

Example:- If Mr. X owns two residential apartments in a residential complex and pays Rs. 15000/- (7500 x 2) per month as maintenance charges towards maintenance of each apartment to the RWA the exemption from GST shall be available to both apartment.

Issue 5:-

- 1) How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member?
- 2) Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?

Clarification:-

The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member.

Example, if the maintenance charges are Rs. 9000/- per month per member, *GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/-*

Education and Training Sector

Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India (Circular No. 117/36/2019 GST dt 11/10/2019)

Issue 1:-

Whether applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India.

Legal Provision:-

i) Under GST Law, vide Sl. No. 66, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST.

“Educational Institution” has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

ii) GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law

iii) Section 76 of the Merchant Shipping Act, 1958 (44 of 1958) provides for the certificates of competency to be held by the officers of ships.

It states that every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed.

Section 78 of the Act provides for several Grades of certificates of competency. Further, Section 79 provides that the Central Government or a person duly authorised by it shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78 of the Act.

iv) The Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 has been notified.

Under Rule 9 of the said Rules, the Director General of Shipping is empowered to designate assessment centres. Further the provisions of sub- rules (6), (7) and (8) of the Rule 4 of the said Rules, empowers the Director General of Shipping, to approve

(i) the training course,

(ii) training, examination and assessment programme, and

(iii) approved training institute etc.

Clarification:-

From the above discussion, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014.

Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66.



CHAPTER - 15

TAX INVOICE

Debit Note & Credit Note

Section 31(3) - Tax Invoice

QR Code:- Tax Invoice shall have quick response (QR) code Newly inserted by N/N 31/2019
CT dt 20/06/2019

Where the value of the goods or services or both supplied is less than ₹200 :-

As per sec 31(3)(b) of CGST Act, A registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than ₹200 subject to such conditions and in such manner as may be prescribed

As per proviso to **rule 46 of CGST Rules,**

Amended by N/N 33/2019
CT dt 18/07/2019

Provided also that a registered person *other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens* may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely,-

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice,

Proviso *Provided also that the signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (74/2018-CT dt 31/12/2018)*

Provided also that the Tax Invoice shall have quick response (QR) code

Bill of Supply (Sec 31(3)(c))

- 1. On Supply of Exempt Goods or Services
- 2. Paying tax under Composition Scheme.

Rule 49- Bill of Supply

Proviso Provided that the provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule:

Provided further that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000 (74/2018-CT dt 31/12/2018)

Provided also that the Bill of Supply shall have quick response (QR) code

Tax invoices in Special Cases (Rule 54)

| Supplier of taxable service | Document in lieu of the tax invoice | |
|--|---|---|
| | Optional information | Mandatory information |
| Insurer/Banking company/Financial institution, including NBFC | <ul style="list-style-type: none"> Serial number Address of the recipient of taxable service | Other information as prescribed for a Tax Invoice, under rule 46 |
| | | Such document may be issued/ made available, physically/ electronically |
| | The said supplier may issue a consolidated tax invoice or any other document in lieu thereof, by whatever name called (for supply of services made during a month at the end month) | |
| | <p>Note : It is important to note here that keeping in view the large number of transactions in banking, insurance and passenger transportation section, taxpayers need not mention the address of the customer and the serial number in their invoices.</p> <p><i>Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000 (N/N 74/2018 CT dt 31/12/2018)</i></p> | |
| Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage | | Gross weight of the consignment |
| | | Name of the consignor and the consignee |
| | | Registration number of goods carriage in which the goods are transported |
| | | Details of goods transported |
| | | Details of place of origin and destination |
| | | GSTIN of the person liable for paying tax whether as consignor, consignee or GTA |
| | | Other information as prescribed for a tax invoice, under rule 46 |
| Supplier of passenger transportation service | <ul style="list-style-type: none"> Serial number Address of the recipient of taxable service | Other information as prescribed for a tax invoice, under rule 46 |
| | | Tax invoice shall include ticket in any form, by whatever name called. |
| | <i>Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provision of the Information technology act, 2000 (N/N 74/2018 CT dt 31/12/2018)</i> | |
| Admission to Exhibition of cinematograph films in multiplex screens | <div>Newly inserted</div> | Shall issue Electronic ticket and Electronic ticket deemed to be Tax Invoice, even such ticket does not contain Recipient details |
| | | Other information as prescribed for a tax invoice, under rule 46 |
| | <i>Provided that the supplier of such service in a screen other than multiplex screens may , at his option follow the above procedure (N/N 33/2019 CT dt 18/07/2019)</i> | |





CHAPTER - 21

REFUNDS

Q.7 : Specify the cases where Doctrine of unjust enrichment is not applicable ?

or

Cases where refund is directly payable to applicant

or

Amount not transferable to consumer welfare fund.

Ans :

Cases where refundable amount shall be paid to the applicant:

Section 54(8) stipulates that the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to — Amended by CGST Amendment Act, 2018

- (a) **Tax on Exports** : refund of tax paid on ~~zero-rated supplies~~ **Exports** of goods or services or both or on inputs or input services used in making such zero-rated supplies.
- (b) **Excess ITC of zero rated supply or inverted structure** : refund of unutilised ITC in case of zero rated supplies made without payment of tax or on account of inverted duty structure;
- (c) **Refund of Tax on issue of refund voucher** : refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued.
- (d) **Payment of Tax under wrong head** : refund of tax in pursuance of section 77, i.e. tax paid tax on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.;
- (e) **Refund if burden is not shifted** : the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) **Notified cases of Government** : the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Section 54(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.

Newly Inserted by N/N 39/2019
CT dt 31/08/2019

Q.10 : Explain the provision of grant of provisional refund?

Ans.:

The proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, (other than such category of registered persons as may be notified by the Government on the recommendations of the Council,)

- ➔ **refund on a provisional basis, 90% of the total amount so claimed**, excluding the amount of ITC provisionally accepted
- ➔ in such manner and subject to such conditions, limitations and safeguards as may be prescribed** and
- ➔ thereafter make an order under section 56(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

Conditions, limitations and safeguards (Rule 91)

Is stipulated as follows:

- ➔ **Where the amount of tax evaded exceeds ₹ 2.5 crores**, the provisional refund shall be granted subject to the condition that the person claiming refund has, **during any period of 5 years immediately**

preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law.

➡ The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

Provided that the order issue in FORM GST RFD - 04 shall not be required to be revalidated by the proper officer. (N/N 3/2019-CT Dated 29/01/2019)

➡ The proper officer shall issue a payment ~~advice~~ **order** for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund **on the basis of a consolidated payment advice.**

Newly Inserted by
N/N 49/2019 CT dt 09/10/19

The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).

Newly Inserted by
N/N 31/2019 CT dt 28/06/19

*Provided that the payment ~~advice~~ **order** in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment ~~advice~~ **order** was issued* (N/N 3/2019-CT Dated 29/01/2019)

Newly Inserted by
N/N 31/2019 CT dt 28/06/19

Q.18 : Explain the order of refund [Section 54(5),(7) read with rule 92]?

Ans.:

➡ Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, **he may make an order in FORM RFD-06 accordingly and the amount so determined shall be credited to the Consumer Welfare Fund**

➡ Refund order shall be issued by the proper officer **within 60 days from the date of receipt of application** complete in all respects [Section 54(7)].

The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim.

| | |
|--|---|
| Where the proper officer is satisfied that the amount refundable is payable to the applicant under section 54(8) | <p>he shall make an</p> <p>➡ order in Form GST RFD-06 and</p> <p>➡ issue a payment advice order for the amount of refund and</p> <p>➡ the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of consolidated payment advice (N/N 31/2019 CT dt 28/06/2019) [Rule 92(4)].</p> <p><i>Provided that the order issued in FORM GST RFD-06 shall not be required to be revalidated by the proper officer</i> (N/N 3/2019-CT dt 29/01/2019)</p> <p>Provided further that the payment order in FORM GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued</p> <p>The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4). [Rule 4(A)]</p> |
| Where the proper officer is satisfied that the amount refundable is not payable to the applicant under section 54(8) | <p>he shall make an order in Form GST RFD-06 and issue an advice a payment order</p> <p>for the amount of refund to be credited to the Consumer Welfare Fund [Rule 92(5)]</p> |

Q.22 : Explain the provision of Interest on Delayed Refunds [section 56 Of CGST Act]?

Ans.:

A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)

- ➔ Where any tax ordered to be refunded (Sec. 54(5)) to any applicant is **not refunded within 60 days from the date of receipt of application** (Sec 54(1)), **interest shall be payable to the applicant.**
- ➔ **Interest is payable on such refund @ 6% p.a.**
- ➔ Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application (Sec 54(1)) till the date of refund of such tax [Sec 56 of CGST Act]. **(N/N 13/2017 CT dated 28.06.2017)**

B. Interest on amount refundable consequent to order passed in an appeal or further proceedings

- ➔ Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application filed consequent to such order, interest shall be payable on such refund.**
- ➔ **Interest is payable on such refund @ 9% p.a.**
- ➔ Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56 of CGST Act]. **(N/N 13/2017 CT dated 28.06.2017)**

C. Order sanctioning interest on delayed refunds [Rule 94]

- ➔ Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment ~~advice~~ **order** in prescribed form.
- ➔ Such order shall specify therein:

Newly Inserted by 31/2019
CT dt 28/6/19

 - the amount of refund which is delayed,
 - the period of delay for which interest is payable and
 - the amount of interest payable.
- ➔ Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion (Circular No. 108/27/2019-GST Dated18/07/2019)

Issue:-

- 1. whether activity of sending /taking goods out of India for exhibition or on consignment basis is a supply?
- 2. What procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion?(i.e. issues relating to maintenance of records, issuance of delivery challan / tax invoice etc.)

Legal provision:-

- 1. As per section 7 CGST Act, for any activity or transaction to be treated as supply, it should be in course or furtherance of business and for a consideration.
Some of the exception are enumerated in Schedule I to CGST Act wherein certain activities are treated as supply even if made without consideration
- 2. As per section 16 of IGST Act, supplies which are either 'exports' or 'made to SEZ unit/developer' would qualify as zero-rated supply.

Clarification:-

- 1. activity of sending/taking goods out of India for exhibition or on consignment basis for export promotion would not be considered as supply since there is no consideration at that point of time (unless the same is covered under schedule I of CGST Act).
Such activity which is not a supply could not be regarded as 'zero-rated supply'.
- 2. list of the clarification on issues relating to maintenance of records, issuance of delivery challan / tax invoice

| Sr. No. | Issue discussed | remarks |
|---------|--|---|
| 1. | Whether any records are required to maintained for sending goods out of India? | The registered person shall maintain record of such goods in the format prescribed. |
| 2. | Documentation requirement for sending goods out of India? | As the activity is in the nature of 'sale on approval basis', the goods shall be accompanied by a delivery challan as prescribed in rule 55 of the CGST Rules. Since it is not a zero-rated supply, execution of bond or LUT is not required |
| 3. | When is the supply of specified goods sent / taken out of India said to take place? | The goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions of section 31(7) of the CGST Act. a) if the goods are neither sold nor brought back within six months, - supply would be deemed to have taken place on the expiry of six months. b) If the goods are sold abroad partially or fully, - the supply is made, in respect of quantity so sold, on the date of such sale. |
| 4. | Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period? | a) if the goods are neither sold nor brought back, either fully or partially within six months- supplier shall issue a tax invoice on the date of expiry of six months from the date of removal b) If the goods are sold abroad partially or fully, within period six month- supplier needs to raise a tax invoice in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. |

| | | |
|----|--|--|
| 5. | <p>Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?</p> <p><i>(A situation where supply has deemed to have taken place after the goods have been sent out of India)</i></p> | <p>A) the activity of sending /taking specified goods out of India is not a zero-rated supply. Inthat case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of Indi</p> <p>B) sender can prefer a refund claim even when goods are sent without execution of LUT or bond, if the supplier is otherwise eligible to claim refund under section 54 of the CGST Act read with Rule 89 of the CGST rules, i.e. claim of refund of unutilised input tax credit.</p> <p>(c) Further, refund claim cannot be preferred under Rule 96 of CGST Rules, 2017 i.e. refund for export with payment of tax, as supply is taking place at a time after goods have already been sent/ taken out of India.</p> |
|----|--|--|

Illustrations

Case – 1

- i) M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is **not a supply**.
- ii) **No tax invoice** is required to be issued in this case but the specified goods shall be accompanied with a **delivery challan** issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- iii) In case the entire quantity of specified goods is **brought back within the stipulated period of six months** from the date of removal, **no tax invoice is required** to be issued as no supply has taken place in such a case.
- iv) In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under section 31(7) of the CGST Act.

Case – 2

M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply.

No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, **a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale** in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.

If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.

Further, M/s ABC may **claim refund of accumulated input tax credit** in accordance with the provisions contained in section 54(3) of the CGST Act read with rule 89(4) of the CGST Rules in respect of zero-rated supply of 60 units.



CHAPTER - 26

MISCELLANEOUS PROVISIONS

Sec 171 : Anti - Profiteering Measure

Section 171 makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed to the recipient by way of commensurate reduction in prices.

The burden **of indirect taxation ultimately falls on the consumers**. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

National Anti-profiteering Authority

Constitution:-

National Anti-profiteering Authority is therefore being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

Ü The National Anti-Profiteering Authority shall be a five member committee consisting of a Chairman who holds

or has held a post equivalent in rank to a Secretary to the Government of India;

Ü and four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under earlier laws.

Ü The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise.

Order of the Authority Substituted

Where the Authority determines that a registered person has not passed on the benefit of the

Ü reduction in the rate of tax on the supply of goods or services or

Ü the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) return to the recipient,

an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18%. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause **along with interest at the rate of 18%. from the date of collection of the higher amount till the date of deposit of such amount** in the Fund (Consumer Welfare Fund) and the remaining fifty per cent. of the amount in the Fund (Consumer Welfare Fund) of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

If the report of the DFAP recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but

the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing,

refer the matter to the DFAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.[Rule 133(4)]

Newly Inserted by N/N
31/2019-CT dt 28/06/2019

The following are noteworthy in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount. Newly Inserted by N/N 31/2019-CT dt 28/06/2019
- The Authority will pass order within ~~3~~ 6 months from the date of the receipt of the report from the DFAP.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- **The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under rule 129(6) during the process of determination under sub-rule (1)** Newly Inserted by N/N 31/2019-CT dt 28/06/2019
- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

Explanation: For the purpose of this sub-rule, the expression, "concerned State" means the State **or Union Territory** in respect of which the Authority passes an order."

[N/N 26/2018 -CT dt 13/06/2018]

Newly Inserted by N/N
31/2019-CT dt 28/06/2019

Duties of the Authority

It shall be the duty of the authority-

- i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- ii) to identify the taxpayer who has not passed on the benefit
- iii) to order
 - reduction in prices
 - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be. If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;
 - imposition of penalty
 - cancellation of registration
- iv) to furnish **a performance report to the GST Council by the 10th day of the close of each quarter**

Process followed by the Authority

Newly Inserted by N/N
31/2019-CT dt 28/06/2019

➤ Application to the Authority:-

All applications from interested parties on issues of local nature **or those forward by standing committee** shall first be examined by the State Level Screening Committee **within two months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority** Newly Inserted by N/N 31/2019-CT dt 28/06/2019

- ☞ On being satisfied that the supplier has not passed on the benefit, the Screening Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering.
- ☞ If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit,
- ☞ it shall refer the matter to the Director General of Anti Profiteering for a detailed investigation.

➤ Investigation:-

- ☞ The Director General of Anti profiteering shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter).
- ☞ The Director General of Anti profiteering can make this evidence available to the interested party & this can be made available to the other interested parties, participating in the proceedings.
- ☞ **The Director General of Anti-profiteering shall complete the investigation within a period of six months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.**

Newly Inserted by N/N
31/2019-CT dt 28/06/2019

- ☞ The evidence provided will be kept confidential as per RTI Act, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.
- ☞ The Director General of Anti profiteering can seek opinion of any other agency or statutory authorities in the discharge of his duties.
- ☞ The **Authority** Director General of Anti profiteering, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing.
- ☞ He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

Amendment in provisions relating to order of Anti-Profitteering Authority

As per rule 133 (4) of CGST Rules to provide that if the report of the Director General of anti-profitteering recommends that there is contravention or even non-contravention of the provisions of section 171 or rules, but

the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of anti-profitteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules. **[Notification No. 14/2018 CT dated 23.03.2018]**

As per Rule 133(5) of CGST Rules :-

Newly Inserted by N/N
31/2019-CT dt 28/06/2019

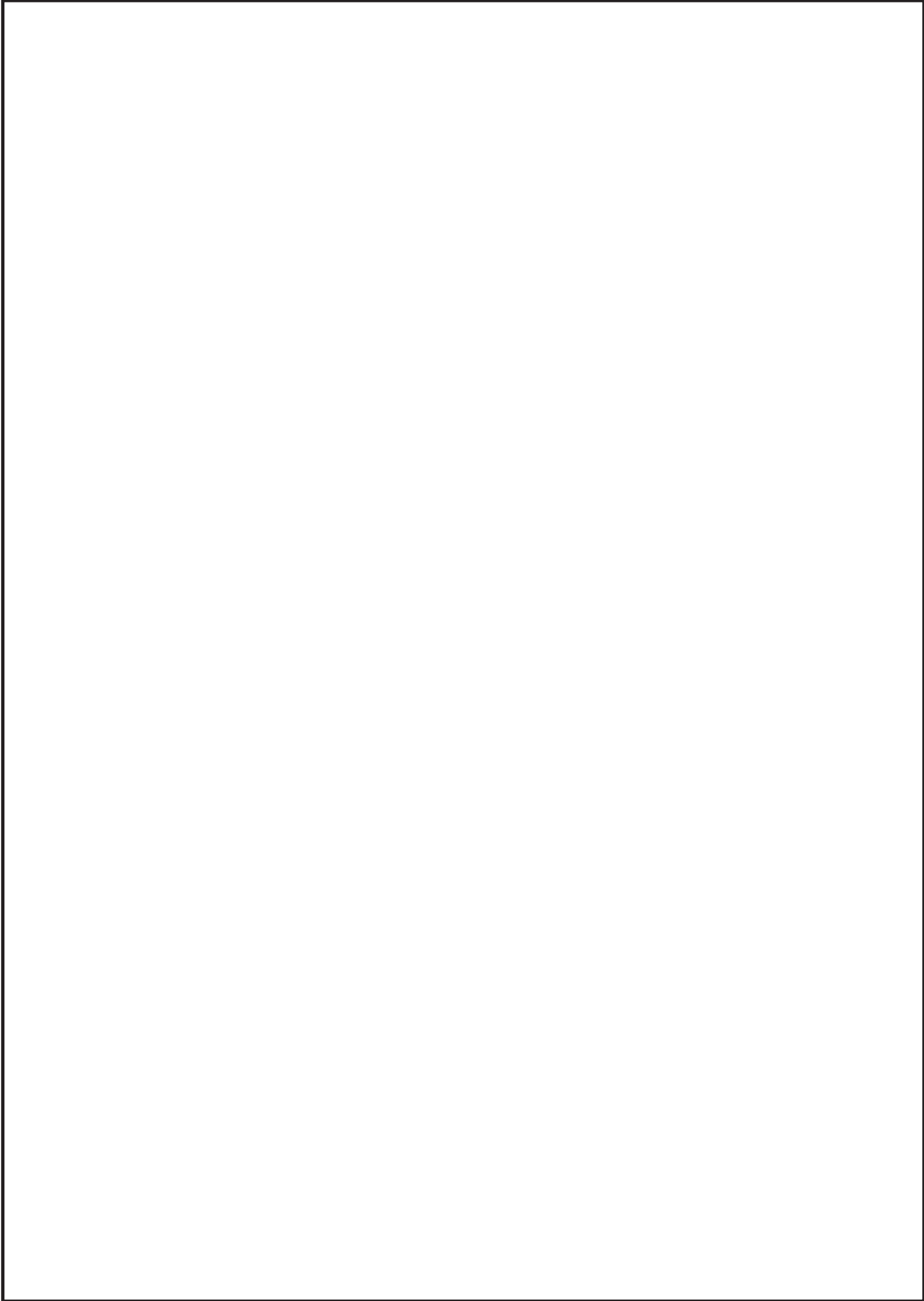
(a) Notwithstanding anything contained in sub-rule (4),

where upon receipt of the report of the Director General of Anti-profitteering referred to in rule 129(6),

the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report,

it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profitteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.



Custom Amendments



Chapter 2

IMPORTATION & EXPORTATION PROCEDURE

STATUTORY PROVISION FOR IMPORTATION

Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016- Cus dated 15.11.2016:

Information about intent to avail benefit of notification: An eligible importer intending to avail the benefit of deferred payment shall *intimate to the Principal Commissioner/Commissioner of Customs*, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Due dates for deferred payment of import duty—

| Sr. No. | Goods corresponding to Bill of Entry returned for payment from | Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2) |
|---------|--|---|
| 1. | 1 st day to 15th day of any month | 16th day of that month |
| 2. | 16th day till the last day of any month other than March | 1st day of the following month |
| 3. | 16th day till the 31st day of March | 31st March |

Electronic payment of duty: The eligible importer shall pay the duty electronically. However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

Deferred payment not to apply in certain cases: If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.



Tutorial Notes

Green channel of import: this is a special scheme allowed in certain cases for speedy clearance of imports. Under such schemes the appraisement is done as per normal procedure except that there would be no physical examination of the goods unless there is any specific doubt. Some of the situations where this scheme has been made applicable are public sector undertakings, government departments, 100 % export oriented units approved by the collector and other importers which a proven identity and clean track record.

SECTION 48 PROCEDURES IN CASE OF GOODS NOT CLEARED, WAREHOUSED, OR TRANSHIPPED WITHIN THIRTY DAYS AFTER UNLOADING

If any imported goods are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof or within such further time as the proper officer may allow, such goods may, after notice to the importer and with the permission of the proper officer be sold by custodian thereof

After the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise

**Circular No. 49/2018-
Cus dated 03.12.2018**

will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods

as per section 46.

(a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

(b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

Provided that—

- Animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
- Arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.



Tutorial Notes

If there are any goods imported from a place outside india, which are not cleared within 30 days from the date of unloading, the custodian of the cargo is unnecessarily burdened with the custody of the goods. It Also deprives the customs department of its legitimate revenue in the form of customs duty. The 30 days have been considered to be sufficient time for any importer to make up his mind whether the goods should be cleared into town on payment of duty or whether they should be transhipped or whether they should be deposited in a warehouse.



CLEARANCE OF EXPORT GOODS

SECTION 41: DELIVERY OF DEPARTURE MANIFEST OR EXPORT MANIFEST OR EXPORT REPORT.

The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer

Newly Inserted by F.A. 2019

➤ *in the case of a vessel aircraft, ---a departure manifest or an export manifest by presenting electronically, **and***

➤ *in the case of a vehicle, - an export report, in such form and manner as may be prescribed*

such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees

Provided that principle Commissioner of Custom or Commissioner of Custom may in cases where it is not feasible to deliver the departure manifest or export manifest or export report by presenting electronically allow the same to be delivered in any other manner.

Person delivering the departure manifest or export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.



Chapter 11

CUSTOMS TARIFF ACT 1975

Types of Duties

Anti-circumvention measure in respect of countervailing duty

Newly Inserted by F.A. 2019

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-

- (i) by altering the description or name or composition of the article on which such duty has been imposed
- (ii) by import of such article in an unassembled or disassembled form
- (iii) by changing the country of its origin or export or
- (iv) in any other manner, whereby the countervailing duty so imposed is rendered ineffective it may extend the countervailing duty to such other article also.

SEC 9C APPEAL

1. *An appeal against the order of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of—*
 - (i) *any subsidy or dumping in relation to import of any article; or*
 - (ii) *import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article*

Newly Inserted by F.A. 2019
2. Appeal shall be accompanied by a fee of ₹ 15000
3. Every application made before the Appellate Tribunal for the grant of stay or for rectification of mistake or for restoration of an appeal with fee of ₹ 500
4. Every appeal shall be filed within 90 days of date of order under appeal, but Tribunal may entertain any appeal after expiry of said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
5. The Appellate Tribunal may, after giving the parties an opportunity of being heard, pass such order thereon as it think fit, confirming, modifying or annulling the order appeal against.

In respect of particular article, the Central Government by notification in the official gazette imposed anti-dumping duty thereon under the Customs Tariff Act, 1975 and consequent to this order, such duty was paid by the importer. The importer of this article feels aggrieved by the order. What is the remedy under the Customs Tariff Act, 1975 [Nov. 97]





Chapter 12

AUDIT

SECTION 99A: AUDIT

TYPES OF AUDIT-TRANSACTION BASED AUDIT (TBA) AND PREMISE BASED AUDIT (PBA) Circular No. 2/2019 dt 08/01/2019

Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed.

- ➔ **TBA (audit of transactions):** Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).
- ➔ **PBA (audit at the premises):** The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended *the scope of Premises Based Audit by including other entities who are concerned with imports or exports.*

In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration.

PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade.

Further, Board may also select any criteria or Theme for the audit.

Executive Commissionerates to assist Audit Commissionerates Circular No. 2/2019 dt 08/01/2019

The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit.

The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit.

Apart from overall supervision, *Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates* to ensure that audit has been conducted as per prescribed procedures.

SECTION 99B: Verification of identity and compliance thereof Newly Inserted by F.A. 2019

- (1) The proper officer, authorised in this behalf by the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, may, for the purposes of ascertaining compliance of the provisions of this Act or any other law for the time being in force, require a person, whose verification he considers necessary for protecting the interest of revenue or for preventing smuggling, to do all or any of the following, namely:—
 - (a) undergo authentication, or furnish proof of possession of Aadhaar number, in such manner and within such time as may be prescribed;
 - (b) submit such other document or information, in such manner and within such time as may be prescribed:
Provided that where such person has not been assigned the Aadhaar number, or where so assigned, but authentication of such person has failed due to technical reasons or for reasons beyond his control, then, he shall be provided an opportunity to furnish such other alternative and viable means of identification in such form and manner and within such time as may be prescribed.
- (2) The provisions of sub-section (1) shall not apply to such person or class of persons as may be prescribed.
- (3) Notwithstanding anything contained in any other provisions of this Act, where the Principal Commissioner of Customs or the Commissioner of Customs comes to the conclusion, based on reasons to be recorded in writing, that the person referred to in sub-section (1) has—

(i) failed to comply with the requirements of the said sub-section or submitted incorrect documents or information under the said sub-section, he may, by order, suspend—

- (a) clearance of imported goods or export goods;
- (b) sanction of refund;
- (c) sanction of drawback;
- (d) exemption from duty;
- (e) licence or registration granted under this Act; or
- (f) any benefit, monetary or otherwise, arising out of import or export,
relating to such person, subject to such conditions as may be prescribed;

(ii) failed authentication as required under the said sub-section, he may, by order, direct that such person shall not have the benefit of any of the items specified in sub-clauses (a) to (f) of clause (i).

- (4) The order of suspension under sub-section (3) shall remain in force until the person concerned complies with the requirements of sub-section (1) or furnishes correct document or information thereunder.

Explanation.—*For the purposes of this section, the expression “Aadhaar number” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.’.*