

## **GENERAL PROCEDURES UNDER CENTRAL EXCISE**

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### **5.1 INTRODUCTION**

Till 1969, there was physical control system wherein each clearance of manufactured goods from the factory was done under the supervision of the Central Excise Officers. Introduction of Self-Removal procedure was a welcome procedure in the industry. Under the Self Removal procedure the assesseees were allowed to quantify the duty on the basis of approved classification list and the price list and clear the goods on payment of appropriate duty.

In 1994, the gate pass system gave way to the invoice-based system, and all clearances are now effected on manufacturer's own invoice. Another major change was brought about in 1996, when the Self-Assessment system was introduced. This system is continuing today also. The assessee himself assesses his returns and the Department scrutinises it or conducts selective audit to ascertain correctness of the duty payment. Even the classification and value of the goods have to be merely declared by the assessee instead of obtaining approval of the same from the Department. The system of classification of goods and price lists have now been done away with.

Prior to March 2000, the duty had to be discharged before removing the goods from the factory and in some circumstances on the day on which it is removed. In 2000, the fortnightly payment of duty was introduced for all commodities as an extension of the monthly payment system which was introduced for Small Scale Industries. However, with effect from 1.04.2003 the monthly payment system of duty has been reinforced.

In 2001, new Central Excise (No.2) Rules, 2001 replaced the Central Excise Rules, 1944 with effect from 1<sup>st</sup> July, 2001. These were again superseded by the Central Excise Rules, 2002 with effect from 1<sup>st</sup> March, 2002. With the introduction of the new rules several changes have been effected in the procedures. The new procedures are simplified. There are less numbers of rules, only 32 as compared to 234 earlier. Classification declaration and Price declarations under erstwhile Rule 173B and 173C respectively have also been dispensed with. The declaration of inputs for availing the Modvat (now Cenvat) was dispensed with from April 2000 itself.

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### 5.2 REMOVAL OF EXCISABLE GOODS [RULE 4]

In terms of Rule 4 of the Central Excise Rules 2002, no excisable goods shall be removed from the place of manufacture or from warehouse, when the goods are stored in warehouse, without payment of duty, whether for consumption, export or manufacture of any other commodity in or outside the place of manufacture, until the excise duty leviable thereon has been paid in such manner as provided in Rule 8 or under any other law. Section 12A casts a liability on every person who is liable to pay duty of excise on any goods. It prescribes that at the time of clearance of the goods the amount of such duty which will form part of the price at which such goods are to be sold should be prominently indicated in all the documents relating to assessment, sales invoice, and other like documents.

**5.2.1 Special provisions for molasses:** Sub-rule (2) specially provides that where molasses are produced in a Khandsari sugar factory, the person who procures such molasses, whether directly from the factory or otherwise, for use in the manufacture of any commodity shall pay the duty leviable on such molasses as if the molasses had been produced by the procurer. Duty on the molasses shall be payable whether or not the goods, which are manufactured with the use of the molasses, are excisable or not.

In certain industries like sugar, the production is seasonal but the off-take from the factory is throughout the year. In such cases storage of huge quantities within the factory is burdensome. Further, since a large quantity of off-take is controlled by the Government, the management may not be in a position to remove the goods on payment of duty. Sub-rule (4) of Rule 4 takes care of these situations. It provides that the Commissioner may, in exceptional circumstances, having regard to the storage of goods and of storage space at the premises, permit a manufacturer to store his goods in any other place outside his premises without payment of duty. This will be subject to such conditions as may be prescribed.

**5.2.2 Procedure to remove the excisable goods on payment of duty under Self Removal Procedure :** Today, except cigarettes which is still under physical control, all other products fall under the self-removal procedure. The manufacturers working under Self-Removing Procedure can remove the excisable goods by following, the under mentioned procedure -

1. The manufacturer may ensure that the goods, which are sought to be removed, have been duly intimated to the department providing the process flow chart of manufacture as well as list of critical raw materials.
2. He shall ensure that the finished goods are all duly entered in the production register daily. The manufacturer should authenticate the first and last pages of this register. (This was called the RG-I register earlier).

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3. The invoice raised should be in line with the purchase order if any, received from the customer. Care is to be exercised in calculations in the invoice.
4. The assessable value (whether cum-duty price or otherwise) is to be arrived at accurately by applying section 4 read with Central Excise Valuation Rules, 2000. If the value is based on MRP or Tariff Value fixed under section 3(2) the same may be applied.
5. He shall prepare an invoice under Rule 11 and calculate the assessable value and Excise duty payable.
6. He shall make the removal entry in production register providing details of value, quantity and duty payable.
7. It is to be ensured that the person / carrier who/ which carries the goods is provided with " duplicate for transporter" copy of invoice.
8. He shall ensure that at the end of the month (1<sup>st</sup> to 30<sup>th</sup> ) he debits the duty payable in the Cenvat Credit a/c and if the balance is not sufficient, pay through the Personal Ledger Account (PLA) by the 5<sup>th</sup> of the next month. For the month of March, payment will be made by the end of that month itself.
9. The units claiming 8/2003 (SSI Exemption) are required to pay the monthly duty by the 15<sup>th</sup> of the subsequent month. Here also, for the month of March payment is to be made by the end of that month itself.
10. It is hereby clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date. The Board has clarified that the liability would be discharged only on the date of realization of the cheque and not earlier as per the *CBEC Circular No.28/2002 dt. 24.5.2002*.

### 5.3 DATE FOR DETERMINATION OF DUTY AND TARIFF VALUATION [RULE 5]

Rule 5 of Central Excise Rules, 2002 lays down that rate of duty or tariff value applicable to any excisable goods other than khandsari molasses, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be. In the case of khandsari molasses, the applicable rate shall be the rate in force on the date of receipt of such molasses in the factory of the procurer of such molasses.

For the excisable goods which are used within the factory, the date of removal of such goods shall be the date on which the goods are issued for such use.

### 5.4 ASSESSMENT [RULE 6]

As per the Central Excise Rules, 2002 the term 'assessment' is defined to include self-assessment of duty made by the assessee and provisional assessment under Rule 7 of the

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said Rules. An “Assessee” is defined to mean any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person.

Duty is payable on removal of goods as Rule 4 of the said Rules provides that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 of the said Rules or under any other law. No excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided. However there is an exception for the goods falling under Chapter 62 of CTA, 1985 and kandsari molasses which is dealt separately.

**5.4.1 Self Assessment :** As per Rule 6 of the Central Excise Rules, 2002, the assessee himself is required to determine duty liability at the time of removal of excisable goods and discharge the same. In other words, the assessee should apply correct classification and value on the quantities being removed by him and indicate the same in the invoice (except in the case of an assessee manufacturing cigarettes, in which case the Superintendent or Inspector of Central Excise has to assess the duty payable before removal by the assessee).

Therefore before each removal, whether outside the factory of manufacture or production or for captive consumption, duty has to be assessed on the excisable goods.

The main ingredients of assessment are:

- a. Ascertainment of date and time of intended removal;
- b. Ascertainment of classification and rate of duty (dealt in Chapter II) at that point of removal;
- c. Valuation of goods (dealt in chapter III) at that point of removal; and
- d. Quantity intended to be removed.

As a part of self assessment, assessee is also required to assess his return for a month and submit to the Range Office having jurisdiction over his factory within ten days of the succeeding month. They are also required to submit ‘CENVAT Return’ for a month within 10 days of the succeeding month. A manufacturer availing exemption notification for Small Scale Industries is permitted to file his return on quarterly basis within 20 days from the end of the quarter.

**5.4.2 Scrutiny of assessment:** In view of the self-assessment procedure wherein the assessee himself assesses the duty liability, the responsibility of the departmental officers is to scrutinise the assessment made for verification of its correctness.

The Central Excise Officers having jurisdiction over the factory/premises of the assessee is responsible for the scrutiny of returns. For this purpose, the said officer(s) may require the relevant documents. Though the statutory records have been dispensed with, the assessee is required to maintain private records containing all requisite information as required by different rules and also provide a list of all records maintained by him to the Range Office. The Officer responsible for scrutiny of return may require the invoices issued by the assessee, Daily Stock Account, Cenvat Account, cash ledgers, ledger of all receipts and payments and the source documents etc. It shall be compulsory for the assessee to provide the necessary records upon receiving the 'Requisition Letter' from the Range Officer or other superior officers. He shall hand over the records under proper acknowledgement and receive them back under proper acknowledgement. The officer scrutinizing return may require presence of the assessee or his authorised person at mutually convenient time, for seeking certain information relating to the records.

The Superintendent of Central Excise in charge of the Range Office, with assistance of the Inspectors in-charge of the factory of an assessee, will scrutinise all the returns. They shall, in selected cases, call for all connecting documents including invoices and the records and scrutinise the correctness of assessment.

The Deputy/Assistant Commissioner of Central Excise will scrutinise the returns of the units, which pay duty exceeding rupees one crore but less than Rs.5 crores from PLA per annum every six months. They shall requisition all connecting documents including invoices and the records and scrutinise the correctness of assessment.

The Additional/Joint Commissioner of Central Excise will scrutinise the returns of the units which pay duty of Rs. 5 crores or more from PLA per annum every six months. They shall requisition all connecting documents including invoices and the records and scrutinise the correctness of assessment.

**5.4.3 Provisional Assessment [Rule 7] :** As per Rule 7 of the Central Excise Rules 2002, provisional assessment can be resorted to in the event the duty can not be determined at the point of clearance of the goods.

The rule, read with the guidelines issued by the Board on 1.9.2001, sets out the procedure for provisional assessment as follows:

Wherever an assessee finds that final assessment is not possible at the point of removal he will make a detailed request in writing to the Divisional Deputy/Assistant Commissioner of Central Excise, indicating:-

- a. Specific grounds/reasons, and the documents or information, for want of which final assessment cannot be made.

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- b. period for which provisional assessment is required.
- c. the rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for Provisional Assessment; and
- d. that he undertakes to appear before the Assistant/Deputy Commissioner of Central Excise within 7 days or such date fixed by him, and furnish all relevant information and documents within the time specified by the Assistant/Deputy Commissioner of Central Excise in his order, so as to enable the proper officer to finalise the provisional assessment.

On receipt of the request, the Deputy/Assistant Commissioner of Central Excise will examine it, if necessary, in consultation with the concerned Range Officer, to ascertain whether provisional assessment is necessary at all. If the reasons/ grounds are not sufficient, he may ask the assessee to appear before him on an appointed day and time, and if he is satisfied that provisional assessment is not necessary, he may pass a reasoned order rejecting the same and also ordering the rate of duty or the value, to be applied by the assessee.

Where the Deputy/Assistant Commissioner of Central Excise is satisfied with the genuineness of the assessee's request he will issue a specific order directing provisional assessment clearly stating:-

- a. The grounds on which Provisional Assessment has been ordered.
- b. The rate and /or value, as the case may be, at which duty has to be provisionally paid.
- c. The amount of differential duty for which bond is to be executed covering the period, if any, during which assessee paid duty provisionally under the deeming provisions, after applying the rate and/ or value specified in (b) above.
- d. The amount of security or surety as may be fixed by Assistant Commissioner keeping in view the instructions issued by the Board from time to time.

The assessee is required to mark the E.R.1 (monthly/quarterly return) and documents covered under Provisional Assessment as "PROVISIONALLY ASSESSED" vide Order No..... dated .....". There is a declaration in E.R.1 where assessee has to mention the goods under 'provisional assessment'.

Notwithstanding 'self-assessment', all cases of provisional assessment have to be finalised by the Deputy/Assistant Commissioner of Central Excise, within a maximum period of 6 months from the date of communicating the order of provisional assessment.

The Commissioner can extend it if sufficient cause is showed which is recorded in writing, the period of 6 months. If the period of extension is beyond 6 months, then the permission of Chief Commissioner is required.

Finalisation of provisional assessment means finalisation of an issue/ground and thereafter finalisation of each E.R.1s. The amount will be communicated to the assessee at the earliest. The amount of each differential duty shall be paid along with interest at the rate of twenty four percent per annum from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

In the event the assessee will be in a position to ascertain the duty himself. He may pay the duty on his own at the earliest and in that case he will not have to incur interest on account of time taken by the Department to finalise assessment and communicate the amount.

Where any refund becomes due to the assessee, order shall be passed for such refund, but disbursement shall be subject to further verification about incidence of such duty. The assessee will be required to submit proof to the Assistant/Deputy Commissioner of Central Excise that the duty incidence was borne by him (assessee). If the assessee fails to produce such proof/evidence, the Assistant/Deputy Commissioner of Central Excise will pass an order for depositing the amount in Consumer Welfare Fund in the prescribed manner. Otherwise, the refund shall be given along with interest at the rate of fifteen percent per annum from the first day of the month succeeding the month for which such refund is determined, till the date of refund.

As mentioned earlier, provisional payment of duty is allowed if the assessee executes a bond in the prescribed form with such surety or security in such amount as the Assistant/Deputy Commissioner may order. Such bond shall bind the assessee for payment of the difference between the amount of duty finally assessed and the amount of duty paid provisionally.

Though it is incumbent upon the assessee to ensure that the bond amount and corresponding securities are sufficient, the Divisional as well as the Range Officer will also keep a strict vigil on such cases with the help of 'Provisional Assessment Register'.

The Assistant/Deputy Commissioner of Central Excise will be held responsible to ensure that bonds for proper amount i.e., 3 times of the estimated differential duty are taken, in case of general bonds and that these are backed by proper (25%) security/ bank guarantee of the bond amount.

The format of bond for provisional assessment has been specified in Notification No. 56/2001-Central Excise (N.T.) dated 3.7.2001.

It is important to note that Rule 7 of the said Rules does not provide for the Department, *suo motu*, issuing directions for resorting to provisional assessment. Therefore, when the Central Excise Officers, during scrutiny or otherwise, find that self-assessment is not in order the assessee may be asked for all necessary documents, records or other information for issue of duty demand for differential duty, if any, after conducting inquiry. Where the assessee fails to provide the records or information and Department is unable to issue

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demand, 'Best Judgement' method may be used to raise demand based on collateral evidences. The burden will be on the assessee to provide information for appropriate re-determination of duty, if any.

As per the general law, the provisions of Provisional Assessment relating to interest clause and statutory time limit can only be prospective. Therefore the provisions of interest and statutory time limit shall be applicable only to those cases of provisional assessment, which are ordered on or after 1<sup>st</sup> July, 2001.

## 5.5 MANNER OF PAYMENT [ RULE 8 ]

Rule 8 deals with the manner of payment of duty. The sub-rule (1) provides that the duty on the goods removed from the factory or the warehouse during the month shall be paid:

- (i) by the 6<sup>th</sup> day of the following month, if the duty is paid electronically through internet banking;
- (ii) by the 5<sup>th</sup> day of the following month in any other case;
- (iii) by the 31<sup>st</sup> day of March in the case of goods removed during the month of March.

However, in case of an assessee availing the exemption under a Notification based on the value of clearances in a financial year (SSIs), the duty on goods cleared during a calendar month shall be paid:

- (i) by the 16<sup>th</sup> day of the following month, if the duty is paid electronically through internet banking;
- (ii) by the 15<sup>th</sup> day of the following month in any other case;
- (iii) by the 31<sup>st</sup> day of March in the case of goods removed during the month of March.

**E-payment of duty** : With effect from 01.04.2007, e -payment has been made mandatory for payment of duty by all assessees who have paid excise duty of rupees 50 lakh or more in cash during the preceding financial year.

Explanation - For the purpose of this rule, -

- (a) the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.
- (b) if the assessee deposits the duty by cheque, the date of presentation of the cheque in the bank designated by the Central Board of Excise & Customs for this purpose shall be deemed to be the date on which the duty has been paid subject to the realisation of that cheque

Sub-rule (1A) provides that in case of goods removed from the State of Gujarat during the second fortnight of February, 2002 and the month of March, 2002 duty shall be paid by the

31<sup>st</sup> March, 2002. For units (located in the state of Gujarat) availing the benefit of exemption under a notification based on the value of clearances, the duty on goods cleared during the month of February, 2002 shall be paid by the 31<sup>st</sup> March, 2002. Further, it is clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.

The duty of excise shall be deemed to have been paid on the excisable goods removed in the manner provided under sub-rule(1) and the credit of such duty allowed, as provided by or under any rule[Sub-rule(2)].

Sub-rule 3 lays down that if the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AB of the Central Excise Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

Sub-rule (3A) provides that if the assessee defaults in payment of duty beyond 30 days from the due date then he shall pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit. He shall continue to pay duty consignment-wise (from PLA) till the date he pays the outstanding amount including interest thereon. In the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

Sub-rule (4) lays down that the provisions of section 11 of the Act shall be applicable for recovery of duty as assessed under rule 6 and the interest under sub-rule (3) in the same manner as it is applicable for recovery of any duty or other sums payable to the Central Government.

The explanation after rule 8(4) provides that for the purposes of payment of duty, the expressions 'duty' or 'duty of excise' shall also include the 'amount' payable in terms of the CENVAT Credit Rules, 2004. Therefore, all 'amounts' payable (like payment under rule 6(3) of the CENVAT Credit Rules, 2004 etc.) should be paid along with duty payable by 5<sup>th</sup> or 15<sup>th</sup> of the next month.

Rule 8A provides that in case of the certain specified goods the duty liability for the goods removed during the period from 1<sup>st</sup> March 2002 to 31<sup>st</sup> May 2002, shall be paid by the 15<sup>th</sup> day of June, 2002.

#### **5.5.1 Duty payment under protest**

Sometimes it happens that the classification and assessable value of goods determined by the excise authorities are not agreeable to or acceptable to the assessee. In such cases,

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the assessee can file an appeal and in the meanwhile he can pay duty under protest if no stay is obtained from Appellate Authorities.

Section 11B of the Central Excise Act, 1944 provides that the time limit of one year for claiming refund of excise duty shall not apply where the duty has been paid under protest.

As per the Supplementary Instructions issued by Central Board of Excise and Customs, any assessee who desires to pay duty under protest, may do so by following the procedure mentioned below:

- (a) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and dated acknowledgement will be given to him.
- (b) The assessee shall mark invoices or monthly/quarterly returns indicating the goods on which duty is paid 'under protest'. If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the Personal Ledger Account, CENVAT Account and the Daily Stock Account.
- (c) If a case is appealed against by the assessee or where the appeal period for further appeal is available, he may continue to pay duty under protest. However, if decision is not in his favour and he exhausts the appellate remedy or does not appeal within stipulated period, he shall not have any right to pay duty under protest.

### 5.5.2 Removal of Goods at concessional rate of duty for manufacture of excisable goods

Under Notification No.34/2001-C.E. (N.T.) dated 21.6.2001 the Central Excise (Removal Of Goods At Concessional Rate Of Duty For Manufacture Of Excisable Goods) Rules, 2001 has been issued by the Central Government.

- Under Rule 3 of the said Rules, a manufacturer who intends to receive the specified goods at concessional rate of duty, is required to make an application in quadruplicate in the specified form to the jurisdictional central Excise authorities. However, he is required to make separate application in respect of each supplier of subject goods.
- Further the manufacturer is required to execute a general bond with surety or security to cover the recovery of duty liability estimated to be involved at any given point of time.
- The application shall be countersigned by the jurisdictional authorities certifying that the manufacturer has executed the required bond.
- Of the four copies of application, one copy shall be forwarded to the jurisdictional range superintendent of the manufacturer of the subject goods and two copies shall be handed over to the applicant manufacturer and one copy shall be retained by the Assistant / Deputy Commissioner of Central Excise.

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- Under Rule 4 the manufacturer of the goods can avail the exemption from duty based on the above referred application.
- The manufacturer receiving the above goods is required to maintain the simple account indicating the quantity and value of subject goods received, consumed and quantity remaining in stock. Further he is also required to submit a monthly return in the specified form.
- If the material received at concessional rate of duty is not used for intended purpose, manufacture is liable to pay differential duty along with interest. Provisions of Section 11A and section 11AB shall apply mutatis mutandis for effecting such recoveries.
- If the manufacturer on receiving the subject goods finds them to be defective or damaged or unsuitable or surplus to his needs, he may return the subject goods to the original manufacturer of the goods. Such returned goods shall be added to the non duty paid stock of the manufacturer of the subject goods and dealt with accordingly.
- If the goods are lost or destroyed by natural causes or by unavoidable accident during transport from place of procurement to the manufacturer's premises or from place of manufacturer to the place of procurer (if goods are returned) during handling or storage in the manufacturer's premises, it will not be treated as used for intended purpose'. Consequently, differential duty and interest will become payable.

### 5.6 REGISTRATION [RULE 9]

For the administration of the Central Excise Act, 1944 and the Central Excise Rules, 2002 manufacturers of excisable goods or any person who deals with excisable goods with some exceptions, are required to get the premises registered with the Central Excise Department before commencing business.

**5.6.1 Persons requiring registration :** In accordance with Rule 9 of the Central Excise Rules, 2002 read with section 6 of Central Excise Act, 1944 and Notifications issued thereunder, the following category of persons are required to register with jurisdictional Central Excise Officer in the Range office having jurisdiction over his place of business/factory:

- i. Every manufacturer of excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations) on which excise duty is leviable.
- ii. First stage or second stage dealers (including manufacturer's depot and importers) desiring to issue cenvattable invoices.
- iii. Persons holding private warehouses for storing non-duty paid goods.
- iv. Persons who obtain excisable goods for availing end-use based exemption notification.

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- vi. Exporters manufacturing or processing export goods by using duty paid inputs and intending to claim rebate of such duty **or** by using inputs received without payment of duty and exporting the finished export goods.

Separate registration is required in respect of separate premises of an entity except in cases where two or more premises are actually part of the same factory (where processes are interlinked), but are segregated by public road, canal or railway-line. However, in case of:

- (a) textile and textile articles falling under Chapter 50 to 63 and
- (b) *compressed natural gas falling under heading 2711 of the Central Excise Tariff*

a person can obtain single registration for more than one premises if all the premises fall within the jurisdiction of one Commissioner.

According to the Boards instruction issued on 1<sup>st</sup> Sep 2001, the fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:

1. Interlinked process – products manufactured/produced in one premises are substantially used in other premises for manufacture of final products.
2. Large number of raw materials are common and received/proposed to be received commonly for both/all the premises
3. Common electricity supplies.
4. There is common labour /work force
5. Common administration/ works management.
6. Common sales tax registration and assessment
7. Common Income Tax assessment

Any other factor as may be indicative of inter-linkage of the manufacturing processes.

This is neither an exhaustive list of indicators nor each indicator is necessarily in each case. The Commissioner has to decide the issue from case to case.

Registration Certificate may be granted to minors provided they have legal guardians i.e. natural guardians or guardians appointed by the Court, as the case may be, to conduct business on their behalf.

**5.6.2 Exemption from Registration:** Rule 9(2) gives power to the Board to issue the notification for giving exemption from registration subject to the conditions and safeguards. Accordingly the Central Board of Excise and Customs (CBEC), by Notification No. 36/2001-CE (NT) dt.26.6.2001, has exempted the following specified categories of persons/premises

from obtaining registration

- i. Persons who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by a notification subject to the declaration to be made in the specified form.
- ii. Small scale units availing the slab exemption based on value of clearances under a notification. However, such units will be required to give a declaration in a specified form once the value of their clearances touches Rs.40 lakhs.
- iii. In respect of final products falling under Chapter 61 or 62 the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability.
- iv. Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to the following conditions:
  - a. the said excisable goods and any intermediary or by-product including the waste and refuse arising during the process of manufacture of the said goods under the Customs Bond are either destroyed or exported out of the country to the satisfaction of the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, in charge of the Customs Bonded Warehouse;
  - b. the manufacturer shall file a declaration in the specified form in triplicate for claiming exemption under this notification;
  - c. no drawback or rebate of duty of excise paid on the raw materials or components used in the manufacture of the said goods, shall be admissible.
- v. The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2004).
- vi. A hundred per cent Export Oriented Undertaking or a unit in Export Processing Zone or a unit in Special Economic Zone licensed or appointed, as the case may be, under the provisions of the Customs Act, 1962. These units are deemed to be registered for the purpose of rule 9.

However, such 100% EOU or a unit in EPZ shall not be deemed to be registered if such undertaking or unit procures excisable goods from the domestic tariff area or removes excisable goods to the domestic tariff area.
- vii. Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification.

**5.6.3 Application for Registration :** Under authority of section 6 of the Central Excise Act, 1944 read with rule 9 of the said Rules, the CBEC has prescribed the format for Application as well as Registration Certificate. The application has to be made to the jurisdictional Central Excise Officer in Form E-1.

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The application for registration should be signed by:

- i. The applicant or by his authorised agent having general power of attorney. The Range Officer shall have power to call the original documents to verify 'power of attorney'. Such document shall not be retained by the Range Officer but be returned immediately after verification.
- ii. In case of unregistered partnership firms, by all partners.
- iii. In case of registered partnerships, by the managing partner or other partner so authorised in the Partnership Deed.

In the application for Registration, the applicant has to submit ground plan. Under the Central Excise Rules, 2002, there is no stipulation of any specified marked area for storing the finished goods (traditionally called the 'bonded store room'). Thus there is no need for marking such area in the ground plan. As per the instruction of the Board, the only verification that the jurisdictional officers should conduct are that the premises mentioned in the application for registration, are genuine and are intended for the purposes for which the application has been made.

Assessee, however, shall be responsible for proper storage and accountal of goods manufactured in his factory at any point of time.

**5.6.4 Filing of Declaration in lieu of registration :** When a manufacturer who is exempt from the registration is required to file a declaration, the same will be filed with the Assistant Commissioner of the jurisdictional Central Excise Division.

The manufacturers who are exempted from the operation of Rule 9 by virtue of Notification no. 36/2001-Central Excise (NT) dt.26/6/2001 have to file a declaration with the Assistant Commissioner of the respective Divisions. Such declarations received from the assessee will have to be filed separately, tariff head-wise in the divisional office.

As per the Board's guidelines issued on 1<sup>st</sup> September, 2001, genuine delay in filing the required declaration need not be viewed seriously and the assessee may be allowed to enjoy the exemption from the operation of Rule 9 as well as from the payment of duty provided the conditions stipulated in the respective exemption Notifications have been duly fulfilled.

**5.6.5 Procedure of issue of Registration Certificate :** The Inspector or Superintendent of Central Excise having jurisdiction over the premises shall make the verification in respect of which the applicant has sought registration within 5 working days of the receipt of application. As per the rules/notification, the registration certificate shall be issued within 7 working days.

As per the Board's guidelines, the Range Officer (Superintendent) either himself or through the Inspector shall verify whether the declared address and operations (intended) are

genuine and the declarations made in the application are correct. If it is found in order, he will endorse the correctness of the same and append his dated signature on the office copies of the Registration application and the copy of the application with the registrant. If any deviations or variations are noticed during the verification, the same should be got corrected. Any major discrepancy, such as fake address, non-existence of any factory etc. shall be reported in writing to the Divisional Officer within 3 working days and the Range Officer shall initiate action to safeguard revenue.

**5.6.6 Issue of Registration Certificate:** All registrations of each type should be numbered in a single series for the Range as a whole, commencing with serial no. 1 for each calendar year. The issuing authority should make every effort to complete all formalities and grant the Registration Certificate within 7 days of receipt of application in his office. Every Registration Certificate granted / issued by the registering authority shall be under his signature. He should also countersign the ground plan accompanying the Registration Certificate. The Registration Certificate and the duplicate copy of the plan should be returned to the registered person who shall exhibit his Registration Certificate or a certified copy thereof in a conspicuous part of the registered premises. The Registering authority in a permanent file shall keep the application as well as the ground plan.

In case of partnership firms, the Registration Certificate which is granted in the name of the said firm [which is registered or not under the Partnership Act] shall contain the names of all the partners.

The Registration Certificate or a certified copy thereof is required to be exhibited in a conspicuous part of the registered premises.

**5.6.7 Period of validity of registration:** Once Registration Certificate is granted, it has a permanent status unless it is suspended or revoked by the appropriate authority in accordance with law or is surrendered by the person or company concerned. If the person who applies for registration with the department is an individual, then the Certificate would cease to be valid in the event of the death of the said individual. Any other person who wishes to continue with the operations for which the deceased person was registered, would then have to apply afresh as per the notification no. 35/2001 – CE (NT) dt. 26.06.2001

In the case of limited company, death of a director would not affect the status of registration, since registration is issued to the body corporate recognizing the same as a legal person. In the case of partnership firms also normally no difficulty would arise with regard to succession, since the surviving partners will continue either in the same name or with the change of name of the business. However, in the case of proprietary business when the proprietor dies, the successor in estate has to apply for a fresh registration. Ordinarily fresh registration would be issued to the person who happens to be in the actual possession of the business. However, grant of fresh registration to the successor in estate shall not be regarded that the Government has accepted the said person as the legal successor/heir to the deceased.

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### 5.6.8 Surrender, Cancellation, Suspension or Revocation of Registration :

Registration Certificate may be surrendered as per application in prescribed form. This is subject to compliance of the statutory obligations under the excise law, particularly the payment of all dues to the Government including the duty on finished excisable goods lying in the factory/warehouse. In case of mis-declaration regarding compliance, the surrender of registration shall not be valid.

The Registering authority may cancel Registration Certificate when the registered person voluntarily surrenders the Certificate due to closure of business.

Registration Certificate may be revoked or suspended by the Deputy/Assistant Commissioner of Central Excise, if the holder or any person under his employ has committed a breach of any condition of the Central Excises Act or the rules made thereunder or has been convicted of an offence under Section 161 read with section 109 or Section 116 of the Indian Penal Code [45 of 1860].

Suspension or revocation of the registration is a heavy punishment since it amounts to suspending or stopping the business and could result in grave damage to the person concerned. Hence this penalty should be resorted to only in cases where there is persistent misdemeanor involving serious loss of revenue.

Though technically, a registration Certificate can be suspended or revoked by the issuing authority, the power to revoke or suspend the Registration is vested only with the Deputy/Assistant Commissioner. In case of suspension or revocation, the Range Officer should refer the matter to the Deputy/Assistant Commissioner who will pass appropriate orders after affording a reasonable opportunity. Appeal against this order lies with the Commissioner [Appeals] and this should be specifically spelt out in the order -in-original of the Deputy/Assistant Commissioner (Preamble).

**5.6.9 Lost Registration Certificates :** When a Registration Certificate is reported to be lost, the registered person shall submit a written application to the Range Officer for issuing a DUPLICATE REGISTRATION CERTIFICATE. The same shall be issued after making necessary entries in the record or logs in the computer data.

An importer who intends to issue invoice under Cenvat Credit Rules will have to Register himself in the manner specified earlier.

**5.6.10 Procedure for Assessee :** The Registration Procedure can be summed up from the angle of the assessee as follows.

1. **Form A-1:** The applicant should file an application in **Form A-1** to the jurisdictional Superintendent of Central Excise properly signed.
2. **Ground Plan:** The application should be accompanied by the ground plan of the premises of the factory. There is no necessity of clear demarcation of the boundaries,

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storeroom, production area as required under old rule 174 of CER, 1944.

3. **Manufacturing Process:** The applicant **may** also enclose a brief write up on the manufacturing process for his products starting from receipt to dispatch for future benefits and avoiding future confusion.
4. **Documents:** The 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 specifies this requirement]**
5. **Tariff Classification:** The tariff classification of the excisable goods, which are going to be manufactured, is also required to be given in the form A-1.
6. **Registration Grant:** The Superintendent of Central Excise shall grant the Registration Certificate in specified form containing registration number within 7 days from the receipt of the duly completed application after conducting the inspection within 5 days from the receipt of application.
7. **Certificate Exhibit:** The certificate of registration or its certified copy should be exhibited in a conspicuous part of the premises.
8. **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.
9. **Surrender of Registration Certificate:** The assessee can surrender his registration certificate by applying in the specified form after fulfilling his obligations under this Act.
10. **Lost Certificate:** The assessee can give a written application for losing the registration certificate upon which a duplicate registration certificate will be issued.

### 5.7 RECORDS [RULE 10]

Prior to April 2000, the rules had prescribed the records to be maintained, referred to as 'Statutory records'. The statutory records under Central Excise Rules, 1944 were dispensed with in the year 2000 and it was decided to rely on private records of the assessee which they usually maintain for their activities. This was done as a measure of simplification and for adopting a common accounting system. While framing the Central Excise (No.2) Rules, 2001, Cenvat Credit Rules, 2001 and subsequently, the new 2002 Rules issued under Central Excise Act, 1944, the Government has continued with the policy of relying on the private records of the assessee.

The main features of the acceptance of private records are as below: -

- i. The fact that the rules do not prescribe 'statutory records' shall not be construed that no record has to be maintained. Every assessee has to compulsorily maintain private records.

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- ii. The rules which require certain records to be maintained are self contained and they specify the minimum information that an assessee MUST enter in their own record by which the assessee has to decide himself as to the form in which they are going to maintain such information.
- iii. There is no format for record-keeping, except in the case of Rule 17 of the said Rules where it is provided that the 100% EOU unit or a unit in FTZ/SEZ shall maintain in proper form appropriate account relating to production, description of goods, quantity removed, duty paid and each removal shall be made on an invoice. This format has been notified by *Notification No. 59/2001-Central Excise (N.T.) dated 6<sup>th</sup> August, 2001*.
- iv. This means that the assessee is free to devise his record-keeping, depending upon his accounting requirements but shall ensure that the requirements of particular rules are met.
- v. There is a specific requirement about maintenance of 'Daily Stock Account' in Rule 10 of the Central Excise Rules, 2002. It provides that every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding
  - a. description of the goods produced or manufactured,
  - b. opening balance, quantity produced or manufactured,
  - c. inventory of goods,
  - d. quantity removed,
  - e. assessable value,
  - f. the amount of duty payable; and
  - g. particulars regarding amount of duty actually paid.

The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent. All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.

- vi. There is no requirement of 'authentication' of records by jurisdictional Central Excise Officer before a book/register is brought into use by an assessee. These records (relevant for Central Excise) shall, however, be authenticated on the first and last page by the assessee in the same manner as the Daily Stock Account. They shall also be preserved for a period of five years immediately after the financial year to which such records pertain.
- vii. Every assessee is statutorily required to furnish to the Range Officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in

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regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods.

- viii. Every assessee shall, on demand make available to the Range officer duly empowered by Commissioner or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India,-
- a. the records maintained or prepared by him in terms of sub-rule (2) of rule 22 of the said Rules;
  - b. the cost audit reports, if any, under section 233B of the Companies Act, 1956; and
  - c. the Income-tax audit report, if any, under section 44AB of Income-tax Act, 1961;
- for the scrutiny of the officer or audit party, as the case may be.
- (ix) Every assessee who is having more than one factory, and maintains separate records in respect of every factory for the purpose of audit, shall produce the said records for audit purposes.

Records shall mean all the records prepared or maintained by the assessee for accounting of transactions with regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods. All accounts, agreements, invoice, price-list, return, statement or any other source document, whether in writing or in any other form shall be treated as records. Source documents are those documents which form the basis of accounting of transactions and include sales invoice, purchase invoice, journal voucher, delivery challan and debit or credit note.

Under Rule 22, every assessee is required to furnish the list of all records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of goods including inputs and capital goods. If there is any modification in the list, the same may be communicated to the Department as and when such modification takes place.

Non-maintenance of daily stock account as contemplated under rules or other information mentioned in other rules mentioned above by the assessee in his private records will mean contravention of specified rules attracting appropriate penal action. If such non-maintenance of records is with intent to evade payment of Central Excise duty, the more stringent penal provisions of the Central Excise Act and Central Excise Rules shall be attracted.

The private records relevant for Central Excise including the Daily Stock Account maintained in compliance with the provisions of the said Rules shall necessarily be kept in the factory to which they pertain.

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### **5.8 ELECTRONIC MAINTENANCE OF RECORDS AND PREPARATION OF RETURNS AND DOCUMENTS**

Any person may electronically maintain or generate all or any of the records, returns, invoices and other documents prescribed under the rules made under Central Excise Act, 1944, using a computer, in electronically readable format. No specific permission from the Central Excise Department is required for this purpose. Such person is also not required to give any intimation to the Department.

However, the department will record in "Scrutiny Register" or any other record indicating a person's profile the fact that such person is electronically maintaining records or generating returns, invoices or other documents, using computer.

The records can be kept on any electronic media, such as hard disk of computers, floppies, CDs or tapes and preserved.

The records, returns and documents should be in electronically readable format. This also means that a person who uses computerized system to generate records/books of accounts, returns etc., must keep the electronic record, even when a hard copy is kept.

It is suggested to take the printouts (hard copies) of records and documents at the end of each month and kept in bound folders, separately for each type of record, return, documents etc.

The person should ensure that proper back-up records are also maintained and preserved so that in the event of destruction due to unavoidable accidents or natural causes, the information can be restored within reasonable period of time. All such records, returns, invoices and other documents (both electronic and hard copy, including back-ups) shall be preserved for a period of five years (counted from the first day of the financial year following the financial year to which a record, return, invoice or document pertains).

It shall be incumbent upon a person (who maintains electronic records, returns, documents etc.) to produce, on demand, the relevant records, returns or documents, in hard copy and/or in the form of tapes or floppies or cartridges or compact disk or any other media in an electronically readable format (duly authenticated by the assessee), documentation including policy and procedure manuals, instructions to record the flow and treatment of transactions through accounting system, from the stage of initiation to closure and storage to the Central Excise Officers, or the audit parties deputed by the Commissioner or the Comptroller and Auditor General of India. Such records, returns, invoices or other documents will be produced pertaining to such period (subject to the period of preservation) as may be requested including the daily entries in electronic format relating to the current month for which the printouts are not taken out.

He shall also provide account of the audit trail and inter-linkages including the source document, whether paper or electronic, and the financial accounts record layout, data

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dictionary and explanation for codes used and total number of records in each field alongwith sample copies of documents. Whenever changes are made in the aforesaid systems adopted by the assessee, he shall inform the Central Excise Officers and submit the relevant document.

In case any person is found to be misusing this facility or not providing access to the information or if there are any other cogent reasons, the Assistant Commissioner or the Deputy Commissioner of Central Excise may, after recording such reasons and after taking into consideration the explanation tendered by the person regarding the discrepancies, if any, prohibit a person from electronically maintaining or generating any records, returns, invoices or other documents using computer and inform the immediate superior officer.

### 5.9 INVOICING [RULE 11]

An invoice is the document under cover of which the excisable goods are to be cleared by the manufacturer. This is also the document which indicates the assessment of the goods to duty. No excisable goods can be cleared except under an invoice. The invoice is the manufacturer's own document and though the Department has specified the entries thereon, the format etc. is left to the manufacturer's choice. The provisions of this rule shall apply *mutatis mutandis* to goods supplied by a first stage dealer or a second stage dealer.

However, where a first stage dealer receives imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under section 3(5) of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of the additional duty levied under 3(5) of the Customs Tariff Act, 1975 shall be admissible.

The second stage dealer shall also make the similar indication on the invoice issued by him when he resells the imported goods on which credit of additional duty of customs levied under section 3(5) of the Customs Tariff Act, 1975 is not admissible.

**5.9.1 Removals only on invoice :** Rule 11 of the Central Excise Rules, 2002 provides that no excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorised agent.

However, textile yarns, fabrics and readymade garments can be cleared on proforma invoice. No duty is payable on such invoice but the manufacturer should prepare the final invoice within five days after making adjustments of goods rejected and returned by the buyer. Such a period of five days can be extended to 21 days with the permission of commissioner. The final invoice and proforma invoice should have cross reference to each other.

In case of cigarettes, which are under physical control, the Factory Officers are posted by rotation in the factory. If the factory is operational 24 hours, the officers are posted 24

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hours. They check the operations of the assessee as per instructions. Each invoice has to be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory.

**5.9.2 Serially numbered invoice:** As per Rule 11, the invoice shall be serially numbered and shall contain the registration number, address of the jurisdictional Central Excise Division, name of consignee, description, classification, time and date of removal, rate of duty, quantity, mode of transport, vehicle registration number and value of goods and the duty payable thereon. In case of a proprietary concern or a business owned by Hindu Undivided Family, the name of the proprietor or Hindu Undivided Family, as the case may be, shall also be mentioned in the invoice.

The serial number shall commence from 1<sup>st</sup> April every year [beginning of a financial year]. The serial number can be given at the time of printing or by using franking machine. But when the invoice book is authenticated in the manner specified in sub-rule (5) of rule 11, each leaf should contain serial number. Hand written serial number shall not be accepted.

In case of computer-generated invoice, the serial number may be allowed to be generated and printed by computer at the time of preparation of invoice only if the software is such that computer automatically generates the number and same number cannot be generated more than once. For this purpose, the Central Excise Officers may check the system/software from time to time.

### 5.9.3 Number of invoice copies

The invoice shall be prepared in triplicate in the following manner, namely:-

- i. the original copy being marked as ORIGINAL FOR BUYER;
- ii. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER;
- iii. the triplicate copy being marked as TRIPLICATE FOR ASSESSEE.

However, the assessee may make more than three copies for his other requirements. But it is suggested by the Board to mark on them prominently "NOT FOR CENVAT PURPOSES".

**5.9.4 Number of Invoice book :** Rule 11 of the said Rules provides that only one invoice book shall be in use at a time, unless otherwise allowed by the Deputy/Assistant Commissioner of Central Excise in the special facts and circumstances of each case. But if assessee requires two different invoice books for the purposes of removals for home-consumption, and removals for export they may do so by intimating the jurisdictional Deputy/Assistant Commissioner of Central Excise. No permission is required to use two different invoice books for home consumption and export.

Wherever an assessee is allowed to keep more than one invoice book, he should be asked to keep different numerical serial numbers for the different sets. In case of running

stationary used in computers, the bound book shall not be insisted upon provided the stationary is pre-printed with distinctive names and marks of the assessee. After the invoices are prepared, the triplicate copy shall be retained in bound-book form. Where invoices are to be type written, the leaves have to be first taken out from the book for typing. In such cases also the triplicate copy shall be retained in bound-book form.

**5.9.5 Authentication of Invoices :** The reading of the rule 11 provides that the owner or working partner or Managing Director or Company Secretary has to authenticate each foil of the invoice book, before being brought into use. However, the Board has relaxed this due to the difficulty faced by the assessee. It is now provided that any person duly authorised in this regard by the company, owner or working partner may also authenticate invoices. Copy of the letter of authority should be submitted to the Range Officer before doing so.

**5.9.6 Intimation of serial numbers :** Before making use of the invoice book, the serial numbers of the same shall be intimated to the Superintendent of Central Excise having jurisdiction over the factory of the assessee. This can be done in writing by post/e-mail/fax/hand delivery or any other similar means.

**5.9.7 Rounding off of duty in invoice :** The amount of duty being shown in invoices issued under Rule 11 of the said Rules should be rounded off to the nearest rupee as provided for under section 37D of the Central Excise Act, 1944 and the duty amount so rounded off should be indicated both in words as well as in figures.

**5.9.8 Cancellation of invoices :** As per the Board's guidelines, when an assessee is compelled to cancel invoice, the following actions should be taken:-

- i. Intimation of a cancelled invoice should be sent to the Range Superintendent on the same date, whenever possible. However, in case of exceptional circumstances beyond the control of the assessee, should this not be possible, the intimation should be sent on the next working day;
- ii. Along with the intimation of the cancelled invoice sent to the Range Superintendent the original copy of the cancelled invoice should also be sent.
- iii. Triplicate copy of the cancelled invoice may be retained by the assessee in the invoice book so that the same can be produced whenever required by audit parties, preventive parties and other visiting officers.

However the new rules do not speak of any procedure to be adopted for the cancellation of invoices as in the case of old rules. Therefore the question arises as to whether the Board can issue a method not warranted either by the Act or Rules.

**5.9.9 Procedure of transshipment of goods *en route* final destination :** The transshipment of goods from one vehicle to other vehicle(s) *en route* the destination(s) can be of two categories:-

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- (a) Where the entire quantity is transhipped from one vehicle to another vehicle, which may be on account of—
  - (i) Breakdowns;
  - (ii) Non-availability of inter-state transport permit.
- (b) Where the consignment originally cleared on an invoice issued under Rule 11, is required to be split up *en route* for transport by different vehicles on account of -
  - i. breakdown of the original vehicle and non-availability of the substitute vehicle of the appropriate capacity, or
  - ii. requirement of splitting up of the consignment and loading in vehicle other than the vehicle on which goods were cleared from the factory, or
  - iii. part consignment/package(s) misplaced during transhipment, but recovered later on.

Regarding category (a) and (b), the owner of goods or his agent or the person in charge of the vehicle, at the material time, acting as his agent, shall make a suitable endorsement at the back of the transport's copy of the invoice accompanying the consignment indicating the date and time of breakdown of the vehicle and the registration number of the new vehicle in which the consignment is re-loaded.

In cases of splitting up and transhipment on account of any other reason, including pre-determined distribution of goods from an intermediate point, the assessee should be prepared separate invoice for each lot. At the intermediate point, the owner of goods or his agent or the person in charge of the original vehicle shall endorse the registration number of the new vehicle. Upon receipt of goods in the factory, the assessee shall confirm by endorsing on the invoice that the goods were received in the factory in the specified vehicle.

## 5.10 RETURNS [RULE 12]

The Central Excise Rules, 2002 provide that the assessee shall be required to file certain periodic returns, which relate to his tax liability and other transactions, such as relating to CENVAT credit .

**5.10.1 Monthly return:** Every assessee shall submit to the Superintendent of Central Excise a **monthly** return of production and removal of goods and other relevant particulars within 10 days after the close of the month to which the return relates. The return shall be filed in the prescribed Form (ER-1). [Rule 12(1)]

**5.10.2 Monthly statement for pan masala manufacturers:** An assessee, manufacturing pan masala falling under tariff item 2106 90 20 or pan masala containing

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tobacco falling under tariff item 2403 99 90, shall also file a statement along with the monthly return. The statement shall contain the monthly summary of-

- (i) the purchase invoices for the month with the names and addresses of the suppliers of betel nut, tobacco and packing material along with the quantity of the said goods purchased; and
- (ii) the sales invoices for the month with the names and addresses of the buyers, description, quantity and value of goods sold by the assessee.

In cases where the goods are not sold from the factory, the address of the premises to which the goods are dispatched from the factory shall also be provided. [First proviso to Rule 12(1)]

**5.10.3. Quarterly return:** As per the second and third provisos to rule 12(1), the following assesses shall file a **quarterly** return of production and removal of goods within 20 days after the close of the quarter to which the return relates:

- (i) assessee availing the exemption under a notification based on value of clearances in a financial year (SSI); or
- (ii) assessee manufacturing processed yarn, unprocessed fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 of First Schedule to the Tariff Act; or
- (iii) assessee manufacturing readymade garments falling under Chapter 61 or 62 of First Schedule to the Tariff Act, which prior to 1st day of April, 2003 were eligible for an exemption under a notification based on value of clearances in a financial year.
- (iv) assessee availing the benefit of exemption under *Notification No. 49/2003 CE dated 10.06.2003* or *Notification No. 50/2003 CE dated 10.06.2003* (*Notification Nos. 49 and 50/2003* grant exemption to goods produced in Uttranchal and Himachal Pradesh).

The return shall be filed in the prescribed form [ER-3]. The due dates for quarterly return are given in the following table:

| Clearances for SSI & textile articles | Due date                    |
|---------------------------------------|-----------------------------|
| First Quarter of the year             | 20 <sup>th</sup> of July    |
| Second Quarter of the year            | 20 <sup>th</sup> of October |
| Third Quarter of the year             | 20 <sup>th</sup> of January |
| Fourth Quarter of the year            | 20 <sup>th</sup> of April   |

**5.10.4 Annual financial information statement:** Every assessee shall submit to the Superintendent of Central Excise, an Annual Financial Information Statement for the preceding financial year to which the statement relates in the prescribed form (ER 4) by 30<sup>th</sup> day of November of the succeeding year. The Central Government may, by notification, and subject to such conditions or limitations as may be specified in such notification, specify

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assessee or class of assessee who may not require to submit such an Annual Financial Information Statement. [Rule 12(2)]

The following have been exempted by the Central Government from filing of such annual information return:

- (i) assessee who pay less than Rs.100 lakhs as excise duty during the financial year to which the Annual Financial Information Statement relates;
- (ii) Indian Ordnance Factories, Department of Defence Production and Ministry of Defence.

**5.10.5 Annual Installed Capacity Statement:** *As per rule 12(2A) every assessee shall submit to the Superintendent of Central Excise, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates by the 30<sup>th</sup> April of the succeeding financial year. However, the Central Government may specify assessee or class of assessee who may not require to submit such an Annual Installed Capacity Statement. The statement shall be filed in Form ER-7.*

**5.10.6 Scrutiny of return:** The proper officer may on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board [Rule 12(3)]. Sub-rule 4 casts a responsibility on every assessee to make available to the proper officer all the documents and records for verification as and when required by such officer.

**5.10.7 Documents accompanying the return:** The assessee has to submit along with the E.R.-1 and E.R.-3 returns for the month/quarter, as the case may be, copies of the PLA and relevant TR6 challans. The PLA extracts will give details of all the credits made through TR6 challans during the month and upto the 5<sup>th</sup> of the following month upto which the duty liability can be discharged for the month. A summary could also be put at the end of the PLA extracts indicating the following:

- a. opening balance, after discharging the duty liability of the previous month;
- b. the credits made during the month and upto the 5<sup>th</sup> of the following month;
- c. total duty discharged during the month;
- d. closing balance in the PLA after discharging the duty liability.

The units in the SSI sector could suitably modify this summary, as they are required to pay duty on monthly basis.

Return to be filed by Hundred per cent Export Oriented Undertaking/Units in Special Economic Zones is the E.R.2 Return, notified by *Notification No. 49/2001-Central Excise (N.T.) dated 26.6.2001.*

### 5.11 JOB WORK IN ARTICLE OF JEWELLERY [RULE 12AA]

(1) Every person (except an export-oriented unit or a unit located in special economic zone) who gets article of jewellery falling under heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985 produced or manufactured on his behalf, on job work basis, (hereinafter referred to as "the said person") shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee.

However, the job worker may, at his option, agree to obtain registration, maintain accounts, pay the duty leviable on such goods, prepare the invoice and comply with the other provisions of these rules and in such a case the provisions of these rules shall not apply to the said person.

(2) If the said person desires clearance of excisable goods for home consumption or for exports from the premises of the job worker, he shall pay duty on such excisable goods and prepare an invoice, in the manner referred to in rules 8 and 11 respectively except for mentioning the date and time of removal of goods on such invoice.

(3) The original and the duplicate copy of the invoice so prepared shall be sent by him to the job worker from whose premises the excisable goods after completion of job work are intended to be cleared, before the goods are cleared from the premises of the job worker.

(4) The job worker shall fill up the particulars of date and time of removal of goods before the clearance of goods and after such clearance the job worker shall intimate to the said person, the date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.

(5) The said person may supply or cause to supply to a job worker, the following goods, namely:-

- (a) inputs in respect of which he may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2004, without reversal of the credit thereon; or
- (b) goods manufactured in the factory of the said person without payment of duty; under a challan, consignment note or any other document (herein referred to as 'document') with such information as specified in sub-rule (2) of rule 11 of the Central Excise Rules, 2002, duly signed by him or his authorised agent.

(6) The responsibility in respect of accountability of the goods, referred to in sub-rule (5) shall lie on the said person.

(7) The job worker shall not be required to get himself registered or shall not be required to maintain any record evidencing the processes undertaken for the sole purposes of undertaking job work under these rules unless he has exercised his option to do the same.

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- (8) The job worker, with or without completing the job work may,-
- (i) return the goods without payment of duty to the said person; or
  - (ii) clear the goods for home consumption or for exports, subject to receipt of an invoice from the said person, as mentioned in sub-rule (4).
- (9) The job worker shall clear the goods after filling in invoice the time and date of removal and authentication of such details. The rate of duty on such goods shall be the rate in force on date of removal of such goods from the premises of the job worker and no excisable goods shall be removed except under the invoice.

For the purpose of this rule, "job worker" means a person engaged in manufacture or processing on behalf and under the instructions of the said person from any inputs or goods supplied by the said person or by any other person authorized by the said person, so as to complete a part or whole of the process resulting ultimately in manufacture of articles of jewellery falling under heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985, and the term "job work" shall be construed accordingly.

Article of jewellery shall mean articles of jewellery on which brand name or trade name is indelibly affixed or embossed on itself. 'Brand name or trade name' means a brand name or tradename, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

It has been clarified that if any goods or part thereof is lost, destroyed, found short at any time before the clearance of articles of jewellery falling under heading 7113 of the First Schedule to the Tariff Act or waste, by-products or like goods arising during the course of manufacture of such goods, the said person shall be liable to pay duty thereon as if such goods were cleared for home consumption.

## **5.12 MAINTENANCE OF RECORDS AND PAYMENT OF DUTY BY THE INDEPENDENT WEAVER OF UNPROCESSED FABRICS [RULE 12C]**

An independent weaver of unprocessed fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58, or 60 of the First Schedule to the Central Excise Tariff Act can authorise another person to maintain accounts, pay duty, prepare invoice and comply with other provisions of these rules except Rule 9. However, the primary responsibility of complying with the provisions of these rules shall be with the independent weaver. In case of short payment or non-payment of duty on such unprocessed fabrics, the independent weaver and the authorised agent will bear the consequences and penalty.

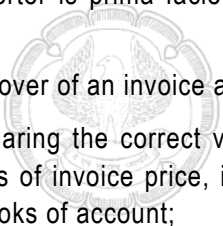
Independent weaver is defined as a weaver who works on his own, purchases the yarn

himself and sells the grey fabrics manufacture by him.

### 5.13 POWER TO IMPOSE RESTRICTIONS IN CERTAIN TYPES OF CASES [RULE 12CC]

Rule 12CC empowers the Central Government to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter. The Central Government can exercise such powers where having regard to the extent of evasion of duty, nature and type of offences or any other relevant factors, it is of the opinion that in order to prevent evasion and default in payment of excise duty, it is necessary in the public interest to impose restrictions. The nature of restrictions, (e.g. suspension of registration in case of a dealer) types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board may be specified by a notification in the Official Gazette. The provisions of this rule shall not be subject to anything contained in Central Excise Rules, 2002.

*Notification No. 32/2006 CE(NT) dated 30.12.2006* specifies that Member (Central Excise), Central Board of Excise and Customs may order for withdrawal of facilities or impose restrictions where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following,-

- 
- (a) removal of goods without the cover of an invoice and without payment of duty;
  - (b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
  - (c) taking of CENVAT credit without the receipt of goods specified in the document based on which the said credit has been taken;
  - (d) taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
  - (e) issue of excise duty invoice without delivery of goods specified in the said invoice;
  - (f) claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine.

#### **Facilities to be withdrawn and imposition of restrictions:**

The officer authorized by the Board may impose following restrictions in case of a manufacturer involved in committing any of the above-mentioned offences:

- (i) the facility of monthly payment of duties may be withdrawn and the assessee shall be required to pay excise duty for each consignment at the time of removal of goods;

### **5.30 Central Excise**

- (ii) payment of duty by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay excise duty without utilising the CENVAT credit.

It may be noted that the person against whom the order for withdrawal of facilities or imposition of restrictions has been passed may continue to take CENVAT credit but he would not be able to utilize the credit for payment of duty during the period specified in the said order.

Further, where a person is found to be knowingly involved in committing any one or more type of the above-mentioned offences for the second time or subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse. For second time or subsequent offence, the restriction specified in clauses (i) and (ii) may also be imposed.

Where a first stage or second stage dealer is found to be knowingly involved in committing the type of offence specified at clauses (d) or (e), the registration granted under rule 9 of the Central Excise Rules 2002 may be suspended for a specified period. During the period of suspension, the said dealer shall not issue any Central Excise Invoice. However, he may continue his business and issue sales invoices without showing excise duty in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.

Where a merchant exporter is found to be knowingly involved in committing the type of offence specified at clause (f), the self sealing facility for export consignment may be withdrawn whereby each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer.

Further, any other facility available to a manufacturer, first stage or second stage dealer or an exporter provided by a circular or an order issued by the Board may also be ordered to be withdrawn for a specified period.

#### **Monetary limit:**

The provisions of this notification shall be applicable only in a case where the duty or CENVAT credit alleged to be involved in the above-mentioned offences is more than Rs.10 lakhs.

#### **Procedure:**

The Commissioner of Central Excise or Additional Director General of Central Excise Intelligence, as the case may be, after examination of records and other evidence, and after satisfying himself that the person has knowingly committed the above-mentioned offence, may forward a proposal to the Chief Commissioner or Director General of Central Excise Intelligence, as the case may be, specifying the facilities to be withdrawn and

restriction to be imposed and the period of such withdrawal or restrictions, within 30 days of the detection of the case, as far as possible.

The Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, as the case may be, shall examine the said proposal and after satisfying himself that the records and evidence relied upon in the said proposal are sufficient to form a reasonable belief that a person has knowingly committed the said offences, may forward the proposal along with his recommendations to the Board. However, the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, before forwarding his recommendations, shall give an opportunity of being heard to the person against whom the proceedings have been initiated and shall take into account any representation made by such person before he forwards his recommendations to the Board.

An officer authorized by the Board shall examine the recommendations received from the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence and issue an order specifying the type of facilities to be withdrawn or type of restrictions imposed, along with the period for which said facilities will not be available or the period for which the restrictions shall be operative.

#### **5.14 SPECIAL PROCEDURE FOR PAYMENT OF DUTY [RULE 15]**

Rule 15(1) gives power to the Central Government to generally specify the goods in respect of which an assessee shall have the option to pay the duty of excise on the basis of such factors as may be relevant to production of such goods and at such rate as may be notified for this purpose by issuing the notification. Rule 15(2) also gives power to the Central Government to specify the procedure for making an application for availing of the special procedure for payment of duty, the abatement, if any, that may be allowed on account of closure of a factory during any period, and any other matter incidental thereto.

#### **5.15 RETURN OF DUTY PAID GOODS TO THE FACTORY [RULE 16]**

Rule 16 of the Central Excise Rules, 2002 deals with return of duty paid goods. The said rule is wide enough to cover all the purposes including the goods received for being re-made, refined, re-conditioned.

The rule provides that the assessee shall state the particulars of such return in his records and shall be entitled to have cenvat credit of the duty paid as if such goods are received as inputs under the Cenvat Credit Rules, 2002 and utilise this credit according to the said rules. The narrow proposition of this rule implies the applicability of this rule only to the factory where the goods were manufactured or produced.

Once the goods are returned, two propositions would follow:

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1. Where the returned goods are put through a process not amounting to manufacture;
2. Where the returned goods are put through a process amounting to manufacture

In the first situation i.e. the process not amounting to manufacture, the amount equal to the Cenvat credit availed on such goods has to be debited on removal. The manufacturer shall thereby pay an amount equal to the Cenvat credit taken. In the second situation i.e. the process conducted on such goods amounts to manufacture, duty at the rate applicable on the date of removal and on the value determined under section 4 or section 4A or 3(2) of the Act, as the case may be, has to be paid on removal of such goods. The amount paid as such shall be allowed as Cenvat credit as if it was a duty paid by the manufacturer who removes the goods.

Sub-rule (3) of Rule 16 says in the event the assessee has any difficulty, the Commissioner is empowered to resolve the same and permit the entry of the goods into the factory and the availment of Cenvat credit thereon. For this the Commissioner may, either on case to case basis by special order or to be applied to "particular type of case" by general order, impose such conditions as may be necessary for safeguarding interest of revenue.

#### **5.16 REMOVAL OF GOODS FOR JOB WORK etc. [RULE 16A]**

Rule 16A provides that any inputs received in a factory may be removed as such or after being partially processed to a job-worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfillment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.

#### **5.17 SPECIAL PROCEDURE FOR REMOVAL OF SEMI-FINISHED GOODS FOR CERTAIN PURPOSES [RULE 16B]**

The Commissioner of Central Excise may by special order and subject to conditions as may be specified by the Commissioner of Central Excise, permit a manufacturer to remove excisable goods which are in the nature of semi-finished goods, for carrying out certain manufacturing processes, to some other premises and to bring back such goods to his factory, without payment of duty, or to some other registered premises and allow these goods to be removed on payment of duty or without payment of duty for export from such other registered premises.

#### **5.18 SPECIAL PROCEDURE FOR REMOVAL OF EXCISABLE GOODS FOR CARRYING OUT CERTAIN PROCESSES [RULE 16C]**

Rule 16C provides that the Commissioner may allow a manufacturer to remove excisable goods manufactured by him for carrying out test or any process not amounting to manufacture to any other premises without payment of duty. The said other premises may

be registered or unregistered. After such tests or any such other process are carried out, the Commissioner may allow-

- (a) bringing back of such goods to the said factory without payment of duty, for subsequent clearance for home consumption or export, as the case may be, or
- (b) removal of such goods from the said other premises, for home consumption on payment of duty leviable thereon or without payment of duty for export, as the case may be:

However, this rule shall not apply to the goods known as “prototypes” which are sent out for trial or development test.

In order to ensure uniformity in the conditions to be imposed by the Commissioner, it has been clarified vide *Circular No. 844/02/2007-CX dated 31.01.2007* that the procedure prescribed under sub-rules (2),(3),(4) & (9) of rule 12AA of the Central Excise Rules, 2002 should broadly be followed in such cases. However, proper records of receipt of goods, its use, nature of activities carried out, goods processed and cleared by the said other premises should be maintained. Further, any waste/scrap arising at such other premises while carrying out the test/other processes should either be cleared on payment of duties or it should be returned back.

#### 5.19 REMOVAL OF GOODS BY A 100% EXPORT ORIENTED UNDERTAKING FOR DOMESTIC TARIFF AREA [RULE 17]

**5.19.1 Duty payment as per rule 8:** Rule 17(1) provides that where any goods are removed from a 100% EOU to domestic tariff area, such removal shall be made under an invoice in the procedure specified under rule 11. The duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8.

**5.19.2 Maintenance of appropriate accounts:** A 100% EOU is required to maintain appropriate accounts related to production in the prescribed form giving the following details:

- (i) description of goods
- (ii) quantity removed
- (iii) duty paid [sub-rule 2].

**5.19.3 Monthly return (ER-2):** Such unit is further required to submit a monthly return in the specified form (E.R. – 2) in respect of the excisable goods manufactured in, and receipt of inputs and capital goods, in the unit. The return is to be submitted to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates [sub-rule 3].

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**5.19.4 Scrutiny by the proper officer:** *The proper officer may on the basis of information contained in the return filed by the unit under rule 17(3), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board [sub-rule 4].*

**5.19.5 Furnishing of documents and records by assessee:** *Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer [sub-rule 5].*

### 5.20 POWERS OF CENTRAL EXCISE OFFICERS

Central Excise Act and Central Excise Rules, 2002 provide certain powers to the Central Excise Officers. As per section 12E, a Central Excise Officer may exercise the powers and discharge the duties conferred or imposed on any other Central Excise Officer who is subordinate to him. However, Commissioner (Appeals) can not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA (Appeals).

#### 5.20.1 Access to a registered premises [Rule 22]

(1) An officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee, and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of-

- (i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be;
- (ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and
- (iii) all the financial records and statements including trial balance or its equivalent.

(3) Every assessee, and first stage and second stage dealer shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, -

- (i) the records maintained or prepared by him in terms of sub-rule (2);
- (ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956 ; and
- (iii) the Income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 ; for the scrutiny of the officer or audit party, as the case may be.

It has been clarified that for the purposes of this rule, “first stage dealer” and “second stage dealer” shall have the meanings assigned to them in CENVAT Credit Rules, 2004.

**5.20.2 Power to stop and search [Rule 23]**

Any Central Excise Officer may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty *[Refer Chapter 8 for detailed discussion]*.

**5.20.3 Power to detain or seize goods [Rule 24]**

If a Central Excise Officer has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods *[Refer Chapter 8 for detailed discussion]*.

**5.20.4 Power to arrest [Section 13]**

Any Central Excise Officer not below the rank of Inspector of Central Excise may, with prior approval of the Commissioner of Central Excise, arrest any person whom he has reason to believe to be liable to punishment under the Central Excise Act or the rules made thereunder *[Refer Chapter 8 for detailed discussion]*.

**5.20.5 Power to summon persons to give evidence and produce documents in inquiries under this Act [Section 14]**

Any Central Excise Officer may summon any person whose attendance he considers necessary either:

- (a) to give evidence; or
- (b) or to produce a document; or
- (c) any other thing in any inquiry which he is making for any of the purposes of the Central Excise Act.

Such Central Excise Officer should be duly empowered by the Central Government for this purpose. A summons to produce documents or other things may be

- (a) for the production of certain specified documents or things; or
- (b) for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct. Further, all persons so summoned shall be bound to state the truth upon any subject in respect of which they are examined or making statements.

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They shall also be bound to produce such documents and other things as may be required:

Every such inquiry as aforesaid shall be deemed to be a “judicial proceeding” within the meaning of section 193 and section 228 of the Indian Penal Code, 1860.

### 5.21 ACCOUNT CURRENT AND PROCEDURES RELATING THERETO

**5.21.1 Personal Ledger Account (PLA):** The manufacturer working under the procedure shall maintain an account current (Personal Ledger Account) in the specified Form.

Each credit and debit entry should be made on separate lines and assigned a running serial number for the financial year.

The PLA must be prepared in triplicate by writing with indelible pencil and using double-sided carbon. Original and duplicate copies of the PLA should be detached by the manufacturers and sent to the Central Excise Officer in charge along with the monthly/quarterly periodical return in form ER-1/ER-2/ER-3.

**5.21.2 Credit and debit in account current :** The assessee may make credit in the PLA by making cash payment into the Treasury/or Authorised Bank. If allowed by the Commissioner, in exceptional cases, such as sudden strike in bank, natural calamity, riot etc., after sending by Registered A.D. post or by a messenger a cheque for the requisite amount to the Chief Accounts Officer of the Commissionerate, provided procedure specified in this regard are followed.

Deposit into the Treasury of the authorised bank should be made in a Challan in form TR 6 under the correct Head of Account. The Assessee's ECC No. should also be indicated in the challans. A copy of each Treasury Challan bearing Treasury/Bank seal and the signature of the authorised officer of the Treasury/Bank which is received back from the Treasury/Bank in token of having made the deposit, should be sent by the assessee to the Central Excise Office along with the monthly/periodical return.

There is an 'Explanation' to sub-rule (1) of rule 8 that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date. It is being interpreted that it refers to deposit of duty amount by the focal point banks into the account of Government. This is not the intention. Once the assessee has deposited a cheque in bank designated by the CBEC, the date of presentation of the cheque shall be deemed to be the date on which the duty has been paid subject to the realization of the cheque.

No restriction exists with regard to any minimum amount, which should necessarily remain in balance to the credit of an assessee in his PLA. With the monthly payment system, there should be enough credit at the time of payment of duty for the month.

Mutilations or erasures of entries once made in the PLA are not allowed. If any correction becomes necessary, the original entry should be neatly scored out and attested by the assessee or his authorised agent.

**5.21.3 Payment of rents, fines or penalties :** In case where miscellaneous dues like rents, fines or penalties are to be paid by the holder of account current he may be advised to make payments of such accounts directly into the authorised bank under Challan in form T R 6 supported by order of demand, if any. Such challans need not be counter-signed by the Departmental Officer but should indicate the particulars of penalties, rent etc, deposited. If, however, the account holder desires that such miscellaneous dues should also be paid through an account current, he may be permitted to open a separate account current for this purpose under the group minor head "E-Miscellaneous-1 Miscellaneous".

**5.21.4 Account Code Directory :** Regarding the Account Code Directory for the purpose of computerisation, separate instructions have been issued by the Principal Chief Controller of Accounts C.B.E.C., which may be referred to. These are not reproduced here since it is not necessary for the students to go into this at all.

**5.21.5 Procedure for deposit of Central Excise duties during bank strikes, natural calamities etc.:** This procedure is to be followed only when all the banks nominated to collect revenues within a Commissionerate are unable to transact business, due to strike of banks or sudden closure of banks due to riots, imposition of curfew or natural calamities such as flood, cyclones, etc.

Normally in all cases of closure of bank business due to strike by bank employees, the public gets advance intimation either through the press, or otherwise. In all such cases, the assessee should make advance arrangements to deposit money into the banks and keep sufficient amounts in their account current [PLA] so that they do not face any difficulty in the clearance of the goods during the period of the strike.

In cases where the strike of bank employees is without notice, or where the strike called for after due notice is prolonged beyond a reasonable time (say over 3-4 days) or where there is sudden closure of banks due to riots, imposition of curfew or natural calamities such as flood, cyclones, etc., the Commissioner may adopt the procedure specified hereinafter in partial relaxation of the provisions contained in the "Manual for collection of Revenue and payment of refunds etc.(hereinafter referred to as 'Manual')" only for the duration of the strike or the sudden closures.

The Commissioners should issue a Trade Notice stating that during the days of the closure of bank business due to such strikes (specifying the dates wherever possible), the assessee can send their cheques by registered post, acknowledgement due (R.P.A.D.) or special messenger, with the TR-6 challans (in quadruplicate) duly filled in, to the Chief Accounts Officers of the Commissionerates, with a clear declaration that they have sufficient balance in their bank account.

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- i. They should be advised to send a copy of the letter forwarding the cheque, to the concerned Range Officer also.
- ii. On the strength of a cheque so sent, they may take credit in the P.L.As.
- iii. On receipt of the cheque in his office, the Chief Accounts Officer will immediately intimate the concerned Range Officer about the name of the assessee, the number and date of the cheque and its amount.
- iv. Immediately after the strike is over, all such cheques should be deposited by the Chief Accounts Officer into the Focal Point Bank/State Bank of India at the Headquarters or Reserve Bank of India, as the case may be, through TR-6 challans (in quadruplicate) according to the procedure prescribed in the Manual.
- v. The Chief Accounts Officer will send the Duplicate/Triplicate copies of the receipted challans to the assesseees and the quadruplicate copy to the R.Os. concerned to enable them to exercise necessary checks and prepare the monthly statement of revenue.
- vi. Bank commission or collection charges, if any, chargeable by the banks should be debited in the P.L.A of the assesseees by the Chief Accounts Officer under intimation to them as also the R.Os.
- vii. If any of the cheques sent by the assesseees are dishonoured, the Commissioners shall take appropriate penal action as prescribed under the rules.
- viii. The Chief Accounts Officer should maintain a suitable record in regard to receipt and disposal of such cheques.

**5.21.6 Payment by cheque when not permitted :** For removal of doubts and to ensure uniformity of application of the procedure it is clarified that the payment of duty/other dues through cheques should not be permitted in the following cases: -

- i. If there is a strike in or closures of only one nominated bank of the Commissionerate and the assessee still remains in a position to deposit money in the other nominated banks or Departmental Treasury (wherever they exist) – unless the assesseees' bank is the only nominated bank in the Commissionerate.
- ii. In the case of declared bank holidays because such holidays are known well in advance.
- iii. Where the public has been given advance intimation of a strike, unless the strike is unduly prolonged (say over 3-4 days).
- iv. Where bank employees adopt "go-slow" tactics.

## 5.22 SAMPLES

There is no specific provision in Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules') 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. drawal of samples is required. The Board vide its instructions issued on 17.05.2005 has dealt with samples separately.

## 5.23 LARGE TAX PAYER UNITS

The Finance Minister in his Budget Speech 2005-06 announced the proposal to set up Large Taxpayer Units (hereinafter referred to as LTUs) in the country in line with the international practice, which would service large taxpayers paying excise duty, corporate tax/income-tax and service tax under a single window. LTU is a trade facilitative measure seeking to address and deliver appropriate solutions to the unique compliance issues that may arise. The establishment of LTU is a step to achieve excellence in the formulation and implementation of Service Tax and Excise initiatives by creating a climate for voluntary compliance by providing guidance and building of mutual trust. It is envisaged that this approach will improve India's business climate, and will reassure the trade that their taxation related concerns would be dealt with in a fair and transparent manner.

The Government has decided to implement the LTU scheme in a phased manner. The first Large Taxpayer Unit has been set up at Bangalore. LTUs will also be established in a phased manner in Chennai, Delhi, Kolkata, and Mumbai. The Chief Commissioner, Central Excise and Service Tax will head the LTU in Bangalore.

Conceptually, LTU is a self-contained tax office that provides single point interface with the tax administration to the large taxpayers who pay direct and indirect taxes above a specified threshold limit. It is a single office that deals with central excise/service tax/income tax/ corporate tax issues of all units holding a single PAN. Once a taxpayer acquires the status of LTU, the entire jurisdiction of central excise, service tax and income tax matters stand transferred to the said LTU in respect of all his manufacturing units, service providing premises, and other registered premises located throughout the country. Some of such activities are as given below: -

- (a) Filing of returns
- (b) Filing of refund/rebate claims
- (c) Audit, Adjudication and Appeals
- (d) Filing of intimation, permissions
- (e) Visit to units
- (f) Acceptance of proof of export

A LTU will be headed by a Chief Commissioner (either from CBDT or from CBEC). The Chief Commissioner, LTU is expected to undertake following functions-

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- (a) overall administration of LTU;
- (b) co-ordination between the direct tax and the indirect tax wings of LTU;
- (c) distribution of work amongst the LTU officers;
- (d) monitoring of revenue collection;
- (e) quality Assurance Checks/ taxpayer feedback system;
- (f) devising effective taxpayer assistance system;
- (g) review of the orders passed by the Commissioners as adjudicating authority (as a member of Review Committee);
- (h) issuance of trade notices/ circulars to bring about uniformity in tax administration as well as determination of amount of tax payable;
- (i) coordination with the Boards (CBEC and CBDT), Directorates and with other field formations in the matters such as audit verification, revenue recoveries, etc.

The Chief Commissioner, LTU will intimate the jurisdictional Central Excise, Service Tax and Income Tax Commissioners regarding the transfer of the specified units from their jurisdiction to the LTU. There will be Commissioners posted in LTU, who would be holding executive and appellate charges. The powers and duties would be similar to that of other field commissioners. However, they are required to play a pro-active role in ensuring the fulfilment of objectives of a LTU. The Commissioners of Direct and Indirect Taxes are expected to work in a coordinated manner. Other Group 'A', 'B', 'C' officers along with supporting staff will be posted by CBDT and CBEC. The Chief Commissioner, LTU will assign a Client Executive for each taxpayer from among the Additional/Joint/Deputy/Asstt. Commissioner posted in LTU, and the said Client Executive will be the single point interface with the large taxpayer for all purposes.

The officers posted in LTU will have all India jurisdiction in respect of all registered premises of a large taxpayer registered in that particular LTU. The erstwhile Central Excise or Service Tax Commissionerate Officers will have concurrent jurisdiction. However, the interaction with these units will be limited to specific functions requiring physical presence of the officers for purposes as warehousing, sealing or any other work as assigned by the LTU.

##### **5.23.1 Definition of large tax payer:**

Rule 2(ea) of the Central Excise Rules, 2002, defines "large taxpayer" as a person who-

- (i) has one or more registered premises under the Central Excise Act, 1944; or
- (ii) has one or more registered premises under Chapter V of the Finance Act, 1994;

and is an assessee under the Income Tax Act, 1961, who holds a Permanent Account Number issued under section 139A of the said Act, and satisfies the conditions and observes the procedures as notified by the Central Government in this regard.

The following persons have been notified to be eligible to opt as large taxpayer:

## General Procedures Under Central Excise 5.41

(i) Any person engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985, or

(ii) a provider of taxable service,

who has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application for large tax payer-

(a) duties of excise of more than Rs.500 lakhs in cash or through account current; or

(b) service tax of more than Rs.500 lakhs in cash or through account current; or

(c) advance tax of more than Rs.1000 lakhs, under the Income Tax Act, 1961,

and is presently assessed to income tax or corporate tax under the Income Tax Act, 1961, under the jurisdiction of prescribed income tax authorities.

Further, following procedures have also been notified which are to be followed to be eligible to opt as large tax payer:

A large taxpayer who satisfies the conditions mentioned above may file an application in the prescribed form duly completed in all respects to the Chief Commissioner of Central Excise, Large Taxpayer Unit for the city where the large taxpayer is presently assessed to income tax or corporate tax indicating his willingness to be a large taxpayer.

A person willing to operate as large taxpayer shall furnish details of each of the premises already registered under the Central Excise Act, 1944 including the premises of first and second stage dealers and each of the premises registered under Chapter V of the Finance Act, 1994 including the premises of input service distributor.

The Chief Commissioner of Central Excise, Large Taxpayer Unit may after due verification of the application form, grant the acceptance in writing. The process of acceptance would not normally take more than 7 days.

Existing registrations under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 shall continue. However, in case a new factory or service provider, input service distributor or first or second stage dealer which becomes liable to be registered, after opting as large taxpayer, the application for such new registration shall be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

### 5.23.2 Procedure and facilities for the large taxpayer [Rule 12BB]

(1) A large taxpayer may remove excisable goods (intermediate goods), except motor spirit, commonly known as petrol, high speed diesel and light diesel oil without payment of duties of excise under the cover of a transfer challan or invoice from any of his registered premises (sender premises) where such goods are produced, manufactured or warehoused to his other registered premises (recipient premises) for further use in the manufacture or production of such other excisable goods (subject goods). However, the large taxpayer cannot remove the intermediate goods without payment of duty to the premises of a first or second stage dealer. The removal of intermediate goods without

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payment of duty from the sender premises to recipient premises shall be subject to the conditions that-

- (a) the subject goods are manufactured using the said intermediate goods and cleared on payment of appropriate duties of excise leviable thereon within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises; or
- (b) the subject goods are manufactured using the said intermediate goods and exported out of India, under bond or letter of undertaking within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Taxpayer Unit in this regard are satisfied.

The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee.

However, if the subject goods manufactured or produced using the said intermediate goods are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of 6 months, duties of excise payable on such intermediate goods shall be paid by the recipient premises with interest in the manner and rate specified under section 11AB. The duty payable shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises. If the large taxpayer fails to pay such amount, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AB.

### Illustration 1

Excise duty is payable on intermediate goods, namely, electronics goods, manufactured by factory A which are removed without payment of duties of excise for use in the manufacture of subject goods, namely, machines, in factory B of the large taxpayer. In case such machines are not exported or are removed without payment of duties of excise, then factory B shall pay duties of excise payable on the electronic goods so cleared along with interest.

Further, if any duty of excise is payable on such intermediate goods and if the said duty is not payable on such subject goods, the said duty of excise as equivalent to the total amount payable on such intermediate goods along with interest under section 11AB of the Act shall be paid by the recipient premises. The duty payable shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises. If the large taxpayer fails to pay such amount, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AB respectively of the Act.

### Illustration 2

National Calamity Contingent duty is payable on intermediate goods namely, polyester

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yarn manufactured by factory A. Such yarn is removed without payment of duty of excise for use in the manufacture of subject goods, namely, grey fabrics in factory B of a large taxpayer, (on which such National Calamity Contingent duty is not payable), then factory B shall pay an amount equivalent to the National Calamity Contingent duty that would have been payable on the polyester yarn along with interest under section 11AB of the Act.

It may be noted that the provisions of this sub-rule shall not be applicable if the recipient premises is availing following notifications:

- (i) No. 32/99-CE, dated 08.07.1999;
- (ii) No. 33/99-CE, dated 08.07.1999;
- (iii) No. 39/2001-CE, dated 31.07.2001;
- (iv) No. 56/2002-CE, dated 14.11.2002;
- (v) No. 57/2002-CE, dated 14.11.2002;
- (vi) No. 56/2003-CE, dated 25.06.2003; and
- (vii) No. 71/2003-CE, dated 09.09.2003

Also, the provisions of this sub-rule shall not apply in respect of a EOU or a unit located in a EHTP or STP.

(2) Where a registered premises of a large taxpayer manufacturing excisable goods has paid to the credit of Central Government any duty of excise in excess of duty of excise payable on account of arithmetical error, the said large taxpayer may adjust the excess duty so paid by him, against his duty liability for the subsequent period subject to the limitations prescribed under rule 3(7)(b) of the CENVAT Credit Rules, 2004.

However, such adjustment shall be admissible only if the said registered premises has not passed on the incidence of such excess duty so paid to any other person, and the consignee does not avail credit of such duty under the CENVAT Credit Rules, 2004.

(3) Any notice issued but not adjudged by any of the Central Excise Officer immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(4) A large taxpayer shall submit the monthly returns, as prescribed under these rules, for each of the registered premises.

(5) A large taxpayer, on demand, may be required to make available the financial, production, stores and CENVAT credit records in electronic media, such as, compact disc or for the purposes of carrying out any scrutiny and verification as may be necessary.

(6) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.

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(7) The provisions of other rules of Central Excise Rules, 2002 in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

It may be noted that concepts of large tax payer has also been incorporated in the CENVAT Credit Rules, 2004 by inserting rule 12A, which provides for the procedure and facilities for the large taxpayer (discussed in previous Chapter).

*It has been clarified vide Circular No.878/16 /2008-CX dated 21.11.2008 that the large taxpayer units (LTUs) shall pay the central excise and service tax dues electronically only, through internet banking.*

*However, in case of difficulties in e-payment, a large taxpayer is permitted to pay the duty through banks (except in such cases where e-payment is mandatory) in the jurisdiction of the LTU Commissionerate only.*

#### Self-examination questions

1. When and how is the assessee required to discharge his liability towards payment of duty under the Central Excise Rules, 2002?
2. Who is required to obtain registration under Rule 9 of the Central Excise Rules, 2002?
3. Discuss the mechanism for removal of goods at concessional rate of duty for manufacture of excisable goods with reference to the Central Excise Act, 1944 and the rules made thereunder.
4. Discuss the provisions in respect of removal of goods by a unit in Hundred Percent Export Oriented Undertaking for Domestic Tariff Area.
5. What do you mean by payment of excise duty under protest? Explain the procedure that has to be followed by an assessee who opts to pay duty under protest.
6. Discuss the special provisions for removal of excisable goods in respect of molasses.
7. Explain the provisions relating to provisional assessment.
8. What is an invoice? Describe the special considerations in respect of an invoice with respect to rule 11 of the Central Excise Rules, 2002.
9. Discuss the special provisions in respect of job work relating to articles of jewellery.
10. Write a brief note on powers of Central Excise Officers.