

FOOD FOR THOUGHT

TAX & CONSTITUTION

Article 265:

Prohibits arbitrary collection of tax. It reads as:

"No tax shall be levied or collected except by authority of law."

Thus the Government may levy a tax only under the authority of the Constitution of India.

Article 245:

- *Parliament can make law for the whole or part of India.*
- *Legislature of State can make law for the whole or part of state.*



Article 246: Division of Power

The Constitution, in its Schedule VII, has enumerated the matters on which the Central Government and the State Government can make laws. Such matters are divided into three categories--

- List – I : Union List (It contains the matters in respect of which *only the CG* has the power of legislation) [Entry 82 to 97] E.g, Excise [84], Customs [83], Income tax [82].
- List – II : State List (It contains the matters in respect of which *only the SG* has the power of legislation) [Entry 45 to 63] E.g Sales tax [Entry 54].
- List – III: Concurrent List (It contains the matters in respect of which *both the CG & SG* have power of legislation). E.g, Education, security. **No Taxes are covered under this list.**

Article 270: (Revenue Sharing)

Mandatory sharing of Income tax revenue between Centre and States. [Corporation tax not to be shared]

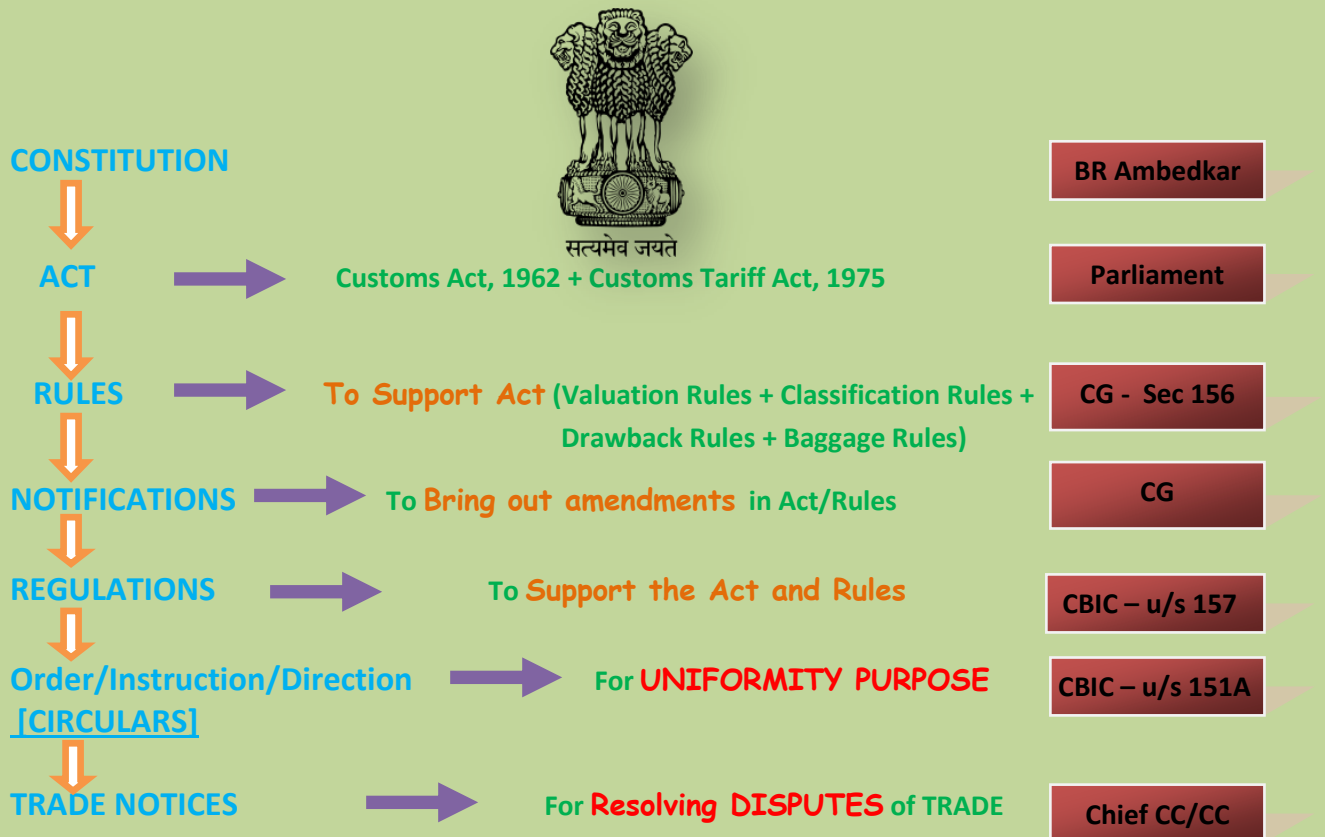
Article 368:

For Amending Constitution **2/3rd majority** is required.

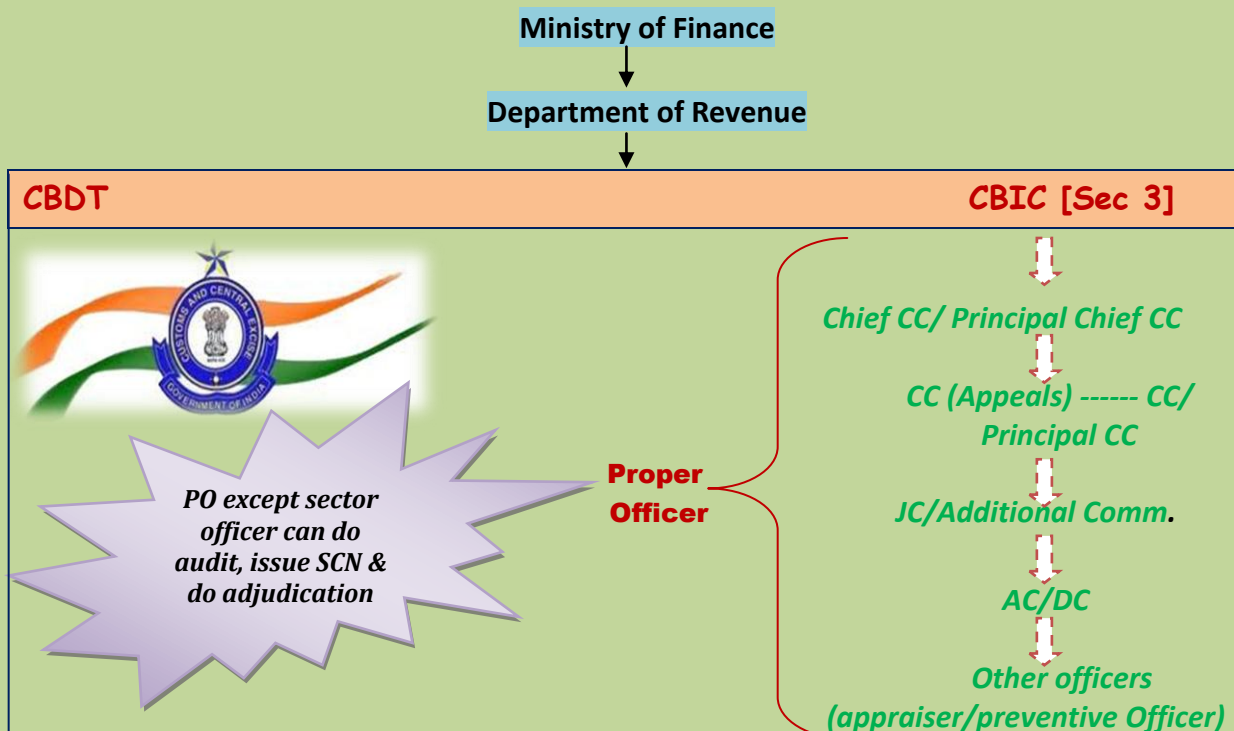
Article 370:

Any Act of Parliament applies to Jammu and Kashmir only with the **concurrence of the SG**.

TAX SYSTEM IN INDIA



ADMINISTRATION HIERARCHY



ACT

Customs Act, 1962

Customs Tariff Act, 1975

Provisions relating to:

- Levy – Sec 12 --- [Import/Export]
- Collection – Sec 47 + Rules

Ist ScheduleContains rate of
Import Duty**IInd Schedule**Contains rate of
Export Duty

Standard Rate

Preferential Rate

General Rate
(higher)For Imports from Most
Favoured Nations (Lower Rate)CTA Extract

Heading No. (8-digit code)	Description of Articles	Rate of Duty	
		Standard	Preferential
XX.XX.XX.XX	Product _____	___%	___%
YY.YY.YY.YY	Product _____	___%	___%

RULES**VALUATION
RULES**It determines the
value on which
duty is to be paid.**CLASSIFICATION
RULES**It determines the
rate of duty .**DRAWBACK
RULES**It determines the
amount of refund
on export.**BAGGAGE
RULES**It determines the
rate in case of
baggage import.**RULES & REGULATIONS**

	Rules Sec: 2(36)	Regulations Sec: 2(35)
Made By	Central Government	CBIC
Under Section	Sec 156	Sec 157
Consistent with	Provisions of the Act	Provisions of the Act and Rules

Notification Vs. Circular

- ⇒ Notifications are binding on all concerned person (assessee and department - PO).
- ⇒ Circulars are binding only on department - PO and not the assessee.

NOTIFICATION

A notification is issued by a government (central/ state) to exercise the power of a legislative enactment. It is generally issued by CG **to bring out amendments** Notifications have **full statutory force as if it is CONTAINED IN ACT** itself, and are **therefore binding on all** (department and assessee).

Effective date in case of Notification –

- If it is **mentioned in the notification** – from the **date mentioned** in it.
- If it is **not mentioned in the notification** – from the **date** on which it is **ISSUED** (applicable for notifications other than Exemption Notifications).

CIRCULAR

The circulars are issued by CBIC and are normally explanatory in nature. Circulars clarify the provisions of the Act and thus, bring out the real intention of the legislature. However, the provisions of any Act of the Parliament cannot be altered or contradicted or changed by the departmental circulars.

Sec 151A of Customs Act, 1962

The **Board** may, if it considers it necessary and expedient so to do for the **purpose of UNIFORMITY**

- ⇒ In **classification** of goods or
- ⇒ **With respect to levy of duties** of Customs on such goods **OR**
- ⇒ **for the implementation of any other provisions of this Act, or any rules for the time being in force**, in so far as they relate to any prohibition, restrictions or procedure for import or export

Issue orders, instructions and directions [Circulars] to the **PO** as it may deem fit. **And such officers** and all other officers employed in execution of this Act **shall** observe and follow such orders, instructions and directions [Circulars].

Provided that, no such orders, instructions, directions (**Circulars**) shall be issued –

- (a) So as to **require any PO to make a particular assessment** or dispose of a particular case in a particular manner; **OR**
- (b) So as **to interfere with the discretion of the CC (Appeals)** in the exercise of its Appellate functions.

RATAN MELTING & WIRE INDUSTRIES – 2008 – SC

- Circular is **binding on PO** but **not on the assessee, Appellant Authorities – CESTAT, HC, SC**.
- If Circular is in favour of assessee (beneficial to assessee), then the assessee can claim the benefit of the circular.
- **Department can take a stand against the Circular, if circular takes a contrary stand as compared to the decision of SC. (Voidable)**
- **Circular cannot be contrary to the provisions of the Act (i.e it is Void-ab-initio).**

Circular No. 1006/13/2015: Court decision prevails over Circular and instructions

- (1) Circular Contrary to SC judgement should not be followed.
- (2) Circular contrary to HC judgement:
- No appeal** filed against HC judgement – Circular *Should not be followed*
 - Appeal filed** – Case should be kept alive and to be *decided after judgement*.

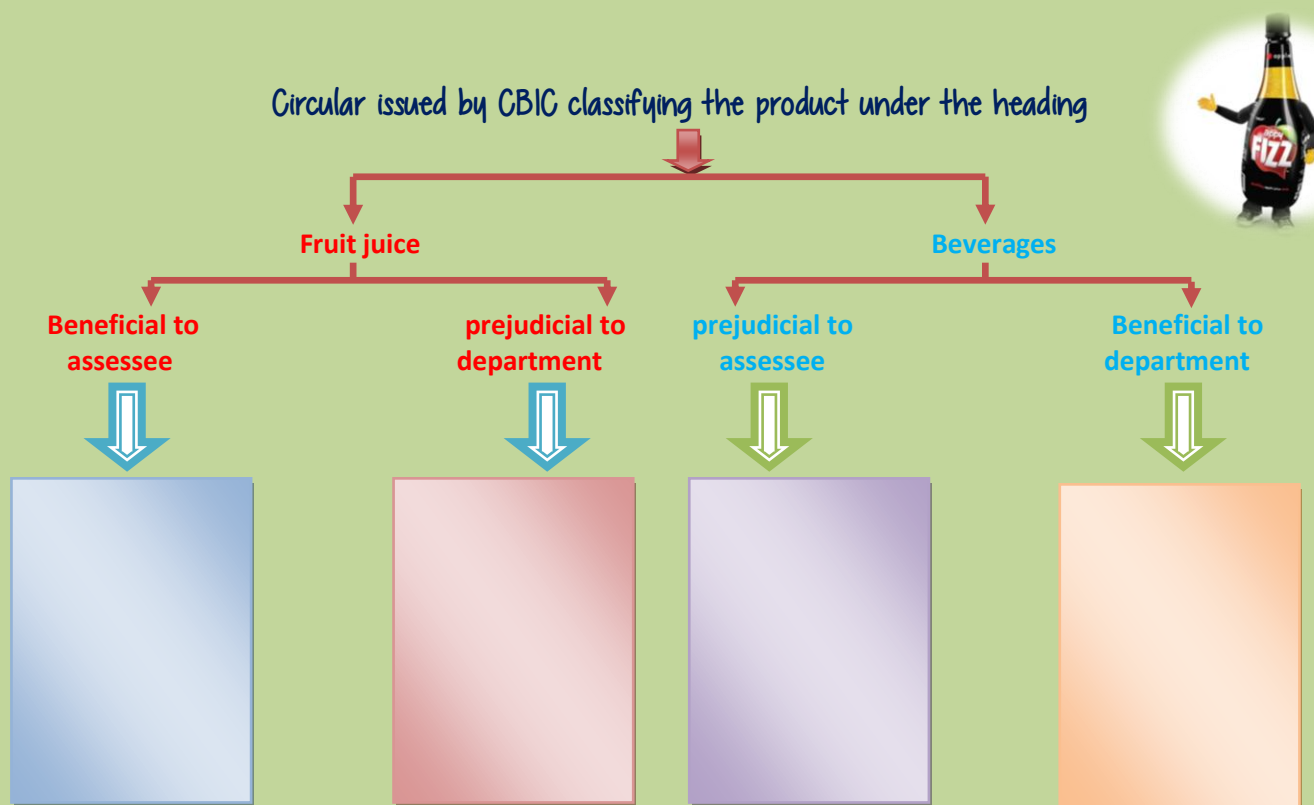
NET SESSION:

Situations	Circular Status
PO	Binding
Assessee	Not Binding
CESTAT, HC, SC	Not Binding
CC	Binding
CC (A)	Not Binding
Circular Contrary to Act	Void-ab-initio
Circular contrary to SC/HC decision	Voidable
Whether PO can challenge the Circular	Generally NO
When PO can challenge the circular if it is contrary to SC decision	YES

Example:

Assessee is importing a Product named Appy fizz. There are two classifications heading available:

Heading	Description of Heading	Product shall be Classification under
XX.XX	Fruit Juice	10%
YY.YY	Beverages	12%



HOW DOES AN IMPORTER WORK

IEC Code

Every person who wants to import or export is required to take Import Export Code



Arrival

On arrival he shall submit BOE + Bill of lading



Clearance

After submitting documents & paying taxes, PO issue Out of Charge Order and thereafter goods can be cleared



Audit/ Scrutiny of BOE

SCN (2 yrs/ 5yrs)
2 yrs – Bonafied case
5 yrs – 5 cases
(Fraud) **[Sec 28]**

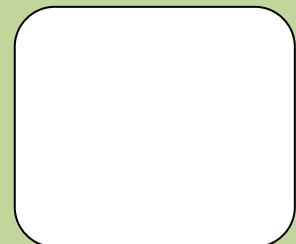
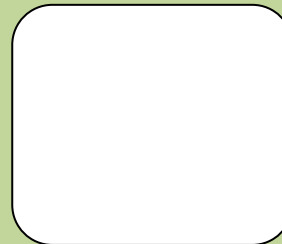
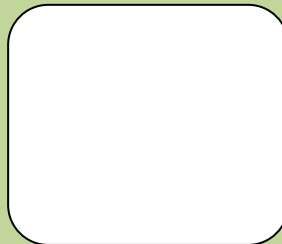
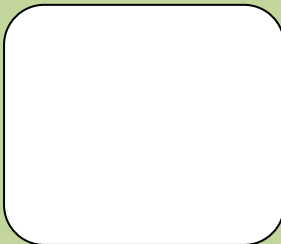
Categories of Goods (4)

PROHIBITED
GOODS

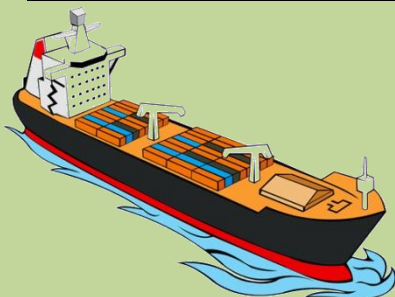
CANALISED
GOODS

RESTRICTED
GOODS

FREE
GOODS



Manner of Import/Export (3)



Commercial cargo

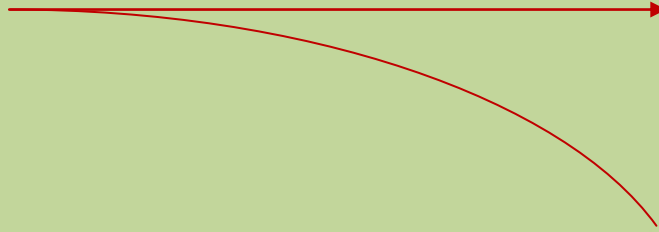


Import by Post/Courier

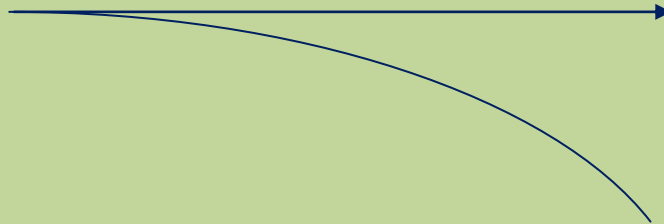


Baggage Route

Sale by Normal Assessee



Sale by 100% EOU



Sale by SEZ



PROVISIONAL COLLECTION OF TAXES ACT, 1931

Sec 3: Power to make declaration under this Act

Where a **bill** to be introduced in the parliament on behalf of government provides for

⇒ **IMPOSITION or INCREASE** of duty of

⇒ **CUSTOMS or EXCISE**

The CG may cause to be inserted in the bill a **DECLARATION** that is expedient in public interest that any provisions of the bill relating to imposition or increase shall have **IMMEDIATE EFFECT**.

Sec 4: The declaration shall be ceased to exist

- (a) When it comes into operation as an Act
- (b) CG directs it by notification in OZ.
- (c) on expiry of **75 days** (i.e it is to be approved within 75 days)