# Central Excise Duty on free Samples

## 1. Introduction:

There is no specific provision in Central Excise Rules, 2002 governing drawl and testing of 'samples' of manufactured goods or inputs to ascertain their correct identity or classification or eligibility of any exemption. However, under various procedures, such as relating to exports, assessment etc. drawl of samples is required.

## 2. Categorization of Samples

The samples can be categorized, as follows:

(1) Trade samples sent to customers for trial;
(2) Samples for test purposes;
(3) Samples for supply against sale contracts or for enforcement of control measures;
(4) Samples for display at exhibitions, fairs and in show-cases; and
(5) Samples for market inquiries by Central Excise Officers.

Apart from the assessee requiring the samples for cogent reasons, the Central Excise Department may also require drawl and testing of samples and the assessee shall comply with such directions as may be given in this regard. However, there shall not be any drawl and testing of samples in routine manner.

## 3. Procedure for the drawl and accounting of Samples

### 3.1 Trade Samples

The manufacturers' generally give such samples to their customers for 'trial and approval'. The removal shall be in the same manner as the removal of goods for home consumption. **The manufacturer shall prepare an invoice under rule 11 of the said Rules and record the details in his Daily Stock Account**. He shall discharge duty in the manner specified in rule 8 of the said Rules unless the removal of samples are exempted from duty by a notification issued under Section 5A of the Central Excise Act, 1944.

Samples of certain goods sent to the trade by manufacturers are likely to be returned. In such cases, the procedure specified in rule 16 of the said Rules and the instructions relating thereto shall be followed.

### 3.2 Samples for test purposes

The samples of this category will generally include:-

(i) Samples drawn by in-house laboratory for testing quality and adherence to product specifications;
(ii) Samples drawn for preservation for investigation of complaints;
(iii) Samples drawn for test at other concerns and independent testing agencies;
(iv) Samples required to be sent to Government Test centres including the Chemical Examiners for test.

The assessee is required to maintain a proper account of receipts and the utilisation of samples in the test, in the laboratory. The removal shall be in the same manner as the goods are removed for home consumption. The manufacturer shall prepare invoice under rule 11 the said Rules and make issue entries for the goods (samples) in the Daily Stock Account. Appropriate duty shall be paid by the assessee on these samples before their removal for test purposes unless otherwise exempted by a duty exemption notification.

## 3.3 Samples for other purposes

Where samples are required for the purposes specified at (iii), (iv) and (v) of paragraph 3.2 above, the procedure specified at paragraph 3.2 shall be followed. However, it is clarified that when a manufacturer preserves the samples of their product for some period for investigation of complaints, if any, no duty should be charged on these samples considering that the goods remain within the factory. Duty shall be charged, unless exempted by a notification, once the samples are cleared from the factory. If at any time the manufacturer desires to destroy these samples, procedure specified in rule 21 of the said Rules shall be followed.

## 4. Quantity of samples

4.1 The quantity of the samples should be drawn are indicated in Annexure I in the Central Excise manual of Chemical Laboratories in the Customs Houses published by Directorate of Publications, Customs and Central Excise New Delhi 1983 which is attached as annexure 1.

How ever, in some cases a specific quantity is asked for which should be supported by requisition order from the chemical examiner. An Account of all departmental samples drawn and send to the chemical examiner should be maintained by the Range officer.

## 5. Test Memo

5.1 A test memo should always be prepared in triplicate, the original to be sent to the Chemical Examiner, triplicate to the Deputy/Assistant Commissioner and duplicate retained on the Range Officer's record.

## 6. Preservation of Samples

6.1 The samples drawn by the Range staff but not sent for test to laboratories should be preserved for six months from the date of analytical report on the sample tested. In case of any discrepancy being noticed, the samples have to be preserved till the period of Appeal or Revision application is over or till disposal of Appeal/Revision Application. The remnants, which are not required by the concerned assessee, may be destroyed soon after the parties specially inform that they accept the analytical report furnished by the Chief Chemist or after completion of the period of appeal or revision petition is over, as the case may be.

## 7. Cost of samples when drawn by the Department

7.1 In respect of samples drawn by the officers of the Central Excise Department for ascertaining the identity of goods/its classification or any other official purposes relating to Central Excise, the cost of samples may be reimbursed on manufacturer's request out of the contingency by the divisional officer. The cost of the containers required for drawl of samples may not be much and if the same cannot be borne by the assessee through persuasion the same should be borne by the Department.

## 8. Procedure for testing and re-testing of samples drawn by the Department

8.1 Except where there are special instructions for particular kind of samples, the representative samples from such or any lot must be drawn in quadruplicate in the presence of the owner/manager of the factory or his representatives.

8.2 The quantities of excisable goods or materials taken for testing should be the minimum necessary for testing and the Commissioner will, in consultation with the Chemical Examiner concerned, specify for each kind of excisable goods or materials the size of samples for this purpose.

8.3 The samples should be sealed with Excise seals and a declaration obtained from the owners (manufacturers) to the effect that the samples drawn are representative of the lot. The assessee, if he so desires, may also be permitted to affix his seal on the samples.

8.4 The four samples drawn for test should be clearly marked as:

(a) Original for Chemical Examiner (to be despatched to him along with the declaration and the relative test memorandum under intimation to the Assistant/Deputy Commissioner concerned).

(b) Duplicate to be sent to the Deputy/Assistant Commissioner of Central Excise (to be forwarded to him for safe custody for further use in case a dispute arises).

(c) Triplicate for Range Officer (to be retained for any future reference or to cover loss by post or other emergency).

(d) Quadruplicate to be given to the manufacturer (for his own record).

8.5 Before despatch of sample to the Deputy/Assistant Commissioner of Central Excise and the Chemical Examiner, the samples should be packed properly, sealed and marked in such a way that they suffer no loss or deterioration in transit or subsequent storage.

8.6 The Chemical Examiner after test, will return the remnant sample, if fit for re-test and not in other cases, together with his test report, to the Assistant Commissioner concerned. The Chemical Examiner will be in position to indicate whether or not a remnant is fit for re-test and the Deputy/Assistant Commissioner of Central Excise or other adjudicating authority will in most cases be able to anticipate whether the assessee will demand a re-test or not. The test results should be speedily communicated to the Assessee.

8.7 The Department shall carefully preserve the remnant sample.

8.8 Whenever the assessee is dissatisfied with the test carried out by the Chemical Examiner he can apply to the Deputy/Assistant Commissioner of Central Excise concerned, after payment of the prescribed test fees, for a retest within 90 days from the date on which the test result was communicated to the him.

8.9 Where the remnant sample is available in sufficient quantity in its original state, re-test should ordinarily be on such remnant sample. Where such remnant sample was received from the Chemical Examiner but it is not in sufficient quantity or in original state, or where the party concerned desires, for one or the other reasons, a re-test on duplicate or triplicate sample, Deputy/Assistant Commissioner of Central Excise, the adjudicating authority or, as the case may be, the appellate authority should pass an appropriate order for re-test on duplicate or triplicate sample.

8.10 Where an assessee requests for re-test in a laboratory other than a Control Laboratory (hereinafter in this paragraph referred to as "outside laboratory") whether on the remnant or the duplicate or triplicate sample, such request may be allowed for testing the sample from an outside Government or Semi-Government laboratory with the prior permission of the Commissioner or the Appellate or the Reversionary authority, as the case may be after Chief Chemist has confirmed that the departmental laboratories do not have the facilities for performing the particular test in question. The request for re-test in outside laboratories will be conditional upon the party concerned meeting the cost of the re-test.

8.11 It is always open to the assessee concerned to get the authenticated sample, in its possession, analysed in any laboratory of his own choice and submit the findings of such laboratory for due consideration on merits of each case, by the appropriate adjudicating/appellate authority. However, the assessee should ensure that the laboratory which analyses the samples indicates clearly in its test report the full particulars of the samples and whether the central excise seals affixed to the samples were intact or not at the time of its receipt by such laboratory.

8.12 The payment of a fee for re-test does not entitle the assessee to a copy of chemical report. The result of any such retest must however be communicated to the owner at the earliest. Where a copy of the test report is to be furnished to the assessee at its request, the Department shall have the option to provide only a concise, edited) form of the Test Report. The editing of the Test Report should be done in consultation with the Chemical Examiner.

8.13 For the purpose of market enquiries regarding the value of excisable goods, samples can be drawn by Central excise Officer on written order of the Deputy/Assistant Commissioner of Central Excise, on returnable basis. There is no need to make any issue entries in Daily Stock Account for such samples as the same are to be returned to the factory. The Range Officer should maintain a simple account showing the date of taking the sample, quantity taken and date of return. There should be proper acknowledgement of drawl and return of sample. The officer, who draws sample, will also give acknowledgement to the assessee and take acknowledgement when he returns the sample.

## 9. Clearance of model/proto-type without payment of duty for trial etc.

9.1 Where a finished excisable goods falling in the category of model/proto-type are to be sent out for trail purposes by actually putting them to effective use after conducting certain test to ensure that they meet with certain standard/specified norm, clearance may be allowed on payment of duty. Their subsequent return to the factory may be regulated in terms of rule 21 of the said Rules.

## 10. Samples drawn at the time of export of goods

10.1 Three sets of samples are drawn at the time of examination or sealing of export goods. Two sets of samples, duly sealed, are handed over by the Central Excise Officer examining the consignment to the exporter or his authorised agent for delivery to the Custom Officer at the point of export. The Central Excise Officer for his record retains the third set of sample.

10.2 The Customs Officer will check the export goods with the sample before allowing export. The samples shall be dealt with in accordance with instructions/standing orders of the Board or the Commissioner of Customs.

## 11 Valuation Rules

**11.1 Transaction Value:** Section 4(1)(b) of the Central Excise Act states that if Assessable Value' cannot be determined u/s 4(1)(a), it shall be determined in such manner as may be prescribed by rules. Under these powers, Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 have been made effective from 1-7-2000.

Value nearest to time of removal if goods not sold - If goods are not sold at the time of removal, then value will be based on the value of such goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments. [Rule 4]. This rule applies when price at the time of removal is not available as the goods are not sold by the assessee at the time of removal. Thus, this rule should apply in case of removal of free samples or supply under warranty claims. In case of removal of samples or free replacement under warranty claims, duty will be payable on price of identical goods sold by assessee near about the time of removal of the samples.

**11.2 MRP Based Assessment (Section 4A):** CESTAT in its majority decision in the case of M/s Cadila Pharmaceuticals Ltd. Vs Commissioner of Central Excise Ahmedabad II, reported at 2008 (232) ELT 0245 (Tri.-LB), has held that even after the pharmaceutical products have been notified for MRP assessment under Section 4A of the Central Excise Act, the assessment of free physician samples of these products , is appropriately required to be done under Rule 4 of the valuation rules by taking into consideration the deemed value under Section 4A(1) notwithstanding the non availability of normal price under Section 4(1)(a) of the Act, ibid. Accordingly, the value for payment of excise duty for physician sample would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)

The departmental Circular No. 915/05/2010-CX, New Delhi, 19th February, 2010. clarified that the aforesaid decision of CESTAT would, mutatis mutandis, be applicable in respect of free samples of other products which are under MRP assessment. Accordingly, it is clarified that valuation of Samples which are distributed free as part of marketing strategy, or as gifts or donations, shall be determined, in terms of Board's circular No. 813/10/2005-CX dated 25.4.2005 and the aforesaid decisions of CESTAT, as explained in foregoing paras whether the final products are assessed under MRP based assessment or otherwise.

## Frequently Asked Questions (FAQ)

1. Are free samples subject to excise duty

   Excise duty is payable even in case of free supply of goods, as sale is not necessary condition for charging duty (Medley Pharmaceuticals Ltd. v. CCE, (2011) 2 SCC 601)

2. How to pay duty for free samples

   Follow the procedures laid down under Rule 11 of Central Excise Rules, 2002 and prepare invoice accordingly (similar to finished goods movement). Excise duty has to be deposited as laid down under Rule 8 of Central Excise Rules 2002.

3. Is it necessary to pay duty for all the samples mentioned above (5 categories as para. 2 on above)

   Yes. We have to pay duty on all samples including samples given to Quality Control & R&D, as excise duty is charged on manufacture and not on sales.

4. On what value should we pay excise duty

Here reference should be made to Rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000. This has been confirmed by the department through 2 circulars :

1. Circular No. 813/10/2005 CX dated 25.4.2005 (for section 4 valuation)
2. Circular no. 915/5/2010-CX dated 19.02.2010 (for section 4A valuation – MRP based valuation)

5. How to calculate assessable value on those products covered under MRP Valuation where in samples MRP is not mentioned?

Excise duty is payable even in case of free supply since sale is not a necessary condition for charging duty under the act (Central Excise Act, 1944)," a bench comprising Justice DK Jain and Justice HL Dattu said in its judgement. It should be would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)

**Circular No. 813/10/2005-CX**
**25th April, 2005**

**F.No. 209/30/2003-CX 6**

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

**Subject:- Clarification with regards to valuation of the goods, reg.**

Sir,

I am directed to refer to Board's letter No. 6/39/2000-CX.I dated 1.7.2002 clarifying certain points relating to the Central Excise Valuation ( Determination of Price of Excisable Goods) Rules,2000.

2. A number of references seeking further clarification on some of the points clarified in the Circular mentioned in para 1 above have been received in the Board. These points are being clarified in the table enclosed. These clarifications supercede the clarification given in above referred circular.

3. Trade Notices may be issued for the benefit of the Trade.

4. Hindi version will follow.

5. Receipt of this circular may kindly be acknowledged.

Yours faithfully

Ashok Kumar
Under Secretary to the Govt. of India

**F.No.6/18/2003-CX.I**
**Dated the 25th Apirl, 2005**

| Sl.No. | Old Sl.No. | Point of Doubt | Clarification |
|---|---|---|---|
| 1. | 13 | How will valuation of samples be made done which are distributed free, as part of marketing strategy, or as gifts or donations? | In case of free samples, the value should be determined under Rule 4 of Central Excise Valuation ( Determination of Price of Excisable Goods) Rules, 2000. |
| 2 | 14 | How will valuation be done when inputs or capital goods, on which CENVAT | In such situations, the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 would apply. |

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|---|---|---|---|
| | | credit has been taken, are removed as such from the factory, under the erstwhile sub-rule (1C) of rule 57AB of the Central Excise Rules, 1944or under rule 3 (4) of the Cenvat Credit Rules, 2001 or 2002? | |

Circular No. 915/05/2010-CX

F No. 6/5/2009-DS (CX-I & 4)

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

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New Delhi, 19th February, 2010.

To

Director General (All)

Chief Commissioners of Central Excise including LTU (All)

Commissioners of Central Excise including LTU (All)

**Subject: - Clarification regarding valuation of free samples of the products covered under MRP based assessment – reg**

Sir,

Attention of field formations is invited to Board's circular No. 813/10/2005-CX dated 25.4.2005 issued from F.No. 6/39/2000- CX1 wherein it was clarified that in the case of free samples, the value should be determined under Rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. A larger bench of CESTAT in the case of Blue Cross Laboratories Vs CCE, Mumbai 2006(202) ELT 152 (T-LB), has also held that physician samples are to be assessed under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. Further, the aforesaid circular of 2005 has also been upheld by the Hon’ble High Court of Mumbai in the case of Indian Drugs Manufacturer’s Association Vs. UOI, reported at 2008(222) ELT 0022 (Bom).

3. Subsequently, CESTAT in its majority decision in the case of M/s Cadila Pharmaceuticals Ltd. Vs Commissioner of Central Excise Ahmedabad II, reported at 2008 (232) ELT 0245 (Tri.-LB), has held that even after the pharmaceutical products have been notified for MRP assessment under Section 4A of the Central Excise Act, the assessment of free physician samples of these products , is appropriately required to be done under Rule 4 of the valuation rules by taking into consideration the deemed value under Section 4A(1) notwithstanding the non availability of normal price under Section 4(1)(a) of the Act, ibid. Accordingly, the value for payment of excise duty for physician sample would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)

4. The aforesaid decision of CESTAT would, mutatis mutandis, be applicable in respect of free samples of other products which are under MRP assessment. Accordingly, it is clarified that valuation of Samples which are distributed free as part of marketing strategy, or as gifts or donations, shall be determined, in terms of Board’s circular No. 813/10/2005-CX dated 25.4.2005 and the aforesaid decisions of CESTAT, as explained in foregoing paras 2 & 3, whether the final products are assessed under MRP based assessment or otherwise.

5. Trade and Industry may be informed.

6. Receipt of this circular may be acknowledged

7. Hindi version would follow.

Yours faithfully,

(MADAN MOHAN)

Under Secretary (CX. 1)