Concept of Excise

- It is a duty on **production or manufacture** of **excisable goods in India.**

The **Central Government has the power** to levy excise duty, covered under Entry 84 of Union List.

Entry 84 of Union List reads as under:

Power to levy excise duty is with the CG

- Duties of excise on tobacco & other goods m/p in India.

- Medicinal and toilet preparations containing alcohol or any substance given under exceptions.

Power is with State government under Entry 51 of the State List Except :

- Alcoholic liquors for human consumption.

- Opium, Indian Hemp and other narcotics.

CETA, 1985
CENTRAL EXCISE TARIFF ACT, 1985.

CEA, 1944
THE CENTRAL EXCISE ACT, 1944

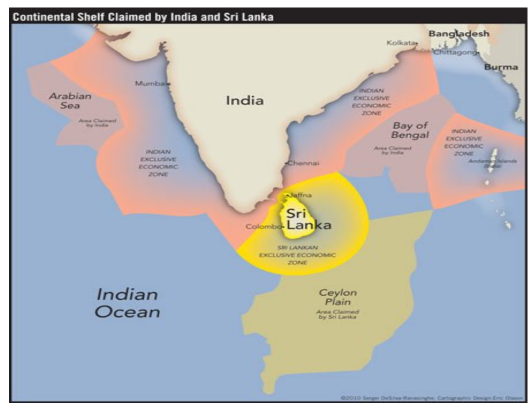
Extent and scope of central excise law

- Section 3 of CEA,1944

Extent and scope of section 3

- 3 Points
  - Central excise law extends to whole of India
  - No levy on goods m/p in SEZ
  - Rate of excise duty

Central excise law extends to whole of India



- The central excise law extends to whole of India **including Jammu and Kashmir**, includes the territorial waters of India.

- The provision of central excise law extends **to "designated areas"** in the continental shelf and exclusive economic zone of India.

- **Therefore any goods p/m within,-**

a) The territorial waters of India and

b) The designated areas of continental shelf, EEZ which are treated as part of India shall be liable to excise duty.

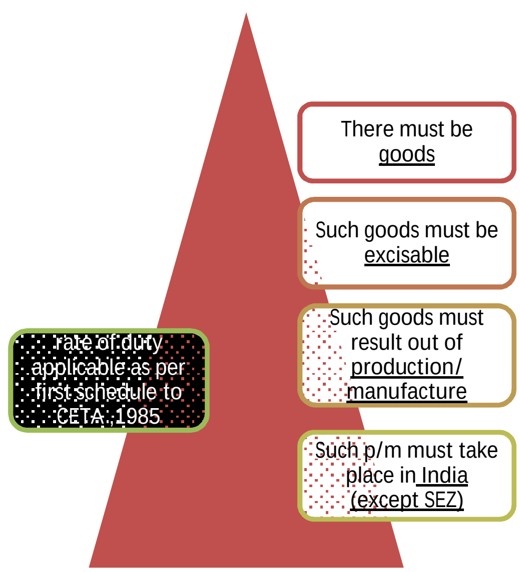
Rate of excise duty

- The general rate of CENVAT (BED) as per first schedule to tariff act is 16 %, however by exemption notification it is 12 %

- In addition education cess @ 2%

- Secondary and higher secondary cess @ 1 %

- **Thus effective rate will be 12.36 %**



Basic conditions for levy of duty u/s 3 of the CEA, 1944

- The term "levy" INCLUDES both

    1) imposition of taxes

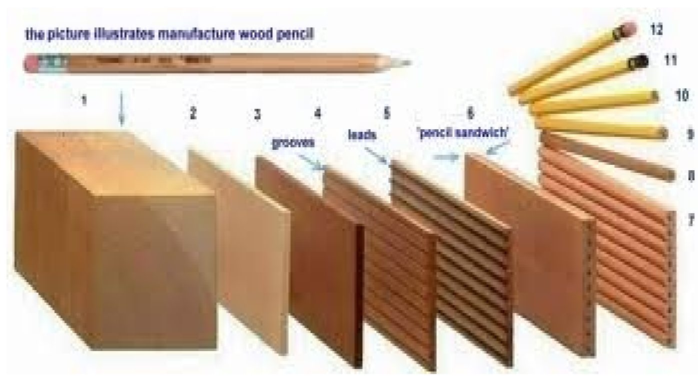
    2) Assessment

- Reference "ACCEx vs. National Tobacco co. India Ltd."

    It does not include → COLLECTION OF TAXES

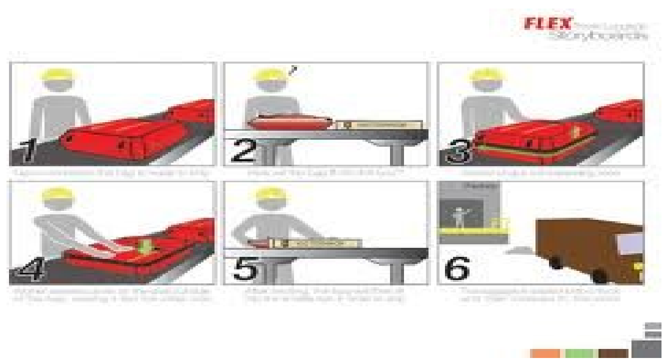
- A special duty of excise in addition to BED –
- On excisable goods is specified in the second schedule to CETA, 1985.

Concept of taxable event and significance of the date of removal of goods in the context of levy and collection of duty.



Taxable event

- Taxable event is that event which creates liability to tax.



- In the context of central excise **production or manufacture** of **excisable goods in India.**

Duty payable on removal

- **Rule 4 Central Excise Rules,2002:**
- The **excise duty is payable on removal of excisable goods from the factory or registered warehouse.**
- "No excisable goods on which duty is payable shall be removed without payment of duty from any place where they are manufactured."

Date of determination of rate of duty and tariff valuation.

- **Rule 5 of Central Excise Rules,2002:**
- The rate of duty + tariff valuation to any excisable goods = ***rate /value in force on the date of removal of goods from a factory or a warehouse.***

A person is neither a producer nor a curer nor a manufacturer of excisable goods, but only stores such goods in a warehouse. Can he be called upon to pay the duties of excise on such goods?

- As per rule 4(1) of the central excise rules,2002
- Every person who p/m any excisable goods, or who stores such goods in a warehouse, shall pay duty leviable on such goods.
- No excisable goods on which any duty is payable shall be removed without payment of duty from any place, where they are p/m / warehouse.

Exception:

Where molasses are produced in khandsari sugar factory, the person who procures such molasses, directly or indirectly from factory for use in the manufacture of any commodity

Whether excisable or not shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by procurer.

Goods, Excisable goods, Movability and Marketability of goods.

Goods

- The term has not been defined in CEA,1944
- **Article 366 (12) of the constitution- M-A-C-S**

→ Material, articles, commodities and substance.

- **Sale of goods Act,1930**

→ Defines goods to mean every kind of moveable property other than actionable claims and money includes stocks and shares, growing crops, grass and things attached to and forming part of the land, which are agreed to be severed before sale.

- **Goods can be tangible as well as intangible.**
- **Judicial view in respect of goods**:

→ *UOI v. DCM,* the Supreme Court has held that in order to be goods, the article must be capable of being brought to the market to be bought and sold.

Vendibility/ Marketability of goods

- Marketability is the capability of the product of being bought and sold into the market.

1. *UOI vs. Delhi cloth & general Mills Co. Ltd*.:-

An article will be called GOODS if it is known to the market as such and can ordinarily come to market to be bought and sold.

2. *South Bihar Sugar Mills:-*

Marketability is a conclusive test but it only means saleable or suitable to sale. It ***NEED NOT be ACTUAL SALE.***

3. *CCEx. V TISCO*

Everything which can be sold is not necessarily a marketable commodity for example Rubbish can be sold but it is not a commercially marketable commodity.

4. *AP State Electricity board v CCEx*

Marketability does not depend upon number of buyers, only one buyer is enough to prove the marketability of goods.

5. *Bhor industries v. CCEx.*

Mere mention in tariff is not enough, an Article must be satisfy the 2 basic criteria i.e. movable and marketable.

6. *CCEx v. Ambalal Sarabhai Enterprises*

Article must be known in the market as such and usage in the captive consumption is not determinative of whether the article is capable of being sold in the market. It was also held that burden to establish that an article is movable and marketable is on the department.

Concept of "Deemed Marketability"

2(d) "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.

"Excisable Goods"

2(d) "Excisable goods" means goods specified in the first schedule and second schedule to the Central Excise Tariff Act, 1985

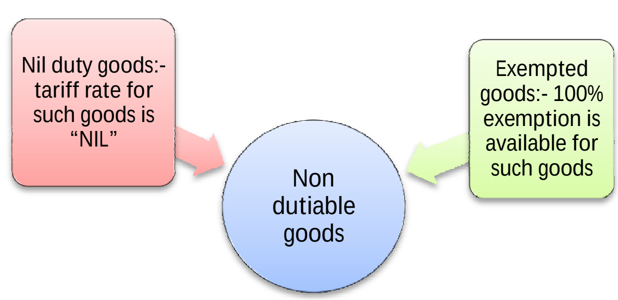
As being subject to a duty of excise and includes salt.

Non excisable goods:

Goods which are not listed in Tariff or goods which mentioned in Tariff but the column of rate of duty is blank, the excise law does not apply to such goods.

Non Dutiable goods

- Non dutiable goods are excisable goods listed in excise tariff.
- Excise law is applicable to them, but they are not liable to excise duty



Exempted goods

- Exempted goods means the goods which are **exempt from whole of duty of excise.**
- Exempted goods do not become excisable after being fully exempted by notification, since **they are listed in the schedules to the tariff as being subject to the duty of excise**
- Reference- ***Wallace Flour Mills Co. Ltd v CCEx***
- Note – exempted goods → no duty
- Exempted goods → Excisable

Goods carrying nil rate of duty or nil rated goods

- CETA,1985 prescribes the **rate of duty** of excise for each head and sub- head
- If the tariff itself specifies duty as "Nil", **the goods are chargeable to nil rate duty.**
- Nil rate of duty is also a rate of duty & goods with nil rate of duty cannot be treated as non excisable
- Thus nil rated goods are also **excisable goods**.
- Reference – ***CCEx v Vazir Sultan Tobacco Co. Ltd.***
- Note:
- **Nil rated goods = chargeable @ nil rate + Excisable**.

CASE STUDY

Medley Pharmaceuticals Ltd. V CCEx

Physician samples distributed as free samples to medicinal practitioners marketable and liable to excise duty

Q) Whether the physician samples which are distributed to medical practitioners as free samples are liable to excise duty?
Sale thereof is prohibited under the drugs and cosmetics Act, 1940?

→ Excise duty is impost on manufacture. It is **leviable on m/p of Excisable goods**

→ **Actual Sale** is not a necessary condition for charging duty

+

→Marketability is important essence of chargeability.

→ **Marketability means suitable for sale, actual sale is not necessary.**

+

The prohibition on sale of physician samples under the drugs act has **no bearing or effect** on levy of excise duty.

***Conclusion: samples distributed as free samples are chargeable to excise duty*.**

CASE STUDY

Bagasse & Aluminum / zinc dross & other waste products.

→ <u>Deemed marketable and hence excisable.</u>

- The board has clarified that Bagasse, Aluminum /Zinc dross and other waste products, residue or refuse arise during course of manufacture and are capable of being sold for a consideration.

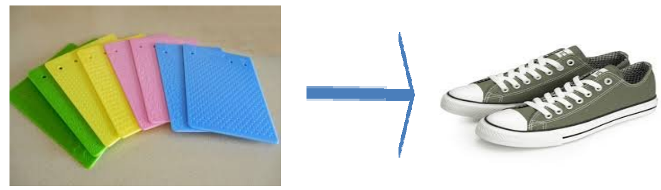
→ Would be excisable + chargeable to payment of excise duty as per section 2(d) CEA, 1944.

→ CBEC circular No.904/24/2009 quashed imposition of excise on bagasse.

Case study:

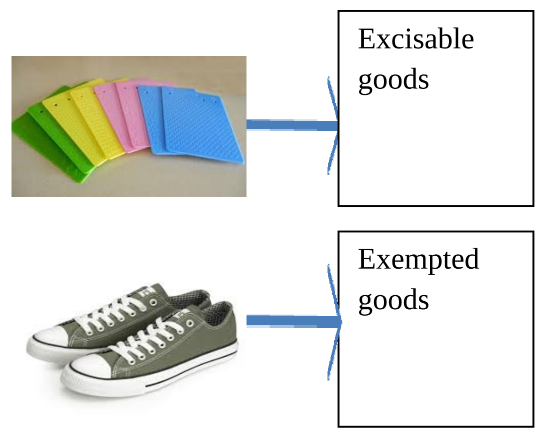
Bata India Ltd. V CCEx (5 marks, Dec 2011)

- Solid Shoes company, a manufacturer of footwear, used to purchase raw material like fabric + rubber + chemicals +solvent = DRTF
- (Double textured rubberized fabric), this was cut and stitched as per customers requirement.
- At times DRTF was sent to job workers for stitching purpose
- After completion of the entire process, the vulcanization of footwear was done and then, it would be available for sale.
- Some of the DRTF was used in the manufacture of canvas shoes, which are exempt from duty



- The department contended that the intermediate product DRTF was a distinct product with a specific properties and was used in considerable quantities for making raincoats, holdalls, handbags, etc in the outside market.

- Since the DRTF was excisable and used in the manufacture of exempted goods final product being shoes, therefore DRTF was liable to excise duty.
- However, the department didn't have any proof marketability.
- Marketability is a essential ingredient of a product liable to excise.
- Burden to prove that an article is marketable in the condition in which department wants to levy excise department itself.



- Marketability means it should be only suitable for sale, Actual sale is not necessary.
- The mere fact that the product went outside for job work is not an indication to show that the product marketable product.
- In this case the department did not have sufficient evidence to prove marketability.
- A mere test report from a chemical examiner would not prove commercial identity
- On the contrary evidence shown by the Assessee would show that the product was not a commercially known product, hence it was not marketable → not excisable.
- **Conclusion:**
- Since the department did not have any evidence to prove that DRTF was capable of being bought and sold for a consideration, therefore the same **<u>was not liable to excise.</u>**

Manufacture→ Ambit, Scope

What is **Manufacture** in Central Excise?

- Manufacture → Section 2 (f)
- Manufacture - includes any process

a) **Incidental or ancillary to the completion** of manufactured product

b) Which is specified in relation to **any goods,** in section or chapter notes of the **first schedule to the CETA,1985.(**as amounting to deemed manufacture.

c) Which, in relation to goods specified in the **third schedule**, involves-

→ **Packing and repacking** of such goods in a unit container.

→ **Labeling or relabeling** of containers including **declaration/ alteration of retail sale price on it.**

→ **Adoption of any treatment** on the goods to render the product marketable to the consumer (Deemed manufacture)

- And the word "manufacturer" shall be construed accordingly
- Shall also include a person who employs hired labour in the p/m of excisable goods

Scope and ambit of manufacture

- The scope of the definition has be cleared by the supreme court with references to various cases-
- ***Union of India vs. Delhi Cloth & General mills Co Ltd.***

→ " Manufacture **implies a change**, but every change is not a manufacture

→ And yet every **change of an article is the result** of treatment + labour and manipulation.

→ But something more is necessary and there must **be transformation;**

→ A **new and different article must emerge** having a distinctive name, character or use"

Empire Industries Ltd vs. Union of India

- To Constitute manufacture it is not necessary that one should absolutely make out a new thing
- It is the transformation of a matter into something else that would amount to manufacture that is the question of degree.
- Whether that is commercially identified.

CIT vs. Tara Agencies

- In the case of tea business
- Production takes place in tea gardens→ manufacture happens when the tea leaves are plucked from the tea bushes and by mechanical process, they are converted into tea and blending of different flavours makes it marketable.
- Hence its marketability is its process.

Examples

Processes which amount to manufacture….

- **Obtaining fine powder** ammonium nitrate from crude lumps of ammonium nitrate.
- **Purification and Filteration** done to make product hydrochloric acid and Sulphuric acid marketable