Department of Commerce

University of Calcutta

Study Material

Cum

Lecture Notes

Only for the Students of M.Com. (Semester II)-2020

University of Calcutta

(Internal Circulation)

Dear Students,

Hope you, your parents and other family members are safe and secured. We are going through a world-wide crisis that seriously affects not only the normal life and economy but also the teaching-learning process of our University and our department is not an exception.

As the lock-down is continuing and it is not possible to reach you face to face class room teaching. Keeping in mind the present situation, our esteemed teachers are trying their level best to reach you through providing study material cum lecture notes of different subjects. This material is not an exhaustive one though it is an indicative so that you can understand different topics of different subjects. We believe that it is not the alternative of direct teaching learning.

It is a gentle request you to circulate this material only to your friends those who are studying in Semester II (2020).

Stay safe and stay home.

Best wishes.

Paper: CC 204

Indirect Tax and Corporate Tax Planning

(ITCTP)

CC 204: Indirect Tax and Corporate Tax Planning (ITCTP)

Module I

Goods and Services Tax (GST)

(Prof. Snehamay Bhattacharyya)

Important areas for discussion

1. Basic concepts (indirect tax, value addition-based tax, destination-based /consumption-based tax , Reverse Charge, important definitions from CGST and IGST Acts).
2. Supply & its taxability (Sec 7-8)
3. Levy, collection and exemption of tax (Sections ; 9 – 11 of CGST Act).
4. Time and value of supply (Sections: 12 – 15 of CGST Act).
5. Input tax credit (Sections: 16 – 19 of CGST Act).

Some important definitions

Items	Section
Taxable Supply	2(108) CGST
Exempt Supply	2(47) CGST
Composite Supply	2(30) CGST
Mixed Supply	2(74) CGST
Continuous Supply of Goods	2(32) CGST
Continuous Supply of Services	2(33) CGST
Outward Supply	2(83) CGST
Inward Supply	2(67) CGST
Place of Supply	2(86) & Chapter V IGST
Person	2(84) CGST
Taxable Person	2(107) CGST
Casual Taxable Person	2(20) CGST
Reverse Charge	2(98) CGST
Output Tax	2(82) CGST
Input Tax	2(62) CGST
Input Tax Credit	2(63) CGST
Electronic Cash Ledger	49(1) CGST
Electronic Credit Ledger	49(2) CGST

Reference: TAXMANN'S GST & CUSTOMS LAW - CA(Dr.) K.M. Bansal (4^{th} Edition)

Areas already covered in the class room:

- Basic concepts (indirect tax, value addition-based tax, destination-based /consumption-based tax , Reverse Charge, important definitions from CGST and IGST Acts).
- Levy and collection of tax

A Summary of the areas already covered in the class room

Goods and Services Tax(GST) is **levied**on Supply of goods/services/both, taxable under the provisions of the Act**on** taxable person(supplier ----- in case of Forward Charge and Recipient of supply -------- in case of Reverse Charge) and is payable on twentieth day of the month immediately following the month in which Time of Supplyin relation to the supply concerned falls. Being a value addition based tax, it removes cascading effect on price and reduces tax on output by tax paid on input. Again, The state where the final consumptiontakes placeis the destination for enjoyment of the GST revenue from the supply concerned. Hence it is a destination based tax/consumption based tax.

Areas in continuation to the above

It is assessed as given below:

Computation of GST Payable

	_
Tax on outward Supply(excluding exempt supply)	
Less: Input Tax Credit(in relation to inputs consumed for the purpose of business other than for exempt supply)	
GST Payable	

Tax on Outward Supply = Value of Supply X Rate of Tax.

For computation of GST liability we need:-

1. Value of Supply
2. A Rate *(notified by GST Council)*
3. Input Tax Credit

1. Value pf Supply

(a).<u>Meaning:</u> Sec 15(1) of CGST Act

It is the Transaction Value of supply.

Transaction Value is the Price

1) Paid/payable in a supply
2) Between two unrelated persons, and
3) Where such price is the sole consideration (i.e., there is no hidden consideration) for the supply

(b)<u>Adjustments to Transaction Value</u>: Sec 15 (2) of CGST Act

Value of supply to include

- Taxes, duties, cesses
- Supplier's obligation (in relation to the supply) met by the Recipient.
- Expenses incidental to the supply ………. Freight, commission, insurance., ……….
- Interest/ penalty for delayed payment of consideration.
- Where the Price is a subsidized one: amount of subsidy (if borne by a non-government organization).

Value of supply to be reduced by
The amount of Discount (as per terms of the agreement to supply) provided before/ at the time of supply.
In case, the parties to the supply are related persons/ price is not the sole consideration:-
Value of supply = Open Market Value(OMV)/ Prices of similar goods(when OMV is not available).

2. Rate of Tax depends on: Inter/intra-state Supply, Mixed/Composite Supply

Inter-state Supply: When supplier and recipient are in different states.
It is taxed at appropriate rate of IGST.
Intra-state Supply: When supplier and recipient are in the same state.
It is taxed at appropriate rate of CGST & SGST
Mixed Supply:A mixed supply is two or more independent products or services which are offered together as a bundle but can also be sold separately. The mixed supply is taxed, atthe rate, applicable to the item or service with the highest GST rate in the .
Composite Supply:A composite supply is two or more goods or services that are only sold as a set and cannot be sold individually. Every composite supply has a principal supply, which is the main product or service that the buyer primarily wants. The rest of the supply is made up of supporting elements that add value to the principal supply.
A composite supply is taxed at the GST rate of the principal supply.

3. **<u>Input Tax Credit</u>** [Sec 16 CGST]

Conditions:

- <u>Registration</u>
- <u>Evidence</u>:-
  - As to Receiving the goods/services
  - As to Document in possession (Tax invoice/Debit note)
  - As to Appearance of input tax in the Electronic Credit Ledger
- <u>Payment of tax to the Government</u>
- <u>Use for the purpose of business</u>
- <u>Submission of Return</u>

<u>TIME OF SUPPLY</u>

In case of	For Goods	For Services
Forward Charge	Earlier of:- a) Date of raising the Bill b) Date of Removal of goods	<u>Situation: A</u> <u>When the bill is issued/raised within the time limit</u> Earlier of:- a) Date of issuing the bill b) Date of Payment <u>Situation: B</u> <u>When the bill is not issued/raised within the time limit</u> Earlier of:- a) Date of rendering the service b) Date of Payment
Reverse Charge	Earliest of:- a) Date of receiving the goods b) Date of Payment* c) 31st day from the date of issuing the bill	Earliest of:- a) Date of receiving the goods b) Date of Payment* c) 61st day from the date of issuing the bill
	* Earlier of:- a) Date of entry for the payment in the Books of Accounts Date of Payment as per Bank Statement	

PLACE OF SUPPLY(For Goods)

Supply		Place of supply
If there is movement of goods	Without any direction from a third party……………… (A)	Place where the movement terminates for delivery to the recipient
	Under a direction from a third party ……………………….(B)	Principal place of business of the third party
If there is no movement of goods	Example: A building is transferred together with a ***generator set*** affixed.	Place where the item (***gen. set***) is present at the time of delivery

Examples:

		Supplier	Recipient	Third Party
(A)	X purchased a Samsung mobile set from a dealer	Dealer	X	None
(B)	X ordered, Samsung mobile set dealer, to deliver a mobile set to his mother in Delhi	Dealer	Mother	X

<u>Some Problems and Solutions on GST</u>

<u>M Com. 2018 (Old Syllabus)</u>

<u>Q 1:</u> X, a registered supplier, sold goods worth Rs. 60,000 to Y, a registered supplier in the same state. The supply includes exempted supply worth Rs. 20,000. X purchased inputs worth Rs. 30,000 from A, a registered supplier in the same state. Out of these, inputs worth Rs. 10,000 were consumed by X for household purpose.
Calculate GST liability of X, assuming applicable rate of CGST is 9% and SGST is 9%. (5)

1. Solution

Taxable Person:	X
Nature of Supply	Intra-state

Outward Supply			**Inward Supply**: Inputs purchased	
Goods supplied to Y	. 60,000		**Goods received from A**	. 30,000
Less				
Exempted supply	**. 20,000**		Consumption for non-business purpose	**10,000**
<u>Value of Supply</u>	**40,000**		**<u>Value of Supply(Consumption for business purpose)</u>**	**20,000**

Tax on outward supply				**Tax on inward supply(on consumption for business purpose)**		
CGST (9%)	**3,600**			CGST (9%)	**1,800**	
SGST(9%)		**3,600**		**SGST(9%)**		**1,800**
Input Tax Credit						
CGST	**1,200***					
SGST		**1,200***				
GST Payable	**2,400**	**2,400**				

***Tax on inward supply (on consumption for business purpose) X <u>Taxable Supply (Rs. 40,000)</u>**
Goods supplied to Y (Rs. 60,000)

Q. 2:Subir of West Bengal imported some goods, for the first time, and supplied the same to Amrik of Punjab for Rs. 60,000. Subir and Amrik are related persons. Price of similar goods available in the market is Rs. 75,000. Applicable rate of GST on such supply:- CGST 9%, SGST 9% and IGST 18%.
Subsequently Amrik supplied goods to Arora of Punjab for Rs. 90,000. Applicable rate of GST on such supply:- CGST 6%, SGST 6% and IGST 12%.
Calculate the GST liability of Subir and Amrik.
Solution:

Taxable Person	**Subir**
Supply	**Inter state**
Value of supply	.75,000**
Tax on outward supply (IGST)	. 9,000
Input Tax Credit	NIL
GST payable (IGST)	. 9,000

**Reason: Related person. Open Market Value not available. Hence price of similar goods considered.

Taxable Person	**Amrik**	
Supply	**Intra-state**	
Value of supply	Rs.90,000	
	CGST	SGST
Tax on outward supply :	Rs. 8,100	Rs. 8,100
Input Tax Credit(IGST)	Rs. 8,100	Rs. 900(9,000 – 8,100)
GST payable	NIL	Rs. 7,200

Customs Laws- Basic

1. Analysis of relevant terms used in Customs Laws-

• Conveyance	• Import and Imported Goods
• Customs Area	• Prohibited Goods
• Customs Port	• Person-in-Charge
• Customs Stations	• Foreign Going Vessel/ Aircraft.
• Goods	• High Sea
• Dutiable Goods	• Domestic Tariff Area (DTA)
• Coastal Goods	• Exclusive Economic Zone
• Notification	• India and Territorial Waters of India
• Board	• Indian Customs Waters
• Export and Export Goods	• Significance of Indian Customs Waters

2. Difference between Rules and Regulations under Customs Laws.
3. Charging section 12 of the Customs Act, 1962.
4. Various questions based on the following case laws-
   - *Associated Cement Companies Ltd.* v *CC (2001) (128) ELT 21 (SC*)
   - *Union of India* v *Rajindra Dyeing & Printing Mills Ltd. (*2005) (180) ELT 433 (SC)
   - *Garden Silk Mills v. UOI (1999) (113) ELT 358 (SC)*
   - *Tirupati Udyog Ltd. v UOI (2011) (272) ELT 209 (AP) and Advait Steel Rolling Mills Pvt. Ltd. v UOI (2012)286 ELT 535 (Madras)*

The above portion has already been covered through class lectures before suspension of classes.

❑ Taxable Event under the Customs Act, 1962-

It has already been discussed in the class lectures that the basic conditions for levy of customs duty is import or export of good specified in section 2(22) of the Customs Act, 1962. In other words, the goods become liable to duty when there is import into India u/s 2(23) of the Customs Act, 1962 or export from India u/s 2(18) of the Customs Act, 1962. But which one is the taxable event under the customs law? Referring the words of Hon'ble Supreme Court of India taxable event is the "event, the occurrence of which immediately attracts charge."

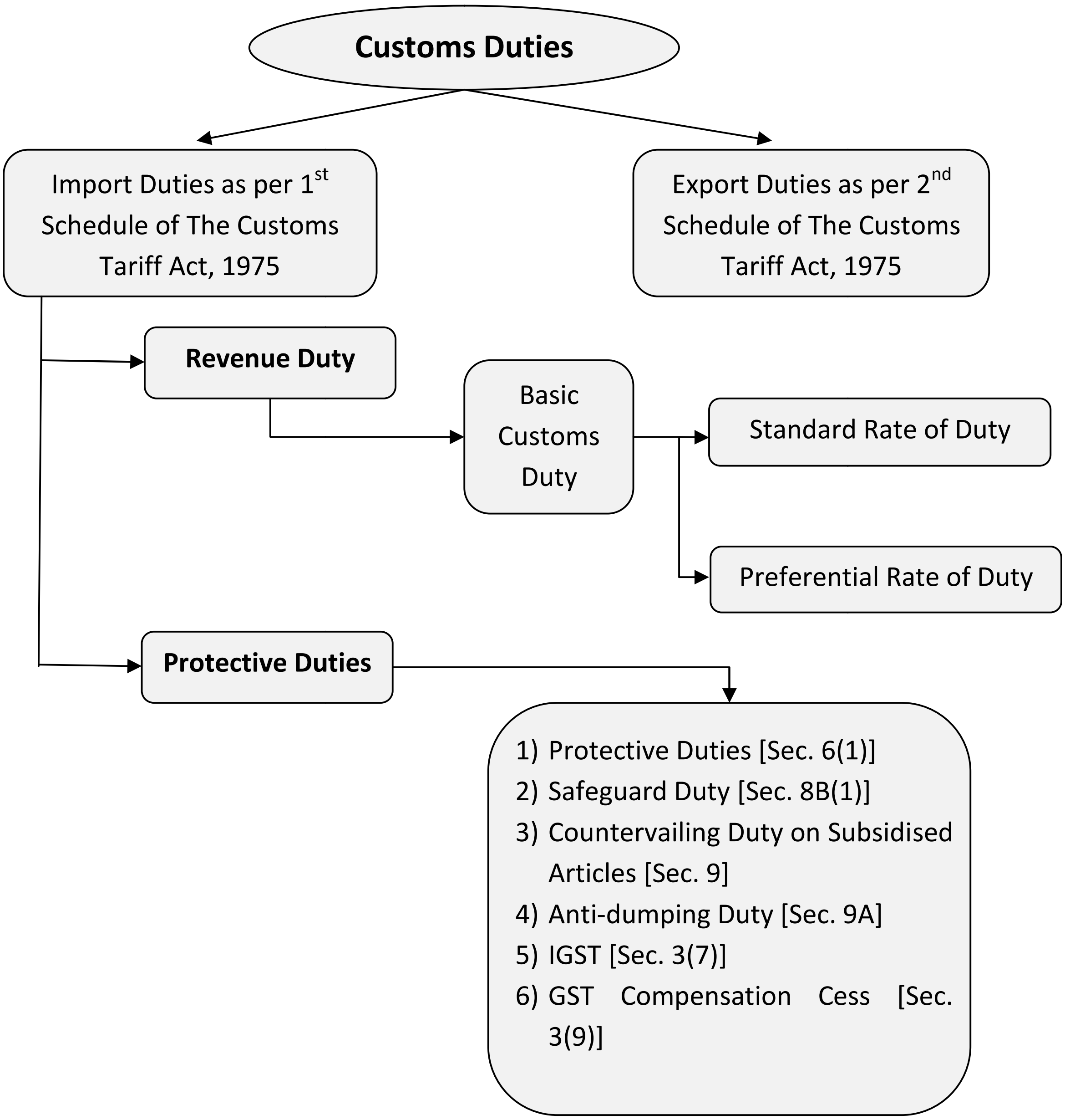
It has already been discussed in class that 'India' includes the "territorial waters of India" u/s 2(27) of the Customs Act, 1962. 'Territorial Waters' according to section 3(2) of The Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976, means the line every point of which is at a distance of twelve (12) nautical miles from the nearest point of the appropriate baseline. 'Indian Customs Waters' u/s 2(28) of the Customs Act, 1962 are now extended to the Exclusive Economic Zone (EEZ).

Therefore, to sum up, “the taxable event” under the Customs Act, 1962 requires the following ingredients:

1) There must be existence of the goods as specified in section 2(22) of the Customs Act, 1962.
2) The goods must be in physical form.
3) The goods must be brought by human beings for specific purpose.
4) The event must result in entry into India but at the customs barrier.

Customs Laws- Types of Duties

❑ Customs Duties- At a Glance



❑ Different types of Customs Duties-

Different duties which are attracted in the case of export/ import. These are given below:

1. Basic Customs Duty (BCD) (Section 12 of Customs Act, 1962 and section 2 of the Customs Tariff Act, 1975).
2. ***Education Cess (applicable before February 2, 2018)***.
3. ***Secondary and Higher Education Cess (applicable before February 2, 2018)***.
4. Social Welfare Surcharge (SWS) (***applicable from February 2, 2018***).
5. IGST.
6. GST Compensation Cess
7. Safeguard Duty
8. Anti-dumping Duty.
9. Protective Duty.
10. Countervailing Duty (CVD) (*now called as IGST*) and Special CVD (payable on few projects which are still covered under Central Excise Act) [*The goods imported into India, are now subject to the Integrated Goods and Services Tax (IGST), not CVD or Special Additional Duty (SAD). However, petroleum and tobacco products are still outside the scope of GST and hence CVD and SAD are applicable to them as usual.]*.

❑ Social Welfare Surcharge (SWS)[Section 110 of the Finance Act, 2018]:

1. *Prior to 2nd February, 2018, an Education Cess @ 2% and Secondary and Higher Education Cess @ 1% were leviable on the items imported into India.*
2. However, w.e.f. 2nd February, 2018, all goods imported into India have been exempted from Education Cess and Secondary and Higher Education Cess vide *Notification No. 7/2018 and 8/2018-Cus, dated 02.02.2018*.
3. SWS @ 10% has been levied ***w.e.f. 2nd February, 2018*** on the aggregate duties of customs levied at the time of import.
4. SWS has been levied to fulfil the commitment of the Government to provide and finance education, health and social security.
5. The SWS shall be calculated @ 10% on the aggregate of duties and taxes and cesses, which are levied and collected by the Central Govt. in Ministry of Finance (Dept. of Revenues) u/s 12 of the Customs Act, 1962.
6. The following are excluded while calculating SWS:
   - Safeguard Duty under section 8B and 8C of the Customs Tariff Act, 1975,
   - Countervailing Duty on subsidised articles under section 9 of the Customs Tariff Act, 1975,
   - Anti-dumping Duty under section 9A of the Customs Tariff Act, 1975,
   - IGST under section 3(7) of the Customs Tariff Act, 1975,
   - GST Compensation Cess to States under section 3(9) of the Customs Tariff Act, 1975,
   - SWS itself on imported goods.
7. The SWS on imported goods are in addition to any other duties of customs/ tax/ cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.
8. SWS leviable on integrated tax and GST Compensation Cess has been exempted vide *Notification No. 13/2018-Cus, dated 02.02.2018*.
9. No SWS is levied on export goods.

❑ Road and Infrastructure Cess on Imported Goods [Section 111 of the Finance Act, 2018] (w.e.f. 2nd February, 2018):

Road and infrastructure Cess shall be levied as duty of customs @ Rs.8 per litre on motor spirit (i.e. petrol) and High Speed Diesel (HSD) imported into India for the purpose of financing infrastructure projects.

❑ Basic Customs Duty (BCD) [Section 12 of Customs Act, 1962 and Section 2 of The Customs Tariff Act, 1975]:

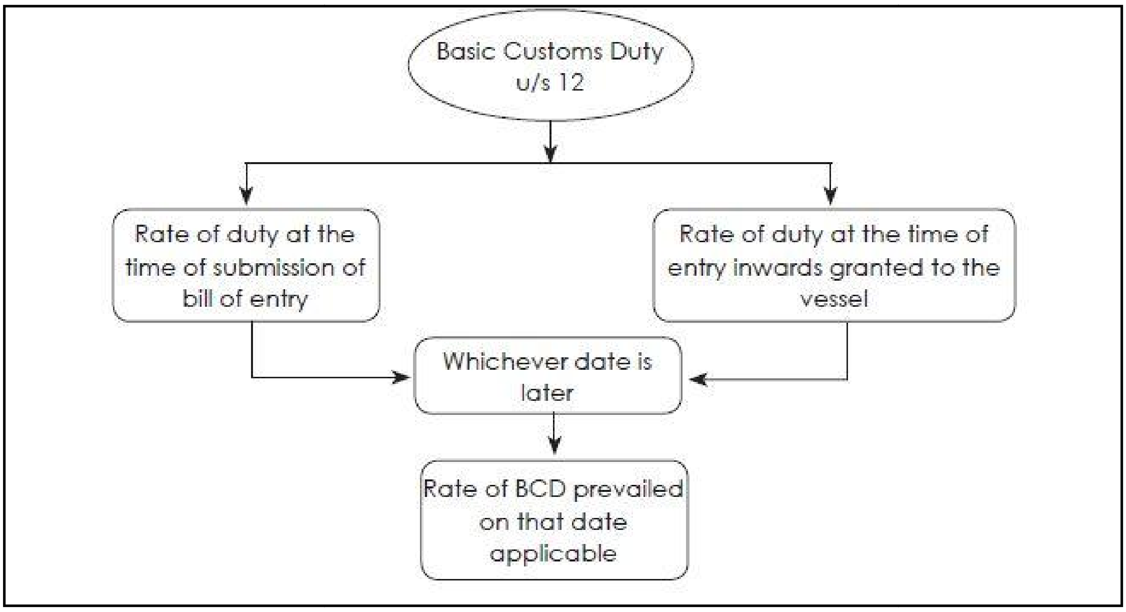
The basic customs duty is levied as per section 12 of the Customs Act, 1962 and specified u/s 2 of the Customs Tariff Act, 1975 (hereinafter referred to as CTA, 1975). Normally, it is levied at a percentage of "***value***" as determined u/s 14(1). The duty may be fixed on *ad-valorem* basis or specific rate basis. The duty may be a percentage of the value of goods or at a specific rate. The Central Govt. has the power to reduce or exempt any goods from these duties. The Central Govt. has issued few exemption notifications. The Govt. may levy **standard rate of duty** specified in column (4) of CTA, 1975.

In case of imports from preferential area, **the preferential rate of duty** specified in column (5) of CTA, 1975 is applicable, if mentioned in the Tariff. "***Preferential area***" means any country or territory which the Central Govt. may, by notification in the Official Gazette, declare to be such area. The Govt. may, by notification u/s 25 of the Customs Act, 1962, prescribe preferential rate of duty in respect of imports from certain preferential areas. Preferential rate of duty is always lesser than standard rate of duty. The importer has to satisfy certain conditions to avail the preferential rate of duty on the imported goods.

The import must satisfy the followings conditions for claiming preferential rate of duty:

- Specific claim for preferential rate of duty must be made by the importer.
- The import must be from the preferential area.
- The area must be notified by the Customs Tariff Act, 1975 to be a preferential area.
- The goods are produced or manufactured in such preferential area.

❖ Determination of Rate of Basic Customs Duty (BCD)



Note:

(1) If the importer imports machinery as well as accessories which are classifiable under two different headings of Customs Tariff Act, 1975 with different rate of duties- If so, the accessories are essential for machinery then the rate of duty applicable for machinery is also applicable for accessories.

(2) If the accessories are not essential for operation of machinery then rate of duties as applicable for machinery as well as accessories will apply separately. Hence, the common expenditure of packing charges, freight charges, insurance charges etc., will be apportioned in the ratio of the value of accessories and machinery.

❑ Integrated Goods and Services Tax (IGST) [Section 3(7) of the Customs Tariff Act, 1975] - What is the Significance of IGST in case of Import?

IGST (Integrated Goods and Services Tax) is a component under GST law, which is levied on goods being imported into India from other country. It has subsumed various customs duties including Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD). [*Till June 30, 2017, CVD equal to excise duty was imposed on goods imported into India. Moreover, special CVD i.e. Special Additional Duty (SAD) of 4% was imposed in lieu of VAT/ Sales Tax. W.e.f. July1, 2017, these duties have been replaced by IGST (except few items which are subject to excise duty even after July 1. 2017)*]

In the GST regime, IGST will be levied on imports by virtue of Section 3(7) of the Customs Tariff Act, 1975. IGST, wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017. It may also be noted that IGST would also be levied on cargo, which has arrived prior to 1st July, but a bill of entry is filed on or after 1stJuly 2017.

Similarly ex-bond bill of entry filed on or after 1stJuly 2017 would attract IGST, as applicable. In the case where cargo arrival is after 1stJuly and an advance bill of entry was filed before 1stJuly along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of IGST as applicable.

IGST will be calculated on the aggregate of the following:

During July 1, 2017 and February 1, 2018	• Assessable Value • Basic Customs Duty (BCD) • Education Cess and SHES (i.e. @ 3% of BCD)
On or after February 2, 2018	• Assessable Value • Basic Customs Duty (BCD) • Social Welfare Surcharge (SWS) (i.e. @ 10% of BCD)

Other Points:

1. IGST is not payable on baggage.
2. Input tax credit is available pertaining to IGST paid on inward supply.
3. IGST is applicable in case of import of goods and/ or services.
4. IGST is payable at the effective GST rate. If an exemption is given on inter-state supply under IGST Act, it will be taken into consideration in calculating IGST for the purpose of import.
5. Sometimes exemption is given under IGST Act subject to fulfilment of certain conditions, which cannot be fulfilled in the case of imported goods/ services. Such conditions shall be ignored.

❑ Some Practical Questions Showing the Mode of Calculation:

☞ Question 1:

Kartick Aryan & Company Ltd. imported goods from the USA. The assessable value of the goods is Rs. 5,00,000. BCD is payable @ 10%. When the same goods are supplied to India, IGST payable is @ 18%.

Find out total customs duty payable.

Solution:

Particulars	Amount (Rs.)	Duty (Rs.)
Assessable Value	5,00,000	-
BCD @ 10% on Rs.5,00,000 (Rs. 5,00,000 × 10%)	50,000	50,000
SWS @ 10% on BCD i.e. Rs. 50,000 (Rs. 50,000 × 10%)	5,000	5,000
Total value for the purpose of IGST	**5,55,000**	**55,000**
IGST u/s 3(7) of the Customs Tariff Act, 1975- @ 18% on Rs. 5,55,000	99,900	99,900
Total Imported Value of the Goods and Duty Payable	**6,54,900**	**1,54,900**
Import Duty Payable can also be calculated as Rs. (6,54,900 - 5,00,000)		

Note:

1. On IT software and big list of goods, SWS is exempt.
2. If goods are gold, silver including that plated with platinum unwroth or in semi-manufactured form or in powder form, then SWS is to be calculated @ 3%.

☞ Question 2:

Sigma Ltd. imported 1,000 litre of High Speed Diesel oil from the USA. The assessable value of the goods is Rs.1,00,000. BCD is payable @ 10%. CVD payable is 12% and Special CVD payable is 4%. Goods also attract anti-dumping duty calculated at Rs. 25,000.

Find out total customs duty payable.

Solution:

Particulars	Amount (Rs.)	Duty (Rs.)
Assessable Value	1,00,000	-
BCD @ 10% on Rs. 1,00,000	10,000	10,000
CVD @ 12% on Rs.1,10,000 (Rs.1,10,000 × 12%)	13,200	13,200
Total for the purpose of levying Special CVD	**1,23,200**	**23,200**
Special CVD @ 4% on Rs.1,23,200 i.e. (Rs. 1,23,200 × 4%)	4,928	4,928
Value for levying SWS	**1,28,128**	**28,128**
SWS @ 10% on Rs. 28,128	2,813	2,813
Total	**1,30,941**	**30,941**

Anti-dumping duty u/s 9A of Customs Tariff Act, 1975	25,000	25,000
Road & Infrastructure Cess (RIC) (@ Rs.8/ litre × 1,000)	8,000	8,000
Total Imported Value of the Goods and Duty Payable	**1,63,941**	**63,941**

Import Duty Payable can also be calculated as Rs. (1,63,941 - 1,00,000) = Rs.63,941

CC 204: Indirect Tax and Corporate Tax Planning (ITCTP)

Module II

(Prof. S Basu)

Following materials on Corporate Tax Planning (module II) indicate the outline of mode of study as per teaching plan

A. Concepts of tax evasion, avoidance, planning and management – Already discussed in the class.

B. Planning based on

(1) **Business or profession** (already discussed in the class along with case studies), and

(2) **General business decisions** (already discussed in the class along with case studies).

(3) **Capital gains:**

(i) Timing of sale: It is very important from tax planning point of view. Timing of sale will decide whether a capital gain short-term or long-term along with its taxability. (consider the period 12m/24m/36m)

(ii) Offsetting STCG on sale of business assets – already covered along with case studies.

(iii) Application of exemptions: Exemptions are the tools of tax planning. Students are requested to go through the relevant provisions with respect to (a) reasons for allowing the exemption; (b) amount of exemption; (c) period of holding of new assets/investments in respect of section 54D, 54EC, 54EE, 54G, 54GA from the suggested text book. Proper use of the abovementioned exemptions will reduce the tax burden of an assessee.

(iv) Taxability of capital gains:

- **STCG**:
  - General case (other than equity shares/ units of equity oriented fund subject to STT): To be taxed at normal rate. Deductions under chapter VIA are available.
  - Equity shares/ units of equity oriented fund subject to STT: Taxable u/s 111A @ 15% + surcharge (if applicable) + HEC @4%. However, deductions under chapter VIA are not available.

- **LTCG:**

- General case (other than securities & units): Taxable u/s 112 @ 20% + surcharge (if applicable) + HEC @4%. However, deductions under chapter VIA are not available.
- Unlisted securities* and shares of closely held companies:
  - Foreign company: To be taxed @ 10% + surcharge (if applicable) + HEC @4%. (Computed without indexation benefit)
  - Domestic company: To be taxed @ 20% + surcharge (if applicable) + HEC @4%.
- Listed securities* (not subject to STT) u/s 112:

  Lower of the following:
  (a) 20% of LTCG computed after indexation.
  (b) 10% of LTCG computed without indexation.

** Here, securities include share, debentures, bonds, govt. securities.*

Case study 1 (Assignment):

Date of acquisition- 01.07.2002; Cost of acquisition- Rs.1,05,000; Date of sale-15.05.2019; Sale proceeds- Rs.5,00,000. [CII: 2002-03 = 105; 2019-20 = 289]. Compute tax payable from tax planning point of view.

- Equity shares/ units of equity oriented fund subject to STT u/s 112A:

  (a) LTCG ≤ Rs.1,00,000 : No taxability

  (b) LTCG > Rs.1,00,000 : To be taxed @ 10% on the amount exceeding Rs.1,00,000 + surcharge (if applicable) + HEC @4%.

  (c) Deductions under chapter VIA are not available.

Case study 2 (Assignment):

LTCG on sale of equity shares subject to STT is – (i) Rs.88,000; (ii) Rs.2,10,000. Compute tax payable.

HOW TO COMPUTE LTCG FOR THE PURPOSE OF SECTION 112A:

(1) Compute COA as follows:

Consider the higher of:

(a) Actual Cost;
(b) Lower of (i) FMV as on 31.01.2018, (ii) Sales consideration.

(2) Compute LTCG as follows: Sale consideration – COA

(3) Indexation benefit is not available.

(4) Note on FMV:

(a) If equity shares & units are listed: Highest quoted price on 31.01.2018. If there is no trading on the said date, highest quoted price on the immediately preceding day.

(b) If units are not listed: NAV as on 31.01.2018.

(c) For shares not listed on 31.01.2018, but listed before transfer:

$$\text{FMV as on 31.01.2018} = \text{COA} \times \frac{\text{CII of 2017-18 (i.e. 272)}}{\text{CII of the year in which the shares were first held by the assessee or 2001-02, whichever is later.}}$$

Case study 3 (Assignment):

Listed shares purchased on 15.06.2003 for Rs.50,000; share were sold on 03.12.2019 for Rs.4,50,000 after payment of STT. FMV of the shares on 31.01.2018 were Rs.3,00,000, Compute capital gains and tax payable.

(4) **Income from Other Sources:** Deemed Dividend

Section 2(22)(a) – (e) deals with deemed dividend.

(A) **Section 2(22)(a):** Any distribution resulting in release of company's assets. There are two elements:

(i) Distribution of cash to shareholders (both equity and preference) – Deemed dividend to the extent of accumulated profit.

(ii) Distribution in kinds (assets/investments) to shareholders – Deemed dividend to the extent of accumulated profit. Market value (not book value) of assets/investments distributed needs to be considered.

(B) **Section 2(22)(b):** There are two elements:

(i) Distribution of debentures/debenture stock/deposit certificate to the shareholders – Deemed dividend to the extent of accumulated profit.

(ii) Distribution of bonus share to the preference shareholders – Deemed dividend to the extent of accumulated profit.

(C) **Section 2(22)(c):** Distribution to the shareholders on liquidation – Deemed dividend to the extent of accumulated profit.

(D) **Section 2(22)(d):** Distribution on reduction of capital – Deemed dividend to the extent of accumulated profit.

(E) **Section 2(22)(e):** Any distribution by a closely held company (not in money lending business) by way of loans and advances with or without interest (excluding trade advances) to:

(i) A registered shareholder holding 10% or more of the equity share capital on the date of loan or advance given.

(ii) A concern where the above shareholder have substantial interest (entitled to 20% or more of income) at any time during the previous year. However the shareholder must be the member or partner of the concern on the date of loan or advances given.

– Deemed dividend to the extent of accumulated profit.

Meaning of accumulated profit (to be computed after adjustment of DDT):

(i) **For Section 2(22)(a) – (d):** Capitalised profit + Reserves created out of profit of the company (excluding depreciation reserve)

(ii) **For Section 2(22)(e):** Capitalised profit not to be considered.

Taxability of Deemed Dividend:

(i) **In the hands of company:** Company has to pay DDT @ 20.55529% on deemed dividend u/s 2(22)(a) – (d).

For section 2(22)(e) the rate is 34.944%. However, a company will not pay DDT on dividend adjusted against loans and advances given.

(ii) **In the hands of shareholders:** Deemed dividend u/s 2(22)(a) – (e) are fully exempted in the hands of shareholders.