Basics of Excise Duty Liability

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| |  |  | | --- | --- | | **Conditions for imposition of excise duty** |          Entry No. 84 of List I of Seventh Schedule to Constitution empowers Central Government to impose levy of excise on goods manufactured or produced in India.           In case of ‘deemed manufacture’, imposition of excise duty can be justified under entry 97 of List I.           Excise is a duty on manufacture. Manufacture or production of ‘excisable goods’ in India is the ‘taxable event’ in Central Excise. [Section 3(1) of Central Excise Act]           Ownership of inputs or final products is irrelevant for purpose of liability of excise duty. | | **Person liable to pay excise duty** |          Excise Duty liability is generally on manufacturer, but in some cases, duty is collected from others also. Duty liability is no ‘manufacturer’, though he can collect it from buyer. He will be liable even if he does not collect [rule 4(1) of Central Excise Rules]           In case of goods stored in warehouse under rule 20, the duty liability is on person who stores the goods in warehouse [rule 4(1) of Central Excise Rules]           In case of molasses produced in khandsari sugar factory, duty liability is of procurer i.e. purchaser if he is procuring it for manufacture of any commodity [rule 4(2) of Central Excise Rules].           In case of job work, duty liability is of job worker, even if he is not owner of manufactured goods. However, if inputs are sent under Cenvat provisions or under notification No. 214/86-CE, duty liability is of raw material supplier. | | **Rate of excise duty** |          Basic excise duty is levied u/s 3(1) of Central Excise Act. The section is termed as ‘charging section’. The duty rate is generally 10% w.e.f. 27-2-2010 i.e. total 10.3% including education and SAH cess [earlier, it was 8.24% and still earlier, it was 14% i.e. total 14.42%).           Education cess is payable @ 2% of the basic duty and Secondary and High Education Cess is 1% of basic excise duty.           NCCD and Cess is payable on some products. | | **Goods and excisable goods** |          As per judicial interpretation, for purpose of levy of Excise duty, an article must satisfy two requirements to be ‘goods’ i.e. (*a*) it must be movable ***and***(*b*) it must be marketable. However, actual sale is not necessary.           ‘Goods’ includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable [*Explanation* to section 2(d) of Central Excise Act].           Marketability is to be decided on the basis of condition in which goods are manufactured or produced.           The marketability test requires that the goods  ***as such*** should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied. Thus, if erected and installed machinery has to be dismantled before removal, it will not be goods - *Triveni Engineering* v. *CCE* AIR 2000 SC 2896 120 ELT 273 (SC).           Software is excisable goods. However, presently, excise duty/service tax as well as Vat is payable on branded (packaged) software and  service tax and Vat is payable on customised software.           Section 2(*d*) of Central Excise Act defines Excisable Goods as ‘Goods specified in the Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt’.  Thus, unless an article is specified in the Central Excise Tariff Act as subject to duty, no duty is leviable.            ‘Goods’ includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Thus, some articles like cement structures and trusses, scrap etc. will be ‘goods’ even if otherwise they are not marketable. | | **Dutiability of waste and scrap** | |  |  | | --- | --- | | bullet | Waste and scrap is ‘final product’ for excise purposes. Waste and Scrap can be ‘goods’ but dutiable only if ‘manufactured’, are capable of being sold **and** are mentioned in Central Excise Tariff. | | | **Manufacture** |          Taxable event for central excise duty is manufacture or production in India. The word ‘produced’ is broader than ‘manufacture’ and covers articles produced naturally, live products, waste, scrap etc.           ‘Manufacture’ can be (a) as defined by Court or (b) Deemed manufacture.           ‘Manufacture’ as defined by Courts, takes place only when the process results in a commercially different article or commodity.  There can be ‘manufacture’ if both inputs and final product fall in same tariff heading.           In *Union of India*v.*Delhi Cloth Mills Co. Ltd.* AIR 1963 SC 791 = 1963 Suppl (1) SCR 586 = 1977 (1) ELT (J199) (SC) (SC five member constitution bench) it has been held that the manufacture means bringing into existence a new substance. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a*distinctive name, character or use.*           However, this test does not apply in case of ‘deemed manufacture’.           Assembly can be ‘manufacture’. Putting two items together for making a set is not generally ‘manufacture’. | | **Deemed manufacture** | |  |  | | --- | --- | | bullet | Deemed manufacture is (a) process as specified in CETA. Over 35 processes have been specified *or* (b) Repacking, relabelling, putting or altering MRP in case of articles covered under MRP valuation provisions [clauses (ii) and (iii) of section 2(f) of Central Excise Act] | | bullet | In case of ‘deemed manufacture’ as specified in CETA, simple repacking is not ‘deemed manufacture’. It has to be from bulk pack to retail pack. However, in case of products covered under MRP valuation, it can be ‘manufacture’. | | bullet | Simply putting manufacturer’s mark is not ‘labelling’. | | bullet | Mere putting name of goods, consignor and consignee is not ‘labelling’. | | bullet | Mere putting bar code is not ‘manufacture’. | | | **Who is ‘manufacturer’** |          Manufacturer is who ‘manufactures’ [Section 2(f) of Central Excise Act]  He is the person who actually brings new and identifiable product into existence or undertakes process defined as ‘deemed manufacture’.           Duty liability is on ‘manufacturer’, except in few cases of reverse charge. Mere supplier of raw material or brand name owner is not ‘manufacturer’.           Loan licensee is not ‘manufacturer’.           Ownership is not relevant to determine who is manufacturer. If relationship between brand name owner/raw material supplier and the actual person bringing the new and identifiable product into existence are on Principal to Principal basis, the brand name owner/raw material supplier will not be ‘manufacturer’. |    . |

Liability of Central Excise Duty

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| **Nature of Excise Duty**  Power to levy excise duty is derived from Constitution. Excise is a duty on excisable goods manufactured or produced in India. Each word of this definition is vitally important to fix liability of Central Excise Duty.  Indian Constitution has given powers to Central Govt. and State Govt. to levy various taxes and duties. Powers of Central and State Govt. are enlisted in Seventh Schedule to our Constitution. Entry No. 84 of list I of Seventh Schedule to the Constitution reads as follows : “*Duties of excise on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, narcotics, but including medical and toilet preparations containing alcohol, opium or narcotics.*”  In addition, in some cases, duty is imposed on 'deemed manufacture' also. Hence, central excise duty is presently levied under entry 84 and 97.  Power to impose excise on alcoholic liquors, opium and narcotics is granted to States under entry No. 51 of list II of Seventh Schedule to the Constitution and it is called ‘State Excise’. The Act, Rules and rates for excise on liquor are different for each State (*this is the reason why price of liquor varies widely from Goa to MP to Punjab. In some States, it is officially not available.*).  ***Basic conditions of excise liability -***Section 3 of Central Excise Act ( often called the ‘*Charging Section*’ ) states that ‘There shall be**levied and collected** in such manner as may be prescribed duties on all excisable goods (*excluding goods produced or manufactured in special economic zones*) which are produced or manufactured in India - . - . -'. The words ‘goods which are manufactured or produced in India’ are same as those used in Entry No 84 to list I. Thus, the power to levy Central Excise duty is derived from the Constitution. This definition of charging section of Central Excise is vital, because it clearly signifies that there are four basic conditions for levy of Central Excise duty. (*1*) The duty is on goods. (*2*) The goods must be excisable. (*3*) The goods must be manufactured or produced *(4)* Such manufacture or production must be in India. **Unless all of these conditions are satisfied, Central Excise Duty cannot be levied.**Each of these requirements needs close scrutiny.  GOODS MANUFACTURED IN SEZ ARE ‘EXCLUDED EXCISABLE GOODS’ – A per section 3(1) of CE Act, duty is leviable on all excisable goods (excluding goods manufactured or produced in Special Economic Zones). Thus, goods manufactured or produced in SEZ are ‘excisable goods’ but no duty is leviable, as charging section 3(1) excludes those goods. Thus, the goods manufactured in SEZ are not ‘exempted goods’. They can be termed as ‘excluded excisable goods’ [The revised definition is made effective from 15-8-2003].  *Taxable Event for Excise Duty* - ‘Taxable event’ is that on happening of which the charge is fixed. It is that event, which on its occurrence creates or attracts the liability to tax. Such liability does not accrue at any earlier or later point of time - *Goodyear India Ltd.*v. *State of Haryana* (1990) 76 STC 71 (SC) = 1990 UPTC 198 = AIR 1990 SC 781. Tax becomes payable when liability to pay tax arises and liability to pay tax arises by the happening of the taxable event. - *Kalwa Devadallain* v. *UOI* (1963) 49 ITR 165 (SC) \* *M A Co.* v. *Asstt Commissioner* (1964) 15 STC 487 (All HC).  In*Re Sea Customs Act, 1878* - AIR 1963 SC 1760 = (1964) 3 SCR 787 (SC 9 member full bench), it was observed - 'Excise duty is not directly on the goods, but manufacture thereof. - . - . - Though both excise duty and sales tax are levied with reference to goods, the two are very different imposts. In one case, the imposition is on the act of manufacture or production, while in the other it is on act of sale. In neither case, therefore, can it be said that the excise duty or sale tax is directly on the goods, for in that event, they will really become the same tax' - confirmed in *Shinde Brothers* v. *Dy Commissioner* - AIR 1967 SC 1512 = (1967) 1 SCR 548, where it was held that excise duty is on goods and taxable event is manufacture or production of goods.  It has been held that in *Wallace Flour Mills Co. Ltd.*v.*CCE*(1989) 186 ITR 440 (SC) = 1989 (44) ELT 598 (SC) = 1989(2) SCALE 804 = (1989) 4 SCC 592 that ‘manufacture or production in India’ of an 'excisable article’ is a ‘taxable event’ for Central Excise, though duty can be levied and collected at a later stage for administrative convenience - quoted with approval and followed in *Shree Synthetics Ltd*. v. *UOI*1999(113) ELT 774 (SC 3 member bench). Removal from factory is not the 'taxable event'. In *CCE*v.*Vazir Sultan Tobacco Co. Ltd.*- 1996 (2) SCALE 603 = (1996) 13 RLT 291 = JT 1996 (3) (2 ?)112 = AIR 1996 SC 3025 = 1996 AIR SCW 1353 = 63 ECR 359 = 1996 (83) ELT 3 = (1996) 3 SCC 434 (SC - 3 member bench), Supreme Court has confirmed that the levy is and remains upon the manufacture or production alone. Only the collection is shifted to stage of removal. It is also confirmed that the removal of goods is not a taxable event. In*Empire Industries*v.*UOI* (1985) 20 ELT 179 (SC) = AIR 1986 SC 662 = (1985) 1 SCALE 1269 = (1987) 64 STC 42 (SC) = (1985) 3 SCC 314 = 1985 Supp (1) SCR 292 = (1986) 162 ITR 846 (SC), it was observed - 'Taxable event in Central Excise is the manufacture of excisable goods. - . - . - The sale or the ownership of the end-product is absolutely irrelevant for the purposes of 'taxable event' under Central Excise'.  *Person liable to pay excise duty*- Once duty liability is fixed, the duty can be collected from a person at the time and place found administratively most convenient for collection.  THE DUTY LIABILITY IN CASE OF MANUFACTURED GOODS - Rule 4(1) of Central Excise Rules makes it clear that excise duty is payable by the manufacturer or producer of excisable goods. In case where goods are allowed to be stored in a warehouse without payment of duty, the duty liability is of the person who stores the goods. Rule 4(1) makes it clear that goods can be removed from the place where they are manufactured or produced or warehoused, only on payment of duty.  Ownership of raw material is not relevant for duty liability. – *CCE* v. *Mahindra & Mahindra* 2001(132) ELT 632 (CEGAT). Duty demand is payable by manufacturer, even if it cannot be recovered from customer. – *Snap Chem* v. *CCE* 2001(137) ELT 235 (CEGAT).  DUTY LIABILITY IN CASE OF GOODS STORED IN WAREHOUSE - Rule 20 of CE Rules permit warehousing of certain goods in warehouses without payment of duty. These goods are coffee, petroleum products, benzene, tolune etc. In such cases, the duty liability is on the person who stores the goods.  DUTY LIABILITY IN CASE OF MOLASSES PRODUCED IN KHANDSARI SUGAR FACTORY - The other exception is in case of molasses produced in a khandsari sugar factory, the duty liability is of the procurer (i.e. purchaser) of such molasses. The duty is payable on the date of receipt of such molasses in the factory of procurer. The duty on molasses produced in khandsari sugar factory is payable only when the procurer procures the molasses for use in the manufacture of any commodity. Such commodity may or may not be excisable. [Rule 4(2) of CE Rules].  - - Validity of this rule has been upheld in *Ranson Industries* v. *UOI* 2003(151) ELT 53 (J&K HC DB).  DUTY LIABILITY IN CASE OF JOB WORK - Even in case of job work, the duty liability is of actual manufacturer and not of the raw material supplier.- *GTC Industries* v. *CCE* 2001(132) ELT 74 (CEGAT). - - However, a job worker manufacturing goods under notification No 214/86 is exempt from excise duty, as the raw material supplier undertakes that he will use these goods further to manufacture final product or clear for export or pay duty on such goods. [The only exception is in case of textile articles, as explained below].  *Rate of duty as applicable on date of removal relevant* - Though taxable event is 'manufacture', duty payable is as applicable on date of removal i.e. clearance from factory. In *Wallace Flour Mills Co. Ltd.* v. *CCE*1989(44) ELT 598 = 1989(2) SCALE 804 = 186 ITR 440 = 1989(4) SCC 592 (SC), goods were fully manufactured and packed when goods were exempt from duty. These were cleared after the exemption was withdrawn and goods became liable to duty. It was held that duty is payable as applicable on date of removal.  *State of goods at the time of removal is relevant* - Goods have to be classified and valued in the state in which goods are removed from the factory. Any further processing done after removal is not relevant.  *Duty payable even when not collected* - An assessee is liable to pay sales tax and the question whether he has collected it from consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act. - *American Remedies P Ltd.* v. *Govt of AP* 1999(1) SCALE 30 = 113 STC 400 (SC 3 member bench).  *Duty is a manufacturing expense from accounting point of view* - Excise duty should be considered as a manufacturing expense and should be considered as an element of cost for inventory valuation, like other manufacturing expenses. Excise duty cannot be treated as a period cost.  - Guidance Note of ICAI on Accounting Treatment for Excise Duty - Chartered Accountant - July 2000.  **Types of excise duties*-***Excise duties are of following types -  DUTIES UNDER CENTRAL EXCISE ACT - Basic duty is levied under Central Excise Act.  BASIC EXCISE DUTY TO BE TERMED AS CENVAT - Basic excise duty (also termed as Cenvat as per section 2A of CEA added w.e.f. 12-5-2000) is levied at the rates specified in First Schedule to Central Excise Tariff Act, read with exemption notification, if any. – [section 3(1)(a) of CEA].  Basic excise duty is levied u/s 3(1) of Central Excise Act. The section is termed as ‘charging section’. The duty rate is generally 10.30% w.e.f. 27-2-2010including education and SAH cess [ It was 8% w.e.f. 24-2-2009 i.e. total 8.24%. Still earlier, it was 14% i.e. total 14.42%].  Education cess is payable @ 2% of the basic duty and Secondary and High Education Cess is 1% of basic excise duty.  EDUCATION CESS AND SAH EDUCATION CESS ON EXCISE DUTY - If excise duty rate is 8%, education cess will be 0.16% and SAH Education cess will be 0.08%. A provisions of Central Excise Act, including those relating to refunds, exemptions and penalties will apply to education cess and SAH cess.  EXCISE DUTY IN CASE OF CLEARANCES BY EOU – The EOU units are expected to export all their production. However, if they clear their final product in DTA (domestic tariff area), the rate of excise duty will be equal to customs duty on like article if imported in India.*[proviso* to section 3(1)]. Note that even if rate of customs duty is considered for payment of duty, actually the duty paid by them is Central Excise Duty. The rate of customs duty is taken only as a measure. The EOU unit can sale part of their final products in India at 50% of customs duty or normal excise duty in certain cases.  NATIONAL CALAMITY CONTINGENT DUTY – A ‘National Calamity Contingent Duty’ (NCCD) has been imposed vide section 136 of Finance Act, 2001 [clause 129 of Finance Bill, 2001, w.e.f. 1.3.2001]. This duty is imposed on pan masala, chewing tobacco and cigarettes.  It varies from 10% to 45%. - - NCCD of 1% was imposed on PFY, motor cars, multi utility vehicles and two wheelers  and NCCD of Rs 50 per ton was imposed on domestic crude oil, vide section 169 of Finance Act, 2003.  DUTIES UNDER OTHER ACTS - Some duties and cesses are levied on manufactured products under other Acts. The administrative machinery of central excise is used to collect those taxes. Provisions of Central Excise Act and Rules have been made applicable for levy and collection of these duties / cesses.  DUTY ON MEDICAL AND TOILET PREPARATIONS - A duty of excise is imposed on medical preparations under Medical and Toilet Preparations (Excise Duties) Act, 1955.  ADDITIONAL DUTY ON MINERAL PRODUCTS - Additional duty on mineral products (like motor spirit, kerosene, diesel and furnace oil) is payable under Mineral Products (Additional Duties of Excise and Customs) Act, 1958.  CESS - A cess has been imposed on certain products.  **Goods**  The word “goods” has not been defined under the Central Excise Act. Article 366(12) of the Constitution defines ‘goods’ as ‘goods includes all materials, commodities and articles’. Sale of Goods Act defines that “**Goods”** means every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. These definitions are quite wide for purpose of Central Excise Act. However, case law on this is well developed and as per judicial interpretation, the word “goods”, for purpose of levy of Excise duty, must satisfy two requirements i.e. (*a*) they must be movable ***and***(*b*) they must be marketable.  ***Goods must be movable -***They must be **movable**. Thus, immovable property or property attached to earth is not ‘goods’ and hence duty cannot be levied on it -*Kailash Oil Cake Industries*v.*CCE* - 1993 (63) ELT 693 (CEGAT). Duty cannot be levied on immovable property - *National Radio*v.*CCE* - 1995 (76) 436 (CEGAT).  ***Goods must be Marketable -***The item must be such that it is **capable of being**bought or sold. This is the test of ‘Marketability’. The goods must be known in the market. Unless this test of *marketability* is satisfied, duty cannot be levied as these will not be *goods*. [This is also termed as 'Vendibility Test']. This view, expressed in *UOI*v.*Delhi Cloth Mills* - AIR 1963 SC 791 = 1963 (Suppl.) (1) SCR 586 *=*1977 (1) ELT (J 177) (SC 5 member Constitution bench), has been consistently followed by Supreme Court in subsequent cases and by all High Courts. It was held that to become ‘goods’ an article must be something which can ordinarily come to market to be bought and sold.  In case of DCM, they were manufacturing ‘*Vanaspati*’. Raw material was groundnut and til oil. During manufacture, ‘refined oil’ got produced at intermediate stage which was consumed within factory for manufacture of ‘*Vanaspati*’. Excise department demanded duty on this ‘refined oil’. [During the relevant period, there was no excise duty on ‘Vanaspati’, but ‘refined oil’ was excisable.] This stand was negated by Supreme Court. It was observed that process of deodorisation was not carried out on the ‘refined oil’. In the market, the product is not known as ‘refined oil’ unless it is deodorized. Applying this ‘marketability test’, it was held that the ‘refined oil’ which is not ‘deodorized’ is not ‘goods’. [Deodorisation was carried out in the manufacturing process after hydrogenation only.]  *Actual sale is not necessary -*Marketability is an essential ingredient in order to be dutiable. Marketability is a decisive test for dutiability. It only means ‘saleable’ or ‘suitable for sale’. It need not in fact be marketed. The article should be capable of being sold to consumers, as it is - without any thing more. - *Indian Cable Co. Ltd.*v.*CCE* - 1994 (74) ELT 22 (SC) = JT 1994 (6) SC 243 = (1995) 97 STC 307 (SC) = 1994 AIR SCW 4071 = AIR 1995 SC 64 = (1994) 6 SCC 610 = 1994 (4) RLT 437 (SC 3 member bench).  *Mere mention in Tariff is not enough -*Mere mention of an item in tariff is not enough. Simply because a certain article falls within the schedule (of Central Excise Tariff), it would not be dutiable if the article is not ‘goods’ known to the market. - *Bhor Industries Ltd.*v.*CCE*(1989) 40 ELT 280 (SC) = 1989 (1) SCC 602 = 1989(1) SCALE 226 = 1989 (1) SCR 382 = AIR 1989 SC 1153 = (1989) 73 STC 145 (SC) = (1990) 184 ITR 129 (SC) - In this case, it was found that crude PVC films (intermediate product) manufactured by the assessee for captive consumption, for further manufacture of leather cloth were not marketable in that stage and hence not dutiable.  Mere specification in tariff is not proof of marketability. - *Ion Exchange (India) Ltd.* v. *CCE* 1999(4) SCALE 345 = 1999 AIR SCW 2606 = AIR 1999 SC 2457 = 1999(112) ELT 746 (SC).  The aforesaid judgments that goods are not dutiable if they are not marketable, even when they are specifically mentioned in Central Excise Tariff, were under review and the matter was referred to large bench in *UOI* v. *Delhi Cloth and General Mills (DCM)* 1997(91) ELT 23 = 19 RLT 475 = 1998 AIR SCW 2300 = 1997(2) SCALE 609 = AIR 1998 SC 2917 = 1997(4) SCC 203 (SC 2 member bench). A three member bench in *UOI* v. *DCM*1997(4) SCALE 251 = 1997 AIR SCW 2344 = 1997(5) SCC 767 = 109 STC 113 = (1997) 92 ELT 315 = AIR 1997 SC 2429 (SC 3 member bench) has reiterated and confirmed the present view that even if a commodity is specifically mentioned in tariff, duty is not payable if the commodity is not marketable. In this case, it was also observed that the commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable.  *Duty leviable on captive consumption -*Since excise is a duty on manufacture, duty is leviable even if goods are consumed within the factory and not sold. However, the goods must be marketable in the condition in which they are manufactured and further consumed within the factory.  However, mere fact that goods have been captively consumed (i.e. consumed within the factory) is no evidence of its marketability (or non-marketability). Even transient items can be ‘goods’ provided that the article is capable of being marketed even during that short period. Goods which are unstable can be theoretically marketable if there was market for such transient article - but one has to take a practical view on the basis of available evidence. - *Ambalal Sarabhai Enterprises*v.*CCE* (1989) 43 ELT 214 (SC) = JT 1989 (3) SC 741 = 1989 (3) SCR 784 = (1990) 77 STC 190 = AIR 1990 SC 59 = (1989) 4 SCC 112.  *Every thing that is sold is not 'marketable' -*'Marketability' implies regular market for a product. Occasional, stray or distress sales do not mean that the product is 'marketable'.  *Marketability to be decided on the basis of the state in which it is produced -*The commodity which is sought to be made liable to excise duty must be a commodity that is marketable as it is, and not a commodity that may, by further processing, be made marketable - *UOI*v. *DCM*1997(4) SCALE 251 = 1997 AIR SCW 2344 = 1997(5) SCC 767 = (1997) 92 ELT 315 = 109 STC 113 = AIR 1997 SC 2429 (SC 3 member bench) - same view in *Wochardt Ltd.* v. *CCE* 1999(105) ELT 573 (CEGAT) \* *Eastern Coils* v. *CCE* 2001(132) ELT 369 (CEGAT).  ***What are “Goods” -***Some examples will clarify the legal position.  GAS, STEAM ETC. - Gas and Steam are goods as it is a tangible property. - . - It is marketable - *Ambalal Sarabhai Enterprises Ltd.*v.*UOI* 1991 (54) ELT 30 (Guj HC). It is held that ‘steam is ‘goods’ as it can be weighted, measured and marketed.  ELECTRICITY – In case of electrical energy, generation or production coincides almost instantaneously with its consumption. Sale, supply and consumption takes place without any hiatus. - - Electricity is movable property though it is not tangible. It is ‘goods’. – *State of Andhra Pradesh* v. *National Thermal Power Corporation* (NTPC) 2002 AIR SCW 1956 = 127 STC 280 (SC 5 member bench). The ‘electricity’ is ‘goods’ - *CST*v.*MPEB* - (1970) 25 STC 188 (SC) = (1969) 2 SCR 939 = AIR 1970 SC 732 (partly overruled in 2002 only to the extent that it was held in 2002 judgment that electricity cannot be stored). - followed in *Indian Oil Corpn* v. *CTO*(1997) 107 STC 463 (Raj TT)  DRAWING, DESIGNS ETC. ARE GOODS – Drawing and designs relating to machinery or technology are ‘goods’, even if payment is made for technical advice or information technology, which is intangible asset. But the moment it is put on a media, whether paper or diskettes or any other things, that what is supplied becomes chattel. – *Associated Cement Companies Ltd*. v. *CC* 2001 AIR SCW 559 = 128 ELT 21 = 124 STC 59 = AIR 2001 SC 862 = 2001(1) SCALE 436 = JT 2001(2) SC 141 (SC 3 member bench). Knowledge in the form of drawing and design relating to machinery are ‘goods’ – *Prerna Textiles* v. *CCE* 2000(117) ELT 241 (CEGAT) – civil appeal dismissed by SC (2001) 134 ELT A169.  MACHINERY - Will be ‘goods’ if it is in marketable condition at the time of removal from factory of manufacture, even if *subsequently*, it is to be fastened to earth.  *Waste and Scrap are ‘goods’ -*In *Khandelwal Metal and Engg Works*v.*UOI* - 1985 (Supp) 1 SCR 750 = 1985 (20) ELT 222 (SC) = AIR 1985 SC 1211 = (1985) 3 SCC 620, Apex Court held that scrap would be liable to duty, if it is known in commercial parlance by that name and has an established market - followed in *Dhrunal Chhotalal Patel*v.*UOI*- 1993 (63) ELT 27 (Bom HC). In *Greysham* v. *CCE*2000(117) ELT 350 (CEGAT), it was held that waste and scrap of steel arising during manufacture is dutiable as it is marketable and specifically mentioned in tariff.  WASTE AND SCRAP NOT GOODS IF NOT MARKETABLE - Carbide sludge arising in manufacture of acetylene gas is not marketable and hence not liable to duty – *CCE* v. *Bansal Indus. Gases* 2003(151) ELT 4 (SC 3 member bench). Spent Nickel Catalyst arising during manufacture of soap is not an excisable commodity as department failed to prove that it is a marketable commodity. – *CCE* v. *Hindustan Lever* 2003(151) ELT 10 (SC).  WASTE AND SCRAP EXCISABLE ONLY IF MENTIONED IN CETA - The waste and scrap will not be ‘excisable goods’ unless they are specified in CETA. In *CCE* v. *Carborandum Universal Ltd.* 1998(103) ELT 363 (CEGAT), it was held that waste termed as 'dust collector fine' emerging during grinding is merely an industrial waste and even if it fetches some price, it is not 'excisable goods' as there is no tariff entry in CETA.  ***What are not “Goods” -***Some cases where the product was held as not ‘goods’ are illustrated here.  *Goods having very short life are not ‘goods’, if not marketable in that short period –*Yeast having short shelf life is not ‘goods’ when there is no proof about its marketability, even if the product is specified in tariff. *CCE* v. *Jagjit Industries* 2002 AIR SCW 1277 = 141 ELT 306 (SC)  *Immovables are not ‘goods’ -*Articles *which are attached* to earth are not goods as goods means a movable property.  *Excisability of plant & machinery assembled at site -*Plant and Machinery or structure assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable.  The word ‘goods’ applies to those which can be brought to market for being bought and sold, and it is implied that it applies to such goods as are movable. Goods erected and installed in the premises and embedded to earth cease to be goods and cannot be held to be excisable goods. *- Quality Steel Tubes (P.) Ltd.*v.*CCE -*1995 (75) ELT 17 (SC) = 1994(5) SCALE 183 = (1995) 2 SCC 372 = 6 RLT 131 = 1995 AIR SCW 11 = JT 1995 (1) SC 99 = (1995) 56 ECR 209 (SC) - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not ‘goods’.  In *Municipal Corporation of Greater Bombay*v.*Indian Oil Corporation* - JT 1990 (4) SC 533 = 1990(2) SCALE 1140 = AIR 1991 SC 686 = 1991 Supp (2) SCC 18, it was held that if the chattel is movable to another place in the same position (condition?), it is movable property. If it has to be dismantled and re-erected at later place, it is attached to earth and is immovable property.  ASSEMBLY AT SITE IS NOT MANUFACTURE, IF IMMOVABLE PRODUCT EMERGES - In *Mittal Engg Works* v. *CCE*- 1996 (8) SCALE 452 = 1996 (88) ELT 622 (SC) = 17 RLT 612 = (1997) 106 STC 201 (SC) = (1997) 1 SCC 203 = JT 1996(10) SC 722, it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without any thing more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in *CCE* v. *Hyderabad Race Club*- 1996 (8) SCALE 468 = 1996 (88) ELT 633 (SC), where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable.  PRESENT LEGAL POSITION – There were some conflicting judgments. All Supreme Court judgments were of division benches, i.e. 2 member benches. In case of conflicting decisions of coordinate benches (i.e. judgments given by same number of judges), the later judgment prevails. The latest judgment on the issue is of *Triveni Engineering* judgment dated 8-8-2000, which has been practically accepted by Board vide its circular dated 15-1-2002. Hence, the present legal provision is, as decided in *Triveni Engineering*, i.e. 'The marketability test requires that the goods  ***as such*** should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. Thus, if machinery has to be dismantled before removal, it will not be goods. Following is also clear - (a) Duty cannot be levied on immovable property (b) If plant is so embedded to earth that it is not possible to move it without dismantle, no duty can be levied. (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable (d) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.  ***Intermediate Product - Captive Consumption -***Manufacture is possible at intermediate stage also. If a product which is complete, identifiable and which can be sold in market comes into existence during the manufacturing process at intermediate stage, it will amount to manufacture and will be dutiable even if it is not sold and it is used within the same factory. (In excise terminology, it is called ‘Captive Consumption). (*Such intermediate products are exempt from duty if these are used in manufacture of final product which is dutiable. If such exemption is not available, duty liability is certain.*) In *A S Processors* v. *CCE* 1999(112) ELT 706 (CEGAT), it was observed that once a new product comes into existence at intermediate stage, it is charged to duty if not exempted under any notification. In *CCE* v.*Modern Mills* 1999(113) ELT 822 (CEGAT), it was held that duty liability on intermediate product arises as soon as manufacture (of intermediate product for captive consumption) is complete as it is 'deemed to have been removed' under rule 9(1).  **Excisable Goods**  Other essential requirement is that the goods must be ‘*excisable*’. Section 2(*d*) of Central Excise Act defines Excisable Goods as ‘Goods specified in the Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt’. ‘Goods’ includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable [*Explanation* to section 2(d) of CEA].  Thus, unless the item is specified in the Central Excise Tariff Act as subject to duty, no duty is leviable.  ***Goods ‘excisable’ even if exempt from duty -***‘Excisable goods’ do not become non-excisable goods merely because they are exempt from duty by an exemption notification -. *Wallace Flour Mills Co. Ltd.*v.*CCE*(1989) 186 ITR 440 (SC) = 1989(2) SCALE 804 = 1989 (44) ELT 598 (SC) = (1989) 4 SCC 592.  If exemption is granted u/s 5A(1) [that time rule 8(1)], goods do not cease to be excisable goods and levy of duty is not erased. – *CCE* v.*Smithkline Beecham Consumer Health Care Ltd.* 2003(151) ELT 5 (SC).  ***Goods not included in CETA are ‘non-excisable goods’ -***Some goods like wheat, rice, cut flowers, horses, soya beans etc. are not mentioned in Central Excise Tariff *at all* and hence they are not ‘excisable goods’, though they may be ‘goods’. These are ‘non-excisable goods’. Similarly, ‘waste and scrap’ will be ‘excisable goods’ only if specifically mentioned in CETA - *CCE* v. *Amol Decalite Ltd.*1999(105) ELT 222 (CEGAT). In *Western India Ceramics P Ltd.* v. *CCE* 1998(9) ELT 425 (CEGAT), it was held that broken glazed tiles are not excisable as there is no specific entry (in Tariff) for it.  ***Mere mention in CETA not enough -***Mere mention in the Excise Tariff will not attract duty, unless these are ‘goods’ i.e. unless test of marketability is satisfied - *Bhor Industries Ltd.*v.*CCE -* 1989 (40) ELT 280 (SC) = (1989) 73 STC 145 (SC) = (1989) 1 SCC 602 = (1989) 1 SCALE 226 = (1989) 1 SCR 382 = (1990) 184 ITR 129 (SC) = AIR 1989 SC 1153 = 1989 (21) ECR 273  Further, the ‘excisable goods’ are liable to duty only if they are ‘manufactured’ or ‘produced’.  *Goods excisable even if duty is nil* – If by virtue of an exemption notification, the rate of duty is reduced to NIL, the goods specified in the tariff would still be regarded as excisable goods on which NIL rate of duty was payable.  *Goods removed under bond are not 'exempted goods'* - Under Central Excise, the term 'exempted goods' has specific meaning. 'Exempted goods' means those exempted under notification issued u/s 5A of CEA. Goods removed under bond without payment of duty are neither goods 'exempt from duty' nor 'goods chargeable to Nil rate of duty'. - CBE&C circular No 278/112/96-CX dated 11.12.1996 - relying on law ministry opinion dated 29.10.1974.  *Goods manufactured in SEZ are ‘excluded excisable goods’* – As per section 3(1) of CE Act, as made effective w.e.f. 15-8-2003, duty is leviable on all excisable goods (except goods manufactured or produced in Special Economic Zone). Thus, goods manufactured or produced in SEZ are ‘excisable goods’ but no duty is leviable, as charging section 3(1) excludes those goods. Thus, the goods manufactured in SEZ are not ‘exempted goods’. They can be termed as ‘excluded excisable goods’.  ***Meaning of 'Goods which have suffered duty' -***In some cases, the wording used is 'goods which have suffered duty / tax'. In such case, it has been held that actual payment of tax / duty is necessary. Goods cannot be said to have 'suffered tax' when no tax is paid. -*State of MP* v. *Indore Iron & Steel Mills* 1998(4) SCALE 562 also 1998(5) SCALE 467 = AIR 1998 SC 3050 = 111 STC 261 = 1998(6) SCC 416 = JT 1998(6) SC 501.  **Manufactured or produced**  Excise is a duty on “manufacture or production” of goods. Excise is mainly levied on goods manufactured or produced. Thus, definition of ‘manufactured’ or ‘produced’ is important because excise is a duty on manufacture and if there is no manufacture, there is no liability of payment of Central Excise duty. In *Hyderabad Industries Ltd.*v.*UOI* - 1995 (78) ELT 641 (SC) = 1995 AIR SCW 3367 = (1995) 5 SCC 338 - (SC 3 member bench), it was held that even if Central Excise Tariff mentions an item, there is no duty liability unless the process is ‘manufacture’, i.e. if new and identifiable product does not emerge after the process.  DIFFERENCE BETWEEN SALES TAX AND EXCISE - Central Excise duty has to be distinguished from Sales Tax. The Sales Tax is a tax on sales and hence can be imposed only when there is a sale. On the other hand, excise duty is a duty on manufacture and the duty liability is fastened immediately after goods are manufactured ; whether these are sold or not is immaterial. For example, if a Company manufactures a machine or fabricates some furniture within the factory for its own use, there will be no sales tax on the machine or furniture manufactured as it is not sold. However, the machine or furniture will be liable to excise duty as it has been *manufactured*. However, for administrative convenience, the payment of duty may be deferred till removal of goods from the factory.  ***Produced -***The word *produced* is used to cover items like tobacco, tea, coal, ores etc. which are *produced*, but no manufacturing process may be carried out. In *CIT*v.*N C Budharaja and Co.* - (1993) 204 ITR 412 (SC) = (1993) 91 STC 448 (SC) = AIR 1993 SC 2529 = JT 1993 (5) SC 346 = 1994 Supp (1) SCC 280 = (1993) 70 Taxman 312 = 1993 AIR SCW 3317, it has been held that the word ‘production’ has a wider connotation than the word ‘manufacture’. Every ‘manufacture’ can be characterised as ‘production’, but every ‘production’ need not amount to manufacture. When the word ‘produced’ or ‘production’ is used in juxtaposition with the word ‘manufacture’, it takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all by-products, intermediate products and residual products, which emerge in the course of manufacture of goods. Thus, waste, scrap and by-products are dutiable even if they are not manufactured, as they are ‘produced’.  Thus, the word 'produced' covers (a) Items like coffee, tea, tobacco, coal, dairy products, ores etc. which are 'produced' (b) The word 'produced' can also cover live products like horse, fish, flowers etc. which are 'produced' (c) By-products, scrap etc. which are not really 'manufactured' but they do get 'produced' (d) It will obviously cover goods 'manufactured'.  ***Manufacture -***Section 2(*f*) of Central Excise Act merely states that *“manufacture”* includes any process - (*i*) incidental or ancillary to the completion of manufactured product *or* (*ii*) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, *or* (iii) which, in relation to goods specified in third schedule to the CEA, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer. *[clauses (ii) and (iii) are called deemed manufacture]*. - - Thus, definition of ‘manufacture’ is inclusive and not exhaustive. However, there is ample case law on this issue. ‘Manufacture’ means : (*a*) Manufacture as specified in various Court decisions i.e. new and identifiable product must emerge *or* (*b*) Deemed Manufacture.  ‘Manufacture’ as defined by Courts, takes place only when the process results in a commercially different article or commodity. Following would be instances when ‘manufacture’ has taken place (*a*) manufacture of table from wood (*b*) conversion of pulp into base paper (*c*) conversion of sugarcane to sugar.  DEEMED MANUFACTURE – Deemed manufacture is of two types – (a) CETA specifies some processes as ‘amounting to manufacture’. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to ‘manufacture’ [section 2(f)(ii)] (b) In respect of goods specified in third schedule to Central Excise Act, repacking, re-labelling, putting or altering retail sale price etc. will be ‘manufacture’. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A on basis of MRP printed on the package. [section 2(f)(iii) w.e.f. 14-5-2003] - - These provisions are discussed later in this chapter.  ***Manufacture as defined by Courts -***Some important Court decisions are discussed here.  *New substance having distinct name, character or use must emerge -*In *Union of India*v.*Delhi Cloth Mills Co. Ltd.* AIR 1963 SC 791 = 1963 Suppl (1) SCR 586 = 1977 (1) ELT (J199) (SC) and 1990 (27) ECR 151 SC]; a five member constitution bench of Supreme Court has held that the manufacture means bringing into existence a new substance. (This is a very important and leading case regarding definition of ‘Manufacture’). Manufacture is end result of one or more processes, through which original commodity passes. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a*distinctive name, character or use.*  There is no manufacture and hence no excise duty liability if a new and commercially different identifiable product does not result -*Hyderabad Industries Ltd.*v.*UOI* - 1995 (78) ELT 641 (SC) = 1995 AIR SCW 3367 = (1995) 5 SCC 338 - SC 3 member bench   (For example cutting of wood in small pieces or making small pieces of a long steel bars would not amount to manufacture as no new product emerges).  MERE MENTION IN TARIFF DOES NOT MEAN MANUFACTURE – In *CCE* v. *Markfed Vanaspati*2003(153) ELT 491 (SC)., it was held that even if an article is specified in tariff, there is no duty liability unless it is ‘manufactured’.  *Trade Parlance is important -*The test to be applied is whether a commodity subject to processing retains its original character and identity or whether the processed commodity is regarded in the trade by those who deal in it, as distinct identity from original commodity. Nature and extent of processing may vary. With each process, the original commodity experiences change. But it is only when the change or series of change take commodity to a point where commercially it is recognised as a new and distinct commodity, then it can be said that new commodity has come into being. The test is whether in the eyes of those dealing in the commodity or in commercial parlance, the processed commodity is regarded as distinct in character and identity from the original commodity - *Sterling Foods*v.*State of Karnataka*- 1986 (63) STC 239 = 1986(3) SCC 469 = AIR 1986 SC 1809 = 1986(2) SCALE 106 = 1986 (26) ELT 3 (SC). Similar views in *Aditya Mills Ltd.*v.*UOI* (1989) 1 CLA 137 (SC) = (1989) 73 STC 195 = 37 ELT 471 = AIR 1988 SC 2237.  *Assembly can be manufacture****-***Assembly of various parts and components may amount to manufacture if new product emerges, which is movable and marketable.  *Manufacture even if final product falls under same tariff -*There can be ‘manufacture’ even if both inputs and final product fall under same tariff heading, if a different identifiable commercially known product comes into existence - *Laminated Packings (P.) Ltd.*v.*CCE*- 1990 (49) ELT 326 (SC) = 1990 (30) ECR 166 (SC) = 1990(2) SCALE 272 = (1990) 3 JT (SC) 493.  ***Deemed manufacture -***Section 2(f), which defines ‘Manufacture’ has two deeming provisions. Deemed manufacture is of two types – (a) CETA specifies some processes as ‘amounting to manufacture’. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to ‘manufacture’ [section 2(f)(ii)] (b) In respect of goods specified in third schedule to Central Excise Act, repacking, re-labelling, putting or altering retail sale price etc. will be ‘manufacture’. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A on basis of MRP printed on the package. [section 2(f)(iii) w.e.f. 14-5-2003].  Thus, the process may not amount to manufacture as per principles evolved by Courts, but these will be liable to excise duty if it is defined as *amounting to manufacture* under CETA, or if the product is included in third schedule to Act and any of specified process (like re-packing, re-labelling, alteration of retail sale price etc.) are carried out. - - This is called 'deeming provision' or a 'legal fiction'. e.g. process like labelling, re-labelling, re-packing is not 'manufacture' as no new product emerges. However, it will be 'deemed manufacture' and duty will be payable if the process is specified in Central Excise Tariff as 'amounting to manufacture' in relation to any goods. This amounts to charging excise duty on product which is not really manufactured as defined by Courts.  BOTH REPACKING AND LABELLING REQUIRED AND PRODUCT SHOULD BE MADE MARKETABLE  – In many ‘deemed manufacture’ provisions, the wording used is ‘labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer’. Since the word used is ‘and’, it can be argued that mere labelling without re-packing is not ‘deemed manufacture’, as activities of labelling/re-labelling ***and*** re-packing in small packs are inter-dependent and not mutually exclusive.  MERE RE-PACKING IS NOT MANUFACTURE – The words used in many ‘deeming provisions are ‘repacking from bulk packs to small packs’. Thus, mere re-packing is not ‘deemed manufacture’. If goods returned are re-packed, such re-packing is from one retail pack to another retail pack and hence cannot be termed as ‘manufacture’.  - - Similarly, if goods returned for rectification are re-packed, it is not ‘any other treatment to render the product marketable’, as the product was already marketable.  WHEN 'REPACKING AND LABELLING'’ WILL AMOUNT TO MANUFACTURE - In some cases, goods are bought in bulk and sold in retail. This will not amount to 'repacking'. Generally, the expression 'packing' is considered as a package containing pre-packed commodity and quantity of the product contained therein is also pre-determined. - . - Activity of simply transferring material from one container to another may not come under the description 'repacking and labelling' - . - . - However, facts should be ascertained and decision should be taken based on all relevant facts- CBE&C circular No 342/58/97-CX dated 8.10.1997.  *Deemed manufacture in case of goods covered under MRP provisions* - In respect of goods specified in third schedule to Central Excise Act, any process which involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on the container or adoption of any other treatment on the goods to render the product marketable to consumer will be ‘manufacture’. [section 2(f)(iii) effective from 14-5-2003].  The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A, i.e. on basis of MRP printed on the package. Thus, in case of goods on which duty is payable on basis of MRP, if any of the process as specified (like labelling, re-labelling, repacking in unit container, alteration of MRP etc.), it will be ‘manufacture’ and duty will become payable. - - Some times, a manufacturer of goods (which are covered under MRP provisions) clears goods from factory in bulk without putting MRP at the time of clearance. Duty is paid on basis of section 4. The goods are packed and labeled and MRP is put either by the buyer who buys the goods or in some godown or depot or C&F Agent of the manufacturer. Now, the process carried out by the buyer or by C&F Agent or at such depot or godown of manufacturer will be ‘manufacture’. Such depot/buyer/C&F Agent/godown will have to be registered under Central Excise as ‘manufacturer’. It will have to pay duty on the basis of MRP, but will get Cenvat credit of duty paid at the time of clearance from the factory.  Though the section provides that alteration of Retail Sale Price shall be ‘deemed manufacture’, rule 23(7) of Standards of Weights and Measures (Packaged Commodities) Rules, 1997 reads as follows – ‘The manufacturer/packer shall not alter the price on wrapper once printed and used for packing’. - - Thus, in any case, alteration of MRP printed on wrapper is not permissible.  ***Incidental or ancillary process -***Section 2(f), which defines ‘Manufacture’ states that “*manufacture*” includes any process which is incidental or ancillary to the completion of manufactured product. Incidental means occasional or casual process. Ancillary means auxiliary, i.e. it is integral part of manufacturing. Manufacture is not complete unless all ancillary and incidental processes are complete. In border line cases, there can be ambiguity whether a particular process is incidental or ancillary process. For instance, painting or polishing may be essential process for manufacture of furniture. However, a machinery may be said to be finished without painting. It has been held that quality checking is not a process ancillary or incidental to manufacture, unless it is legally mandatory.  **Manufacturer**  The liability to pay duty is on ‘Manufacturer or producer’. Duty cannot be recovered from his purchaser - *Mahindra & Mahindra Ltd.* v. *CCE*- (1983) 13 ELT 974 (CEGAT) (though the manufacturer may recover the same from buyer). Hence, Excise demands, if any, are always raised on manufacturer and recovered from manufacturer. Hence, it is essential to decide who is to be termed as ‘Manufacturer’.  ***Who is the 'manufacturer' -***The definition of ‘manufacture’ u/s 2(f) is not exhaustive. Hence, the word ‘Manufacturer’ has to be understood in its natural meaning, i.e. ‘Manufacturer’ is a person who actually manufactures or produces excisable goods, i.e. one who actually brings into existence new and identifiable product.  Person who transforms commodity into another commodity having a distinct name and character is the manufacturer. – *Pearl Soap Co.* v.*CCE* (2001) 138 ELT 1317 (CEGAT).  SIMPLE DOMESTIC ILLUSTRATION - One domestic example might be helpful. It is common to send wheat to a Mill to grind the wheat and convert it into ‘Wheat Flour’. Now, even if the ‘wheat’ belongs to you, the ‘Mill Owner’ will be the manufacturer of ‘wheat flour’ as per definition of Central Excise. Thus, ‘ownership’ and ‘manufacturer’ may be different. If the cost of wheat is Rs. 12 per Kg and the Mill Owner charges one rupee as job charges (conversion charges for converting ‘wheat’ into ‘wheat flour’), ‘value’ of wheat flour for Central Excise valuation purposes would be Rs. 13/-. Similarly, when you give cloth to tailor to make shirt, the tailor will be the manufacturer of shirt even if cloth belongs to you and the shirt has been made as per your requirements.  *Enlarging definition of ‘manufacturer’* - Section 2(f), which defines the word ‘manufacture’, after defining the word ‘*manufacture*’ states that “the word manufacturer shall be understood accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.” Here again, the definition is not exhaustive but inclusive. The definition enlarges definition of ‘manufacture’ to two categories of persons, besides actual manufacturers, namely : (a) Persons who get the goods manufactured through hired labour. (b) Persons who engage in manufacture of goods on their own account. - - These may be termed as ‘deemed manufacturers’.  MANUFACTURE THROUGH HIRED LABOUR - A person will be treated as ‘Manufacturer’ if he engages ‘hired labour’ who may be Employee or Contractor for manufacture of excisable goods. A hired labour is one who hires himself out to work for and under control of another for wages. However, if he undertakes manufacture on own account, he cannot be said to have hired himself out to another even if he manufactures for other - *Techma Engineering Enterprise*v.*CCE* - 1987 (27) ELT 460 (CEGAT).  Sub-contractor is manufacturer if relation to the main contractor is on principal to principal basis, even when job work is done at site, if relationship between sub-contractor and main contractor is on principal to principal basis. - *Voltas Ltd*. v. *CCE* 2002(139) ELT 223 (CEGAT) \* *Voltas Ltd*. v. *CCE* 2002(144) ELT 108 (CEGAT).  ENGAGES IN MANUFACTURE ON HIS OWN ACCOUNT – The word ‘engages’ has to be read as ‘engages others’. This is because, if he is himself engaged in manufacturer, then he is actually the manufacturer. Extended or enlarged definition is not required to treat him as ‘manufacturer’. ‘On his own account’ has been interpreted to mean as ‘under his direction and control’ in *Philips India* v. *UOI* 1980(6) ELT 263 (All HC DB).  *Manufacture at site of buyer* - In *Basti Sugar Mills* v. *CCE* 2000(115) ELT 626 (CEGAT), it was held that an independent contractor who assembles the parts in a factory (assembly of crane in this case) will be the manufacturer and not the owner of factory. [In this case, contractor assembling the parts was independent contractor appointed by supplier of parts of crane. Obviously, he was not 'hired labour' of the factory owner.] – same view in *Solid and Correct Engineering Works* v. *CCE* 2002(145) ELT 673 (CEGAT). In this case, the marketing company assembled various parts at the site of buyer. It was held that the marketing company is the manufacturer.  *Raw material Supplier is not the manufacturer -*It is common in Industry to supply raw material to a Job Worker or Processor and get the goods manufactured from him in his factory e.g. Automobile Manufacturers like Bajaj, Maruti, Mahindra, Premier Automobiles or Hindustan Motor very often get many parts manufactured from outside on ‘Job Work’ basis. In such cases, they (Maruti, Bajaj etc.) will not be treated as ‘Manufacturer’ even if the Raw Material is supplied by them and right of rejection is retained by them. In *Ujagar Prints*v.*UOI* - AIR 1989 SC 516 = 42 Taxman 151 (SC) = 1989 (39) ELT 493 (SC) = (1989) 74 STC 401 (SC) = (1989) 3 SCC 488 = 179 ITR 317 (SC) (5 member constitution bench), it has been held that excise duty is on ‘manufacture and production of goods’ and liability to pay duty is not dependent upon whether the manufacturer is owner or not.  *Brand Owner is not the Manufacturer -*Some large units get their goods manufactured from others under their Brand Name, instead of manufacturing it themselves. They usually control quality and may even supply the design. e.g. Bajaj Electricals get many electrical goods manufactured from others; Batas procure some foot-wear from others and supply under their brand name. Some large pharmaceutical companies also get the goods manufactured from small scale units under their brand names. In such cases; Bajaj, Bata or the Pharmaceutical Companies will not be treated as ‘Manufacturer’ even if they exercise quality control, or allow use of their brand name, or provide financial help to the small manufacturers, or even supply the raw material, if their relation with the manufacturer is ‘*Principal to Principal’* basis. Supreme Court in *Cibatul Ltd.*v.*UOI* - 1978 (22) ELT 302 (SC) - have held that if the goods are produced with Customer’s brand name under his quality control, it does not mean that the Customer is the Manufacturer. Same view was reaffirmed in *Jt. Secretary to Government of India*v.*Food Specialities Ltd. -* 1985 (22) ELT 324 (SC).  Brand name owner will not be manufacturer even if he supplies raw material. - *Philips India Ltd.*v.*UOI* - 1980 (6) ELT 263 (All HC DB) - quoted and followed in*Cheryl Laboratories*v.*CCE* - 1993 (65) ELT 596 (CEGAT - 3 member bench order).  **Manufacture must be in India**  Last operative word of section 3 of Central Excise Act is that excisable goods must be manufactured or produced in India. Thus, excise levy cannot be imposed on imported goods or goods manufactured in Nepal. This is also true if goods are imported in SKD or CKD condition and they are only assembled in India, as no new product emerges - *Walchand Nagar Industries*v.*CCE* - 1995 (79) ELT 485 (CEGAT - 3 member bench order). - same view in *Indian Xerographic System Ltd.*v.*CC, Bombay* - (1995) 80 ELT 337 (CEGAT) \* *CIT* v.*Telco* (1968) 68 ITR 325 (Bom).  However, if goods are classified as per rules of classification as complete machine as per legal fiction, but actually components or sub-assemblies are imported, its assembly in India will amount to manufacture and excise duty will be payable. Case law on this issue has been discussed earlier in this chapter. |

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Classification of Goods

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| **Classification of goods for Central Excise and Customs**     |  |  | | --- | --- | | **Background of Central Excise Tariff** |          Rate of duty is determined based on Classification of goods read with relevant exemption notification.           Classification is done on basis of Central Excise Tariff and Customs Tariff. Both the tariffs are based on HSN (Harmonised System of Nomenclature) developed by WCO.           Goods are classified in 20 sections (21 in case of customs). Each section consists of various chapters.           Tariff is based on 8 digit classification of goods. First two digits indicate chapter, next two digits indicate heading and next two are sub-classification. Single, double and triple dashes are used to groups and sub-groups.           Eight digit classification is termed as ‘tariff item’. Rate of duty is indicated only against ‘tariff item’.           Classification is done on basis of GIR (General Interpretative Rules) which are part of Tariff. Titles of sections and chapters are only for reference. Section notes and chapter notes have overriding effect. | | **Steps in classification of an article** | (1)   Refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion, the classification is final (Rule 1 of GIR). You do not have to look to classification rules or trade practice or dictionary meaning. If classification is not possible, then only go to GIR. The rules are to be applied sequentially.  (2)   If meaning of word is not clear, refer to trade practice. If trade understanding of a product cannot be established, find technical or dictionary meaning of the term used in the tariff. You may also refer to BIS or other standards, but *trade parlance* is most important.  (3)   If goods are incomplete or un-finished, but classification of finished product is known, find if the un-finished item has *essential characteristics* of finished goods. If so, classify in same heading - Rule 2(a).  (4)   If ambiguity persists, find out which heading is specific and which heading is more general. Prefer specific heading.- Rule 3(a).  (5)   If problem is not resolved by Rule 3(a), find which material or component is giving ‘*essential character*’ to the goods in question - Rule 3(b).  (6)   If both are equally specific, find which comes last in the Tariff and take it - Rule 3(c).  (7)   If you are unable to find any entry which matches the goods in question, find goods which are most akin - Rule 4.  (8)   In case of mixtures or sets too, the procedure is more or less same, except that each ingredient of the mixture or set has to be seen in above sequence. As per rule 2(b), any reference to a material or substance includes a reference to mixtures or combinations of that material or substance with other material or substance.  (9)   Packing material is classified along with the goods except when the packing is for repetitive use – Rule 5 | | **General Principles of classification of an Article** |          Words used in Tariff are to be understood in the sense these are understood in the trade. This is ‘trade parlance theory’. The trade parlance is more important than dictionary or technical meaning, unless the word is specifically defined in the Tariff itself.           HSN is very important guide in classifying a product and it should be normally followed.           End use is generally not relevant for classification, except when the tariff description so requires and classification is relating to function of the product. | |

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Valuation under Central Excise

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| **Basis of calculation of duty payable i.e. Valuation**     |  |  | | --- | --- | | **Modes of calculation of excise duty** | Duty can be payable on basis of specific duty (based on weight, length, volume etc.), MRP based duty [section 4A], compounded levy, tariff value [section 3(2)], production capacity [section 3A] or on *ad valorem* basis [section 4]. | | **MRP based valuation [section 4A]** | | | **Products covered under MRP provisions** | In case of about 110 products, duty is payable u/s 4A of Central on basis of MRP printed on the package, after allowing abatement at specified rates. MRP should be inclusive of all taxes and duties.  The provision applies only when product is package intended for retail sale ***and*** is specified in a notification issued u/s 4A. | | **MRP provisions are overriding** | MRP provisions u/s 4A are overriding provisions. | | **Assessable value when MRP not applicable** | Even in case of products covered u/s 4A, where MRP provisions are not applicable, valuation will be on basis of ‘value’ u/s 4 i.e. Assessable Value.  MRP provisions do not apply to free samples, package less than 10gm/10 ml, wholesale package or package above 25 Kg (50 Kg in some cases) | | **Deemed manufacture of products u/s 4A** | In case of goods covered under section 4A, packing or repacking and re-labelling is ‘deemed manufacture’. | | **Incorrect MRP** | Department can ascertain MRP if MRP not declared or incorrectly declared or obliterated. Penalty can be imposed [section 4A(4)(a) of Central Excise Act]. | | **Basic requirement of Assessable Value [section 4]** | | | **Transaction value as assessable value** | When duty is payable on *ad valorem* basis, it is payable on assessable value as defined in section 4 of Central Excise Act.  ‘Transaction Value’ is taken as Assessable Value only if goods are sold at the time and place of removal, buyer is unrelated and price is sole consideration [Section 4(1)(a) of Central Excise Act]. | | **What is transaction value** | Transaction value is the price paid or payable for the goods at the time and place of removal, ‘by reason of, or in connection with sale’, inclusive of all expenses but excluding taxes [section 4(3)(d) of Central Excise Act].  Transaction value does not include duty of excise, sales tax and any other taxes on goods.  Only taxes actually paid or payable are allowed as deduction. | | **Price to be taken as inclusive of excise duty** | If goods are cleared without payment of duty, the price is taken as ‘cum duty’ price and excise duty payable should be calculated by back calculations *CCE* v. *Maruti Udyog* 122 Taxman 105 =  (2002) 3 SCC 547 = 141 ELT 3 (SC 3 member bench). If there is additional consideration, it will be added to invoice price and then duty payable is calculated by making back calculations [Explanation to section 4(1) of Central Excise Act] | | **Inclusions and exclusions in ‘transaction value’** | | | **By reason of or in connection with sale of such goods.** | Any amount charged is includible in assessable value if it is by reason of or in connection with sale of such goods. | | **Packing and design charges** | Duty is payable on packing charges and design charges related to manufacture. | | **Price escalation** | Duty is payable in case of price escalation after clearance, but not when price was final at the time of clearance. If there is price rise after clearance of goods from factory, differential excise duty and interest @ 13% is payable. | | **Trade discounts** | Trade discount is allowable as deduction from assessable value. Cash discount is allowable. Discount need not be uniform. | | **Notional interest on advances** | Notional interest on advances is includible only if there is evidence that it has depressed the selling price. | | **Warranty charges** | Compulsory charges for after sale service during warranty period are includible. After sale service charges which are optional are not includible. | | **PDI and after sales service** | Pre-delivery charges (PDI) and after sale service charges are not includible if these are incurred by dealer out of his commission. | | **Outward freight after ‘place of removal’ not includible in assessable value** | | | **Place of removal** | Transport charges upto place of removal are includible in assessable value. | | **Ownership transferring at factory gate** | If delivery is ex-works and property is transferred to buyer at factory gate, outward freight is not includible in assessable value as factory gate is the place of removal. This will be so even if transport is arranged by manufacturer and charged to buyer. | | **Contract FOR** | Even if contract is F.O.R. destination basis, there can be ‘sale’ at factory gate, since as per section 39 of Sale of Goods Act, delivery of goods to carrier is *prima facie* delivery to buyer. If contract is F.O.R. basis *and* sale takes place only when goods are delivered to buyer (i.e. property in goods passes to buyer at destination only), transport charges are includible in assessable value. | | **Profit on transport activity permissible** | If assessee himself provides transport services, reasonable profit on the transport activity should be permissible i.e. it is not includible in assessable value. | | **Equalised freight** | Equalised freight is also allowable as deduction, if there is ‘sale’ at factory gate. | | **Bought out goods and accessories when includible in assessable value** | | | Price of essential bought out goods | Price of Bought out goods supplied along with manufactured goods is includible, if these are essential parts of manufactured goods. | | Price of parts not fitted at time of removal | Since goods are to be assessed in the condition in which cleared from factory, value of components not fitted is not required to be added in assessable value, even if they are essential | | Price of accessories not includible | Price of accessories and optional bought out items is not includible in Assessable Value  Accessory means an object not essential in itself but adding to beauty, convenience or effectiveness of something else. | | **Valuation rules** | | | Transaction value not acceptable | If transaction value is not acceptable, valuation is required to be done as per Valuation Rules [Section 4(1)(b) of Central Excise Act and Valuation Rule 3] | | Value of similar goods | Valuation can be done on value of ‘such’ goods (i.e. goods of same class of same manufacturer) [Rule 4] | | Transport upto place of removal | Cost of transport upto ‘place of removal’ is includible in assessable value but not beyond that [Rule 5] | | Money value of other consideration includible | If price is not sole consideration, money value of other consideration should be added e.g. cost of material, patterns, dies, designs etc. supplied by buyer is required to be added to Assessable Value [rule 6]. Value of patterns, dies etc. should be added on pro-rata basis. | | Captive consumption | In case of captive consumption, duty is payable on basis of cost of production plus 10%. Cost of Production should be calculated on basis of CAS-4 [Rule 8] | | Job work | In case of job work, duty is payable by job worker. Valuation is done on the basis of price at which raw material supplier (Principal Manufacturer) sales the manufactured final product in market [Rule 10A]. If goods are covered under MRP valuation provisions, duty is payable on MRP basis. | | **Valuation in case of sale from depot/branch** | | | **Depot price at the time of removal** | In case of depot sale, duty is payable on basis of depot price prevailing at the time of removal of final product from the factory [Rule 7]. | | **Subsequent sale price not relevant** | Price at which the goods are actually sold subsequently is not relevant. Differential duty is not payable even if goods are sold later at higher price from depot. Similarly, refund is not available if prices are goods are subsequently actually sold at lower price. | | **Transport charges after depot** | Transport charges upto depot and depot expenses are not allowable as deduction (These are already included in depot price). Transport charges from depot onwards are not includible in assessable value. | | **Value addition done at depot** | Any value addition done at depot is not includible in assessable value, if activity is not ‘manufacture’ (the reason is that goods are to be assessed in the condition in which they are removed from factory). | | **Deemed manufacture in case of MRP** | In case of products covered under MRP provisions, if packing in retail pack and labelling of MRP is done at depot/place of consignment agent, it will be ‘deemed manufacture’ and excise duty will be payable. | | **Valuation when sale through ‘related person’** | | | **Price to unrelated buyer relevant** | If goods are sold through related person, value for purpose of excise will be the price at which the related buyer sales goods to unrelated buyer. | | **Inter connected undertaking** | An inter-connected undertaking will be treated as ‘related person’ for excise valuation only if there is holding subsidiary relationship [Inter-connected undertaking means 25% common control] | | **Holding and subsidiary** | A holding and subsidiary are ‘related persons’, | | **Rate legal entities** | A mere distributor is not a related person.  A company or firm is a separate legal entity and cannot be a ‘related person’ of other company or firm. | | **Piercing corporate veil** | Even if the buyer does not fall within the definition of ‘related person’, sale price to him can be rejected by piercing the corporate veil. His selling price can be considered if it is found, by piercing corporate veil, that the transaction is not at arms length i.e. price is not the sole consideration. | | **Valuation in case of entire sale through related person** | If goods are sold solely through related person (except in case of inter connected undertaking, unless there is holding subsidiary relationship), valuation will be ‘normal transaction value’ at which the related buyer sales to unrelated buyer [rules 9 and 10 of Valuation Rules] | | Supply of goods to related person for captive consumption | If goods are supplied to related person for captive consumption, valuation will be on basis of cost of production plus 10%. | | Partial sale through related person | If sale is partly to related person and partly to unrelated person, valuation shall be done on ‘reasonable basis’ by residual method under rule 11.  If related person is only one of the buyers and substantial sales are made to unrelated persons at same price, that price can be considered for valuation in respect of sale to related person also. | | **Other provisions relating to valuation** | | | **Residuary rule of valuation** | If valuation is not possible under any of aforesaid rules, valuation will be on basis of ‘best judgment’ assessment, i.e. value shall be determined using reasonable means consistent with the principles and general provisions of Valuation rules and section 4(1) of section 4 of the Act [Rule 11] | | **Duty based on production capacity** | Section 3A of CEA provides for payment of duty on basis of production capacity, without any reference to actual production. Production capacity will be determined as per Rules. Pan masala and gutkha are covered under these provisions. | | **Compounded levy scheme** | Compounded levy scheme under rule 15 of Central Excise rules, provides for payment of duty on basis of production capacity. It is an optional scheme. The scheme is presently applicable to stainless steel pattas/patties and Aluminium circles. These articles are not eligible for SSI exemption. | | **Tariff value [section 3(2) of Central Excise Act]** | In some cases, tariff value is fixed by Government from time to time. This is a “*Notional Value*” for purpose of calculating the duty payable. Once ‘tariff value’ for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4. | |

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Central Excise Procedures

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| |  |  | | --- | --- | | **Administration of Central Excise** | Administration of Central Excise is under CBE&C (Central Board of Excise and Customs). The hierarchy is – Chief Commissioner, Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner, Superintendent and Inspector. | | **Registration** | Every person who produces or manufactures excisable goods, is required to get registered, unless exempted. [Rule 9 of Central Excise Rules]. If there is any change in information supplied in Form A-1, the same should be supplied in Form A-1. | | **Daily Stock Account** | Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock. [Rule 10 of Central Excise Rules] | | **Clearance of goods under Invoice** | Goods must be cleared under Invoice of assessee. In case of cigarettes, invoice should be countersigned by Excise officer. [Rule 11 of Central Excise Rules] | | **Payment of excise duty** | Duty is payable on monthly basis through GAR-7 challan / Cenvat credit by 5th/6th of following month, except in March.  SSI units have to pay duty on quarterly  basis by 5th/6th of month following the quarter. Assessee paying duty through PLA more than Rs 10 lakhs per annum is required to make e-payment only [Rule 8]. | | **Returns of production, clearances and payment of excise duty** | Monthly return in form ER-1 should be filed by 10th of following month. SSI units have to file quarterly return in form ER-3. [Rule 12 of Central Excise Rules] - - EOU/STP units to file monthly return in form ER-2 – see rule 17(3) of CE Rules  E-return is mandatory where duty paid in previous year (by cash and/or through Cenvat credit) exceeded Rs 10 lakhs in previous year. | | **Annual Financial Information** | Assessees paying duty of Rs one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules]. | | **Information about Principal Inputs** | Specified assessees are required to submit Information relating to Principal Inputs every year before 30th April in form ER-5, to Superintendent of Central Excise. [rule 9A(1) to Cenvat Credit Rules]. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days [rule 9A(2) to Cenvat Credit Rules]. Only assessees manufacturing goods under specified tariff heading are required to submit the return. The specified tariff headings are – 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; 54.02, 54.03, 55.01, 55.02, 55.03, 55.04. Even in case of assessees manufacturing those products, only assessees paying duty of Rs one crore or more (either through current account or Cenvat credit) are required to submit the return. | | **Monthly return of receipt and consumption of each of Principal Inputs** | Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by tenth of following month [rule 9A(3) to Cenvat Credit Rules].*Only those assessees who are required to submit ER-5 return are required to submit ER-6 return.* ***See chart below for various returns to be filed.*** | | **Annual Installed Capacity statement** | Submit Annual Installed Capacity Statement in form ER-7 every year before 30th April. | | **Submission of List of records** | Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sales or delivery of goods including inputs and capital goods, input services and financial records and statements including trial balance [Rule 22(2)]. | | **Changes in details of assessee** | Inform change in boundary of premises, address, name of authorised person, change in name of partners, directors or Managing Director in form A-1. [*Refer* Instructions given below form A-1] | | **Non-core procedures (to be followed when required)** |          Export without payment of duty or under claim of rebate [Rules 18 and 19 of Central Excise Rules]           Receipt of goods for repairs / reconditioning [Rule 16 of Central Excise Rules]           Receipt of Goods at concessional rate of duty for manufacture of Excisable Goods.           Provisional Assessment [Rule 7 of Central Excise Rules]           Warehousing of goods.           Adjudication, Appeals and settlement.  ***See chart after following chart for summary of non-core procedures*** |   **Returns to be filed under Central Excise**   |  |  |  |  | | --- | --- | --- | --- | | **Form of Return** | **Description** | **Who is required to file** | **Time limit for filing return** | | **ER-1**  **[Rule 12(1) of Central Excise Rules]** | Monthly Return by large units | Manufacturers not eligible for SSI concession | 10th of following month | | **ER-2**  **[Rule 12(1) of Central Excise Rules]** | Return by EOU | EOU units | 10th of following month | | **ER-3**  **[Proviso to Rule 12(1) of Central Excise Rules]** | Quarterly Return by SSI | Assessees eligible for SSI concession (even if he does not avail the concession) | 10th of next month of the quarter | | **ER-4**  **[rule 12(2) of Central Excise Rules]** | Annual Financial Information Statement | Assessees paying duty of Rs one crore or more per annum  either through PLA or Cenvat or both together (Till 29-9-2008, the provision was applicable only when payment through PLA alone was more than Rs one crore). | Annually by 30th November of succeeding year | | **ER-5**  **[Rules 9A(1) and 9A(2) of Cenvat Credit Rules]** | Information relating to Principal Inputs | Assessees paying duty of Rs one crore or more per annum (either through PLA or Cenvat or both together) and manufacturing goods under specified tariff headings (Till 29-9-2008, the provision was applicable only when payment through PLA alone was more than Rs one crore). | Annually, by 30th April for the current year (e.g. return for 2005-06 is to be filed by 30-4-2005]. | | **ER-6 [Rule 9A(3) of Cenvat Credit Rules]** | Monthly return of receipt and consumption of each of Principal Inputs | Assessees required to submit ER-5 return | 10th of following month | | **ER-7 [Rule 12(2A) of Central Excise Rules]** | Annual Installed Capacity Statement | All assessees, except manufacturers of *biris* and matches without aid of power and  , reinforced cement concrete pipes | Annually, by 30th April for the previous year (e.g. return for 2010-11 should be submitted by 30-4-2011 | | **Form as per Notification No. 73/2003-CE(NT) [Rule 9(8) of Cenvat Credit Rules]** | Quarterly return of Cenvatable Invoices issued | Registered dealers | By 15th of following month | | **ST-3 [Rule 9(9) of Cenvat Credit Rules and rule 7(2) of Service Tax Rules]** | Half yearly return of taxable services provided | Person liable to pay service tax | Within 25 days from close of half year | | **ST-3 [Rule 9(10) of Cenvat Credit Rules]** | Hal yearly return of Cenvat credit distributed | Input Service Distributor | Within one month from close of half year |     6 Other Procedures in Central Excise     |  |  | | --- | --- | | **Export Procedures** |          Exports are free from taxes and duties.           Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18.           Container containing export goods should be sealed by excise officer. Self-sealing is permissible.           Excisable Goods should be exported under cover of Invoice and ARE-1 form. Export should be within 6 months from date of clearance from factory.           Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue Letter of Undertaking.           Export to Nepal/Bhutan are required to be made on payment of excise duty, except when supply is against international bidding.           Rebate under rule 18 can be either of duty paid on final products or duty aid on inputs but not both.           EOU has to issue CT-3 certificate for obtaining inputs without payment of excise duty. | | **Bringing good for repairs** |          Final products cleared on payment of duty can be brought back for repairs etc., by following prescribed procedures.   |  |  | | --- | --- | | bullet | Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16. | | bullet | The goods need not have been manufactured by assessee himself. | | bullet | Cenvat credit of duty paid on such goods can be taken, on basis of duty paying documents of such goods. | | bullet | After processing/repairs, if the process amounts to ‘manufacture’, excise duty based on assessable value is payable. | | bullet | If process does not amount to manufacture, an ‘amount’ equal to Cenvat credit availed should be paid [rule 16(2)]. | | bullet | If some self manufactured components are used, duty will have to be paid on such components. | | bullet | Buyer/recipient of such goods can avail Cenvat credit of such amount/duty. | | bullet | If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)]. | | | **Bonds** |          Assessee is required to execute bond for various purposes like obtaining goods without payment of duty, clearance of seized goods etc. B-1 bond is for exporting without payment of duty, B-17 bond is for EOU. | | **Bringing goods are concessional rate of duty** |          Goods can be obtained at concessional rate of duty concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, if prescribed conditions are satisfied and procedure is followed. | |

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Cenvat

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| **Cenvat Credit in easy steps**     |  |  | | --- | --- | | What is Cenvat? | | | **Avoid cascading effect** | Basic purpose of Vat is to eliminate cascading effect of taxes by tax credit system. This is done through mechanism of input tax credit. | | **Destination Principle** | Cenvat is based on destination principle i.e. excise duty/service tax is paid only when goods are consumed. Till then, burden of duty gets passed on to the next buyer/customer [In case of sales tax, as per this principle, sales tax is payable in the State in which goods are consumed and not in the State in which goods are produced] | | **Credit of inputs, input services and capital goods** | Cenvat scheme allows credit of excise duty paid on inputs goods, capital goods and service tax paid on input services [Rule 3(1) of Cenvat Credit Rules] | | **Utilisation of Cenvat Credit** | This credit can be utilised for payment of excise duty on dutiable final products and service tax on taxable output services [Rule 3(4) of Cenvat Credit Rules] | | **Credit only if manufacture or provision of service** | Cenvat credit is available only if there is ‘manufacture’ or ‘provision of taxable output service’. | | **One to one relation not required** | Cenvat Credit Rules do not require one to one relationship [Rule 3(1) read with 3(4) of Cenvat Credit Rules]  Entire Cenvat credit is common pool which can be utilised for payment of any eligible duty, service tax or amount. | | **Input (goods) eligible for Cenvat credit** | | | **Inputs used in or in relation to manufacture** | Inputs which are used in or in relation to manufacture of taxable final product and inputs directly used for provision of taxable output service are eligible for Cenvat credit [Rule 2(k) of Cenvat Credit Rules]  Input may be used directly or indirectly in manufacture. Any input integrally connected with manufacturing process is eligible. Process loss is eligible. | | **Consumables eligible** | Consumables are eligible for Cenvat credit. | | **Accessories, packing material, paint** | Accessories, packing material and paints are eligible as inputs. | | **LDO, HSD and petrol not eligible** | LDO, HSD and petrol are not eligible for Cenvat credit [Explanation 1 to Rule 2(k) of Cenvat Credit Rules] | | **Cement, angles, channels etc. not eligible** | Input does not include cement, angles, channels, CTD or TMT used for construction of factory shed, building or foundation or structures to support capital goods [*Explanation* 2 to Rule 2(k) of Cenvat Credit Rules] | | **Inputs directly used for providing service** | Definition of ‘input’ is restricted for service providers. Only inputs used directly in providing taxable service are eligible.  If service provider charges separately for material supplied while providing service, its cost is not includible. Correspondingly, duty paid on such material is not Cenvatable. | | **Instant credit** | Cenvat credit on input (goods) is instant, i.e. as soon as inputs are received in the factory. | | **Input Service** | | | **Input service eligible for Cenvat credit** | Cenvat credit is available of service tax paid on input services.  Definition of ‘input service’ is very wide [Rule 2(l) of Cenvat Credit Rules]. Inclusive part of the definition expands the scope much beyond manufacture or provision of taxable service. | | **Any service in relation to business is input service** | Decisions in *Coca Cola* (Bombay High Court) and *ABB* (LB of CESTAT) have cleared most of doubts about interpretation of ‘input service’ and it is clear that any relation with manufacture or provision of taxable service is not required. any service in relation to business of manufacturer or service provider is ‘input service’ | | **Credit only after payment of bill** | Credit of service tax on input services is available only after payment is made of bill including service tax to service provider for service [Rule 4(7) of Cenvat Credit Rules] | | **Input Service Distributor and Input Credit Distributor** | | | **Utilisation of credit of service tax paid at HO, depots** | Service tax paid at Head Office, Regional/Branch office can be utilised through mechanism of ‘Input Service Distributor’. They should be registered and pass credit through invoice [Rules 2(m) and 7 of Cenvat Credit Rules] | | **Distribution of Credit through Invoice** | The ‘Input Service Distributor’ can distribute Cenvat credit of service tax availed by it by issuing an Invoice to its manufacturing units or units providing output service. The invoice should have details as required in Rule 4A(2) of Service Tax Rules. | | **Distribution can be in any ratio** | The distribution of credit can be in any ratio. However, total credit distributed should not be more than service tax paid on input services. If some input service is *exclusively* used for exempted final product/output service, its credit is not available for distribution by Input Service Distributor [Rule 7]. | | **Credit of excise duty on input goods** | Input Credit Distributor can distribute credit on duty paid on inputs (goods) if invoice received at HO and distributed to other places [Rule 7A of Cenvat Credit Rules]  Since Cenvat credit can be passed through mechanism of endorsement of invoice, this facility is not much used. | | Capital goods eligible for Cenvat credit | | | **Capital goods eligible for Cenvat credit** | Only capital goods as defined in Rule 2(a) of Cenvat Credit Rules are eligible for Cenvat Credit. Following capital goods are covered in clause (A)(i) of above definition - Tools, hand tools, knives etc. falling under chapter 82 \* Machinery covered under chapter 84 \* Electrical machinery under chapter 85 \* Measuring, checking and testing machines etc. falling under chapter 90 \* Grinding wheels and the like, and parts thereof falling under sub-heading No 6804 \* Abrasive powder or grain on a base of textile material, of paper, of paper board or other materials, falling under chapter heading 6805  Dumpers or tippers falling under chapter 87 are eligible as capital goods for Cenvat credit to providers of service of Site formation and clearance, excavation and earthmoving and demolition [section 65(105)(zzza)] and Mining of mineral, oil or gas services [section 65(105)(zzzy)], if these are registered in name of service provider and zre used for providing taxable service (amendment w.e.f. 22-6-2010). Other service providers and manufacturers are not eligible.  This definition is quite different from ‘capital goods’ as understood in conventional accounting or under income tax. | | **Capital goods to be used in factory** | Capital goods should be used in the factory of manufacturer or for provision of output service. | | **Equipment or appliances used in office not eligible to manufacturer** | Capital goods does not include equipment or appliance used in an office of manufacturer (this restriction does not apply to service provider) | | **Eligibility of Motor vehicles** | Motor vehicle is capital goods only in respect of specified service providers [Rule 2(a)(B) of Cenvat Credit Rules] | | **Sending out capital goods** | Capital goods should be used in factory. These can be sent outside for job work but should be brought back within 180 days [Rule 4(5)(a) of Cenvat Credit Rules]  Moulds, dies, jigs and fixtures can be sent outside without restriction of return within 180 days [Rule 4(5)(b) of Cenvat Credit Rules | | **Partial use of capital goods for exempted goods allowable** | Capital goods used exclusively for manufacture of exempted goods are not eligible for Cenvat credit. Thus, partial use for exempted goods is allowable i.e. full Cenvat credit is available. | | **Capital goods on hire purchase/lease/loan** | Capital goods obtained on hire purchase/lease / loan are eligible [Rule 4(3) of Cenvat Credit Rules] | | **Duty paying documents** | Duty paying documents eligible are same for Cenvat on inputs. | | **Depreciation should not be availed on Cenvat portion** | Depreciation under section 32 of Income Tax Act should not be claimed on the excise portion of the Capital Goods. – Rule 4(4) of Cenvat Credit Rules (Otherwise, the manufacturer will get double deduction for Income Tax - one credit as Cenvat and another credit as depreciation) *e.g.* if cost of 'capital goods' is Rs 1.16 lakhs, out of which Rs 0.15 lakh is duty paid, assessee can claim depreciation under Income Tax only on Rs one lakh, if he has availed Cenvat credit of Rs 0.16 lakh. The requirement gets satisfied only if the assessee follows accounting procedure specified in guidelines issued by Institute of Chartered Accountants of India | | **Credit to be availed in two instalments** | Cenvat credit on capital goods is required to be availed in more than one year, i.e. upto 50% credit can be availed when these are received and balance in any subsequent financial year. The condition for taking balance credit is that the capital goods should be in possession of manufacturer of final products in subsequent years. *SSI units can avail entire 100% Cenvat credit in first year itself* – Rule 4(2)(a) of Cenvat Credit Rules. | | **Removal of capital goods as such, after use or as scrap** | Capital goods on which Cenvat credit was taken can be removed ‘as such’ on payment of ‘amount’ equal to Cenvat credit availed [Rule 3(5) of Cenvat Credit Rules]  If capital goods on which Cenvat was availed are removed as scrap, an ‘amount’ equal to duty on scrap value is payable [Rule 3(5A) of Cenvat Credit Rules].  If capital goods are cleared after use as second hand capital goods, ‘amount’ is payable at reduced rate by reducing credit taken @ 2.5% per quarter. | | **Availment of Cenvat credit** | | | **What is ‘Cenvat Credit’** | ‘Cenvat Credit’ is a pool of duties and taxes paid on inputs, capital goods and input services as specified in Rule 3(1) of Cenvat Credit Rules. | | **Procurement of goods from EOU** | In respect of inputs / capital goods procured from EOU unit, Cenvat credit is available equal to CVD and special CVD paid and education cess and SAH education cess w.e.f. 7-9-2009 (earlier, it was allowable as per a complicated formula) – Rule 3(7)(a) of Cenvat Credit Rules. | | **Utilisation of Cenvat credit** | | | **Utilisation for any eligible purpose** | Cenvat credit is a pool. The credit in this pool can be utilised for payment of any excide duty on excisable final product and service tax on taxable output service. The credit can also be used for payment of certain ‘amounts’ [Rule 3(4) of Cenvat Credit Rules] | | **Credit only of inputs and services received upto end of month** | Credit can be utilised only of inputs and input services received upto end of the month [First proviso to Rule 3(4) of Cenvat Credit Rules] (even if excise duty/service tax is payable at a later date) | | **Inter-changeability of credit of various duties** | Credit of Basic excise duty, CVD, Special CVD and service tax can be utilised for payment of *any*duty on final product or service tax on output services, except duty payable u/s 85 of Finance Act on pan masala and certain tobacco products [*provisos* to Rule 3(4) of Cenvat Credit Rules] | | **Restrictions on interchangeability** | Cenvat Credit of education cess, NCCD and additional excise duty paid on inputs under section 85 of Finance Act (and corresponding CVD on imported inputs) can be utilised only for payment of corresponding duty on final product i.e. the credit is not inter-changeable. | | **Credit of special CVD** | Credit of special CVD (present rate is @ 4%) u/s 3(5) of Customs Tariff Act can be utilised by manufacturer but not by service providers [third *proviso* to Rule 3(4) of Cenvat Credit Rules] | | **Credit of education cess and SAHE cess** | Credit of education cess paid on input goods and paid on input services is inter-changeable. Similarly, credit of SAH Education cess paid on input goods and paid on input services is inter-changeable. | | **Duty paying document for availing Cenvat credit** | | | **Eligible duty/tax paying document** | Cenvat credit can be availed on basis of eligible duty documents as specified in Rule 9(1).  Invoice of Manufacturer, Bill of Entry, Supplementary Invoice, Dealer’s Invoice and GAR-7 challan when service receiver is liable to pay service tax are major eligible documents. | | **Transit Invoice** | Credit can be availed on basis of transit invoice i.e. on basis of invoice of manufacturer when goods purchased through dealer and name of ultimate buyer is shown as consignee. | | **No time limit for availing Cenvat credit** | There is no time limit for availing Cenvat credit can be taken even after 3/4 years | | **Credit cannot be denied on account of minor defects** | There is ample case law that Cenvat credit cannot be denied for minor defects in duty paying document. | | **Endorsement of duty paying document** | Duty/tax paying document need not be in name of the manufacturer using the input/input services for manufacture/provision of taxable output service. It is sufficient if these are endorsed in his name with certificate that endorser has not availed Cenvat credit. | | **Burden of proof** | Person taking credit must take reasonable steps while availing Credit. Burden of proof of admissibility of Cenvat credit is on him [Rule 9(5) of Cenvat Credit Rules] | | **Dealer’s Invoice for Cenvat** | | | **First stage and second stage dealer can issue Cenvatable Invoice** | Cenvat credit can be availed on basis of Invoice issued by dealer registered with Central Excise [Rule 9(1) of Cenvat Credit Rules]  First stage and second stage dealer registered with Central Excise can issue Cenvatable Invoice. First stage dealer means dealer purchasing goods from manufacturer or his depot or consignment agent. They have to submit quarterly return to department within 15 days from close of quarter [Rule 9(8) of Cenvat Credit Rules] | | **Optional refund of 4% special CVD** | If the first stage dealer claims refund of special CVD of 4%, the buyer cannot avail Cenvat credit. (This is not compulsory on dealer. It is optional). | | **Transit Invoice** | Transit Invoice is also permissible. In such case, dealer need not be registered, if name of ultimate buyer is shown as consignee in the invoice issued by manufacturer. | | **Cenvat credit of CVD and special CVD on imported goods** | Cenvat credit can be availed in respect of imported goods purchased through dealer, by either issuing dealer’s invoice or  by endorsement of Bill of Entry. | | **Manufacture of Exempted as well as taxable goods and provider of both exempted and taxable services** | | | **No credit if final product/output service exempted** | Cenvat credit is available only if final product is dutiable or service tax is payable on output service [Rule 6(1) of Cenvat Credit Rules] | | **Options available to manufacturer of exempted as well as taxable goods and provider of exempted and taxable services** | If assessee is manufacturing exempted as well as dutiable goods and/or providing taxable as well as exempt services, and availing Cenvat credit, he has three options (a) maintain separate records of inputs and input services used for exempt final products/services (b) If common inputs/input services are utilised for exempted as well as taxable final product, assessee is required to pay 5% ‘amount’ on exempted final product or 6% ‘amount’ on exempt output services (b) Pay amount proportionate to credit on exempted final product/output service [Rule 6(2) and 6(3) of Cenvat Credit Rules] | | **Option cannot be changed during the year** | Option once availed cannot be changed in the financial year. The option is to all exempted goods/services [*Explanation* I to Rule 6(3) of Cenvat Credit Rules] | | **Entire credit without proportionate reversal** | In case of 16 services covered under Rule 6(5) of Cenvat Credit Rules, entire Cenvat credit is available without proportionate reversal. | | **Supplies to SEZ, EOU, exports,** | In case of supplies covered under Rule 6(6) of Cenvat Credit Rules [exports, supplies to SEZ/EOU, specified projects], entire credit is available without proportionate reversal. | | **Removal of inputs for sale or job work** | | | **Removal of inputs as such** | Inputs on which Cenvat credit was taken can be removed ‘as such’ on payment of ‘amount’ equal to Cenvat credit availed [Rule 3(5) of Cenvat Credit Rules] | | **Sending inputs for job work** | Inputs on which Cenvat credit was availed can be sent outside for job work. These should come back within 180 days [Rule 4(5)(a) of Cenvat Credit Rules] | | **Direct despatch from place of job worker** | Direct despatch of final product from place of job worker can be done with permission of AC/DC for one financial year [Rule 4(6) of Cenvat Credit Rules] | | **Removal of waste** | | | **Waste is final product** | Waste is final product for excise purposes and duty is payable as if final product is being cleared. This applies only if waste is ‘produced’ or ‘manufactured’ and is excisable goods. | | **Waste not mentioned in Tariff** | If a particular waste is not mentioned in Central Excise tariff, neither any amount nor duty is payable at the time of clearance. | | **Records and returns under Cenvat** | | | **Records of Cenvat credit** | Manufacturer/service provider is required to maintain records of inputs and capital goods, records of credit received and utilised. [Rule 9(5) of Cenvat Credit Rules] | | **Return of Cenvat credit availed and utilised** | Returns of details of Cenvat credit availed, Principal Inputs and utilization of Principal Inputs in forms ER-1 to ER-7 is to be submitted [Rule 9A of Cenvat Credit Rules] | | **Revised return** | Revised return of Cenvat credit can be submitted within 60 days [Rule 9(11) of Cenvat Credit Rules] | | **Returns by dealers, input service distributor** | Dealer/service provider/input service distributor is also required to submit returns [Rule 9(6) and 9(10) of Cenvat Credit Rules] | | **Other provisions relating to Cenvat** | | | **SSI to reverse Cenvat at end of year** | SSI unit can opt out of Cenvat at end of the year. He has to reverse Cenvat credit on inputs in stock as on 31st March [Rule 11(2) of Cenvat Credit Rules] | | **SSI can take Cenvat of duty on inputs in stock** | When he starts payment of duty during financial year after exemption is over, he can avail Cenvat credit of duty paid on inputs in stock | | **Simultaneous exemption** | Simultaneous exemption and availment of Cenvat is permissible by SSI only in specified cases. | | **Cenvat credit to exporter** | Exporter of final product or taxable services can avail Cenvat credit on inputs and input services. He can claim refund of Cenvat credit if he cannot utilise the Cenvat credit for payment of duty on sale made within India on payment of duty [Rule 5 of Cenvat Credit Rules] | | **Refund of credit of input services** | Merchant exporter can claim refund of specified input services used while exporting final product. | | **Transfer, amalgamation of undertaking** | If undertaking is transferred, merged or shifted, Cenvat credit can be transferred [Rule 10 of Cenvat Credit Rules] . | | **Penalty for improper Cenvat credit** | Penalty can be imposed for wrongfully taking or utilising Cenvat credit [Rules 15 and 15A of Cenvat Credit Rules] | | **Accounting for Cenvat and stock valuation** | Accounting for Cenvat should be as per guidance note issued by ICAI.  Inventory valuation should be as per AS-2 which requires exclusion of Cenvat credit. However, for income tax purposes, Cenvat credit has to be added in valuation in view of section 145A of Income Tax Act. | |

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Excise and Small Scale Industries

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| **Provisions of General SSI exemption**   |  |  | | --- | --- | | **Exemption Notification for SSI** | SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3-2003. The SSI unit need not be registered with any authority | | **Eligibility for SSI concession** | Unit whose turnover was less that Rs 4 crores in previous year are entitled to full exemption upto Rs 150 lakhs in current financial year. SSI unit can avail Cenvat credit on inputs and input services only after it starts paying duty. However, Cenvat credit of capital goods can be availed even if these were received during period of exemption. | | **Articles eligible for SSI exemption** | Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not confirming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture. | | **SSI unit manufacturing goods with other’s brand name not eligible for exemption** | Goods manufactured by an SSI unit with brand name of others are not eligible for SSI concession, unless goods are manufactured in a rural area. However, SSI exemption will be available to packing material even if it bears brand name of other person. | | **Mode of calculation of limit of Rs 150 lakhs/Rs 400 lakhs** | While calculating limit of Rs 400/150 lakhs – (a) Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other’s brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture and traded goods is to be excluded (b) Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included (c) Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of Rs 400 lakhs, but excluded for limit of Rs 150 lakhs. | | **Procedural relaxations** | SSI units eligible for SSI concession are required to pay duty on quarterly basis and file quarterly return even if they do not avail the SSI exemption | | **Turnover of all units of same manufacturer to be clubbed** | Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit. | | **Clubbing if two units belonging to different firms/companies are apparently separate but are one in reality** | If two SSI units are genuinely independent, they are eligible for SSI exemption, even if some or even most partners/directors are common. Financial control, flow back of profits and unity of interest are the major tests to determine whether turnover of two units is required to be clubbed. | |

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