

# AMENDMENTS MADE BY THE FINANCE ACT, 2015 AND RELEVANT NOTIFICATION & CIRCULAR

## SECTION A: CENTRAL EXCISE

**(1) Rate of Basic excise duty:** 12.5% w.e.f. 1.3.2015. EC & SHEC shall not levied on Central Excise by virtue of Exemption Notification No. 14 & 15/2015

**(2) Section 3A:** The word 'factor' used in section 3A also includes 'factors'. Hence, the Central Government can specify more than one factor relevant to the production of goods notified u/s. 3A. [w.e.f. 1.3.2015, by the Finance Act, 2015]

### (3) SHOW CAUSE NOTICE

	Section 11A of the Central Excise Act, 1944	Section 73 of the Finance Act 1994	Section 28 of the Custom Act,1962
Time limit to serve Show cause Notice	<p>(i) The Central Excise Officer shall, within 1 year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.</p> <p>(ii) The above time limit shall be extended to 5 years in case of (a) fraud; or (b) collusion; or (c) any wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Act/rules intent to evade payment of duty.</p>	<p>(i) 18 months instead of 1 year. other provisions are same.</p>	<p>The proper office instead of Central Excise Office. Other provisions same as Section 11A.</p>
Period to be excluded	<p>Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of 1 year/ 5 years.</p>	<p>18 months instead of 1 year. other same</p>	<p>Same as section 11A.</p>
Deemed Show Cause Notice	<p>(1) After issue of notice any statement containing details of non/short payment etc. should be considered as deemed to be a service of show cause notice. Provided the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice(s).</p> <p>(2) Where SCN issued by applying extended period of limitation has not been sustained because of non establishment of fraud in any court, then the Central Excise Officer shall determine the duty of excise payable by such person for the period of 1 year, deeming as if the notice were issued for no fraud case.</p>	<p>Same provisions. in point (2) – 18 months instead of 1 year.</p>	<p>(1) similar to Excise  (2) No such provision.</p>

No Show cause -	<p>(a) In case of No fraud case – if the assessee Voluntary pays entire duty and Interest before issue SCN. [must inform to the Central Excise Officer of such payment in writing, and the officer shall not serve SCN and in case the amount is short paid then notice shall be served only for the balance amount and the period of one year shall be computed from the date of receipt of information]</p> <p><b>(b) where the duty declared in the return by the assessee has not been paid, then recovery procedures u/s. 11 starts without issuing SCN u/s. 11A. [w.e.f 14.5.2015]</b></p>	Same provisions – in point (b) section 87 instead of section 11.	<p>(a) Same as Excise</p> <p>(b) No such provision.</p> <p>(c) Where the amount due is less than ₹100.</p>
Time limit for completion of adjudication	<p>u/s. 11A(10), the Central Excise Officer shall, where it is possible, determine the amount of duty of excise not being in excess of the amount specified in the notice –</p> <p>(a) within 6 months from the date of notice [ in case of no fraud, collusion etc.;</p> <p>(b) within 1 year from the date of notice ( in case of fraud cases).</p>	Same provisions.	Same as Excise.
Quantum of Interest & penalty	Covered separately	Covered separately	Covered separately
Misc. point	<p>(i) Payment of interest is mandatory even if not mentioned in the adjudication order.</p> <p>(ii) The provisions of section 11A are also applicable for recovery of interest</p> <p>(iii) if the amount of duty is modified in any court then, interest and penalty shall be calculated on such modified amount and accordingly interest and penalty payable if any shall be calculated from the date of such order.</p>	<p>Same provisions but point (ii) is not there in service tax.</p>	<p>(i) Same as excise.</p> <p>(ii) and (iii) no such provisions.</p> <p>(iv) if the duty, interest and penalty has been paid in full, then all proceedings (except provisions of sections 135, 135A and 140) shall, be deemed to be conclusive as to the matters stated therein;</p>
Relevant date	(i) if return filed, then from the date of filing of such return <b>whether</b>	Point (i) to (v) – same as	(a) in a case where duty is not levied,

**return filed in time or not.**

(ii) in case return not filed- from the due date of return.

(iii) in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;

(iv) in case of provisional assessment - the date of adjustment of duty after the final assessment thereof;

(v) in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;

**(vi) in the case where only interest is to be recovered, the date of payment of duty to which such interest relates.**

Excise.

Point (vi) not in service tax.

or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be ;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest

**Following significant amendments has been made by the Finance Act, 2015 w.e.f 14.5.2015:**

(1) Section 11(5),(6) and (7) provides for reduction of penalty in case of captured fraud (i.e. fraud transactions are recorded in specified records) has been deleted to bring uniformity in all fraud cases whether or not transaction is recorded. Consequential amendments has been made in section 11AC.

(2) where non/short payment of duty is shown in returns, no SCN u/s. 11A will be send rather direct recovery proceedings will be initiated u/s. 11. [ newly inserted section 11(16)]

(3) the amended provisions of section 11A will be applicable for cases for which notice has been issued on or after 14.5.2015.

(4) Definition of relevant date has been amended to cover situation when return is not filed in due date and also provides relevant date where only interest is recovered.

<b>(4) INTEREST UNDER EXCISE, SERVICE TAX &amp; CUSTOMS</b>		
<b>SECTION 11AA (CENTRAL EXCISE)</b>	<b>SECTION 75 (SERVICE TAX)</b>	<b>SECTION 28AA (CUSTOMS)</b>
<p>(a) Rate – 18% p.a</p> <p>(b) No concessional rate.</p> <p>(c) interest can be waived - where,—</p> <p>(i) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B/Sec 151A; and</p> <p>(ii) such amount of duty is voluntarily paid in full, within 45 days from the date of issue of such order, without reserving any right to appeal against the said payment at any subsequent stage of such payment</p> <p>(d) Interest shall be calculated from the due date of payment of duty till the date of actual payment.</p>	<p><b>(a) Rate:</b></p> <p>For delay upto 6 months - 18% p.a</p> <p>For Next 6 months – 24% p.a</p> <p>Beyond 1 year – 30% p.a</p> <p><b>(b)</b> The concession of 3% on applicable rate is provided to assessee whose turnover does not exceed ₹ 60 lakh in preceding Financial year. [In such case the applicable rate = 15%/21%/27% as the case may be</p> <p><b>(c)</b> Interest cannot be waived.</p> <p><b>(d)</b> Interest shall be calculated after the expiry of due date of payment till the date of actual payment.</p>	<p><b>SAME AS CENTRAL EXCISE.</b></p> <p><b>But the period of interest shall be calculated from the first day of the month succeeding the month of due date of payment.</b></p>

#### **(5) PENALTY UNDER EXCISE/SERVICE TAX**

	<b>SECTION 76 AND SECTION 78 [SERVICE TAX]</b>	<b>SECTION 11AC [CENTRAL EXCISE]</b>	<b>SECTION 28 &amp; 114A [CUSTOMS]</b>
<b>NO FRAUD CASE</b>	<p><b>SECTION 76:</b></p> <p><b>(1) Maximum penalty – 10% of service tax.</b></p> <p>(In addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding 10% of the amount of such service tax)</p> <p><b>No penalty:</b> where service tax and interest is paid within a period of 30 days of the date of service of notice u/s. 73(1), no penalty shall be payable</p>	<p>penalty = upto 10% of the duty so determined or ₹ 5,000; whichever is higher.</p> <p>No penalty: same as service tax.</p> <p>Reduced penalty: same as service tax.</p>	<p>Provided that where notice u/s 28(1)(a) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, <u>has been paid in full within 30 days from the date of receipt of the notice, no penalty shall be levied and the</u></p>

	<p>and proceedings in respect of such service tax and interest shall be deemed to have been concluded;<i>[before adjudication]</i></p> <p><b><u>Penalty reduced to 25% of the penalty imposed in the order:</u></b> where service tax, interest and also the reduced penalty is paid within a period of 30 days of the date of receipt of the order of the Central Excise Officer determining the amount of service tax u/s. 73(2), the penalty payable shall be 25% of the penalty imposed in that order. <i>[after adjudication]</i></p> <p>(2) Where the amount of penalty is increased by the Commissioner (appeal), CESTAT/ any Court, then the benefit of reduced penalty will be available on such increased amount of penalty and the period of 30 days will be counted from the date of such order.</p>		<p>proceedings against such person or other persons to whom the said notice is served shall be deemed to be concluded. [proviso to section 28(2) w.e.f 14.5.2015].</p>
<p><b>FRAUD CASE</b></p> <p>where any duty/tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any willful mis-statement or suppression of facts, or</p>	<p><b>Section 78:</b></p> <p><b><u>(1) Penalty shall be 100% of the amount of service tax:</u></b></p> <p>(in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to 100% of the amount of such service tax)</p> <p><b><u>(2) Reduced penalty:</u></b></p> <p><b><u>(i) Penalty shall be 50% of the service tax:</u></b></p> <p>(where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011</p>	<p>Same as Service tax</p>	<p><b><u>Quantum of penalty [Section 114A]</u></b></p> <p><b>(1) Normally 100% of duty evaded.</b></p> <p><b>(2)</b> In case the duty, interest and reduced penalty are deposited within 30 days from the date of communication of the order : <b>25%</b> of the duty payable.</p> <p><b>(3) Section 28(5):</b> penalty reduced to <del>25%</del> 15% of</p>

<p>contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty</p>	<p>upto 14.05.2015 (both Days inclusive), the penalty shall be 50% of the service tax so determined.)</p> <p><b>(ii) Penalty shall be 15% of the service tax:</b> (where service tax, interest and reduced penalty is paid <b>within a period of 30 days of the date of service of notice</b> under the proviso to section 73(1), the penalty payable shall be 15% of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded.) – <b>before adjudication</b></p> <p><b>(ii) Penalty shall be 25% of the service tax:</b></p> <p>(where service tax, interest and reduced penalty is paid within a period of 30 days of the date of the date of receipt of the order of the Central Excise Officer determining the amount of service tax u/s. 73(2), the penalty payable shall be 25% of the service tax so determined.)</p> <p><b>- after adjudication</b></p> <p><b>(3)</b> Where the amount of service tax or penalty is increased by the Commissioner (appeal), CESTAT/ any Court, then the benefit of reduced penalty will be available on such increased amount of service tax and the period of 30 days will be counted from the date of such order.</p>		<p>duty if duty, interest and reduced penalty is paid within 30 days of receipt of the notice and inform the proper officer of such payment in writing.</p> <p><b>[w.e.f 14.5.2015]</b></p> <p>(3) The amount of penalty will increase or decrease if the duty amount is subsequently increased or decreased in appeals. In such a case the benefit of reduced penalty will be availed only when such increased duty, interest and penalty are deposited within 30 days of the determination of increased duty.</p>
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Explanation 1.— For the removal of doubts, it is hereby declared that—

(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before 14.5.2015 shall be governed by the amended penalty provision.

(ii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued but an order determining duty has not been passed before 14.5.2015, shall be eligible to closure of proceedings on payment of duty and interest (voluntary payment) or on payment of duty, interest and reduced penalty, subject to the condition that the payment of duty, interest and penalty, as the case may be, is made within 30 days from 14.05.2015. [under customs except provisions of sections 135, 135A and 140 all other proceedings deemed to be closed]

(iii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where an order determining duty under section 11A(10) is passed after the 14.05.15 shall be eligible to payment of reduced penalty under clause (b) or clause (e) of sub-section (1), subject to the condition that the payment of duty, interest and penalty is made within 30 days of the communication of the order.

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Summary of penalty provisions of Central Excise as amended by the Finance Act, 2015 w.e.f 14.5.2015

**No fraud cases:**

(1) No penalty if duty and interest is paid before issue of SCN or within 30 days of issue of SCN all proceedings in respect of said duty and interest shall be deemed to be concluded. Otherwise penalty @ 10% or ₹ 5,000, whichever is higher.

(2) However, the amount of penalty can be reduced by 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days of date of communication of adjudication order.

**Fraud cases:**

(1) Normal penalty: 100% of duty evaded.

(2) Reduced penalty:

(i) 15% of duty if duty, interest and reduced penalty is paid within 30 days of issue of SCN. **[all proceedings in respect of said duty, interest and penalty shall be deemed to be concluded]**

(ii) 25% of duty if duty, interest and reduced penalty is paid within 30 days of adjudication order

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(6) Section 80 of the Finance Act, 1994 is omitted which provides for waiver of penalty u/s 76 or 77, in a case of reasonable cause. Hence, w.e.f 14.05.2015 penalty under service tax cannot be waived.

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## CENVAT CREDIT RULES, 2004

**(7) Rule 5B: Following services are notified for claiming refund of CENVAT credit:**

**(1) Service portion of works contract service**

**(2) Renting or Hiring of passenger motor vehicle (where no abatement is claimed)**

~~(3) Manpower supply service or Security Service (since w.e.f. 1.4.2015, covered under full reverse charge, therefore provisions of rule 5B shall not be applicable) 60~~

[ Notification No. 15/2015]

**(8) Rule 6(3): option 1**

(a) Pay an amount equal of 6% of value of exempted goods and ~~6%~~ **7% of value of exempted services**. But in case of **transportation of goods or passengers by rail service pay 2% of value of exempted goods and services.**

(b) Claim total CENVAT credit of:

√ Input/ Input services used only for taxable goods/services.

√ Input/ Input services which are commonly used for both taxable & exempted goods and services.

(c) CENVAT credit of input/ input services used exclusively for exempted goods or services not allowed.

(d) Buyer cannot claim CENVAT credit of 6% of value of exempted goods & ~~6%~~ **7% of value of exempted services.**

**[7% for exempted service w.e.f 1.6.2015 vide Notification No. 14/2015, dated 19<sup>th</sup> May 2015]**

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**(9) Rule 6(6): The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case excisable goods removed without payment of duty are either -**

Ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. 1st October, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, in terms of the provisions of S.No.40A of the Table in notification No.12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated that 17th March, 2012. [Notification No. 21/2015, 7<sup>th</sup> Oct 2015]

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**(9) W.E.F 14.5.2015, PENALTY PROVISIONS OF RULE 15 IS ALIGN WITH THE SEC. 11AC/SEC. 78.**

**RULE 15: CONFISCATION AND PENALTY**

**(1) If any person takes or utilizes CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then**

(i) all such goods shall be liable to confiscation and

~~(ii) such person shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be or ₹ 2,000, whichever is greater.~~

(ii) such person shall be liable to a penalty **in terms of section 11AC(1)(a) or (b) of the Central Excise Act or section 76(1) of the Finance Act, as the case may be. – no fraud case**

**(2) In a case fraud the manufacturer or service provider shall also be liable for penalty u/s. 11AC(1) (c),(d) or (e) of the Central Excise Act. or u/s 78(1), as the case may be.**



(4) Any order under sub rule (1), (2) or (3) shall be issued by the Central Excise Officer following the principles of natural justice.

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## CENTRAL EXCISE RULES, 2002

### (10) RULE 25: CONFISCATION AND PENALTY

Subject to the provisions of section 11AC of the Act, any producer, manufacturer, registered person of a warehouse or an importer who issues an invoice on which CENVAT credit can be taken or a registered dealer shall be liable to a penalty not exceeding the amount of duty or 5000 whichever is greater, if the said person – [Notification 8/2015, w.e.f 14.5.2015]

- (a) Removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
- (b) Does not account for any excisable goods produced or manufactured or stored by him; or
- (c) Engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or
- (d) Contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty.

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### (11) SETTLEMENT COMMISSION

(1) **Section 31(c): "case"** means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made:

**However**, when any proceeding is referred back (in any appeal or revision, as the case may be) ~~omitted w.e.f. 14.5.15~~, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding within the meaning of this clause;

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#### (2) Section 32: Customs and Central Excise Settlement Commission

The settlement commission shall consist of a Chairman and many Vice-Chairmen and other members as the central govt. thinks fit and function within the department of the Central Govt. dealing with customs and central excise matters.

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#### (3) Section 32B

In the event of the occurrence of any vacancy in the office of the chairman by reason of his death, resignation or otherwise, the Vice-Chairman, or **the members (w.e.f. 14.5.15)** as the central Govt. may by notification authorize in this behalf, shall act as the Chairman until the date on which a new chairman, appointed in accordance with the provisions of this chapter to fill such vacancy, enters upon his office.

When the chairman is unable to discharge his functions owing to absence, illness or any other cause the Vice-Chairman, or **the members** as the central Govt. may by notification authorize in this behalf, shall discharge the functions of the Chairman until the date on which chairman resumes his duties.

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#### (4) Section 32k: Power of Settlement Commission To Grant Immunity From Prosecution And Penalty

The settlement commission may, if it is satisfied that any person who made application for settlement has co-operated with settlement commission and made full and true disclosure of his duty liability, grant immunity from penalty and prosecution after imposing conditions it my thinks fit.

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**(5)** Settlement commission has no jurisdiction to entertain the matters in relation to the goods specified u/s. 123 of the Customs Act, 1962 which includes Gold. Hence, settlement commission cannot entertain in respect of gold smuggling. [Shri Ram Niwas Verma (Delhi HC)]- on 1.10.2015 CBEC also clarified the same].

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### CLASSIFICATION

**(12) Circular No. 1008, Dated, 20.10.2015:** Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG).

**Whether exemption Notification No. 12/2012-Central Excise, dated 17.03.2012 covers part/components of Wind Operated Electricity Generators (WOEG).**

In the case of in case of M/s Gemini Instratech, dated 13th Aug 2015 the Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that the above parts (such as Tower, Nacelle, Rotor, blades, doors) may be treated as parts and components of wind operated electricity generators eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.

**(13) Circular No. 1007, dated 12.10.2015:** Coconut oil packed in retail packs of 50 ml, 100 ml and 200 ml and 500 ml would be classifiable as coconut oil (Heading NO. 1513) and not as hair oil (heading No. 3305). Based on Judgment of Capital Technologies(2015)(CESTAT).

[Earlier, CBEC circular No. 890, classified that edible coconut oils packed upto 200 gm shall be classified as hair oil, since appeal filed by Dept. rejected by SC, therefore the CBEC withdraw its Circular No. 890/2009]

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### REGISTRATION

**(14)** Registration not required for every manufacturing unit engaged in the manufacture of aluminium roofing panels (falling under tariff item 7610), if such roofing panels are consumed at the site of manufacture for execution of the project and the manufacturer of the goods has a centralized billing or accounting system in respect of such goods manufactured by different manufacturing units and opts for registering only the premises or office from where such centralized billing or accounting is done. [Notification No.17/2015]

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## Miscellaneous

(15) Section 37 of the Central Excise Act, 1944 empowers Central Government to frame various rules. W.e.f 14.5.2015, amendment has made under this section to fix minimum penalty under various rules from ₹ 2000 to ₹5000.

### GOODS MANUFACTURED BY 100% EOU BUT SOLD IN DTA

#### (16) Relevant amendments:

- (1) Exemption of EC and SHEC on Custom portion is withdrawn [Notification 16/2015]
- (2) EC & SHEC on Excise portion exempted from 1.3.2015.

**Question 1:** X Ltd. (a 100% EOU) manufactured goods and sold it to Y Ltd. (a manufacturer in DTA). The other details are as under –

- (1) Transaction value ₹ 12,00,000
- (2) Assessable Value under Customs ₹ 10,00,000
- (3) Basic customs duty 10%
- (4) Excise Duty 12.5%.
- (5) Rate of VAT 4% (NO VAT is actually paid due to exemption).

Compute Excise duty payable by X Ltd. and CENVAT Credit allowed to Y Ltd.

#### Solution to Question 1:

##### Computation of Excise duty payable by X Ltd.

	₹
(A) Assessable Value under Customs	10,00,000
(B) Basic customs Duty (50% Exempted) @ 5%	50,000
(C) Additional Duty of Customs u/s. 3(1) @ 12.5% on [A+B] i.e, 10,50,000	1,31,250
(D) EC & SHEC @ 3% on 1,81,250	5438
(E) Additional duty of customs u/s. 3(5) @4% on (A+B+C+D) i.e.	47,468
Excise duty (equal to Customs duty) [B+C+D+E]	<u>2,34,156</u>

##### Calculation of CENVAT Credit allowed to Y Ltd.

As per Rule 3(7)(a) of the CENVAT Credit rules, 2004, CENVAT credit to be allowed as under –

	₹
On basic customs duty – not allowed	NIL
On ADC 3(1) – allowed	1,31,250
On ADC 3(5) – allowed	<u>47,468</u>
	1,78,718

[From F.Y. 2015-16 the calculation of duty in case of movement of goods from 100% EOU to DTA has been aligned with normal custom duty calculation, subject to Exemption]

## SECTION B: CUSTOMS

### **(17) PENALTY FOR IMPORTATION OF GOODS [SEC. 112]**

While the improperly imported goods can be seized and confiscated under Section 111, the person responsible for this wrongful act can be penalized under Section 112 of the Customs Act, 1962.

Penalty under Section 112 of the Customs Act, 1962 may be imposed on any person who in relation to any goods does or omits to be any act of commission or omission, which would render such goods liable to confiscation under Section 111 of that Act. The quantum of penalty is as under.

Particulars	Quantum of Penalty Not Exceeding -
Prohibited goods	The value of goods or ₹ 5,000 whichever is greater.
Dutiable goods	The duty sought to be evaded or ₹5,000 whichever is greater. <b>[old provision]</b>  <b>W.e.f 14.05.2015:</b> 10% of duty sought to be evaded or ₹ 5000, whichever is higher and subject to section 114A. <b>Further,</b> where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined.
In case the value stated in Bill of Entry or Baggage Declaration is less than actual value	The difference between (actual value and declared value thereof) or ₹5,000 whichever is greater
In respect of goods that are prohibited and in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.	(The value of the goods) or (the difference between the actual value and the declared value thereof) or ₹5,000 whichever is greater
In the case of dutiable goods in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.	(The Duty sought to be evaded) or (the difference between the actual value and declared value) or ₹5,000 whichever is greater

### **(18) PENALTY FOR ATTEMPT TO EXPORT GOODS IMPROPERLY [SECTION 114]**

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty as follows -

(a) In case of prohibited goods, penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater.

(b) In the case of dutiable goods, other than prohibited goods, penalty not exceeding the sought to be evaded or ₹ 5000, whichever is the greater; **[old provision]**

**w.e.f 14.05.2015:** 10% of duty sought to be evaded or ₹ 5000, whichever is higher and subject to section 114A. **Further,** where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined.

(c) In the case of any other goods, penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

## SECTION C: SERVICE TAX

### (19) SECTION 66B: RATE OF SERVICE TAX

Period	Service Tax	EC&SHEC	Swachh Bharat Cess (SBC)	Effective Rate of Service Tax
From 1.4.2015 to 31.05.2015	12%	3%	NIL	12.36%
From 01.06.2015 to 14.11.2015	14%	Not applicable (subsumed in revised rate of service tax)		14%
From 15.11.2015 to 31.03.2016	14%	Not applicable	0.5 % on taxable value.	14.5%

All the above rates are relevant for exam depending on the date of point of taxation.

#### Notes:

(1) CALCULATION OF SBC ON COMPOSITE TAX RATE:  $\frac{\text{COMPOSITE RATE} \times 0.5}{14}$

**For example:** in case of air travel agent the composite rate of service tax is 0.7% of the basic fare in the case of domestic bookings. If the basic fare is ₹ 20,000, then Service tax to be paid ₹ 140 and SBC to be ₹ 5 i. e.  $[(140/14) \times 0.5]$ .

(2) Provisions of reverse charge equally applicable for SBC also.

(3) CENVAT credit cannot be utilised for payment of SBC. Credit is also not available on such payment.

(4) Swachh Bharat Cess shall not be leviable on services which are exempt from service tax or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

(5) SBC is calculated on taxable value [i.e after providing abatement]

(6) value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

### (20) SECTION 65B(44): DEFINITION OF SERVICE TAX

**Explanation 2 w.e.f 14.05.2015:** Following are however regarded as services and chargeable to tax :

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.;

**Section 65B (23A):** "foreman of chit fund" shall have the same meaning as is assigned to the term "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982;'

Section 65B(31A): "lottery distributor or selling agent" means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organised by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998;

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## **(21) What constitute Consideration for the purpose of Service Tax?**

Clause (a) of Explanation to Section 67, provides that "consideration" includes:-

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, **except in such circumstances, and subject to such conditions, as may be prescribed [Refer Rule 5];**

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, or, the discount received, [ i.e, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket] . **[Substituted by the Finance Act, 2015 w.e.f 14.05.2015]**

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## **(22) Negative List Section 66D**

### **(1) Manufacturing of Goods: services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption"**

"process amounting to manufacture or production of goods" means a process on which excise duty is leviable whether under Central Excise Act, 1944; or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or any process amounting to manufacture of ~~alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics~~ on which duties of excise are leviable under any State Act for the time being in force. [Section 65B(40)]

**Note: w.e.f 1.6.2015 services by way of carrying out any process amounting to manufacture of alcoholic liquor for human consumption shall be liable for service tax.**

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### **(2) Entertainment events/amusement facilities are omitted from Negative list from 1.6.2015. However, some specified items are covered under Mega exemption.**

~~"entertainment event" means an event or a performance which is intended to provide; recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme; [Section 65B(24)]~~ **omitted from 1.6.2015**

~~"amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided; [Section 65B(9)]~~ **omitted from 1.6.2015**

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### **(3) Activities of betting/gambling/lottery**

Betting, gambling or lottery shall not be taxable. However, auxiliary services used for organizing or promoting betting or gambling event.

For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in *Explanation 2* to clause (44) of section 65B- 1.6.2015

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(4) Any service provided to business entity by Government or local authority is outside the Negative list and therefore taxable from a date to be notified. Currently, **only support service is taxable.**

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(5) "Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder; [Section 65B (26A) newly inserted w.e.f 14.5.2015]

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**(23) Section 66F(1): Unless otherwise specified, reference to a main service shall not include reference to a service which is used for providing main service.**

**Illustration:** The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.

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## **(24) COMPOSITION SCHEME**

### **(1) Option to air Travel Agent**

In this case service tax is payable by the assessee as per the following option-

- i) **14%** on commission; or
- ii) **0.7%** of the basic fare in the case of domestic bookings, and
- iii) **1.4%** of the basic fare in the case of international bookings,

**[Before 1.6.2015, the rate was 12%, 0.6% and 1.2% as the case may be plus EC & SHEC]**

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**(2) Life insurance business:** An insurer carrying on life insurance business shall have the following option to pay Service tax –

- (i) @ **14%** on the risk premium;

Risk premium = Gross premium charged from a policy holder (-) amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

- (ii) In all other cases: [only if break up not known]

First year: @ **3.5%** of the premium charged from policy holder

Subsequent year: @ **1.75 %** of the premium charged from policy holder

**[Before 1.6.2015, the rate was 12%, 3% and 1.5% as the case may be plus EC and SHEC]**

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**(3) Rule 6(7C): Optional composition scheme for Distributor or Selling agent of lotteries.**

→ **Who can take the benefit:** The distributor or selling agents rendering the taxable service of promotion, marketing or organizing/ assisting in organizing lottery.

→ **Effective rate**

Where the guaranteed lottery prize payout is > 80%	₹ <b>8200</b> on every or part of ₹10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw.
Where the guaranteed lottery prize payout is ≤ 80%	₹ <b>12800</b> on every or part of ₹10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw.

[Before 1.6.2015, the rate was 7000 and 11,000, as the case may be plus EC and SHEC]

**(4) Money- changing services provided by a foreign exchange broker (including banks)**

The person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

Gross amount of currency exchanged[GACE]	Rate of service Tax
Upto ₹ 1, 00,000	0.14% or ₹ 35; higher
₹ 1, 00,001 to ₹ 10, 00,000	₹ 140 + 0.07% of GACE
Exceeding ₹ 10, 00,000	₹ 770 + 0.014% of GACE subject to maximum ₹ 7,000

[Before 1.6.2015, the rate was 0.12%, 0.06%, 0.012% and maximum 6000, as the case may be plus EC and SHEC]

**(25) MEGA EXEMPTION**

**(1) Exemption applicable from 1.04.2015**

- (i) Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;
- (ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;
- (iii) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;
- (iv) Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons

“Zoo” means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public but does not include a circus and an establishment of a licensed dealer in captive animals.



consisting of the exhibitor as one of its members;

(2)

**Exemption applicable from 1.6.2015**

Services by way of right to admission to,-

(i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;

(ii) recognised sporting event;

(iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than ₹ 500 per person.”.

“recognised sporting event” means any sporting event,-

(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;

(ii) covered under entry 11.

**(3) From 1.6.2015, job work processing in relation to alcoholic liquors for human consumption is liable to service tax.**

**(4) Services by the following persons in respective capacities – are exempt.**

(a) sub-broker or an authorised person to a stock broker;

(b) authorised person to a member of a commodity exchange;

~~(c) mutual fund agent to a mutual fund or asset management company;~~

~~(d) distributor to a mutual fund or asset management company;~~

~~(e) selling or marketing agent of lottery tickets to a distributor or a selling agent;~~

**[From 1.4.2015 services covered in point (c),(d) and (e) is taxable and covered under reverse charge]**

(f) selling agent or a distributor of SIM cards or recharge coupon vouchers;

**(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or [substituted by the following clauses from 21.10.2015]**

**w.e.f 21.10.2015:**

**(g) business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking companys rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding;**

***“ Basic Savings Bank Deposit Account means a Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto”***

**(ga) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (g);**

(gb) business facilitator or a business correspondent to an insurance company in a rural area; or”

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

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**(5) charitable activities includes advancement of Yoga.**

- advancement of religion or spirituality **or yoga**; [yoga inserted w.e.f 21.10.2015]

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## **(26) REVERSE CHARGE**

From a date to be notified by the Central Government, all services (except renting and services covered under section 66D(a)(i)/(ii)/(iii)] provided by government to business entity are under full reverse charge. [Currently, only support services are under reverse charge.

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**(27) Section 86 (w.e.f 14.05.2015):** in relation to matter of rebate under service tax no appeal can be filed to CESTAT rather it is filed for revision before central Govt. [ similar to excise]

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**(28) Rule 6(6A) of the Service Tax Rules, 1994:** Where the assessee does not pay self-assessment tax, the same shall be recoverable alongwith interest in the manner prescribed u/s. 87 of the Act. [ Omitted from 14.05.2015 and consequently section 73(1B) has been inserted]

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## **(29) OTHER EXEMPTION**

**(1) Notification No. 17/2015-Service Tax, dated 19.5.2015:** Taxable services provided by way of,

(i) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL); (ii) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to the power generating companies or plants,

under the Power System Development Fund Scheme of the Ministry of Power shall be exempted till 31.3.2017 from the whole of the service tax, subject to the satisfaction of prescribed conditions.

However, the exemption shall not be available if such Re-gasified Liquefied Natural Gas (RLNG) and Liquefied Natural Gas (LNG), is used for generation of electrical energy by captive generating plant as defined in clause (8) of section 2 of the Electricity Act, 2003:

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**(2) Notification No. 19/2015-Service Tax, dated 14.10.2015:** The service tax payable between 1.7.2012 to 13.10.2014, on the service provided by an Indian Bank or other entity acting as an agent to the MTSO (Money Transfer Service Operators) in relation to remittance of foreign currency from outside India to India, shall not be required to be paid. [by virtue of section 11C of the Central Excise Act,1944 read with Section 83 of the Finance Act, 1994]

**(30) Circular No.186/5/2015-ST, dated 5.10.2015:**

(1) A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. **Therefore**, if ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage etc. are provided by GTA in the ordinary course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on the entire amount and not only on transport charges.

(2) It is also clarified that transportation of goods by road by a GTA, in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as 'services of goods transport agency in relation to transportation of goods' for the purpose of abatement of 70%, so long as (a) the entire transportation of goods is by road; and (b) the GTA issues a consignment note, by whatever name called

**(31) Letter C. No. ST-20, dated 13.8.2015: NO service tax shall be levied on** Pick-up or the Home Deliveries of the food sold by the Restaurant. In the given case, the dominant nature of the transaction is that of sale and not service as the food is not served at the Restaurant and other element of service such as live entertainment, air conditioning, or personalized hospitality are also offered.

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**(32) UTILIZATION OF CENVAT CREDIT FOR DIFFERENT TYPES OF EXCISE DUTY**

**1. EC & SHEC on Excise duty/service Tax**

**Credit of EC and SHEC on inputs or capital goods or input service** received in the factory of manufacture of final product on or after the 1/3/2015 for excise or premises of service provider on or after 1/6/2015 for service tax can be utilized for payment of the basic excise duty/service tax. [For capital goods: balance 50% of goods received in 2014-15 also allowed]

Note: However, CBEC is yet to provide a clarification on utilization of old unutilised CENVAT Credit on EC and SHEC.

**2. Swachh Bharat Cess**

- (a) It is levied @ 0.5% on value of all taxable services w.e.f 15.11.2015.
- (b) With respect to Swachh Bharat Cess neither CENVAT Credit is available on it nor CENVAT Credit can be utilised for its payment.

**(33) Circular No. 1003/10/2015-CX, Dated 05.05.2015: Cenvat Credit in transit sale through registered/unregistered dealer/ registered importer**

Rule 11(2) has been amended with the intention to allow an additional facility for direct transport of goods from the manufacturer or the importer to the consignee where the consignee avails Cenvat Credit on the basis of the Cenvatable invoice issued by the registered dealer or the registered importer. This facility obviates the need for the goods to be brought to the premises of the registered importer or the registered dealer for subsequent transport of the goods to the consignee.

**Clarification on certain issues:**

Situation	Availability of CENVAT credit and procedures to be followed by the consigner and consignee
(i) Where a registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee.	Consignee can avail credit on the basis of invoice issued by the manufacturer or the registered importer.  Registered dealer shall not required to issue Cenvatable invoice but commercial invoice can be issued.
(ii) Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices for each sale in favour of the consignees for such individual sale	Same as above
(iii) Where a registered dealer negotiates sale by splitting a consignment procured from a manufacturer or a registered importer and issues Cenvatable invoices for each of the sale,	To save the time and transportation cost, the registered dealer now, does not required to bringing the goods to his godown, he should order for direct transport of consignment and accordingly, the

	consignee can claim Cenvat Credit in same manner as given above.
(iv) Where a un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee,	Credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. As the dealer is not registered, there is no question of issuing any Cenvatable invoice by him . Such dealers as in the past can continue to be un-registered.
(v) Where goods are sold by the registered importer to an end-user (say a manufacturer) who would avail credit on the basis of importer's invoice and the goods are transported directly from the port or warehouse at the port to the buyer's premises	For such movement the factum of such direct transport to the buyer's premises needs to be recorded in the invoice.

**(34) PROCEDURES AND CONDITIONS FOR EXPORT TO ALL COUNTRIES EXCEPT BHUTAN WITHOUT PAYMENT OF DUTY [Notification No. 42/2001]**

**Notification No. 23 /2015, dated 30.10.2015:**

One of the procedures is that the exporter shall takes all necessary steps including packages, seal the goods to gets the ready for dispatch. However, where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner or Chief Commissioner of Central Excise subject to safeguard as may be specified by him in the permission. The safeguards shall, inter-alia, include the following:-

- (i) method of verification of quantity and quality of goods including testing of goods where necessary at the place of removal or despatch and at the port of export or SEZ, where the goods are received;
- (ii) no remission of duty shall be allowed for loss of goods within transit;
- (iii) permission shall be given on case to case basis for a specified period not exceeding one year at a time and may be withdrawn in case of misuse; and
- (iv) any additional safeguards as may be specified .

**(35) Circular No. 1006/13/2015-CX, dated the 21<sup>th</sup> September,2015: Board circular should not be binding on departmental officer in the following cases-**

- (i) Board Circulars contrary to the judgements of Hon'ble Supreme Court should not be followed.
- (ii) The above direction would also apply to the judgements of Hon'ble High Court where Board has decided that no appeal would be filed on merit.

All pending cases decided after the date of the judgement would, conform to the law laid by the Hon'ble Supreme Court or High Court, as the case may be, irrespective of whether the circular has been rescinded or not.

**(36) Notification NO. 18/2015, 06.7.2015:**

**Use digital signature**

- (i) Only Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India shall be used.
- (ii) Must intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least 15 days in advance:-

1. name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
2. name of the Certifying Authority;
3. date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority:

However, in case of any change in the details submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, complete details shall be submitted afresh within 15 days of such change.

### **Maintaining and persevering records in e-form**

(i) Assessee who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.

(ii) Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

(iii) Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.

(iv) A Central Excise Officer, during an enquiry, investigation or audit, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.

### **(37) Guidelines for launching prosecution under the Central Excise and Service Tax**

**Circular No. 1009/16/2015-CX, dated the 23<sup>rd</sup> October, 2015**

<b><u>(1) Monetary Limit:</u></b>	<p>Prosecution should normally be launch if evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified u/s. 9(1) of the Central Excise Act, 1944 or u/s. 89(1) of the Finance Act, 1994 is equal to or more than <b>₹ 1 Crore.</b></p> <p>Notwithstanding the above limits, prosecution can be launched in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility.</p> <p>A company/assessee would be treated as habitually evading tax/duty or misusing Cenvat Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past 5 years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than <b>₹ 1 Crore.</b></p>
<b>Authority to sanction prosecution</b>	<p>The sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be required.</p> <p>In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the sanction of Principal Director General/ Director General, CEI is required.</p>

<p><b>(3) Procedure for sanction of prosecution</b></p>	<p>(i) Department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens rea (guilty mind) which would indicate his guilt.</p> <p>(ii) In the case of public limited companies, prosecution should be launched only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it and not against all directors.</p> <p>(iii) Prosecution should not be launched in cases of technical opinion regarding interpretation of law.</p> <p>(iv) Availability of adequate evidence and standard proof required in a criminal prosecution. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be sufficient to establish the fact for prosecution.</p> <p>(v) Decision on prosecution should be normally taken immediately on completion of the adjudication proceedings. However, Hon'ble Supreme Court of India in the case of Radheshyam Kejriwal [2011(266)ELT 294 (SC)] has <i>interalia</i>, observed the following :-</p> <p>(i) adjudication proceedings and criminal proceedings can be launched simultaneously;</p> <p>(ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution;</p> <p>(iii) adjudication proceedings and criminal proceedings are independent in nature to each other and</p> <p>(iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.”</p> <p>Therefore, prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.</p>
<p><b>Publication of names of persons convicted:</b></p>	<p>Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act,1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts.</p> <p>It is directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.</p>
<p><b>Compounding of offences</b></p>	<p>Section 9A(2) of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act,1994 provides for compounding of offences by the Principal Chief/ Chief Commissioner on payment of compounding amount.</p> <p>All persons against whom prosecution is initiated or contemplated should be informed in writing, the offer of compounding.</p>

**(38) Circular No. 1010/17/2015, 23.10.2015:** Arrest of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is equal to or more than ₹ 1 crores.

**(39) Circular No. 23/2015, 29.9.2015: Refund/Claim of Safeguard Duties as Duty Drawback**

(1) With respect to Safeguard Duties which are leviable under Section 8B or Section 8C of the Customs Tariff Act, 1975 read with Section 12 of the Customs Act, the Board clarifies that these are rebatable as Drawback in terms of Section 75 of the Customs Act. Since Safeguard Duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such Safeguard Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This would necessarily mean that drawback shall be admissible only where the inputs which suffered Safeguard Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

(2) Where imported goods subject to Safeguard Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties as part of total duties paid, subject to fulfilment of other conditions.

**(40) Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962 [Circular No.27/2015, dated 23.10.2015]**

**Threshold limit for launching prosecution and exceptions:**

**1. Baggage and Outright smuggling cases:**

Nature	Threshold limits
Cases involving unauthorized importation in baggage / cases under Transfer of Residence Rules	CIF value of the goods involved is ₹ 20 lakh or more;
Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Customs Act, 1962 or foreign currency	the value of offending goods is ₹ 20 lakh or more;

**2. Appraising Cases/ Commercial Frauds:**

Nature	Threshold limits
(i) In cases related to importation/exportation of trade goods (i.e. appraising cases) involving- (a) wilful mis-declaration in value/description; (b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962,	CIF/FOB value of the offending goods is ₹ 1 crore or more;
(ii) In cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962	if the amount of drawback or exemption from duty is ₹ 1 crore or more;

**3. Exceptions:**

(i) The above threshold limits would not apply in case of persons indulging habitually in such violations or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. provided



the cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit.

(ii) The threshold limits would also not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, launching of prosecution should be considered invariably, irrespective of value of offending goods involved.

(iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/ business trips etc.) detected at the time of departure back from India, exceeding the threshold limits of ₹ 20 lakh, if it is claimed that the currency has been legally acquired and brought into India but not declared inadvertently, prosecution need not be considered as a routine.

**(iv) Prosecutions should not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.**

#### **4. Stage for launching of prosecution:**

Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

Further, in following cases investigation may be completed in time bound manner preferably within **six months** and adjudication may be expedited to facilitate launching of prosecution.

(a) In case where arrest has been made during investigation (for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.

(b) In case where arrest has not been made but it relates to outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of goods is ₹ 20 lakh or more.

Further, if the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available. [ by virtue apex court decision in the case of Radheshyam Kejriwal [2011] ]

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#### **(41) Circular No.28/2015, dated 23.10.2015: Revised Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962**

While the Act does not specify any value limits for exercising the powers of arrest, it is clarified that arrest in respect of an offence, should be effected only in exceptional situations.

(1) Threshold limit of arrest increased: same as prosecution (As discussed above)

However, the threshold limit would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required, on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

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# LAST TERM AMENDMENTS

## RELEVANT NOTIFICATION & CIRCULARS ISSUED BETWEEN 1.11.2014 TO 30.04.2015

[Already discussed in the amendment class held for Nov 2015 Exam]

### SERVICE TAX

Notification/ Circular No.	CENVAT CREDIT ON INPUT SERVICE
Circular No. 999, dated 28.02.2015	<p>Determination of place of removal in case of export for the purpose of allowing CNEVAT credit on input service –</p> <p><b>(a) In case of direct export by manufacturer exporter:</b> the place of removal is the port/ICD/CFS where the shipping bill is filed.</p> <p><b>(b) In case of export by merchant exporter:</b> Generally the place of removal is the factory gate from where goods are cleared by the merchant exporter from the manufacturer. However, in depending upon the facts of the case, in some cases it may extends to the port/ICD/CFS where shipping bill is filed by the merchant exporter.</p>
	<b>ABATEMENTS</b>
Notification No. 8/2015, dated 01.03.2015	<p><b>Changes applicable from 1.04.2015</b></p> <p>(1) Transportation service by GTA, rail and vessel: Abatement 70% uniformly and CENVAT credit shall not be allowed in all cases. [<b>Common provisions for all</b>]</p> <p><b>(2) <u>Transport of passengers by air, with or without accompanied belongings</u> in</b></p> <p>(i) economy class: abatement 60%</p> <p><b>(ii) other than economy class: abatement 40%</b></p> <p>Condition: CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</p> <p><b>(iii) No abatement for service provided in relation to chit.</b></p>
	<b>REVERSE CHARGE</b>
Notification 5/2015, dated 1.03.2015 and Notification 7/2015, dated 1.03.2015	<p><b>Full reverse charge :-</b></p> <p><b>(i) <u>Aggregator Service:</u></b> in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator/his representative/person appointed by him shall be liable to pay service Tax.</p> <p><b>[newly inserted w.e.f 01.03.2015] – it is to be noted that aggregator is not the service receiver but he is liable to pay service, hence the scope of reverse charge is widened to any person who may or may not be service receiver.</b></p> <p><b><u>Provision in detail:</u></b> in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service shall be liable to pay service Tax:</p> <p>Provided that if the aggregator does not have a physical presence in the taxable territory,</p>

any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax;

Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.’

“aggregator” means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator.’ [ Rule 2(1)(aa) of the Service Tax Rules, 1994] for example **Uber, taxiForSure, OLA**

“brand name or trade name” means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person;’ – **Same meaning as given under Small Service Provider** [Rule 2(1)(bca) from 1.03.2015]

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**(ii) Mutual Fund:** in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company, then such mutual fund/ AMC shall be liable to pay service tax [**newly inserted w.e.f 01.04.2015**]

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**(iii) Lottery distribution:** in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, such distributor/ selling agent shall be liable to pay service tax [ **newly inserted w.e.f 01.04.2015**]

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**(iv) Manpower supply service:** W.e.f 1.04.2015, will fall under full reverse charge.[currently under partial Reverse charge]

#### REGISTRATION

Order No. 1/2015, dated 28.02.2015  
**w.e.f 1.03.2015: procedures of registration amended. Mostly similar to central excise. However, following are some significant changes-**  
(i) application for registration of single premises must be filed online and registration shall be granted within 2 days.  
(iii) downloaded certificate is sufficient, no requirement of signed copy.

#### INVOICE

Notification No. 5/2015, dated 1.3.2015  
**Authentication by digital signature:**  
(1) Any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature  
(2)The Board may, by notification, specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices. [Rule 4C of the Service Tax Rules, 1994 w.e.f 01.03.2015]

#### RECORDS

Notification No. 5/2015, dated 1.3.2015  
(1) Records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.  
(2) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records. [Rule 5 of the Service

**SEARCH AND SEIZURE**

Notification  
No. 23/2014,  
dated  
05.12.2014

After decision of Delhi High Court in the case of Travelite (India) that the power to conduct audit given in rule did not have statutory backing.

(a) Section 94(2) has been amended by the Finance Act (No. 2) 2014 for statutory backing of rule 5A

(b) rule 5A(2) has been substituted w.e.f 05.12.2014 which also empowers nominated Cost/chartered Accountant to call for record and audit for scrutiny purpose.

**Rule 5A(1):** An officer authorised by Commissioner in this behalf shall have access to any registered premises for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

**Rule 5A(2): w.e.f 5.12.2014:** Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-

- (i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;
  - (ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013; and
  - (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961,
- for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.”

Note: “registered premises” includes all premises or offices from where an assessee is providing taxable services.

(c) **Circular No.181, dated 10.12.2014** – clarified that rule 5A(2) has statutory backing of section 94(2)(k). Section 94(2)(k) empowers to make rules for “imposition, on persons liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be **verified**”. The word verified is very broad and includes audit by department.

**MISCELLANEOUS**

Notification  
No. 19/2014,  
dated  
25.08.2014

**Rule 12 of the Service Tax Rules, 1994:** From 1.10.2014, CBEC or the Chief Commissioner of Central Excise may issue instructions for any incidental or supplemental matters for the implementation of the provisions of the Finance Act, 1994.

**MEGA EXEMPTION**

Notification  
No. 6/ 2015,  
dated  
01.03.2015

**New exemption applicable from 1.04.2015**

(1) Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;

&  
Notification  
No. 12/ 2015,  
dated

(2) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;

30.04.2015

- (3) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;
- (4) Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;”
- (5) Services provided by way of transportation of a patient in an ambulance, other than Health care service [ **earlier exemption was allowed only to ambulance service provided by person involved in Health care service, now it is extended to any person providing ambulance service**]
- (6) Varishtha Pension BimaYojana sponsored by Government.
- (7) Insurance/pension scheme:** Following government sponsored insurance schemes are further exempted vide Notification No. 12/2015, dated 30.04.2015
- (a) Pradhan Mantri Suraksha Bima Yojna;
- (b) Pradhan Mantri Jeevan Jyoti Bima Yojana;
- (d) Pradhan Mantri Jan Dhan Yojana;
- (e) Atal Pension Yojana (APY).

**Exemption withdrawn or restricted w.e.f 01.4.2015**

- (1) Service provided in respective capacities by following person is now taxable under reverse charge.
- (a) mutual fund agent to a mutual fund or asset management company;
- (b) distributor to a mutual fund or asset management company;
- (c) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (2) Services by way of making telephone calls from -
- (i) departmentally run public telephone;
- (ii) guaranteed public telephone operating only for local calls; or
- (iii) free telephone at airport and hospital where no bills are being issued; [exemption withdrawn but not much of any practical implication]
- (3) **GTA, rail/vessel service w.r.t transportation of foodstuffs: exemption limited only to milk, salt and food grain including flours, pulses and rice. Now, transportation of tea, coffee, jaggery, sugar, edible oils are taxable.**  
[Note: transportation of agricultural produce will continue to exempt]
- (4) Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than one lakh rupees:
- Provided that the exemption shall not apply to service provided by such artist as a brand ambassador;
- [Now, for availing exemption a monetary limit is introduced, if charges for per performance is more than 1,00,000 then taxable]*
- (5) Services by way of construction, erection, commissioning, or installation of original works pertaining to **an airport, port shall be taxable. [Refer page 76]**
- (6) Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out,

	<p>repair, maintenance, renovation, or alteration of -</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;</p> <p>(f) a residential complex predominantly meant for self-use or the use of government employees etc. <b>shall be taxable. [ Refer page 75]</b></p>
	<b>OTHER EXEMPTIONS</b>
Notification No. 4/2015, dated 01.03.2015	<b>w.e.f 1.04.2015 amendments in exemption Notification 31/2012 as under</b> GTA service for transport of goods by road – i) from any CFS/ICD to port or airport or <b>land custom station</b> of exports; or ii) from the place of removal (Factory) to CFS/ICD or port or airport <b>land custom station</b> of export.
Notification 3/2015, dated 01.03.2015	w.e.f 01.03.2015 exemption granted vide Notification No. 42/2012 to Commission agent Located outside India for sale of exported goods has been withdrawn. <b>Since</b> , w.e.f 1.10.2014 after amendments made in Rule 9 of place of provisions of service Rules, the place of provisions of above service is in non-taxable territory, hence no need for exemption]
Notification No. 10 and 11, dated 8.04.2015	<b><u>SERVICE PROVIDED AGAINST MEIS AND SEIS DUTY CREDIT SCRIPS:</u></b> (1) The taxable services provided or agreed to be provided by a person located in taxable territory against MEIS and SEIS duty credit scrips, issued to an export shall be exempted. [MEIS - Merchandise Exports from India Scheme (Refer chapter FTP), SEIS: Service Exports from India Scheme (Refer chapter FTP)] – <b>Refer Note 2</b>

**Note 1: New Procedures of Registration [w.e.f 01.03.2015]** (1) Application can be filed only in online mode in [www.aces.gov.in](http://www.aces.gov.in). Application in FORM ST 1

(2) Quoting of PAN is compulsory. non-pan based registration not allowed except govt. department.

(3) email and phone no. mandatory

(4) Must quote Customs Registration No (BIN No), Import Export Code (IEC) Number, State Sales Tax /(VAT) Number, Central Sales Tax Number, Company Index Number (CIN), Service Tax Registration Number

**(5) Certificate of registration:** (i) For single premises is to be granted within 2 working days in **Form ST 2**. Registration Certificate can be downloaded from [www.aces.gov](http://www.aces.gov).

**(ii) Issue of Registration certificate for more than one premises:** The registration certificate is issued by the Superintendent of Central Excise within 7 days of making application in Form ST 2. If the registration certificate is not granted within such period, then the applicant shall be deemed to be registered.

It is also clarified that the time limit of 7 days from date of receipt of application shall be reckoned from the date the application for registration is complete in all respects.

**6) Submission of documents:** The applicant is required to submit a **self attested copy** of the following documents by **registered post/ Speed Post** to the concerned Division, **within 7 days** of filing the Form ST-1 online, for the purposes of verification:-

(i) Copy of the PAN Card of the proprietor or the legal entity registered.

(ii) Photograph and proof of identity of the person filing the application

(iii) Document to establish possession of the premises to be registered

*[such as proof of ownership, lease or rent agreement, allotment letter from Government, No Objection Certificate from the legal owner]*

(iv) Details of the main Bank Account.

(v) Memorandum/Articles of Association/List of Directors.

(vi) Authorisation by the Board of Directors/Partners/Proprietor for the person filing the application.

(vii) Business transaction numbers obtained from other Government departments or agencies

**7) Physical verification of premises:** Where the need for the verification of premises arises, the same will have to be authorised by an officer not below the rank of Additional /Joint Commissioner.

**8) Cancellation/revocation of registration:** The registration certificate may be revoked by the Deputy/Assistant Commissioner in any of the following situations, after giving the assessee an opportunity to represent against the proposed revocation and taking into consideration the reply received, if any:

(i) the premises are found to be non-existent or not in possession of the assessee.

(ii) no documents are received within 15 days of the date of filing the registration application.

(iii) the documents are found to be incomplete or incorrect in any respect.

**Note 2: SERVICE PROVIDED AGAINST MEIS AND SEIS DUTY CREDIT SCRIPS:**

The exemption shall be subject to the following conditions, namely:-

(1) that the conditions prescribed for claiming exemption from Basic custom duty, CVD and special CVD on goods imported into India against MEIS and SEIS duty credit scrips are complied and the said scrip has been registered with the Customs Authority;

(2) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;

(3) that the holder of the scrip, presents the scrip to the Customs Authority along with a letter and an invoice or challan or bill, issued by the service provider indicating details of his jurisdictional Central Excise Officer and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;

(4) that the Customs Authority, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(5) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(6) that the holder of the scrip presents the scrip debited by the Customs Authority within 30 days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, he shall pay such service tax along with applicable interest;

(7) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the Customs Authority, and keep a record of payment of such service tax and interest, if any;

(8) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(9) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

## CENTRAL EXCISE

### CENVAT CREDIT RULES, 2004

**Notification /  
Circular No.**

**Notification  
No. 6/2015,  
dated  
1.03.2015**

**Rule 4: Claim of CENVAT Credit**

- (1) Time limit of claiming Cenvat credit on inputs and input services extended from 6 months to 1 year from the date of Invoice. [Rule 4(1)&(7)] w.e.f 1.3.2015
- (2) Cenvat Credit allowed to the manufacturer even if the input and capital goods are not received in the factory of the manufacturer but received directly in the premises of the job worker. [Rule 4(2)] w.e.f 1.3.2015. [corresponding amendments in rule 11 of the central Excise rule]
- (3) Cenvat credit allowed if capital goods received back from Job worker within 2 years (extended from 180 days to 2 years). No such extension for inputs. [Rule 4(5)] w.e.f 1.3.2015 – **Note 1**
- (4) Claim of Cenvat Credit on input service under partial reverse charge: can claim from the date when service tax amount is paid to govt. and the condition that value of service must be paid to service provider has been deleted. [Rule 4(7)] [same provision for partial reverse charge and full reverse charge] – w.e.f 1.04.2015
- (5) Any amount payable to Government as per Rule 4 can be paid by utilising Cenvat credit. In case of non-payment amount can be recovered as per Rule 14. [Explanation (I) and (II) to Rule 4 w.e.f 1.3.2015]

**Rule 5 : Refund of Cenvat credit**

- (1) "export goods" means any goods which are to be taken out of India to a place outside India. [Definition provided under rule 5] w.e.f 1.3.2015. [points to be noted SEZ is a place outside India as per SEZ Act]

**Rule 6: Reversal of Cenvat credit**

- (1) Reversal of Cenvat credit under rule 6 also applicable if inputs and input services are used for non-excisable good. For the purpose of this rule exempted goods includes non-excisable goods also – Explanation 1 to rule 6(1). [now, treated at par with exempted service, because from the beginning exempted service includes non-taxable service under rule 6 ] – w.e.f 1.3.2015

**Exempted service Rule 2(e)**

- (1) Exempted service; (2) Services on which no service tax is leviable u/s. 66B; (3) Services on which abatement is claimed on the condition that CENVAT shall not be allowed.

**Exclude:** Services which is exported in terms of rule 6A

**Exempted goods Rule 2(d):** Exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes- (i) goods which are chargeable to "Nil" rate of duty , (ii) goods under notification No. 1/2011-CE, and (iii) goods under entries at serial numbers 67 and 128 of Notification No. 12/2012-CE.

“Explanation 1. – For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.



	<p>Explanation 2. – Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.”.</p> <p><b><u>Amendments relating to importer:</u></b>  <b>(1) record:</b> Importers required to maintain records same as first/second stage dealer. [Rule 9(4)]  <b>(2) restriction:</b> as per rule 12AAA shall also be applicable to registered importer. Similar amendments in rule 12CCC of the Central Excise Rules (page No. 97].</p> <p><b><u>Rule 14: recovery of Cenvat Credit: substituted w.e.f 1.3.2015</u></b>  (i) For cenvat credit wrongly taken but utilised –shall recovered as per sec. 11A/sec. 73 without any interest.  (ii) For credit wrongly taken and utilised or erroneously refunded; shall recovered as per sec. 11A/73 along with interest u/s. 11AA/sec. 75.</p>
<p><b>Circular No. 990, dated 19.11.2014</b></p>	<p>The limitation of availing Cenvat Credit within 6 months/ 1 year shall be application when credit is claimed for the first time and not for re- credit.</p> <p>The limit of claiming Cenvat Credit within 6 months (now 1 year) shall not apply when re-credit is taken of amount reversed as per rule 3(5B), rule 4(5)(a) and 3<sup>rd</sup> proviso (now 2<sup>nd</sup> proviso) to rule 4(7) – partial reverse charge.</p>
<p><b>Notification No. 8/2015, dated 1.03.2015</b></p>	<p style="text-align: center;"><b>CENTRAL EXCISE RULES, 2002</b></p> <p><b><u>Rule 8(4): Recovery of duty, interest &amp; penalty:</u></b>  The following shall be recovered as per section 11 and not u/s. 11A-  (i) duty assessed under rule 6 and shown in the return,  (ii) interest payable as per rule 8(3) and  (iii) Penalty payable as per rule 8(3A).</p> <p><b>This means that if the amount is shown in the return as payable but not paid then the recovery proceedings can be initiated without issue of SCN.</b></p>
<p><b>Notification No. 8/2015, dated 1.03.2015</b></p>	<p><b><u>e-form and digital signature:</u></b></p> <p><b><u>Rule 10: Daily stock account</u></b>  (a) The records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature. [ rule 10(4)]  (b) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records. [rule 10(5)]</p> <p><b><u>Rule 11: Issue of Invoice</u></b>  <b><u>Rule 11(8):</u></b> An invoice issued under this rule by a manufacturer may be authenticated by means of a digital signature:  Provided that where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter and self attested by the manufacturer shall be used for transport of goods.</p> <p><b><u>Rule 11(9):</u></b> The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee using digitally signed invoice.</p> <p><i>Explanation.</i> – For the purposes of rule 10 and this rule, the expressions, “authenticate”,</p>

	“digital signature” and “electronic form” shall have the respective meanings as assigned to them in the Information Technology Act, 2000.
<b>Notification No. 8/2015, dated 1.03.2015</b>	<p><b>Rule 11: Issue of Invoice</b></p> <p><b>(1) Contents of invoice in some special cases</b></p> <p>(i) when goods are directly sent to job-worker without bringing to factory of the manufacturer or premises of service provider, then invoice must contains details of job worker and such manufacturer/ service provider. [2<sup>nd</sup> proviso to rule 11(2)]</p> <p>(ii) when goods are sent to customer premises directly without bringing to registered dealer’s premises, then the invoice must contains details of both. [3<sup>rd</sup> proviso to rule 11(2)]</p> <p>(iii) when goods imported under the cover of bill of entry are directly send by importer to customer from the place of import/ port, then the importer must mentioned that in the invoice. [4<sup>th</sup> proviso to rule 11(2)]</p> <p><b>(2) The provisions of rule 11 shall also applicable to a registered importer who issue CENVATable invoice. [rule 11(7)]</b></p> <p>The provisions of Rule 11, relating the Invoices has also been made applicable to invoices issued by 1<sup>st</sup> stage and second stage Dealers and <b>an importer who issues an invoice on which CENVAT credit can be taken. [rule 11(7)]</b></p>
<b>Notification No. 8/2015, dated 1.03.2015</b>	<p><b>Fine payable for delay furnishing of return/ statement:</b></p> <p>Fine payable for delay filing of following return/ statement:</p> <p>(a) Return: ER 1, ER 2, ER 3 and ER 8.</p> <p>(b) Annual financial statement: ER 4</p> <p>(c) Annual installed capacity statement: ER 7</p> <p><b>Quantum of fine = ₹ 100 per day subject to a maximum of ₹ 20,000 for the period of delay in submission of each such return or statement. [newly inserted rule 12(6), rule 17(6)- for ER 2]</b></p>
<b>Notification No. 8/2015, dated 1.03.2015</b>	<p><b>Amendments related to registered importer:</b></p> <p>(i) Rule 12CCC: restriction also applicable</p> <p>(ii) provision of rule 22(2) and (3) regarding furnishing of list of records and required documents when called shall also applicable.</p> <p>(iii) penalty under rule 25 shall also applicable.</p>
<b>Notification No. 8/2015, dated 1.03.2015</b>	<p><b>Rule 18: Export procedures</b></p> <p>Explanation: “export”, with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.”</p> <p><b>Consequences of above amendments: rebate of excise under rule 18 shall not be applicable on supply of goods to 100% EOU.</b> However, CBEC clarified vide Circular No. 1001, dated 28.04.2015 that since, SEZ is a place outside India as per SEZ Act., therefore clearance of goods to SEZ shall continue to be regarded as export and hence, benefit of rule 18 of the Central Excise rule and rule 5 of the CENVAT Credit rules cannot be denied.</p>
	<p><b>REGISTRATION</b></p> <p>[Rule 9 of the Central Excise Rules, 2002]</p>
<b>Notification No. 7/2015, dated 01.03.2015</b>	<p><b>Registration procedures has been amendments – significant changes are as under –</b></p> <p>(a) application can be filed only in online mode</p> <p>(b) certificate of registration is to be granted within 2 working days</p> <p>(c) Verification of documents and premises can be done after the grant of registration.</p>

	<p>(d) email and phone no. mandatory</p> <p>(e) non-pan based registration not allowed except govt. department.</p> <p>(f) required to quote registration No. issued by other Govt. department such CST/VAT Reg no, IEC, CIN No., etc.</p> <p>(g) physical verification mandatory.</p> <p>(h) specific provisions for cancellation of registration</p>
	<b>ADVANCE RULING [SECTION 23A(C)(III)]</b>
<b>Notification No. 11/2015, dated 1.03.2015</b>	<p>Resident firm has been notified as class or category of resident who can apply for advance ruling.</p> <p>Explanation. - For the purposes of this notification,- “firm” shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 , and includes-</p> <p>(i) the limited liability partnership as defined in clause (n) of sub-section (1) of the section 2 of the Limited Liability Partnership Act, 2008 ; or</p> <p>(ii) limited liability partnership which has no company as its partner; or</p> <p>(iii) the sole proprietorship; or</p> <p>(iv) One Person Company.</p> <p><b>Note: similar amendments in Customs and Service tax.</b></p>
	<b>MISCELLANEOUS</b>
	<p>Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001</p> <p>To get the benefit under this rules, a manufacturer is required to issue letter of undertaking instead of executing a bond.</p> <p><b><u>Rule 3: Application by the manufacturer to obtain the benefit</u></b></p> <p>(1) A manufacturer who intends to receive subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-I to the jurisdictional Assistant Commissioner or the Deputy Commissioner.</p> <p>(2) The manufacturer shall make separate application in respect of each supplier of subject goods.</p> <p>(3) The manufacturer shall execute a general bond with surety or security.</p> <p><b>“Provided that it shall be sufficient to provide a letter of undertaking by a manufacturer against whom no show cause notice has been issued under sub-sections (4) or (5) of section 11A of Central Excise Act, 1944 or where no action is proposed under any notification issued in pursuance of rule 12CCC of Central Excise Rules, 2002 or rule 12AAA of CENVAT Credit Rules, 2004.(inserted w.e.f. 1.3.15)</b></p>
	<b>APPEALS &amp; REVISIONS</b>
<b>Circular No. 993, dated 05.01.2015</b>	<p>Clarification on requirement of pre-deposit in matter related to rebate, duty drawback and baggage under Customs:-</p> <p>(i) in case of first appeal file before commissioner (Appeal): pre-deposit required as per sec. 129E.</p> <p>(ii) In case of revision by Central Govt u/s. 129DD: pre-deposit shall not be required. As provisions of section 129E shall not applicable on sec. 129DD.</p>
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<b>Note 1: RULE 4(5)(A): CENVAT CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT TO A JOB WORKER [SUBSTITUTED W.E.F. 1/3/2015]</b>	

(i) **CENVAT credit in respect of inputs sent to a job worker:** The CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for –

- further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and

- it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the inputs or the products produced therefrom are received back by the manufacturer or the provider of output service, as the case may be, within **180 days** of their being sent from the factory or premises of the provider of output service, as the case may be:

(ii) **CENVAT credit in respect of capital goods sent to a job worker** the CENVAT credit on capital goods shall be allowed even if any capital goods as such are sent to a job worker for-

- further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and

- it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the capital goods are received back by the manufacturer or the provider of output service, as the case may be, within **two years** of their being so sent:

(iii) **where inputs/ capital goods are directly sent to Job-worker for the above prescribed purpose**

credit shall also be allowed even if any inputs/capital goods are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of **180 days/ 2 years** shall be counted from the date of receipt of the inputs/capital goods by the job worker;

(iv) **Reversal and re credit:** if the inputs or capital goods, as the case may be, are not received back within the time specified under sub-clause (i) or (ii), as the case may be, by the manufacturer or the provider of output service, the manufacturer or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods, as the case may be, by debiting the CENVAT credit or otherwise, but the manufacturer or the provider of output service may take the CENVAT credit again when the inputs or capital goods, as the case may be, are received back in the factory or in the premises of the provider of output service.

**Note 2: RULE 14: RECOVERY OF CENVAT CREDIT WRONGLY TAKEN OR ERRONEOUSLY REFUNDED [substituted w.e.f. 1.3.15]**

~~Where the CENVAT credit has been *taken and utilized* wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provision of section 11A and 11AA of the Excise Act or section 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.~~

(1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the

case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

(2) For the purposes of sub-rule (1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: -

- (i) the opening balance of the month has been utilised first;
- (ii) credit admissible in terms of these rules taken during the month has been utilised next;
- (iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.”

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**Note 3: NEW PROCEDURES OF REGISTRATION [APPLICABLE W.E.F 1.03.2015]**

Notification, No. 7/2015-Central Excise (N.T.):

(1) Application can be filed only in online mode in [www.aces.gov.in](http://www.aces.gov.in)

(2) Quoting of PAN is compulsory. non-pan based registration not allowed except govt. department.

(3) email and phone no. mandatory

(4) Must quote Customs Registration No (BIN No), Import Export Code (IEC) Number, State Sales Tax

/(VAT) Number, Central Sales Tax Number, Company Index Number (CIN), Service Tax Registration Number

(5) certificate of registration is to be granted within 2 working days. A Registration Certificate containing registration number shall be issued online and a printed copy of the Registration Certificate which was issued online through the website [www.aces.gov.in](http://www.aces.gov.in) shall be adequate proof of registration and the signature of the issuing authority is not required on the said Registration Certificate.

**6) Submission of documents:** The applicant shall tender self attested copies of the following documents at the time of verification of the premises:

(i) Plan of the factory premises;

(ii) Copy of the PAN Card of the proprietor or the legal entity registered;

(iii) Photograph and Proof of the identity of the applicant;

(iv) Documents to establish possession of the premises to be registered;

(v) Bank account details;

(vi) Memorandum or Articles of Association and List of Directors; and

(vii) Authorization by the Board of Directors or Partners or Proprietor for filing the application by a third party.

**7) Physical verification:** (i) The authorized officer shall verify the premises physically within seven days from the date of receipt of application through online. Any error must be rectified within 15 days failing which the registration shall stand cancelled after reasonable opportunity to the assessee.

(ii) On the physical verification of the premises, if it is found to be non-existent, the registration shall stand cancelled after reasonable opportunity to the assessee.

**7) Transfer of Business or acquisition of factory:** Where a registered person transfers his business to another person, the transferee shall get himself registered afresh. Where an applicant has acquired an old factory from a Bank or a Financial Institution, he shall get himself registered afresh.

**8) Change in the Constitution:** Where a registered person is a firm or a company or association of persons, then in the event of any change in the constitution of the firm leading to change in PAN, he shall get himself registered afresh. In other cases of change in constitution of business, where there is no change in PAN, the necessary amendment should be made within 30 days.

**9) De-registration:** Every registered person, who ceases to carry on the business for which he is registered, shall de-register himself by making an online application in the website [www.aces.gov.in](http://www.aces.gov.in), in the form specified in the website. Where there are no dues pending recovery from the assessee, application for de-registration shall be approved within 30 days.

**10) Cancellation of registration:** A registration certificate may be cancelled in any of the following situations, namely:—

(i) where on verification, the premises proposed to be registered is found to be non-existent;

(ii) where the assessee does not respond to request for rectification of error noticed during the verification of the premises within fifteen days of intimation;

(iii) where there is substantial mis-declaration in the application form; and

(iv) where the factory has closed and there are no dues pending against the assessee .” . .

## CUSTOMS

Notification/ Circular No	DUTY DRAWBACK
<b>Notification No. 109/2014, dated 17.11.2014</b>	w.e.f 22.11.2014, where claim has been made in rule 3 and rule 4, application for special brand rate shall not be allowed. [Amendments in rule 7]. Now, the exporter has to decide prior to export of goods whether to claim drawback under All industry rate or Special brand rate.
<b>Notification No. 20/2015, dated 10.02.2015</b>	<b>w.e.f 13.02.2015:</b> Duty drawback now can be allowed on rice falling under chapter 1006. [amendments in rule 3, rule 6(4) and rule 7(5) of the Customs, Central Excise and Service Tax Duty Drawback Rules, 1995]
	ADVANCE RULING
<b>Notification No. 27/2015, dated 01.32015</b>	Section 28EC(iii): Resident firm can apply for advance ruling. [same as Central excise)