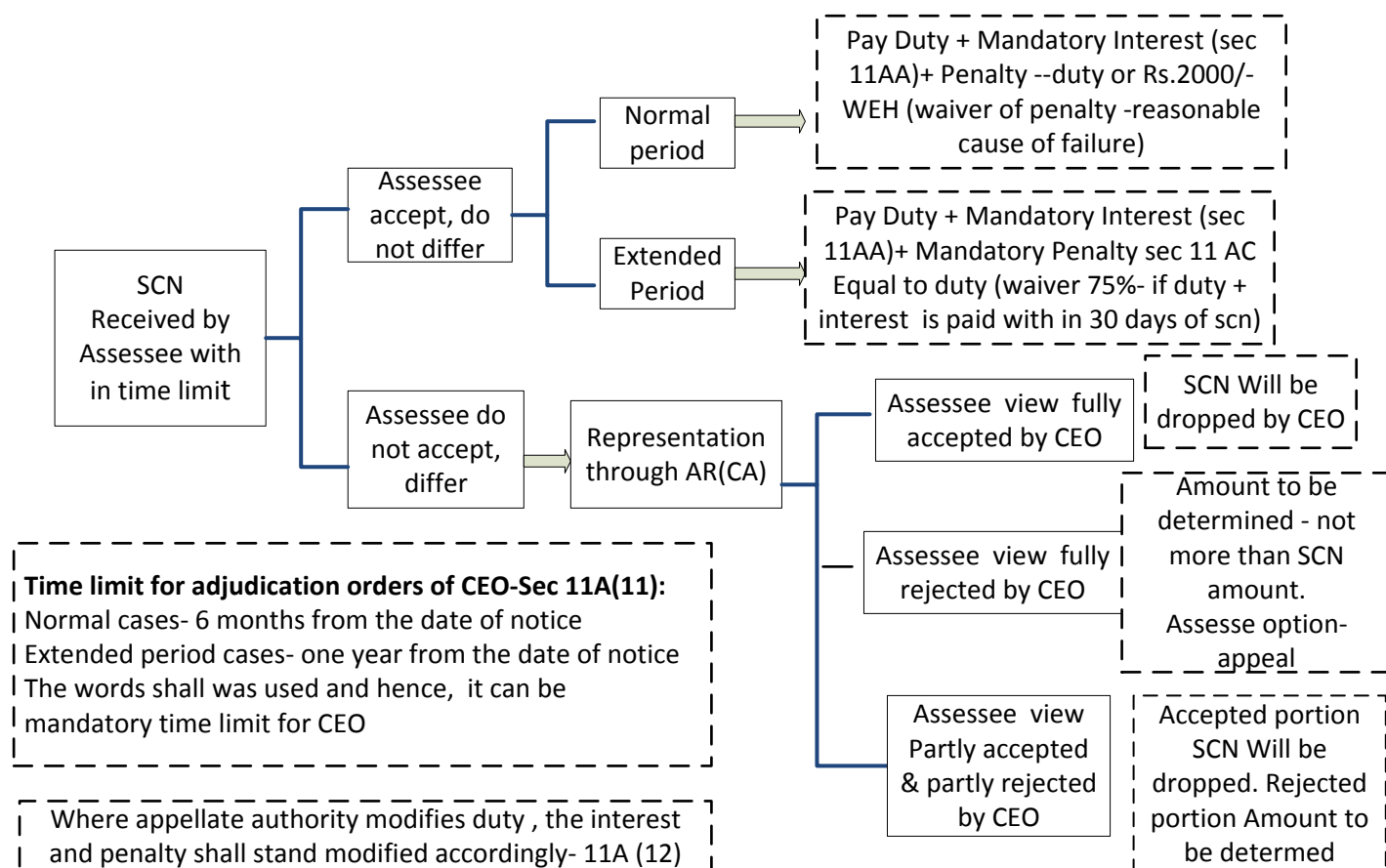
Demand (Recovery) of Excise Duty- Sec 11 A of CEA



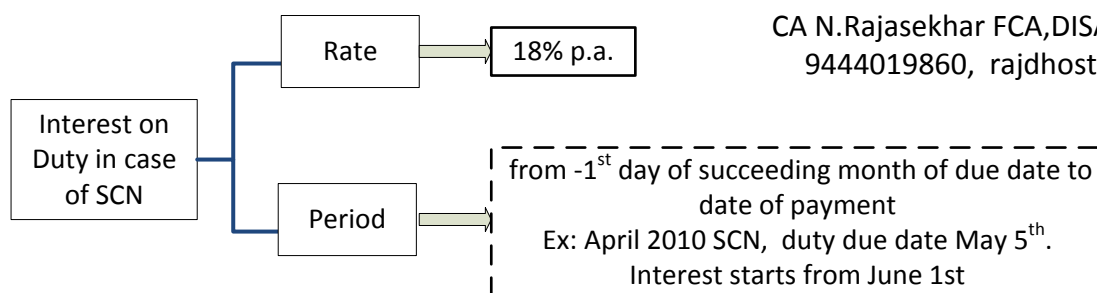
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SCN issued after lapse of time limit, it is invalid.
In case of extended period, it is on the part of department to prove fraud, collusion etc., on the part of assessee.

Adjudication orders of CEO- Sec 11 A(10) of CEA



Mandatory Interest in case of Recovery of Duty- Sec 11 AA

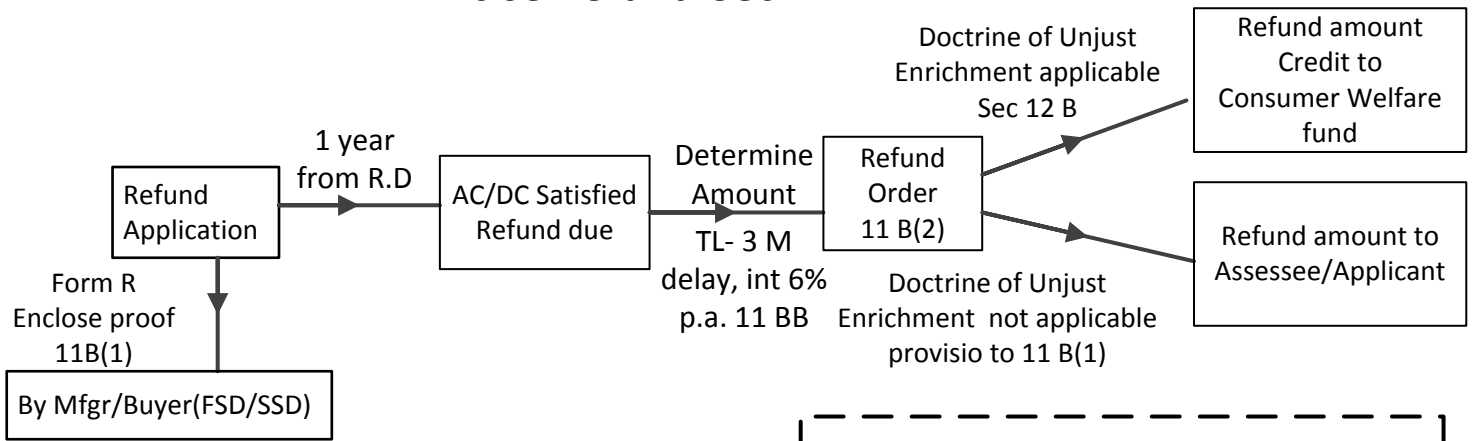


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1. If SCN amount was increased in appeal, Interest on increased amount is payable from date of order- Sec 11 A (13)
2. Interest is payable whether the adjudication order shown interest separately or not- Sec 11 A (14)

For Other sections from 11 AC to 11 E, Point wise, self explanatory read the book

Excise Refund-Sec 11 B



Relevant Date:

1 In case of Export Rebate

Export through aircraft/vessel-Date of leaving aircraft/Vessel Export through vehicle-Date of leaving custom frontier Export through post-Date of dispatch of article

2 In case of Compound levy scheme-Date of reduction of duty

3 In Case of Exemption u/s 5 A-Date of exemption order

4 In Case of Provisional Assessment-Date of final adjustment of duty

5-In case of FSD/SSD Date of Purchase of goods

6 In case of Order of court/Appellate authority-Date of order

7 In any other case Date of payment of duty

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

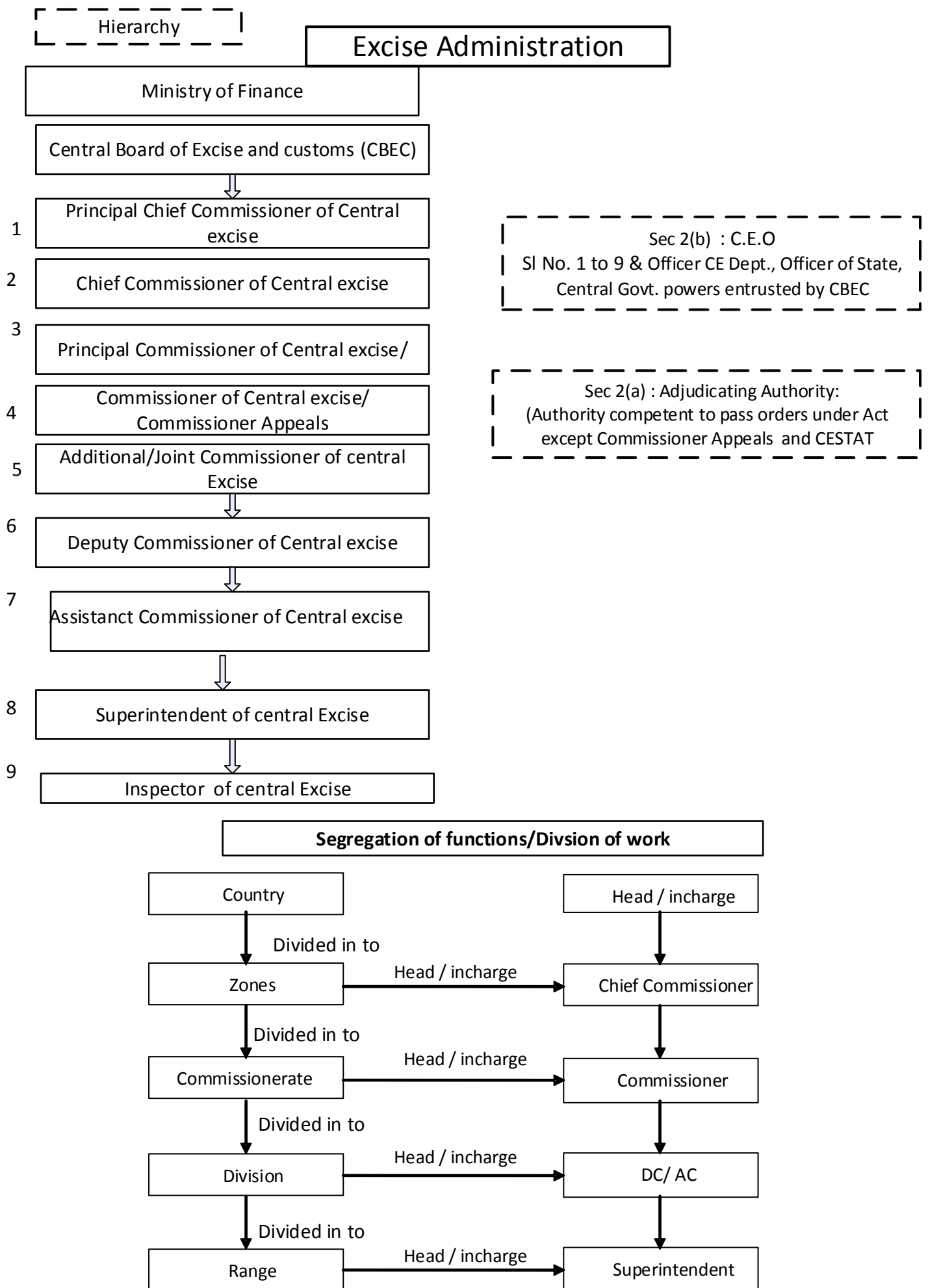
- It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer sec 12 B
- In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him.
 - He will get double benefit – One from consumer and again from the Government.
 - At the same time, the duty is illegally collected and hence cannot be retained by Government, it will be credited to Consumer welfare fund
- The fund may be used for activities of protection and benefit of consumers. Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)

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Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- When duty is paid under protest and only lower amount of duty is charged to customer
- Pre-deposit of duty pending appeal
- When contract is for price inclusive of all duties
- When debit note is raised by buyer and amount deducted from bill
- When credit note issued to buyer and buyer account is credited,
- Refund of export rebate/incentive.
- Deposit taken from buyer against possible liability of excise duty. And deposit refunded

For Comparison with customs and service tax, read chapter 13 Division IV of the book



Excise Assessments

CE Rule 2(b), 'Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under Rule 7

It normally implies determination of duty liability

Types of Assessments

1 Self Assessment Rule 6

2. Provisional Assessment Rule 7

3. Best Judgment Assessment

Self Assessment- Rule 6

Assessee determines classification & Valuation

Assessee Pays Appropriate duty

Files Monthly returns ER1/2/3

Assessee declares In Self Assessment memorandum

In case of cigarettes, duty will be assessed by the superintendent of excise before removal of the goods

CEO Scrutinize the return, Inspection, Verification-- SCN if require

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Provisional Assessment- Rule 7

Assessee Unable to determines classification /Rate of duty & Valuation

Request to Ac/DC for Provisional Assessment with reasons

B 2 bond

AC/Dc allow P A and he determine rate of duty payable

Time limit to complete FA

6 months
Extention By C- 6 months
BY CC beyond- one year

Best Judgmental Assessment- Chapter 3 Part IV Para 3.1 of CBE&C's CE Manual

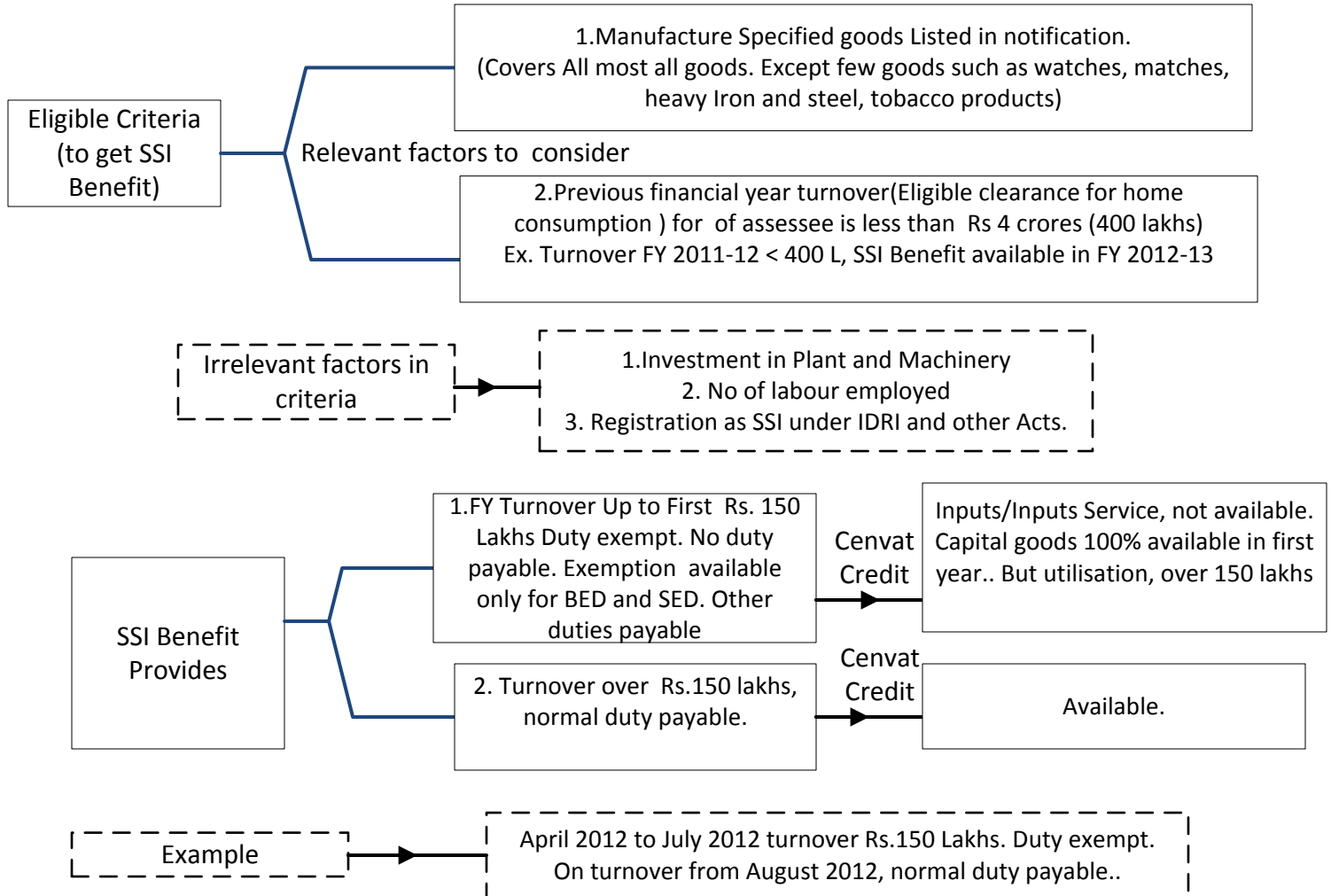
Final Assessment (FA)

FA duty > PA duty =
Assesse pay duty+18% int.
FA duty < PA duty =
Refund to Assesse +6% in

Best judgment assessment is made:

- Where assessee fails to provide record /information for the purpose of assessment and Where the department is unable to issue demand.
- Assessment done will be based on available information.
- Demand will be issued if necessary.
- Burden to provide information for re-determination of duty is on assessee.

Small scale Industries (SSI)- Notification No 8/2003 dt01.03.2003



Procedural Concessions for SSI units

- No registration is required until they cross Rs.150 Lakhs of turnover.
- Quarterly return
 - Payment of duty is to be done quarterly instead of monthly
 - 100% CENVAT credit is available on capital goods in the first year.
 - One Consolidated entry in PLA for all removals during the day.
 - Audit should be done once every 2 to 5 years.
 - Exemption for payment of duty if goods manufactured under brand name of others in rural area.

Obligation of SSI

- File a declaration with Superintendent when the turnover crosses 90 lakhs.
- Get a registration and maintenance of records when turnover crosses 150 lakhs.

Small scale Industries (SSI)- Notification No 8/2003 dt01.03.2003

Clubbing provisions of SSI

When calculating the limits of 150 lakhs and 400 lakhs, the following factors will be clubbed:

- Turnover of the all products manufactured / all the factories or units of the assessee
- Turnover of factory used by more than one manufacturer in a financial year
- Turnover of clearance in the name of bogus /dummy/sham units
- Turnover of two units where there is substantial funding between two units
- Turnover of two units when change of ownership takes place during the previous year

However, the following will not be clubbed:

- Turnover of units of relatives/Turnover of same management units
- Turnover of the units having separate registration/ separate assessment/ Turnover of units having common partners/common directors

Calculation of turnover for limits (Value of clearances)

The calculation mode for Rs.150 and Rs.400 lakhs is same except few items. **CA N. Rajasekhar FCA, DISA (ICAI) Chennai**
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Common Exclusions for 150 and 400 lakhs

The following shall be excluded / not be considered from the turnover calculation for 150 lakhs and 400 lakhs

- Export turnover other than from exports to Nepal and Bhutan
- Clearance to SEZ/STP/EHTP/EOU/FTZ/EPZ/ **without payment of duty** /United Nations organization
- Export **under bond** through merchant exporter
- Turnover of goods manufactured with other's brand name in urban area (No SSI benefit, duty payable)
- Turnover of inputs/capital goods bought by assessee and cleared as such (since it is not a manufacture)
- Job work turnover exempt under notification 214/86,83/94 and 84/94
- Goods may be exempt under some other notification, i.e. other than SSI exemption notification - Final product of such goods
- Value of intermediate products used as inputs in manufacturing final products which are eligible for SSI exemption
- Job work of test, repairs, reconditioning, processing, etc. which is not a manufacture.
-

Common Inclusions for 150 and 400 lakhs

The following shall be taken in to account while calculating the turnover (value of clearances for both 150 lakhs and 400 lakhs):

- Exports to Nepal and Bhutan (To be included even money received in foreign currency)(
 - Goods manufactured with other's brand name in rural area (SSI need not pay duty on these goods, But include for limits)
 - Clearances which are eligible for SSI benefit where no duty payable (goods manufactured in the brand name of Khadi village, National small scale industries, Turnover of Packing material, notebooks, writing pads)
 - Goods may be exempt under some other notification, i.e. other than SSI exemption notification - Intermediate product of such goods
 - Turnover of goods charged to Nil duty
- Turnover of Non excisable goods

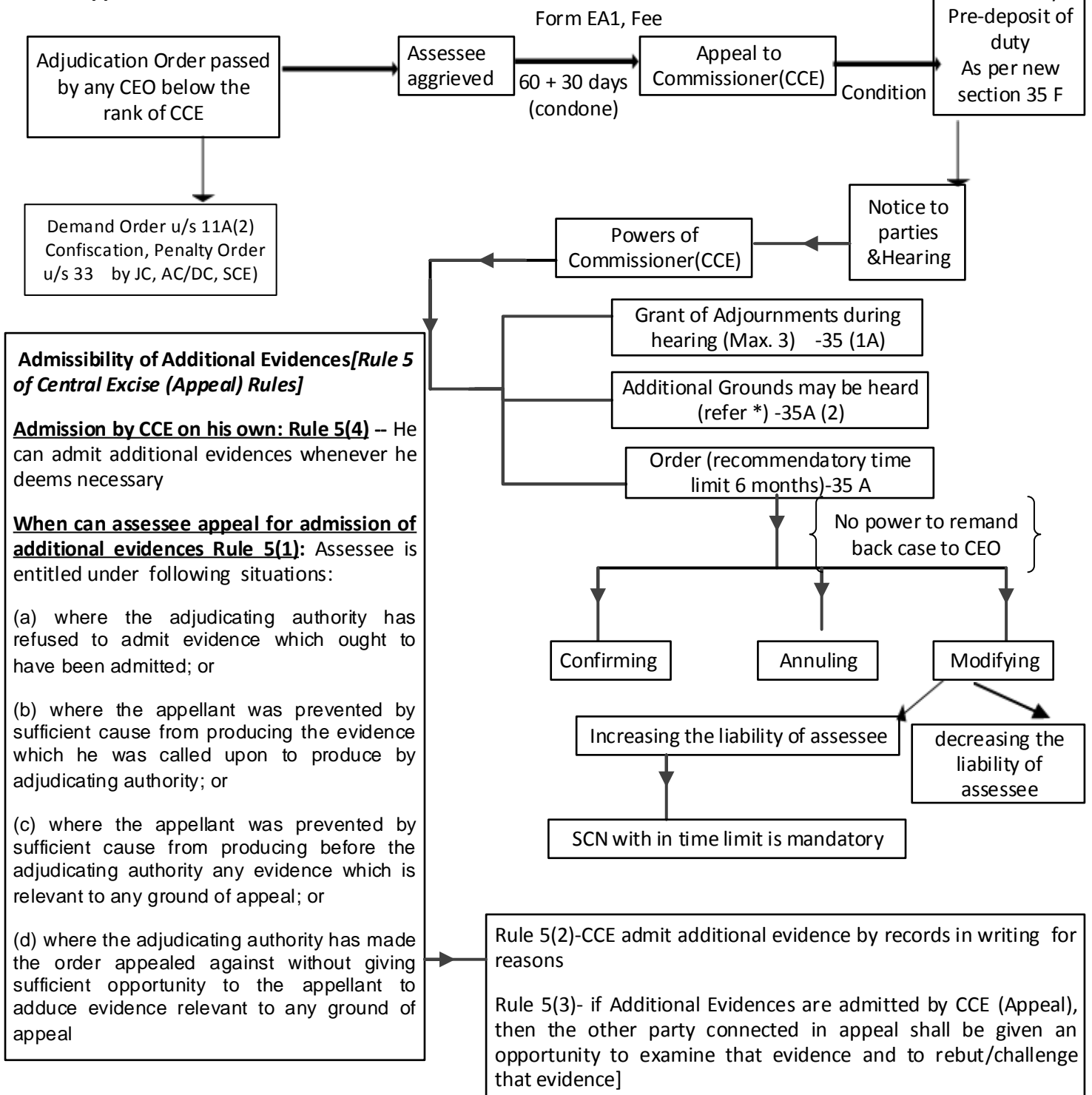
Differential treatment

The following is to be included in 400 lakhs limits calculation and to be excluded for 150 lakhs limits calculation

- Turnover of goods which are exempt from duty other than SSI Notification and Other than Job work notification (For example U/s 5A notification)

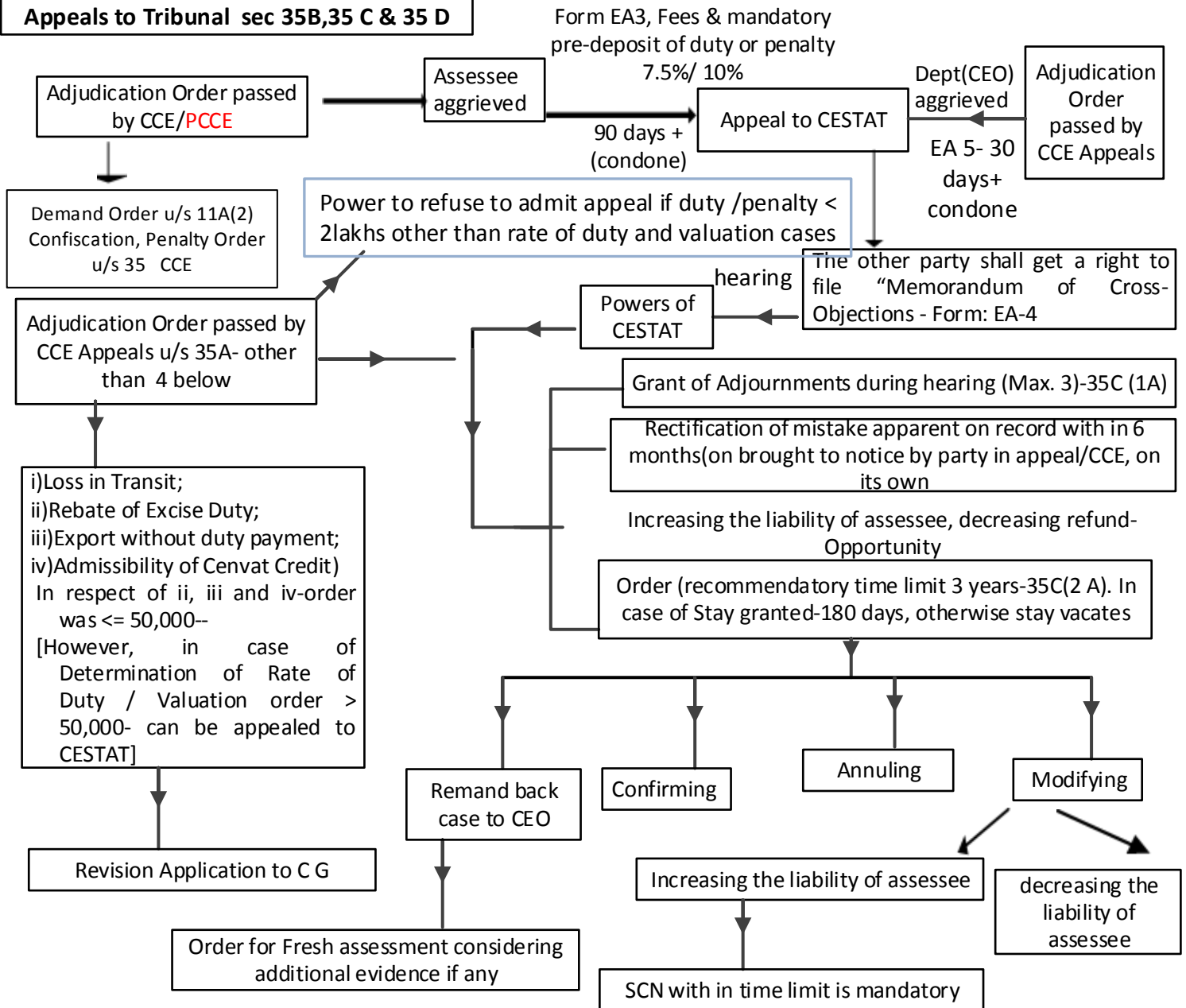
Appeals under Central Excise

Appeals to Commissioner appeals sec 35 & 35 A



Appeals under Central Excise- 2

Appeals to Tribunal sec 35B, 35 C & 35 D

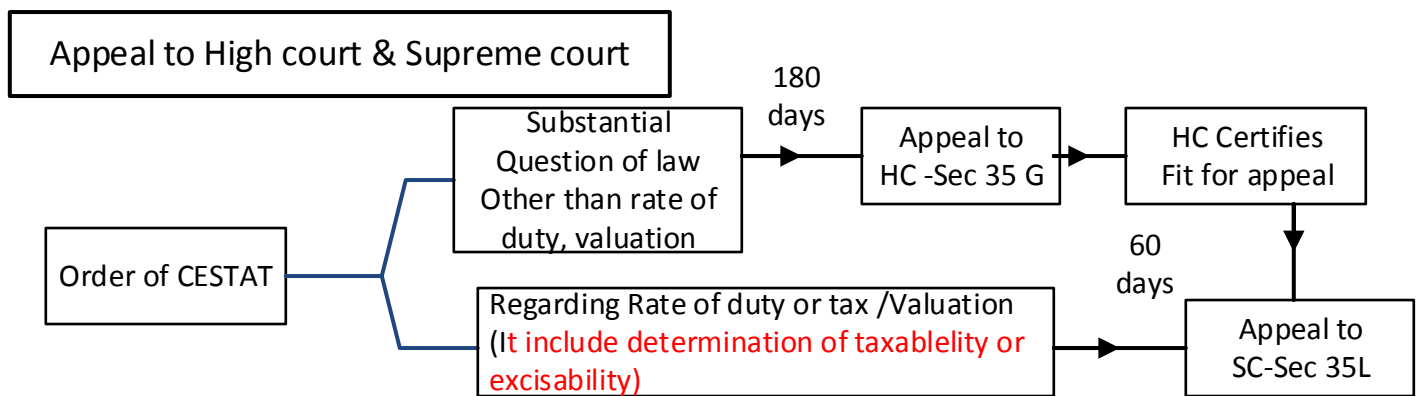


Other inherent Powers of CESTAT:

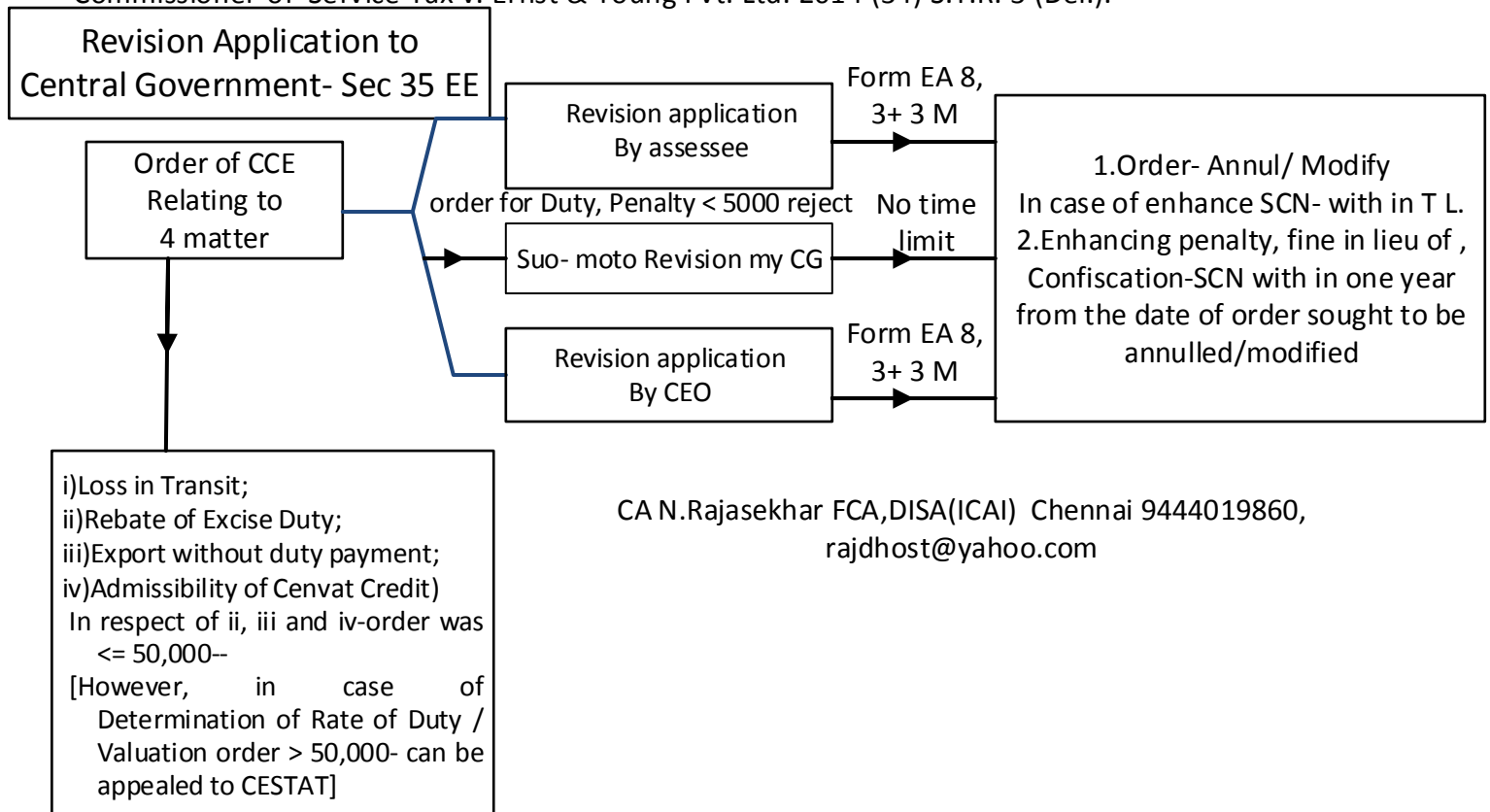
1. Recall dismissed order, if deposit of duty as ordered paid late
 2. Quash its own order, if found obtained by fraud, disregard of statutory provision, by mistake
 3. Correct an error so that justice is done
- The above powers are subject to some limitations.

Tribunal has no powers to review its orders on its own.

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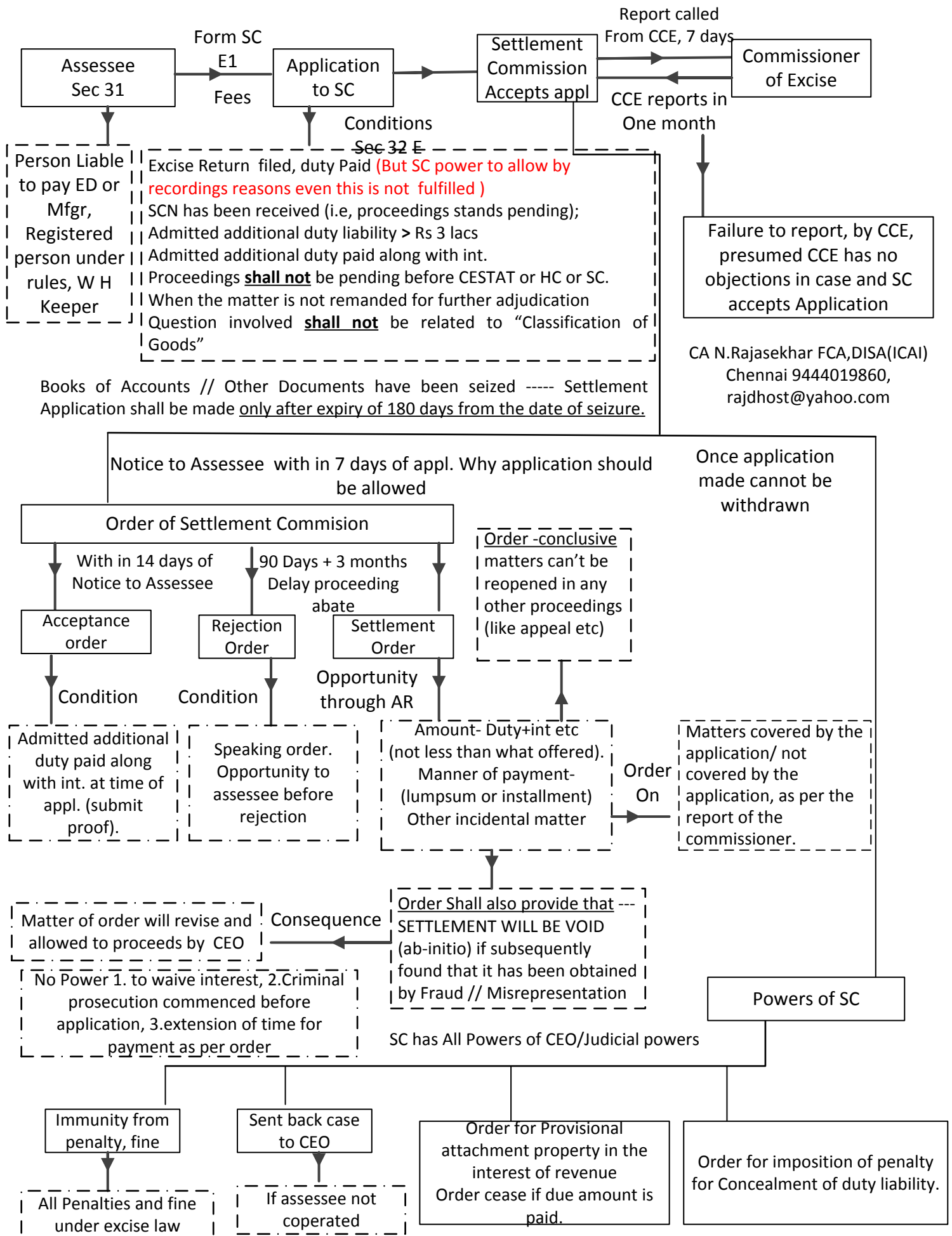


Whether particular activity is a manufacture or not/ taxable service or not, whether it is changeable or not under the act is covered by the cases of rate of duty and valuation and hence appeal lies with Supreme Court *Commissioner of Service Tax v. Ernst & Young Pvt. Ltd.* 2014 (34) S.T.R. 3 (Del.).

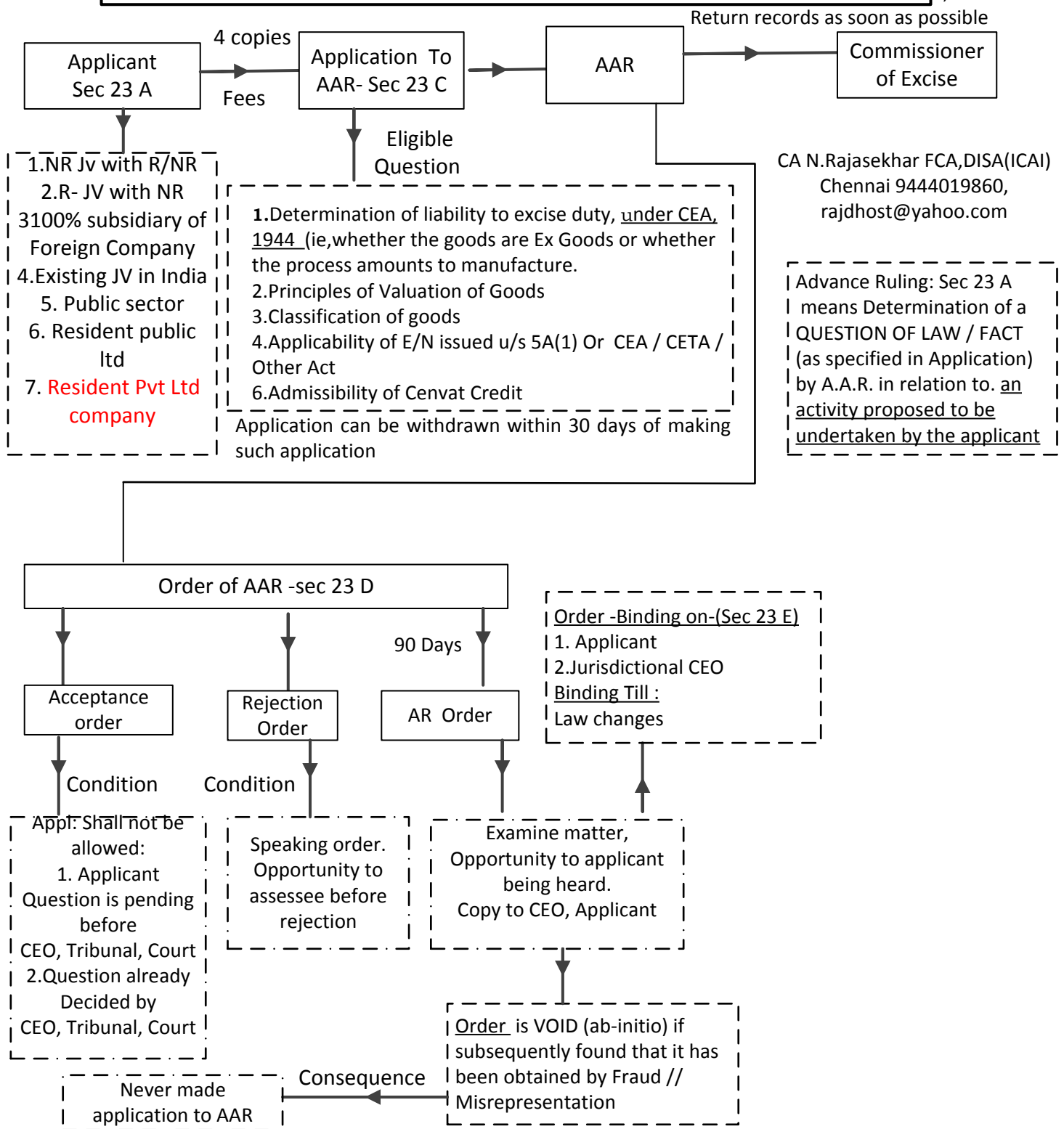


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Excise- Settlement Commission



Excise- Authority for Advance Ruling- Sec 23 A to 23 H

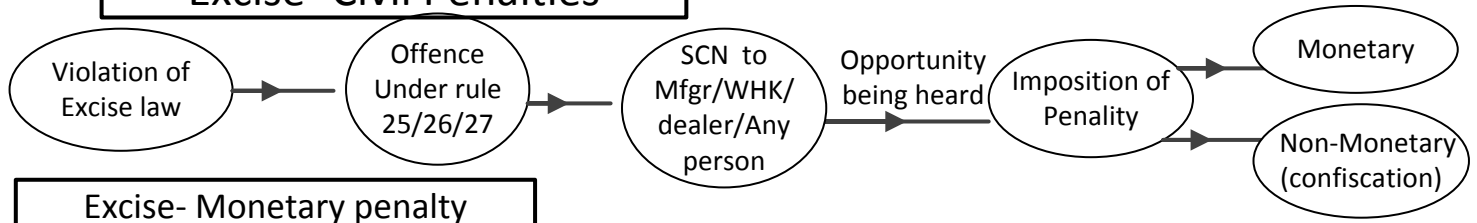


Benefit of seeking advance ruling from Authority would be applicable only in relation to activity which is proposed to be undertaken (& not in respect of that which has already been undertaken) --- MCDONALD'S INDIA PVT. LTD.-

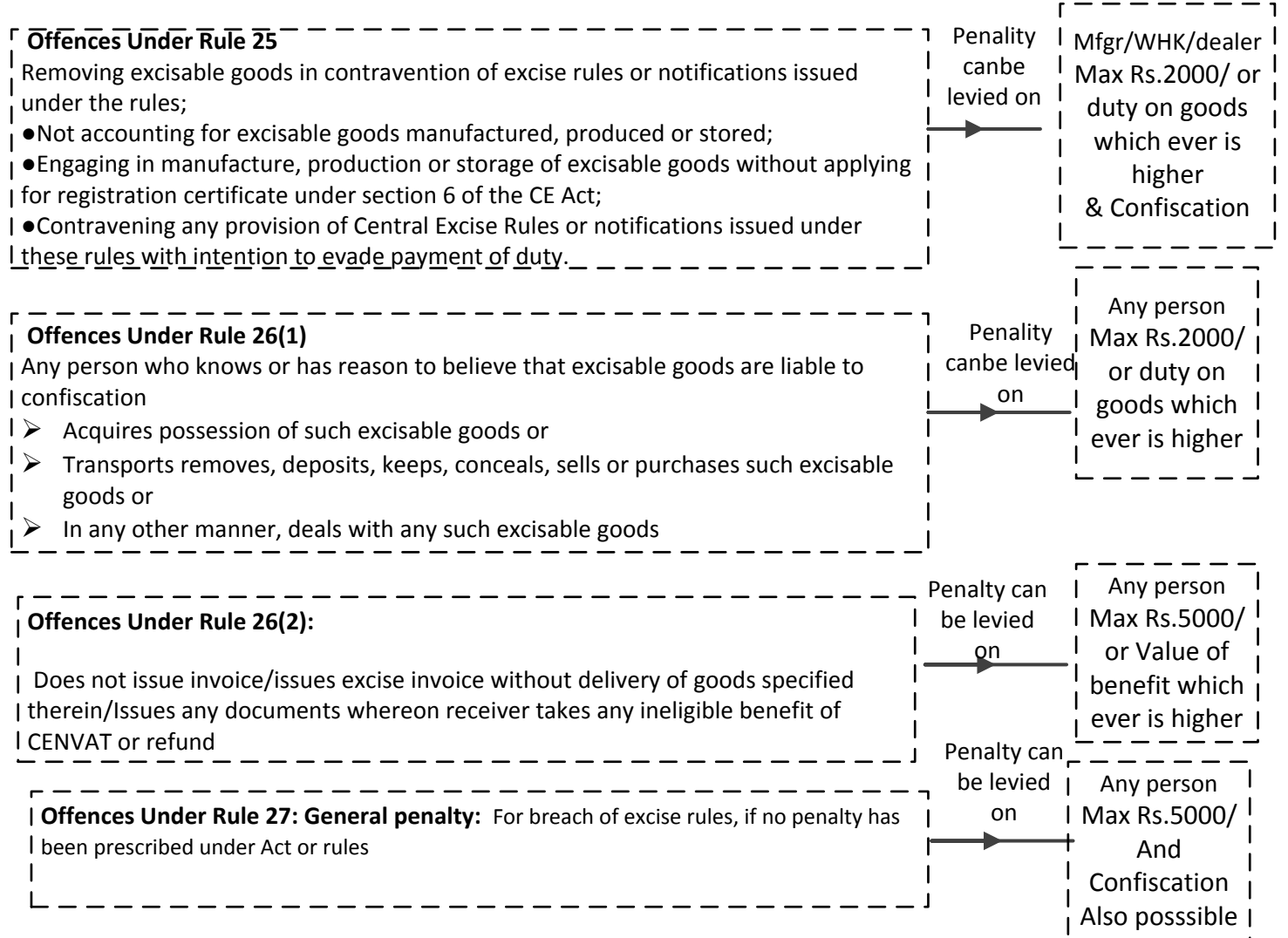
Merely because another subsidiary is carrying out the same activity and its case is pending with the CEO, another subsidiary will not become ineligible to obtain AR in relation to same question".

A.TEX (INDIA) PVT. LTD. – SC-

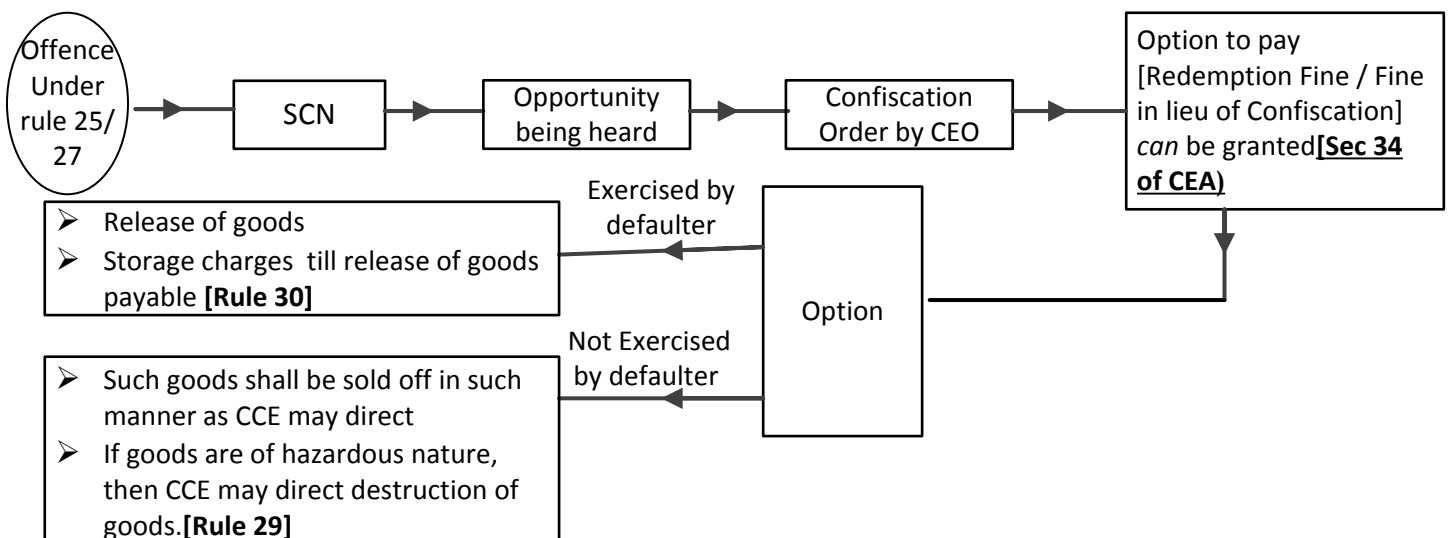
Excise- Civil Penalties

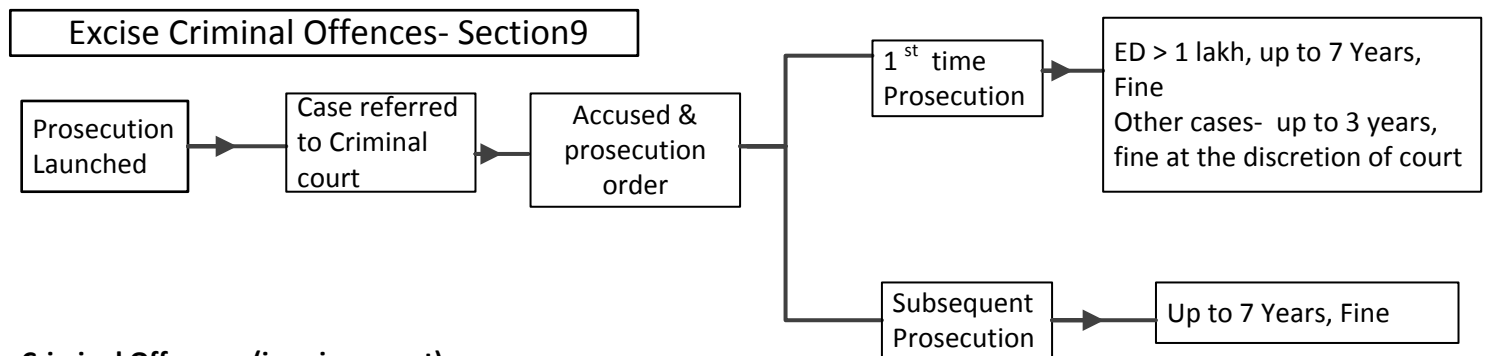


Excise- Monetary penalty



Excise- Non Monetary penalty- Confiscation





Criminal Offences- (imprisonment)

- 1) Possession of "Tobacco" in excess of prescribed quantity;
- 2) Evading payment of excise duty;
- 3) Removal any excisable goods in contravention of any provisions of CEA / Rules or *in anyway concern himself with such removal*;
- 4) -- Acquiring possession of, or
 - In anyway concerning himself in Transporting/ Depositing/ Keeping/Concealing, selling or purchasing, or
 - In any other manner dealing with goods which he knows or has reason to believe are liable to confiscation;
- 5) Contravention of any provisions of Cenvat Credit Rules, 2004;
- 6) Failure to supply the information which he is required to supply under the act or supplying false information;
- 7) *Attempting to commit or abetting the commission of, first two categories of offences.*

Term of 7 years imprisonment can be reduced to a minimum of 6 Months if the Court, shall be satisfied that there exists "SPECIAL & ADEQUATE REASONS".

Reasons not admissible as "Special & Adequate Reasons:

- i) Conviction for the first time
- ii) Penalty has already been imposed/ Goods have been confiscated/ Other action has been taken
- iii) Age of the accused
- iv) Accused merely secondary party, not the principal offender

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Sec 9A

Offence to be non-cognizable: No arrest in respect of these Offences shall be made without obtaining arrest warrant.

Offence can be Compounded: For that request to be made to Chief CCE (such request can be made before launch of prosecution proceeding and even after launch of prosecution proceeding) --- Any of the offence is compoundable on payment of prescribed fee.

There are certain guidelines for arrest and bail read,, CBEC vide Circular No. 974/08/2013 CX dated 17.09.2013

Pre-deposit of duty in appeals and refund of such duty

Sec 35 F Effective from 06.08.2014 & Classification through Circular No.
984/08/2014 CX dated 16.09.2014

The predeposit of duty in case of appeals is as follows.

Stage of appeal	Appellate Authority	Mandatory Quantum of pre-deposit of duty demanded
First appeal		
(a) Order of CEO Below the rank of Commissioner	Commissioner Appeals	7.5% of the duty where only duty or both duty and penalty are in dispute OR 7.5% of the penalty where only penalty is in dispute The amount of pre-deposit shall not exceed `Rs.10 crores.
(b) Order of Commissioner	CESTAT	Example : JC of Excise confirmed duty demand on X ltd Rs. 10 lakhs + Penalty u/s 11 AC Rs. 10 lakhs + Penalty under CE rules 26 Rs. 3 lakhs Pre deposit = 10 lakhs x 7.5% = Rs.75000/- No predeposit on penalty Rs. 13 lakhs Example 2 AC of Excise confirmed Penalty on X ltd .u/s 11 AC Rs. 10 lakhs + Penalty under CE rules 26 Rs. 5 lakhs Pre deposit = 15 lakhs x 7.5% = Rs.1,12,500/- Both penalty to be added for redeposit
Second appeal		10% of the duty where only duty or both duty and penalty are in dispute OR 10% of the penalty where only penalty is in dispute The amount of pre-deposit shall not exceed `Rs.10 crores. Example same as above given in the first appeal but if the order issued by Commissioner appeals rate of pre deposit is 10% in case of second appeal
Order of Commissioner Appeals	CESTAT	

Pre-deposit of 7.5%/10% **would exclude interest**, if any, payable on the **duty demanded**.

Duty demanded shall include the following

Adjudication order amount as per sec 11	xxxxxxx
Duty collected amount to be deposited u/s 11D	xxxxxxx

erroneous CENVAT credit taken	XXXXXXXX
Amount payable under Rule 11D	XXXXXXXX
Total amount	XXXXXXXX

All the above provisions will also applicable to service tax also Parallel amendments have been made in the Customs Act, 1962 in section 129E.

All pending appeals/stay applications filed prior to 06.08.2014 (the date of enactment of the Finance (No. 2) Bill, 2014) shall be governed by the erstwhile old provisions.

Payments made during investigation

- Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10% (subject to a limit of ` 10 crore), will be considered as payments towards pre-deposit for filing the appeals.

Date of filing of appeal will be deemed to be the date of deposit of such payments.

Refund of Pre-Deposit

- Refund of pre-deposit is not refund of duty and hence the same will not be governed by provisions of section 11B of Central Excise Act/section 27 of Customs Act, 1962. Therefore, once the appeal is decided in favour of the assessee, he can apply for refund of pre-deposit.
- Refund of pre-deposit along with interest will have to be made within 15 days of receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.
- **Refund of pre-deposit should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party.**
- In the event of a remand, refund of the pre-deposit shall be payable along with interest.

Interest on delayed refund of amount deposited under section 35FR from 06.08.2014

- Payment of interest on the refund of such pre-deposit from the date of its payment to the date of refund. Also, the rate of interest would be 6% p.a.
- Interest on delayed refund of pre-deposit made prior to 06.08.2014, the old provision interest @6%p.a after three months from the date of communication of the order will apply

Parallel amendments

All the above provisions will also applicable to service tax sec 83/ Customs, Sec 129

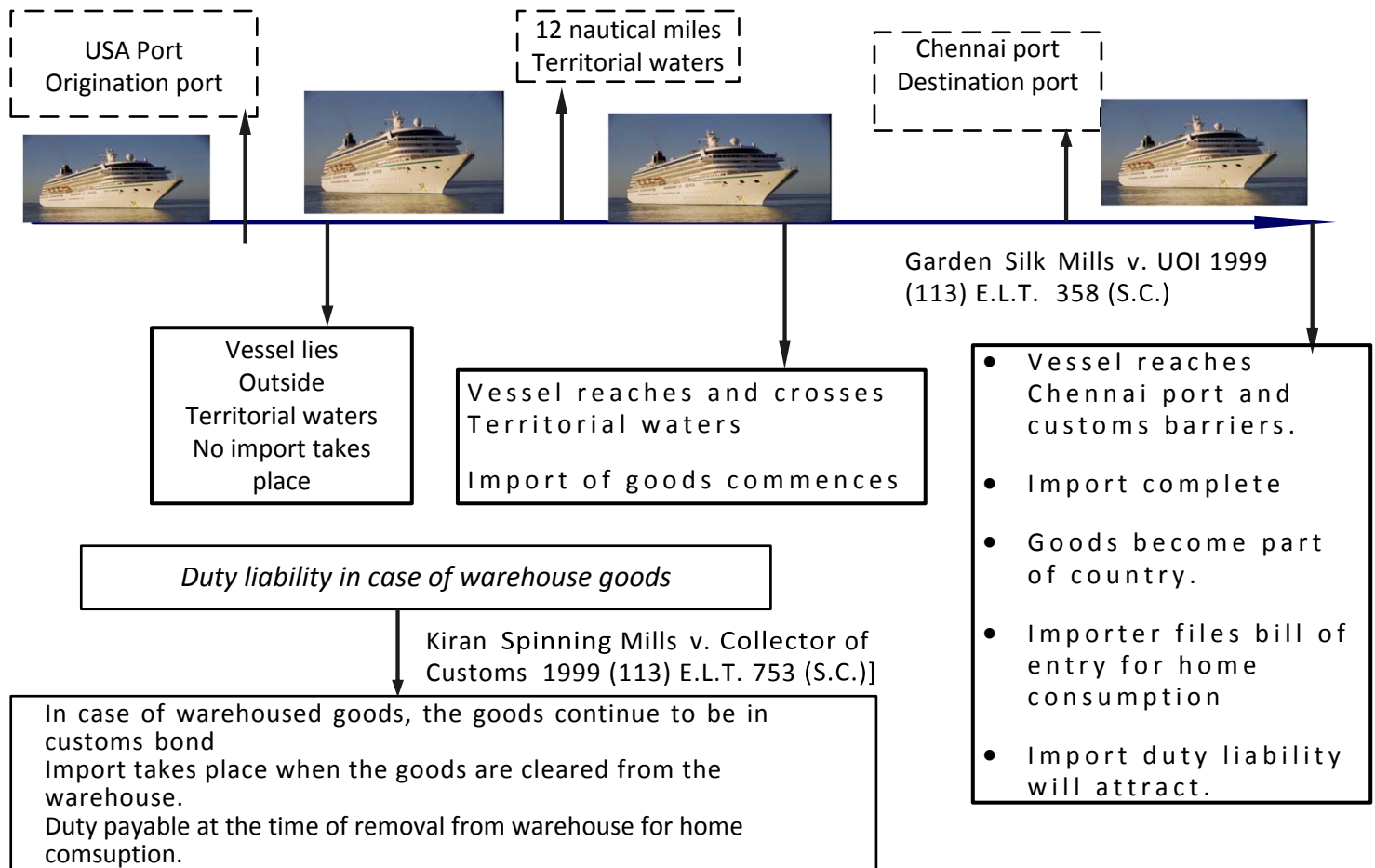
Customs Duty liability Sec 12

Sec 12 of customs provides customs duty shall be levied at such rates specified in Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into and exported from India. Duty payable on goods imported by government also.

India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. It was impossible to determine when exactly the vessel crossed the territorial waters limit. Hence taxable event was settled as below

Taxable event for Import goods

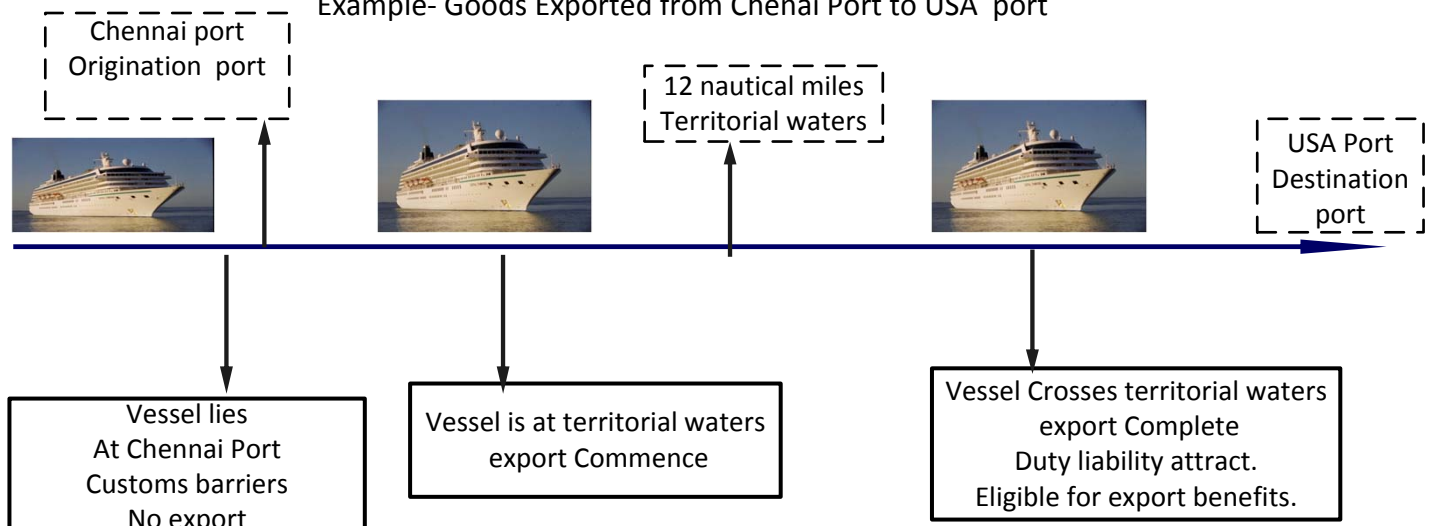
Example- Goods imported from USA Port to Chennai port



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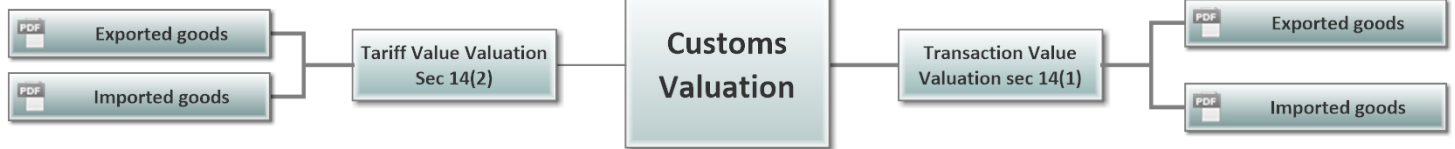
Taxable event for Export goods

Example- Goods Exported from Chennai Port to USA port



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Customs Valuation 1-



Tariff value is over riding of transaction value. If tariff values fixed, value should be as per tariff value

"Transaction value" Valuation Imported goods

Transaction value of imported goods read with Valuation rules

Cost and services to add Rule 10(1)

- (a)(i) Commission & Brokerage Paid in India
- (ii) Cost of Containers;
- (iii) Cost of Packing (*Labour or Material*).
- (b) Value of Assists [4 Types] Place of origin India or Outside India
 - i) Materials / Components / Parts contained in FP
 - ii) Tools/ Moulds / Dies / Similar Items :
 - iii) Materials consumed in production of imported goods:
 - iv) Eng. / Development/Art Work/ Design Work / Plans & Sketches (*Place of Origin: Must be Outside India*):
- (c) Royalties & License Fees in connection with sale except "*Charges for Right of Reproduction of Imported Goods in India*"
- (d) Subsequent Sale Proceeds – accruing to the seller [But "*Dividend Payments*" – Not Includible (*since payment of dividend can't be equated with accrual of sale proceeds subsequently*)]
- (e) All Other Payments made by buyer
 - Payment is made as a condition for sale of imported goods; &
 - Payment is made by buyer to the seller directly or to a third party to satisfy an obligation of seller

Rule 10: Transaction value = Price of goods sold at the time and place of importation + costs and services, assists (i.e CIF Value All costs up to destination port)

Rule 3: TV will be accepted only

1. No restrictions on use of goods (except law, geographical use restrictions) Restrictions which do not affect value of goods.
2. Price is not subject to condition where price cannot determine.
3. Buyer and seller not related to each other

TV in case of relative is accepted if (i) relationship does not influence price (ii) Importer demonstrates Price is close approximation to identical/similar goods /deductive value/computed value

Rule 12: When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

Cost and services to add Rule 10(2)

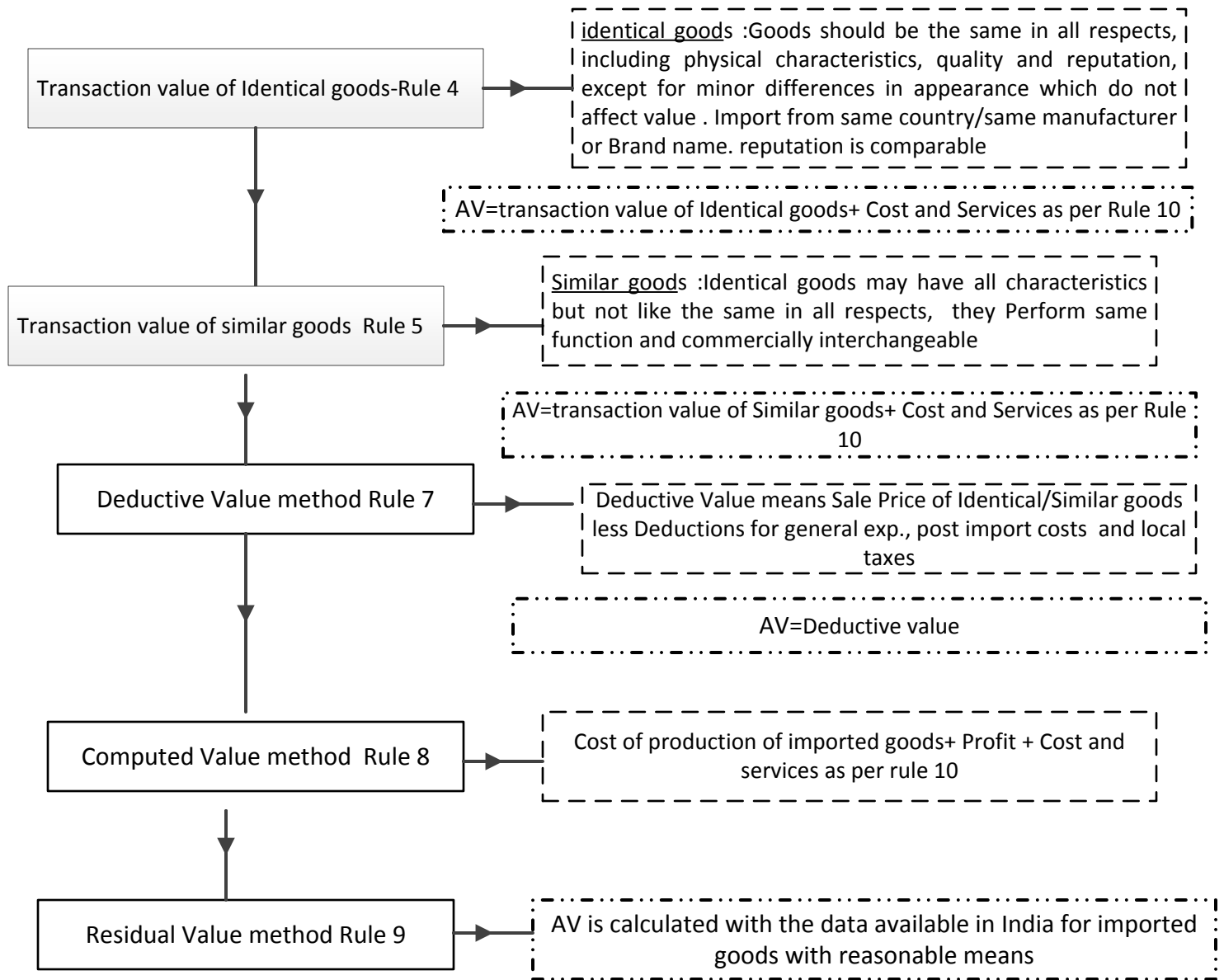
- (a) Cost of Transport:
Actual amount. If not ascertainable 20% of FOB
In case of Air, Actual restricted to 20% of FOB
- (b) Transit Insurance:
Actual amount, if Not ascertainable 1.125% of FOB
- (c) Landing Charges- flat 1% of CIF
- (d) demurrage charges

Cost and services to exclude not to add (post importation costs)

- (a) Charges for Construction, Erection, Assembly, Maintenance or Technical assistance, Undertaken after importation
- (b) The cost of transport after importation
- (c) Duties and taxes in India
- (d) Interest on Delayed Payments

Customs Valuation 2

If transaction value is not determinable under rule 3, the value shall be determined as per following rules in order



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Meaning of relative Rule 2 (2)

1.They are

- Officer/Director in each other's business
- Legally Recognized partner
- Employer & Employee;
- Members of same family;

2.Both of them

- Are controlled by a third person;
- Control a third person;
- ONE OF THEM**
- Control the other

3.Any person

- Owns/controls 5% or more of voting power/ shares in both of them;
-

Explanation:

- 1. Person include legal person
- 2.Sole Distributor/ Sole Selling Agent – shall not be treated as RP unless they fall under any of the above criteria

Customs Valuation 3

"Transaction value" Valuation Export goods

Transaction value of Export goods

: Transaction value = Price of goods sold at the time and place of Exportation (i.e. FOB Value) All costs up to origination port

T V in case of relative is accepted if (i) relation ship does not influence price

Rule 8: When proper officer has doubt about truth and accuracy of TV, he can ask information, still doubt can reject TV by giving opportunity

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If transaction value is not determinable under rule 3, the value shall be determined as per following rules in order

Transaction value of goods of kind and Quality -(Determination of Export Value by Comparison-Rule 4

Goods of kind and Quality -similar to that Identical goods/ similar goods

AV=transaction value of goods of kind and Quality-

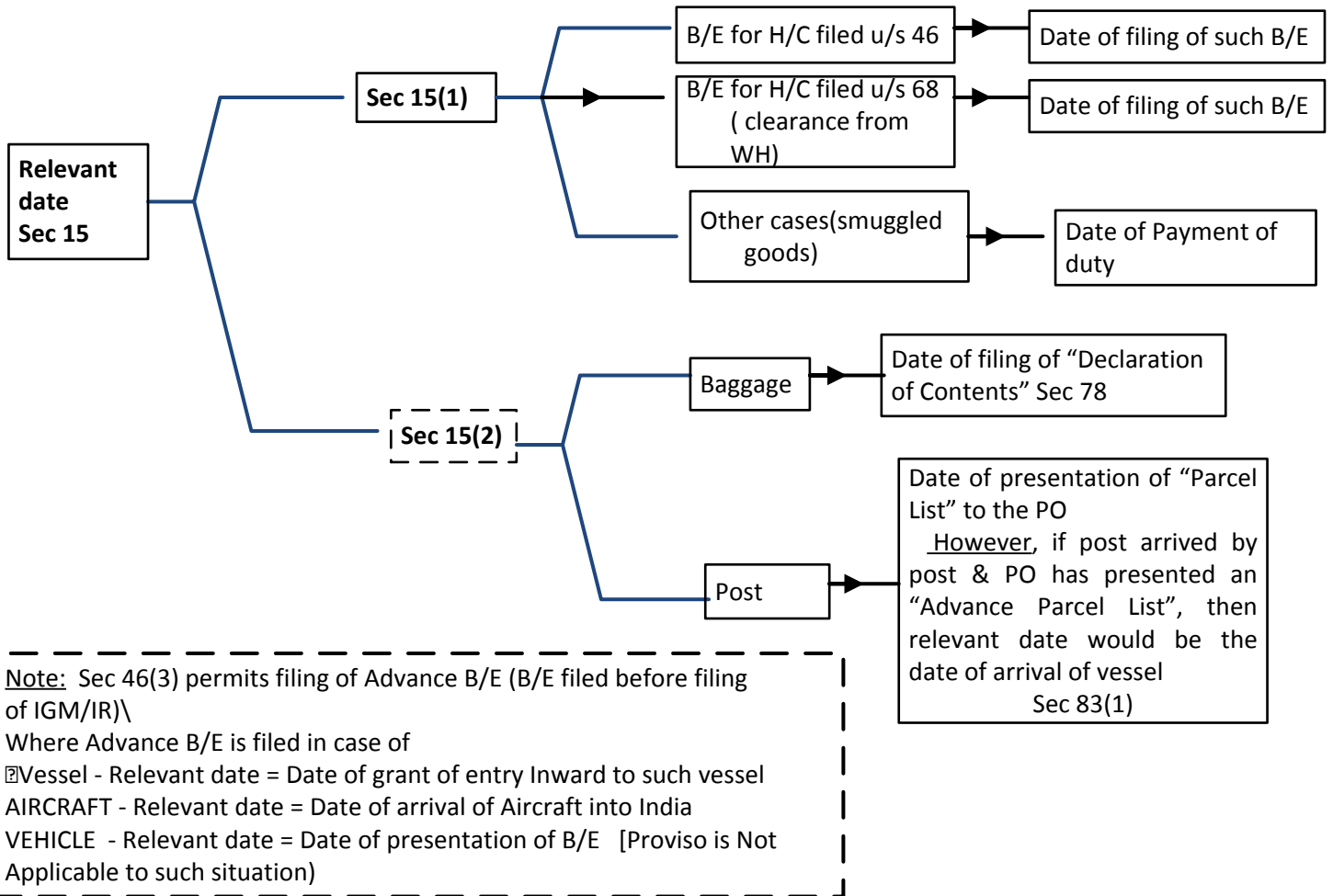
Computed Value method Rule 5

AV= Cost of production of export goods+ Design charges+ Profit

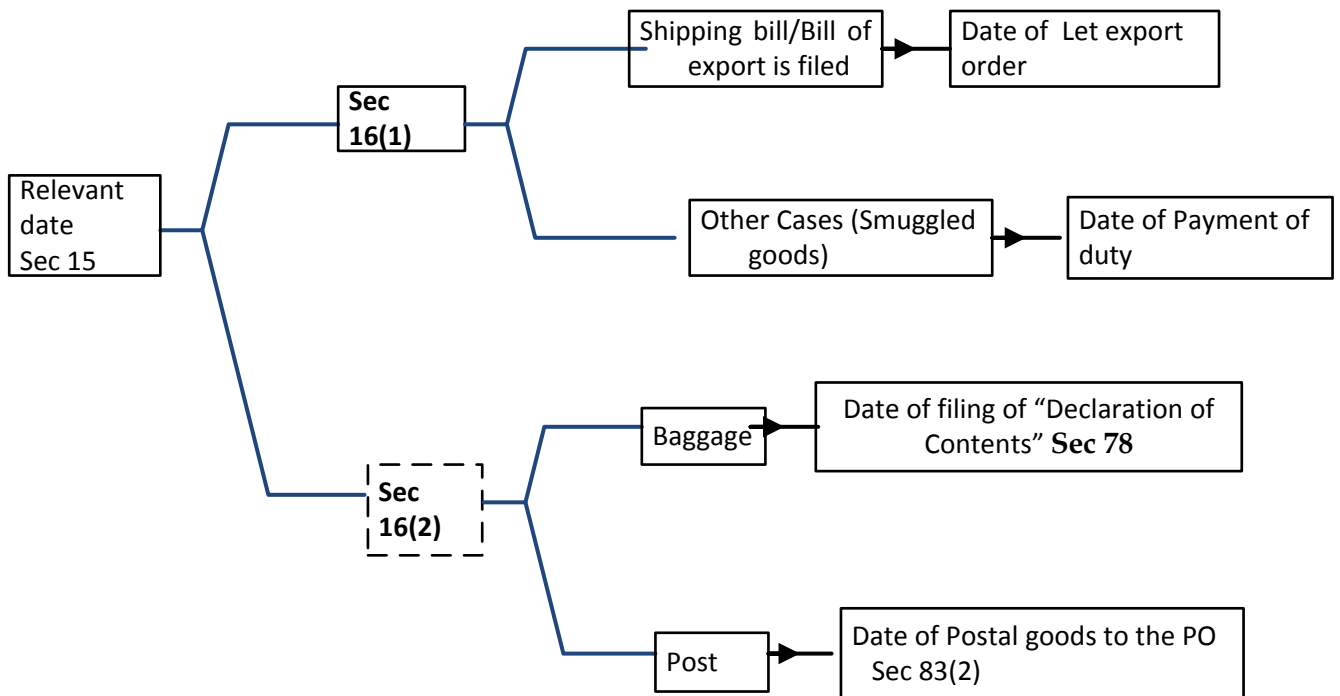
Residual Value method Rule 9

AV is calculated with the data available in India for export goods with reasonable means

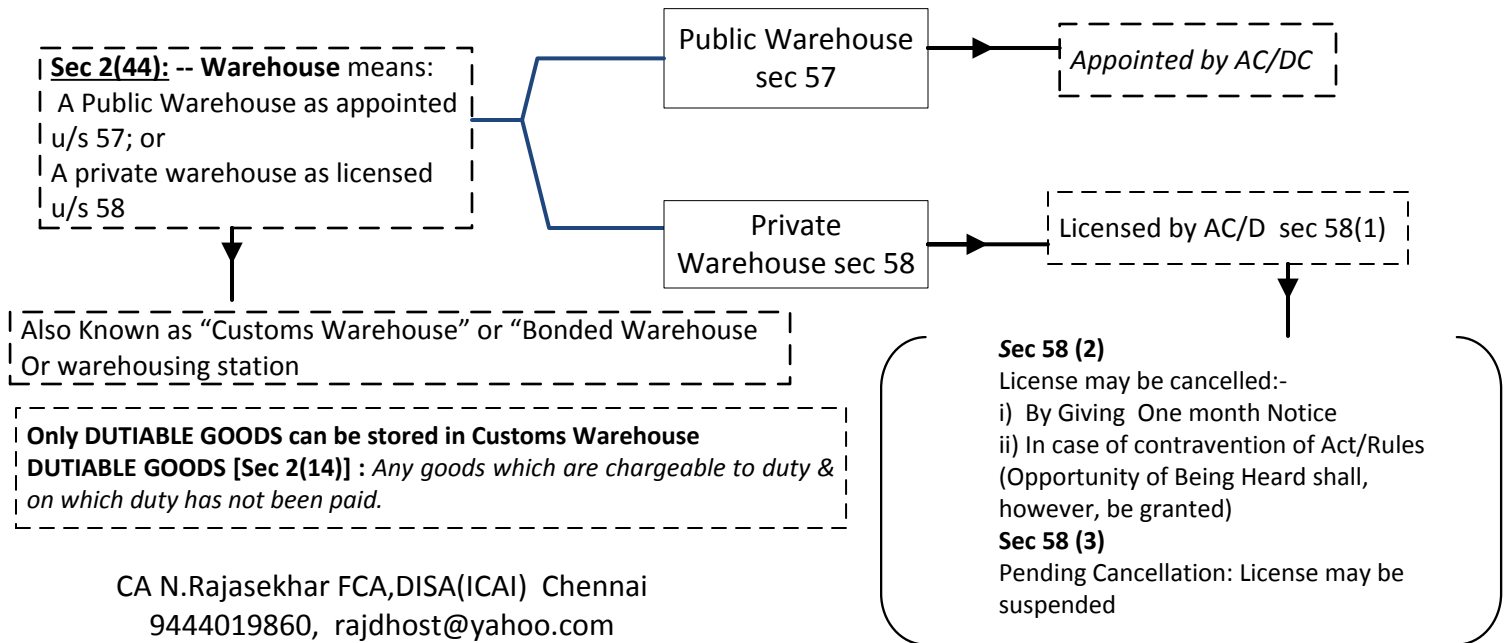
Relevant date for Imported Goods



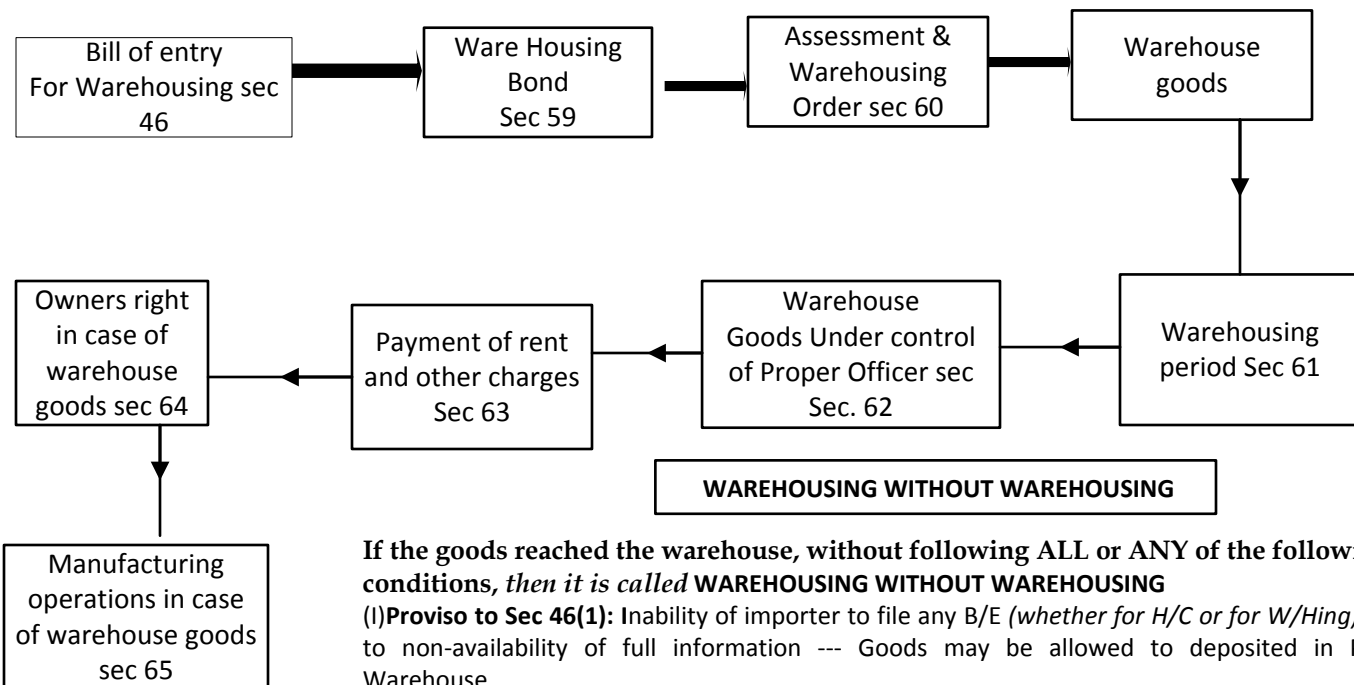
Relevant date for Export Goods



WAREHOUSING OF IMPORTED GOODS



WAREHOUSING Procedure

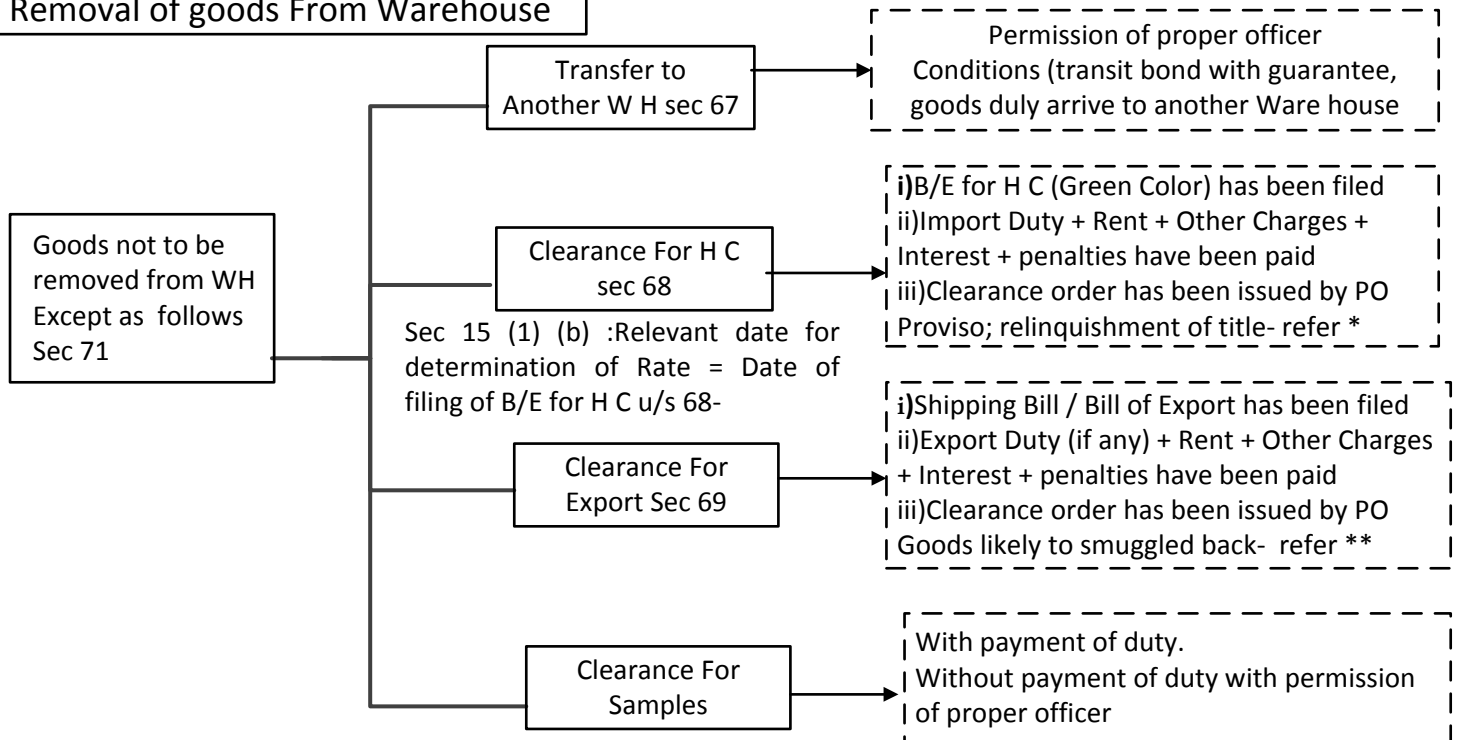


ii) **Sec 49:** B/E for H/C filed by importer –inability to clear the goods within a reasonable time – Goods may be allowed to be deposited in Warehouse (Public W/H or Private W/H) (Such goods may be dutiable or non-dutiable)

iii) **Sec 85:** B/E filed for Warehousing – Importer submitting a declaration that these are to be supplied as Stores – without payment of duty (i.e., to Foreign Going Vessel/Aircraft or Ship of Indian Navy) --- such stores may be warehoused without assessment of duty thereon (i.e., No Bond Execution).

WAREHOUSING OF IMPORTED GOODS-2

Removal of goods From Warehouse



* Relinquishment of title by owner of warehouse goods Proviso: to sec 68

Importer may relinquish his title to goods **Before passing of Clearance Order** for Home consumption-

Then, he shall not be liable to pay DUTY.. Title may be relinquished only upon payment of ware housing dues such as Rent, interest, penalty and other charges,) In respect of any goods where **offence has been committed** under customs Act or any other law, **relinquishment cannot be made.**

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** Goods likely to be smuggled back into India sec 68(2)

In case of Goods likely to be smuggled back into India – CG may by *Notification in official gazette* direct that:

--- Clearance without duty payment not permissible

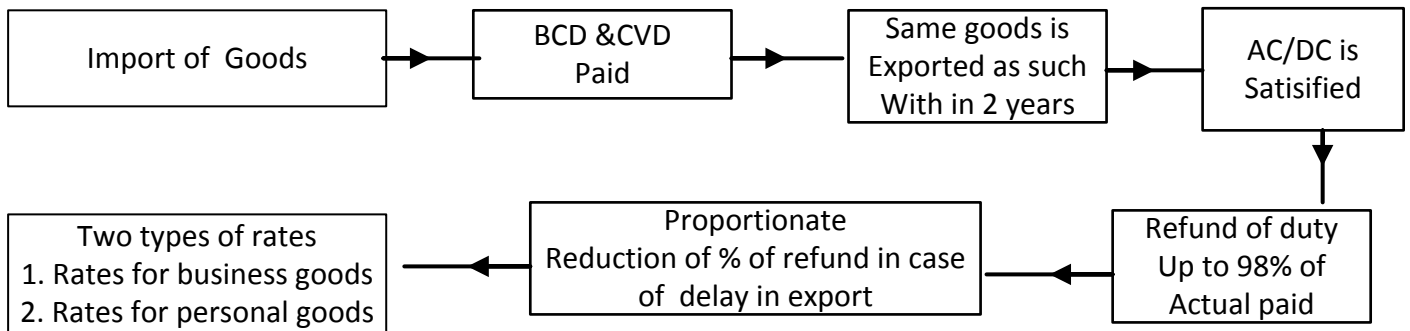
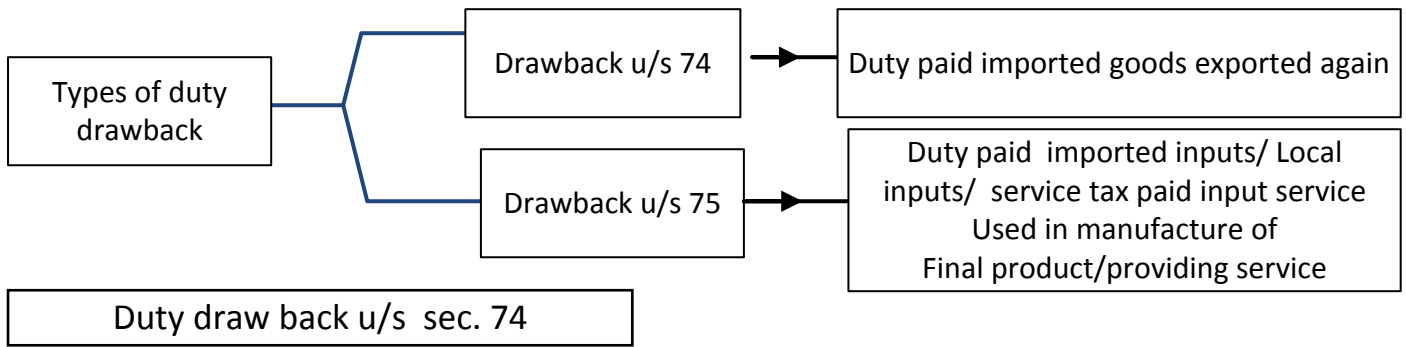
---Clearance is permissible only subject to fulfillment of specified conditions or restrictions.

Allowance in case of volatile goods [Section 70]

- If any warehoused goods at the time of delivery from a warehouse are found to be deficient in quantity on account of natural loss, the AC/DC may remit the duty on such deficiency.
- This section applies to such warehoused goods as notified by the Central Government, having regard to the volatility of the goods and the manner of their storage.

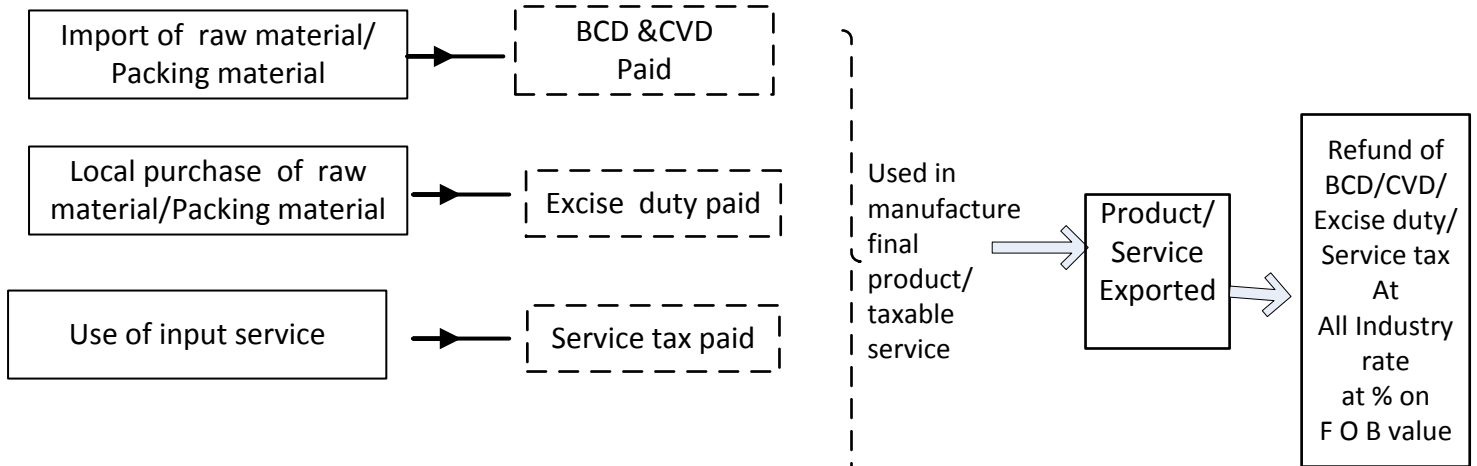
Duty Drawback

Duty draw back means refund of customs duty, and excise duty paid on inputs/material to exporter on export

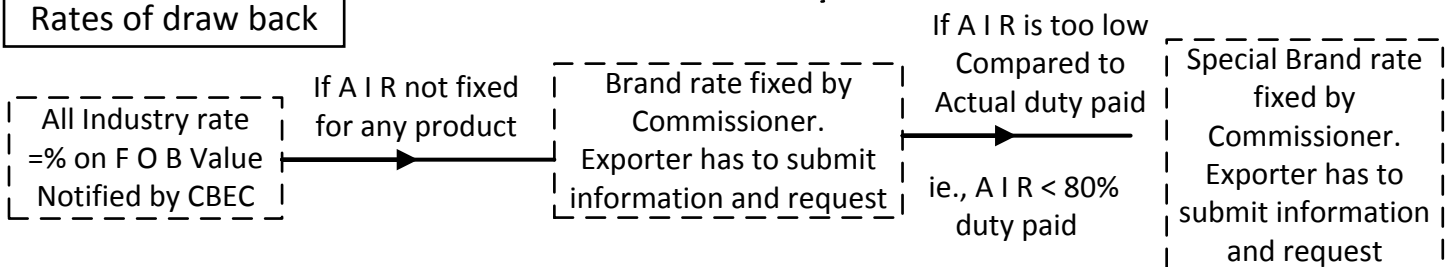


Duty draw back u/s sec. 75

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Rates of draw back



Comparison between Excise, Customs and Service Tax

Certain provisions in the Central Excise, Customs and Service Tax are similar. However, these similar provisions were not elaborated in the Customs and Service Tax. The comparison is given as under:

Comparison of classification under excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Classification rules	Rules under CETA, 1985 Rule 1 to 6	Rules 1 to 6 of the CTA. Same as excise	With the introduction of negative list, replacing taxable services, the question of classification does not arise. However, interpretation provides 1. reference to main service does not include reference to auxiliary service. 2. Prefer specific definition, than general definition 3. Classification of bundled services
Tariff headings HSN, tariff nos.	Similar in excise and customs. Eg: Chapter 39 - Plastics	Similar in excise and customs. Eg: Chapter 39 - Plastics	N/A

Comparison of valuation under excise and customs

Factor of comparison	Excise	Customs
Tariff valuation	Section 3(2), provisions similar to customs	Section 14(2), provisions similar to excise
MRP, Annual Capacity Production, Compound levy scheme	Sections 4A and 3A and Rule 15	No such valuations in customs. MRP Valuation will be considered for CVD payment.
Transaction value	Section 4 1. Price of goods sold at the time and place of removal 2. Buyer and seller not related to each other (Meaning of Relative - 4 persons are listed - Mutual interest, holding and subsidiary, Relative under Companies Act, relative who is distributor) 3. Price is sole consideration for sale	Section 14(1) and Valuation rules 1. Price of goods sold at the time and place of Importation/exportation 2. Buyer and seller not related to each other [Meaning of Relative - 8 persons are listed, For example Employee-, Employer, director, 5% holding etc. (these persons are not relatives under excise)] 3. Price is sole consideration for sale
Inclusions and exclusions in Transaction value	More or less same. For example, Packing, design, etc., Installation, discount, local taxes	More or less same. For example, Packing, design, etc., Installation, discount, local taxes
Valuation Rules	Applicable when value cannot be determined under transaction value - Section 4	Transaction value determined as per Section 14(1) read with valuation rules.

Comparison of demand, recovery of duty and tax in case of excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Demand	Section 11A: Not levied, Not paid, Short Levied, Short paid, Erroneously Refunded	Section 28: Not levied, Not paid, Short Levied, Short paid, Erroneously Refunded	Section 73 of the Finance Act (FA), 1994; Similar to Section 11A of the CE Act (instead of duty, it is tax)
Relevant Date	<ol style="list-style-type: none"> 1. Return filed: Date of filing 2. Return not filed: due date of Filing 3. Provisional assessment: date of Final assessment. 4. Erroneous refund: Date of refund 5. Other cases: Date of payment 	Non-levy: Date of clearance order Short-levy: Date of payment Provisional assessment: Date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment	Same as under Excise
Time Limit	Normal - 1 year Extended (Fraud cases) - 5 years, in case of fraud, collusion, wilful misstatement, suppression of facts, violation of law with intention to evade duty,	Normal - 1 year Extended - 5 years, in case of fraud, collusion, wilful misstatement, suppression of facts, violation of law with intention to evade duty,	Normal-18 months Extended Same as under Excise If Extended period notice is sustainable in appeal, the notice is treated as notice for normal period.(FA 2013)
Levy of interest on recovered duty/tax)	Section 11AA (@18% p.a.) From the first day after due date.	Section 28AA (@18% p.a.) From 1st day of the month succeeding the month in which duty was ought to be paid.	Section 75 Slab system 18% to 30% For small service providers up to taxable value of Rs. 60 lakhs in last financial year - concession by 3%
Penalty in fraud cases (similar provisions in all 3 Acts)	Section 11AC	Section 114A	Section 78
Deposit Amount collected in excess from buyer /customer (similar provisions in all 3 Acts)	Section 11D	Section 28B	Section 73A
Interest leviable on amount collected in excess	Section 11DD (@18% p.a.)	No Corresponding provision	Section 73B Similar to excise

Factor of comparison	Excise	Customs	Service tax
Provisional attachment of property (similar provisions in all 3 Acts)	Section 11DDA	Section 28BA. Applicable for the new section 28 AAA also	Section 73C

Factor of comparison	Excise	Customs	Service tax
Publication of names of persons	Section 9B, Section 37E	Section 135B, 154B	Section 73D
Recovery of amount due to government	Section 11 1. Adjustment in Refund 2. Attachment of movable/ immovable property 3. Recovery by issuing a Certificate to the collector 4. Recovery from successor	Section 142 Similar to excise	Section 87 Same as excise
Power to Grant exemption in public Interest (similar provisions in all 3 Acts)	Section 5A	Section 25	Section 93
Liability under the Act - first Charge (similar provisions in all 3 Acts)	Section 11E	Section 142A	Section 88

Comparison of refunds under excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Refund	Section 11B Time limit: 1 Year from Relevant date Exceptions to Doctrine of Unjust Enrichment: (a) Rebate on export of goods (b) Refund of CENVAT Credit; (c) Unspent balance of PLA; (d) ED paid and borne by manufacturer; (Cum-duty price) (e) ED paid and borne by buyer (f) ED paid and borne by notified persons	Section 27 Time limit: 1 year from the date of payment of duty or interest. Exceptions to Doctrine of Unjust Enrichment: (a) Duty Drawback on export of goods; (b) Customs duty (CD) to be paid and borne by importer/exporter; (c) CD paid and borne by buyer (d) CD paid and borne by notified persons (e) CD paid on imports made by an individual for his personal use (f) Refund of Export duty on re-import of goods (in situations covered under section 26);	Section 83 of the FA, 1994 provides that section 11B of the CE Act will apply
Interest on delayed refund	Section 11BB	Section 27A	Section 83 of the FA, 1994 provides that section 11BB of the CE Act will apply

Factor of comparison	Excise	Customs	Service tax
ED/ST to be shown separately on invoice	Section 12A	Section 28C (Though provision says, Customs duty will not be shown and charged in invoice like excise, service tax).	Section 83 of the FA, 1994 provides that section 12A of the CE Act will apply
Presumption that duty burden passed on Consumer	Section 12B	Section 28D	Section 83 of the FA, 1994 provides that section 12B of the CE Act will apply

Comparison of administration and appeals under excise, customs and service tax

Factor of comparison	Excise	Customs	Service tax
Administration Hierarchy	CBEC, Principal Chief Commissioner,, to Inspector	CBEC to DC/ AC; same as excise No Superintendent/ Inspector - Appraiser/ Examiner instead (Such other class of officer as appointed for the purpose of the Customs Act)	Excise Dept. will administer service tax
Appeal Hierarchy	CESTAT and Commissioner (Appeals)	CESTAT and Commissioner (Appeals)	CESTAT and Commissioner (Appeals)
Appeal to Commissioner (Appeals)	Sections 35 and 35A Forms EA-1 and EA-2 (Dept)	Sections 128 and 128A Forms CA-1 and CA-2 (Dept)	Section 85 Form ST-4
Appeals to CESTAT	Sections 35B, 35C and 35D Form EA-3, EA-4, EA-5 Exceptions: Order of 1. Goods lost in transit 2. Rebate on exports 3. Export of goods without payment of duty 4. Admissibility of CENVAT credit Revisionary Application to be made to the Central Govt. Sec 35 EE - Form EA-8	Sections 129A, 129B and 129C Form CA-3, CA-4, CA-5 Exceptions: Order of 1. Duty drawback 2. Baggage 3. Short landing of goods In above 3 cases Revisionary Application to be made to the Central Govt. sec 129 DD in Form CA-8	Section 86 Form ST-5, ST-6, ST-7 Exceptions: No corresponding provision.
Pre-deposit of duty in appeal	Sec 35 F	Sec 129F similar	Central excise sec 35 F is applicable
Power of CBEC to issue instructions	Sec 35 R		Central excise sec 35 R is applicable
Appeal to High court	Sec 35 G to K	Sec 130 to 130 D Similar	Central excise provisions Applicable

Factor of comparison	Excise	Customs	Service tax
Appeal to Supreme court	Sec 35 K, 35 M	Sec 130 E Similar	Central excise provisions Applicable

Comparison on settlement commission

Factor of comparison	Excise	Customs	Service tax
Person who can make application	Manufacturer/Registered person of a private warehouse	Importer/Exporter, any other person may in respect of a case	Person liable to pay service tax
Case	Section 31 Case means pending adjudication proceedings before CEO on the date of application When a tribunal, court, or any authority sends back proceedings to Adjudicating authority it is not a case	Section 127A Similar to excise Wherever CEO substitute Proper officer.	Settlement Commission provisions of Central excise is applicable to Service tax
Conditions for admissibility of settlement application	Section 32E (a) Applicant has filed returns showing production, clearance and duty paid; Exception available (b) SCN for recovery of duty has been issued by CEO; (c) Additional ED accepted by the applicant in his application should exceed Rs. 3,00,000. (d) Additional ED accepted has been deposited along with interest @18%; (e) Question involved is not to be related to "Classification of Goods"; (f) When the case is pending before tribunal/court - Application will not be accepted (g) Where seizure operation has been carried out and Excisable Goods/Books of Accounts/ other documents have been seized - Settlement Application shall be admissible only when made after expiry of 180 days of seizure	Section 127B (a) Applicant has filed Bill of Entry / Shipping Bill (b) to (g) similar to excise Wherever excise, substitute Customs duty Additional point: No settlement is possible in relation to: Section 123 Goods (smuggled goods) Goods in relation to which offence under NDPS (Narcotics, Drugs and Psychotropic Substances) Act has been committed	Where the word duty the word tax & where the word goods, the word service has to substitute.
Procedure after receipt of application (similar provisions in both the acts)	Section 32F	Section 127C Similar to Excise	
Powers of settlement commission (similar provisions in both the acts)	Sections 32G to 32L	Sections 127D to 127I Similar to Excise	
Order of settlement	Section 32M	Section 127J Similar to Excise	

Factor of comparison	Excise	Customs	Service tax
(similar provisions in both the acts)			

Comparison on Authority for Advance Ruling

Factor of comparison	Excise	Customs	Service tax
Activity	Section 23A “Activity” means production or manufacture of goods. and includes any new business of Production or manufacture proposed to be undertaken by the existing producer or manufacturer	Section 28E “Activity” means Import or Export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter	Section 96A “Activity” not defined, it usually means providing of service.
Applicant Similar provisions	<ul style="list-style-type: none"> i. Nonresident setup Jv with resident/ non resident ii. Resident setup Jv with Nonresident iii. Indian subsidiary of foreign holding iv. Company v. Indian public sector company vi. Private limited Co. 	Similar	Similar
Application for Advance Ruling	Section 23C Eligible issues on which Advance Ruling can be sought: <ul style="list-style-type: none"> a) Valuation of goods; b) Classification of goods; c) Applicability of Exemption notification; d) Applicability of Other Notifications; e) Admissibility of CENVAT Credit Of excise duty and service tax f) Determination of liability to pay ED 	Section 28H Eligible issues on which Advance Ruling can be sought: <ul style="list-style-type: none"> (a) to (d) & (f) similar (e) not applicable Substitute Customs duty for excise duty/ Service tax for Service	Section 96C Eligible issues on which Advance Ruling can be sought: <ul style="list-style-type: none"> (a) to (f) similar Substitute service for goods/ Service tax for Service.
Procedure on receipt of application	Section 23D Similar	Section 28I Similar	Section 96D Similar
Applicability of Advance Ruling	Section 23E Similar	Section 28J Similar	Section 96E Similar
Advance Ruling to be	Section 23F Similar	Section 28K Similar	Section 96F Similar

Factor of comparison	Excise	Customs	Service tax
void in certain circumstances			

Provisions of Central Excise Act, 1944 applicable to Service Tax

As per section 83 of the Finance Act, 1994, provisions of the following sections of the Central Excise Act, 1944 have been made applicable to service tax:

Excise section no.	Contents of the section	Parallel section no. in Customs
Sec 5A	Exemption notification scope of applicability from 06.08.2014	
9A(2)	Certain offences to be non-cognizable.	
9AA	Offences by companies.	
9B	Power of Court to publish name/ place of business, etc., of persons convicted	9B
9C	Presumption of culpable mental state	138A
9D	Relevancy of statements under certain circumstances	138B
9E	Application of section 562 of the Code of Criminal Procedure, 1898	9E
11B	Claim for refund of duty	27
11BB	Interest on delayed refunds	27A
11C	Power not to recover duty of excise not levied or short levied as a result of general practice	28A
12	Application of the provisions of Act No. 52 of 1962 to Central Excise Duties	N.A.
12A	Price of goods to indicate the amount of duty paid thereon	28C
12B	Presumption that the incidence of duty has been passed on to the buyer	28D
12C	Consumer Welfare Fund	2(21A) adopting definition in CE
12D	Utilisation of the Fund	N.A.
12E	Powers of Central Excise Officers	5
14	Power to summon persons to give evidence and produce documents in inquiries under this Act	108
15	Officers required to assist Central Excise Officers	151
15 A and 15 B	Annual return with specific information and penalty from 06.08.2014	
31,32, 32A to 32P	Settlement commission provisions	
33A	Adjudication procedure	122A
35F	Deposit, pending appeals, of duty demanded or penalty levied	129E
35FF	Interest on refund of pre-deposit if delayed beyond three months [section inserted vide Finance Act, 2008]	129EE

Excise section no.	Contents of the section	Parallel section no. in Customs
35G	Appeal to High Court	130
35H	Application to High Court	130A
35I	Power of High Court or Supreme Court to require statement to be amended	130B
35J	Case before High Court to be heard by not less than two judges	130C
35K	Decision of High Court or Supreme Court on the case stated	130D
35L	Appeal to the Supreme Court	130E
35M	Hearing before Supreme Court	130F
35N	Sums due to be paid notwithstanding reference, etc.	131
35O	Exclusion of time taken for copy	131A
35Q	Appearance by authorised representative	146A
35R	Appeal not to be filed in certain cases	35R
36	Definitions Appellate tribunal	131C
36A	Presumption as to documents in certain cases	139(i)
36B	Admissibility of micro-films, facsimile copies of documents and computer print outs as documents and as evidence	138C
37A	Delegation of Power	152
37B	Instructions to Central Excise Officers	151A
37C	Service of decisions, orders, summons, etc.	153
37D	Rounding off of duty, etc.	154A
38A	Savings clause – Amendments in law	159A
40	Protection of action taken under the Act	155