

Central Excise Made Simple

Updated up to May 2013

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The opinions and views expressed in this soft book are those of the authors. The authors do not undertake any responsibility for the accuracy or correctness of the contents of the book. Expert advice maybe taken, wherever felt necessary.

PREFACE

Manufacture also constitutes a major part of the economic activity of our country. The Central Government had also realised that unless this sector is nurtured, there would be no inclusive growth. The vast unemployed population of the country mainly in the rural areas also requires gainful employment which can be provided only by a vibrant and robust manufacturing sector. Although the services sector is growing exponentially, the maximum employment would be in the manufacturing especially the SSI and other ancillaries sector. Central Excise has for the past decade been the mainstay of the revenue with service tax and direct taxes stealing the show as far as growth of the taxes are concerned. The Central Government gets the revenue from Central Excise, Income Tax, Service Tax and Customs, and these taxes are administered by Central Government.

The scores of multinationals setting up shop in India may also wish to take advantage of the technical skills at lower costs. The world over India today is truly considered an alternative and an attractive alternative option to China for outsourcing of manufactured products/ parts. The purchasing of automobile or steel companies by Indian companies would lead to increasing outsourcing from India of manufactured products. The slow but sure increase in the standard of living of the average citizen foretells huge demands/increased consumption. The fall in the average rates of duty for the past few years reaching 10% now if continued would augur well for the manufacturers within India. Today India is among the top three nations of the world in terms of purchasing power.

The reforms in Central Excise have been largely successful in spite of the partial rollback taking place through executive instructions and actions in the past three years. The doing away with almost all statutory formats, declarations and intimations has made the tax compliance less cumbersome. The self assessment has been in place for all products except Cigarettes. The onus of compliance has shifted from the Range to the Manufacturers.

Professional advisors, managers and executives in charge of Taxation should have an in depth idea of the law of central excise as there is a very high responsibility on them. This knowledge would make the decision-making process function less risky and make the manufacturing activity cost effective thereby remaining globally competitive.

This soft book has made an attempt to introduce & update the law and procedures of excise in brief. For the interested, an explanatory section has been included providing the landmark judicial decisions and definitions as may be required. The specific important topics/ subjects of interest to professionals as well as the industry managers have been included in brief separately.

The tax planning avenues, special chapter on the SSI's, Traders registration, FAQs, Common Errors chapter are a result of the assessment of readers' need. The audit from the Government's side has gained a very high importance with the powers of scrutiny removed from the Ranges. Consequently the need for professional audit by Chartered Accountants or other professionals of the excise records is being felt. The possibility of the mandatory audit in line with Income Tax is real as that would be value additive to the tax administrators, industry and the consumer now appears slim and maybe incorporated in the GST regime.

The book has reached this "*user friendly*" form largely on suggestions of my professional colleagues in practice and industry who provided a direction and topics of interest, for which I am indebted. My thanks to articles and assistants in my office staff who have done the job of collation of the FAQs and Common errors. This was initially

bought out in 2002 by the KSCAA. This updated 2012 edition has been largely the effort of CA Roopa Nayak who requires special praise for the meticulous editing and updation.

We would like to thank Ms. Lakshmi GK, who has updated this book.

The readers, my professional colleagues, other professional and students are requested to provide their free and frank comments on the deficiencies in this effort by our team to enable us to improve. mhiregange@gmail.com, rajesh@hiregange.com and roopa@hiregange.com

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CHAPTER 1: PRACTICAL APPROACH TO DETERMINATION OF LIABILITY

✓ Background:

Indirect Tax was introduced for the first time in India as far back as 300 BC. Kautilya in his "Arthashastra" had enumerated that kings could collect taxes on the manufacture of textiles, alcoholic drink and textiles.

However in more recent times, the Central Excise Act, 1944 (which prior to 1996, was known as the Central Excises and Salt Act 1944) is the main law relating to duties of Excise on goods manufactured or produced in India and on Salt. This Act had replaced not less than 10 separate Excise Acts and 11 sets of statutory rules besides 5 Acts relating to Salt. Thus the Central Excise Act, 1944 is a comprehensive Excise duty enactment administered by the Union Government.

At present, some of the beneficial provisions include coverage of cenvat scheme to all inputs except diesel and petrol, inclusion of cenvat on capital goods (1994), passing on of credit by dealers under excise (1994). There is also no need to file copies of invoices or copies of cenvat availed invoices for verification along with returns. Cross credit between service tax and excise was one of the later measures. (2004)

✓ What is Central Excise Law?

The Central Excise Law made up of Acts, Rules, Notifications, Circulars and Trade Notices apart from analysis of case laws can be used in determining the excise duty implications on the activity of manufacture. This can help the indirect taxes practitioner to advise the manufacturer/professional manager on the procedures to be followed and compliances to be ensured where central excise is applicable on the product/ process/ trading.

In advising the manufacturer, several questions would arise, which would require to be answered. The suggested steps have been deliberately kept free of too many sections and case laws to serve the purpose of being reader friendly. The definitions, case laws and explanations are available at the end of this chapter. Further flowcharts wherever possible have been added at the end of chapters for ease of understanding. The detailed list of notifications has been set out in the appendix at the end of the book. The bird's eye view of processes and procedures under central excise have been provided for ease of understanding as under.

✓ **Where is the Power to levy Central Excise?**

The power to levy Central Excise duty is derived from Constitution. The Indian Parliament has exclusive powers to make laws with respect to any of matters enumerated in List I in the Seventh Schedule to Constitution. (Called 'Union List'). 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. "The Products under List II (State List) or List III (Concurrent List) of the VII Schedule of the Constitution of India are not covered by Central Excise. The products like opium, narcotic drugs, and alcoholic liquors for human consumption are outside the scope of Central Excise [coverage is by the states]. The medicinal and toilet items which contain alcohol are covered by central excise and subject to duty of excise.

✓ **Where is the levy applicable?**

The Central Excise duty liability arises when there is manufacture of goods which are moveable, marketable, and find a mention in the First or Second Schedule to the Central Excise Tariff Act 1985. Most products find a mention. To get more details refer to chapter 3.

✓ **Who is required to be registered under Central Excise law?**

The following persons are within the preview of Central Excise Law:

- Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, is required to get registered as per the law. However there are certain relaxations relating to same.
- Considering the requirement and relaxation, any person who engages in the manufacture, production or any process of production or manufacture of any specified products which are finding a place in the First Schedule to the Central Excise Tariff Act 1985 or carries on trading activities intending to pass on credit has to be registered under excise.
- The relaxation from registration is provided in Notification No.36/2001 dated 26.6.2001 wherein it gives registration exemption to manufacturers producing goods wholly exempted from duty of excise. Under this notification, those claiming the benefit of nil rate of duty clearances or exemption from the whole

of duty based on value/quantity of clearances/process of manufacture/on the ground that raw material has suffered duty of excise subject to conditions specified in the Tariff or in the Notification would have to give a declaration. This declaration would be sufficient if given one time.

- However, a manufacturer claiming benefit of any SSI exemptions or other exemption based on value or quantity of clearances in a financial year would have to give a declaration every year when clearances touch Rs. 90 lakhs.

✓ **What is the taxable event for levy of Central Excise?**

The levy of central excise is applicable on the manufacture of goods. Though the taxable event of manufacture happens at a particular point of time, the levy and collection is postponed to removal of goods from the place of manufacture/factory for administrative convenience and practical compliance.

In the context of manufacture the following points are relevant:

- Manufacture is a process / activity but not every process results in manufacture.
- The term 'Manufacture' has been understood as a process resulting in commercially different article or commodity having distinctive name, character and use
- If the use has not altered, then it would be advisable to seek an opinion from experts in the field or err on the side of revenue. There have been a large number of decisions of the Tribunal and the courts with regard to manufacture of innumerable products, which may shed light to ascertain whether there is manufacture or not.
- However it should be ensured that processes not amounting to manufacture are not claimed/described as manufacture as the revenue department may at a later date take the view that there is no manufacture, whereby they may deny the Cenvat credit along with demand for consequent interest and penalty.
- Lastly excisable goods must be manufactured or produced in India in order to attract duty of excise.

✓ **What is the value for payment?**

- Valuation Methods under Central Excise

The valuation of goods under Central Excise is done under any of the following four main methods. They are the transaction value method, MRP method, Tariff Values, Valuation method prescribed under Central Excise Valuation Rules .

- Firstly the transaction value under Section 4. (for definition see chapter 6 on classifications & valuation) This value is applicable when the goods are sold to by the assessee for delivery at the time and place of removal, where the buyer and assessee are not related and price is sole consideration for the sale. . "Assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent.

Here the clarity of the purchase/ work order and its independence with other orders to the same client could be very important. The place and time of delivery is also important. In these cases the invoice value would be accepted. Most of the goods fall into this category.

- Secondly the MRP method of valuation under Section 4 A is applicable to the notified products (Appendix) which are covered under the Legal Metrology Act, 2009 and rules made there under. This is applicable only for those goods, which are proposed to be sold in retail. The value is based on the MRP declared on the packages less the abatement allowed under the law. The retail sale price is the maximum price at which the excisable goods in packaged form maybe sold to the ultimate consumers inclusive of all taxes and expenses and price is sole consideration for such sale. It should be noted that the goods covered under MRP based valuation would not get any deductions other than the abatements.

MRP based valuation is applicable to specified goods only. The FMCG as well as a few other products find a place in the list (Appendix for definition and detailed listing of all items covered by MRP as well as the abatement applicable to them)

- It is to be noted that excise duty is payable on removal and not on sale.
- Thirdly a few products fall under Section 3(2) called the valuation under Tariff Values where the Government itself has kept control for various purposes like political expediency, public interest, high tax revenue etc. In this segment the method could be specific (per piece, based on length, per Kg, or based on Retail Sale price or even ad valorem). Examples could be pan masala and cigarettes.
- Fourthly, the residuary category items which are not covered by the above three, the ones which are considered as 'removals' and not sale. This could also be the method applicable when the goods sold are consumed captively, sold to relatives, sold at the

depots, additional consideration exists, job worker discharges the duty and removals other than sale such as samples, warranty repairs, donations, captive consumption etc. In this case reference to the Valuation Rules 2000 would be required. (Alternative valuation methods refer chapter 6).

Note: There is a capacity based levy wherein the duty maybe based on the capacity of the machine rather than the value of the goods. The provisions for the same have been notified. Pan masala is covered there under effective from 1st July 2008.

✓ **What are the set – off of credits that would be available?**

The Cenvat Credit Rules, 2004 has unified the credits available on goods and services. The Cenvat credit of duty paid on inputs and tax paid on taxable services would be available to both the 'manufacturers' and 'output service providers'. The duty paid on almost all inputs which are used in the manufacture of final products leviable to duty is available as credit. This is called the Cenvat credit (earlier MODVAT). This amount can be used in lieu of cash to discharge the central excise duty (now also called CENVAT).

✓ **Who can pass on Credit?**

The manufactured goods could be cleared and dispatched either to:

- Industrial Consumer: An industrial consumer who would use it further in the manufacturing process. Where the industrial user procures the materials from a manufacturer who is registered under excise he can avail the benefit of cenvat credit of duties that are paid on the materials by the manufacturer to set off against his own duty liability on finished goods. or
- Ultimate Consumers: To the ultimate consumers for their personal use. The consumer who procures the goods for personal use would not be interested in cenvat credits since he/she is not in a position to utilise the same.
- Dealer: The dealer purchasing the goods from the manufacturer would be trading in the same. If the goods are to be sold to the manufacturer or service provider who can avail Cenvat credit, then it is possible to pass on the credit of duty paid to such manufacturer. Here it should be remembered that in order to pass on the duty paid by a dealer on goods that are procured by him from a manufacturer he has to be registered under excise law. Therefore the credits availability would not be available where such industrial user/ manufacturer buy goods from an unregistered dealer.

✓ **Conditions and obligations for availing the CENVAT Credit in general:**

The conditions to be fulfilled in order to avail Cenvat Credit are:-

- a. The credit can be availed only on / after receipt of goods by the receiver (who need not be the buyer), except in cases where the materials are sent directly to the job worker.
- b. Cenvat credit is to be availed on specified duty paid documents listed in the provisions of Rule 9 of Cenvat Credit Rules like invoice, BOE, supplementary invoice etc., credit cannot be availed on debit notes, Xerox copies of invoices etc.
- c. It should be ensured that that the inputs and capital goods meet requirements of definition as set out in CCR 2004.
- d. The person availing the cenvat credit has to maintain proper stores records with regard to receipt, disposal, consumption and inventory of the inputs as well as capital goods. The materials should be accounted at the stores only after proper inspection.
- e. The person availing the cenvat credit has to maintain proper stores records with regard to receipt, disposal, and consumption. The manufacturer should ascertain purpose for which the goods are procured and ensure the purpose for which it would be used before recording details of cenvat credit.
- f. The person availing the cenvat credit has to confirm that duty has been paid on the inputs or capital goods. (This requirement may be impractical as the buyer would depend on the prima facie representation on duty paid document that the duty payable which has been indicated would be paid.)
- g. Cenvat credit is not available for the inputs which are used in the manufacture of exempted final products. Where the inputs are partially used for exempted activity manufacturer shall follow the provisions of Rule 6 of Cenvat Credit Rules 2004 for determining his duty liability. (where no separate records are maintained-payment of 6% of price for exempted goods or ascertaining proportionate credits). Please refer Chapter 7 on Cenvat Credit.
- h. The credit details along with all the other relevant details like invoice number, date, GRN Number, assessable value, excise duty thereon along with education cess and SHE cess are to be recorded in the cenvat credit register on the basis of duplicate for transporter copy of invoice.
- i. Credit is available on inputs used for exempted goods cleared for units being a EOU, FTZ, EHTP, STP, SEZ or cleared for exported under letter of undertaking or bond.
- j. Credit on capital goods is allowable up to 50% of the eligible credit in the year of receipt of the capital goods in the factory. The balance 50% is marked for availment in subsequent year and such bills are filed separately. The credit on capital goods can be availed fully in a single installment in the year of receipt in factory by SSI units w.e.f 1.4.2010 vide amendment brought in by Finance Act 2010.
- k. The balance credit on the capital goods can be availed in the subsequent years if the

assessee is in possession of the asset. The components, spares and accessories, moulds, tools and dies and refractories and refractory materials need not be in possession of assessee in second year for availing credit thereon.

- l. In case of capital goods the credits would be denied if used exclusively for exempted activity.
- m. The cenvat credit on capital goods can be availed even if such assets are acquired on Lease, hire purchase or loan agreement basis.
- n. Cenvat credit is not allowable if depreciation under Income Tax Act is calculated including the amount of cenvat credit. (This would amount to conferring a double benefit which is not allowable)
- o. Cenvat credit can be claimed on the goods received in the factory and subsequently sent to the job worker for processing or otherwise.
- p. The goods so sent have to be received back within 180 days of the removal to job worker. Otherwise the duty availed has to be reversed. Re-credit is permissible on receipt any time later.
- q. Cenvat credit is allowable even in case of jigs, fixtures, moulds & dies sent to job worker by a manufacturer. There is no time limit as to its return to the factory. Rule 4(5)(b) is being amended by Finance Act 2010 to provide that cenvat credit shall be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to another manufacturer for production of goods or to a job worker for the production of goods on his behalf

✓ **Whether exemptions or deductions are available?**

- What is meaning of exemptions under excise?

In simple terms, the manufacturer is relaxed from payment of duty either fully or partially is called exemption. The manufacturer could avail the exemptions if any, which are granted in the law provided the manufacturer falls within the parameters. These exemptions could enable the manufacturers to clear excisable goods at nil rate or may also provide for concession in the matter of levy of duty based on value of clearances etc.,
- When would it be beneficial to claim exemptions?
 - (i). If the final product is being sent to the consumer then exemption should be claimed.
 - (ii). If the item were an intermediate product then availing credit on the inputs and paying duty on the finished goods would be preferable when the customer is eligible for credit.

(iii). Where the order is received as basic + taxes as applicable would mean that the manufacturer would benefit by opting for duty payment.

(iv). A comparative analysis of the two situations (opting for registration and opting for exemption) would highlight the benefit to the client. The manufacturer doing very low value addition could register. (for comparative tables refer table later in this chapter).

- What are the kinds of exemptions?

(i). Conditional exemptions: These are exemptions that are available only where the manufacturer fulfills certain conditions. SSI exemption is one such exemption which provides exemption from excise duty up to Rs 150 Lakhs of clearances. However this is subject to the condition that the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed rupees four hundred lakhs in the preceding financial year

(ii). Unconditional Exemptions : These are exemptions which are granted without any conditions and also as per the provisions of Section 5A of Central Excise Act, 1994, it is compulsory that you have to avail unconditional full exemption given.

(iii). Locational/area Based Exemptions: Locational exemptions can be availed only by units located in Himachal Pradesh etc 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. However excisable goods on which normally duty would be payable and which are removed for export under bond cannot be considered as exempted goods nor goods subject to nil rate of duty. Where the final products are exempt from duty of excise the scrap arising in the course of such manufacture is also to be exempted from duty fully.

- ✓ **SSI Exemption**

- What is SSI Exemption?

The exemption notification could be availed only if the substantive conditions attached thereto are fulfilled. The exemption based on the value of clearances for units who have had clearances not exceeding Rs. 400 Lakhs [also called the SSI Exemption] is available for specified products, which may be confirmed by reference to the Notification 8/2003 dt. 1.3.2003. The manufacturer who is eligible for the exemption can claim the

exemption up to a clearance value of Rs.150 Lakhs. Clearance has to be differentiated from turnover as the former is the value of removals whereas the latter is the sale/transfer of property. (For details refer Chapter 2 for the Provisions relating to SSI).

The exemption notification could be availed only if the substantive conditions attached thereto are fulfilled. The exemption based on the value of clearances for units who have had clearances not exceeding Rs. 150 Lakhs during the year is called the SSI Exemption. The same is available for specified products, which may be confirmed by reference to the Notification 8/2003 dt. 1.3.2003.

➤ Conditions to be fulfilled:

- The exemption notification could be availed only if the substantive conditions attached thereto are fulfilled.
- Here it has to be noted that this exemption is not available for Branded Goods of another.
- However if such a branded goods manufacturer is situated in a rural area, manufactures for Khadi Board or is an Original Equipment Manufacturer then the exemption would still be available i'e when goods are manufactured bearing the brand name of manufacturer himself then the exemption would still be available.
- Even where the raw materials received by manufacturers which may bear a brand name are entitled to benefit of Notification.
- Where the goods manufactured by the SSI unit are branded goods, payment of duty on such branded goods would not disentitle the other products from getting the benefits of the Notification.
- Where the goods manufactured by the SSI unit are branded goods bearing brand name of others, payment of duty on such branded goods would not disentitle the other products from getting the benefits of the Notification.
- Excise duty which was made applicable in Finance Act 2011 at the rate of 12% shall now apply to ready-made garments and made-up articles of textiles falling under Chapters 61, 62 and 63 (heading nos.63.01 to 63.08) of the Central Excise Tariff except those falling under heading nos.63.09 and 63.10 when they bear or are sold under a brand name. The branded garments was once again exempted from excise duty in Finance Act 2013 vide exemption Notification No.30/2004-CE. Consequently no excise duty is payable on same.

➤ Is the notification available to each unit of a manufacturer?

The benefit under the notification is available to the all units together as the provisions set out:

- A manufacturer who undertakes manufacturing operations from one or more factories
- A factory where one or more manufacturers undertake manufacturing activity

➤ When are clubbing provisions attracted?

The clearances of units could be clubbed by the revenue department where the manufacturers set up new concerns by splitting the company, set up one more company with financial, managerial, production, marketing dependence. An example could be a manufacturer of packing bags made of PDPE/HDPE. As soon as the clearances reach close to Rs140 Lakhs he may set up another unit and then another. All such units may be using same machinery, located in same premises, with same partners. In such scenarios all the mutually interdependent units would be considered as one entity. The revenue department could initiate litigation due to establishment of financial flowback.

➤ What are the major Locational Exemptions? Why these exemptions are called Locational exemptions?

Where industries are set up in/ located at specified areas of Kutch in Gujrat or North East of India and more recently Himachal Pradesh, Uttaranachal, Special Economic Zones (SEZs) set up by various States in India, and undertake manufacture specified products, these are exempt from duty of excise/ re-imburement of duty paid. Income tax and CST benefits are also available in such areas. Since these duty exemptions are available only to units set up in certain areas these are called as area based exemptions.

➤ Can units availing area based exemptions send goods for job work to units who are not so covered?

It may not be possible for such units to send goods on job work basis other than if permitted. This is because one of the main conditions for availing the exemption under Central Excise Notification No.214/86 dt 25.3.1986 is that the final product must be cleared on payment of duty. Since the principal manufacturer who supplies the material is exempted from duty liability the benefit of this exemption would not be available.

It is expected that at the time of introduction of GST in April 2012, all such area based exemption would be replaced by a subsidy scheme in the balance period.

✓ **Registration for manufacturers and dealers:**

Registration for manufacturer:

Where excise duty is payable, the manufacturer would have to register and he would have no option. Non-registration is not a valid defense for non-payment of duty. For the intermediate goods manufacturer who makes supplies to industrial customer, it may be preferable not to claim the exemption and take the registration from the start of the enterprise to ensure competitiveness due to the concept of cenvat credit where the capital costs are high and where the duty can be passed on.

Registration for Dealers:

The trader who is registered under central excise can pass on the duty paid on goods traded by him /imported by him to customers who can avail the credit for the same. (See chapter 4 on Traders Provisions)

➤ What are the Benefits of Registration?

The small manufacturers would find that in some cases it may be beneficial to opt for registration and payment of duty from day one. The factors which are relevant are as under:-

- a. The ancillary industries to manufacturers who pay excise would always find it beneficial. For instance suppliers of parts of automobiles. (See table for cost benefit analysis)
- b. The final product manufacturers or the dealers who sell to the consumers directly may find the exemption preferable.
- c. The manufacturer who receives the orders in basic + duties as applicable would find the payment of duty preferable.
- d. The manufacturer who gets an all inclusive price may find exemption preferable.
- e. The manufacturer who adds very low value (assembly, low margin, high turnover orders) may find registration preferable. (See table for accumulation of credit below)
- f. The manufacturer who engages in exports and local clearances may be able to utilise the credits on inputs used for exports for the payment of duty on local clearances.

✓ **Table – I: Comparative Analysis of availing and not availing exemption of a intermediate product**

Particulars	Exemption	No Exemption
	Amount in Rs.	Amount in Rs.
Raw material cost including duty	54.00	54.00

CENVAT credit availed	—	5.00
Net Cost	54.00	49.00
Conversion Cost	40.00	40.00
Total Cost	94.00	89.00
Profit margin	10.00	10.00
Basic Selling Price	104.00	99.00
Excise Duty (Net of CENVAT credit) (assuming 10%)	—	10.00
Total selling price	104.00	109.00
Benefit to the final mfr. by way of CENVAT credit	—	10.00
Net Cost to the buyer.	104.00	99.00
Percentage Benefit for Customer		4%
Loss to Supplier		NIL
Benefit For Customer for Rs.150 Lakhs of purchase	NIL	Rs. 6 Lakhs

Note: The benefit may be shared between the customer and manufacturer. There is a possibility, though not probable that with the coming in of GST this exemption could be done away with totally.

✓ **Procedure of Registration under Central Excise for Manufacturers Section
– 6 and Rule 9 of Central Excise Rules 2002**

Registration under Central Excise is required for every person who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods. The registration could be obtained a little prior to crossing Rs. 150 Lakhs which is the exemption limit u/n 8/2003-CE dated 1.3.2003 or after budget amendments or as the product has become excisable or on the manufacturer voluntarily deciding to register.

The procedure for registration manually is as follows:

Form A-1: the applicant should file an application in Form A-1 to the jurisdictional Superintendent of central Excise in duplicate. Covering letter: The application could be accompanied by a covering letter indicating the business profile and contain a brief write up on the manufacturing process for his products starting from receipt to dispatch.

- a. Documents: The application can be accompanied by a copy of the partnership deed, Board resolution, Memorandum of Association and power of attorney in case of application being made by person other than the proprietor, partner or director may be provided. [Neither the rule nor the form specify this requirement]
- b. PAN & Address: Mandatorily only the self attested copy of the PAN letter should suffice. But the proof of status as well as proof of premises may be provided along with the authorisation (in case of company). The details of the Permanent

Account Number (PAN) of the Company are to be provided. The PAN, residential and official addresses of the partners or directors or authorized signatories are also required.(copies maybe enclosed). In case of any resistance to accept the form, the same maybe sent by speed/ registered post acknowledgement due.

- c. Tariff Classification: The description and tariff heading applicable of the excisable goods, which are going to be manufactured, are also required. In case manufacturer is not clear on the classification he may consult an expert rather than making a mistake.
- d. Registration Grant: .The registration has to be issued on the same day and if for any technical or other reason it is not possible within the next working day.The jurisdictional ACCE/DCCE shall grant the registration Certificate in specified form containing registration number within 7 days from the receipt of the duly completed application.
- e. Certificate Exhibit: The certificate of Registration or its certified copy should be exhibited in a conspicuous part of the premises.
- f. Fresh registration: Fresh registration has to be sought in the event of change in premises or in case of change in the ownership of the business.

The registration number is based on the PAN number of the registrant. There would be need to get fresh registration in case of change in premises or change in ownership of business. The registration certificate cannot be revoked on flimsy grounds by revenue department.

The revenue department has now ACES software in place to allow the facility of on-line registration to assessees under central excise. The password and user id has to be obtained by submitting details of authorized person's name and mail id. The password and user id would be intimated by mail, after which the online registration can be done by filling in details like assessee profile, location details, product details along with classification etc.

In case the applicant wants to make an on-line application the additional steps are as follows:

The applicant has to log on the www.aces.gov.in and go to the link Central Excise

- (i) Applicant to access ACES application by clicking <http://www.aces.gov.in>
- (ii) Applicant to click central excise or service tax as required
- (iii) Select the hyperlink "New users to register with aces" to create user name and password after giving valid E-mail ID and other basic details of the person registering with the aces application.
- (iv) User id once selected is **permanent** , password can be changed regularly. Applicant receives an e-acknowledgement.

- (v) Once user id and password is received from the aces, the applicant again requires going aces website and clicking on service tax link and fills in the user name and password to log in to his account.
 - (vi) Select REG module, fill form Form A-1. This enable online filing of application form for registration with department. Applicant receives an e-acknowledgement.
 - (vii) After it is submitted, a print out could be obtained.
 - (viii) It is to be submitted along with the PAN card copy, address proof like phone bill or khatha of premises or municipal taxes receipt as well as copies of constitution document of assessee like partnership deed in case of firm, Memorandum of Association, Articles of Association in case of Company would have to be submitted to the jurisdictional officer.
- The registration maybe granted within a maximum of 7 days from date.

➤ **Judicial Decisions on Registration:**

1. Indian Refrigeration Industries v Commissioner [2001 (128) ELT A65 (SC)]:
Facts/Issues: The issues involved is whether the unit will be treated as a small scale unit for the purpose of availing exemption from the date of applying for the certificate of registration or from the date of issue of the certificate by the competent authority;
Decision: It was held that the registration certificate to be treated as effective from the date of applying for the certificate and not from the date of issuance.
 2. Daksha Cable Ind. P. Ltd. v CCE [2004 (173) ELT (371) (T-Mum)]: Facts/Issues:
There was a revocation of the registration certificate of the business.
Decision: It was held that registration to manufacture excisable goods is a substantive right under the law. The revocation of registration certificate on frivolous grounds not valid.
 3. Rama Petrochemicals Ltd. [2004 (173) ELT 475 (T-Mum.)]:Facts/Issues; The registration certificate of assessee was revoked.
Decision: Central Excise Act does not lay down any condition that premises in which goods cleared for exports are stored to be registered under Central Excise. Penalty set aside.
- ✓ **When & How to issue invoice?**
- An invoice is the document under the cover of which any excisable goods are to be cleared by the manufacturer or registered dealer. This document indicates the assessment of goods to duty. The invoice has to be signed by

the owner of the factory or his authorized agent as informed to the revenue department.

- The invoice should contain the registration number, name of consignee, description, classification, time and date of removal, rate of duty, quantity, value of goods and duty payable thereon, address of the concerned Central Excise division, mode of transport and vehicle registration number.
- The invoice under Rule 11 does not have to adhere to a specified format.
- While preparing an invoice there is no distinction between a dealer and manufacturer.
- The invoice has to be generated in triplicate marked as (i) Original for buyer, (ii) Duplicate for Transporter, (iii) Triplicate for assessee. An extra copy also may be generated in addition to the above whenever called for.
- In case of computer generated-invoice, the serial number is allowed to be generated and printed by the computer only if the software is such that same number cannot be generated more than once.
- Whenever invoices are brought into use a declaration of the numbers is to be made after authentication of the first and last pages of the invoice book. In the Finance Act 2010 the requirement of pre-authentication of invoices has been done away.
- Only one copy of invoice book shall be in use at a time unless allowed by the Assistant/Deputy Commissioner of Central Excise.
- In case where assessee requires two different invoice books i.e. separate series for DTA removal and Exports, he may do so by intimating to the jurisdictional Deputy/Assistant Commissioner of Central Excise. The contents of the invoice as per law is provided in rule 11 of Central Excise Rules.

✓ **When & How to Pay Duty of Excise?**

At present, the assessment is made on self-removal of goods. Assessment means determination of tax liability. The manufacturer himself has to determine the duty liability. However it should be noted that where molasses are manufactured in a khandsari sugar factory the duty liability fastens on the purchaser of molasses. If the goods are correctly

classified and the assessable value correctly determined the correct amount of duty can be paid. The following procedure has to be followed by the manufacturers:

1. The finished goods should be entered in the daily stock account.
2. The manufacturer could ensure that the details as to the quantity of the goods cleared from factory in the excise invoice raised matches with the packing list, delivery challan (if separately provided), gate passes for the quantities.
3. The goods cleared should match in description of goods in the purchase order if any, received from the customer. The calculations of assessable value and excise duty payable in the invoice should be done correctly.
4. An invoice under Rule 11 of CER should be prepared showing the assessable value and Excise duty payable.
5. The issues/removal entry of finished goods in Daily Stock Account register should be done providing details of value, quantity and duty payable.
6. It is to be ensured that the goods carrier is provided with "duplicate for transporter" copy of invoice. [This may be put in a cover specifically mentioning in bold "NOT FOR SALES TAX/CHECK POST"]
7. The rate of duty is that which is applicable on the date of removal of goods from the factory.
8. The payment of duty may become necessary where the cenvat credits are not sufficient for a particular month. The payment of duty can be made by way of a GAR -7 challan into the designated Bank and proof of the same obtained.
9. Alternatively duty can be paid electronically through internet banking. This mode of payment is compulsory for the assessee who has paid the duty of Rs. 10 lakhs or more (including the utilization of credits) in the preceding financial year.
10. The earlier concept of the assessee's account with Central Excise called the PLA (Personal Ledger Account) has become a voluntary account current maintained by the assessee. This account current would help the assessee to pay the duties in advance and maintain a balance which could help to cover some small errors being committed at a later point of time.
11. The due date for payment is 5th of succeeding month which could be extended to the 6th of next month if paid electronically. However SSI units can make

payment by 5th/6th of month succeeding the end of the quarter. However this method may lead to cash crunch for SSI units unless they plan their cash flow correctly so that cash is set aside to make quarterly payments.

12. The date of payment would be the date of submitting to the bank provided that the cheque is honoured. The account of the payments and utilisation of the PLA could be maintained in the normal financial accounts of the concern.
13. Where there is a delay in duty payment in any financial year beyond more than 30 days from due date by the manufacturer there could be an order suspending the duty payment by adjusting duty credit. In such case the assessee would have to clear every consignment after debiting the account current. This is a very harsh measure.

➤ Judicial Decisions on levy & Removal under Self Removal Procedure

1. CCE v Vazir Sultan Tobacco Co. Ltd. [1996 (83) ELT 3 (SC)]:Facts/Issues: Sub-section (1) of Section 37 of the Finance Act, 1978 levied a special duty of excise equal to five per cent of the amount of excise duty chargeable on goods, w.e.f. March 1, 1978 till March 31, 1979. The question is whether the goods manufactured prior to March 1, 1978 but removed on or after March 1, 1978 are liable to pay the special duty of excise.
Decision: Goods manufactured prior to levy of duty but cleared thereafter not liable to excise duty. The duty is collected at the stage of removal for the sake of convenience.
2. UOI v Delhi Cloth & General Mills Co. Ltd. 1997 (92) ELT 315 (SC):Facts/Issues: Calcium carbide tapped from the furnace in the liquid form and used within the factory in the manufacture of Acetylene gas not being of a purity that renders it marketable nor it was packed in such a way to make it marketable.
Decision: Commodity which is sought to be made liable to duty must be marketable and not a commodity that may by further processing be made marketable.
3. Indorama Synthetics (I) Ltd. v CCE, Nagpur [2005 (190) ELT 193 (T-Mum)]:Facts/Issues: whether the appellant has to pay/reverse the Cenvat credit in respect of capital goods and inputs lying as such and inputs (raw materials) contained in finished products lying as such and transferred, on change of ownership of premises.

Decision: No duty can be imposed on the stock lying in the factory transferred to new owners without any physical removal of goods from the factory.

4. B.P.L. Electronics Ltd. v CCE, Bangalore [1994 (71) ELT 801 (T-Delhi)]:Facts/Issues: The goods manufactured on their own account, using moulds but, to raise working capital through the bank or financial institutions, the manufacturers have entered into a leasing arrangement with a financial company, by which these moulds are sold to them parting with possession of the same.

Decision: The fact of raising an invoice in favour of a financial company does not create a liability for charging duty.

✓ **What is Provisional assessment?**

Where the manufacturer cannot classify his products under the correct tariff heading as at the time of removal he can opt for 'provisional assessment' and discharge the balance of duty / claim a refund on final assessment. For example this is applicable when goods are cleared to sales depots of manufacturer from factory of manufacture and sold there from at future date. Most of the litigation in the future would be in this area as the definition of transaction value appears to be impractical as well as unreasonable

✓ **What are the records to be maintained?**

- (i) The manufacturer who is registered under Central Excise has to provide a declaration list in duplicate of the books of account, stocks, returns and documents maintained u/r 22(2) of Central Excise Rules 2002 for the recording and control of the stocks and of monetary transactions.
- (ii) The manufacturer has to keep record of quantity of goods manufactured, removed, value of removal, duty paid and the inventory.
- (iii) The receipt, disposal, consumption and inventory of inputs are also to be accounted. [This is very critical if the cenvat credit has been availed on the inputs]
- (iv) In case the accounts and registers are computerised the details of the software along with the sample reports may be submitted to the revenue department. All types of transactions / activities proposed may be indicated with the ones in doubt as well.
- (v) Where the manufacturer adds some records or discontinues some records/documents from the list that is already filed the intimation of the same

would have to be given to the range Superintendent of Central Excise. This disclosure could be evidence that there was no intention of suppression in cases of dispute.

(vi) The list of executives authorized to sign the invoices, returns and any other document may also be submitted.

It is to be noted that the requirement of pre-authentication of invoices has been done away with by Finance Act 2010.

✓ **When and How to File Returns?**

Excise returns of manufacturer provides the information on the manufactured products i.e. opening balance, quantity manufactured, quantity cleared either on payment of duty or otherwise, the value of clearance, duty payable and the closing balance for the month. It also provides an abstract of the credits availed and utilized on capital goods, input services as well as inputs as well as the amount of payment in cash along with the proof of the same.

- i. The monthly excise returns are to be filed by assessees by the 10th of the next succeeding month.
- ii. The SSI unit's w.e.f. April 2010 are also required to file returns by the 10th of the month succeeding the end of quarter.
- iii. It should be noted that an assessee registered under excise would have to file a return even where there is no manufacture or removal of excisable goods during a particular period.
- iv. The ER-1 return should contain details as to the details of manufacture and removals of each final product with reference to the relevant sub-heading under Central Excise Tariff.
- v. The manufacturer should also get the details as to the following:
 1. Finished goods manufactured and cleared from Daily Stock Account,
 2. Cenvat credits details from cenvat credits register,
 3. Details of goods rejected and repaired/processed,
 4. Details of the goods sent for job work and credit reversals thereon,
 5. Details of capital goods and inputs cleared as such,
 6. Personal ledger account details of cash payments,

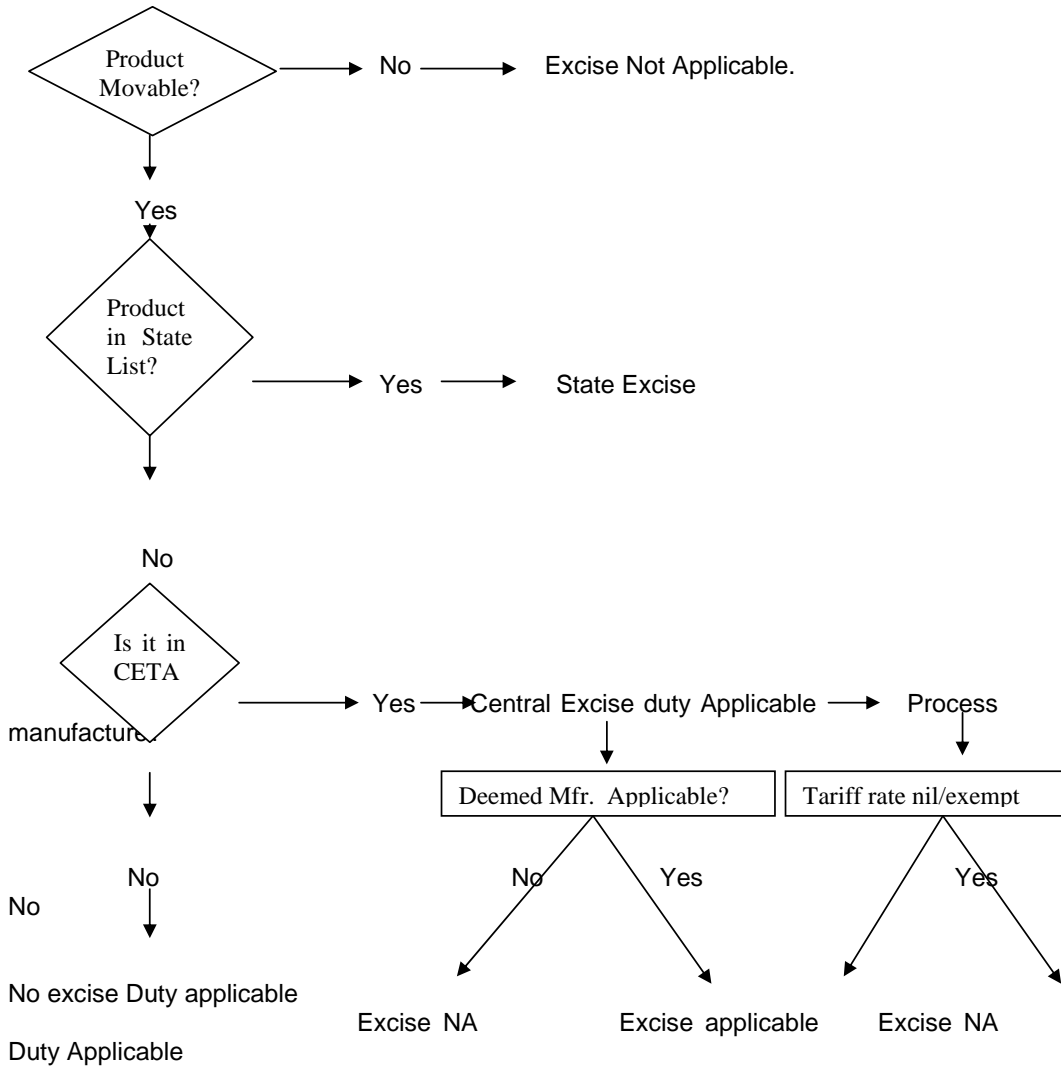
(vi) Once the details are obtained from registers maintained for the purpose, the

figures are to be totaled and checked for accuracy and correctness by comparing the totals with the figures as per the financial ledgers to spot entries that were missed out.

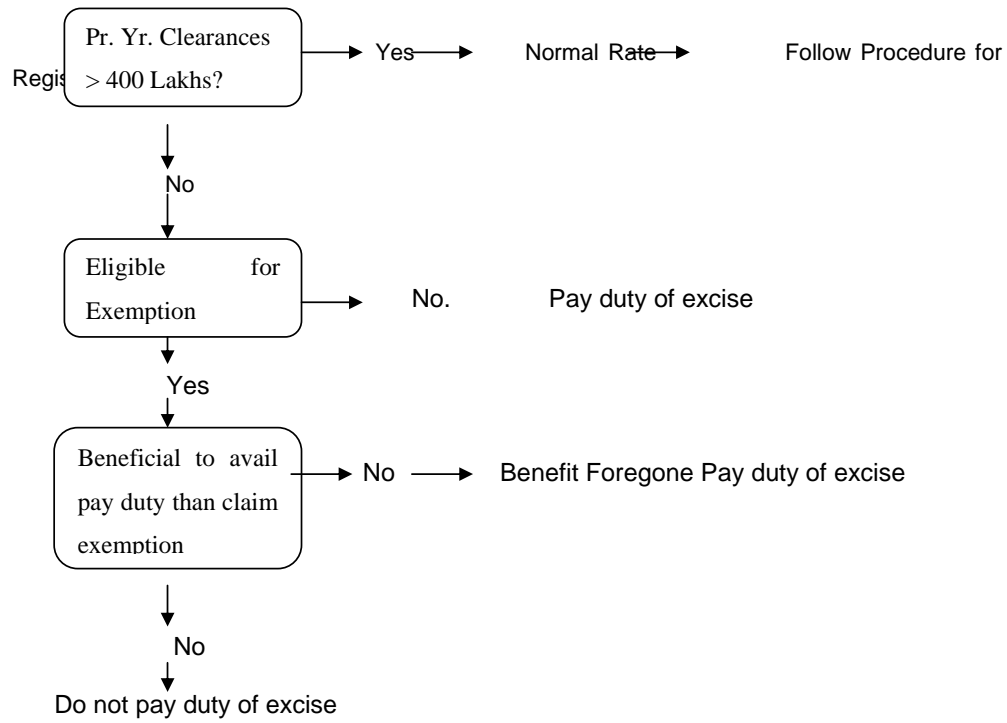
- (vii) The figures as per the registers should then be entered on to the Excise returns in the relevant columns and boxes. The details that are to be normally entered are – item description, tariff heading, details of nature of clearance (whether export or under notification), duty payable, duty paid through cenvat credit and in cash, details of cenvat credit giving break up of the cenvat credit on inputs, capital goods and input services and utilization of the same etc
- (viii) If the balance of credit on hand at the end of the month is insufficient to pay off the excise duty liability, the shortage should be met through cash payment in the designated bank. If there is a delay in payment, the same is to be paid with interest at 18% p.a (13% upto 31-03-2011) for the delayed period.
- (ix) The returns should be checked for errors in posting if any and then filed with the revenue department with a covering letter. A dated acknowledgement is to be obtained. Where it is filed electronically, the procedure laid down in the revenue departmental website is to be followed.

✓ **Flow charts pertaining to chapter - 1:**

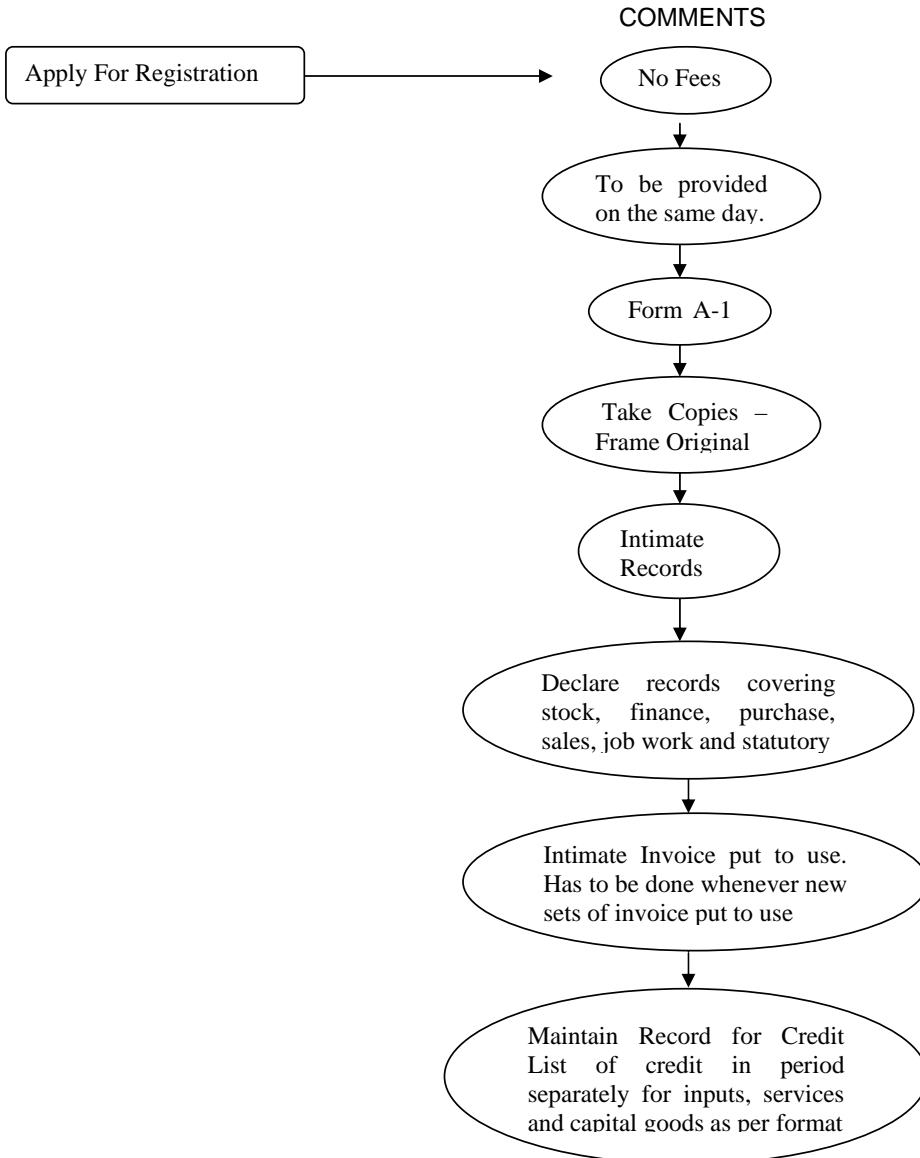
➤ **Flow Chart for Applicability Excise**



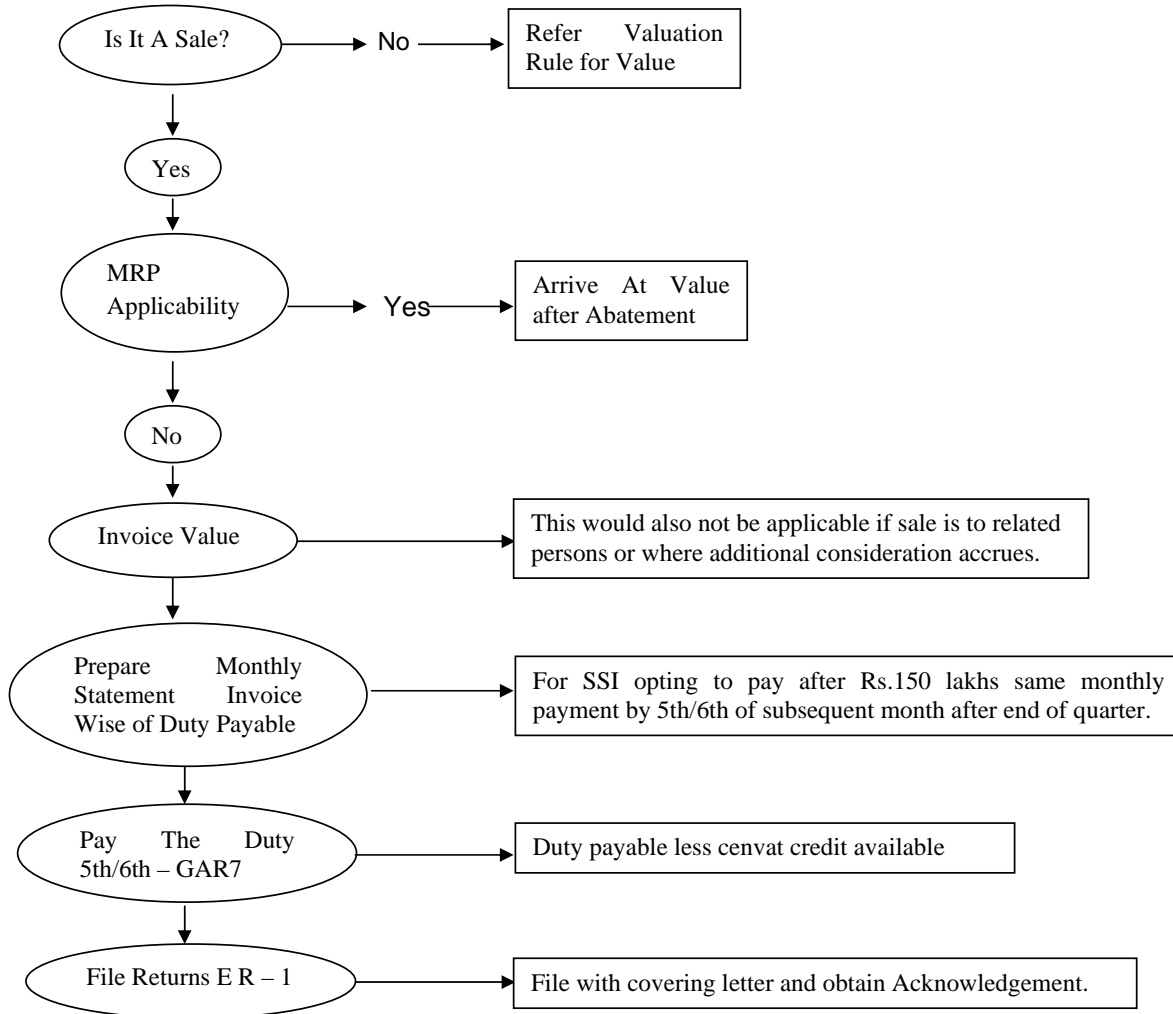
➤ Flow Chart on Exemptions/Concessions



➤ Flow Chart for Procedure under Excise



➤ Rules of Valuation



CHAPTER 2: SUGGESTED APPROACH TO ADVISE THE MANUFACTURER UNDER CENTRAL EXCISE:

✓ **Introduction**

Readers would have got a glimpse or bird's eye view of implications under central excise under the First Chapter. However, the suggested approach would require several questions to be answered.

The practicing professional / industry executive would know that points of law and interpretations are considerably less frequent than the day to day queries. Under Central Excise there have been hundreds of Circulars and Trade Notices, which could be used for specific purposes of clarifying the practical aspects of the law, as long as they are not repugnant to the new rules.

To dwell on the legal validity of Circulars, it was held by the Supreme Court in the case of CCE vs. Ratan Melting and Wire Industries (2008(231) ELT 22 that the Circulars are binding on the Revenue department. However a Circular that is contrary to the statutory provisions has really no existence in law. The Supreme Court in the case of Suchithra Components Ltd vs. Commissioner of Central Excise, Guntur (2008(11)STR 430(SC) had held that Beneficial circular to be applied retrospectively while oppressive circular applicable prospectively. Hence when Circular is against the assessee, they have right to claim enforcement prospectively.

The following are the broad steps with reference to which the manufacturer who wishes to understand the excise implications of his products could be guided:

✓ **Ascertain if the process amounts to manufacture?**

Sometimes there may be a doubt as to whether the process undertaken amounts to manufacture at all. Here the following precautions could be borne in mind:

1. Wherever there is a bona fide doubt the manufacturer could intimate the process undertaken/to be undertaken to the revenue department by way of a letter. The manufacturer could ask for a clarification in writing if the process amounts to manufacture as well as resulting classification of subject goods.
2. The legal advice of an expert in the field of indirect taxes could be taken.
3. Where there are conflicting decisions of Tribunals on the matter of excisability of product in question, the payment under protest is to be made erring on the side of revenue to avoid demand for interest, penalty later.

4. When duty is paid under protest intimation to revenue is necessary along with the fact indicated clearly on the face of GAR-7 Challan as well as in returns.
5. Along with the first invoice a detailed letter of protest should be filed to the range with a copy to the Assistant/Deputy Commissioner indicating the grounds on which it is felt to be in doubt.
6. The benefit of duty payment under protest, is that the limitation period u/s 11B of Central Excise Act 1944, would not be applicable. However, it should be noted that it is fraught with risk to avail the credit of duty paid under protest by the customer
7. However, if the customer/buyer is willing to bear the duty component on clearances, there would be no need to discharge duty liability under protest.
8. The amount of duty paid in pursuance of an adjudication order is a payment under protest. The duty payment against confirmed demand, pending appeal could also be treated as payment under protest at time of hearing appeal.

✓ **Ascertain the classification of subject goods?**

The detailed procedure is as under:

1. The manufacturer shall identify the correct classification of the goods as per the Central Excise Tariff and ascertain the rate of duty which is payable.
2. Then examine whether any exemption or concessional notification exists. Here care is to be taken to ensure conditions if any are complied with.
3. It is suggested to declare all the goods manufactured including by-products, intermediate products, waste and scrap, if any generated during the manufacturing process. (Exempted items are also to be declared as an additional disclosure as a measure of caution)
4. The manufacturer shall provide the description of the goods as it is to be invoiced.
5. The classification also becomes relevant to ascertain whether the processes/activity like packing, labelling, re-labelling etc undertaken is covered by deemed manufacture or not.

✓ **Whether exemption benefit is available?**

After determining the correct classification of the goods the manufacturer can pay duty amount correctly. In all cases, the cost of excise versus the benefit in cenvat including service tax credit should be considered as set out in procedure to calculate benefit of

opting for duty payment for SSI.

- (i) The manufacturer could opt for the exemption notifications (including those based on value of clearances like the SSI exemption notification), if any eligible.
- (ii) The inputs used to manufacture the exempted goods should be segregated so as to ensure that the cenvat credit on same is not availed. Wherever it is not possible to do so, the proportionate credit would need to be reversed under rule 6(3A) of Cenvat Credit Rules 2004 or pay an amount equal to 6% of value of exempted goods.
- (iii) Wherever the bulk of output is supplied to the industrial consumers who are in a position to avail credit of excise duty paid on inputs, to set off against duty paid on their own clearance, it would be better to pass on cenvat credit to such customers.
- (iv) In case of decision to opt for the exemption/concession, the conditions are to be examined. (Eg. Certificate from Specified Authority like set out in case of Notification no.64/95-CE, which specifies in respect of goods supplied to the specified projects under Ministry of defence exemption only where before clearances of the goods, a certificate from the Programme Director of such programmes is obtained and given to the proper officer.) Without that documentation or on promise of the document later, the removal should be made on payment of duty as later on non receipt interest and penalty would be fastened.
- (v) A written intimation should be given to the proper revenue departmental officer as to availment of exemption notification so as to get the understanding of the exemption by assessee-manufacturer confirmed.
- (vi) This could also help in preventing any future litigation by citing wrong availment of benefit of exemption notification.

✓ **What is SSI exemption & To whom is it Available?**

The exemption notification presently available to small/tiny manufacturers is notification 8/2003 CE as amended, which at present exempts payment of duty on aggregate value of clearances of Rs.150 lakhs made on or after 1st April. This Notification is popularly called as SSI exemption Notification.

The manufacturer availing the notification has to satisfy certain conditions for availing the benefit and the goods manufactured should be covered under this notification. At present pan masala, sandalwood oil, tea, weapons etc are some items that are not eligible for this benefit. It may be advisable for a manufacturer to confirm the classification of his final products so as to ensure if

his product is covered under this notification prior to opting for it.

Notification No. 8/2003-CE dated 1.3.2003

Value of Clearances in the financial year (Rs. In Lakhs)	Duty Structure
0 – 150 lakhs made on or after 1st April	0% without CENVAT Facility, however excise duty paid on capital goods are eligible for availment.
> 150 lakhs	Normal duty with CENVAT Facility

✓ **Can Cenvat Credit be availed under the Notification?**

In respect of units availing the benefit of Notification No. 8/2003-CE, no CENVAT Credit is available on the excise duty paid on inputs. However there is no restriction on availment of Cenvat credit on capital goods. The restriction on availing input credit would be applicable only to the units of the manufacturer that are availing the benefit of this SSI exemption and would not be applicable to the other units of the same manufacturer that are clearing the goods after discharging duty of excise.(This may happen when branded goods are manufactured at other unit).

✓ **What are the Conditions to be fulfilled?**

In order to claim the benefit of this notification, the following conditions have to be satisfied:

- a. The manufacturer has an option not to opt for this exemption and could instead discharge duty at normal rates on the goods cleared by him availing cenvat facility. However he has to intimate the option to the AC/DC of Central Excise.
- b. The manufacturer availing benefits of Notification 8/2003 does not avail CENVAT credit on inputs during the exemption period(though the notification only speaks about inputs, in terms of Rule 6 of CENVAT Credit Rules, 2004 even credit on input services cannot be availed. Here it should be noted that the SSI exemption cannot be denied when input credit is taken by bona fide mistake while operating under exemption. It was held in Ramdarshan Rolling Mills vs. Commissioner of C.Ex. Indore (2010(255) ELT 584(Ti-Del) that input credit during period of exemption taken due to mistake of clerk without mala fide intent. Excess credit debited by assessee when they started paying duty. SSI exemption not to be denied. Relaxation is provided in respect of cenvat credit on capital goods and though the credit can be availed during the exemption period the same can be

- utilised after the notified limit is crossed.
- c. The aggregate value of clearances of all goods chargeable to duty by a manufacturer from one or more factories or by more than one manufacturer from the same factory shall be considered.
 - d. This notification would not apply if in the preceding financial year, the aggregate value of clearances for home consumption exceeded Rs. 400 lakhs.
 - e. This notification would not be applicable to the goods which are cleared under the brand name of others. (Exception is provided to the goods manufactured in rural area and certain Governmental agencies brand names as well as when sold as OE parts) Brand name restriction has been eased under general SSI exemption scheme on plastic bottles and plastic containers used as packing materials vide Finance Act 2010. Further Central Government clarified vide notification 28/2011 CE that Packing materials includes labels of all kinds.

✓ **Judicial Decisions on Brand name:**

Intertec v CCE [2001 (127) ELT 609 (T-LB)]: Facts/Issues: Vertical blinds were treated by the manufacturers as branded goods. Full duty on these goods was paid at the time of clearance. In respect of other goods manufactured by them, concession as per Notification No. 1/93-C.E. was availed of.

Decision: If the goods manufactured by the SSI unit manufacturing a branded goods, payment of duty on such branded goods would not disentitle the other products from getting the benefits of the Notification.

Supercoat Industries v CCE [2008 (225) ELT 477]: Facts/Issues: The brand name of another person appeared on the cartons containing several tins of paint. The brand name did not belong to the manufacturer.

Decision: The benefit of this notification is available when the brand name is used on secondary packing.

Macfield Beverages I P Ltd v CCE [2008 (223) ELT 231 (Tri Bang)]: Facts/Issues: The appellant claims SSI exemption on the ground that their factory is situated in rural area.

Decision: The certification by the tehsildar that the factory is located in rural area is a good evidence for manufacturers to prove that the branded goods manufactured from the unit located in rural area

✓ **What are the Inclusions & Exclusions to compute value of clearances for SSI Exemption?**

Value of clearances for the purpose of calculating basic exemption of Rs. 150 lakhs or Entitlement limit of Rs. 400 lakhs would mean value fixed under section 4 or 4A or tariff value fixed under section 3(2) of the Act. However it would not include the following clearances-:

Summary of Exclusions:

For Rs 150 Lakhs turnover	For Rs 400 lakhs turnover
All exempted clearances.	Clearances bearing brand name/trade name of others.
Clearances bearing brand name/trade name of others.	
Captive clearance of specified goods used in Mfr of Specified goods.	Captive clearance of specified goods used in Mfr of Specified goods.
Trading turnover	Trading turnover
Exports (Excluding Bhutan)	Exports (Excluding Bhutan)
Clearance to United nation or International organization, FTZ, SEZ, EOU, EHTP.	Clearance to United nation or International organization, FTZ, SEZ, EOU, EHTP.
Turnover of non- excisable goods.	Turnover of non- excisable goods.
When manufacturer gets Job work from other customers which does not amount to manufacture.	When manufacturer gets Job work from other customers which does not amount to manufacture.
Job work or any process which does not amount to manufacture.	Job work or any process which does not amount to manufacture
Manufacturer gives Job work amounting to manufacture- excluded only if on Principal to Principal basis & job worker is paying duty/ exempted Not. 25/2012-ST under Sl. No 30	Manufacturer gives Job work amounting to manufacture- excluded only if on Principal to Principal basis & job worker is paying duty/ exempted 25/2012 ST under Sl. No 30.

However it would include the following

Summary of Inclusions:

For Rs 150 Lakhs turnover	For Rs 400 lakhs turnover
Goods manufactured in rural area with other's brand name.	Value of exempted goods (exempted under any other notification) or goods chargeable to nil rates as per tariff would have to be included.
Captive consumption if final product is exempt under any other Notification & intermediate product is marketable.	
Export to Bhutan.	Goods manufactured in rural area with other's brand name
When manufacturer gets Job work from other job workers on principal to principal basis & the process amounts to manufacture & manufacturer discharges Central Excise liability.	Export to Bhutan When manufacturer gets Job work from other customers on principal to principal basis & the process amounts to manufacture & manufacturer discharges

	Central Excise liability.
Job work amounting to manufacture when undertaking is given as per Notification No. 214/86.	Job work amounting to manufacture when undertaking is given as per Notification No. 214/86.

What is Meant by Clubbing of Clearances:

The limits referred above (either for calculating basic exemption of Rs. 150 lakhs or Entitlement limit of Rs. 400 lakhs) would be calculated by considering clearances

- a. for a manufacturer from one or more factories; or
- b. from a factory by one or more manufacturers.

The main aspects which indicate one unit as dependent of the other as a dummy are as under:

- reason to start is due to customers not willing to pay the excise duty;
- beneficial financial interest which indicates financial flow back;
- working in tandem and as one unit;
- common procurement or sale (common products and sales force);
- insufficient production/managerial capability;
- common stock usage;
- free processing facility for each other;

The reasons for commencing investigation are same/adjoining location, same product, sharing of customers, same partners (beneficial interest), interest free advances, shared facilities, sharing of expenses and incomes etc. None of these in themselves can be said to be a reason for clubbing.

✓ **Judicial Decisions relating to clubbing of the clearances**

1. Commissioner vs. Khanna Paper Mills Ltd (2010 (255) ELT A084 SC)

Facts: The basic dispute is whether three manufacturing facilities, are to be treated as three different factories.

Decision: The recovery of some records or the fact that some persons attending

to some work relating to more than one unit or that there was some financial arrangement between units was of no consequence and the evidence could not lead to the conclusion that the three factories could be treated as a single unit. Therefore, the three manufacturing facilities started at different points of time by different legal entities were three different factories entitled to separate exemption.

2. Ramanujam Chemicals & Co. vs. Commissioner of C.Ex.Trichy (2010 (253) ELT 500(Tri-Chennai)

Facts: Proprietary concern purchased and manufacture continued in same premises.

Decision: Since factory is same, the clearances from the factory including clearances made by proprietary concern prior to its purchase by new owners is to be included in computing the ceiling limit prescribed for SSI exemption.

3. AC v JC Shah [1978 (2) ELT J 317 (SC)]:Facts: The assessee is a partner in two firms as well as owner of a factory which were treatable as production by or on behalf of same person.

Decision: If one person owns a factory and is a partner in another factory, the production of all factories cannot be clubbed.

4. Verna Frost v. CCE 2000 (118) E.L.T. 504 (Tri):Facts: Both units are situated in one premises and were in the name of father and son, respectively.

Decision: Since both units are controlled by father, and there was common control of management and sales, the clubbing provisions were applicable.

5. Lubicare Relays P. Ltd. V. CCE 2000 (125) ELT 904 (Tri):Facts: There were several concerns producing different goods set up at different points of time, with common strategies, to raise resources, to effect modernization, improve efficiency, and extend the market share that had treated themselves as one for various purposes including financial transactions.

Decision: Where the units are started at different points of time but manufacturing. activities are co-ordinated, planned and organised centrally in such a way that the activities have financial implications and bearing on the profitability of units intermingled ,the clearances have to be clubbed.

6. Akay Filtips P. Ltd. V. CCE 2000 (122) ELT 761 (Tri):Facts: There was the presence of common employees; the fact that a design mould press machine

which was imported by one entity was in fact found installed in the other factory when there was no document to show sale or official transfer of the machine by one company to the other, common offices; common directors, many within the family

Decision: The value of clearances of the two units was to be clubbed, units being not independent.

✓ **What Are The Benefits If The Subject Goods Are Exported?**

There are two Rules under Central Excise Rules 2002, namely Rule 18 and Rule 19 which governs the exports of goods.

Rule 18 allows rebate of duty paid on goods exported or duty paid on materials used in the manufacture of goods exported subject to the conditions or limitations as may be specified by it in the notification issued in this regard. The relevant Notifications are Notification No.19/2004-CE(NT) dated 6.9.2004, Notification No.20/2004-CE(NT) dated 6.9.2004 and Notification No.21/2004-CE(NT) dated 6.9.2004.

Rule 19(1) permits the export of any excisable goods without payment of duty from the factory, warehouse or any other premises as may be approved by the Commissioner.

Rule 19(2) similarly permits the removal of any material without payment of duty from the factory, warehouse or any other premises for use in the manufacture of goods which are exported, as may be approved by the Commissioner.

The Related Benefits of Exports Are As Under:-

- a. The manufacturer could apply for a rebate of excise duty paid on inputs used in the manufacture of export product under Rule 18 of Central Excise Rules 2002. The benefit of rebate of duty paid on the inputs is available for even exempted goods or nil rated goods. This is vide Notification No.21/2004-CE (NT) dated 6.9.2004.
- b. The duty could be paid at the time of export under Notification No.19/2004-CE (NT) dated 6.9.2004(in respect of exports to countries other than Nepal and Bhutan) or 20/2004-CE (NT) dated 6.9.2004(for exports to Nepal) after availing credit on the inputs by utilising the credit balances and claiming a refund of the duty paid also called the exports under rebate claim.
- c. The clearance of excisable goods without payment of duty, under Letter of Undertaking/bond, by exporters or merchant exporters, is another option which

could be examined. The procedure thereof is set out in Notification No.42/2001-CE (NT) dated 26.6.2001. However vide Notification No.24/2010-CE dated 26.5.2010 it says that export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, other than goods cleared by a hundred per cent export-oriented undertaking, shall not be allowed to be exported under bond. Such goods could have to be exported under rebate claim under Notification No.21/2004-CE (NT) dated 6.9.2004.

- d. To claim the drawback under excise and customs as applicable to the product. (Generally opted for where the All Industry Rate is available)
- e. The exporters could also opt for registration and receive the inputs without payment of duty wherever advantageous u/n 43/2001-CE(NT) dated 26.6.2001.
- f. Exporters also require to have a close look at alternative import methods / benefits like advance licence, DFIA, EPCG, 100% EOU, STP, EHTP etc.
- g. The SEZ is another attractive option where the exports are substantial. Here it may be noted that goods manufactured in a Special Economic Zone are not liable to excise duty. The charging section 3(1) of Central Excise Act excludes goods manufactured in an SEZ.
- h. SEZ/ EOU's are liable to duty only when goods are cleared into the domestic area as is set out in SEZ Act. Further the quantification of duty and the method of computation is different from excise duty.
- i. The exporters have also been allowed a facility to claim the refund of the post removal service tax costs incurred. These are in addition to the drawback where claimed services are not input services. [Notification 42/2012, dated 29-06-2012]

CHAPTER 3: WHAT ARE GOODS?

✓ Introduction:

Section 3 of the Central Excise Act, 1944, which is charging section, talks of levy of excise duty on goods manufactured in India. Therefore, there are two fundamental propositions as under:

- (i) There has to be a manufacture.
- (ii) The manufacture must result into goods.

Therefore conversely it can be seen that in case of immovable property there can be no excise duty liability. (Refer case laws in Exp-1)

The words "goods" has not been defined under the Act or Rules and one would have referred to the definition under the Sale of Goods Act, 1930 or Article 366 of the Constitution. The Constitution of India defines 'goods' in Article 366 (12) as goods includes all materials, commodities and articles. As per the Sale of Goods Act definition, "goods" means the following:

- every kind of movable property other than actionable claims and money;
- and includes stock 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.

In the context of Central Excise duty, the liability on subject goods would have to be noted with reference to the undergoing:

- It is not sufficient if there are goods. It is also required that such goods must be moveable, saleable/marketable.
- In order to be goods the articles must be capable of coming to the market to be bought and sold. Therefore, the Apex court introduced an important concept of the term goods that the items must be moveable and marketable by virtue of decision in Union of India v. Delhi Cloth Mills Co. Ltd., 1977 (1) E.L.T. (J 199).
- However Section 2(d) of Central Excise Act, 1944 provides an explanation to the definition of "excisable goods" which states that 'goods' include 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.

- It is important to note that presently there is no requirement of actual sale or actual market for the manufactured goods as long as the goods are capable of being brought to the market. Therefore by virtue of this explanation added to definition of excisable goods w.e.f.16.5.2008, the requirement of marketability need not be established separately.
- Therefore at present all goods that find a place in the Central Excise Tariff are deemed to be marketable. In our opinion, the said amendment would not shift the burden of proving that the manufactured goods are not marketable on the assessee, how much ever the revenue department would want to.
- The revenue department has to show marketability. In Gujarat Narmada Valley Fertiliser Pvt. Ltd. v. CCE, 2005 (184) E.L.T. 128 (S.C.), it is held that onus of establishing the marketability is on the Revenue.

There has to be the following ingredients to attract excise duty liability:

1: Duty on Goods: There is no definition for Goods in the Central Excise Act 1944.

- Under the Sale of Goods Act 1930, items that are movable are said to be goods.
- Immovable property has been defined as anything that is permanently embedded/ fastened to the earth, or anything permanently attached to such embedded item.
- Marketability is an equally important criterion. It is implicit that such goods must be moveable, saleable / marketable. Actual sale is not necessary.
- Most items, which are known, are marketable with the exception of damaged machinery, transient chemicals, intermediate goods which are not known to be sold, garbage and few exceptional products.
- Only materials that are being subjected to 'any process' may be said to be not marketable, or those, which are used for the process of Research and Development.
- However Section 2(d) of Central Excise Act, 1944 provides an explanation (wef 16.5.2008) to the definition of "excisable goods" which states that 'goods' include any article, material or substance which are capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Therefore by virtue of this explanation, the requirement of marketability need not be established separately. This in the view of the author could lead to substantial litigation.

✓ **What is immovable property?**

The goods which come into existence after they are grouted to the ground or installed on civil structures embedded in the ground and which cannot be removed without cannibalizing or without substantially damaging the parts / portions cannot be considered as goods but would be immovable property.

• **Can Software be considered as Goods or as services?**

An interesting point is that even packaged and canned software capable of sale off shelf is considered as goods and are covered in tariff sub-heading 85.23 of the Central Excise Tariff Act 1985. In *Tata Consultancy Services Vs State of Andhra Pradesh* (2004 (178) ELT 22 (SC)), sale of software on CD/floppy was held to amount to sale of goods and liable to sales tax/VAT. In *Infosys Technologies Ltd Vs Commissioner Commercial taxes Chennai* (2009 (233) ELT 56 (Chennai)), even customized software developed and sold were held to be goods if they had the necessary attributes. However there is an exemption from excise duty on customized software under Notification No.6/2006-CE dated 1.3.2006.

Explanations to Chapter 3

➤ **Explanation - 1: Immovable Property**

➤ **Definitions:**

Section-2(26) of the General Clauses Act 1897 defines Immovable property as under:

“Immovable Property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Sec-2(7) of Sale of Goods Act 1930 defines goods:- “Goods” means every kind of movable property(other than actionable claims and money) and includes stock shares, growing crops and things attached to or forming part of land which was agreed to be severed before sale or under a contract for sale

➤ **Judicial Decisions on Immovable Property**

1. *Commr. Of C.Ex. Ahmedabad vs. Solid & Correct Engineering Works* (2010(252) ELT 481 (SC) Facts: Asphalt drums/hot mixes plant are supplied, erected,

commissioned and after sales service is done as well relating thereto.

Decision: The plants are not per se immovable and they become immovable when embedded in earth. The attachment of plant with nuts and bolts intended to provide stability and prevent vibration not covered as attached to earth. The attachment can be easily detachable from foundation and is not permanent. The plant moved after road construction or repair project is completed. The plants in question not immovable property and not immune from excise duty.

2. CCE v. Kone Elevators India Ltd., 2001 (138) E.L.T. 635 (Tri.): Facts: The activity undertaken was that of entering into contracts with the customers for supply of lifts by installation and commissioning of the same at buyer's site with warranty of certain period, can be treated as goods classifiable under Chapter Heading 84.28.

Decision: Lift coming into existence only after it is installed along with the building and becomes operational it is an immovable property and not goods.

3. Craft Interiors Ltd. v. CCE, 2005 (187) E.L.T.113 (Tri.): Facts: The revenue alleged that the manufacture and assembling of excisable goods namely, furniture and furniture parts at the premises of clients was done without discharging the excise duty payable on such goods.

Decision: The wall cladding, column cladding, soft board panelling, wall paneling, teak wood shelf would be immovable property. Similarly Skirting, Raceway, Beading, Frame work above false ceiling, mirror panellings, window sill, grooves, patta are immovable properties.

4. Axialo Industries v CCE 2008 (223) ELT 454 (Tri): Facts: The grinding room made up of metallic enclosures are embedded in the Earth along with civil work and while removing the same, it becomes a scrap.

Decision: The erection of grinding room/enclosure done piece by piece and along with civil work and brings into existence immovable property. Duty of excise is not leviable thereon.

✓ **Judicial Decision on Marketability**

Position Prior to 16.5.2008: When definition of excisable goods was amended to deem all excisable goods to be marketable:

1. Bhor Industries Ltd Vs Collector Central Excise (1989 (40) ELT 280 (SC)): Facts: It was contended by assessee that the crude PVC sheets were

not marketable and had not acquired the character and status of PVC films as known to the market. It was contended that only marketable PVC film would fall within the said item.

Decision: The court held that an article would not be liable to duty of excise merely because of its specification in the tariff schedule unless it is "goods" and known to the market i.e. marketability is an essential ingredient for dutiability.

2. Gurdaspur Distillery Vs CCE Chandigarh (2008 (224) ELT 337 (SC)):Facts: The residue known as spent wash comes into existence during manufacture of de-natured Ethyl Alcohol. The same is reacted in a closed type digester and Methane gas is produced which, in turn, is used by the respondent as fuel in distillery. Is it excisable gas?

Decision: Article not becomes liable to excise duty merely because of its specification in the Schedule to Central Excise Tariff Act. The methane gas produced is not marketable. Evidence has to be produced by Revenue to prove marketability of goods.

3. Board of Trustees v. Collector of Central Excise, A.P., 2007 (216) E.L.T. 513 (S.C.):Facts: The Department has taken the view that Cement Concrete Armour Units (CCAU) used by Port Trust for the installation of break waters in the outer harbour for purpose of keeping the water calm and tranquil is excisable under Central Excise Act.

Decision: The concrete armour blocks used for installation of break waters in harbour for keeping water calm are not goods as they are not marketable. The Court further held that Concrete armour blocks are essentially in prisomoid form, of certain specification and are made to order and these are harbour or location specific. No evidence to show that these blocks could be used any other place.

✓ **Other decisions on marketability:**

1. Gujrat Narmada Valley Fertilizers Co. Ltd. v. CCEx,Vadodra, 2008(231) E.L.T. 167 (Tri.-Ahmd):Facts: The waste and scrap was arising during the manufacture of Printed Circuit Boards.

Decision: In absence of any tariff entry regarding the waste and scrap of printed circuit board generated during manufacture of printed circuit board the same is not excisable goods. It is not liable to excise duty.

2. Diwan Sahib Fashions Pvt. Ltd., v. CCEx., Delhi, (2008(229) E.L.T. 204(Tri.-Delhi):Facts: There would be no excise duty liability on the garments made as per an individual customer's measurements and specifications as it is not marketable and the same cannot be sold to any other person and cannot be displayed in a showroom for sale.

Decision: Garments Sale to one person found to be sufficient for satisfying marketability criterion. It is not required that product must be sold in showroom/shop

3. CCE, Mumbai v Laljee Godhoo & Co. [2007 (216) ELT 514 (SC)]: Facts: Whether the process to which the raw asafoetida (hing) is subjected to, resulting in the formation of "compounded asafoetida", constitutes "manufacture" under the Central Excise Act, 1944?

Decision: The process of subjecting raw materials asafoetida (hing) resulting in formation of compounded asafoetida. No Chemical change brought by impugned process. Products remaining the same at starting and terminal points of the process. It was held that test of manufacture not satisfied. Twin tests of manufacture and marketability applicable for making goods excisable.

✓ **What is meant by Manufacture under Central Excise Law?**

Central Excise Law has defined the term 'Manufacture' in an inclusive manner and further the definition is also not specific.

Section 2(f)(i) of Central Excise Act, 1944 defines the term "manufacture" to include any process which is incidental or ancillary to the completion of the manufactured product.

Further as per section 2(f)(ii) that process which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the CETA 1985 as amounting to manufacture, would be regarded as amounting to manufacture. This is commonly or popularly known as 'Deemed Manufacture' concept.

Further as per section 2(f)(iii) any process involving packing or re-packing of such goods as are covered in the Third Schedule to CETA 1985, in a unit container or labeling or re-

labeling of containers (including the declaration or alteration of retail sale price on it) or the adoption of any other treatment on the goods to render the product marketable to the consumer would also be regarded as manufacture. This is termed as manufacture in respect of goods specified in Third Schedule.

The goods covered under Third Schedule would be regarded as having been manufactured if any processes by way of packing or re-packing, labelling, affixing stickers or any other process to make the goods marketable to the customer are undertaken. Here even if the subject goods in question do not undergo a change in name, character and use as a result of the processing, the process undertaken would still be regarded as amounting to manufacture. Therefore even a trader undertaking such processes could be liable to a duty of excise.

The term 'manufacturer' is to be construed accordingly and would include one who does manufacturing on his own account as well as a person who hires labour in this regard for manufacturing.

✓ **What is taxable event?**

The taxable event for the levy of central excise duty is manufacture of excisable goods. The taxable event happens at a particular point of time but the levy and collection is postponed for administrative convenience.

✓ **Steps to determine if process is resulting in manufacture?**

The process undertaken by the manufacturer should be examined to see whether it can amount to manufacture (For definition of manufacture see Exp – 1.) The tests which can be applied are that the incoming material and the final outgoing material are to be compared with respect to their name, character or use. If the final product is distinct and different with regard to the three criteria stated above, then manufacture has taken place as understood under central excise.

✓ **Steps to ascertain if manufacture of goods has taken place:**

- The process undertaken by the manufacturer should firstly be examined to see whether it can amount to manufacture. (For definition of manufacture see Exp – 1.)
- The tests which can be applied are that the incoming material and the final outgoing material are to be compared with respect to their name, character

and use. If the final product is distinct and different with regard to the three criteria stated above, then manufacture has taken place as understood under central excise. In other words, the produce which arises out of the process must be distinct from the inputs out of which it is processed.

- If the use has not altered, then it would be advisable to seek an opinion from experts in the field or err on the side of revenue. There have been a large number of decisions of the Tribunal and the courts with regard to manufacture of innumerable products, which may shed light (See Exp - 2).
- However it should be ensured that processes not amounting to manufacture are not described as manufacture as the revenue department may at a later date take the view that there is no manufacture. This could result in denial of credit along with consequent demand for interest and penalty.
- Lastly, excisable goods must be manufactured or produced in India in order to attract duty of excise.

✓ **What is the Difference between Manufacture & Processing?**

- It is required to distinguish manufacture and processing. Manufacture involves a number of processes whereas a process is one of the steps that is involved in the manufacture of a product.
- If there is a difference between the product that results from the processes carried out on the incoming material and the material that entered the process, the manufacture of goods is said to take place. It was held in McDowell & Company Ltd vs. Commr. Of C .Ex., Bangalore-III(2006(199)E.L.T.368(Tri.-Bang) that as regards excisability of food flavors both essences and resultant product food flavor fall under same tariff heading 3302. Process of mixing of essences not manufacture and the resultant food flavor not excisable even if it is marketable - Sections 2(f) and 3 of Central Excise Act, 1944.

✓ **What is the Difference between Manufacture and the activity carried out as Deemed Manufacture?**

- Manufacture implies change but every change is not manufacture. Deemed manufacture includes process which is termed as manufacture by the Tariff, such process shall be deemed to be manufacture.

- Manufacture is defined under clause (i) of the definition under section 2 that any process which is incidental or ancillary to the completion of manufactured product to be considered as manufacture. The section notes or chapter notes of the Tariff chapter under which the product falls should be perused to see if it is specifically stated therein that a particular process amounts to manufacture and if there is no such specific provision in section or chapter note of the Tariff, the commodity would not become excisable merely because a separate tariff item exists in respect of commodity.
- In the case of goods mentioned in Third Schedule of the Central Excise Act , 1944 even if process / activity (like packing, labeling, repacking etc) NOT amounting to manufacture are undertaken, such processes would be DEEMED to be manufacture and the excise duty would have to be paid. (For definition see Exp - 1) Therefore, in respect of goods mentioned in Third Schedule, apart from seeing of manufacture has taken place, it should be checked if any of the activities mentioned under Section 2(f)(iii) are carried out. (Refer Appendix for list of processes deemed to be manufacture.)

Here it should be noted that the deemed manufacture concept is applicable to products valued at MRP under Section 4A of the Act. (Refer Appendix - MRP Based Valuation for Third Schedule of Central Excise Tariff Act 1985)

This leads to a situation where the minor processors or trader of certain goods may be liable for payment of central excise duty. Consequently they would also be eligible for the credit on the incoming products and the exemptions provided under law for a manufacturer.

✓ **Explanation 2: Manufacture**

➤ Definition:

Section 2(f) of Central Excise Act, 1944 defines 'manufacture' and 'manufacturer' in an inclusive manner as follows:

"manufacture" includes any process,—

- (i) incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture,

(iii) which, in relation to any goods specified in the Third Schedule, 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 it or adoption of any other treatment on the goods to render the product marketable to the consumer and the word "manufacturer" shall be construed 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;

➤ Judicial Decisions on Manufacture

1. State of Maharashtra v. Mahalaxmi Stores – (2003 (152) E.L.T. 30 (S.C.):Facts: Decision: Every type of variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of a new commercial commodity.
2. McDowell & Company Ltd vs. Commr. Of C .Ex., Bangalore-III(2006(199)E.L.T.368(Tri.-Bang):Facts: The food flavour' is supplied to Contract Bottling Units, who used the same in manufacture of Indian Made Foreign Liquor. Decision: As regards excisability of food flavors both essences and resultant product food flavor fall under same tariff heading 3302. Different proportions of ingredients give different flavors. Completely different or new product does not emerge. Essences remain essences. Process of mixing of essences not amounts to manufacture and the resultant food flavor not excisable. Goods emerging from processes is not amounting to manufacture and is not excisable even if marketable - Sections 2(f) and 3 of Central Excise Act, 1944.
3. Narne Tulaman Manufacturing P Ltd Vs CCE(1988(38) ELT 566(SC):Facts: Whether the assembling of duty paid components of the weighbridge amounts to manufacture when both parts and final product separately and specifically dutiable. Decision: The activity of assembling amounts to manufacture as it brings into existence weighbridge, a new product known to the market and known under the excise item
4. UOI Vs DCM (1977 (1) ELT J 199 (SC): Facts: The only finished product manufactured from the raw materials purchased is Vanaspati which is liable to excise duty. The manufacturer contended that at no stage do they produce any new product.

Field Code Changed

Decision: The manufacture is understood to mean bringing into existence a new substance. The transformation should result in a new and different article emerging having distinctive name character or use

CHAPTER 4: UNDERSTANDING TRADING, PROCESSING AND MANUFACTURE

✓ **What is trading?**

Trading in common understanding is purchase and sale of goods without undertaking any processing on the same. From the Central Excise perspective trading can be done by importer or dealers. Again the first stage dealer and second stage dealer is defined from the central excise perspective.

✓ **Definitions of First and Second Stage Dealers:**

The dealer may be first stage dealer or second stage dealers. The definitions are as under:

- a. The First Stage dealer is one who purchases goods directly from a Manufacturer under cover of an invoice or from depot or from consignment agent or on behalf of the manufacturer. Where he purchases from an importer or from depot of importer or consignment agent of importer, it should be under cover of an invoice. It is to be noted that the person who purchases from the importer/ manufacturer is the 1st stage dealer and he can sell the goods to a 2nd stage dealer who can pass on the cenvat credit.
- b. Second Stage dealer is one who purchases from the 1st stage dealer.
- c. Here it should be noted that the Board vide Notification No.73/2003-CE (NT) dated 15.9.2003 prescribes the format of the return as set out in Rule 9(8) of Central Excise Rules which has to be submitted within close of each quarter of a year to the Superintendent of Central Excise by dealer.

✓ **Can the Importers/Dealers pass on cenvat credit?**

- The importers/dealers have been provided a facility to pass on cenvat credit from 1994. However, in order to pass on the credit they have to be registered under Central Excise.
- The credit of duty passed on by through an invoice issued by importer or the First Stage Dealer or Second Stage Dealer is available as CENVAT Credit subject to the conditions in the rules as per Rule 9 of Cenvat Credit Rules 2004 specifies such invoices/documents as documents on which credits can be claimed.
- The invoice would be raised by such registered dealer in accordance with the provisions of Rule 11 of Central Excise Rules 2002.

- The dealer who wishes to pass on credit would have to register and the buyer seeking to avail the credit benefit would have to buy from importer or a registered First Stage Dealer or a Second Stage Dealer
- The importer or 1st / 2nd stage dealers can pass on the cenvat credit only if they indicate that the goods have been issued from duty paid stocks, recorded in the register and pro rata duty has been indicated in the invoice. The duty would be passed on proportionately to the extent of goods that are purchased by the industrial user.
- The dealer has to ensure the identity and address of the supplier-manufacturer by personal knowledge, or on the strength of the certificate given by a person with whose handwriting or signature he is familiar or on the strength of the jurisdiction SCE of manufacturer/ supplier.
- The records are to be preserved for 5 years.
- The central excise officer needs to get permission of the AC/DC to visit the dealers.

A list in duplicate would have to be maintained of all the records prepared or maintained by the assessee for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of goods including inputs and capital goods should be submitted to the revenue department. These should also be made available along with the audit reports when the revenue department audit is conducted.

✓ **What are the Contents of Dealers Invoice?**

The dealer's invoice has to contain the following:

- Registration number,
- Description, classification,
- Time and date of removal,
- Rate of duty,
- Quantity and value of goods &
- The duty payable thereon.

✓ **Procedures to be followed by dealers**

- The dealer shall keep a stock register in a form, which contains entries of receipts/issues, the value of the same and duty details passed.
- A stock register has to be maintained wherein entries are made at the end of the

day of receipt and issue of excisable goods.

- The stock registers are to be maintained for each godown if there is more than one godown.
- The dealer shall maintain the details in stock registered invoice-wise i.e. he shall keep account of each consignment received under invoice and in respect of which he issues one or more cenvatable invoice.
- All the sales / transfers are to be accounted in the Stock register (Old RG23D) irrespective of whether a Cenvat Credit Invoice or Commercial invoice is issued.
- Each open consignment item wise would be available as open and once closed the incoming BOE or Invoice is to be cancelled by way of endorsement.
- The stock records and the financial records should be reconciled. The columns (indicated in above note) are to be entered filled up and the pages signed. The month end summary of Opening Balance + Credit - Debit = Closing Balance in the financial records by way of a memorandum account would ensure that the excise record and the financial records are reconcilable.
- The invoices are to be filed on basis of time of receipt and separate files for commercial invoice whereby the duty of excise is passed and only commercial invoice for other purchases are to be kept.
- The invoices should contain the details of duty per unit, and other details mentioned above. Due to this the customer would know the source as well as the margin under which the dealers have supplied the goods.
- The online entry could be done. The balances in all cases should be correct, and should also match with the physical stock.

✓ **Can the manufacturing units undertake trading activity as well?**

The Manufacturing units could be trading in the inputs used in manufacture. The excise duty passed on could be the amount of duty charged by the supplier/manufacturer. However in reality the manufacturers charge higher duty due to non-tracking of each sale to the purchase or any other reason. The Tribunals have held that where excess credit is thus passed on there is no infirmity and credit cannot be denied. However there may be litigation by the department to say that credit itself is not eligible as it is not input at all.

✓ **Some Relevant Case Laws**

Judicial Decisions on Dealer-Manufacturer:

1. Ganga Engineers v CCE Kanpur [2007 (219) ELT 406 (T-Delhi):Facts: All the invoices were issued by the dealer, without fulfilling the requirement of obtaining Central Excise registration.
Decision: As the CENVAT/Modvat invoices issued by dealers who were not registered with the department the cenvat credit was denied. The fact that the dealer failed to apply for registration due to ignorance of law was not maintainable.
2. Bhuwarka Trade Links P. Ltd. v CCE, Bangalore [2001 (133) ELT 490 (T-Bang)]Facts: The invoices were issued to the customers before the cancellation of their Registered dealers status.
Decision: On the cancellation of the registration of the dealer, all the invoices issued by him do not become void ab initio and invalid documents.
3. Commissioner of C.Ex Vishakapatnam vs. Balaji Iron & Steel Traders (2009 (236) ELT595(Tri-Bang):Facts: The customer of the manufacturer is a unregistered dealer who passes on the credit to registered dealer.
Decision: Original manufacturer selling goods to the unregistered dealer who in turn consigns the same to second stage dealer. Second stage dealer invoice is valid duty paying document to take credit.

CHAPTER 5: WHETHER MANUFACTURED GOODS ARE LIABLE TO DUTY OF EXCISE OR NOT?

Classification of Excisable Goods

✓ **Introduction:**

The amount of duty of excise payable on excisable goods depends upon the rate of duty. This in turn depends on the tariff heading or sub-heading under which the goods are covered. When the classification is done correctly the eligibility to exemptions also can be determined.

- Classification of Goods: The classification of goods consists of determining the headings or sub-headings of the Central Excise Tariff Act 1985 under which the said goods would be covered. The classification of goods is also required to be decided for the purposes of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub headings.

✓ **What is the Scope of Process of Classification of Excisable Goods?**

The process of classification involves the following in brief.

- Unless the item is specified in the Central Excise Tariff Act as subject to duty, no duty is leviable.
- Classify the product with reference to the broad category and then specific coverage within the broad entry of the Central Excise Tariff Act 1985.
- Where the entry is not clear or more than one classification appears to be correct then reference is to be made to the rules of interpretation of the First Schedule contained in the Central Excise Tariff Act 1985.
- Even when this is not helpful the recourse to the Harmonised System of Nomenclature (HSN) may be made.
- The classification could also be confirmed by reference to the case laws with regard to the products if any, which could be a valuable indicator.

- Where an alternative with a lower rate is chosen, the justification of the choice should be clear and legally defensible including the fulfillment of the conditions.

✓ **What is meant by Classification?**

'Classification' of a product, in short, is the determination of heading or sub-heading under which the particular product would be covered.

✓ **What is Importance of Correct Classification?**

The classification of excise goods has to be determined correctly prior to start of commercial production by a manufacturer or by existing manufacturer prior to introduction of a new product line. This would ensure that duty liability would not devolve by way of future demands in case wrong classification is done by manufacturer. Further VAT rates in most of the states are also based on the said classification.

✓ **What is the Scope of Central Excise Tariff?**

- Section 2 of the Central Excise Tariff Act, 1985 provides that duty of excise shall be levied and collected at the rates provided in the Central Excise Tariff Act. The rate of Central Excise duty for any product manufactured or produced in India is provided in the First and Second Schedule to the Central Excise Tariff Act.
- The Central Excise Tariff was enacted in the year 1985 as a separate Act modeled along international practices based on Harmonised System of Nomenclature (HSN).
- CETA consists of two Schedules - the First Schedule gives basic excise duties (i.e. Cenvat duty) leviable on various products, while Second Schedule gives list of items on which special excise duty is payable. Second Schedule contains only few items.
- The Central Excise Tariff Act, 1985 (CETA) in the First Schedule classifies all the goods under 96 chapters and a code is assigned to items of specific description under headings and sub-headings of each chapter.
- The chapters are grouped under 20 broad sections. Each section relates to a broad class of goods. The tariff is designed to group all goods relating to same industry and all the goods obtained from the same raw material under one Chapter in a sequential manner as far as possible. Excisable goods are classified beginning with raw materials and ending with finished products within the same chapter. Chapters are divided into headings. For example Section I would cover Live animals, animal products, etc. Chapter 4 which falls within Section I covers only Dairy produce etc like milk powder etc. Chapter 5 would cover human hair, skins and parts of birds etc.

In order to understand where the products should be categorized, it is necessary to see the Interpretative Notes contained at the beginning of the Tariff as well as see the Notes contained in the specific Section and Chapter. Thus, section notes, chapter notes along with interpretation

rules cumulatively forms statutory principles for classification.

✓ **What is HSN?**

This international practice of adopting a uniform classification was done to facilitate a common understanding of products across countries. This classification was called the Harmonised System of Nomenclature or HSN for short. HSN is a multi-purpose 8 digit product coding system for classifying goods. The Supreme Court has held in *CCE v. Wood Craft Products Ltd.* 1995 (77) E.L.T. 23 that HSN can be resorted to in case of ambiguity in classifying goods. The Honorable Supreme Court in the case of *Phil Corporation Ltd* 2008 (223) ELT 9 (SC), has held that HSN is a safe guide for classification.

✓ **What Are the Rates Applicable to Excisable Goods?**

The product is excisable when it finds a mention in the schedules to the Central Excise Tariff Act 1985. The duty to be levied would be calculated at the rates correspondingly mentioned in the Tariff heading. Presently the rate is 12%.

✓ **What are the Rules for Interpretation of the Tariff?**

Central Excise Tariff Act provides a set of six rules to act as an instrument for classification. This set of rules is similar to the interpretative rules provided in HSN. These are called the General Interpretative Rules. The CBEC manual provides that the classification should be first tested in the light of Rule 1 and if it is not possible, recourse is taken to rule 2, 3 and 4 in that same order in which the rules are set out.

1. Rule 1 provides that the titles of sections, chapters and sub-chapters are provided for ease of reference and determination of where the goods would fall and would be dependent on the relevant section and chapter notes contained in the Tariff. Example: The heading of Chapter 84 refer to nuclear reactors, machinery etc but even a hand pump falls under chapter 84. In the case of *Intel Design System (I) P Ltd* 2008 (223) ELT 135 (SC), the Honorable Supreme Court had observed that the classification of excisable goods was to be determined according to the terms of the Heading and in terms of Section/Chapter notes.

The Tribunal held in *Rajasthan Synthetic Industries Ltd. v. CCE* 1989 (42) ELT 24 that rules for interpretation are not invocable if the section and chapter notes clearly determine the classification.

Where the Notes are silent, classification would be as per Note 2, 3, 4 and 5 of the Interpretative Rules. It would therefore be noted that Note 2, 3, 4 and 5 would have to be resorted to only if the Chapter does not contain any guide to classify the particular product.

2. Rule 2(a) governs classification of incomplete or unfinished goods. It specifies that if the incomplete or unfinished goods have the essential characteristics of the complete or finished goods, then such goods would be classified in the same heading as the complete goods. Complete or finished goods would cover goods removed in unassembled or disassembled form. For instance a cycle removed in CKD condition is a 'cycle' or railway coaches removed without seats would still be railway coaches.

It was held in *Delphi Automotive Systems v. CCE, Noida*, 2004 (163) E.L.T. 47 (Tri. - Del.), that the supply of the components like evaporator (cooling) coil, condenser coil, fan or blower for circulating the air and compressor would be considered as the main product, if it has the essential characteristics of the complete air conditioning machine or else it would be classified as 'parts' only

3. Rule 2(b) provides that any reference in a heading to a substance shall include mixtures or combinations of that material with other materials. Any reference to the goods of a given material or substance shall be taken to include a reference to goods consisting of such material or substance. However, classification would be according to Rule 3 in such cases, where the subject goods consists of more than one material or substance.

4. Rule 3 states that for the purposes of sub-rule (b) of rule 2 or where goods are prima facie classifiable under two headings, the following shall be done sequentially :

a. Specific description would have to be adopted in place of a general description. Example: Steering wheel of a car is part of motor vehicle as it is more specific. This was held by the Supreme Court in *Moorco India Ltd. v. CC*, 1994 (74) E.L.T.

. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set, those headings are to be regarded as equally specific in relation to those goods , even if one of them gives a more complete description of the goods. In such instances, classification has to be determined in terms of rule 3(b) or rule 3(c)

b. Mixtures, composite goods consisting of different materials shall be classified as if they consist of that material or part which gives them their essential character. Ex: Concrete mix mainly consists of cement, further small proportions of stone, water and chemicals, in terms of rule 3, the classification of concrete mix is made under articles of stone, plaster, cement as concrete mix consists mainly of cement. Tribunal held in *Hemkunt Industries v. Commr. of C.E. Delhi-I*, 2003 (156) E.L.T. 246 (Tri. - Del.), by applying the above rule held that the decorative plastic photo frames, consisting of both plastic and steel has to be classified as an article of plastic only as plastic gives the

essential character to the product

c. When goods cannot be classified in a or b above, they shall be classified under that heading which occurs last in the numerical order.

5. Rule 4 says where goods cannot be classified using the above principles, they would be classified under the head appropriate to the goods to which they are most akin.

6. Rule 5: In respect of packing material which are specially designed or fitted to contain a specific article and given with the articles for which they are intended, shall follow the classification of the items which are packed. Ex: Camera cases, mobile cases, musical instrument case etc. such packing material if not used with the article for which it is intended for may have low or no utility. However this rule should not be adopted when packing material itself gives the essential character as a whole.

The packing materials and containers cleared or presented along with the goods are classifiable with the goods, however this provision would not be applicable when such packing material are intended for its repetitive use. Ex: Glass bottles are meant for repetitive use and therefore cannot be classified along with soft drink.

7. Rule 6: While ascertaining the classification of goods in the sub-heading of a heading it should be determined according to the terms of those sub-headings and any related Sub-heading notes and, mutatis mutandis the above principles of classification on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule, the relative Chapter and Section Notes apply, unless the context otherwise requires a different interpretation.

What are the other Rules for Interpretation – Non-statutory Principles

Apart from the above statutory principles of classification, the Courts have evolved certain non-statutory principles. Some of these decisions have been illustrated below. But it must be understood that statutory principles would have precedence over non-statutory principles.

Some of the non statutory principles for classifications are:

(i) Trade parlance theory: This theory is used when the words are not defined under the act and words are not used in scientific or technical sense in the tariff. Trade parlance means the meaning as commonly understood by the people dealing commercially with the subject goods or the commercial recognition that is given to a commodity. This aspect is at times ignored by the

revenue departmental officials leading to litigation.

(ii) Function or use: This principle is used when the definition in the statute is absent and articles are identified with their utility, primary use, design, shape etc. This refers to the primary function of the subject goods in the minds of the consumers of such goods.

(iii) Constituent material: Under this theory, the essential character of the product can be derived from the raw material that make up the goods.

(iv) Expert opinion: Some times classification involving technical questions are decided after obtaining an opinion of experts and the opinion of the expert would not carry weight when they are contrary to another expert's opinion.

(v) Dictionary meaning: This principle can be adopted when the meaning given in the statute is overlapping, for finding out the trade understanding.

(vi) Classification by ISI: ISI specifications are normally meant for ensuring quality control and can be considered for classification when the product is not defined or specified in the tariff. However this cannot be the lone factor for classification. This method can be adopted only in absence of other instruments of classification.

In a nut shell:

- The first step-find out the heading and sub-heading read with the relevant section and chapter notes. If there is no ambiguity the classification is final and do not proceed to the rules of classification.
- Get the trade understanding of goods in minds of people using the goods/dealing in the goods, if the meaning is not clear.
- If the trade understanding is not available, go to the technical or scientific meaning. If the tariff headings however have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.
- If none of the above are available reference may be had to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.
- Where classification is not clear, based on the section/chapter headings and sub-headings, find out the classification of the finished product, ascertain if the unfinished product has the essential characteristics of the finished product, if yes apply that classification to the unfinished product as per Rule 2(a).
- If the classification is not ascertained as per Rule 2(a), find out the heading which is more specific to the nature of product. Use the classification which is more specific as per Rule 3(a).

- If the classification is still elusive, ascertain which material gives the article its essential characteristics and use that classification as per Rule 3(b).
- If the problem still persists, use the thumb rule, later the better as per Rule 3(c).
- If product in question does not fall under any of the entries following the steps given above, then the last step is to find out the tariff entry to which the product is most akin as per Rule 4.

- ✓ **Judicial Decisions on Classification** Alpine Industries vs. Collector of Central Excise, New Delhi (2003 (152) ELT 16 (SC)):Facts: Is Lip salve' used for care of the lips a protective / preventive preparation for chapping of lips, or a medicament.

Decision: The Certificate issued by the Army authorities and the chemical ingredients of the product are not decisive on the question of classification of the product for levy of excise duty. 'Commercial parlance theory' applicable for classification of product under Central Excise Tariff. The product is not suitable for use only for soldiers operating in high altitude areas but it is of use for every one. Hindalco Industries Ltd v CCE [2009 (237) ELT 588 (Tri- Ahmd)]. Facts: the Primary use of product manufactured was determined by referring to HSN.

Decision: Since the tariff is aligned with HSN, it has to be accepted that the recommendations of Harmonised System Committee being of a great persuasive value has to be considered for the purpose of determination of classification.CCE Vs Frito Lay India [2009-TIOL-112 (SC)]:Facts: Whether the subject prepared food are covered in chapter sub-heading 19.04 covering food preparations obtained by swelling or roasting cereals in grain form or under residuary entry 21.08 of edible preparations not elsewhere specified.

Decision: It is a settled rule of interpretation that if a specific entry covers a product, then one need not go into the residuary entry.

- ✓ CCE v Fenoplast P. Ltd. [1994 (72) ELT 513 (SC)]:Facts: The issue was determination of the classification of cotton fabric, coated, popularly known as rexine cloth.

Decision: If words not defined in the Act, the trade understanding to be used for classification.

- ✓ CC v Gujrat Perstorp Electronics Ltd., [2005 (186) ELT 532 (SC)]:Facts: Whether Designs, drawings and plans in the form of FEED (Front End Engineering

Package) imported under know-how and basic Engineering Agreement are printed books.

Decision: The Specific entry is to be preferred over general entry .

✓ **What is the meaning of Exemption**

Under Section 5A of Central Excise Legislation, the Central Government is empowered to grant exemption in public interest either unconditionally or subject to conditions (to be fulfilled either before or after removal) from the whole or any part of the duty of excise payable. Notifications issued under Sec. 5A(1) are not applicable to excisable goods which are produced or manufactured in 100% EOU/ SEZ and brought to any other place in India unless specifically mentioned. This is because such units are exempted under other notifications specially applicable to them.

The Finance Act, 2005 with effect from 13-5-2005 has inserted sub-section (1A) to Section 5A which states that where exemption is granted from whole of excise duty payable absolutely, then such manufacturer shall be required to compulsorily claim exemption and cannot opt to make the payment of excise duty. Supreme Court in CCE v. Pudumjee Pulp & Paper Mills Ltd., 2006 (198) E.L.T. 330 (S.C.), held that, prima facie, in view of fact that the Clause (1A) of Section 5A of Central Excise Act, 1944 was introduced by Act No. 18 of 2005 w.e.f. 13-5-2005, same would not come into operation with retrospective effect.

The exemptions could mainly be in respect of products/processes, industry based or area based exemptions. However, it should be remembered that where the benefit is not claimed under the correct provision at all is comparable to claiming a benefit under a wrong provision of law and therefore such exemptions could be availed subsequently also by assessee.(held in the case of CCE vs. Kankai Imports 2008 (223) E.L.T. 62 (Tri.-Chennai).

It is critical to avail the exemption available keeping the following in view:

- Read the exemption literally. (Do not assume/ presume)
- See the history and intention of legislature in case of any apprehension on applicability of the exemption. (Why it was introduced, did the FM say something on the same in the budget speech at time of its introduction, past case laws etc.)
- As far as possible it should be ensured that the exemption notification is harmoniously interpreted in congruence with the intention of the legislature
- If an interpretation leads to nothing being provided by way of benefit vide exemption notification then such interpretation would not be appropriate.
- Check whether the substantive conditions are met. If conditions are not met, do

not avail the exemption.

- If only a small condition is not met, the benefit of exemption could be availed. However this would have to be decided on case to case basis.

- Where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater reliefs.

To understand what the courts have to say about the same we provide case laws as under:

✓ **Judicial Decisions on Exemptions**

1. Ramdhan Pandey v. State of U.P., (1993 (66) E.L.T. 547 (S.C.);Facts: An order was issued which did not have a recital as to the public interest.

Decision: Exemption notification is not valid if it does not recite public interest.

2. H.C.L. Limited v. CC,(2001 (130) E.L.T. 405 (S.C.):Facts: There were two exemption notifications applicable and gave to the assessee the benefit of that notification which was more beneficial to it.

Decision: Where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that that notification is general in its terms and the other notification is more specific to the goods.

3. Orient Traders vs. Commercial Tax Officer, Tirupati(2009(237) ELT 447 (SC):Facts: The benefit of the concessional rate of tax for gold bullion and specie vide notification, was claimed as applicable to silver by assessee.

Decision: The exemption notifications are to be construed strictly. The intention of legislature if clear and unambiguous, then not open to courts to add words in exemption notification to extend benefit to other items which not mentioned in notification.

4. Commissioner of Cus(Prv)Amritsar vs. Malwa Industries Ltd92009(235) ELT 214(SC):

Facts: There would be applicability of Excise duty exemption notification for exemption from CVD on imported goods. This was subject to the condition of use in same factory. The question was whether goods to be used must be manufactured in same factory?

Decision: Exemption notification should be read literally. It can be construed

liberally if once it is found that notification applicable to case of assessee.

5. Commissioner of C.Ex. Jaipur Vs. Mewar Bartan Nirman Udyog(2008 (231) ELT 27(SC):

Facts: There was an exemption for the circles other than of copper, nil rate applicable. But another entry covering circles of alloys of copper attracted duty. Department contends that copper includes brass under the tariff and denies exemption.

Decision; Rules of Interpretation applicable to cases of classification under the Tariff and not applicable to interpretation of exemption notification.

CHAPTER 6: VALUATION

A: Valuation of Goods for Sale

B: Valuation of Goods Not for Sale

Firstly, we would see what are the various basis on which valuation is done under excise.

✓ **What are the valuation mechanisms under excise?**

The excisable goods are those which are charged to duty as per the Tariff. The duty is payable on the basis of any of the following :

- a. Specific duty
- b. Duty based on value
 - a. Duty based on the Tariff Value
 - b. Duty based in the value arrived at on the basis of valuation U/s 4.
 - c. Duty based on Maximum Retail Price (MRP) *now called as Retail Sale Price (RSP) as covered under Legal Metrology Act, 2009 or any other law*

If one were to guess the percentage of products sold which are covered under Section 3(2), 4A and 4 it could be of the order of 1%, 29% and 70% respectively.

✓ **What is meant by Specific duty?**

In the case of some goods, duty is payable based on unit like kilograms, liters, length, weight, volume, etc. For instance, duty payable is payable on cigarettes based on length. This method demands frequent revisions to keep pace with inflation. The major disadvantage of this method from revenue point of view is that even if selling price of the product increases the duty collected remains the same.

✓ **What is assessable value?**

Assessable value is the value on which duty of excise is payable as a percentage and this is nomenclated as ad-valorem duty., This is because under this method the Central Excise is payable on the basis of value. The Honorable Supreme Court in the case of CCE v Acer India Ltd. 2004 (172) ELT 289 observed that the transaction value is subject to the charging section contained in Section 3 of the Act. This was differed in Commissioner of Central Excise, Indore vs.

Grasim Industries Ltd(2009(241)E.L.T.321(S.C.)).That is to say section 4 is only a measure of the duty and not the levy itself. (Definition at the end)

In the case of duties charged on the basis of value, such value may be charged on either of the following basis:

a. Duty as a percentage of Tariff value fixed by the Central Government U/S 3(2) of the Central Excise Act, 1944 :

Section 3(2) empowers the Central Government to notify and amend the values for excisable goods. These values could be fixed generally or specifically in the Central Excise Tariff. These are based on whole sale trade prices. Tariff Value for certain notified goods may either vary depending upon the class of goods or depending upon the class of manufacturers or even depending upon the class of buyers. Once the goods are notified under this provision, the valuation section i.e. sec 4 becomes ineffective i.e the value so fixed is to be considered and the manufacturer's sale price would not be considered.

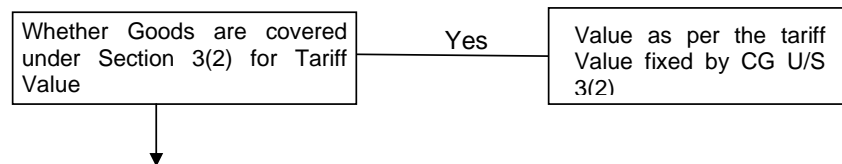
b. Duty as percentage of Assessable value determined in accordance with section 4 of the Central Excise Act, 1944 (Ad valorem duty) :

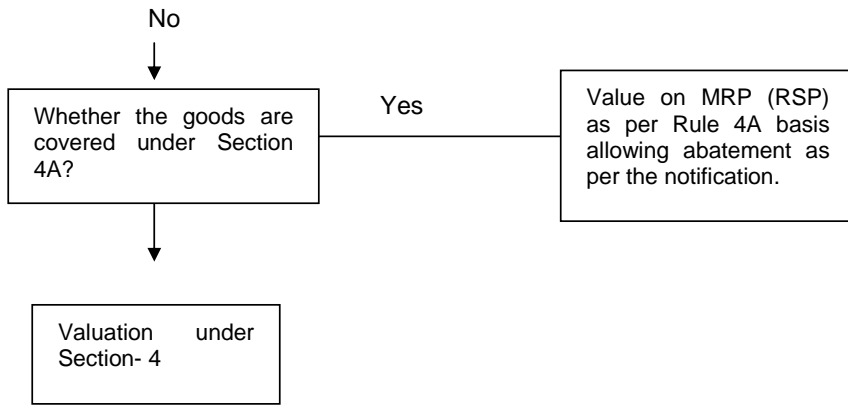
Section 4 deals with the valuation of goods, which are chargeable to duty on the basis of ad valorem concept. Prior to 1st July 2000 the valuation was based on the principle of 'normal price', which was based on the prices at which manufacturer sold the goods. Since 1st July 2000, the concept of 'transaction value' has been brought in for making the valuation simple, user friendly and along commercially accepted lines .

c. Retail Sale Price (RSP): Duty may also be fixed on the basis of maximum retail price after giving permissible deductions in the form of abatements. This has been done under Section 4A on many mass consumption products (FMCG) where the retail price and wholesale price of goods are at wide variance and the Government wants to raise revenues knowing that the manufacturer has shifted much of the overheads away from the factory by planning the production and marketing structure.

The valuation under section 4 (transaction value)& also Section 4A (MRP valuation) is discussed in detail below:.

The scheme of valuation for sales in general could be summarised in the form of the chart provided under:





CHAPTER 6A: WHAT IS THE VALUE OF GOODS INTENDED FOR SALE?

✓ Valuation under Section 4 (Transaction value basis) :

- When is transaction value applicable?

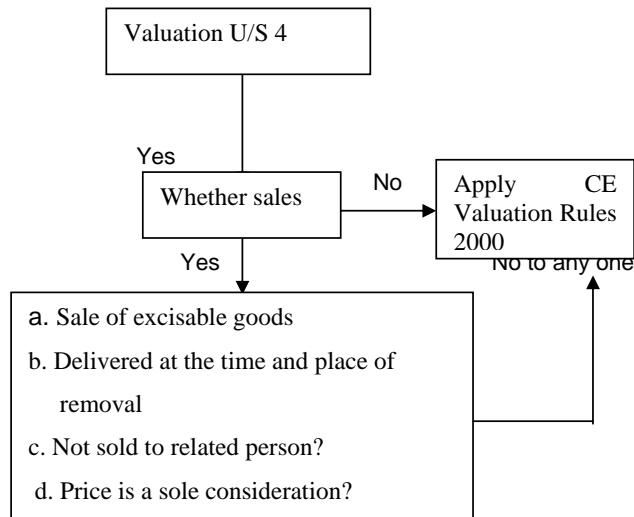
For applying the transaction value for any case, the following requirements should be satisfied:

- The goods are sold by an assessee for delivery at the time and place of removal. The term “place of removal” and “time of removal” has been defined basically to mean a factory, a warehouse, and a depot, premises of a consignment agent or any other place or premises.
- The assessee and the buyer of the goods are not related; and
- The price is the sole consideration for the sale.

The definition of transaction value is comprehensive and covers not only the selling price but also other related aspects in relation to the sales paid or payable either to the manufacturer or to any person on behalf of manufacturer. The definition though seems to cover some of the elements which are beyond the manufacturing and sale either paid at the time of sale or any time thereafter.

The scheme of valuation under section 4 can be put in the form of chart provided below.

- Valuation under section 4 in form of flow chart



✓ **What is Transaction Value made of?**

The components which are included in the definition may be listed as follows:

- a. Advertising and publicity
- b. Marketing and selling
- c. Storage
- d. Outward Handling
- e. Servicing
- f. Warranty
- g. Commission
- h. Any other matter

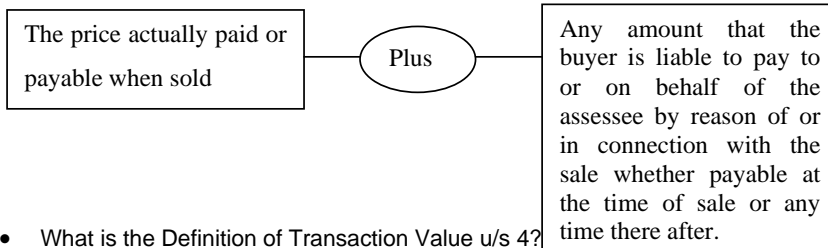
It is clear from the above that the above are includible only if the buyer is liable to pay for or on behalf of the assessee. However, the amounts like excise duty, sales tax and other taxes are not includible if actually paid or payable.

• **Would transaction value include value addition as well?**

The definition of transaction value seems to extend its scope beyond the normal boundaries of a levy on manufacture. It probably looks at value addition also.

It is important to note that the Supreme Court has held in the context of customs law in *Associated Cement Companies Ltd. v. CC 2000 (121) ELT 21* that the concept of transaction value is quite different from the concept of price and such value can include many items which may classically have been understood to be part of the sale price.

The definition of transaction value could be understood through the use of flow charts.



• **What is the Definition of Transaction Value u/s 4?**

“Transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but doesn't include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on

such goods.

- What is Scope of Transaction Value?

The definition illustrates with examples, of what amounts are included as additions to price which the buyer may be liable to pay to or on behalf of the assessee. However, the definition states as "including but not limited to" which clearly means that the items included in the definition are only illustrative and more may be includible.

It would be worthwhile to examine the issue of includibility or otherwise of certain receipts to the manufacturer.

Items of Cost	Includible or not
1. Advertising and publicity	Includible if expenditure incurred by manufacturer and reimbursed by buyer to manufacturer.
2. Marketing and selling	Includible if expenditure incurred by manufacturer and reimbursed by buyer to manufacturer.
3. Storage and outward handling	Includible if expenditure directly incurred by buyer or reimbursed by buyer to manufacturer.
4. Servicing	Includible if there is a nexus with sale and manufacturer receives any amount towards servicing.
5. Warranty	Includible specifically.
6. Commission	Includible as commission paid to commission agents is not deductible.
7. Freight	Not Includible. Refer the case of Baroda Electric Meters Ltd case [1997 (94) ELT 13(SC)]. It was distinguished in Saraswati Air Products Ltd vs. Commr. Of C.Ex. Meerut(2009(243)E.L.T.397(Tri.-Del).
8. Discounts	Trade discounts that are known at time of clearance of goods are deductible. Even quantity discounts can be deducted. Cash discounts are also to be reduced from the assessable value.
9. Installation and Commissioning	Not Includible. Further the activity would be liable to service tax. Ratio of decision in Thermax Ltd v. CCE 1998 (99) E.L.T. 481 would apply even now post 2010..
10. Packing	Includible. However, in our opinion, certain durable and returnable packing and containers used for delivery of goods

	may not be includible.
11. Taxes and duties	Not Includible. Because it is not part of cost of manufacture and specifically excluded.
12. Interest on deposits and advances.	It is includible. only when there is a nexus between the price and the advance. When there is reduction in price as a result of advance the notional interest on advances maybe included in computation of assessable value..
13. Accessories	If they are distinct and do not form a part of the manufactured goods they are not includible. However where it is included there is an added advantage that the manufacturer may avail cenvat credit of such accessories by treating it as inputs.

✓ **Practical Illustration on Inclusions & Exclusions From Assessable Value under different circumstances:**

Should erection, installation and commissioning charges be included in the assessable value

If the final product is not excisable, the question of including these charges in the assessable value of the product does not arise. As for example, since a water supply Plant, as a whole, is an immovable property and therefore not excisable, no duty would be payable on the cost of erection, installation and commissioning of the steel plant. On the other hand if the parts/components of a generator are brought to a site and the generator erected/installed and commissioned at the site then, the generator being an excisable commodity, the cost of erection, installation and commissioning charges would be included in its assessable value. This is not applicable in cases where excisable goods come into being at the factory and are installed later. The payment of service tax on that component either by the manufacturer or any other entity would put the issue beyond doubt.

- Are warranty charges includible?

Whether the warranty charges are charged separately and not considered as "price" of goods by the assessee, then also warranty charges would be includable in the transaction value forming basis of valuation. In those transactions where warranty charges are not recovered, the question of including warranty charges in transaction value does not arise.

- Would the packing charges be includible?

As per commercial practice, the price for the goods charged, normally includes the cost of packing charges. Any charges recovered for packing are obviously charges recovered in relation to the sale of the goods under assessment and would form part of the transaction value of the goods. It is immaterial whether packing is ordinary or special. Whatever amount is charged from the buyer for packing and if not already included by the assessee in the price payable for the goods would be included while determining the transaction value of the goods for assessment to duty. Thus all packing charges would be includible.

- Is the value of trade mark includible?

Where a manufacturer is the owner of the brand name, the price including the value of the brand name, at which he sells the goods in the course of wholesale trade, would constitute the normal price. But where the goods are manufactured by some other person and then sold to a dealer who is the owner of the brand name, the value of the brand name cannot be considered for computing the assessable value as the brand name owner cannot be treated as manufacturer and the price at which the brand name owner sells the goods cannot be taken as assessable value.

- Is the Consultancy charges / technical specifications to be included?

The costs towards drawing, designing and technical specifications are to be included in the assessable value. However, the cost towards project report, plant layout, civil works and training which are in the nature of services are not includible in the assessable value. Value of moulds supplied free of cost are also includible.

- Is the Inspection charges and testing charges to be included -

Where the manufacturer incurs the cost towards inspection and testing of goods prior to their clearance, such costs are includible in the assessable value. The inspection and testing charges incurred subsequent to the clearance of the goods are ideally to be charged to service tax as these are taxable services.

- Handling cost is to be included?

Handling cost incurred before the clearance of the goods from the place of removal is includible in the assessable value.

- Excess amounts charged to the customer to be included?

Amount charged and recovered from customers by providing separate bills would be

considered as gross receipts or cum duty price and duty is to be paid after computing the assessable value from the gross receipts.

- The price escalation subsequent to the removal of goods to be included?

The excess amount realised under an escalation clause would form part of the assessable value and thus attract Central Excise duty. The duty in such instance is payable on the enhanced rate that is fixed. Differential interest has also been held to be liable.

- Would the reduction in price subsequent to removal on payment of duty, be excluded from assessable value or lead to refund?

If the goods are removed on payment of duty, based on declared price, subsequent reduction of price for whatever reason, including Govt. interference or discount would not create a claim for refund of Central Excise duty paid on the amount of price reduction.

- Would the interest payable after the credit period is over, form a part of the assessable value?

Illustration- Assessee charges Rs.2000/- per unit for his goods, if the payment is made within 45 days. Rs.2000/- per unit would of course include the interest component pertaining to the general credit period of 45 days. Even if the payment is made at the time of delivery, Rs.2000/- would be the assessable value, irrespective of the possible inclusion of interest element in the price. If the assessee charges Rs.2040/- per unit after 45 days and Rs.40/- per unit is identifiable as being relatable to time lag in payment, this amount of Rs.40/- per unit would not form a part of the value. This is based on the decision of the Supreme Court in GOI Vs MRF Ltd. 1995 (77) ELT 0433 SC

- Would notional interest have to be charged on the advances / deposits accepted by the manufacturer and included in assessable value?

Interest on advance / deposits received against future sale of goods is includible in the assessable value only if there is a nexus between the advance / deposit and the sale price. It was held in the Metal Box case – 1995 (75) ELT 449(SC) that before adding notional interest, the fact should be established that the interest free advance reflected favoured or special treatment and that advances had the effect of pegging down the wholesale price. If the assessee charges the same price from those who give advances

and those who do not, the question of including notional interest on advances does not arise –This was held in VST Industries Ltd Vs CCE 1998 (97) ELT 395 (SC).

- Would the cost of parts supplied free of costs by the manufacturer be includible?

It is clarified vide Circular No. 725/41/2003-CX., dated 30-6-2003 that since the assessable value should take/include the entire intrinsic value of the article sought to be assessed, irrespective of the fact that manufacturer or processor of the article does not pay for the cost of some of its components, the value of caps fitted with the tubes should be included while determining assessable value of the tubes.

- Whether the Cost of Components Supplied by Job Worker is includible?

Where the components are received under Rule 4(5)(a) / not. 214/86 for job work, only the cost of goods supplied by the job worker needs to be included as per the decision of the Supreme Court in the case of International Auto Ltd. 2005 (183) ELT 239 (SC). This is as per the logic that the manufacturer would again be discharging the duty of excise on the finished components and would have availed of the duty on the components sent for job work.

- The cost of accessories supplied by the buyer is includible or not?

There is a distinction between the component and the accessory. A thing is a part or a component of the other, only if the other is incomplete without it. A thing is an accessory of the other if the thing is not essential for the other, but only adds to its convenience or effectiveness.

The cost of accessory supplied by the buyer as a package of sale of the manufactured goods would be includable in the value and cenvat credit on the accessories can also be availed.

- ✓ The cost of transportation is includible or not?

Cost of transportation and insurance is not to be included in determining the assessable value of goods. In cases where the vehicles are owned by the manufacturers, then the cost of transportation can be calculated through the accepted principles of costing. A cost certificate from a Cost Accountant/Chartered Accountant/Company Secretary may be accepted. The cost of transportation should, however, be separately shown on the invoice.

It is clarified vide Circular No. 827/4/2006-CX, dt 12-4-2006, that as per Rule 5 of the

Valuation Rules the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. If the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount would not be available as a deduction. Therefore, unless it is separately mentioned on the invoice that the transportation charges indicated therein do not include cost of transportation for the return journey of the empty truck/vehicle, the deduction of the said transportation charges maybe disputable. However this is questionable since post removal expenses are not considered to be a part of assessable value.

✓ Maximum Retail Price (M R P) now RSP Based valuation (Section 4A)

The provision relating to duty based on MRP is dealt in Section 4A. Section 4A was introduced with effect from 14-5-1997 and today covers more than 100 Tariff headings.

• What is meant by MRP?

MRP or Retail Sales Price is the maximum price at which the goods in packaged form maybe sold to the ultimate customer and includes all the costs to reach the point of sale as well as all taxes i.e. price should be the only consideration for sale.

• What Does MRP (RSP) Include?

Such costs include the following:

- All taxes, local or otherwise,
- Freight, transport,
- Commission to dealers and
- Charges for advertisement,
- Charges for delivery, packing, forwarding and the like.

✓ What is Definition of Retail Sale Price?

The retail sale price (RSP) has been defined to mean the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer inclusive of all taxes and expenses and price is the sole consideration for such sale.

✓ To Which Goods does it Apply?

The said section would apply to those goods, which are covered under the Legal Metrology Act, 2009, or any other similar law for the purpose of declaring the retail sale price on the package thereof.

✓ When would valuation be done under this Section?

- a. The goods are to be covered under Legal Metrology Act, 2009 or rules made there under or under any other law in force which require declaration of retail sale price on the package.
- b. The Government may notify such products for the purpose of this Section.
- c. The law requires such products to declare the retail sale price on the package. At present there are 108 entries notified vide Notification No.49/2008-CE(NT) dated 24.12.2008. (as listed at Appendix 2)
- d. The valuation has to be done on the basis of retail sale price declared on the package less abatement. The basis of such abatements has not been made public but is expected to cover the taxes and the normal distribution expenses.
- e. It is also stated that where there are more than one retail sale price, the maximum of such retail sale price would be deemed to be the retail sale price for the purpose of this section.

- ✓ What happens when the Retail sale price is not declared as per provisions on notified goods?
 - Goods are liable for confiscation when they are cleared without declaring the retail sale price on them or,
 - where the declared retail sale price does not constitute the sole consideration for sale. Or
 - where a dealer obliterates or alters, tampers such declaration after removal, the same would render the goods liable for confiscation or
 - if a wholesaler tampers with the MRP (RSP) declaration after removal the goods could be confiscated.

- ✓ What happens where multiple prices are declared for different packages of same subject goods?

Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different places, each such retail price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

- Where would MRP (RSP) based levy not be applicable?

In the following cases, levy based on MRP would not be applicable when:—

1. The goods are not liable for excise duty.

2. Goods, which are captively consumed.
3. The goods are not notified by the Central Government as applicable to the levy under Section 4A.
4. Goods are not covered under the Packaged Commodity rules.
5. There is no requirement of declaring the MRP on the packages under the Legal Metrology Act, 2009. (maybe exempted or otherwise)

- ✓ Are goods covered under MRP (RSP) levy to be assessed under section 4A when removed in bulk?

The goods specified under the MRP regime would not be liable to be assessed under Section 4A when removed in bulk (not for the purpose of retail sale/without any packing). In the case of Jayanti Foods Processing P Ltd. [2007 (215) ELT 327 (SC)] it was clearly observed that the sale of 4 litres pack of ice cream for the use in a hotel for serving its customer was not liable as there was no sale of packaged product.

CHAPTER 6B: WHAT IS VALUE OF GOODS NOT INTENDED FOR SALE?**Scenarios where Transaction Value does not apply:**

As given in the chart for the valuation scheme under section 4(1)(a) there are four conditions which have to be fulfilled for valuation of goods on transaction value basis.

- a. There should be sale of excisable goods
- b. The goods sold should be for delivery at the time and place of removal
- c. The assessee and the buyer of the goods are not to be related persons
- d. The price should be the sole consideration for the sale.

In the cases where any of the above said requirements are not met, the assessable value shall be adjusted/ determined on the basis of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Further it should be noted that assessable value for excise duty purposes would be decided on basis of selling price, if the above mentioned conditions are fulfilled even if it is below manufacturing cost.

The Valuation Rules should not go against the provisions of Section 4. The said rules may be summarised in the following manner:

Rule 3 : General: If the conditions of valuation set out under section 4(1)(a) is not fulfilled, the value has to be computed as per these rules. These conditions are that the goods are sold to related parties, additional consideration accrues or is paid, time and place of delivery and sale are different or the goods are manufactured by a job worker and the principal does not carry out any processing at his end.

Rule 4 : Difference in Timing: Adjustment for the value for the differences in the time of removal and the time of delivery the value of the excisable goods based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under the assessment. If necessary, make adjustment due to different in the dates of delivery of such goods removed at nearest time and of the excisable goods under assessment.

Rule 5 : Difference in place of delivery :Adjustment for the value for the difference in place of removal and of delivery. The freight payable by the customer if indicated in the invoice and on actual basis would not form part of the assessable value and could be deducted. Even averaged freight could be allowed as a deduction provided it is computed on acceptable costing principles. Where the sale is completed at factory gate itself there would be no excise duty charged on the freight charged for transportation which would be a post removal expense.

Rule 6 : Additional consideration: Adjustment for the additional consideration flowing from the buyers' end to the manufacturer would have to be made to arrive at assessable value for the computation of excise duty. Depending on the type of consideration the additions would take place. For example: a) Huge advances given having a nexus to price– Notional interest @ bank rates on amount of advance where the advance has a nexus to the price. b) Materials/Moulds/ dies/ machinery/ designs and drawings having commercial value provided free of cost- The net value of the asset to be divided by the number of components the asset is expected to produce to be added to each component supplied and excise duty would be discharged on the same. The goods and services to be treated as an additional consideration as set out in this rule.

Rule 7 : Depot sales: Value for the clearances to depots or consignment agents or any other place for sale. The 2 options are - a) The removal from the factory should be at the price of the same item at the depot at the relevant (removal from depot) time. The subsequent sale at different rates would then not be relevant. This was confirmed in the case of Commr. Of C. Ex., Siliguri vs. Bharat Petroleum Corporation Ltd (2010(255)ELT568(Tri-Kolkata) where held that charges collected at depot could not be added to assessable value which had to be based on date of removal from factory. b) The assessee may opt for provisional assessment for want of information on the prices prevailing at depot at time of clearance from factory. In such situation assessee could discharge the duty at estimated values. At periodic intervals the same should be adjusted for the actual values. The additional duty payable would be required to be paid or refund claimed. This has been found to be practically cumbersome.

Rule 8 : Captive consumption :Value for the captive consumption. The value is to be computed on cost of production + 10% . The cost of production may have to be certified

by a Chartered Accountant/ Cost Accountant and has to be certified following principles as set out in CAS 4.

This could be applicable when the manufactured goods are used by the manufacturer in the process of manufacture or for repairs, servicing or demonstration purposes in his factory. However Notification No.67/95-CE dated 16.3.1995 exempts captive consumption when the inputs are used in the manufacture of excisable goods that are chargeable to duty rate other than nil. Further inputs could be captively consumed to manufacture goods that are cleared without paying duty thereon under this notification for EHTP, STP, 100% EOU or by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in rule 6 of the CENVAT Credit Rules, 2004. However the capital goods manufactured in a factory could be captively consumed to manufacture the exempted goods or goods that are cleared at nil rate of duty under Notification no.67/95-CE .

Rule 9 : Value for sale through related persons other than inter-connected undertakings:

As per section 4(3)(b) persons shall be deemed to be related if

- They are inter-connected undertakings
- They are relatives
- The buyer is a relative and distributor of assessee or a sub-distributor of such distributor
- They are so associated that they have direct or indirect interest in each others business.

The price at which the said goods are sold by the related person to independent buyers would be considered the appropriate value under excise on which duty would have to be discharged. This valuation would also be applicable when all the goods manufactured are sold only through or to such related persons.

Rule 10 : Inter-related companies and holding and subsidiary companies: There should be mutuality of interest (two way interest) between the inter-connected undertakings for this rule to apply. They should also be related in terms of sec 2(g) of the Monopolies and Restrictive Trade Practices Act or Sec 4(3)(b) explanation (i) of Central Excise Act However if the inter-connected undertaking are holding or subsidiary companies the relationship is presumed. The valuation is at the value at which the sale takes place if

goods are sold to unrelated party by the inter-connected undertaking. Further such sale should be exclusively through such inter-connected undertakings for this rule to apply.

Rule 10A: Value determination when the manufacture is done by job-worker- For the purposes of this rule, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

(i) In a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the buyer is not a related party, and price is sole consideration for sale the value of the goods shall be the transaction value of goods sold by the principal manufacturer.

(ii) In a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the job-worker's factory, but transferred to some other place from where the said goods are to be sold to a party that is not related to the principal manufacturer the value of the excisable goods would be the normal transaction value sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker.

(iii) In a scenario not covered under clause (1) or (2), the provisions of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods. Thus it can be stated that if the cases are not covered by clauses (1) or (2) above, valuation of goods shall be determined in terms of the ratio decided by the Supreme Court in the case of Ujagar Prints and Others v Union of India 1987 (27) ELT 567 (SC), read with other Rules of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Rule 11: Residuary rule. If all the above rules fail then any method which is practiced, decided or as per the best judgment of the assessing officer.

✓ Judicial Decisions on Valuation

1. UOI & Ors. V. Bombay Tyres, 1983 (14) ELT 1896 (SC): Facts: The question under consideration was whether any post-manufacturing expenses are deductible from the price when determining the "value" of the excisable article.

Decision: The post-manufacturing expenses cannot be excluded as it is not permissible. The storage charges, freight and other transport charges, handling charges, interest on inventories, after sale service charges, insurance charges, packing charges, marketing and selling organisational expenses as well as advertisement and publicity expenses all to be included in the assessable value.
2. Voltas Limited vs. Union Of India(1991(56)ELT329(Bom):Facts: The short question which falls for determination is whether the deductions in respect of maintenance charges and site service charges in respect of air-conditioners and water coolers are permissible while determining the assessable value of the manufactured goods.

Decision: These charges are not includible in assessable value.
3. Collector vs. Hindustan Lever Ltd(1995(078)ELTA030(SC): Facts: The question involved was whether the cost of packing (durable) is includible in the assessable value, irrespective of who supplied the packing?

Decision: The durable and returnable packing is not includible in the assessable value irrespective of whether durable packing belongs to the assessee or belongs to the customer.
4. Philips India Ltd. V. CCE, 1997 (91) ELT 540 (SC)Facts: The advertisement and free after-sale-service during guarantee period were provided by dealers to the product of manufacturer under an agreement.

Decision: Such agreement at arms length and genuineness thereof not in dispute - Manufacturer sharing half and half advertisement expenses, since advertisement benefited both - Free after-sale-service by dealers to all goods of Philips even if sold by any dealer throughout the country also for the mutual benefit of the manufacturer and the dealer.
5. Commisioner of Central Excise, Ahmedabad vs. Xerographic Ltd (2010(257)ELT11(SC):Facts: The distributor companies alleged as related persons of manufacturer and value adopted by such companies sought to be taken as assessable value of goods removed.

Decision: Three conditions to be satisfied before invoking related person concept. These are mutuality of interest, alleged related person should be related

as defined in statutory provision and price charged from related person should be lower than normal value due to extra commercial considerations - Section 4 of Central Excise Act.

6. Commissioner of Central Excise, Mysore vs Nestle India Ltd(2009 (248) ELT 737 (Tri-Bang):Facts: The "Instant coffee" valuation is covered under Section 4A of Central Excise Act, 1944. The manufacturers supplied soluble coffee powder packed in unit container of 200 and 500gms to Indian Army. The issue involved in the instant case is regarding assessment of clearance of soluble instant coffee cleared in bulk to such organization.

Decision: Instant coffee packets without printed MRP and with marking 'for Defence Services only'. It was held there was no sale and valuation under Section 4 was proper.

7. CCE v. Bhaskar Ispat Pvt. Ltd., 2004 (167) ELT (189) (T-LB: Facts: The issue is whether the chargers for additional testing conducted at the request of customer and the cost of such testing charges being born by the customer, are includible in the assessable value of the goods.

Decision: The cost of additional testing of goods conducted at the request of and borne by the customer, was not includible in the assessable value.

8. V. B. Office Systems V. CCE, 2001 (128) ELT 162 (Tri-Chennai):Facts: The issue was non-inclusion of warranty charges in the assessable value of the computers manufactured and marketed.

Decision: The warranty charges for the first twelve months being compulsorily collected from customers, includible in assessable value. . If repair charges are collected during warranty period being labour charges from customers, the same held to be different from services. Provision for free repair during warranty period by manufacturer through the dealer for the customers' benefit includible in the value.

9. Ballarpur Industries Ltd V UOI, 1987 (30) ELT 267 (Bom- HC):Facts: Whether the dealers' commission was not reflected in invoices can be allowed by way of credit note?

Decision: Commission paid to wholesale buyer in the form of credit notes is a permissible deduction. Commission paid to a selling agent is not deductible.

10. Haldia Petro Chemicals Ltd vs. Commissioner of C.Ex. Haldia(2009(233) ELT 344 (Tri-Kolkata) Facts: The manufacturer charges their customers an increased freight amount which covers not only the outward freight but freight for bringing back empty tankers can be considered as a part of assessable value.
- Decision: The Impugned goods being butadiene notified as explosive, specially designed container necessary. The transaction value is exclusive of freight available for sale at factory gate. The return freight is not includible.

CHAPTER – 7: WHAT IS SET OFF OF CREDIT ON INPUTS, CAPITAL GOODS, INPUT SERVICES

• What is Cenvat Credit Scheme?

By the introduction of Cenvat Credit Rules with effect from 10-9-2004 the credit of excise duty paid on inputs and capital goods as well as input services used in relation to business are allowed to both manufacturers and service providers. Cenvat Credit Rules, 2004 has unified the credits available on goods and services, the Cenvat credit of duty on inputs and tax on taxable services would be available to both the 'manufacturers' and 'output service providers'.

However, credit cannot be allowed on inputs and input services that are used to manufacture exempted goods or providing exempted services. The cenvat credit on capital goods can be allowed to be availed only where it is partially used to manufacture dutiable/excisable goods or to render taxable output services.

• What Are the Conditions for availing credits on inputs?

- (ii). The credit can be availed immediately on receipt of the 'inputs' into the factory. Further the benefit of cenvat credit on inputs used for manufacture would not be available when the same is used for manufacture of goods on which benefit of notification 01/2011- CE is availed and also the manufacturer would not be eligible to avail CENVAT Credit when duty paid for final products availing exemption under sl. No 67 & 128 of notification 12/2012
- (iii). The 'inputs', are not required to be owned by the manufacturer.
- (iv). Cenvat credit on all inputs (as defined in the rules, which is amended w.e.f. 01.04.2011) can be availed. The conditions in this regard generally are that the inputs must be used in the factory of final products on which duty is chargeable, received under a valid Invoice or Bill of Entry and a known source.
- (v). The goods on which credit is availed can also be removed without payment of duty for job work under a delivery document.
- (vi). The condition is that materials sent for job work are to be returned within a period of 180 days.
- (vii). In case of delay the duty debit is required for which a re-credit is permissible on receipt.
- (viii). For better understanding of the definition of input, specific inclusions and exclusions are tabled:

<u>Inclusions</u>	<u>Exclusions</u>
All goods used in the factory by the	Light diesel oil, high speed diesel oil,

manufacturer of the final product	Motor spirit commonly known as petrol
Any goods including accessories cleared along with the final product and goods used for providing free warranty.	Any goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods.
Similarly, goods used for generation of electricity or steam for captive use also constitute inputs.	Capital goods except when used as parts and components in manufacture of final products and also does not include the motor vehicles.
	Motor Vehicles
	Goods used primarily for personal use or consumption of any employee including food articles etc.
	Goods having no relationship with whatsoever with the manufacture of final product.

• **What Are the Conditions for availing Cenvat credit on capital goods:**

- (i). The cenvat credit on capital goods is available.
- (ii). The credit could be taken upto 50 % of the total eligible credit in the year of receipt and the balance in any subsequent year in which the same are in possession of the manufacturer.
- (iii). Finance Act, 2010 provides facilities to SSI units that are eligible for availing benefit under notification No.8/2003-CE to avail full cenvat credit on capital goods in one installment i.e. availment in year of receipt of such goods. This change would be w.e.f. 1.3.2010. It would be applicable even if the eligible units opt not to avail SSI exemption.
- (iv). Credit on capital goods is not allowed when it is used as appliance for purpose other than for manufacture; for instance equipments, furniture, air conditioner installed in office premises etc though known to be capital goods under normal parlance. Whether the same would be allowed for service providers is a question to be judicially confirmed.

- (v). Whereas, cenvat credit on motor vehicles is not available to manufacturer and is available only to specified service providers providing defined services using the vehicles.
- (vi). Further, Cenvat credit facility would be available only if the manufacturer/service provider uses capital goods fully or partially for manufacturing goods liable to excise duty or provision of taxable services.
- (vii). When the capital goods are used exclusively to manufacture exempted goods the cenvat credit on such capital goods cannot be availed.
- (viii). The Government had amended with effect from 07.07.09 the definition of inputs to restrict credit of excise duty on inputs like cement, angles, channels, TMT bars etc used for construction of factory shed or building or laying of foundation or making structures for support of capital goods. Now, the present definition of inputs specifically restricts availment of any goods used for construction of a building or a civil structure or laying of foundation or making of structures for supporting the capital goods.
- (ix). The definition of inputs is also amended to restrict the availment on capital goods except when used as parts or components in the manufacture of a final product.
- (x). It was also held recently in the decision in Vandana Global v. CCE Raipur (2010(253) ELT 440(Tri-LB) that goods like cement and steel items used for laying foundation and for building support structures cannot be treated as inputs for capital goods or as inputs used in relation manufacture of final products and therefore was held that no credit of duty paid on the same is allowable. This appears to go against the basic principles of the scheme and maybe agitated at higher forums. However, the principal of the above is now factored within the definition of inputs to exclude goods used for construction of a building or civil structure or laying of foundation or making of structures to support the capital goods.
- (xi). When the capital goods are imported, the restriction of availment as discussed above would aptly apply i.e. availment of CVD upto 50%, however this restriction would not be applicable for SAD i.e. full benefit of SAD paid on importation would be available.

- **What Are the Conditions for availing Input Service Credits?**

- (i). The "input service credits" w.e.f. 10.9.2004 is also available to a manufacturer. For better understanding of the definition, inclusion and exclusion as provided in the definition are tabled below:

<u>Inclusions</u>	<u>Exclusions</u>
<p>Any service used by the provider of taxable service for providing output service or</p> <p>Used by a manufacturer whether directly or indirectly in relation to manufacture of final product and clearance of final product upto the place of removal</p>	<p>Architect service, port service, air port service, other port services, commercial or industrial construction service, works contract service and construction of residential complex when they are used in construction of building or civil structure or even when used for laying foundation or making structure for support of capital goods.</p>
<p>Services in relation to</p> <ul style="list-style-type: none"> • Modernization or renovation or repairs of the premises of provider of output service or an office relating to such premises • Advertisement or sales promotion • Market research • Storage up to the place of removal • Procurement of inputs • Accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, 	<p>Services such as rent a cab service, general insurance service, authorised service station service and supply of tangible goods service shall not be available as credits, unless they are used by service providers who have been allowed to take Cenvat credit of duty paid on capital goods</p>

<p>credit rating, share registry and security, business exhibition, legal service)</p> <ul style="list-style-type: none"> • Inward transportation of inputs or capital goods and • Outward transportation up to the place of removal 	
	<p>Services such as those provided in relation to outdoor catering, beauty treatment, health service, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefit extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee.</p>

(iii) The Cenvat Credit on Input Services shall be allowed on or after the day on which the invoice / bill of the vendor has been received. However, if the payment not made to the vendor within in three months from the date of Invoice, then the CENVAT Credit availed on such services should be reversed and can be re-availed after making payment to the vendor.

(iv) For Input Service Tax credit paid under reverse charge / Joint charge mechanism,

the CENVAT Credit shall be allowed after making payment to the department by the recipient.

Exempted Goods & Exempted Services

Rule 2(d) of Cenvat Credit Rules defines “exempted goods” to mean goods which are exempt from the whole of duty of excise leviable thereon, and includes goods which are chargeable to “Nil” rate of duty. The definition is now amended to include the goods in respect of which the benefit of exemption under notification 01/2011 as amended – CE is availed.

Rule 2(e) defines “exempted services” to mean taxable services which are exempt from the whole of service tax leviable thereon, and includes services on which no service tax is leviable under section 66B of the Finance Act. Exports as clarified by the board would not be considered as exempted or nil rated. The definition is amended to include taxable services whose part of the value is exempted on the condition that no credit of inputs and input services, used for providing taxable service shall be taken.

Further the explanation is also added to clarify that exempted service to include trading.

How to calculate the amount of Cenvat credit to be availed where the manufacturer has both dutiable and exempted clearances and separate records for consumption are not being maintained:

The provisions of Rule 6 before amendment had not considered many of the vital aspects prevalent in the industry, the application of rule 6 was very limited in as much as it had not considered the trading activity. Further value with respect to compositional scheme with respect to the abated portion is also brought into the preview of Rule 6. Further goods falling within the preview of notification 1/2011, wherein the assessee avails the benefit of paying duty at the rate of 1%, would also be considered as exempted goods.

Rule 6 of the Cenvat credit Rules 2004 has undergone major change. The heading of the rule has been changed as ‘Obligation of a manufacturer or producer of final products and a provider of taxable service’. Earlier the heading was ‘Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services. This very change in the title of the rule will have serious implication as the argument of non applicability of the rule 6, when the manufacturer manufacturing dutiable goods also provides services which are not liable to service tax would not

stand. The converse of which also holds good.

Sub Rule 1 of rule 6 has also been changed to provide that the Cenvat credit benefit would not be allowed on inputs or input services which are used **in or in relation to** manufacture of exempted goods or for provision of exempted service. Earlier the rule has the wordings that the credit would not be allowed on 'input or input service which is used in the manufacture of exempted goods or for provision of exempted service'. Due to this change, now the assessee is prevented from taking the contention of availing full credit on input or input service **in relation to** manufacture of exempted goods or provision of exempted goods.

The sub rule 2 now provides for maintenance of separate records in more detailed manner in respect of receipt, consumption and inventory of inputs / input services i.e. when the manufacturer or provider of output service avails cenvat credit in respect of any inputs or input services and manufacturers final product or provides output service which are chargeable to duty or tax as well as exempted goods or services, then the manufacturer or service provider shall maintain separate accounts for:

(a) for receipt, consumption and inventory of inputs used:

- i. in or in relation to manufacture of exempted goods;
- ii. in or in relation to the manufacture of dutiable final products excluding exempted goods;
- iii. for the provision of exempted services;
- iv. for the provision of output services excluding exempted services; and

(b) The receipt and use of input services –

- i. In or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
- ii. In or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
- iii. For the provision of exempted services; and
- iv. For the provision of output services excluding exempted services,

The benefit of cenvat credit is available only on inputs under sub-clause (ii) and (iv) of clause (a) and input services under sub-clause (ii) and (iv) of clause (b).

Where separate records as aforesaid are not maintained, one of the options available for the manufacturer is to pay an amount equal to 6% of value of exempted goods.

The new option which is now available is that the maintenance of separate accounts for the receipt, consumption and inventory of inputs as provided above and pay an amount as determined under sub-rule (3A) in respect of only input services.

Framework for determining the amount of credits admissible

The calculations / steps for ascertaining provisional credits in relation to exempted activity would be as follows -

1. Ascertain the cenvat credit attributable to inputs services used for manufacturing exempted goods/ providing exempted services, if any and let the credits be A.
2. Ascertain the cenvat credits provisionally in respect of inputs services used for exempted activity – $(B/C) * \text{Total credits taken during the relevant month not including amount A}$ indicated above.

For this purpose, B = total value of exempted activity provided during the preceding financial year

C = total value of dutiable goods manufactured and removed during preceding financial year + total value of exempted services and taxable services provided during preceding financial year.

At the end of the relevant financial year, the following calculations would have to be made

–

- 1 Ascertain the cenvat credit attributable to inputs services used for manufacturing exempted goods/ exempted services if any and let the credits be H.
- 2 Ascertain the cenvat credits in respect of input services used for providing exempted services/ goods during the financial year as follows – $(J/K) * \text{Total credits taken during the relevant financial year not including amount H}$ indicated above.

For this purpose, J = total value of exempted services / goods provided during the relevant financial year

K = total value of dutiable goods manufactured and removed during relevant financial year + total value of exempted services and taxable services provided during relevant financial year.

For the purpose of Rule 6 of cenvat credit Rules, exempted means the following

Activity	Status	Treatment
Trading activity	Exempted service	Difference between the purchase price and sale price needs to be considered
Goods attracting 1% rate of duty as specified in	Exempted Goods	Turnover of such 1% rated goods to be

notification 1/2011 and exemption availed under sl. No 67 & 128 of notification no. 12/2012 CE		considered
Payment of tax on taxable services, with a condition that benefit of credit is not available	Exempted Service	Percentage of the value so exempted to be factored.

Where the credits ascertained finally in relation to exempted activity are less than the credits ascertained provisionally, the service provider can take credit for the differential amount.

Where the credits ascertained finally in relation to exempted activity are more than the credits ascertained provisionally, the service provider would have to pay the differential amount on or before the 30th June of succeeding financial year. Where the payment is made after 30th of June, interest at 24% p.a. would be payable for the period of delay.

Utilisation of Cenvat Credit

Rule 3(4) gives the various ways in which the Cenvat credit taken can be utilized. As per Rule 3(4) Cenvat credit so taken can be utilized for payment of-

- (a) any duty of excise on any final product; or
- (b) an amount equal to Cenvat credit taken on inputs if such inputs are removed as such or after being partially processed; or
- (c) an amount equal to the Cenvat credit taken on capital goods if such capital goods are removed as such; or
- (d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or
- (e) service tax on any output service :

Proviso to Rule 3(4) specifies while paying duty of excise or service tax as the case may be, the Cenvat credit shall be utilized only to the extent such credit is available on the last day of the month or quarter as the case may be for payment of duty relating to the month or quarter as the case may be.

- proviso to Rule 3 sub-rule 4 which states that **no credit of the additional duty** leviable under sub-section (5) of section 3 of the Customs Tariff Act, shall be utilised for payment of service tax on any output service;
- It is provided that w.e.f. 1-3-2011, Cenvat credit cannot be utilized for payment of 1% (now 2%) duty chargeable in terms of Notification 1/2011 C.E., dated 1-3-20011.

An explanation has been added to Rule 3(4) to provide that CENVAT credit cannot be used for payment of Service Tax in respect of services where the person liable to pay the service tax is the recipient of the service.

Removal as such - Rule 3(5)

Rule 3(5) deals with the cenvat credit on the inputs or capital goods removed as from the factory or premises of the provider of output service.

- when inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of

Comment [y1]: Rule 16 (2) may be explained in short to give a better idea

the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9.

- W.e.f. 1-4-2011, reversal of credit on inputs in terms of Rule 3(5) is not required where any inputs are removed outside the factory for providing free warranty for final products.
- Sub Rule (5) of Rule 3 provides for removal of used capital goods as capital goods or scrap or waste, the manufacturer or service provider shall pay an amount equal to the CENVAT Credit taken on the said capital goods after reducing specified per cent for each quarter of a year or part thereof from the date of taking the Cenvat Credit as follows :
 - (a) For computers and computer peripherals

For each quarter in the first year	10%
For each quarter in the second year	8%
For each quarter in the third year	5%
For each quarter in the fourth and fifth year	1%

(b) For capital goods other than computers and computer peripherals @ 2.5% for each quarter.

- Rule 3(5A) of the CENVAT Credit Rules, 2004, provides if the capital goods, on which Cenvat credit has been taken, are cleared as waste and scrap, an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste and scrap, would be payable.
- In terms of sub-rule 5(B), where input or capital goods (Capital goods which have not been put to use) on which CENVAT credit has been taken is written off fully/partially or any provision has been made in the books of accounts to write off fully/partially the manufacturer shall pay an amount equivalent to the CENVAT credit taken.
- if the input or capital goods which is written off or full /partial provision is made in the books of accounts is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier .
- Rule 3 (5A) are being amended to prescribe that in case the capital goods on which Cenvat credit has been taken are cleared after being used then the amount payable shall be either the amount calculated on the basis of Cenvat credit taken at the time of receipt reduced by a prescribed percentage or the duty on transaction value whichever is higher.

Recovery of cenvat Credits:

- Rule 14 allows for recovery from the manufacturer or the provider of output services CENVAT credit taken or utilised wrongly or has been erroneously refunded along with interest as provided for in Sections 11A of the Central Excise Act, 1944 or section 73 and 75 of the Finance Act.
- Wef 17.3.2012 the recovery of cenvat credit along with interest would be applicable only when the credit is taken and utilized. In other words, **if the cenvat credit is merely wrongly taken and is not utilized**, no interest is payable.
- Rule 15(1) provides penalty in case any person availing cenvat credit on inputs or capital goods or input services in contravention of any of the provisions of the CCR rules, as higher of the following:-
 - ❖ Amount equal to the duty on the excisable goods or services
 - ❖ Rs.2,000/-

- This provision also provides provision for confiscation of the goods on which such credit is wrongly availed.
- Rule 15(2) provides where the CENVAT credit in respect of input or capital goods or input services been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules with intent to evade payment of duty, then, the manufacturer is liable to pay penalty u/s 11AC of the Excise Act.
- Rule 15A deals with general penalty for contravenes of the provisions of rules for which the penalty has been provided in the rules, the personal shall be liable to the penalty which may extend to five thousand rupees.

Definitions:

(iv) for clause (k), the following shall be substituted, namely:‘

(k) “input” means—

- (i) all goods used in the factory by the manufacturer of the final product: or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products: or
- (iii) all goods used for generation of electricity or steam for captive use; or
- (iv) all goods used for providing any output service:

but excludes

A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol:

(B) any goods used for-

(a) construction of a building or a civil structure or a part there to or

(b) laying of foundation or making of structures for support of capital goods.

Except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;

(C) capital goods except when used as parts or **Components** in the manufacture of a final product;

(D) motor vehicles;

(E) any goods. such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee:

and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. — For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;’;

(v) for clause (1), the following shall be substituted, namely:‘

(l) "input service" means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, Storage upto the place of removal, procurement of inputs, accounting, auditing, Financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, Security, Business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes

(c)

(A) Service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or Laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by

a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ; or

b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, Cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;';

(vi) for clause (naa), the following shall be substituted with effect from the 1 day of March, 2011, namely:'

(naa) "manufacturer" or "producer".

(i) in relation to articles of jewellery or other articles of precious metals falling under heading 7113 or 7114, as the case may be, of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002:

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002:';

(a) "capital goods" means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ia) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank, (and)

(vii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers;

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for (i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency'

[(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of –

(i) transportation of passengers; or

(ii) renting of such motor vehicle; or

(iii) imparting motor driving skills;

[(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

(c) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty goods in respect of which the benefit of an exemption under notification 1/2011 CE, dated 1st March 2011 or under entries at serial numbers 67 and 128 of notification no. 12/2012 CE, dated the 17th March, 2012 is availed:

(e) "exempted services" means

(1) taxable services which are exempt from the whole of the service tax leviable thereon,

(2) services on which no service tax is leviable under section 66B of the Finance Act or;

(3) taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

But shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

(f) "Excise Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(g) "Finance Act" means the Finance Act, 1994 (32 of 1994);

(h) "final products" means excisable goods manufactured or produced from input, or using input service;

(ij) "first stage dealer" means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

CHAPTER 8: JOB WORK AND ITS IMPLICATIONS:

What are the implications of Job Work Removals of Subject Goods:

- What is Job Work?

We would firstly examine what is meant by job work? The term job work has been explained in Notification No.214/1986. Job work means processing or working upon raw materials or semi-finished goods supplied to the job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process. In central excise job worker may also add material/ component parts to the materials sent by the principal.

- Can the inputs/semi-finished goods be sent for job work?

The inputs or semi finished goods could be sent for job work on payment of duty where the job worker could avail the credit and discharge the duty at the time of removal.

- What are implications where materials are supplied by job worker?

The Honorable Supreme Court in Prestige Engineering (India) Ltd Vs CCE Meerut (1994 (73) ELT 497 (SC)) held that where the sub contractor or job worker contributed his own raw material for manufacturing, the transaction was not one of job work at all. However, minor additions by the job worker would not detract the transaction from being one of job work.

- What are the various options available with regards to job work?

Principal to principal basis:

Both principal manufacturer and job worker could act as independent manufacturers if excisable goods manufactured are cleared on payment of excise duty by job worker. As job worker is regarded as an independent manufacturer, he would be under an obligation to discharge duty of central excise at the time of clearing the intermediate goods to principal manufacturer. In such a scenario, job worker would be eligible to avail the credit on inputs used in the manufacture of excisable goods supplied by principal or procured otherwise. Principal manufacturer can use the cenvat credit of duty paid on intermediate products supplied by job worker if they are used as inputs for further manufacture of goods that are cleared on payment of excise duty at principal manufacturer's end.

Principal-job worker Basis:

Where principal manufacturer intends to receive the semi-finished goods manufactured by job worker into its factory premises for further processing, it can examine the option of going in under Notification 214/86 CE dated 25.03.86. So job worker need not be discharge duty of excise on the intermediate goods. Principal manufacturer can avail cenvat credit on such inputs sent for processing as soon as these are received in premises. However the credit needs to be reversed if the goods sent are not received back within 180 days from job worker

Detailed job work procedures are given in Chapter 8 on job work.

(ii). Can credit be availed on goods sent for job work?

Generally inputs are removed for job work without payment of duty as the facility is available under the Cenvat Credit Rules 2004. This requires a quantitative account / record to be maintained. The goods sent on job work should be received back within the notified period of 180 days failing which the principal should reverse the Cenvat credit on the materials sent. However Credit on the same can be availed once the same is received back with/without processing. The control on the delivery documents used for this purpose would be advisable

- **What Are The Job Work Procedures?**

Procedure for Sending Inputs to Job Worker U/R 4(5)(a)

There are three methods by which goods can move for job work to job worker as follows:

- a. On Inputs on which credit availed and removal of semi-finished goods liable to duty.
- b. Direct dispatch of inputs to job worker directly without receipt in factory.
- c. Movement of semi finished goods from job worker to job worker.
The provisions relating to removal of inputs to job worker for test, repairs, or carrying out any other operation for the purposes of manufacture of intermediate products / final product are contained in Rule 4(5). The procedures are as under:
 1. In the first scenario, the manufacturer shall remove the goods to job worker using his own challan (similar to Annexure-II challans) and entering the same in own register (similar to Annexure-IV register).

2. The challan could be pre-printed with the name and address of the Manufacturer, in book form, pre-numbered, by the manufacturer and could be in triplicate. Computerised Challans should be kept in bound form, on monthly basis. Where the goods are directly sent to job worker, the name and address of such supplier of materials should also be indicated in the challan.
3. The goods should be sent to job-worker along with original and duplicate copy of challan mentioning therein the quantity of inputs sent, its tariff classification, the process for which it is sent, value of the inputs / semi-finished goods, amount of duty debited and reference to entry number.
4. The goods sent to job-worker should be received back after processing within 180 days. If delayed amount of duty is to be debited / reversed in the cenvat credit register.
5. The goods from the job-worker should come back along with duplicate copy of challan i.e., duly filled for the process carried out, quantity of processed goods being returned and quantity of waste or scrap returned. The DC of the job worker providing the cross link would also suffice. Where the scrap is not returned to the manufacturer the excise duty on such scrap would have to be discharged by the principal manufacturer or by the job worker himself .
6. After receiving all the goods (full quantity) the credit of duty debited if any after lapse of 180 days may be re-credited proportionate to quantity received..
Where there is a direct despatch of inputs to job worker without receipt in factory the principal manufacturer should follow the procedures set out above and the following additional procedures as listed down as under-
 - i. The manufacturer shall instruct the supplier to send the inputs direct to the job worker and would be eligible to Cenvat credit though the input is not received directly at his factory premises.
 - ii. The principal manufacturer should raise a challan after receiving the duplicate copy of the supplier's invoice from the job worker. This challan should also indicate the name of and address of the supplier apart from the name of the manufacturer.
 - iii. The manufacturer shall make only stock entry for receipt and a contra entry for issue with reference of the challan being issued.
 - iv. The manufacturer shall take credit of duty in format U/R 7 only when the inputs duly processed or without process are received in full from the job worker.

- v. The credit shall be taken on the basis of duly filled in challan and on the strength of valid duty paying document prescribed U/R 7.

Additional steps in the scenario of removal of inputs / partially processed goods from job worker to job worker are listed below -

- a. The first job worker should make out his own challan in triplicate containing the required information after he has completed the process. (Which would be akin to the original Delivery Challan issued to him by the customer)
- b. The first job-worker should send the semi-processed goods to the second job-worker with original and duplicate copies of the said challan.
- c. The first job-worker should make an endorsement on the challan of the customer (under which he originally received the materials) providing the name of the second job-worker and return the duplicate copy to the customer/manufacturer.
- d. After the completion of process the second job worker shall make an endorsement on both the copies of the challan of 1st Job Worker and return the processed goods to the Customer (manufacturer) with the duplicate challan duly filled.
- e. The first and second job-workers should maintain an account in the form suggested Annexure V wherein the entries relating to the receipt of goods and issue of processed goods are to be recorded.
- f. The subsequent job worker shall store, process and despatch the goods challan-wise i.e. each challan shall be equal to one lot. Where it is not possible and goods are despatched in batches, separate accounts for such batch-wise despatch should be maintained.
- g. Where the scrap is not received back the appropriate duty of excise leviable on the waste or scrap is to be paid by the job worker or the customer,.
- h. The manufacturer has to ensure that the goods are received back within 180 days (no time limit specified in CENVAT) from the date on which the raw materials were despatched to the first job-worker.

The manufacturer would be able to take re-credit of duty reversed (where inputs are not received back after lapse of 180 days), when processed goods are received subsequently on receipt of the full consignment from the second or subsequent job worker based on own challan from the original job worker and the duplicate of the challan from the subsequent job

CHAPTER 9: EOU & SEZ

- Is there an exemption from duty of excise to any clearance of Excisable Goods Made Inside the territory of India?

There are instances where certain specified clearances are exempted from duty liability. In order to avail the exemption a certificate is given by the customer, to the manufacturer of the goods. The certificates are issued to the customer by the authorities depending on the end use of the items to be procured by such customer. Even where clearances are made to a 100% EOU it would be exempt from duties of excise. The condition being that the goods procured are used by such unit for the purposes of manufacturing of goods which would ultimately be exported outside the country.

- What is An EOU?

An EOU means export oriented undertaking for which letter of permission (LOP) has been granted by the Development Commissioner. Notification No.22/2003-CE dated 31.3.2003 provides an exemption to the goods brought into EOU.

- What is An SEZ?

An SEZ means Special Economic Zone which maybe specified by the Central Government in this behalf. Sections 7 and 26 of the SEZ Act provide that any goods procured by a developer or SEZ unit from the domestic market shall be exempt from taxes subject to the fulfillment of prescribed conditions. Such duty free procurement is done vide Rule 27 of SEZ Rules which provides that the SEZ unit and developers are entitled to procure from DTA their requirement of goods, materials without payment of duty to be used for their authorized operations.

- What is the Procedure to be followed for clearance to 100% EOU?

- The manufacturer should find out—
 1. Does the EOU unit have a proper Letter of Permission/Letter of Intent to operate?
 2. Has the unit done bonding of premises u/s 58 of Customs Act 1962?
 3. Does the unit have permission u/s 65 of Customs Act 1962 to do the designated manufacturing operations in the bonded warehouse?
- The manufacturer would do well to get the copy of the CT 3 certificate which

is got by the 100% EOU from the jurisdictional ACCE/DCCE (having jurisdiction over 100% EOU).

- The manufacturer shall check the CT 3 to ascertain the goods required as well as the quantities ordered and to be supplied.
- The manufacturer shall then manufacture and dispatch the goods manufactured by him.
- He shall also make entries in the Central Excise records and raise the invoice u/r 11 of CER 2002.
- He shall check that the details on the CT 3 certificate match with the invoice to ensure that the descriptions and quantities match.
- An application has to be filed for removal in Form ARE 3 in quadruplicate out of which the Original, duplicate and triplicate copies would accompany the goods to the 100% EOU.
- The quadruplicate copy has to be sent by manufacturer to the SCE having jurisdiction over his factory within 24 hours of removal.
- The goods should be received at the 100% EOU and intimation sent to the SCE having jurisdiction over the 100% EOU regarding such receipt.
- The SCE shall then check the goods and endorse such fact on all copies of the ARE 3 form. The original copy is then sent to the SCE having jurisdiction over the supplying manufacturer's factory and the duplicate copy would be received by such manufacturer for proof of such warehousing at the 100% EOU.
- The manufacturer should see that the warehousing certificate is received within 90 days from the date of clearance. If it is not received within 90 days of the removal, the consignor shall intimate the same to the SCE.

Note: Only manufactured goods can be removed without discharging the duty of excise. Traded goods are not extended the same facility.

- What Are the Benefits of Clearing Goods to a SEZ Unit?

A unit in Domestic Tariff Area, (units within the country other than EOU and SEZ are referred to as DTA in the Foreign Trade Policy), can also clear excisable goods without payment of duty to Special Economic Zone. The unit can also avail the Cenvat Credits

on the inputs and input services used in manufacture of goods cleared to such SEZ. The DTA unit can clear the excisable goods without payment of duty under bond by raising an ARE 1 to a unit in SEZ. The goods can also be cleared on payment of duty where a rebate claim is to be filed.

- What is the Procedure for clearance of excisable goods without payment of duty to a unit/developer in SEZ?
 1. The DTA unit should raise a bond as in case of exports and raise an ARE 1 form having a pre-printed serial number, in quintuplicate along with invoice for clearance.
 2. The procedure laid down under Notification 19/2004-CE(NT) for export under claim for rebate can be followed with regard to distribution of ARE 1 copies.
 3. The DTA unit shall coordinate with the SEZ unit/developer for the purpose of raising a Bill of Export in addition to the ARE 1 where the clearance is under claim for export entitlements
 4. The DTA unit should see that within 45 days from the date of clearance, a copy of the ARE 1 form and/or Bill of Export endorsed by the Authorised Officer of the SEZ for receipt of goods into the SEZ is received/submitted to the SCE having jurisdiction over his factory
 5. If the jurisdictional SCE of DTA unit does not receive the proof of export (ARE-1) within 45 days from the date of removal of goods from the factory or warehouse, he shall raise a demand of duty against the DTA unit.
 6. The DTA unit should confirm that where export entitlements are to be claimed, the receipt for supply is from the Foreign Currency Account of the SEZ unit/developer
 7. Where any export entitlement in the nature of Duty Drawback or DEPB is to be claimed by the DTA unit, the same can be claimed once a disclaimer is received from the SEZ unit/developer as to non avilment of such benefits at their end.

CHAPTER 10: DIRECT EXPORTS

Provisions for Exporters

There are certain benefits to both the merchant exporters as well as manufacturer exporters. Rule 18 and Rule 19 of Central Excise Rules 2002 deals with the provisions pertaining to Exports and benefits associated therewith. Under Central Excise, the assessee has two options which are given below—

1. Export under bond/Letter of Undertaking without payment of duty and
2. Export under rebate

What is meant by Export under bond/Letter of undertaking without payment of duty?

Rule 19 of Central Excise Rules 2002 sets out provisions relating to export under bond/Letter of undertaking states that any excisable goods may be cleared for export without payment of duty from either the factory of manufacture or warehouse or any other premises approved by the Commissioner of Central Excise. The materials can also be cleared for use in the manufacture or processing of goods which would be exported. The exact procedures for exports in this regard have been notified by the Government vide Notification 42/2001 CE (NT) dated 26.06.01 which deals with exports to countries other than Bhutan.

- What is the Procedure for export to countries other than Bhutan by a manufacturer exporter?
 - The exporter should submit a Letter of Undertaking in Form UT-1 to the ACCE/DCCE having jurisdiction over his factory or premises from where the goods are cleared for export.
 - The LUT is valid for a period of twelve calendar months.
 - The exporter has to get the goods ready for dispatch. The packages should be checked and sealed either by him (could be partner/proprietor/ director of company) or a person who has been duly authorized in this regard.
 - The Excise invoice should mention "FOR EXPORT WITHOUT PAYMENT OF DUTY".
 - Apart from this, a specified form (Form ARE 1) in quadruplicate (a quintuplicate copy can be raised to claim other export benefits desired).

- The clearance of goods details are to be made in the Daily Stock Account (DSA).
- Each of the ARE 1 copies has to be certified by the owner/Managing Director/partner of the entity or the person duly authorized to oversee the self-sealing and self-certification process.
- The Original and Duplicate copies of ARE 1 goes with the goods to the place of export and the Triplicate and Quadruplicate copies would be sent to the jurisdictional SCE within 24 hours of the removal. (Where a quintuplicate copy is maintained, the same may be sent with the Original and can be used for claiming any other export incentive).
- At the place of export, the Customs officer authorized would examine the goods and documents and certify on the copies that the goods have been exported with the Shipping Bill reference and other details.
- The said officer would return the original and quintuplicate (if filed) to the exporter and the duplicate may be sent either directly to the ACCE/DCCE with whom the LUT is filed or given in a tamper proof cover to the exporter who would then hand it over to such officer.
- The exporter shall file a statement in the prescribed format at least once in a month giving details of exports made and the proof of shipment received for earlier clearances as well as the cases where the proof is pending along with the copies of ARE 1 form as specified above.
- What is the Procedure for export to countries other than Bhutan by a merchant exporter – Notification 42/2001 CE (NT)?
 - The exporter should give a general bond in Form B-1 annexed to the said notification for an amount equal to the duty chargeable on the goods, to the ACCE/DCCE having jurisdiction over the factory or approved premises from where the goods are cleared.
 - The bond should have adequate surety or security as may be approved by the officer. The security is normally 25% of the bond amount and surety is for the full bond amount. The bond shall be on non-judicial stamp paper of the value as applicable to the state where it is executed.
 - The exporter the gets CT-1 certificates from the jurisdictional SCE to procure

excisable goods without payment of duty.

- The exporter issues CT-1 to the manufacturer from whom the excisable goods are to be procured without payment of duty for the purposes of export. The CT-1 should set out the description of goods sought, the quantities, value and duty amount.
- The exporter should keep a running bond register where the duty amount on the excisable goods received under CT-1 would be debited. The debit cannot exceed the credits in the bond account at any point of time and where it is about to happen, another bond is to be furnished.
- The exporter should get goods ready for dispatch. The goods should be examined and packages sealed by him in the presence of either the owner/partner/Managing Director of the entity or a person who has been duly authorized in this regard.
- The invoice and in addition to the invoice, a specified form (Form ARE 1) in quadruplicate (a quintuplicate copy can be raised to claim any other export incentive desired) should be prepared.
- Each of the copies of ARE 1 would have to be certified by the owner/Managing Director/partner of the entity or the person duly authorized to oversee the self-sealing and self-certification. The certification should be to the effect that the sealing of the goods has been done in his presence.
- The ARE 1 shall also be signed by the person authorized by the manufacturer (as required by Chapter 7 of CBEC Manual).
- The Original and Duplicate copies of ARE1 would accompany the goods to the place of export and the Triplicate and Quadruplicate copies would be sent to the jurisdictional SCE within 24 hours of the removal. (Where a quintuplicate copy is maintained, the same may be sent with the Original and can be used for claiming any other export incentive).
- At the place of export, the Customs officer would check, verify the goods and documents and certify on the copies that the goods have been exported by stating the Shipping Bill reference and other details of export.
- The Customs officer would return the original and quintuplicate (if filed) to the exporter and the duplicate may be sent either directly to the ACCE/DCCE with

whom the LUT is filed or given in a tamper proof cover to the exporter to be given to such officer.

- The exporter shall file a statement in the prescribed format at least once in a month giving details of exports made and the proof of shipment received for earlier clearances as well as the cases where the proof is pending along with the copies of ARE 1 form as specified above.
- Once the proof of export as stated above is submitted and acknowledged by the ACCE/DCCE, the exporter shall claim the credit in the bond register maintained which had been debited at the time of procurement of materials.
- What is the Procedure to procure excisable goods without payment of duty for the use in manufacture or processing of goods for export — Notification 43/2001-C.E (NT), dated 26-6-2001 – Read with Rule 19(2) of Central Excise Rules 2002?
 - The manufacturer should be registered under Excise
 - The manufacturer has to file LUT, undertaking to export the goods manufactured or processed
 - The manufacturer has to file a declaration in quadruplicate with jurisdictional ACCE/DCCE under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 in order to procure the excisable goods without payment of duty.
 - The input-output ratio of raw material to finished goods as well as the duty rate governing the goods to be procured would have to be set out
 - The ACCE/DCCE would confirm the declarations as accurate.
 - He may ask for samples of the finished products or inspect them at the factory and countersign the application/declaration. One copy of the same would be retained by him and two copies shall be forwarded to the manufacturer while the other copy would be sent to the SCE who has jurisdiction over the factory of the supplier of the goods.
 - The manufacturer-exporter would send one copy of the declaration signed by the ACCE/DCCE to the manufacturer who supplies him the excisable goods without payment of duty by following the procedure laid down under Central Excise (Removal of Goods At Concessional Rate of Duty for Manufacture of Excisable

Goods) Rules 2001.

- The goods received can be processed in the factory or sent for job work after which the goods are to be received back in the factory of the manufacturer.
- Even scrap generated outside would have to be received inside the factory.
- The intermediate goods or goods received from job worker can even be cleared for export under bond.
- The goods processed/manufactured are to be cleared under Form ARE 2 for export.
- The scrap is generated in the factory of the manufacturer; the same can be cleared locally on payment of applicable duties of Excise.
- Can Goods be exported under Claim for Rebate?

On exported goods, rebate of the duty paid on such excisable goods or the rebate of duty paid on materials used in the manufacture or processing of such goods exported can be obtained. Where rebate is sought on the duty paid on materials, the goods exported can even be exempted or non-excisable goods. The rebate is available on materials and not on capital goods used.

- In Which Circumstances Can Rebate Claim not be filed?

The benefit of input stage rebate cannot be claimed in the following scenarios—

1. Where amount of rebate is less than Rs. 500
 2. Where the finished goods are exported under a claim for duty drawback
 3. Where market price of goods is less than rebate
 4. Where Cenvat Credit is availed on such raw materials under Cenvat Credit Rules 2004
- What is the Procedure to export goods under rebate to countries other than Bhutan — Notification 19/2004-C.E (NT), dated 6-9-2004?
 - The clearance is to be done by raising an excise invoice raised in accordance with the requirements of Rule 11 of CER 2002 and the Form ARE 1 which is to be in quintuplicate
 - The manufacturer shall record the details as to clearance in his Daily Stock

Account showing the goods sought to be cleared, the value, the duty payable and the details as to invoice number and ARE 1 number.

- The valuation would be as applicable under the CEA 1944 to goods cleared for home consumption and the value may be more or less than the FOB (Free On Board) value indicated on the Shipping Bill. The actual payment of duty would be as per Rule 8 of CER 2002
- Each of the copies of ARE 1 would have to be certified by the owner/Managing Director/partner of the entity or the person duly authorized to oversee the self-sealing and self-certification process. The certification should be to the effect that the sealing of the goods has been done in his presence.
- The Original, duplicate and quintuplicate copies of the ARE 1 form would be sent with the goods to the place of export. The triplicate and quadruplicate copies would be sent to the SCE having jurisdiction over factory or warehouse within 24 hours of removal.
- The SCE shall verify the particulars with the entries in the DSA and invoices and endorse the fact of his verification on the ARE 1 copies and forward the copies to the officer with whom rebate claim is to be filed or hand over the same to the exporter in a tamper proof sealed cover to be given to such officer
- At the place of export, the Customs officer authorized would examine the goods and documents and certify on the copies that the goods have been exported by citing the Shipping Bill reference and other details of export.
- The export should be within six months from the date of clearance for export.
- The said officer would return the original and quintuplicate (if filed) to the exporter and the duplicate may be sent either directly to the officer with whom the rebate claim is to be filed or given in a tamper proof cover to the exporter to be given to such officer.
- The claim for rebate can be filed on the letterhead with the following documents namely,
 - ⇒ original copy of ARE 1,
 - ⇒ invoice issued u/r 11 of CER 2002,
 - ⇒ self attested copy of Shipping Bill,

⇒ self attested copy of Bill of Lading, disclaimer certificate where the claimant is other than exporter.

Where the particulars are found in order the rebate claim is sanctioned. (Where the claim exceeds Rs. 5 lakhs sanction would be after an audit)

CHAPTER 11: DISPUTES AND THEIR RESOLUTION

- When Could Demand arise under Central Excise?

Demand of Duties: (Sec 11A)

The demand under this provision arises when any duties of excise

- has not been levied; or
- has not been paid; or
- the duty is short levied; or
- is short paid or
- Erroneously refunded.

- Is the SCN to be issued to make Demand?

For making such demand of differential duty, the Central Excise Officer shall serve the show cause notice. [A notice of demand is not a SCN and invalid in law if issued at the first instance]

A proceeding starts with the issue of a Show Cause Notice to the assessee. The SCN gives the assessee an opportunity of rebutting and representing his case.

- What is the Time limit for Serving Show Cause Notice?

Where the demand involves fraud or collusion or willful mis-statement or suppression of facts or contravention of any provisions with an intent to evade payment of duty - 5 years from relevant date.

In other cases - 1 year from relevant date.

Where the service of notice is stayed by court order, the period of such stay would be excluded in computing this time limit. (both 1 year as well as 5 years).

If the matter is before the Settlement Commission, Sec. 32L(3) specifies that the time commencing from date of application to receipt of order sending back the case shall be excluded.

Such notice must be received by the assessee within the time limit stipulated above.

- When would the invocation of extended period not be applicable?

The extended period can be invoked under the Central Excise Act, where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there

under with intent to evade payment of duty. When there is no intention to evade the payment of duty, the question of invoking the extended period of limitation does not arise.

- What is meant by Relevant Date?

Relevant date is defined in Explanation 1 to Sec. 11A(15)(b) to mean -

- a) In the case of excisable goods on which duty is has not been levied or paid or has been short levied or short paid and no periodical return as required by the provisions has been filed, the last date on which such return is required to be filed under the Act.
- b) In the case of excisable goods on which duty has not been levied or paid or has been short paid or short levied and the return has been filed on due date, the date on which such return has been filed.
- c) In any other case, the date on which duty is required to be paid under the Act.
- d) In a case where duty is provisionally assessed under the Act or the rules made there under, the date of adjustment of duty after the final assessment.
- e) In the case of excisable goods on which duty has been erroneously refunded, the date of such refund.

- Has Assesses Representation to be recorded Before the Determination of Duty?

Recording of assessee's representation - Sub-section 10 makes it mandatory for the officer to consider the representation of the assessee prior to determining the duty due from such person.. The officer has to comply with the principles of natural justice.

Form of order - It is mandatory for the officer to pass a speaking order. Speaking order is one which gives the reasons for the decision. A simple order stating that all contentions are not proper is not a valid order.

Payment on passing of the order – On receipt may pay or appeal as the assessee has a right of further appeal which grants him rights of obtaining stay of demanded amounts.

- (i) Can Duty demanded be paid Along With Reduced Penalty within 30 Days in Case of Demand Notice? Can duty be paid before the issue of SCN? The amended provisions of section 11A relating to the recovery of duty not levied, short levied, not levied, short paid, or erroneously refunded are as follows. A separate category has been carved out from cases involving extended period of limitation (fraud, collusion, willful mis-statement etc.) wherein a lower mandatory

penalty of 50% of the duty (rather than 100% of the duty) would apply. These would cover cases where it is noticed during an audit, investigation or verification that duty has not been levied, short levied, not paid or short paid or erroneously refunded but the transactions to which such duty relates are entered in the specified records.

- (ii) While a provision has been made for issuance of show cause notice invoking the extended period for recovery of duty with interest under section 11AC and penalty equivalent to 50% of the duty, it has also been specifically provided that even in cases where show cause notice has been issued involving extended period of limitation (fraud, collusion, willful mis-statement etc.) with penalty equal to the duty, the penalty can be remitted to 50% if the Central Excise officer is of the opinion that the details of the transactions in respect of which the demand notice has been issued have been duly recorded by the person charged with duty in the specified records.
- (iii) As per sub section (6), the facility of compounding the penalty amount has been confined only to the new category and if the person chargeable with duty (for and extended period) pays the duty in full or part along with interest before the issuance of a show cause notice, the penalty shall stand reduced to 1% per month but not exceeding 25% of the duty. However if the duty along with interest is paid within thirty days of the issuance of adjudication order, the penalty would be 25% of the duty.

- How to reply to revenue departmental letters involving duty payment or credit reversal without issuing Show Cause Notice?

The revenue departmental authorities could send letters for duty payment including duty debit or reversal of cenvat credit availed for various reasons. There is no provision under the Central Excise Act or Rules to issue Demand Notice without following the provisions of section 11A. Section 11A or Rule 14 of Cenvat Credit Rules postulates that the Show Cause Notice is to be issued and an opportunity is given to the manufacturer to reply to the same. Subsequently after hearing out the manufacturer the order to pay may be made.

- How to Reply to Demand Notice?

- i. The date of the communication of demand to the manufacturer should be noted and the proof of the same retained. (The Cover under which the notice is received is to be retained).
- ii. The Demand Notice may be checked by assessee to ensure that there are no errors in the same, and is issued within 1 year. If SCN is proper in all respects

- the amount may be debited or paid in cash and revenue department intimated with the compliance.
- iii. In some cases it could be possible that the demand is unjustified. In such case the manufacturer may choose to ignore the said notice. However it would be better to communicate to the revenue department in writing asking them to explain on what grounds and under which provisions of the law the demand / reversal is sought to be made.
 - iv. The manufacturer may if there appears to be confusion in understanding, provide the reasons why the said demand is not tenable. He should include all material facts on which he feels that the demand is not proper.
 - v. As the notice is not a Show Cause Notice he would be replying to the officer who issued the notice. He could provide any clarifications issued by the revenue department that are relevant to the matter, any decisions of the Tribunal, High Court or the Supreme Court which may support his contention.
 - vi. This method though not required under the law could ensure that Show Cause Notices are not issued for trivial matters. This would ensure that the time of the manufacturer and the adjudicating officers is not wasted.
 - vii. If the revenue department does not agree and goes ahead to issue a Show Cause Notice the assertions set out in reply to demand notice by manufacturer would be required to be rebutted by it.

Steps to Reply to Show Cause Notice issued under Section 11A -

The suggested procedure for the same is detailed hereunder:-

- i. The proper officer of designation of Superintendent or above may issue a Show Cause Notice (SCN). The date of receipt of SCN should be noted on the notice and the proof of the same retained. (Preserve the cover under which the same is received)
- ii. The contents of the SCN may be gone through and if the allegation in the same is genuine and SCN is received within 1 year, the amount may be debited and the adjudicating officer intimated about the same. In the event the SCN seeks to levy penalty, a request for condonation may be made mentioning therein, the bona fide nature of the error.
- iii. Where the circumstances mentioned in point No. ii. do not exist the

manufacturer may choose to communicate in writing to the revenue department providing them with the statement of facts and the precedent case laws which may be required to be taken into account.

- iv. In the event the SCN is not clear the Manufacturer could ask the issuing officer for clarification as to the allegations made and confirm the provisions of the law under which the demand / reversal is sought to be made.
- v. The manufacturer may if there is lack of clarity in the grounds set out in SCN and there appears to be confusion in understanding by the officers of the revenue department, provide the reasons why the said demand is not tenable.
- vi. The manufacturer should at such times include all material facts and legal interpretations on which he feels that the demand is not justified. [use of affidavits where there is lack of evidence can also be thought of]
- vii. It should be verified if the officer issuing SCN is authorized to issue the same.
- viii. A decision would have to be taken by manufacturer whether the assistance of a counsel is required or not. [large stakes preferable as legal points may assist the tax payer]
- ix. He or the counsel should in their reply provide any clarifications issued by the revenue department in regard to the matter, any decisions of the Tribunal, High Court or the Supreme Court in support of contentions in addition to the facts of the present SCN.
- x. The reply should explicitly ask for a hearing if matter can be better explained along with physical demonstration or the legal counsel could be asked to represent on behalf of manufacturer.
- xi. In case any officer / audit party is to be cross examined, the same maybe sought. The proceedings before the adjudicating officer are evidence.
- xii. The reply should normally be filed within a month of the issue of the SCN or extended time if applied for. The reply should be filed and an acknowledgement obtained in person or by RPAD.

It shall be noted that the period of limitation of 1 year would be extended to 5 years when the demand is made alleging fraud, mis-representation, and suppression of information or collusion.

A counsel could be a person who is knowledgeable in the law of Central Excise as the requirement of specialized knowledge is of importance under this law. If representation services are envisaged, the counsel could in addition be a Chartered Accountant, a cost accountant, a

Company Secretary, a post graduate or Honors degree holder in Commerce, or post graduate degree or diploma holder in Business administration or a retired employee of the Revenue department of Central Excise or Customs after rendering not less than 10 years service if not an advocate.

Changes in Section 11A by Finance Act 2013

- Section 11A sub-section (7A) providing that service of a statement containing details of duty not paid, short levied or erroneously refunded shall be deemed to be a service of notice of demand under sub-section (1) or (3) or (4) or (5) of this section.
- This would be applicable if SCN already issued on even issue and allegations are same as that for subsequent period.

- What is Rate of Interest Applicable Where a Person is Liable to Pay Duty u/s 11A?

If the demand, is raised the person liable to pay duty under sec 11A would also have to pay interest at the notified rate of 18% and the interest would be payable from the month in which such duty was payable up to the date of actual payment of the amount of due.

In case the amount determined is either increased or decreased by Commissioner (Appeals) or CESTAT or Court as the case may be, then the amount of interest payable would also be determined accordingly.

Changes in Finance Act, 2011, 11AA and 11AB have been replaced by one section 11AA wherein it is stating as follows:

- The person who is liable to pay duty shall in addition to the duty, be liable to pay interest at notified rate whether such payment is made voluntarily or after determination of the duty amount under Section 11A.
- The notified rate of interest w.e.f. 01.04.2011 is 18% p.a.
- no interest is payable where the duty became payable consequent to the issue of an order, instruction or direction by the Board under Section 37B
 - a. such amount of duty is voluntarily paid in full, within 45 days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

Finance Act 2013 amendments:

- Section 11 amended in Finance Act 2013 to provide for
 - (i) recovery of money due to the Government from any person other than from whom money is due after giving a proper notice, if that other person holds money for or on account of the first person;
 - (ii) the other person to whom such notice has been issued is bound to comply with such notice and
 - (iii) if the other person to whom the notice is served fails to comply, he shall face all the consequences under this Act.
- Section 37C is being amended to specify additional modes of delivery of specified documents by speed post with proof of delivery or through courier approved by the Central Board of Excise & Customs.
- What is Penalty Leviable under Section 11AC?

Wherever duty is not paid or not levied, short paid or short levied or erroneously refunded by

reason of fraud, collusion, willful misstatement, or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with an intent to evade the payment of duty the manufacturer would be liable to penalty equal to the duty amount determined under section 11AC of the Act in addition to interest determined u/s 11AA.

A relaxation is given where the duty determined under the said section along with the interest payable under section 11AA is paid within 30 days from the date of communication of the order. The relaxation is with the effect that only 25% of the penalty needs to be paid.

In case of appeals where the duty determined at the early stage is varied in the appeal order the penalty amount would also increase or decrease as the case may be.

Judicial Decisions on Demands:

1. T.N. Dadha Pharmaceuticals v. CCE, 2003 (152) ELT 251 (SC): Facts: It was stated that the assessee suppressed the fact that Darzamol Injection contained Dextrose and that it was not declared to the department with deliberate intention to evade the payment of duty by claiming exemption.

Decision: It was held that - To invoke the proviso to section 11A(1) of the Act, three requirements have to be satisfied, namely, (1) that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded; (2) that such a short-levy or short-payment or erroneous refund is by reason of fraud, collusion or willful mis-statement or suppression of facts or contravention of any provisions of the Central Excise Act or the rules made there under; and (3) that the same has been done with intent to evade payment of duty by such person or agent. These requirements are cumulative and not alternative. To make out a case under the proviso, all the three essentials must exist.

2. CCE Vs. Alcobex Metals Ltd., 2003 (153) ELT 241 (SC): Facts: The short point is whether show cause notice issued invoking proviso to Section 11A of the Central Excise Act, 1944 is valid in law?

Decision: Where the SCN is issued invoking extended period of limitation, the demand cannot be converted into normal period by Supreme Court.

3. Nikhil Footwears Ltd vs. Commissioner of C.Ex. Rohtak (2008(224)ELT473(Tri-Del): Facts: The shortage of inputs detected during stock verification. The duty was debited immediately upon detection and before issue of show cause notice

Decision: Since the duty was deposited before issue of the show cause notice no penalty should be imposed.

4. Commissioner v. Sigma Steel Tubes — 2007 (218) E.L.T. 657 (P & H) Facts: The Central Excise Prevention staff detected a shortage of steel tubes involving duty. The shortage and debited the Central Excise duty. Accordingly, a show cause notice under Section 11A of the Act was issued for confirmation of duty along with imposition of penalty.

Field Code Changed

Decision: No penalty could be imposed under Section 11AC of Central Excise Act, 1944, once the duty is deposited before issuance of show cause notice.

5. Bharat Alluminium Co Ltd vs. Commissioner of C.Ex. Raipur(2002(148) ELT 1054(Tri-Del);Facts: The department had, by show cause notice [SCN), proposed to disallow Modvat credit, which was later allowed. The adjudicating authority allowed the Modvat credit and withdrew the SCN.

Decision: On withdrawal of show cause notice, allegations therein do not survive for adjudication and no penalty can be imposed based upon them.

6. Kaur & Singh vs Collector of Central Excise, New Delhi (1997(94) ELT289 (SC) :Facts: The show cause notice, where it is issued after expiration of 6 months(now 1 year) does not set out any particulars in respect of fraud or collusion or wilful mis-statement or suppression of facts or contravention with intention to evade the payment of Excise duty. Not only does it not give any such particulars, it does not even make a bare allegation.

Decision: The extended period cannot be invoked where SCN not alleging fraud or collusion or suppression or wilful misstatement with an intent to evade duty.

7. Kolety Gum Industries vs. Commissioner of Central Excise, Vapi(2005(183) ELT 440(Tri-Mumbai);Facts: The manufacturers had believed that there was no liability to duty on the goods in question.

Decision: The assessee was under bona fide belief that goods in question not dutiable. They maintained regular books of accounts. There can be no suppression of facts to evade payment of duty - Section 11A of Central Excise Act, 1944.

8. Oudh Sugar Mills Limited v UOI, [1978 (2) ELT 172 (SC)];Facts: The allegations made were based only on calculations of raw material fed into the process or on working of the machinery as noticed during test inspection. There was no tangible evidence on record.

Decision: SCN is not sustainable when it is issued on presumptions and assumptions

9. CCE v Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)];Facts: The department if had full knowledge or manufacturer had reasonable belief that he is not required to give a particular information, the six months limitation applicable(now one year).

Decision: The extended period of five years applicable only when something positive other than mere inaction or failure on the part of manufacturer is proved. There should be a conscious or deliberate withholding of information by manufacturer necessary to invoke larger limitation of five years.

- What is Meant By Appeals

Appeal is a remedy available to the aggrieved by the decision or order passed by the authority, wherein the higher authority decides about the correctness of the said decision or order.

- What are the Appellate Stages?

Under the provisions of Chapter VIA of the Central Excise Act 1944 both assessee and revenue department have the right of two or three stage remedies against the orders passed under the Central Excise Act and Rules.

- In case of orders passed by officers lower than the rank of Commissioner of Central Excise, the first appeal lies to the Commissioner (Appeals) and there from to the Appellate Tribunal and finally to the Supreme Court.
- But where the order of the Tribunal does not relate to determination of rate of duty or value of goods, a reference has to be made to the High Court, instead of Appeal to Supreme Court.
- The Central Government has also got revisionary powers under Section 35EE where it says that any person aggrieved by any order passed by the Commissioner (Appeals) may apply to the central government for revision of the order.

- Does Duty and Penalty Have to Be Deposited as a Pre-condition to Appeal?

Where there is an order of demand for duty and penalty on which the appeal is preferred it is a pre-condition that the duty and penalty to be deposited. However the appellate authority may dispense with such pre-deposit of the duty demanded or penalty levied on the reason that those pre-deposit would cause undue hardship to such person.

The law relating to appeal can be summarized As Under.

Order passed by	Appeal lies to	Form to be used
1. All officers upto and including the Additional Commissioner	Commissioner (Appeals) Within sixty days of communication of order	EA1(assessee) EA2(Revenue department)
2. Commissioner / Commissioner (Appeals) Note: except where order of Commissioner (Appeals) relates to loss of goods, rebate on exports / exports in bond (other than Nepal Bhutan) revision lies to	Appellate Tribunal (within 3 months of communication of order sought to be	EA3 – Cross objections to EA3 to be filed in EA4 by opposing party

Central Government	appealed against)	EA5 for application by Department
3. Appellate Tribunal (not involving rate of duty or valuation)	High Court (reference to High Court) Within 180 days of receipt of order	EA6 (Appellant) EA7 (cross objections)
4. Appellate Tribunal (relating to rate of duty / valuation)	Supreme Court Within sixty days from the date of the order sought to be appealed against or within 60 days of receipt of order whichever is later	No specified form
5. Commissioner (Appeals) relating to loss of goods in transit, rebate on exports, export under bond (other than Nepal/ Bhutan)	Government of India (Revisionary Authority) Within 3 months of receipt of order	EA 8

Stay Order by Appellate Tribunal – including additions as per Finance Act, 2013

- As per Section 35C (2A) Appellate Tribunal, to hear and decide every appeal within three years from the date when appeal is filed.
- Where a stay has been granted, the Appellate Tribunal shall dispose of the appeal within 180 days from the date of such order and if not disposed of within 180 days, the stay order shall stand vacated.
- As per the Finance Act, 2013, even if the assessee is not in fault, the CESTAT does not have the power to grant stay beyond a period of 365 days.
- The High Court would have to intercede in such cases and in normal course it is expected that the demand would be stayed.

CHAPTER 12: ASSESSMENTS & AUDITS

- What is meant by Audit?

Audit refers to the scrutinising and verification of documents, records and transactions in order to ensure that the facts are true and fair. It also helps to draw conclusions regarding the veracity of records of transactions and the effectiveness of systems prevailing in the organisation.

- What is meant by Audit under Central Excise?

From the Central Excise point of view audit means scrutinizing of the records of assessee and the verification of the actual process of receipt, storage, production and clearance of goods with a view to check whether the assessee is discharging the central excise duty in accordance with law and following the central excise procedures faithfully.

- What is the Manner/Method of Assessment Presently?

- The situation at present is that the assessee need not record the receipt of inputs , production and clearance / sale of finished goods etc. in registers / documents as statutorily prescribed by the central excise revenue department anymore.
- As a result, the assesses can now maintain the records in electronic form as well, provided the essential information required for calculation of central excise duty liability and other quantitative reconciliation are made available.
- The system of assessment of the returns by the revenue departmental officers has also been removed.
- Now the assessee is required to by himself i'e self assess his monthly tax returns (called the E.R.1/E.R.2) before filing the same with the revenue department.
- Cigarettes are still subject to revenue departmental assessment.
- The revenue departmental officers only scrutinise this return to check for any apparent mistake made by the assessee. They are not required to carry out detailed verification.

- How Are Returns Scrutinized by Officers?

Recently a board circular no.887/7/2009 has been issued prescribing the manner in which the returns to be scrutinized by the excise officers. The Automation of central

excise and service tax (ACES) project has been done now.

- As per this circular, the preliminary scrutiny of return would be done by the system.
- The scrutiny would be done based on the risk involved.
- Then the returns would be forwarded to the Joint/Additional commissioner. The Commissioner should not select those units which are to be mandatorily audited. Based on the checklist set out, the scrutiny would be done and non compliance issues would be raised. It may also lead into referrals for audit and anti-evasion.

There has been a change from the transactional audit to a risk based one. In a risk based audit, there would be a thorough review of the business and the industry to identify the areas where the risk of duty evasion and illicit removals and such other malpractices before one finalizes the extent and nature of checking.

The revenue department uses the returns filed by the assessee, correspondences with him, copies of the assessee profile, published reports, details of the transactions he has with his suppliers/sub-contractors/ service providers and customers to assess the risk profile of assesseees . The transactions details can be obtained from other jurisdictional offices where needed.

- What Are the Different Types of Audit

The revenue departmental audits are following types.

Excise Audit 2000.

Valuation Audit under Section 14A

Cenvat Credit Audit under Section 14AA

Audit under Rule 22 of Central Excise Rules 2001.

- What is Scope of Excise Audit 2000?
 - ✓ This is a system of audit, which was introduced from 1st December 1999.
 - ✓ In September 2000, the Central Board of Excise and Customs (CBEC) made this audit applicable in case of all assesseees paying cash duty of over Rs. 1 crore per annum.
 - ✓ At present, in addition to audit of such units, those units which pay excise duty in cash of Rs. 10 lakhs or more but less than Rs.1 Crore would be audited once in two years.

- ✓ At least 20% of the Units paying cash duty less than Rs.10 lakhs are to be audited in a year.
 - ✓ Therefore, all assesseees are now subjected to EA 2000.
- What is Coverage of Special Audits under sections 14-A and 14-AA of Central Excise Act?
Special audits under sections 14-A and 14-AA could be undertaken as per the order of the Excise officers in respect of excise valuation or for checking the validity and accuracy of Cenvat credits availed by an assessee.
 - ✓ Under Section 14A an officer not below the rank of the Assistant Commissioner /Deputy Commissioner CE could order a manufacturer to get the accounts of his factory, depots, office, or other places audited by a cost accountant/Chartered Accountant.
 - ✓ Such auditor would be nominated by the Chief Commissioner of Central Excise. This provision can be used when during the inquiry, investigation or any proceedings in relation to assessee; such officer has doubts regarding the value declared of the excisable goods.
 - ✓ The direction to get audit done shall be only after getting permission from the Chief Commissioner of Central Excise.
 - ✓ The audit report should be submitted to such officer within 180 days including the period of extension
 - When Can the Commissioner of Central Excise Get Such an Audit Done?
 - ✓ Where the Commissioner of Central Excise has reason to believe that the cenvat credits availed by a manufacturer of excisable goods have been availed through fraud, collusion, wouldful misstatement or suppression of facts or that credits are abnormal in light of the goods manufactured and the type of inputs used the Commissioner may direct such manufacturer to get his accounts audited by a cost accountant/Chartered Accountant to be nominated by such CCE.
 - ✓ The Cost Accountant/Chartered Accountant would submit his report to the said CCE within the time specified.
 - What is Meant by Audits under Rule 22 by Central Excise Commissionerates and C& AG?
The Commissioners of Central excise and the Comptroller and Auditor General of India can also direct parties to audit the records.
 - ✓ It is to be noted that such audit parties have powers to go through all records, as they

may deem fit and necessary for the purpose of their audit.

- ✓ These audits are carried out on a selective basis and usually a notice of 15 days is given to the assessee to keep the records ready for the audit.
- ✓ The records which they may take up are the ones indicated by the assessee to the revenue department under Rule 22(2) of Central Excise Rules 2002 apart from the Cost Audit Report u/s 233B of Companies' Act 1956 and Income Tax Audit Report u/s 44AB if any.

- What is meant by CAAP- Computer Assisted Audit Procedure

This is an audit done by the Excise Revenue department in a computerised environment where all records are computerised and maintained electronically.

The Steps Involved Are As Under:

- ✓ The revenue department uses its own software, which are specially designed to carry out such audits.
- ✓ A review of the entire computerised system (or EDP system) of the company may be carried out by the revenue department in order to check the effectiveness of the control systems being put into place.
- ✓ Using this method, an auditor would study the business model of the assessee, understands the systems by flow chart, computer programming flow chart, the layout of the files and finally determines the data transfer mechanism for extraction of data.
- ✓ After extracting the various financial data files, the auditor then makes them readable by audit software and performs tests on the data which could result in detection of missing invoices or discovery of duplicate series of invoices etc.

- What is EA-2000 Audit Procedure?

a. How to Select An Auditee?

A risk analysis is conducted based on the certain parameters and afterwards units are selected on the basis of the results of such an analysis. This results into the assessees possessing a bad track record in terms of past duty evasion cases, past duty dues , audit objections and non-compliances are given importance for conducting audit over those who are regularly and correctly complying with provisions in relation to records and returns. Another basis could be the areas where revenue leakage is possible due to basic nature of the activities and processes undertaken by assessees and recent changes in law.

b. What is meant by Desk Checking?

Since all the information required can be obtained by officers at their desks without going to assessee's factory/office this step is called as 'desk-checking/desk review'.

What Are the Steps Involved In Desk Checking?

- ✓ The assessee to be audited are assigned at the beginning of the financial year. The auditors need to gather as much information about the assessee as possible. Such knowledge can be got from the revenue departmental records, revenue departmental correspondence with the assessee, published documents like balance sheets annual statements etc., and through market Enquirer.
- ✓ Auditors can read and understand the financial records like the balance sheet, profit and loss account, directors' reports, auditors' reports, schedules, disclosures in notes to account to get a grasp of the assessee's product and business.
- ✓ This would equip the auditors as to the nature of operations, history and the track record of the firm.
- ✓ Since all the information required can be obtained by officers at their desks without going to assessee's factory/office this step is called as 'desk-checking/desk review'.

How to Document the Information?

While doing 'Desk Review' the auditors could identify certain areas, which could need to be closely examined. The auditor may at this stage ask assessee to give certain documents or information to complete the initial investigation. In order to accomplish this he may write a letter to the assessee or send him a questionnaire to obtain this information. This step could be called as 'documenting of information'.

Why should the Auditee's Place Be Visited?

The auditor then follows up with a visit to the unit of the assessee to see the actual running of the unit on the ground, the record maintenance systems in various sections and the system of movement of goods and the authorizations/ raising and movement of related documents within the unit. This step is called 'touring of the premises'. This step is very important since it gives the auditors a general overview about the procedures adopted by the assessee at the unit as well as

to locate significant control weaknesses in documentation and the possible loopholes through which revenue leakage can take place.

How to Draft an Audit Plan?

- ✓ Based on information gathered about the assessee and his own experience with similar assesses and businesses, and from the result of his desk review the auditor would draft an 'audit plan'.
- ✓ The audit plan helps the auditor to list the vulnerable areas which could result in loss of revenue.
- ✓ Since large numbers of documents and records are maintained and the time and resources may not be sufficient, the auditor should verify only a few relevant areas,
- ✓ The objective of an audit plan is to list the areas, which, as per the auditor are prone to loss of duty from the revenue point of view.
- ✓ In a risk based audit, the auditor should time his audit procedures so as to completely verify such areas and the audit plan would enable him to focus on these areas effectively.
- ✓ It must be remembered that an audit plan could be changed.
- ✓ Where after the audit is commenced the auditor notices certain new facts or new aspects of the planned area of audit, he can change the plan, with the approval of his superiors.
- ✓ Similarly, in case during the actual audit, if the auditor is convinced that any area requires lesser amount of scrutiny as against plan , he may change the plan midway with the approval of the superiors.

How to Actually Conduct an Audit?

The auditors visit the unit of the assessee on a scheduled date which is intimated to the assessee in advance.

- There auditors scrutinise the records of the assessee as per the audit plan.
- The auditor has to compare the documentation of a transaction as disclosed in different documents. For instance, the auditor may check the figures of clearance of finished goods showed by the assessee in central excise return with the sales figures of the said goods in Balance Sheet, Sales Tax Returns, Bank statements etc
- The idea of such cross checking is to ensure that no dutiable clearances , which as per the Central Excise law are chargeable to duty, escape duty liability and also to ensure that no Cenvat credit is wrongly claimed.

- The process is always carried out in presence of the assessee so that he can clarify the doubts and provide required information to the auditor.

What is an Audit Para/Audit objection?

- ✓ Where the auditor comes across cases of short payment of duty or availing credits on inputs that are cleared as such or non-observance of Central excise procedures, he is required to discuss the issue with the assessee.
- ✓ After the assessee provides an explanation, if the auditor is satisfied that such non-compliance has happened, he would record the same as an 'Audit Objection' or 'Audit Para' in the 'draft audit report' that is done after completion of audit process.
- ✓ Auditor should not include audit objections for mere procedural lapses / infractions / adoption of wrong procedures, which do not impact the duty payment adversely.
- ✓ Where there are minor procedural irregularities the auditor could discuss the matter with the assessee and advise him to follow the correct procedure in future. Further, to the extent possible the auditor should compute and include in the audit para the duty short paid by the assessee at the spot.
- ✓ However, if this cannot be done due to want of time or for the want of some information not available at that time, then the auditor should make a note of the same in his report.

How to Issue an Audit Report?

After the end of audit and verification the auditor prepares a 'Draft Audit Report' which includes all the audit objections in the form of audit paras.

- ✓ An audit report provides the issue in brief, the reply or the explanation of the assessee, the reason for the auditor not being satisfied with the reply, the amount of short payment (if tabulated) and the recoveries of the same (if could be made at the spot).
- ✓ The draft report is then subjected to the superior officers review, who would examine the sustainability of the objections raised by the auditors.
- ✓ After such review is undertaken by the superior officers, the audit report becomes final.

- ✓ In case the disputed amounts have not already been paid by the assessee on the spot at time of audit, demand notices are issued by the jurisdictional revenue department asking from the assessee as to why recovery of the said amounts should not be made.

As a pre-requisite to Excise Audit 2000 the auditors must in addition to being computer savy, have a complete knowledge of the latest position of Central Excise law and procedures, notifications, instructions and circulars issued by the Finance Ministry and the judicial decisions on issues relating to central excise laws.

- What are the Points to be borne in mind while dealing with Revenue department Audit?
 - To achieve professionalism in audit, the revenue department has under taken the training of all their officers on understanding the accounting methods. However officers are found wanting in knowledge area.
 - The Generalised Audit Software (GAS) for excise audits is also being developed. The auditors are being trained to look for errors and are usually successful in detecting it.
 - The extended period of 5 years of demand is invoked citing suppression in many such cases.
 - They also try to get the amount debited immediately.
 - However this does not stop the revenue department from issuing a Show Cause Notice for demanding payment of interest and penalty.
 - The assessee should as far as possible refrain from debiting of duty on the oral instructions of the audit party or on the letter asking for compliance from the range.
 - In many such cases the duty would not be payable at all in the facts and circumstances of the case.
 - Sometimes the auditors are on a fault finding mission and arrive at many errors and quantify the same along with penalty and interest to arrive at the total amount of demand realizable.
 - Then the revenue departmental auditors undertake negotiations with assessee to decide as to the issues which they would drop, the ones requiring the assessee to reverse and the one they would report.
 - The job of the audit is only to note non compliance and the range on instruction from the Audit would examine the same and may ask for further details.
 - A Show Cause Notice may then be issued if any issue exists where the assessee and revenue department are not in agreement.

APPENDIX

Appendix – 1: Process specified in Section Notes and Chapters as amounting to manufacture:

Deemed manufacture

In relation to the products of the following chapter, labeling or re-labeling of containers or repacking from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

Chapter Number	Chapter Heading
4	Diary produce; Bird's Eggs; Natural Honey; Edible Products of Animal Origin, not elsewhere specified or Included.
1108 11 or 1108 12 or 1108 13 or 1108 14 or 1108 19	Wheat Starch or maize starch or potato starch or manioc starch or others
1507 or 1508 or 1509 or 1510 or 1511 or 1512 or 1513 or 1514 or 1515 or 1518 or 151620 or 151790 or 15171010 or 15171021 or 15171029	Animal or Vegetables fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes
16	Prepared food stuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes
1702	Sugar and sugar confectionary
18	Cocoa and cocoa preparations
19	Preparations of cereals, flour, starch or milk; pastry cooks' products
20	Preparation of vegetables, fruits, nuts or other parts of plants
21	Miscellaneous edible preparation

Chapter Number	Chapter Heading
22	Beverages, spirits and vinegar
2401, 2402, 2403	Tobacco and manufactured tobacco substitutes
2710	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes
28	Inorganic chemicals, organic compounds or precious metals, or rare earth metals, of radioactive elements or of isotopes
29	Organic chemicals
32041981, 32041982, 32041983, 32041984, 32041985, 32041986, 32041987, 32041988, 32041989, 32041990 and 3206	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks
34	soap, organic surface active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modeling pastes "dental waxes" and dental preparations with a basis of plaster
35	Albuminoidal substances; modified starches; glues; enzymes
38 (except 3808)	Miscellaneous chemical products
61	Articles of apparel and clothing accessories, knitted or crocheted (affixing of brand would also amount to manufacture)
62	Apparel and clothing accessories, not knitted or crocheted (affixing of brand would also amount to manufacture)
63	Other made up textile articles; sets; worn clothing and worn textile articles; rags

The process of refining, that is to say any One or more of the processes namely treatment of crude oil with an alkali, bleaching and deodorization shall amount to

manufacture.

Chapter Number	Chapter Heading
1507 to 1515	Animal or Vegetables fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes

In relation to Waters, including natural or artificial mineral waters and including mineral waters- processes such as filtration, purification or any other process or any one or more of these processes and labeling or re-labelling of containers or repacking from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

Chapter Number	Chapter Heading
22	Beverages, spirits and vinegar

The process of cutting or sawing or sizing or polishing or any other process for converting of stone blocks into slabs or tiles shall amount to manufacture.

The process of labeling or relabeling or containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount "manufacture".

Chapter Number	Chapter Heading
2515 and 2516	Marble, travertine, ecaussine and other Calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape And Granite, porphyry, basalt, sandstone and other monumental or building stone, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape

The process of compression of natural gas (even if it does not involve liquefaction) for the purpose of marketing it as compressed natural gas, for use as a fuel or for any other purpose

Chapter Number	Chapter Heading
26	Ores, slag and ash

The process of converting ores to concentrates shall amount to manufacture

Chapter Number	Chapter Heading
2711	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

In relation to these products, conversion of products into tablets or capsules, labeling or relabeling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer.

Chapter Number	Chapter Heading
3003 and 3004	Pharmaceutical products

In relation to the products, conversion of powder into tablets, labeling or relabeling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable

Chapter Number	Chapter Heading
3303, 3304 and 3305	Essential oils, resinoids, perfumery, cosmetic or toilet preparation.

The process of cutting, slitting, perforation or any one or more of these processes shall amount to manufacture.

Chapter Number	Chapter Heading
3701, 3702 and 3703	Photographic or cinematographic goods

Addition of chemicals and other ingredients like inert carriers or solvents, surface active dispersing and stabilizing agents, emulsifiers, wetting and dispersing agents, deodorants, masking agent, attractants and feeding stimulants to pesticidal chemicals in concentrated form, and labeling or re-labeling of containers or repacking from bulk to retail packs or the adoption of any other treatment to render the product marketable to

the consumer, shall amount to manufacture.

Chapter Number	Chapter Heading
3808	Miscellaneous chemical products

The process of metallization or lamination or lacquering amounts to manufacture.

Chapter Number	Chapter Heading
3920 and 3921	Plastics and articles thereof

The process of slitting or cutting or both of these processes shall amount to manufacture

Chapter Number	Chapter Heading
Thermal paper of chapter 48	Paper and paperboard

In relation to the following products dyeing, printing, bleaching, merchandising, twisting, texturising, doubling, multiple folding, cabling any other like process, any combination of these processes and the conversion of any form of any of the said product into another form of such product shall amount to manufacture.

Chapter Number	Chapter Heading
5106, 5107, 5108, 5109, 5110	Wool, fine or coarse animal hair; horsehair yarn and woven fabric

The process of milling, raising, blowing, tentering, dyeing or any other process or any one or more of these process shall amount to manufacture.

Chapter Number	Chapter Heading
5111, 5112, 5113	Wool, fine or coarse animal hair; horsehair yarn and woven fabric

The process of bleaching, mercerizing, dyeing, printing, water proofing, shrink proofing, organdie processing and any other like process or any combination of such process shall amount to manufacture

Chapter Number	Chapter Heading
5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211, 5212	Cotton

The process of dyeing, printing, bleaching, mercerizing, twisting, texturising,

doubling, multiple folding, cabling, air mingling, air texturing, any other like process any combination of products into another form of such product shall amount to manufacture.

Chapter Number	Chapter Heading
5401, 5402, 5403, 5404, 5405, 5406	Man made filaments; strip and the like of man made textile materials

The process of bleaching, dyeing, printing, shrink proofing, tentering, heat setting, crease resistant processing, any other like processing and any combination of such processes shall amount to manufacture

Chapter Number	Chapter Heading
5407 or 5408	Man made filaments; strip and the like of man made textile materials
5512, 5513, 5514, 5515, 5516	Man made staple fibres

The process of bleaching, mercerizing, dyeing, printing, waterproofing, shrink proofing, tentering, heat setting, crease resistant, organdie processing or any other process or any one or more of these processes shall amount to manufacture.

Chapter Number	Chapter Heading
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimming; embroidery.
60	Knitted or crocheted fabrics

The process of cutting or sawing or sizing or polishing or any other process for converting stone blocks into slabs or tiles shall amount to manufacture.

Chapter Number	Chapter Heading
6802, 6810	Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials; Ceramic Products; Glass and Glassware.

The process of printing, decorating or ornamenting amounts to manufacture.

Chapter Number	Chapter Heading
6908 6909 6911, 6912, 6913	Ceramic products
7009, 7010, 7011, 7013, 7018, 7020	Glass and glassware

The process of affixing or embossing trade name or brand name on articles of jewellery shall amount to manufacture

Chapter Number	Chapter Heading
71	Precious Metals

The process of refining of gold dore bar into standard old bar amounts to manufacture

Chapter Number	Chapter Heading
7113	Natural or cultured pearls, precious or semi precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewellery; coin

In relation to these products, the process of obtaining goods and materials by breaking up of ships, boats and other floating structures shall amount to manufacture and

the process of drawing or re drawing a bar, rod or wire rod, round bar or any similar article into bright bar shall amount to manufacture and the process of hardening or tempering shall also amount to manufacture

for chapter heading 7113 or 7114, the process of affixing or embossing trade name or brand name on articles of jewellery or on articles of goldsmiths or silversmiths wares of precious metal or of metal clad with precious metal, shall amount to "manufacture"

Chapter Number	Chapter Heading
72	Iron and steel
7208	Flat rolled products of iron or non alloy steel

The process of drawing or redrawing, process of galvanization and in relation to pipes and tubes, the process of coating with cement or polyethylene or other plastic materials shall amount to manufacture.

The process of galvanization shall amount to manufacture

The process of oiling and pickling in respect of goods of heading 7208 shall amount to "manufacture"

Chapter Number	Chapter Heading
73	Articles of iron and steel

The process of coating with cement or polyethylene or other plastic materials amounts to manufacture.

Chapter Number	Chapter Heading
7304, 7305 and 7306	Copper and articles thereof

The process of drawing or redrawing amounts to manufacture

Chapter Number	Chapter Heading
7411	Copper and articles thereof

The process of drawing or redrawing of aluminium tubes and pipes amounts to manufacture.

Chapter Number	Chapter Heading
76	Aluminium and articles thereof
7607	Aluminium Oil

The process of drawing or redrawing shall amount to manufacture

Chapter Number	Chapter Heading
7608	Aluminium tubes & pipes

Recording of sound or other phenomena shall amount to manufacture.

Process of cutting, slitting and printing of aluminium foils shall amount to "manufacture"

Chapter Number	Chapter Heading
8523	Electrical/electronics machinery and equipment

Building a body or fabrication or mounting or fitting of structures or equipment on the chassis shall amount to manufacture.

The process of matching, matching, batching and charging of Lithium ion batteries or the making of battery packs shall amount to "manufacture"

Chapter Number	Chapter Heading
8706	Vehicles other than railway or tramway rolling

	stock and parts and accessories thereof
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Appendix – 2: MRP Based Valuation

Definition of Section 4A dealing with MRP based valuation:

4A. Valuation of excisable goods with reference to retail sale price.

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

14a[(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer -

(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

Explanation 1. - For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale :

Provided that in case the provisions of the Act, rules or other law as referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Explanation 2. - For the purposes of this section, -

(a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;

(b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

(c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

MRP Valuation Abatement table

List of products under MRP based levy with abatements

TABLE

S.No	Chapter, heading, sub-heading or tariff item	Description of goods	Abatement as a percentage of retail sale price
(1)	(2)	(3)	(4)
1.	17 or 21	Preparations of other sugars	35%
2.	1702	Sugar syrups not containing added flavouring or colouring matter; artificial honey,	35%

		whether or not mixed with natural honey; caramel	
3.	1704	Gums, whether or not sugar coated (including chewing gum, bubblegum and the like)	35%
4.	1704 90	All goods, other than white chocolate	30%
5.	1704 90	White chocolate	35%
6.	1805 00 00 or 1806 10 00	Cocoa powder, whether or not containing added sugar or other sweetening matter	30%
7.	1806	Chocolates in any form, whether or not containing nuts, fruit kernels or fruits, including drinking chocolates	30%
8.	1806	Other food preparations containing cocoa	30%
9.	1901 20 00 or 1901 90	All goods, other than Dough for preparation of bakers' ware of heading No. 1905	30%
10.	1904	All goods, other than goods falling under tariff item 1904 20 00	30%

(1)	(2)	(3)	(4)
11.	1904 20 00	All goods	30%
12.	1905 31 00 or 1905 90 20	Biscuits	30%
13.	1905 32 11 or 1905 32 90	Waffles and wafers, coated with chocolate or containing chocolate	30%
14.	1905 32 90	All goods, other than wafer	35%

(1)	(2)	(3)	(4)
		biscuits	
15.	1905 32 19 or 1905 32 90	Wafer biscuits	30%
16.	2101 11 or 2101 12 00	Extracts, essences and concentrates, of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee	30%
17.	2102	All goods	30%
18	2106 90 11	Sharbat	25%
19	2106 90 20	All goods, other than pan masala containing not more than 15% betel nut	40%
20.	2106 90 20	Pan masala containing not more than 15% betel nut	20%
21.	2403	Pan masala containing tobacco	55%
22.	2106 90 30	All goods	30%
23.	2106 10 00, 2106 90 50, 2106 90 70, 2106 90 80, 2106 90 91 or 2106 90 99	All goods	35%
24.	2201 or 2202	Mineral waters	45%
25.	2201 or 2202	Aerated waters	40%
26.	2209	Vinegar and substitutes for vinegar obtained from acetic acid	35%
26A.	2402	Cigarettes	50%
27.	2403 99 10, 2403 99 20 or 2403 99 30	All goods	55%
28.	2523 21 00 or 2523 29	White cement, whether or not artificially coloured and	30%

(1)	(2)	(3)	(4)
		whether or not with rapid hardening properties	
28A.	2523 29	All goods	30%
29.	2710	Lubricating oils and Lubricating preparations	35%
30.	30	Medicaments, other than those which are exclusively used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems Explanation.- For the purposes of this entry, "retail sale price" means the retail price displayed by the manufacturer under the provisions of the Drugs (Prices Control) Order, 1995.	35%
31.	3204 20	Synthetic organic products of a kind used as fluorescent brightening agents or as a luminophores	30%
32.	3206	All goods other than pigments and inorganic products of a kind used as luminophores	30%
33.	3208, 3209 or 3210	All goods	30%
34.	3212 90 20	Dyes and other colouring matter put up in forms or small packing of a kind used for domestic or laboratory purposes	35%
35.	3213	All goods	35%

(1)	(2)	(3)	(4)
36.	3214	All goods	35%
37.	3303, 3304, 3305 or 3307	All goods	35%
38.	3306 10 20	Toothpaste	30%
39.	3401 19 or 3401 20 00	Soap (other than paper, wadding, felt and non-wovens, impregnated, coated or covered with soap or detergent)	30%
40.	3401 11, 3401 19 or 3402	Organic surface active products and preparations for use as soap in the form of bars, cakes, moulding pieces or shapes, other than goods falling under 3402 90 20	30%
41.	3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparation and mould release preparations based on lubricants)	30%
42.	3405	All goods	30%
43.	3506	Prepared glues and other prepared adhesives, not elsewhere specified or included	35%
44.	3702	All goods other than for X-ray and unexposed cinematographic films	35%

(1)	(2)	(3)	(4)
45.	3808	Insecticides, fungicides, herbicides, weedicides and pesticides	30%
46.	3808	Disinfectants and similar products	35%
47.	3808 93 40	Plant growth regulator	25%
48.	3814 00 10	Thinners	35%
49.	3819	All goods	35%
50.	3820 00 00	Anti-freezing preparations and prepared de-icing fluids	35%
51.	3824 90 24 or 3824 90 90	Stencil correctors and other correcting fluids, ink removers put up in packings for retail sale	35%
52.	3919	Self adhesive tapes of plastics	35%
53.	3923 or 3924	Insulated ware	40%
54.	4816	Carbon paper, self-copy paper, duplicator stencils, of paper	35%
55.	4818	Cleansing or facial tissues, handkerchiefs and towels, of paper pulp, paper, cellulose wadding or webs of cellulose fibres, other than goods falling under 4818 50 00	35%
56.	64	The following goods namely:- (i) Footwear of retail sale price exceeding Rs 250 and not exceeding Rs 750 per pair (ii) All other foot wear	35% 40%

(1)	(2)	(3)	(4)
57.	6506 10	Safety headgear	35%
58.	6907	Vitrified tiles, whether polished or not	45%
59.	6908	Glazed tiles	45%
60.	7321	Cooking appliances and plate warmers, other than LPG gas stoves (with burners only, without other functions such as, grills or oven)	35%
61.	7321	LPG gas stoves (with burners only, without other functions such as, grills or oven)	35%
62.	7323 or 7615 19 10	Pressure Cookers	25%
63.	7324	Sanitary ware of iron or steel	35%
64.	7418 20 10	Sanitary ware of copper	35%
65.	8212	Razors and razor blades (including razor blade blanks in strips)	35%
66.	8305 20 00 or 8305 90 20	Staples in strips, paper clips, of base metal	35%
67.	8414 51 or 8414 59	Electric fans	35%
68.	8415	Window room air-conditioners and split air conditioners of capacity upto 3 tonnes	25%
69.	84181090, 84182100, 84182900, 84183090, 84186920	All goods	35%
70.	8421 21	Water filters and water purifiers, of a kind used for	30%

(1)	(2)	(3)	(4)
		domestic purposes	
71.	8422 11 00 or 8422 19 00	Dish washing machines	35%
72.	8443	Facsimile machines	35%
73.	8443 31 00 or 8443 32	Printer whether or not combined with the functions of copying or facsimile transmission	20%
74.	8443 99 51	Ink cartridges, with print head assembly	20%
75.	8450	Household or laundry-type washing machines, including machines which both wash and dry	35%
76.	8469	Typewriters	30%
77.	8470	Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions, other than goods falling under sub-heading 8470 50 and 8470 90	35%
78.	8471 30	All goods	20%
79.	8471 60	All goods	20%
80.	8472 90 10	Stapling machines	35%
81.	8506	All goods, other than parts falling under tariff item 8506 90 00	35%
82.	8508	All goods, other than parts falling under tariff item 8508 70 00	35%

(1)	(2)	(3)	(4)
83.	8509	All goods, other than parts falling under tariff item 8509 90 00	35%
84.	8510	All goods, other than parts falling under tariff item 8510 90 00	35%
85.	8513	All goods, other than parts falling under tariff item 8513 90 00	30%
86.	8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes.	35%
87.	8517	Telephone sets including telephones with cordless handsets and for cellular networks or for other wireless networks; videophones;	35%
88.	8517 62 30	Modems (modulators – demodulators)	20%
89.	8517 69 60	Set top boxes for gaining access to internet	20%

(1)	(2)	(3)	(4)
90.	8519	All goods	35%
91.	8521	All goods	35%
93.	8523	All goods except 85232100, 85232960, to 85232990, 85234120 to 85234150, 85234930, 85234950 to 85234990, 85234950 to 85234990, 85235210, 852359, 85238020, 85238030 and 85238060	35%
93A	8523 80 20	Packaged Software or canned software	15
94.	8527	All goods except 85279912, 85279919 and 85279990	35%
97.	8528	All goods	35%
100.	8536	All goods, other than goods falling under tariff item 8536 70 00	35%
101.	8539	1. All goods except lamps for automobiles	35%
101A	Chapter 84 or 85	Goods capable of performing two or more functions of items specified at sl. No 67 to 101 and 140 to 142	35%
102.	9006	Photographic (other than cinematographic) cameras	30%
103.	9101 or 9102	All goods, other than braille watches	30%
104.	9103 or 9105	Clocks	40%
105.	9603 21 00	Toothbrush	30%
106.	9612	All goods	30%

(1)	(2)	(3)	(4)
107.	9617	Vacuum flasks	35%
108.	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716.	30%
109	Any chapter	Parts, components and assemblies of goods falling under tariff item 8426 4100, headings 8427, 8429 and sub-heading 8430 10	30%
109A	1517 10	Margarine edible grade	35%
110	16	All goods	35
111	1901 10	All goods put up in unit containers	35
112	1902 other than 1902 4010 and 1902 4090	All goods	35
113	20	All goods	35
114	2101	Coffee or tea pre-mixes	35
115	2103	Sauces, Ketchup and the like and preparations thereof	35
116	2104	Soups and broths and preparations thereof	35
117	2105 0000	All goods	35
118	2106 90	All kinds of food mixes, including instant food mixes	35
119	21069030	Betelnut product known as "Supari"	35

(1)	(2)	(3)	(4)
120	2106 90 99	(i) Ready to eat packaged food, (ii) Milk containing edible nuts with sugar or other ingredients	35 35
121	2202 9010	All goods	35
122	2202 9020	All goods	35
123	2202 9030	Flavoured Milk of Animal Origin	35
124	2202 9090	Tender Coconut water	35
125	30	Medicaments (including those used in Ayurvedic, Unani, Siddha, Homeopathic or Bio-chemic systems), manufactured exclusively in accordance with the formulae described in the authoritative books specified in the First Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940) or Homeopathic Pharmacopoeia of India or the United Kingdom or the German Homeopathic Pharmacopoeia, as the case may be, and sold under the name as specified in such books or pharmacopoeia	35
126	30	Intravenous fluids suited for sugar, electrolyte or fluid replenishment	35
127	3002 20 or 3002 3000	Vaccines (other than those	35

(1)	(2)	(3)	(4)
		specified under the National Immunization program)	
128	3215 9010	Fountain Ink Pen	35
129	3215 9020	Ball pen ink	35
130	3215 9040	Drawing ink	35
131	3306 1010	Tooth powder	35
132	3406 0010	Candles	35
133	39 or 40	Nipples for feeding bottles	35
134	4015	Surgical rubber gloves or medical examination rubber gloves	35
138	7310 or 7326 or any other chapter	Mathematical boxes, geometry boxes, and colour boxes, pencil sharpeners	35
139	8215	All goods	35
140	8421 2120	Water filters functioning without electricity and replaceable kits thereof	35
141	8517 or 8525 60	Mobile handsets including cellular phones and radio trunking terminals	35
142	8517	Wireless data modem cards with PCMCIA or USB or PCI express ports	35
144	9619	All goods	35