

## ***Statutory Role of CMA Professionals in Nation Building***



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Government Of India have entrusted the great responsibility on the members of Chartered Accountants of India, Institute of Cost Accountants of India or Institute of Company Secretaries of India and these Institutes are enacted by Act of Parliament.

Any person involved in Trade, Business & Commerce has to comply with number of statutory laws prevailing in India and Government requires the Certification from member of Institute of Chartered Accountants of India, Institute of Cost Accountants of India or Institute of Company Secretaries of India, those members should process the Certificate of Practice granted by respective Institute.

I give below the Provisions under Foreign Trade Policy, Customs Act 1962 and Rules made there under, Central Excise Act 1944 and Rules made there under, VAT Act of State Government, Income Tax Act 1961 and Rules made there under and Companies Act 1956.

### **A. Customs Act 1962 and Rules made there under**

#### **1. Customs Act, 1962 - Section 146A ,**

Legal practitioner and Custom House Agent is stated to be Authorized Representatives however, in accordance with Custom, Central Excise, Service Tax Appellate Tribunal Procedures (Rule 82) following persons are also authorized to represent the matter , in accordance with Section 35Q of Central Excise Act, 1944: Chartered Accountant, Cost Accountants or Company Secretary

Similarly, they are also authorized to represent before following Authorities

1. Advance Ruling Authority
2. Settlement Commission
3. Anti- Dumping Authority

## **2. Manufacture and other operations in warehouse Regulations, 1961**

In accordance with Regulation 11, of the said Rules , special audit can be conducted by **Cost Accountants** in certain cases when, Chief Commissioner of Customs, for reasons to be recorded in writing directs such Audit.

## **3. Refund of Special Additional Duty (SAD)**

The Provision of obtaining SAD refund has been notified wherein, any statutory auditor (Chartered Accountant or Cost Accountant) can provide the Certificate in the prescribed format which is considered for granting refund.

### **B. Central Excise Act, 1944 and Rules made there under**

1. In accordance with Section 35Q, Chartered Accountant, Cost Accountants or Company Secretary can represent before any Authorities up to CESTAT
2. In accordance with Section 14A, special audit can be conducted by Cost Accountant or Chartered Accountant for determination of correct valuation , if appointed by Chief Commissioner of Central Excise
3. In accordance with Section 14A, special audit can be conducted by Cost Accountant or Chartered Accountant for determination of correct avilment of CENVAT , if appointed by Commissioner of Central Excise

### **C. Finance Act, 1994, (Service Tax) and Rules made there under**

1. In accordance with Section 83, Chartered Accountant, Cost Accountants or Company Secretary can represent before any Authorities up to CESTAT
2. In accordance with Section 72A, special audit can be conducted by Cost Accountant or Chartered Accountant for determination of correct payment of service tax if appointed by Proper Officer of Service Tax

### **D. State VAT Acts and Rules made there under**

VAT Audit has been made mandatory to certain class of dealer based on the turnover and Chartered Accountants are qualified to do the Audit, however, in 17 states including Maharashtra, Gujarat. However, Madhya Pradesh has specified that Vat audit can be conducted by Cost Accountant when dealer is engaged in manufacturing and turnover is less than Rs. 10crs. Cost Accountants are not qualified to do the Audit in Goa and Chhattisgarh. Assessment of VAT Returns also can be done by eligible graduates who can be Sales Tax Practitioner

### E. Foreign Trade Policy

Sr. no.	FTP Appendix	Particulars	Nature of Certification	To be Certified by
1	11A	DATA SHEET FOR ADVANCE AUTHORISATION APPLICATION ON SELF DECLARATION UNDER PARA 4.4.2 & 4.7 OF HBP v 1.	Consumption of Raw Material for application for Advance Authorization on self declaration	CMA / CA
2	14-I-F	FORM OF LEGAL AGREEMENT FOR EOUs	Annual Progress Report	CMA / CA
3	14-I-H	GUIDELINES FOR SALE OF GOODS IN THE DOMESTIC TARIFF AREA (DTA) BY EOU/EHTP/STP/BTP UNITS	DTA Sale Application	CMA / CA
4	14-I-I	PROCEDURE TO BE FOLLOWED FOR REIMBURSEMENT OF CENTRAL SALES TAX (CST) ON SUPPLIES MADE TO EXPORT ORIENTED UNITS (EOUS) AND UNITS IN ELECTRONIC HARDWARE TECHNOLOGY PARK (EHTP) AND SOFTWARE TECHNOLOGY PARK (STP)	CST Refund	CMA / CA
5	15A	APPLICATION FOR CERTIFICATION OF EXPORT PERFORMANCE OF UNITS IN THE PHARMACEUTICAL AND BIOTECHNOLOGY SECTORS BY THE REGIONAL OFFICES OF THE DGFT AS PER CUSTOMS NOTIFICATION NO 21/2002 DATED 1.03.2002 AS AMENDED FROM TIME TO TIME	Export Performance of Units in Pharmaceuticals & Biotechnology	CMA / CA
6	15B	APPLICATION FOR CERTIFICATION OF EXPORT PERFORMANCE OF UNITS IN AGRO CHEMICALS SECTORS BY THE REGIONAL OFFICES OF THE DGFT AS PER CUSTOMS NOTIFICATION NO 21/2002 DATED 1.03.2002 AS AMENDED FROM TIME TO TIME	Export Performance of Units in Chemicals	CMA / CA
7	22D	CERTIFICATE FOR OFFSETTING OF EXPORT PROCEEDS	Offsetting of Export Proceeds	CMA / CA
8	23	REGISTER FOR ACCOUNTING THE CONSUMPTION AND STOCKS OF DUTY FREE IMPORTED OR DOMESTICALLY PROCURED RAW MATERIALS, COMPONENTS ETC. ALLOWED UNDER ADVANCE AUTHORISATION / DFIA*	Consumption and Stocks data under Advance License	CMA / CA
9	26	CERTIFICATE OF CHARTERED ACCOUNTANT COST AND WORKS ACCOUNTANT/ COMPANY SECRETARY (FOR ISSUE OF EPCG/ANNUAL EPCG AUTHORIZATION)	Last Three years Export performance for Calculating Average Export Performance	CMA / CA

10	26A	CERTIFICATE OF CHARTERED ACCOUNTANT/ COST AND WORKS ACCOUNTANT/COMPANY SECRETARY (FOR REDEMPTION EPCG/ ANNUAL EPCG AUTHORIZATION)	Export Proceeds	CMA / CA / CS
11	ANF 3A	Application for Grant of Status Certificate	Export Proceeds	CMA / CA / CS
12	ANF 3B	Application Form for Served From India Scheme (SFIS) [For Foreign Exchange Earned with effect from 1.1.2011 as per Appendix 41 of HBPv1/ Foreign exchange earned upto 31.12.2010 as per Appendix 10 of HBPv1, as applicable]	Export Proceeds	CMA / CA / CS
13	ANF 3D	ANF for Policy Para 3.13.4 For Agri. Infrastructure Incentive Scrip under VKGUY (Kindly see Para 3.13.4 of FTP and Para 3.7.2 of HBPv1) Export of Products covered under ITC HS Chapter 1 to 24 (to be filing with RA, CLA, New Delhi only) April – September / October – March period	Agri-Infrastructure Incentive Scrip for VKGUY	CMA / CA
14	ANF 4A	For Advance Authorization (Including Advance authorization for Annual Requirement) / Advance Release Order (ARO)/ Invalidation letter	Last Three years Export performance for Calculating Average Export Performance	CMA / CA
15	ANF 4B	For Fixation / Modification of Standard Input Output Norms (SION)	Production and consumption details	CMA / CA
16	ANF 4C	For Fixation or Revision of DEPB Rates / Fixation of Brand rate of DEPB for SAD component	Statement containing Shipping Bill No, Date, FOB Value, towards which SAD Claim is filed	CMA / CA
17	ANF 4F	Redemption / No Bond Certificate against Advance Authorization	Statement certifying for utilization of goods	CMA / CA
18	ANF 4I	GEM REP Application	Export Proceeds	CMA / CA
19	ANF 5A	APPLICATION FORM FOR EPCG / ANNUAL EPCG AUTHORISATION (UNDER ZERO DUTY / 3% DUTY/ EPCG DUTY REMISSION SCHEME)	Last Three years Export performance for Calculating Average Export Performance	CMA / CA
20	ANF 5B	Statement of Export for Redemption of EPCG/ Annual EPCG Authorization	Export Proceeds	CMA / CA
21	ANF 8	For claiming Duty Drawback on All Industry Rates/Fixation of Drawback Rates/Refund of Terminal Excise Duty	DBK Refund / Rate Fixation of Terminal Excise Duty	CMA / CA

22	35 & ANF 8A	<p>35 – FORMATS FOR CLAIMING DUTY DRAWBACK ON ALL INDUSTRY RATES/FIXATION OF DRAWBACK RATES/ REFUND OF TERMINAL EXCISE DUTY</p> <p>ANF- 8A – Application for payment of interest on delayed refund of Duty Drawback (DBK)/Terminal Excise Duty (TED) on deemed exports/Central Sales Tax (CST) on supplies to Export Oriented Units (EOU)</p>	<p>– DBK -II, IIA, III, IIIA</p> <p>– DBK II – Receipts of Imported Inputs during three months prior to exports and duty involved therein</p> <p>– DBK IIA – Opening stock of Imported Inputs prior to three months of exports and duty involved therein</p> <p>– DBK III - Receipts of Indigenous Inputs during three months prior to exports and duty involved therein</p> <p>– DBK IIIA - Opening stock of Indigenous Inputs prior to three months of exports and duty involved therein</p> <p>– Brand Rate Calculation sheet</p>	CMA / CA
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#### F. Companies Act, 1956

1. In accordance under Section 224 of the said Act, each company registered under the said Act needs to appoint Auditor for auditing their accounts and Chartered Accountants are only qualified to conduct such Audit.
2. In accordance under Section 233B of the said Act, each company registered under the said Act and engaged in manufacture, processing, production, mining having a turnover of Rs. 20 Cr for specified industries or Rs. 100 cr. for specified industries or net worth more than Rs. 5 cr. are subjected for Cost Audit needs to appoint Auditor for auditing their accounts and Cost Accountants are only qualified to conduct such Audit.
3. In accordance with Section 209 1 (d) of the said Act, certain companies have to maintain Cost Accounting Records in accordance with Cost Accounting Record Rules, 2011 and Cost Accountants are competent to give Cost Compliance Report .
4. In Accordance with Sec 10GD of The Companies Act 1956, representation with Registrar of Company or Competent Authority under Company Act, 1956 can be made by Chartered Accountants , Cost Accountants or Company Secretaries

5. In accordance with 383A , certain companies to have company secretaries or obtain Compliance Certificate from Practicing Company Secretary

#### G. National Tax Tribunal Act, 2005

In accordance with Section 13, following persons can represent before National Tax Tribunal:

(1) A party to an appeal other than Government may either appear in person or authorise one or more chartered accountants or legal practitioners or any person duly authorised by him or it to present his or its case before the National Tax Tribunal.

(2) The Government may authorize one or more legal practitioners or any of its officers to present its case before the National Tax Tribunal. Explanation.-- For the purposes of this section,-

(a) " chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949 ) and who has obtained a certificate of practice under sub- section (1) of section 6 of that Act;

(b) " Legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

#### H. Income Tax Act 1961 and Rules made there under,

1. In accordance with Section 44AB, Accountant (defined as Chartered Accountant) is only qualified to conduct the tax audit for certain class of assesses or for claiming certain exemptions
2. In accordance with Section 92, transfer pricing of international & domestic transaction with related party to be certified by Chartered Accountant and determine 'Arms Length Price'.
3. Representation before various Authorities are given below:

S No .	Income tax Section	Description	Authoriz ed Represe ntative	Remarks
1	246A	Appealable orders before Commissione r (Appeals)	Authoriz ed Represen tative as per Sec 288 of Income Tax Act 1961	<p>288. (1) Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.</p> <p><b>(2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—</b></p> <p>(i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or</p>

				<p>(ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or</p> <p>(iii) any legal practitioner who is entitled to practise in any civil court in India; or</p> <p>(iv) an accountant; or</p> <p>(v) any person who has passed any accountancy examination recognized in this behalf by the Board; or</p> <p>(vi) any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or (See note 1)</p> <p>(via) any person who, before the coming into force of this Act in the Union territory of Dadra and Nagar Haveli, Goa†, Daman and Diu, or Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or]</p> <p>(vii) any other person who, immediately before the commencement of this Act, was an income-tax practitioner within the meaning of clause (iv) of sub-section (2) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practising as such.</p> <p>Explanation.—In this section, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes, in relation to any State, any person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.</p> <p>(3) 32[***]</p> <p>(4) No person—</p> <p>(a) who has been dismissed or removed from Government service after the 1st day of April, 1938; or</p> <p>(b) who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act, other than a penalty imposed on him under 33[clause (ii) of sub-section (1) of] section 271; or</p> <p>(c) who has become an insolvent,</p> <p>shall be qualified to represent an assessee under sub-section (1), for all times in the case of a person referred to in sub-clause (a)*, for such time as the [Chief Commissioner or Commissioner] may by order determine in the case of a person referred to in sub-clause (b)*, and for the period during which the insolvency continues in the case of a person referred to in sub-clause (c)*.</p> <p>(5) If any person—</p> <p>(a) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by any</p>
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				<p>authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practise as a legal practitioner or accountant, as the case may be;</p> <p>(b) who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority<sup>36</sup> may direct that he shall thenceforth be disqualified to represent an assessee under sub-section (1).</p> <p>(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :—</p> <p>(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;</p> <p>(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and</p> <p>(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.</p> <p>(7) A person disqualified to represent an assessee by virtue of the provisions of sub-section (3) of section 61 of the Indian Income-tax Act, 1922 (11 of 1922), shall be disqualified to represent an assessee under sub-section (1).</p>
2	253	Appeals to the Appellate Tribunal.	Same as above (As per Sec 269O)	<p>269-O. Any person who is entitled or required to attend before a competent authority or the Appellate Tribunal in any proceeding under this Chapter, otherwise than when required to attend personally for examination on oath or affirmation, may attend—</p> <p>(a) by an authorised representative in connection with any matter ;</p> <p>(b) by a registered valuer in connection with any matter relating to the valuation of any immovable property for the purposes of this Chapter or the estimation of the amount</p> <p>Explanation.—In this section,—</p> <p>(i) "authorised representative" has the same meaning as in section 288 ;</p> <p>(ii) "registered valuer" has the same meaning as in clause (oaa) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).</p>
3	245C	Application to settlement commission	Same as above (As per Sec 269O)	
4	144C	Dispute Resolution Panel	Same as above (As per Sec 269O)	



5	260A	Appeal to High Court	Practicing Advocate (Sec 30 of Advocate Act, 1961)
6	261	Appeal to Supreme Court	Practicing Advocate (Sec 30 of Advocate Act, 1961)

In view of the above, companies have to disclose correct information for obtaining the certification from the members as stipulated and the professionals have to also follow the ethical practices and should have through knowledge on all the subjects and report his un-bias opinion and provide such report which will be the effective tool to build the Nation.