

[INDIRECT TAXES]

Indirect taxes

Simplified notes

Finance Act 2010

Circulars, notifications up to 31.10.2010

For May/June 2011

Nov/Dec 2011 exams

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Central Excise

Customs

Service tax

Vat

CST



Central excise
Customs

Service tax

Vat and CST

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Dear Students

An attempt is made to simplify indirect taxes, and it is provided in a simple and easiest way for better understanding of subject to the students,

The books cover FA 2010 all the amendments made up to 31.10.2010.

For in-depth and expert knowledge on the subject, students are advised to read case studies, after completion of these notes.

Every attempt is made to avoid errors and omissions; if any error crept it is unintentional.

Author is not responsible.

Approach to Examination

General

Reading the Question paper: First of all, read the question paper quickly, and- i) Select the questions that you will answer; ii) Decide the order in which the answers are to be attempted; and iii) Plan, how you will answer the questions.

Selecting the Questions : You are the best judge, while selecting the question or its part, underline key words in the questions and understand them well.

Order for Answering Questions :

i) Remember that a serious attempt at one question is more valuable than casual attempt at two.

ii) First answer the questions in which you are more confident to answer correctly. It will reveal your best to the examiner

Answering Theory Questions

- ⌚ Before answering each question, read the question very carefully **word by word**, answer to what the question demands.
- ⌚ Answer to the point and in brief. Don't write irrelevant answer.
- ⌚ Present your answer in points or as a list wherever possible.
- ⌚ Questions that use words such as describe and discuss require longer narrative answers. Present such answers in paragraphs with appropriate headings.
- ⌚ Present examples and illustrations frequently.
- ⌚ Tabulate the comparative points (in a columnar fashion), when you answer questions asking for comparison/distinguish, etc.
- ⌚ Avoid writing long and more descriptive answers
- ⌚ When you forget some points when writing the examination, leave some space and start an answering new question. You can return later and complete the previous answer when you recollect the points.
- ⌚ If you are sure of the case laws and sections, provide these in the answer. But in case of ambiguity, avoid quoting wrong section /case law.
- ⌚ Maintain good handwriting. Avoid overwriting.

Answering - Application of theory questions

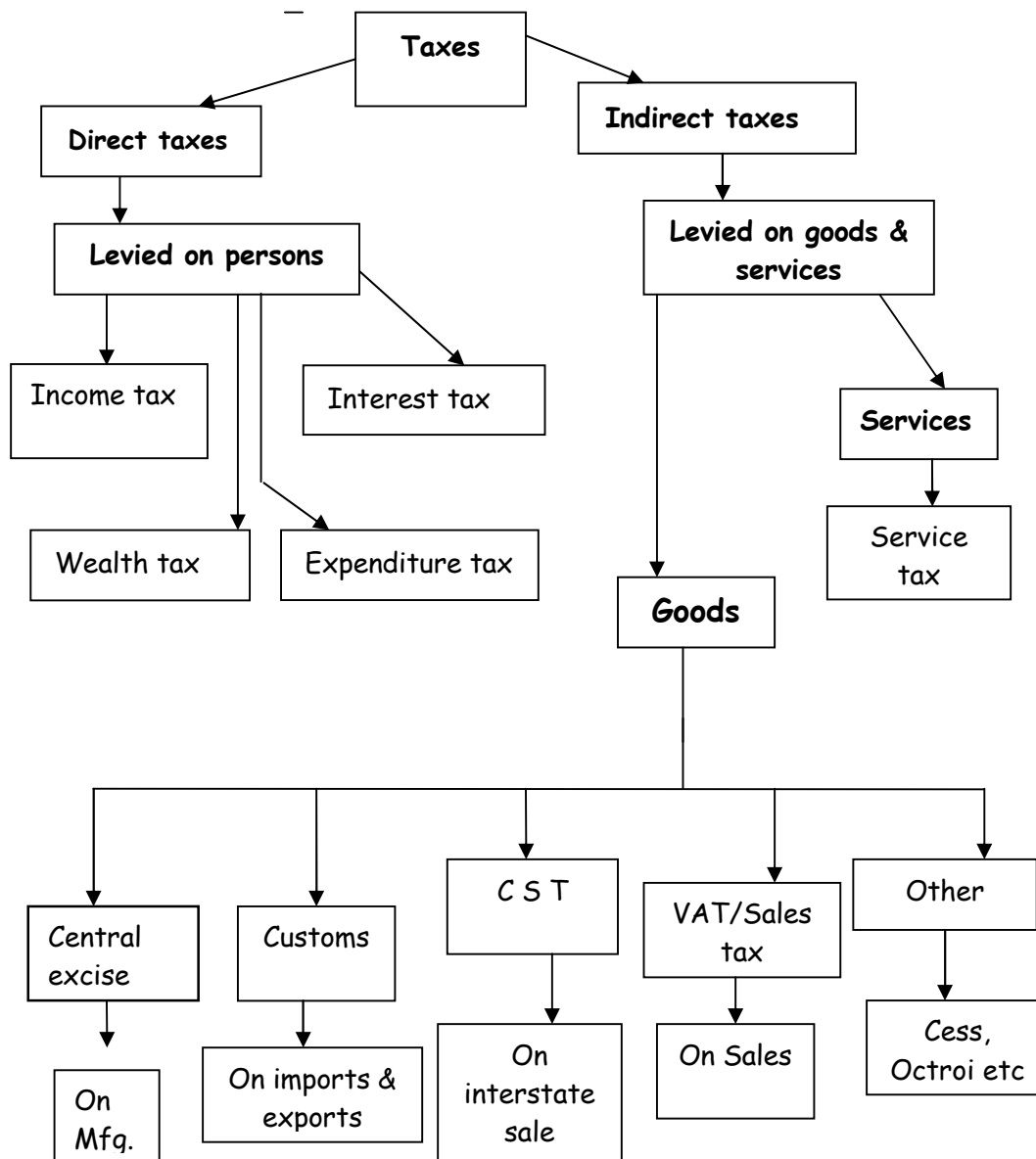
- ⌚ Identify the section/rule on which the question is given
- ⌚ Write the relevant section/rule briefly
- ⌚ Apply the section/ rule to the given question
- ⌚ Write the decision with supporting case if any

Answering Numerical Problems

- ⌚ Answer to the point what required. Present the solution neatly
- ⌚ Write the assumptions & working notes clearly. Provide alternative solution if any.
- ⌚ In case of problems in valuation/SSI, a brief note on inclusions and exclusions/rule should be mentioned.

Good Wishes

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Chennai 31.01.2011



Difference between direct and indirect tax

S No	Direct taxes	Indirect taxes
1	Levied on persons	Levied on goods and services
2	Person paying the tax has to bear the burden	Burden will pass on to consumer
3	No cascading effect	Cascading effect in some cases (increases certain prices of goods and services)
4	Will not be allowed as deduction (income tax wealth tax) in computing income	Allowed as deduction in computing income

Chapter – I

Central excise

As amended by FA 2010 and included notifications and circulars up to 31.1 .2010

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Indirect taxes- Central Excise- simplified

Chapter 1 Central excise Excise duty -Basic Concepts

- Excise is a duty an indirect tax levied as per Entry No. 84 of list I of Seventh Schedule to the Constitution
- It is levied on excisable goods manufactured or produced in India except on alcoholic liquor for human consumption. Excise on alcoholic liquor levied by state government.
- The tax is administered by Central Government.

Central Excise is governed by

- Central Excise Act 1944
- Central excise Tariff Act 1985
- Central Excise rules 2002
- Central Excise Valuation rules 2000
- Cenvat Credit Rules 2004
- Central Excise rules for removal goods at concession Rate
- Central Excise Manual 2001
- Central Excise Appeal Rules 2001
- Central Excise Settlement cases rules 2007
- Cestat procedure Rules 1982
- Central Excise Notifications & Circulars

Excise Act coverage chapter wise

Chapter I	Short title, extent and commencement of the Act including definitions
Chapter II	Levy and collection of duty
Chapter IIA	Indicating amount of duty in the price of goods, etc., for purpose of refund and crediting certain amounts to the Consumer Welfare Fund
Chapter III	Powers and Duties of Officers and Land Holders
Chapter IIIA	Advance Rulings
Chapter V	Settlement of Cases
Chapter VI	Adjudication of Confiscations and Penalties
Chapter VIA	Appeals
Chapter VIB	Presumptions as to Documents
Chapter VII	Supplemental Provisions

Excise Act -Short title, extent and commencement Section 1

- This Act may be called the Central Excise Act, 1944.

Indirect taxes- Central Excise- simplified

- It extends to the whole of India.
- It shall come into force 28-02-1944

Basic conditions of excise liability

Charging section 3 of Central Excise Act

- Levy is manufacture/Production of excisable goods
- Manufacture/Production should be in India
- No levy on goods manufactured in SEZ..
- Duty payable at the rates specified in Schedule I and II of CETA
- EOU/EPZ pay duty for their clearance in India (Domestic Tariff Area -DTA) at the rate of 50% of basic customs duty and Excise duty equal to if that goods are manufactured in India.
- Goods produced and manufactured by Government also attract excise duty. Govt liable to pay excise duty

Basic conditions of excise liability

Four basic conditions should be satisfied for levy

- The duty is on goods
- The goods must be excisable, movable and marketable
- The goods must be manufactured or produced
- Such manufacture or production must be in India.

Goods manufactured in SEZ are 'excluded excisable goods' –But they are not 'exempted goods'. No excise duty levied on goods manufactured in Special Economic Zone. SEZ treated located out of India, when SEZ removed goods for use in India, they have to pay import duty.

Excisable goods manufactured in 100% EOU attract Excise duty, if these goods are removed to DTA, Excise duty is payable @ 50% of Basic customs duty and CVD equal to excise duty.

Concept of Goods under Central Excise

- The word "goods" has been defined under the Central Excise Act. Wide explanation to sec 2(d) w e f 16.5.2008

Goods includes

- any article, material or
- substance which is capable of
- being bought and sold
- for a consideration and
- such goods shall be deemed to be marketable

The word "goods", for purpose of levy of Excise duty, must satisfy three requirements i.e.

- They must be movable and
- They must be marketable.
- They must be excisable

Goods must be movable

- ☐ They must be movable from one place to another place. Capable of being transport from one place to other For sale/Marketing U o I Vs. Delhi Cloth Mills (SC) / South Bihar Sugar Mills Vs. U ol(SC)

- ☐ Movement can be on any mode rail, road, air, water, pipe line etc

Indirect taxes- Central Excise- simplified

- ☐ No duty on immovable goods. Immovable goods means land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

Goods must be Marketable

- ☐ Goods should be Saleable (Actual sale is not necessary) Union Carbide India Ltd. Vs. UOI (SC)
C.C.EX. Vs. Ambalal Sarabhai Enterprises (SC)
- ☐ Good should be Fit for Consumption
- ☐ Goods should Fetch some price
- ☐ At least one buyer is enough to buy the goods.
- ☐ Occasional or distress sale is not treated as marketable

Goods Must Excisable.

Excisable goods means goods mentioned in Central excise tariff. Central excise tariff is book contains details of goods and rate of duty payable on these goods. The description of goods should be mentioned in Central excise tariff, and then only they are called excisable goods

Types of Excisable Goods

- 1. Goods charged to duty
- 2. Goods charged to nil rate of duty
- 3. Goods charged to duty but exempted by way of notification.
- All three are excisable goods (Wallace Flour Mills Ltd. Vs. C.C.EX.(SC)

Goods Charged to duty:

- These goods are mentioned in excise tariff, where certain duty is payable.. for example blasting powder, Gun powder, Binoculars, musical instruments all are charged to duty at 10%

Goods charged to nil duty

- These goods are mentioned in excise tariff, where duty column will be mentioned as nil or Zero. For example, unbranded fruit jam, sewing needle, note books, bricks, cabbage, carrot, radish etc. For all these goods duty column will be mentioned as NIL

Goods Charged duty but exempted by notification

- These goods are mentioned in excise tariff, where certain duty is payable, however the Central Government issued notification for exemption of duty on these goods. Example condensed milk, Water purifiers etc

All the three Conditions of movability, marketability and excisability to be satisfied to call them as goods and for the purpose of levy of excise duty. Bhor Industries Ltd. Vs. C.C.EX(SC)
Ion Exchange India Ltd. vs. C.C.EX (SC)

Non excisable goods and duty on which appropriate duty was paid

- Goods not included in CETA are 'non-excisable goods'
- goods on which appropriate duty has been paid' means that on which excise duty has been paid at 'appropriate' or correct rate, but not nil duty goods CCEX. vs. Dhiren Chemical Industries (S.C).

What are the goods. (Examples of Goods)

- Gas, Steam etc –
- Electricity: Drawing, designs Etc:
- Machinery
- Branded Software: (lotus, oracle, etc,)
- Waste and Scrap-
- Aluminum paint having shelf life of 8 to 10 hours is marketable

Indirect taxes- Central Excise- simplified

- Columns: Columns fabricated at a place and removed to another place for erection, if they cannot remove after erection without dismantling they are not goods.

What are not “Goods” (Examples what are not goods)

- *Some cases where the product was held as not ‘goods’ are illustrated here.*
- *Goods having very short life are not ‘goods’,*
- *Lift –*
- *Storage system Installed at a site:*
- *Zinc scaling and Zinc Flux*
- *Aluminum Cans and Torch Bodies:*
- *Unbranded software (not goods but it is a service- service tax payable)*

Excisable goods and Non Excisable goods

Excisable goods means Goods mentioned in Central excise tariff first and second schedule and including salt.

Non Excisable goods means Goods not mentioned in Central excise tariff first and second schedule
Excisable goods may be dutiable or non dutiable, Where are Non excisable goods always non dutiable only

Dutiable goods and Exempted goods, and Goods charged to nil rate of duty.

Dutiable goods mean duty payable as per excise tariff. Where Exempted goods are mentioned in tariff and duty payment was exempted by notification. Goods charged to nil rate of duty goods are excisable and where is duty column will be “nil”

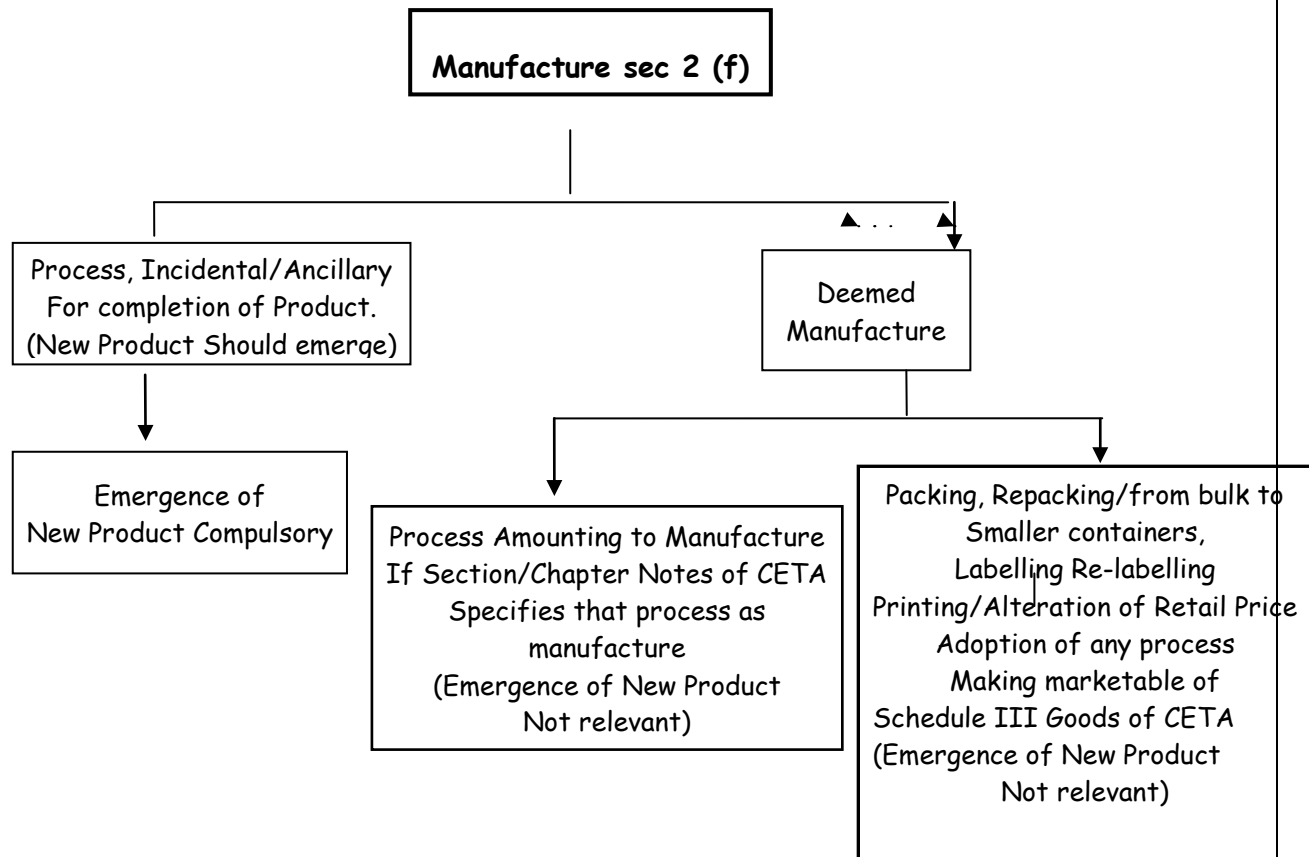
Manufacture

First part of a definition: Manufacture is a Process, Incidental/Ancillary, for completion of Product. Process means stages, a series of action in manufacturing the product. Incidental means occasional or casual process it is not absolute necessity and it is optional. Ancillary means auxiliary, compulsory. Manufacture is complete only when all ancillary and incidental processes are complete. A product comes to market only when incidental and ancillary process is carried out.

All the process cannot be termed as manufacture. As per well established court decisions, Manufacture implies a change, but every change is not manufacture. By virtue of process, a new and different article must emerge having a *distinctive name, character or use*. The new product should be commercially different identifiable product, then only it is manufacture and excise duty liability will arise.

Pictorial diagram of manufacture

Indirect taxes- Central Excise- simplified



Delhi cloth mills Case SC on Manufacture

- Manufacturing is a process
- But every process cannot be termed as manufacture.
- Manufacture implies a change,
- But every change is not manufacture.
- By virtue of process, a new and different article must emerge having a *distinctive name, character or use*.
- The new product should be commercially different identifiable product,
- Then only it is manufacture and excise duty liability will arise.

Examples on Manufacturing

- Cutting of fabrics to make bed sheets etc.
- Making of 'pan masala' by mixing various ingredients
- Making masala powder
- Turmeric to turmeric powder
- Paddy to rice
- Wheat to wheat flour
- Ice from water
- Processing of grey yarn to 'dyed yarn'
- Processing grey fabrics by bleaching, dyeing, printing of fabric
- Making welding wire from MS wire

Indirect taxes- Central Excise- simplified

- Fruit pulp to fruit drink
- Processing non-woven fabrics
- Conversion of yarn to thread
- Stitching of cloth
- Making car matting from rolls
- Ordinary cotton into surgical cotton
- Making chicken kabab, chicken kofta, chicken pakodas from chicken meat

Examples on not Manufacturing

- Changing colour of an article
- Changing engine
- Charging of dry batteries
- Cleaning and repairs of old ornaments
- Cleaning, washing
- Coating
- Compressing and bottling gas
- Conversion of marble blocks into marble slabs/tiles
- Cream into butter
- Crushing/powdering
- Cutting of jumbo rolls into small sizes
- Cutting, sizing to requires size
- Cutting, stamping, folding etc. of processed fabrics
- Plain glazed tile to decorated tiles
- Powdering of lumps of minerals
- Printing of Aluminum foil
- Printing of logo and colour on glass bottle
- Purification and packing of water in bottles
- Roasting, salting, spicing of nuts
- Sawing of timber logs
- Separating mineral sand from ordinary sand
- Sieving of duty paid goods
- Sizing of yarn
- Slitting/cutting of jumbo rolls of tissue paper into small sizes
-

Deemed Manufacture (Second part of definition)

- Any process mentioned in CETA 1985 is a manufacture, it is a manufacture
- Here the question of emergence of new product not necessary

Examples for deemed Mfg of section Chapter notes in Ceta

S No	Name of goods	Nature of process	Central excise Tariff	
			Chapter No	Note No
1	Edible vegetable oils	Refining	15	6
2	Metallic wire	Drawing rod in to wire	Sec XV	10
3	Medicines	Conversion of powder in to tables/capsules	30	6
4	Iron/Steel	Galvanizing(However Circular 19/94 says it is not manufacture as	73	4

Indirect taxes- Central Excise- simplified

		per Gujarat Steel tubes case)		
5	Audio/video Cassettes and tapes	Recording	85	8
6	Motor Vehicles	Body building	87	5
7	Textile products	Dyeing, printing, bleaching, twisting doubling, cabling etc	52	2
8	Milk and dairy products	Labeling, relabelling, repacking from bulk to small containers and any other treatment to make it marketable	4	6
9	Vegetable fruit nuts,	Labeling, relabelling, repacking from bulk to small container	20	3
10	Inorganic chemicals	Labeling, relabelling, repacking from bulk to small container	28	10
11	Readymade garments	Affixing brand name, Labeling, relabelling, repacking from bulk pack to small pack	61/62	4
12	Photographic films, rolls, plates	Cutting, Slitting and perforation from Jumbo rolls- Circular 13/92	37	3

The activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs.[Circular No. 910/30/2009-CX dated 16-12-2009]

Process of pickling and oiling (removal of surface oxides and other contaminants such as dirt from metal) not amount to manufacture since no new product emerge. **Circular No. 927/17/2010-CX Dated 24/6/2010**

Deemed manufacture in case of schedule III of CEA Goods (Second part of definition)

There are about 98 goods in schedule III of CEA. The goods are where MRP valuation is applicable. The goods are mainly consumer goods and eatables. Example: milk products such as cheese, butter, Biscuits etc. Packing or Repacking of these goods in to unit container is manufacture.

- Manufacture' includes any process,
- which, in relation to goods specified in Third Schedule to Central Excise Act,
- involves packing or repacking of such goods in a unit container
- or labeling or re-labeling of containers including the declaration or alteration of retail sale price on the container or
- Adoption of any other treatment on the goods to render the product marketable to consumer will be 'manufacture'.
-

Key issues in the packing/ repacking manufacturing concept

- Packing/repacking will be 'deemed manufacture' only if it is from bulk to in unit container. In such case, putting MRP may or may not be done.
- Labelling/relabelling should include declaration or alteration of retail sale price. Otherwise, mere labeling or relabelling will not be 'deemed manufacture'
- Any other treatment will be 'deemed manufacture' only if it renders the product marketable to consumer
- Packing repacking will be manufacture only when there is value addition in the packing process

Indirect taxes- Central Excise- simplified

- If goods are already marketable, mere packing and repacking them is not a manufacture.

Putting Stickers indicating MRP. Putting stickers on the imported medicines to provide information as per Drug and Cosmetics Act is amount to manufacture **CBEC Circular No 576/12/2001 dated 16.05.2001. However there is a contrary view held in**

1. Putting label name and address of manufacturer and MRP on imported chocolates is not a manufacture –**Lal International Vs CCE (2003) 154ELT520 CEGAT**
2. Putting label name and address of manufacturer as required under standard weights and measures act is not a manufacture. **CCE Vs Pancheseel Soap factory (2002) 145 ELT 527 CEGAT**

Activity of transferring the goods from tankers into smaller drums not amounts to manufacture

As per note 10 to Chapter 29, the activity of repacking products mentioned in the said Chapter from bulk packs to retail packs shall amount to manufacture under section 2(f)(iii) of the Central Excise Act, 1944. In this regard, it has clarified that the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs. **[Circular No. 910/30/2009-CX dated 16-12-2009]**

Produce

- The word produced has wider connotation than the word 'manufacture'.
- Every 'manufacture' can be characterized as 'production',
- Every 'production' need not amount to manufacture
- World *produced* is used to cover items like tobacco, tea, coal, dairy products, ground vegetables, ores etc, which are *produced*, but no manufacturing process may be carried out.

The following are get produced during course of manufacturing

- By-products, intermediate products and residual products,
- Waste, scrap
- Produced goods are dutiable even if they are not manufactured, as they are doing get 'produced' during the process. Excise duty payable not only on manufacture but also on production.

Curing:

It includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture. This is a process, which amounts to manufacture. Curers are liable to pay excise duty. For example, Coffee curers liable to pay excise duty

Assembling

Assembling is a manufacture when –

- Assembling of various parts and components result in new product which is movable and marketable.

Examples

Assembly of kits of components into monitor is manufacture.

- Assembling of computers from duty paid bought out parts is 'manufacture'.
- Assembly of data processing unit from duty paid parts is also 'manufacture'.
- Assembly of purchased electronic components into Electronic final product
- Assembly of components of air conditioner in car does not amount to manufacture - CBE&C Circular No. 479/45/79-CX dated 17-8-1999.

Assembly of SKD or CKD parts

Indirect taxes- Central Excise- simplified

- When goods are despatched In CKD SKD (completely/semi knocked down) condition for transport convenience. Goods are actually manufactured at the place of manufacturer. These are sent in parts only for transport convenience. In such cases assembly by dealer is not a manufacture.

Example

- Cycles, Automobile industry parts, Computers, Imported components in SCD/CKD

Exception

- Some components are imported in CKD packs and balance procured separately and final product assembled in India, assembly would amount to manufacture.

Manufacturer Section 2(f)

Persons who manufactures the goods and include

- (a) Persons who get the goods manufactured through hired labour
- (b) Persons who engage in manufacture of goods on their own account. These may be termed as 'deemed manufacturers' (persons manufactures for their own consumption)

Who is Manufacturer

- A Person who assembles the parts in a factory would be the manufacturer and not the owner of factory-
- Job Worker is a Manufacturer
- A Contractor is a manufacturer.
- A person who engages hired labor is a manufacturer.
- Sub-contractor is manufacturer if relation to the main contractor is on principal-to-principal
- Person who transforms commodity in to another commodity having distinct name and character is manufacturer-
- Persons who manufacture under franchise are a manufacturer- For example if Cola companies supply concentrates to bottlers and cool drinks manufactured by bottler, the Bottler is a manufacturer.

Who are not manufacturer

- Brand name Owner is not the Manufacturer even he supplies material
- Person who gives machine on hire basis
- Loan licensee under drug control
- Brand name owner will not be manufacturer even if he supplies raw material
- Raw material Supplier is not the manufacturer –

Raw material supplier is manufacturer in the following cases

- Relation between Manufacturer and raw material supplier is on agency basis
- Person Employed by raw material supplier and goods return it to him –
- Labour doing work allotted to them under the supervision of Principal-
- Job worker function like a hire labour and there is no principal to principal basis-

Manufacture must be in India

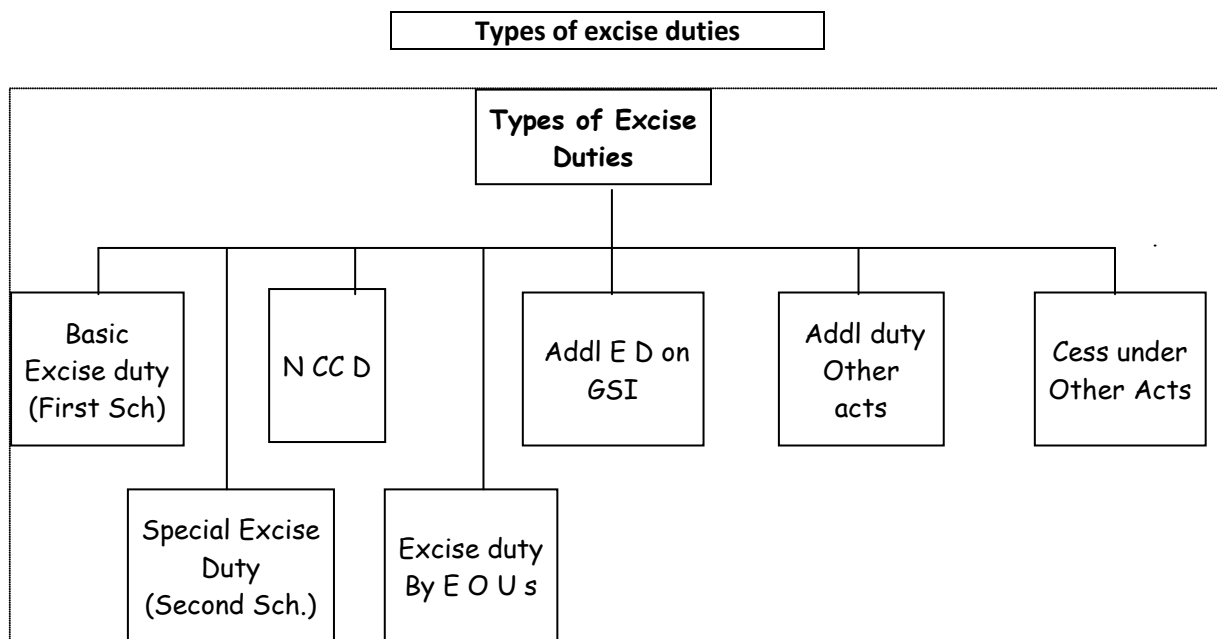
- Excisable goods must be manufactured or produced in India.
- Thus, excise levy cannot be imposed on imported goods or goods manufactured Outside India
- If goods are imported in SKD or CKD condition and they are only assembled in India, as no new product emerges -.
- However, Manufacture -If actually components or sub-assemblies are imported, and its assembly in India .Excise duty payable.

India means

- India includes its territorial waters
- Territorial waters means water extending up to 12 nautical miles from Base line
- Sea bed and subsoil under lying territorial waters and Air space over it.

Excise Duty liability will attract if goods are manufactured up to 200 nautical miles (up to exclusive economic zone). Example oil exploration in the sea.

Indirect taxes- Central Excise- simplified



Basic excise duty

- Cenvat- at the rates specified in First Schedule to CETA, read with exemption notification, if any... Normal rate 8%, (Up to 28.02.10). Generally it is payable on all products

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Special duty of excise –

Also known as auxiliary duty. Levied at rates specified in Second Schedule (8%)

- These duties will normally announce through finance bills.
- The purpose of Special duty is raise resources for some specified objects.
- Some goods where special duty levied is pan masala, cars, air-conditions, soft drinks etc.]. These items are covered in Schedule II to Central Excise Tariff.
- (This duty was abolished by the Finance Act 2006 with effect from 01.03.2006, vide notification No.9/2006 dated 01.03.2006)

ED in case of clearances of EOU

–Excise duty in case of clearances by EOU –

–If they clear their final product in DTA (domestic tariff area) ie for used in India.

- The rate of excise duty will be equal to customs duty on like article if imported in India.
- Even if rate of customs duty is considered for payment of duty, actually the duty paid by them is Central Excise Duty.
- The rate of customs duty is taken only as a measure
- The Calculation and payment of duty is as follows:
 - Duty is payable @ 50% of aggregate of customs duties plus excise duty payable on like goods; vide Notification No. 10/2008-CE dated 1-3-2008.
 - No additional customs duty u/s 3(5) is payable
 - However it sales tax/vat is exempt on the goods customs duty u/s 3(5) is payable

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National Calamity contingent DUTY (NCCD) –.

This duty is in the nature of Surcharge. Introduced as per Section 136 of Finance Act 2001. General Rate 1%. Higher rates for tobacco products 10%, 23% and 45%

Mostly imposed on All Tobacco Products, Most of the all types of Polyester yarn(1%)

Indirect taxes- Central Excise- simplified

Most of the all types of vehicles except two wheeler (1%)

Can also levied on specific duty/tariff value basis

Example: Cigarettes rate varies from Rs. 20 to Rs. 235 per thousand on cigarettes.

Additional Duties of Excise (Goods of Special Importance) Act, 1957

This goods are similar goods that of declared goods under CST Act. This duty provides collection of all taxes at one stage by single authority will be convenient for payment and administration. In case of some items where additional duty will be collected instead of sales tax and such additional duty will be distributed among various States..

This duty has been abolished with effect from 01.03.2006 vide notification no 11/2006 dated 01.03.2006.

Duties under Acts

Some duties and cess are levied on manufactured products under other Acts. The administrative machinery of central excise is used to collect those taxes. Provisions of Central Excise Act and Rules have been made applicable for levy and collection of these duties /cess.

The Coffee Act 1942

Medical and Toilet Preparations (Excise Duties) Act, 1955.

Mineral Products (Additional Duties of Excise and Customs) Act, 1958

Additional Duties of Excise (Textile and Textile articles) Act 1978.

CESS: A cess is payable under

The Rubber Act 1947

Industries Development Regulation Act 1951

The Tea Act 1953

Textile Committee Act 1963

Lime Stone & Mines Labour Welfare Act 1972

Iron, manganese, Chrome Ores Labour Welfare Act 1976

Iron, manganese, Chrome Ores Labour Welfare Act 1976

Sugar Cess Act 1975

Jute Manufactures Cess Act

Education Cess

An education of 2% and higher education cess 1% total 3% was payable on all duties

Difference between tariff rate of duty and effective rate of duty

Tariff Rate' is the rate of duty of a product under each Chapter head and subhead mentioned in Excise tariff. Where as actual duty payable as per exemption notification is called effective rate of duty'.

Difference between Excise duty and other Indirect Taxes

Excise duty and Customs Duty

	Excise duty	Customs Duty
1	Excise is a duty is levied on excisable goods manufactured. The duty is relate to industrial activity	Customs duty is levied on movement of goods across custom frontier
2	Excise is a duty levied on excisable goods manufactured in India	Customs duty is levied in goods imported in to India

Excise duty and Sales Tax

	Excise duty	Sales tax/VAT
1	Excise is a duty is levied on excisable goods manufactured. The duty is on removal, irrespective of Sale	Sales tax/Vat is levied on Sale of goods
2	Excise is a duty levied on Manufacturer	Sales tax/Vat is levied on Seller of goods
3	Excise is a duty administered by Central Government	Sales tax/Vat administered by State Government

Indirect taxes- Central Excise- simplified

4	Excise is levied when the existence of new Commodity.	The taxable event is Sale .The existence of new Commodity is irrelevant for levy of Sales tax/Vat
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Excise duty and Service tax

Excise duty	Service tax
Excise is a duty is levied on excisable goods manufactured. The duty is on Goods	Service tax is levied on Services rendered to Customers and Clients

Excise duty and Entry Tax and Octroi

Excise duty	Entry Tax/Octroi
Excise is a duty is levied on excisable goods manufactured.	Entry tax /Octroi levied on enter of goods in to Specified area
Excise is a duty administered by Central Government	Entry tax /Octroi administered by State Government

Clean Energy Cess Effective from 01.07.2010

- A cess known as clean energy cess is payable on the specified goods(raw coal, raw lignite and raw peat) at the time of removal from mine
- Excise department will administer the cess.
- The effective date for payment of cess is 01.07.2010
- The rates will Rs.50 per ton (as of now).
- The due date for payment of cess will be 5th of the Second month. ie July 2010 removals duty payable on or before September 5th.
- Delay in payment interest @13%.
- If delay exceeds 30 days, it is assumed that goods removed without payment of cess, it will result in penal consequences.
- Excess amount of cess paid can be adjusted in the next month instead of claiming of refund
- adjustment of excess amount paid shall be subject to the condition that such excess amount paid is on account of reasons not involving interpretation of law, taxability, or applicability of any exemption notification
- Every existing producer of goods shall register with CEO by making application with 30 days from 01.07.2010
- the new producer should register within 30 days from the date of production
- In case of centralized billing one registration can be done for all the mines
- Goods should be removed with proper documents. Cess should be shown separately in invoice. Rounding of cess to nearest rupee
- Records to be maintained (similar to DSA).
- Monthly return to be filed in form I giving mine wise details on or before 10th of the second month. For example July 2010 removals return to be filed on or before September 10th.
- Assessment will be self assessment
- CEO has right to access the premises or mine, can verify records
- Clean Energy cess exempts all goods produced or extracted as per traditional and customary rights enjoyed by local tribals in the State of Meghalaya without any license or lease required under any law for the time being in force
- Raw coal, raw lignite and raw peat will be exempt from education cess.
- The provisions regarding demand, refund, recovery penalties etc of excise applicable to cess. General penalty Rs.10,000/-

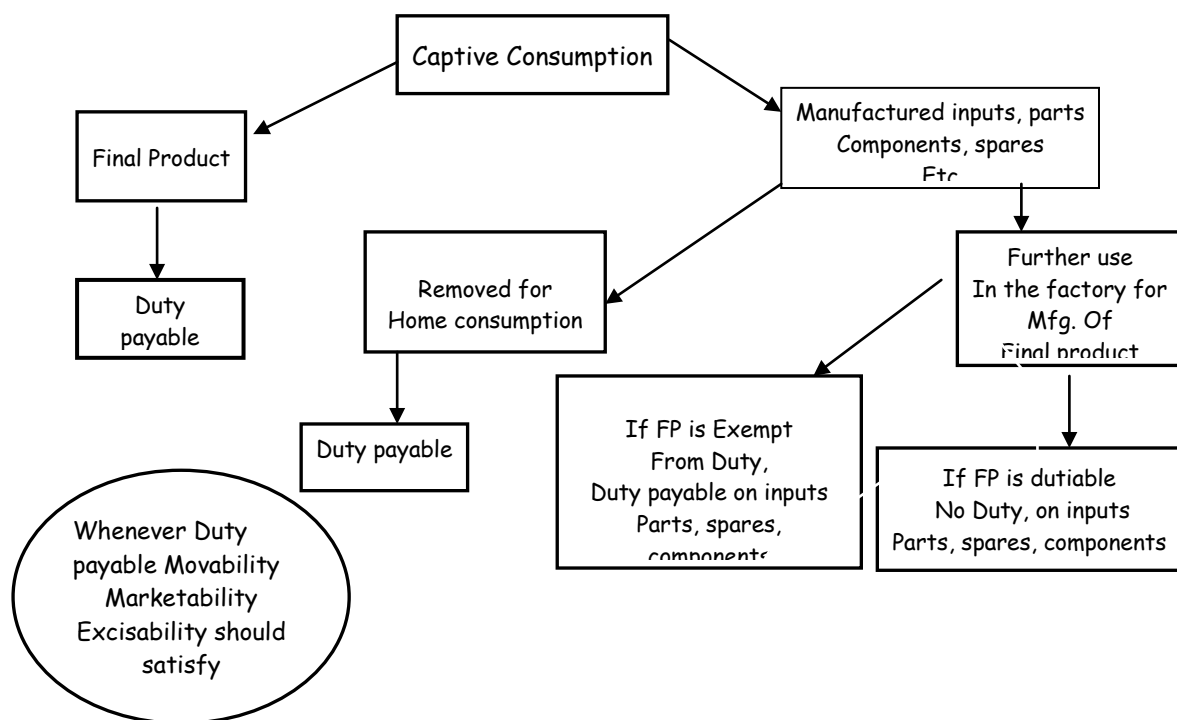
Indirect taxes- Central Excise- simplified

Captive consumption

Meaning

- Goods used by manufacturer with in the factory or branch or some other unit of manufacturer or for own purpose
- Excise duty is on manufacture and not on sale. Hence duty payable on captive consumption subject to certain conditions

Duty liability on captive consumption



Note: If there is any exemption for Captive consumption No duty payable. For example capital goods manufactured and used with in factory no duty payable and duty is exempted.

Exemption to captive consumption if duty paid on final product: The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [Notification No. 67/95 dated 16-3-1995].

Intermediate product

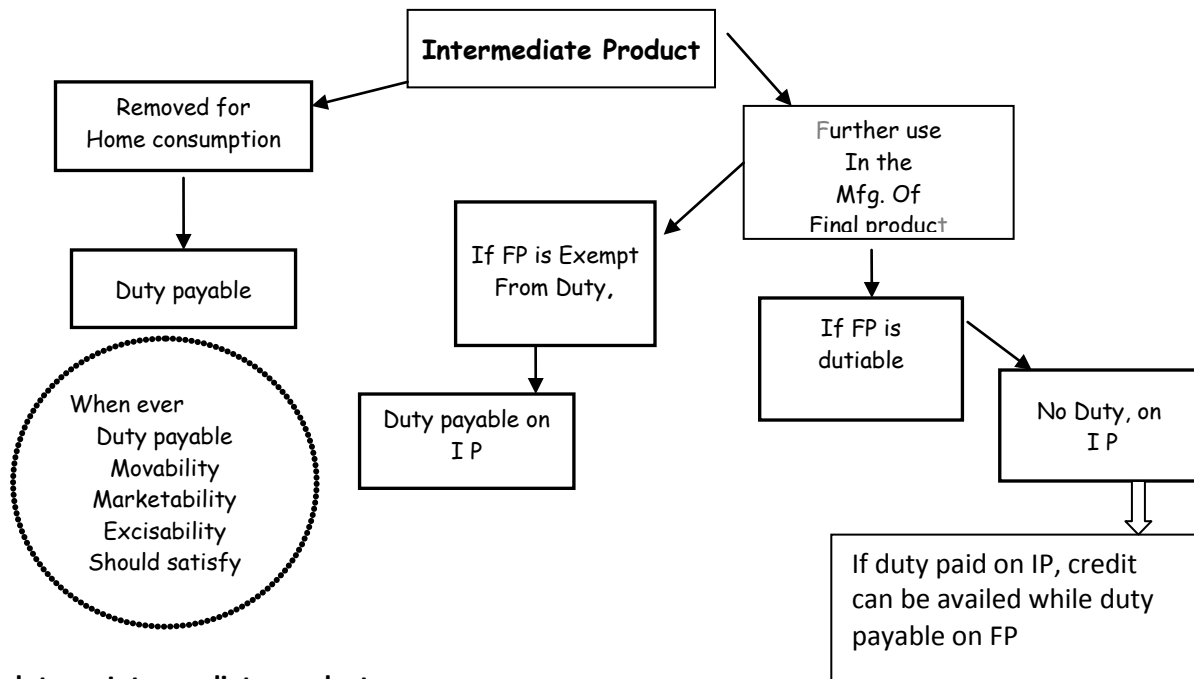
- I P means product emerged during the course of manufacture of final product
- They get produced in manufacture of final product
-

Examples

- Waste and Scrap

Indirect taxes- Central Excise- simplified

- Byproducts and joint products
- Molasses in case of manufacture of sugar
- Pulp/Cake in case of extraction of oil



No duty on Intermediate product

In the following cases no duty on intermediate products if it is used for captive consumption for manufacture of final product, even no duty payable on final product

- Final product cleared for deemed export i.e., cleared to EOU, STP/EHTP
- Final products cleared to ILO, WHO, UNDP, UNIDO programme etc. are exempt under Notification
- Final product cleared to defense, railways, & Indian Navy,
- Final product cleared by SSI under availing turnover exemption. However, if final product is fully exempt under any other notification, duty will be payable on intermediate product, or its value will be considered for calculating limits
- Final product is cleared for export under bond
- Final product is cleared by payment of amount of 10% as per cenvat credit rules

Intermediate products manufactured and used within the factory for manufacture of final products are exempt from duty, even if CT-3 certificate is not issued and Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules [earlier Chapter X] procedure is not followed, subject to the condition that documents/records are available with manufacturer that the intermediate goods have been used for export purpose only - CBE&C circular No. 229/63/96-CX dated 8-7-1996, amended vide 303/19/97-CX dated 11-3-1997.

No duty is payable on intermediate product if final product is cleared for export under bond without payment of duty. Circular No. 10/75-CX 6 dated 3-4-1975, issued by Ministry of Finance confirms that goods exported under bond cannot be treated as exempt from duty or chargeable to

Indirect taxes- Central Excise- simplified

nil rate of duty - CBE&C circular No 278/112/96-CX dated 11.12.1996] & *Orissa Synthetics Ltd. v. CCE* 1995 (77) ELT 350 (CEGAT). Same view in *Indian Aluminium Co. Ltd. v. CCE* 1995 (79) ELT 111 (CEGAT).

Goods falling under chapter 68 Manufactured at site is exempt from duty: goods manufactured under Chapter 68 at construction site (Stone, plaster, Cement, asbestos etc.,)for construction use at site is exempt from duty

Notification No 5/2006 dt01.03.2006 amended on 07.07.2009

Dutability of waste and scrap

- Duty not only on Manufacture but also on Production.
- Waste should arise (get produced) during the course of Manufacture
- If Waste is movable, Marketable & Excisable, duty is payable
- Confirmed in *Khandelwal Metal & Engineering Works Vs. U.O.I (SC)* , UOI vs Indian Aluminum Co.Ltd (SC)
- If the waste does not get produced/or manufactured in the process, there is no duty liability even waste is marketable and excisable. For example, waste arising during the demolition of building is not dutiable. Because building demolition is not a manufacture/production. Similarly steel pipe waste arising from cutting of steel pipe is not dutiable
- Waste and scrap is a final product for the purpose of utilization of cenvat credit.

Bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty. **Circular No. 904/24/2009-CX Dated 28/10/2009**

Excisability of plant & machinery assembled at site CBEC Circular dated 15.01.2002 –

- Duty cannot be levied on immovable property.
- Duty can be levied on parts and components leaving the factory according to condition they removed.
- If plant is so embedded to earth that it is not possible to move it without dismantle, no duty can be levied.
- If machinery is superficially attached to earth through foundation by way of nuts and bolts for operational efficiency, it is not an immovable property and can be easily removed without dismantling, duty is leviable
- When the parts and Components are fixed and installed in such a way where the final article is comes into existence only in shape of immovable property no duty leviable.
- Where the plates, Channels taken to site for fabrication, say for tank, is done at site and it is lifted and placed in a position permanently attached to earth, the tank come in existence as a goods. However if piece by piece attached to earth for the tank comes in existence, it would be immovable property.
- Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable

Conclusion as per various decisions on the excisability of plant and Machinery

- If the goods are movable at the time of removal and subsequently they are installed and fixed to earth, if they are not able to move, without dismantling, they are immovable property and no duty even it is marketable and excisable. Example lift. Lift cannot be moved without dismantling the building. Similarly tanks erected. Similarly kitchen cabinets, kitchen cupboard etc;, water treatment plant,. Turnkey projects.

Indirect taxes- Central Excise- simplified

- If the goods are fixed/installed in earth for administrative convenience and if they can be moved without dismantling, they are goods and liable of duty if they are marketable and excisable. For example, machinery installed with nuts and bolts can be moved. Moved. Similarly AC compressor fixed with clamps nuts and bolts.

Sec 3A levy of excise duty based on Annual capacity Production

- New section 3A introduced by Finance Act 2008 Effective from 16.05.2008
- This new section 3A is overriding section of section 3 (Charging section)
- The Central Government may notify in official gazette, the excisable goods of any description where levy of excise is based on annual capacity of production. (Unmanufactured tobacco bearing a brand name, Chewing tobacco & Jarda scented tobacco)
- Notification is issued considering the safe guard of interest of revenue, extent of evasion of duty and other relevant factors.
- Excise rules provide the manner of determination of annual capacity by CEO not below rank of AC/DC
- Annual capacity is deemed to the annual production.
- Where the factory operated only part of the year, production altered, modified, the annual production is to be calculated proportionately.
- Where a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.
- The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production
- The provisions of this section shall not apply to goods produced or manufactured, by a hundred per cent. Export-oriented undertaking and brought to any other place in India.
- The duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985, for the purpose of CVD under customs tariff Act.
-

Duty Liability Rule 4

Duty liability on Manufacture or production of goods in India' Collection of duty at the time of removal for admin Convenience

Who are liable to pay Duty

1. Manufacturer in the case of goods manufactured (Ownership of goods not relevant) Rule 4
2. In case of warehouse goods-Warehouse keeper/Person who stores goods without payment of duty (Rule 20)
3. In case of Khandasari Molasses- Purchaser/Procurer

Excise duty is payable even it was not collected or not charged in bill.

Rate of duty and tariff Valuation in case of excisable goods Rule 5

As the rate of duty is keep on changing due to notifications of government. The rate of duty applicable for payment of duty is relevant

S No	Particulars/Places of removal	Rate of duty applicable
1	Goods removed from factory	Rate on the date of removal from factory
2	Goods removed from Warehouse	Rate on the date of removal from Warehouse
3	In case of Khandasari molasses	Rate on the date of receipt of molasses in factory
4	When goods cleared for captive	Rate on the date when goods used/issued for

Indirect taxes- Central Excise- simplified

	consumption	production
5	Goods cleared for export but not exported	Rate on the date of removal from factory
6	Goods clandestinely removed	Rate on the date of removal from factory

Rate of duty in case of Pre budget stock

In case of Excisable goods (Whether goods charged to duty, exempted by notification or charged to nil duty)

Rate of duty applicable on the date of removal

Wallace Flour Mills Co. Ltd. v. CCE 1989(44) (SC),

In case of Non Excisable goods (Ie Goods bring in to Excise tariff for First time)

No Duty on Pre Budget stock.

Duty payable on the goods manufactured from the effective date of Notification.

Vazir Sultan Tobacco-1996 (SC)

Power to grant exemption from duty of excise Section 5 A

- If the Central Government is satisfied that it is necessary
- In the public interest so to do,
- It may, by notification in the Official Gazette,
- Exempt duty generally either absolutely or
- Subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification,
- Excisable goods of any specified description from the whole
- Or any part of the duty of excise leviable thereon:
- Goods Manufactured in FTZ/SEZ/100% EOU/ the exemption notification, will apply only when it is specifically provided in such notification,
- When duty exempted absolutely in notification – availment of the benefit mandatory.
- Exemption of duty should not exceed more than statutory duty.
- All notifications of exemption should be published.

Emergency power of the Central Government to increase duty of excise

**Section 3 of CETA
1985**

- Where, in respect of any goods,
- The Central Government is satisfied that the duty leviable thereon
- Under Section 3 of the Central Excise Act, 1944 should be increased
- And those circumstances exist which render it necessary to take immediate action,
- The Central Government may, by notification in the Official Gazette,
- Direct an amendment to the First and second Schedule with new rate of duty
- (a) The new rate should not exceed 15% in case of goods charged to is nil a rate of duty
- In any other case, a rate of duty as it thinks necessary.

Remission of duty on goods

Remission because of Natural Loss – Section 5

‘Remission’ means waiver or cancellation of excise duty legally payable.

The Central Government may, provide for remission of duty of excise leviable on any excisable goods which due to any natural cause (evaporation/volatile, fire, accident, flood etc.,) are found to be deficient in quantity.

Norms for the rules may be permitted, considering the

- Nature of the excisable goods or
- Processing or of curing thereof,
- The period of their storage or transit and
- Other relevant considerations,

Indirect taxes- Central Excise- simplified

- The department will fix the limit or limits of percentage beyond which no such remission shall be allowed:
- Different limit or limits of percentage may be fixed for different varieties of goods
- For different areas or for different seasons.
- The remission will be granted up to prescribed limits,
- on proof from the assessee,
- at the discretion of Central excise officer

Remission because of Natural Loss and Unfit for Consumption/marketing – Rule 21

- Where it is shown to the satisfaction of the Excise Officer
- that goods have been lost or destroyed by natural causes or by unavoidable accident
- or are claimed by the manufacturer as unfit for consumption or for marketing
- at any time before removal,
- he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:
- When the goods are claimed as bad they should be destroyed under the supervision of excise authorities.
- The destruction should be done in such a manner, the goods are irretrievable.- CBEC Manual
- Depending on the quantum of remission of duty, it is proved to the satisfaction of excise officer the goods are irretrievable.

Goods lost because of theft or dacoit cannot held as goods loss because of natural loss or unavoidable loss and hence remission cannot be granted

- Adjudication powers of CEO in respect of Excise and Service tax

S No	Excise officer to be approved	Issue of SCN for duty/Service tax	Remission of duty for loss of goods	Other Powers
1	Superintendent	Up to Rs. 1 Lakh (except fraud cases,)	Up to Rs.10,000	----
2	Assistant/Deputy Commissioner	>1,00,000<=5,00,000 and Cases where sup., cannot issue (fraud cases etc).,	Up to Rs,1,00,000	Issue R C and Refund claim without limit.
3	Joint/Additional Commissioner	>5,00,000 <=50,00,000	Up to Rs 5,00,000	Rebate on export under bond/rebate during transit of goods to WH, No monetary limit.
4	Commissioner	Without Limit	Without Limit	-----

Restriction on possession of excisable goods. Sec 8

- Central government will notify the date in official gazette and it may provide rules in respect of goods specified in second schedule of CETA
- The rules or notifications may provide the limits or maximum amount of such goods or variety or class of goods may be possessed by at any one time by person.
- Notified goods for these purpose is tobacco

Excise Classification

- Classification means Grouping and sub grouping of goods for rate purpose
- It is necessary to identify the numerous products through groups and sub-groups and
- And then to decide a rate of duty on each group/sub-group
- Classification covered by Central Excise tariff Act

The Central Excise Tariff Act	1985 (CETA)
--------------------------------------	--------------------

Indirect taxes- Central Excise- simplified

Salient features

- Classifies all the goods under 95 chapters
- There are over 1,200 tariff headings and 2,500 sub-headings.
- Goods classified using Harmonized System of Nomenclature (HSN),
- Goods classified with 8 digit

Schedules in CETA

- The first schedule gives----- basic excise duties (i.e. Cenvat duty) ,
- Second schedule-----gives list of items on which special excise duty is payable. Only few items.
- In addition to schedules there is annexure containing Third schedule ---contains goods where the MRP Valuation is applicable., Where NCCD is Payable.

Sections of CETA

20 sections. .

- A 'section' is a grouping of a number of Chapters, which codify a particular class of goods. Each of the sections is related to a broader class of goods

Examples

- Section I is 'Animal Products',
- Section VII is 'Plastics and Articles thereof',
- Section XI is 'Textile and Textile Articles',

Chapters in CETA

Section divided in Chapters – for example

- Section XI relates to Textile and Textile Articles and within that Section
- Chapter 50 is Silk, Chapter 51 is Wool, Chapter 52 is Cotton, and Chapter 53 is other vegetable textile fabric,
- Groups and Sub-groups within the Chapter -. For instance, Chapter 50 relating to silk is further divided into 5 headings. 50.01 relate to Silkworm, 50.02 relates to raw silk, 50.03 relates to silk waste, 50.04 relates to silk yarn and 50.05 relates to woven fabric of silk.

Eight Digit Classifications

All goods are classified using 8 digits system.

- First two digits related to the Chapter Number,
- Next two digits relate to heading of the goods
- Next two 2 digits indicate sub-heading
- Last two digits indicate tariff heading.
- A 4 digit code is called as 'heading' and
- A 6 digit code is called as 'sub-heading'
- 8 digit codes are called 'tariff entry'. .

Coding of Single and Double dashes

-Single dash (-) indicates a group,

-Two dashes (- -) a sub-group.

-Triple dash (- - -) and four dashed (- - - -) are used for further classification.

-

Rules for Interpretation of CETA

The Manufacturer has to classify his goods using classification rules

This Classification RULES TO BE APPLIED SEQUENTIALLY. I.e. in order

Rule 1

The titles of sections and chapters for of reference only, Classification to be done as per description of the heading, read with relevant section or chapter notes. Section chapter notes have legal effect. For example Chapter 39 deals with plastic articles, just by reading the heading plastic articles all plastic articles cannot be classified under chapter 39

Chapter 39 notes specifically excludes clocks, watches drawing instruments made of plastic Parts of vehicle aircrafts made of plastic, Toys games articles made of plastic. These goods were covered under different chapter

Indirect taxes- Central Excise- simplified

Classification of Incomplete Goods/unassembled finished goods Rule 2(a)

- Such goods to be Classified as finished and assembled article if contain essential character of finished goods

Examples:

- Passenger coach not fitted with seats will still be a passenger coach
- Motor vehicle not yet fitted with wheels, battery or tyres classify as motor cycle
- Bicycles without saddles and tyres * classify as bicycle
- Photographic camera without an optical element classify as Photographic camera
- Electric supply meter without its totaling device. classify as Electric supply meter

Un-assembled finished goods –

- The heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.

Example

- Cycle removed in CKD condition is to be classified as 'cycle and not parts of cycle

Sub-assemblies of air conditioning machines removed in CKS/SKD packs will be classified as complete machine, if it contains essential elements of air conditioning machine. - – **CBEC circular No. 666/57/2002-CX dated 25-9-2002**

This rule applicable only when the parts/components required for one product removed at a time. When the all the parts are removed over a period of time in different consignments this rule not applicable. In such case they have to classified as parts only

Classification of Mixture or Combinations [Rule 2(b)].

Any reference of goods will also include the reference to mixture or combination of that material or substance with other Materials or substance

- e.g. 'Article of Gold' will include an Article, which is made partly of Gold.
- Steel contains small quantity of carbon still it is referred as steel only.

Rule in case of Conflict between various headings [Rule 3]

- If there is conflict between two headings as per rule 2 b Specific Description preferable over general heading

Example: In case of foot ball, the bladder is made of rubber and outer case it made of leather. But foot ball was specifically classified under chapter 95 Toys, games and sports requisites. Here Chapter 40 and 42 general headings to be ignore and football is classified under chapter 95

Classification as per Essential Character [Rule 3(b)]/ Multi utility articles

- If Rule 3 cannot useful ; it should be classified as if they consisted of the material or component, which gives it their essential character

Examples..

- A pen stand with clock- Classify as pen
- A radio with clock -Classify as radio.
- A floppy diskette/CD is attached to a book. Such diskette/CD is supplementary or accessory to the book, which either explains contents of book or supplies some freeware or some tutorials. Here the essential character is a book
- A manual is supplied along-with software.- Classify as software
- Lock for motor vehicle classify as lock for motor vehicles and not a burglary /fire alarm.
- Data recorded on dvd/hard disk- classify as data not as dvd
- Os loaded in laptop –Classify as laptop. There should not be 2 classifications one as software and other as laptop.
- Printer + Fax + Scanner + Photostat for Rs 7500 - Classify as Printer
- Mobile Telephone + Camera + MP-3 Player for Rs 5000 -Classify as Mobile Telephone

A manual is supplied along-with software. The manual gives instructions as to how to use the software. Here the 'essential character' is 'software'. Hence, the goods will be classified according to 'essential character' as per rule 3(b). - **CBE&C circular No. 528/10 6/93-Cus (TU) dated 24-8-1993.**

Indirect taxes- Central Excise- simplified

If two or more are specific headings Latter the better [Rule 3(c)].

For example

●39.19 Self Adhesive tape / 85.46 Electrical insulators -

Classify as per latter heading 85.46 as electrical insulators.-

VIP bag is Plastic article as per general heading, but suitcase is specific heading

Classification as per Akin Goods [Rule 4].

If the classification is not possible by any of the aforesaid rules, then it should be classified under the heading appropriate to goods to which they are most akin. This is only a last resort and a desperate remedy to resolve the dispute as the matter of classification cannot be kept hanging indefinitely

Classification in case of Packing Material/Containers Rule 5

Certain packing materials are

- Specifically Shaped/Designed to contain an article or a set of articles;
- Suitable for long-term use;
- Presented along with the article for which they are intended;
- Of a kind normally sold with the article for which they are intended (i.e., as a normal prevalent trade practice)

Classify such packing material as that article and not as packing material

This provision will not applicable for durable and returnable packing.

Goods can be compared at the same level only [Rule 6].-

●Sub-Headings can be compared only at the same level; this means that if one heading contains 5-6 sub-headings, these sub-headings can be compared with each other. However, sub-heading less than one heading cannot be compared with sub-heading under a different heading. Thus, first heading has to be decided and then one of the sub-headings within that heading has to be selected.

Classification of Parts

Classification of parts is subject to notes in Sections and Chapters.

A part, which is essential and integral part of machinery, Equipment, Vehicles, furniture should be classified as main product only.

For example Tyres and tubes of vehicles should be classified under vehicles, as automobile parts and not as rubber articles

Parts of General Use

Parts of general use are to be classified in their respective heading and not as part of the machine or equipment

Example tube and pipe fittings, stranded wire, ropes, cables, chains,

Nails, screws, bolts, Padlocks, locks; fittings. Etc.,

Trade parlance theory Classification

- Applicable only when classification rules does not provide conclusive answer.
Based on popular sense
- Classification based on customer use and identity of a product

The consumer buys an article because it performs a specific function for him. This mental association with a product is highly important for classification. Atul Glass Industries (P.) Ltd. v. CCE - (1986) (SC),

Examples on trade parlance.

Carbon paper cannot be classified as a paper.

Lal Dhant Manjan (Red Tooth Powder) cannot be classified as a Medicine. It is tooth powder only

Mineral Water cannot classified as a beverages

Mirror cannot be classified as glass article. It is cosmetic item only

Plastic torch cannot be classified as plastic article.

Coconut is not a fruit or not a vegetable.

Windscreen cannot be classified as glass article. It is automobile part only

Indirect taxes- Central Excise- simplified

Prickly heat powder cannot be classified as toiletry preparations and should be classified as medicines

Classification of coconut oil CBEC Clarification Circular No. 890/10/2009 CX dated 03.06.2009

S.No.	Use by the consumer	It would be classified as
1.	Coconut oil packed in packages which are generally meant for sale in retail as hair oil (packed in containers upto 200 ml)	Hair oil under heading 3305 even though few consumers may use it as edible oil)
2.	Coconut oil packed in say 1 liter or 2 liter packages, which are generally used by consumers for edible purposes	Vegetable oil under Chapter 15 (even though some customers may use it as hair oil)

Excise Valuation

- After the product is correctly classified, and duty liability is established,
- The next question is 'determination of Excise Duty payable.
- Valuation deals with the value on which rate of duty to be applied
- Value is the amount on which excise duty is payable
- Value also known as Assessable value (A.V)
- Excise duty payable = Assessable Value x Rate of excise duty

Excise duty is payable on one of the following basis:

- Specific duty / Tariff Value Section 3(2)
- Duty payable based on Annual Capacity Production (Applicable for pan masala)
- Compound levy Scheme Rule 15
- Duty based on Maximum Retail Price
- Duty as % based on *Assessable Value* fixed under Section 4- Transaction value valuation (*ad valorem duty*)

Specific Duty:

- It is the duty payable on the basis of certain unit like weight, length, volume, etc. of a product
- The disadvantage of this duty is that even if selling price of the product increases, revenue earned by Government does not increase correspondingly. The Government will keep on revising the rates

Presently, specific rates have been specified for:

- cigarettes -on the basis of length
- matches- per 100 boxes or packs
- sugar -on the basis of quintal
- marble slabs and tiles- on the basis of square meter
- colour TV (only when MRP is not marked on the package or it is not the sale consideration) -on the basis of screen size in cm
- cement clinkers –on the basis of per tone
- molasses –on the basis of per ton

Indirect taxes- Central Excise- simplified

For example,

- Cigarettes less than 60 mm –Rs. 168 per thousand
- Cigarettes greater than 60 mm less than 70mm –Rs. 546 per thousand
- Filter cigarette ranging from Rs. 1260 to 2163 Per thousand
- Molasses, Rs. 1000 per Ton

Tariff Value:

Government from time to time fixes tariff value. This is a “Notional Value” for purpose of calculating the duty payable. Once 'tariff value for a commodity is fixed, duty is payable as percentage of this 'tariff value' and not the Assessable Value fixed u/s 4. This is fixed u/s 3(2) of Central Excise Act. Government can fix different tariff values for different classes of goods or goods manufactured by different classes or sold to different classes of buyers.

• When tariff value is prescribed under the law, that value will form the basis for assessment (and not any other value)

Example on tariff value

If retail sale price is printed on the retail pack (Pan masala) and having betel nut content not exceeding 15%, - 78% of the printed retail sale price

Compound Levy Scheme Notification No 34/2001

Applicable only for steel pattas Pattis, Aluminum Circles process under cold rolling

- Scheme is only optional
- Duty payable based on the basis of per cold rolling machine (steel pattas Rs. 30000/ Aluminum Circles Rs. 12000 per machine per month (Approx)
- No Cenvat Credit
- Assessee has to make an application for availing of the scheme
- Assessee should avail the scheme for consecutive 12 months.
- Lesser period may be permitted by AC/DC by recording reasons
- Assessee can extend the period by making application before the expiry of period. If he does not make application for extension of period it is deemed he has opted out of the scheme.
- Any proposed change in the number of machines should be intimated to Superintendent before such change and assessee should get approval
- Central government has got powers to notify the rates of duty for compound levy scheme

Value based on Retail Sale Price/MRP Valuation

• MRP provisions are overriding provisions of transaction value . (Sec 4 A). If MRP provision applicable valuation is to be done as per MRP basis only and not under transaction value or under valuation rules.

• MRp Valuation is applicable only when goods are sold or intended to sold in retail. For example when MRp covered goods issued as free samples, MRP valuation not applicable.

Meaning of MRP

- 'Retail sale price' means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and
- MRP includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale. - -
- In certain cases of Drugs – Retail price means price excluding local taxes

Valuation in case of MRP Provisions

- MRP Printed on the packet xxxxxxxx
- Less Abatement % xxxxxxxx
- Value for Excise to pay duty xxxxxxxx

The abatement % will be notified by Central Government ranging from 20% to 50%

Indirect taxes- Central Excise- simplified

Salient features of MRP Valuation

- The goods should be covered under provisions Both Standards of Weights and Measures Act, and Central excise notification (Schedule III).
- MRP printed on the packet less abatement notified by Central Government will be the valuation
- If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered
- Different prices are printed on different packages; each such price will be 'retail price'.
- If retail price declared on the package at the time of removal is subsequently altered to increase the price, such increased retail price will be retail price for purpose of section 4 A
- When assessee declares two MRP on the packet, and if higher MRP is scored out to show saving, scored out MRP is ignored even it is visible. (CBEC Circular No 673/64 dated 28.10.02)
- If goods covered under MRP provisions are imported, CVD will be payable on basis of valuation u/s 4A i.e. on basis of MRP printed on carton.
- If retail price not indicated or wrongly indicated at the time of removal, the goods are liable to confiscation. In such case, the 'retail sale price' will be ascertained as per MRP Valuation rules in the prescribed manner and duty will be payable as per the rules.(Market MRP Price/identical goods MRP is considered. More than one MRP highest MRP is considered)
- MRP provision is applicable even goods manufactured on job work basis.
- When some goods are sold partly in whole sale and partly retail, for whole sale goods MRP not applicable. For Retail sale MRP Valuation to be done.

CVD duty rate on imported goods when product covered under MRP –

- If goods covered under MRP provisions are imported, CVD will be payable on basis of valuation u/s 4A i.e. on basis of MRP printed on carton.
- If imported goods are printed with MRP if they are not sold, but used for process CVD payable based on transaction value

Some of the situations where MRP cannot be printed are and No MRP Valuation.

Bulk supplies for personal as well as industrial use, however some cases goods supplied for industrial use, MRP applicable example. Cement supplied to industrial construction.(upto 50 Kg pack)

Bulk supplies against contract, ex ice cream sold to hotel bulk, not for resale.

Supplies to canteen store depots of defence,

Item supplied free with another consumer item,

Items supplied free as marketing strategy or market response,

Items meant for export.

In the above cases MRP valuation will not be applicable. CBE&C circular No. 625/16/2002-CX dated 28-2-2002. – followed in *Bharti Systel v. CCE* 2002(145) ELT 626 (CEGAT).

MRP not applicable as per Standard weights and measures Act

Items weighing more than 25 kgs (Except Cement),

Items weight less than 10 g, 10 ml-

Packed fast food items-

Domestic LPG Gas,

Agricultural products above 50 Kgs (Any how it will cover under above 25 Kg category)

Free samples where Samples covered under MRP

The valuation should be done on the basis of MRP valuation u/s 4A. Circular No. 915/05/2010-CX dated 19.02.2010. If samples not covered under MRP they should be valued under valuation Rule No 4. Circular No. 813/10/2005-CX dated 25.4.2005

MRP in case of Multiple and Combination Packages

(CBEC Circular No 673/64 dated 28.10.02)

Indirect taxes- Central Excise- simplified

• In case of multiple piece packages consisting of 2 or more items of same kind, valuation is to be done as below:

MRP printed on Multiple packet will be considered valuation when

- Individual items cannot be sold separately/marked should not sell separately
- If individual items supplied free and no MRP printed on individual items –for example face gel supplied free along with anti dandruff shampoo, MRP printed on shampoo to be considered when only one MRP is indicated. No need to add Market MRP of face gel.
- If individual items have MRP printed but scored out to show shaving

Aggregate of MRP of individual packets will be considered when

- Individual items capable of sold separately and no restriction on the sale of individual items
- Department cannot challenge the MRP printed on the packet- Held in ITC Ltd case (Sc)

Assessment based on Value (Invoice Price)/ Transaction Value

- Where Central Excise is payable on the basis of value, it is known as “advalorem duty”.- Sec 4
- It is Duty charged based on Value (Invoice) with certain additions and deductions.

When the duty of excise is chargeable with reference to value, the 'transaction value' on each removal of goods, considered for the purpose of valuation if all the following conditions are satisfied –

- The goods should be sold at the time and place of removal.
- Buyer and assessee should not be related to each other
- Price should be the *sole consideration* for the sale.

1. The goods should be sold at the time and place of removal.

The Price of Goods sold at the time and place of removal is only relevant. Any increase or decrease after the removal of goods is not relevant Section 4(1)(a). Example delivered to another buyer after removal at different price is not relevant for valuation. However where the agreement provides escalation clause, Price realized as per escalation clause after removal is the value and should be considered for valuation.

Place of removal - ' means

- a factory or any other place or premises of production or manufacture of the excisable goods from where such goods are removed *or*
- (ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods are removed
- (iii) A depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from factory. [Section 4(3)(c)].

Time of removal - As per section 4(3)(cc),

- In case of sale from depot/place of consignment agent, 'time of removal' shall be deemed to be the time at which the goods are cleared from factory.

Examples when there is no sale at factory- Depot sales, samples, FOR contracts etc., in these cases transaction value not applicable

2. Buyer and seller should not be related to each other

Persons shall be deemed to be "related" if,

- They are inter-connected undertakings as per MRTP Act (ICU will be treated relative only When they become ICU by virtue of Holding and Subsidiary Company)
- They are so associated that they have interest, directly or indirectly, in the business of each other.
- Amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- They are relatives as per Clause 41 of Sec 2 of Companies Act
- Except the above four categories none of the other persons are treated as relatives. For example same management companies, Common director companies, common partners firms, one side interest etc are not treated as relative persons

Relative as per Clause 41 of Section 2 of the Companies Act

Indirect taxes- Central Excise- simplified

A person shall be deemed to be a relative of another if, and only if, —

- They are members of a Hindu undivided family; or
- They are husband and wife; or
- Father, Mother,
- Brother, sister, son and daughter and their spouses
- Grand father and grand mother Both maternal and paternal
- Grand son grand daughter and their spouses
- Under this clause a natural living person can only treated as relative. A Company, a firm and HUF cannot treat as relatives.

Price must be sole consideration –

- Price should be sole consideration of sale.
- Price is the consideration given for purchase of a thing

If the Price is not sole Consideration

- The price is to be adjusted for by adding,
- Cost of raw material supplied by buyer at free or reduced cost
- Cost of tools, design drawing, moulds supplied by buyer
- Interest free deposits received from buyer, if the price is reduced

Meaning of Transaction Value

- Price actually paid or payable for goods by buyer to Seller or to third person on behalf of
- The payment should be 'by reason of, or in connection with the sale'. The amount may be payable may be before or after sale. (Price should quantifiable at the time of removal,)
- Any amount charged By Seller for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter is includible

However, these expenses are includible only when following conditions are satisfied i.e.

- (a) The amount should be paid or payable to assessee or on behalf of assessee and
- (b) Payment should be by reason of sale or in connection with sale.

Each removal will be treated as a separate transaction and 'value' for each removal will be separately fixed. For example. Sale to industrial use, sale to Govt, sale in whole sale and sale in retail etc., In each price the value of goods is taken separately.

Inclusions in Transaction Value
--

Packing charges:

- All Packing Primary, Secondary. Or special, will form part of the transaction value. Packing supplied by buyer should also be includible; .Packing which is normally used at whole sale trade at factory gate is only includible in valuation.
- Durable and Returnable packing includible only if the audit report reveals that cost was not amortised -circular No. 643/34/2002-CX dated 1-7-2002.
- Durable and returnable packing supplied by buyer not includible in valuation. (Ex cylinder for sulphur dioxide-TCP Ltd-- Cestat
- Design and Engineering Charges of product- includable
- Consultancy charges relating to manufacturing - includable
- Compulsory after Sales Service / service in warranty period - includable
- Loading and handling charges within the factory -includable
- Commission to Selling Agents- includable

Free after Sales Service Warranty includible in valuation- they are includible whether they are optional or compulsory- **-CBEC Circular NO 354/81/2000 dated 30.06.2000.**

Indirect taxes- Central Excise- simplified

After-sale Service and Pre-delivery Inspection charges were to be included in the assessable value 'These services are provided free by the dealer on behalf of the assessee, the cost towards this is reimbursed to him and thus is a consideration to him for the sale of the goods, therefore will be includible in the assessable value'. **Circular No. 936/26/2010-CX dated 27.10.2010**

Exclusions in Transaction Value

Local Taxes: sales tax; Excise duty and other taxes payable on finished product- Equalized deduction of taxes not permissible – Since each clearance is a separate transaction for assessment, that taxes are deductible only on actual basis and not on average basis. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002**

643/34/2002-CX dated 1-7-2002

Outward handling, - not includible in valuation

Freight and transit insurance charges from factory to buyer place,

Processing cost after removal if such process does not amount to 'manufacture' – CBE&C circular No. 138/08/2000-CX.4 dated 3.1.2001.

•Notional Interest on security deposit/advances – Includible only when the price is reduced because of deposit

Interest on Receivables and on Delayed payment — CBE&C circular No. 643/34/2002-CX dated 1-7-2002.

Shall not be regarded as part of the assessable value provided that:

- The interest charges are clearly distinguished from the price actually paid or payable for the goods;
- The financing arrangement is made in writing; and
- Where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable

Installation and Erection Expenses – CLARIFICATION BY CBE&C

- The Board has clarified with regard to erection an commission charges is as follows
- If final product is not excisable, question of including erection and commissioning charges does not arise.
- If a machine is cleared from a factory on payment of appropriate duty and later taken to premises of the buyer for installation/erection and commissioning into an immovable property, no further duty will be payable
- If parts/components are brought to site and the machine is erected/installed and commissioned, if the product is excisable commodity, cost of erection, installation and commissioning would be included in assessable value. **-CBE&C circular No. 643/34/2002-CX dated 1-7-2002.**

Bank charges for collection of sale proceeds- not includible in valuation

Training charges to customer –

•Training charges to customer will be includible if they are in connection with sale or by reason of sale. If the transaction of providing training to employees of customer is an independent transaction, it may be 'in relation to sale', but not 'in connection with sale'

Inspection charges / addition testing charges paid by buyer

- Assessee carries out his own inspection- includable
- Customer carries out additional inspection borne by the buyer. Not includible
- If such testing is a mandatory requirement, it should be includible whether borne by assessee or buyer.
- This is because there is no sale without such testing.

Subsidy / Rebate obtained by assessee from Government

•A general subsidy / rebate are obviously not being includible as it has no connection with individual clearances of goods.

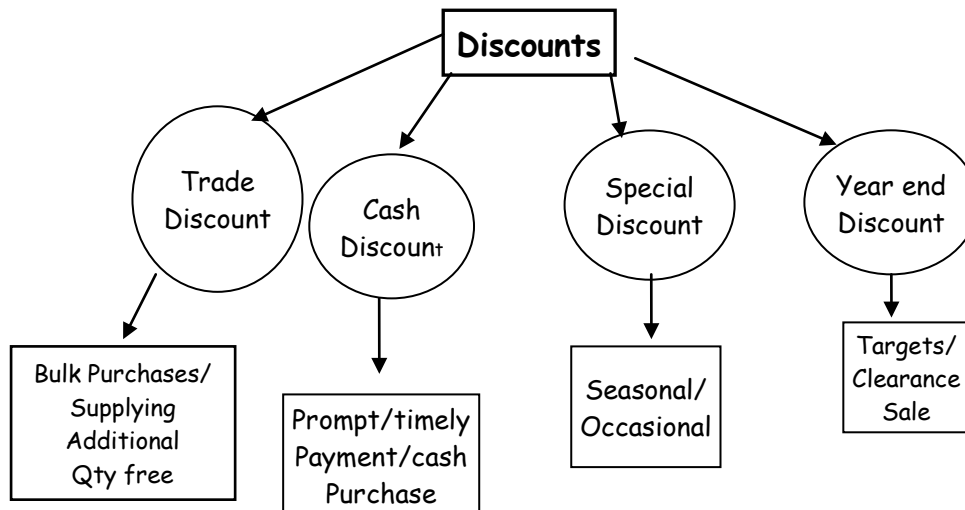
Profit earned on post removal activity –

Indirect taxes- Central Excise- simplified

Profit earned on post removal activity is not to be added unless there is any deliberate attempt to divert a part of the genuine price and show it as other charges

Advertisement and sale promotion Expenses- incurred by buyer if done on his own, are not to be includable,

Discounts



- All discounts are deductible if benefit passes on to buyer.
- Discount need not be uniform. Different discounts to be given to different persons
- There is no condition or provision that amount of such discount should be known at the time of removal of goods from factory. Differential discount is also permissible. Cash discount will be deductible only if actually passed on to buyer., CBE&C circular No. 643/34/2002-CX dated 1-7-2002
- Discounts can be given at any time -. For example year-end discount or turnover discount.

Valuation Rules

- Rules applicable when any of the conditions of transaction value not fulfilled

Valuation in case if goods are not sold: (Rule 4)

- Examples Samples, free warranty claims
- value will be Value of identical similar goods sold by Assessee at Same time
- If does not sell the goods on the same time Value at the nearest date subject to adjustment for price variance in dates of delivery.

Example on sample valuation

- **Case- 50 pieces of Samples are removed on 1.7.2010**

Alternative 1

- 50 pieces also sold on 1.7.2010 at Rs. 120 per Piece. Value for sample- Rs. 120 per piece

Alternative 2

- 50 pieces are not sold on the same day, but different quantities are sold at different price on 1.7.2010. Value for sample can be taken on price at which Highest qty sold (Whole sale price/Normal transaction value) can be taken.

Indirect taxes- Central Excise- simplified

Alternative 3

• There is no sales on 1.7.2010

• Value will be taken at nearest date sale price, subject to adjustment for price variance if any between nearest date and samples removed date.

Value in case of new product issued as sample-

- Where the value is not determinable at the time of removal and value can be known at subsequent date- request can be made for Provisional Assessment/Alternatively Cost + 10% can be considered for valuation.

Value in case of old sample

- Old sample different qty, size, and Different character. Value can be made under rule 11 (BOJ)

Valuation of samples - CBE&C, vide circular No. 813/10/2005-CX dated 25-4-2005 has clarified that in case of samples distributed free, valuation should be done on basis of rule 4. If the samples covered under MRP they should be valued under MRP Valuation.

Goods sold at different place /other than place of removal (Rule 5)

- Ex FOR delivery contract
- Value will be FOR price minus freight .The actual cost of transportation from place of removal up to place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.
- The deduction of Freight will be allowable only if the invoice indicates; the transportation cost does not include freight for return/empty journey- Circular No.827/4/2006-CX dated 12.04.2006

Clarification by CBEC on exclusion of return fare :As per Rule 5 the actual cost of transportation from the place of removal up to the place of delivery is only to be excluded. [Cost of return fare of vehicles is not required to be added for determining value. 'Tribunal held that where onward freight was not includible in the assessable value of the excisable goods, there was no question of return freight being included in the assessable value, whether or not the return freight was mentioned in the relevant invoices(Circular No. 923/13/2010-CX dated 19.5.2010)

Example on Valuation under Rule 5

Factory at Chennai (Place of removal). Buyer place At Bangalore (Place of delivery). No sale at Factory. Sale at buyer place in Bangalore. FO R price up to Bangalore Rs. 120 per unit. freight from Chennai to Bangalore per unit Rs. 10 . Value per unit will be Rs. 110 (120-10)

Factory at Chennai. Depot at Bhuvanewar (Place of removal). Buyer place At Kolkatta (Place of delivery). No sale at Factory. No sale at Depot .Sale at buyer place in Kolkotta.. FO R price up to Kolkotta. Rs. 200 per unit. freight from Chennai to Bhuvanewar Rs. per unit Rs. 20 . freight from Bhuvanewar to Kolkotta . Rs. 10 Per unit Value per unit will be Rs. 190 (200-10) . and not 170 (200-20-10) . No deduction for freight as Chennai is not a place of place of removal

Value when price is not the sole consideration [Rule 6]

• 'Assessable Value' will be the price charged by assessee, plus money value of the additional consideration received.

Example

- The buyer may supply any of the following directly or indirectly, free or at reduced cost.
- Materials, components, parts and similar items including packaging materials
- Tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used
- Engineering, development, artwork, design work and plans and sketches u
- In case of interest free advances received by seller, notional interest will be added only when the price was reduced because of interest free advance.

Example on price is sole consideration

Example 1

Indirect taxes- Central Excise- simplified

- A seller sell a unit at price of Rs. 100
- Assume, Buyer supplies material worth Rs. 60 per unit
- Design and drawing worth Rs. 10 per unit
- Buyer will pay only balance Rs. 30 (100-60-10).
- Here the Rs. 30 paid by buyer is not sole consideration for sale.
- Value will be $30 + 10 + 60 = 100$ is the value

Example 2

- A seller normally sell a unit at price of Rs. 100
- Assume , the buyer paid price in advance and also some deposit
- The Seller reduces the price to Rs. 80 because of advance payment and deposit
- Here the price Rs. 80 is not sole consideration for sale
- Rs, 20 to be added to Rs. 80 to arrive the value

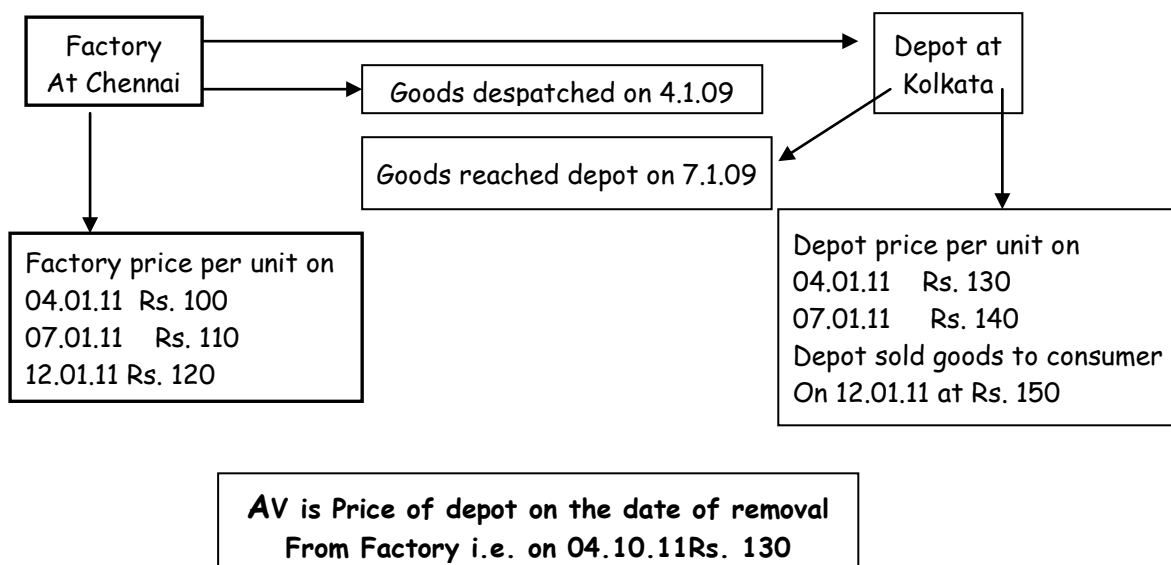
Valuation for Sale at depot / consignment agent place [Rule 7]

- Place of removal includes depot/ place of consignment agent,
- Time of removal in case of depot is time when such goods are removed from factory.
- Value is price (Normal transaction value) prevailing at the depot as on date of removal from factory.
- Price at which such goods are subsequently sold to buyer from the depot is not relevant for purpose of excise valuation
- No deduction for freight from factory to depot
- One day different prices. Price at highest qty sold is the value ('normal transaction value)
- If the price of depot on the date of removal is not available depot price at nearest date can be taken subject to adjustment for variance if any
- Freight and insurance from depot onwards to buyer place is not includible in value.

Meaning of 'normal transaction value'

• As per Valuation Rule 2(b), "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods is sold. The term 'greatest aggregate quantity' is used in rule 7 of Customs Valuation Rules. For example if 65 units are sold @ Rs. 1000, 55 units are sold @ Rs. 950 and 80 units are sold @ Rs. 900; then greatest aggregate quantity is 80 which is sold @ Rs. 900 per unit, which will be the basis for valuation.

Example on depot valuation:



Valuation in case of captive consumption (Rule 8)/

Indirect taxes- Central Excise- simplified

- Captive consumption means goods are not sold but consumed within the factory.
- Valuation shall be done on basis of cost of production plus 10%. Cost of production is to be determined as per CAS 4

Cost of production as per CAS 4

Material consumed (Cost should be exclusive of local taxes and excise)	xxxxxxx
Direct labour/wages	xxxxxxx
Direct expenses	xxxxxxx
Works overheads	xxxxxxx
Quality control costs	xxxxxxx
Research and development costs	xxxxxxx
Administration overheads relating to production	xxxxxxx
Less: Sale of scrap	xxxxxxx
Cost of production	xxxxxxx
Add: 10%	xxxxxxx
Value for excise (Assessable value)	xxxxxxx

Selling and distribution costs to be ignored

CBEC has clarified that if same goods are partly sold by assessee and partly consumed captively, goods sold have to be assessed on basis of transaction value and goods captively consumed should be assessed on basis of rule 8. **CBE&C, vide its circular No. 643/34/2002-CX dated 1-7-2002**, the reason is, as per new section 4, transaction value has to be determined separately for each removal. In case of captive consumption, cost calculation should be as per CAS-4 issued by ICWAI

Valuation in case of Sale to/through related person Rule 9/ Sale through ICU (Holding and Subsidiary company) Rule 10

Rule 9 and 10 applicable only

- When all goods are sold only to or through related persons. Or
- When there is a substantial sale to related persons and minor amount of sale to unrelated person.

Relative person valuation rule not applicable

- When the goods are sold partly to related persons and partly to unrelated persons (Applicable rule is rule 11 BOJ)
- When the price of RP and URP is same. ie sale to RP at market whole sale price

Value will be price at which the relative person sold to unrelative person.

Example on relative person valuation

Mr. A Sell goods to Mr. B @ Rs 100 per Unit. The same goods was Sold by Mr. B to Mr.C at Rs. 110 per Unit. A and B are related persons, B and C are unrelated persons. The Assessable for Mr. A removal will be Rs. 110 per unit. If B and C are related persons, the price of C to unrelated person will be the value. If B or C are not sold the goods and consumed captively. Valuation to be done as per rule 8 (Captive consumption basis)

Value in Case of Job Work- Rule 10 A (Applicable from 01.04.2007)

Indirect taxes- Central Excise- simplified

- Where the goods are sold from the place of job worker, the principal manufacturer (the person who supplies material to jobworker) transaction value (selling price) will be value, where the buyer and principal manufacturer are not related and Price is sole consideration.
- Where the goods are not sold from the place of job worker, removed from goods from job worker place and sold at some other place, Price of such goods at nearest place of removal is the value, where the buyer and principal manufacturer are not related and Price is sole consideration.
- Where the value cannot be determined as above two cases, the value will be determined as per other valuation rules
- With this new rule, profit margin of principal manufacturer is brought in to tax net.

Example for Job work value

- Cost of the leather supplied by principal manufacturer for making a pair of leather shoes Rs. 500
- Job worker charges Rs. 150 per pair towards labour charges and his profit
- Cost of transport from raw material supplier to jobworker place Rs. 10
- Jobworker finish the work and principal manufacturer wants to sell the shoes from the job worker place at Rs. 999-95.
- The A V will Rs. 999-95

Valuation in case of body building of a vehicle

When automobile manufacturer send chassis to independent body builder under stock transfer on payment of duty. The body builder availed the CENVAT credit of the duty paid on the chassis and cleared the same on payment of duty to the Depot/Sales Office/Distributor of the Motor Vehicle (MV) manufacturer. The duty was discharged by the body builder on the assessable value comprising the value of Chassis and the job charges i.e. cost construction method. The Depot/Sales office of the MV manufacturer sold the vehicles at a higher price than the price on which duty had been paid. Accordingly, after the insertion of rule 10A, the practice of discharging the duty on cost construction method by the body builder is not legally correct. Hence value should be done as per rule 10 A.

Best judgment Assessment Valuation [Rule 11]

BOJ only when it not possible to value from Rule 4 to 10A

- The value shall be determined using reasonable means consistent with the principles and general provisions of these rules and of section 4(1) of the Act. . It is mixture and combination of rule 4 to 10 A.
- This rule is applicable when the goods are sold partly to related and partly to unrelated persons, as there is no specific provision made.

Valuation in case of Computer Software

• Value of preloaded operational software not includible of valuation in case of computer; even computer cannot function without software. Software is not a part of Computer. Computer is complete without software. CCE Vs Acer India Ltd (2004) (SC) 172ELT289

Cum Duty price

- When the price is not sole consideration and if any Additional Consideration is added to arrive Assessable Value it should be treated, as cum duty price - If Assessee removes goods without payment of duty by mistake (treating dutiable goods as exempted goods), the price should be treated as cum duty price CCE Vs Maruthi Udyog Ltd (2002) (SC). If the goods are covered under MRP, abatement deduction will not available
- If the information is specific (in exam question) it should be cum duty price
- And calculation should be made backwards-
- $A V = (\text{Cum duty price minus-permissible deduction} \times 100 / 100 + \text{rate of duty})$

Valuation in case of Bought out goods / spare parts / Consumables/ Accessories

Bought out spares, parts fitted and delivered and along with main product includible in valuation

Indirect taxes- Central Excise- simplified

Valuation in case of accessories

Cost of Accessories, which are optional whether fitted, or not to the main product will not be includible in the Valuation.

Cost of Consumable is not includible in the valuation; even the main product cannot function without such consumable.

Example, ribbon in case of typewriter, cassette in case of tape recorder and needle in case of gramophone.

Valuation application Chart

Step 1

First check whether duty is payable based on Annual capacity production, if yes pay duty based on annual capacity production

Step 1

If Annual capacity Production valuation not applicable check whether duty payable based on tariff values, if yes value as per tariff values

Step 2

If tariff values does not apply, check whether MRP Valuation applicable, and MRP printed goods are sold or intended to sold, if yes value as per MRP provision

Step 3

If MRP Valuation does not apply, check whether 4 conditions of Transaction value is satisfied, if yes value as per transaction value

Step 4

If 4 conditions of transaction value not satisfied, value as per valuation rules.

Excise Procedures

Excise Procedures include

- Registration
- Maintaining proper production and stock registers.
- Procedures to be followed when removing of goods
- Payment of duty and
- Filing of Returns
- Special procedure for large tax payer.

Coverage of excise procedures. The procedures are covered in

- Excise Rules 2002
- Cenvat Credit Rules 2004
- Excise Manual 2001
- Excise removal of goods At concession rate Rules 2001
- Excise Circulars Notifications

Registration of factory/warehouse Sec 6 Rule 9

Notification NO 35 &36/2001

Persons requiring registration

- Every manufacturer of excisable goods (including Govt, autonomous corporations) on which excise duty is leviable.
- An importer / Dealers who desire to issue CENVATABLE invoices
- Persons holding private warehouses.
- Persons who obtain excisable goods for availing end-use based exemption notification.
- Exporters manufacturing or processing export goods intending to claim rebate of such duty
- EOU units procuring goods from DTA or supplying goods to DTA

Persons Exemption from Registration Notification No. 36/2001- dt.26.6.2001,

Indirect taxes- Central Excise- simplified

- Persons who manufacture the excisable goods, which are chargeable to nil rate of duty or are fully exempt from duty by a notification
- SSI units availing the slab exemption based on value of clearances under a notification. Only declaration when the value of their clearances touches Rs.40 lakhs.
- job-worker of ready-made garments need not get registered if the principal manufacturer undertakes to discharge the duty liability
- Persons manufacturing excisable goods by following the warehousing procedure under section 65 of Customs Act,
- 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).
- 100% EOU/SEZ licensed under the provisions of the Customs Act

Procedure for Registration

- Application in form A-1 duly filled up and signed along with self-attested copy of PAN should be submitted to Jurisdictional AC/DC.
- EOU located in port towns, application should be submitted to DC/AC Customs,
- If PAN is not available, copy of application made for PAN should be submitted
- AC/DC will scrutinize the application
- Registration certificate will be granted within 7 working days
- Reg. No is based on 15 digit PAN (E C C No.)
- Range Officer and Sector Officer shall verify address and premises within 5 working days after registration

Other Provisions with regard to registration

- Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory
- Registration Certificate may be granted to minors if guardians conduct business
- Registration is not transferable.
- Any Change in constitution to be intimated within 30 days of change. No fresh registration required.
- If there is any change in information given in form A-1, the change should be informed in form A-1

Closure of business

- Apply for de-registration. Surrender original RC and pay duty up to date.
- Registration can be revoked or suspended if manufacturer or his employee breach of any of the provisions of Central Excise Act or Rules or has been convicted under section 161 of Indian Penal Code.

Penalty for non-registration

- Up to duty of contravening goods or Rs.2,000 whichever is higher
- In addition, Confiscation
- It is also an offence under section 9 of CEA imprisonment up to seven years (minimum 6 months) can be imposed

Factory' under Central Excise - Section 2(e)

- Factory means as any premises, including the precincts thereof, wherein or in any part of which, excisable goods are manufactured
- Precincts mean area enclosed by compound wall. A Canteen, a recreation club, a shed a cycle stand located inside the compound wall will be a factory
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured.
- It is not necessary that factory registered under factories act.
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured

Records for storage of goods

Daily Stock Account of stored goods Rule 10

- A daily stock has to be maintained by every assessee.

Indirect taxes- Central Excise- simplified

- DSA should be maintained on daily basis, in a legible manner,
- Entry in DSA to be made after goods are fully manufactured, duly tested and packed

Particular of DSA

- Date
- Description of goods manufactured or produced
- Opening Balance
- Quantity produced or manufactured
- Inventory of goods
- Quantity Removed
- Assessable Value
- Amount of duty payable
- Particulars regarding amount of duty actually paid.
- Manufacturer or his authorized agent authenticates the first page and last page of such book.

Period

- All such records shall be preserved for 5 years.

Penalty will be levied

- for not maintaining or Overwriting and cutting, or
- Difference between DSA stock and Physical Stocks

Penalty will be duty payable on goods or Rs. 2000 whichever is higher and Confiscation

Clearance of Goods for home consumption Rule 11

- 'Clearance' means removal of excisable goods from the factory.
- Excisable goods can be removed from factory only under Invoice'.

Requirements of Invoice Rule 11(2)

- Invoice should be serially numbered. Serial No by printing or by franking machine.
- The serial number should start from 1st April and will continue for the whole financial year.
- Before using serial numbers, the serial number shall be intimated to Range Superintendent

Invoice to be prepared in triplicate with suitable marks

- Original shall be marked 'ORIGINAL FOR BUYER'
- Duplicate copy shall be marked 'DUPLICATE FOR TRANSPORTER'
- Triplicate shall be marked 'TRIPLICATE FOR ASSESSEE'.
- Additional Copies if any can be maintained and they should be marked as 'NOT FOR CENVAT PURPOSES'.
- Only one invoice book should be used at a time
- Separate series of invoice for export and home consumption permitted. Assessee has to just intimate AC / DC.
- Invoice to be authenticated by owner or authorized person (Pre-authentication before used is not required Wef 01.04.2010)
- Invoice should be in book form
- The invoices can be 'loose leaf' only if Invoices are computerized.
- Non Compliance of above goods can be detained or Cenvat credit can be denied –
- In invoice duty payable should be rounded to in nearest rupee (sec 37 D) -

Contents of Invoice

- Name address, Registration Number of Manufacturer
- Name of proprietor in case of proprietor ship firm, Karta, Head in case of HUF
- Name and address of consignee
- Description and classification of goods
- Time and date of removal
- Quantity and Assessable Value of goods
- Rate of duty
- Duty payable on the goods.

Indirect taxes- Central Excise- simplified

- Mode of transport
- Name and Address of the jurisdictional Central Excise Division of assessee

Supplementary Invoice for differential duty –

- Prepared when Assessee may have to pay differential duty
- Should contain cross-reference to the original invoice

Computerization of Invoices

No permission is required.

Requirements

(1) In Case of running stationery

- the stationary should be pre-printed with all details
- After invoices are prepared, triplicate copy shall be retained in bound book form.

(2) If case of Blank stationery

Computer software should generate serial number automatically

- Same number cannot be generated more than once. –

Price of goods should indicate amount of duty paid there on Sec 12 A

Every person liable to pay duty at the time of clearance of goods, **prominently indicate** in all documents relating to assessment and sales invoice, the amount of duty which will form part of price at which goods are sold.

Manner of Payment of Duty Rule 8

Due date for payment of Excise duty

Nature of Assessee	Month	Due Date
All Assessee except SSI	April to Feb	5th of the following month
SSI-	April to Dec-	5th of the following Quarter (wef 01.04.2010)
All Assesses-	March (SSI -Jan to Mar)	March 31
In case of E payment	April to February SSI(April to Dec -3qtr)	6th of the following month 6 th of the following Quarter

EOU now can pay duty on monthly basis vide notification No 23/2008 dt 23/05/2008 (earlier day basis)

e-payment mandatory for payment of duty by all assessee who have paid excise duty of, rupees 10 lakh or more during the previous financial year or already paid Rs. 10 lakhs during the current financial year, Gross (before availing Cenvat credit) - WEF 01.04.2010

- Discharge of duty liability only if the amount payable is credited to C. G A/c
- Payment by Cheque the date of presentation of the cheque is the date of payment- subject to realization of that cheque.
- Payment of duty also include **payment of an amount** as per cenvat credit rules
- If the due date is holiday duty can be paid on next working day.

Delay in payment of duty- Interest payable @ 13% p.a starting from first day after due date till the payment of duty

If Assessee defaults payment of duty more than 30 days,

- Assessee will forego the monthly facility of payment of the duty
- Such forfeiture will be till such date on which all dues including interest thereof are paid,
- During such punishment period Payment of duty should be made on each consignment basis

without availing cenvat credit

- in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and penalties can be levied

GAR-7 Challan

Excise duty is to be paid using G A R 7 Challan. (TR 6 challan up to 31.03.2007)

Particulars of Challan

- Name address, telephone no of Assessee

Indirect taxes- Central Excise- simplified

- 15 Digit ECC No of assessee
- Commissionerate code, Division code, range
- 8 digit accounting code of duty/cess payable
- Payment should be made in Designated Bank with signature of Assessee
- The challan should be serially numbered, from 1st April onwards –
- Countersignature of excise officer is not necessary in challan
- After payment assessee should ensure the counter foil should contain with bank seal, BSR code of branch (7 digits) Date of deposit (8 digits) and challan serial number (5 digits). Total 20 digits known as CIN (challan identification Number) and it should be quoted in return

Personal Ledger Account (PLA)/ Current Account

- PLA is duty payment register
- Assessee should pay duty through PLA.
- No specific permission is necessary.
- The PLA debited with duty payable and credited when duty is deposited in bank by GAR 7 challan

PLA contains following details:

- Serial No., and date,
- Details of credit like GAR 7 challan number, date and amount for each subhead of excise duty details of debit and balance.

Maintenance of PLA

- PLA has to be maintained in triplicate using indelible pencil and both sided carbon
- Each entry should be serially numbered and should be made on a separate line.
- The running serial number should start from 1 every financial year.
- Both debit and credit entry should not be on same line
- PLA and Cenvat credit should be used only for payment duty and not for other payments like rent, fines, penalties etc
- Corrections in PLA are not allowed.
- If any correction is necessary, the original entry should be neatly scored out and attested by assessee. Fresh entry to be made in next row.
- Two copies of PLA and copies of GAR 7 receipted challan shall be submitted along with Excise return

Periodical returns- Rule 12

The following are the various returns are to be filed by the assessee, the return is required *in quintuplicate*, and Assessee will have sixth copy as his record copy.

Form of Return	Description	Who is required to file	Due date for filing return
ER-1[Rule 12(1) of Central Excise Rules]	Monthly Return by large units	Manufacturers not eligible for SSI concession	10th of following month
ER-2[Rule 12(1) of Central Excise Rules]	Return by EOU	EOU units	10th of following month
ER-3[Proviso to Rule 12(1) of Central Excise Rules]	Quarterly Return by SSI	Assessee availing SSI concession	10 th of following quarter Wef 01.04.2010
ER-4[rule 12(2) of Central Excise Rules]	Annual Financial Information Statement	Assessee paying duty of Rs one crore or more per annum through PLA	Annually by 30th November of succeeding year
ER-5 [Rules 9A(1) and 9A(2) of Cenvat Credit Rules]	Information relating to Principal Inputs	Assessee paying duty of Rs one crore or more per annum through PLA and manufacturing goods under specified tariff headings	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30-4-2010).
ER-6 [Rule 9A(3) of	Monthly return of receipt	Assessee required to	10th of following month

Indirect taxes- Central Excise- simplified

Cenvat Credit Rules]	and consumption of each of Principal Inputs	submit ER-5 return	
ER-7 [Rule 9A(4) of Cenvat Credit Rules]	Annual Installed Capacity production Statement	Assessee required to submit ER-5 return	Annually, by 30th April for the current year (e.g. return for 2010-11 is to be filed by 30-4-2010).

Certain Manufacturers are exempt from filing of Annual Installed Capacity production return such as biris, manufactured without the aid of machines, matches manufactured without the aid of power &) reinforced cement concrete pipes Notification dated 26/2009 dt.18.11.2009

Submission of list of records Rule 22(2)

Every assessee should submit, a list in duplicate of all records Prepared or maintained by him

- For receipt, purchase goods
- For Manufacture, storage of goods
- For Sale or delivery of goods
- Registers should be maintained for inputs and capital goods.
- The above records and Cost Audit Report, Income Tax Audit Report u/s 44AB of Income Tax Act Should be submitted for scrutiny in case of inspection to Range officer, Audit persons

Meaning of 'record'

- All accounts, agreements, invoice, price list, return, statement or any other source document, whether in writing or in any other form, sales invoice, purchase invoice, journal voucher, delivery challan and debit or credit notes. -

Electronic filing of Returns mandatory when duty payment exceeds Rs. 10 lakhs

CBE&C has introduced the facility of filing the monthly/quarterly excise returns electronically.

Where the duty payment Gross (including utilization of Cenvat credit) is Rs. 10 lakhs or more during the previous financial year, returns to be filed electronically. Even the (FSD/SSD) dealer required to file electronically. It is mandatory (WEF 01.04.2010)

- To avail the facility of e filing assessee should submit an application in the prescribed form for e filing
- Assessee should Submit returns after receipt confirmation, User ID and Password from the Department,

JOB WORK

Meaning-(Notification N0 214/86)

- Processing or working upon of raw materials or semi-finished goods
- So as to complete a part or whole of the process resulting in the manufacture Or finishing of an article or
- Any operation which is essential for the aforesaid process.

Persons eligible to send materials for job work

- (a) Manufacturers (b) Exporters (c) Units in SEZ, EOU, EHTP & STP (d) persons supplying U N O etc
- Job worker can use his own material and recover charges therefore from the principal manufacturer.

Inputs that can be sent for job work

- All inputs except diesel petrol and oil, filament yarn

Duty liability in case of Job Work

If job work process is a manufacture, job worker has to pay excise duty.

Job worker will exempt from payment of duty in the following cases

- Should not receive material from trader or buyer
- The manufacturer should give declaration to jurisdictional CEO that he will undertake duty liability
- After the job work, processed material, balance unused material and scrap should be returned to supplier.
- Goods can be cleared directly from the place of job worker with permission of Commissioner.

Exemption from duty for job worker when material received under Cenvat provisions

Indirect taxes- Central Excise- simplified

- Material received by a manufacturer under CENVAT can be sent to a job worker
- He should material brought back by the manufacturer for further processing.
- In such cases, there is no duty liability on the job worker and he is exempted from the same.

Large tax payer units Rule 12 BB

Meaning of Large tax payer unit

- Who is presently assessed to income tax in any of the five cities (Bangalore, Chennai, Delhi, Kolkata or Mumbai)
- has one or more registered premises under the Central Excise Act, 1944 or Service tax Act
- and an assessee under the Income Tax Act, 1961, who holds a Permanent Account Number issued under section 139A of the said Act, and

Who has paid during any in previous year to the year of filing application for option to avail STP

- excise duty in cash (account current) of Rs 5 crore or more; or
- service tax in cash (account current) of Rs 5 crore or more; or
- advance (income) tax/corporation tax of Rs 10 crore or more

A large taxpayer who satisfies the conditions mentioned above may file an application in prescribed form duly completed in all respects to the Chief Commissioner of Central Excise, indicating his willingness to be a large taxpayer. He can avail facility of all the excise, service tax and income tax at one place in single window clearance. However the scheme is only optional.

Procedure for LTP units

LTP can avail the following facility-

- Can remove excisable goods, except petrol and diesel oil without duty to any person registered premises except FSD/SSD
- Removal should be with invoice or transfer challan
- The goods can be cleared for Home consumption or export within 6 months from the date of sending the material
- If not cleared the recipient premises has to pay duty with interest u/s 11 AB
- The transfer challan or invoice should contain similar particulars of invoice Rule 11
- A large taxpayer shall submit the monthly returns, as for each of the registered premises.
- A large taxpayer, on demand, may be required to make available all records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.
- Availment of LTP scheme is optional
- A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

Power to impose restrictions in certain types of cases.

Central Government, if necessary in the public interest to provide for certain measures

Considerations for taking measures

- Extent of evasion of duty,
- Nature and type of offences or
- Such other factors as may be relevant

Measures:

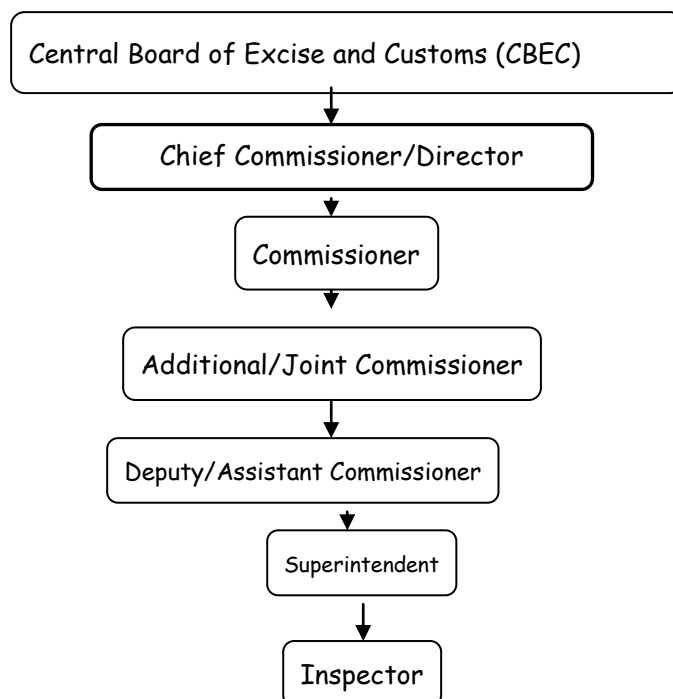
- May place restrictions on a manufacturer, FSD/SSD or exporter, specify nature of restrictions including suspension of registration in case of a dealer
- Types of facilities to be withdrawn
- Procedure for issue of such order by an officer authorized by the Board.

The circumstances under which the restrictions are place are

Indirect taxes- Central Excise- simplified

- Removal of goods without the cover of an invoice and without payment of duty;
removal of goods without Correct Value
- Excess sale price realized not accounted;
- Availing CENVAT Credit without the receipt of goods/ specified documents
- Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine
- issue of excise duty invoice without delivery of goods specified in the said invoice;
- claiming of refund or rebate which are not genuine

Excise Administration

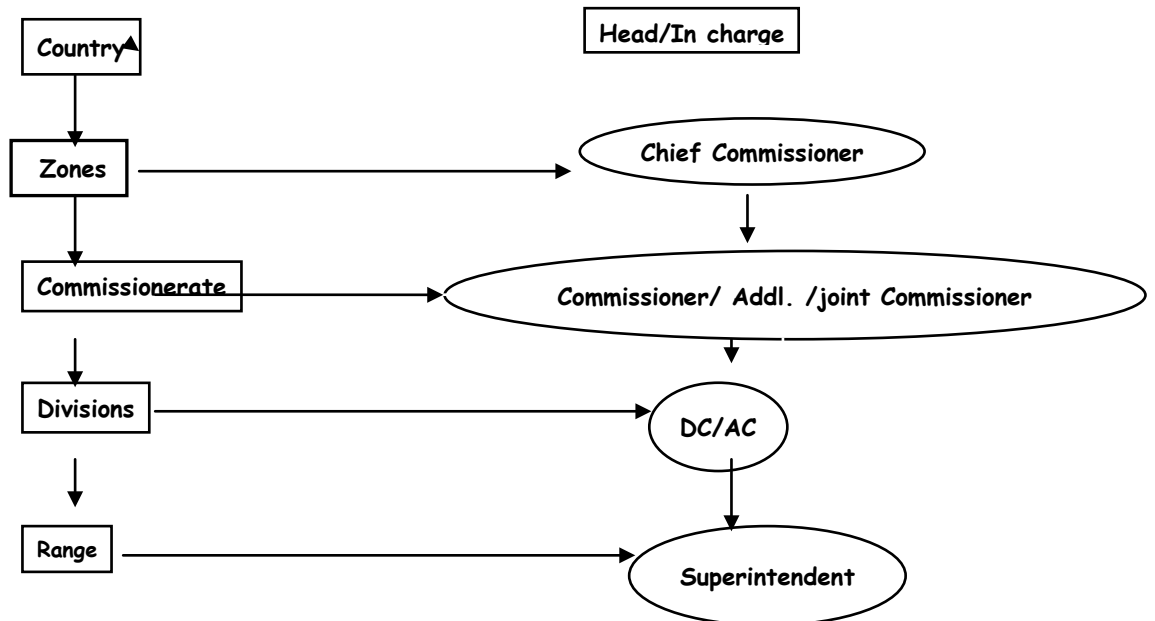


Meaning of CEO: All above in the hierarchy from Chief Commissioner to Inspector including Commissioner (Appeals) and Officer of State government if CBEC entrusted any powers to him

Meaning of Adjudicating authority: Authority who has right to pass orders decisions under Act excluding Commissioner Appeals, Appellate tribunal and CBEC

Indirect taxes- Central Excise- simplified

Segregation of excise functions



Board - CBE&C.

- Formed under Central Boards of Revenue Act, 1963. Head Quarter in New Delhi
- Consisting of six to seven members, headed by Chairman,
- Chairman has powers to administer the Excise Act/distribute work
- Central Excise Rules authorizes Board to appoint Central Excise Officers. Rule 3(1)
- Board can exercise all powers conferred on these officers under the Central Excise Act.
- Board can authorize CC/C/JC/DC/AC to appoint officers below rank of AC.
- Section 37B of CEA authorizes Board to issue orders, instructions and directions to Central **Excise Officers**

The Provisions with regard to Excise Officer are similar in section 4(1) and 151 A of Customs Act as below.

Chief Commissioner of Central Excise

- Country is divided in several zones.
- Each 'zone' is under supervision of '*Chief Commissioner of Central Excise*'
- Board Specify the jurisdiction of Chief Commissioner, Commissioner or Commissioner (Appeals).

Commissioner of Central Excise

- Each 'zone' covers various Commissionerate and
- Commissioner of Central Excise (CCE) is Administrative in-charge of the 'Commissionerate'.

Additional Commissioner of CE –

- There may be one or more Additional Commissioner in a Commissionerate.
- Restrictions on powers of Additional Commissioner have been placed through administrative instructions.
- Commissioner has unlimited powers of adjudication, while Addl Commissioner has restricted powers of adjudication.

Deputy Commissioner/Assistant Commissioner

- Each Commissionerate of Central Excise is divided into divisions
- Each division is under administrative control of 'Deputy Commissioner' or 'Assistant Commissioner of Central Excise'
- Assistant Commissioner (Senior Scale) is designated as 'Deputy Commissioner'

Indirect taxes- Central Excise- simplified

- Both Assistant Commissioner and Deputy Commissioner have same powers.

Superintendent

- The division under each Deputy / Assistant Commissioner of Central Excise is further divided into various ranges
- Each range is under control of Superintendent of Central Excise, who is of the rank of a Gazetted Officer.
- Inspectors work under Superintendent and some powers have been delegated to them. Inspectors are not a Gazetted Officers.

POWERS OF CENTRAL EXCISE OFFICERS

Excise Officer Power to Access to registered premises.

- An officer empowered by the Commissioner shall have access to any registered premises
- He can carry out any scrutiny, verification and checks.
- Every assessee, and FSD & SSD shall furnish to the officer, a list in duplicate of all the records
- Records and Audit reports make available to the officer or the audit party

Visit Book of Excise Officers

- Each factory is required to maintain a visit book in prescribed form.
- Inspector and Superintendent visiting the factory are required to fill in the book.

Restrictions on visit to SSI

- Excise Officers and departmental audit parties can visit SSI units for specific purposes only and on specific written permission of Assistant/Deputy Commissioner.

Excise officer power to stop conveyance, search and seize:

- If he has reason to believe that the goods are being carried with the intention of evading duty.

Power to detain or seize the goods -Rule 24 of Central Excise Rules.

- any goods, which are liable to excise duty but no duty is paid thereon or
- the said goods are removed with intention of evading the duty payable thereon,

Return of Seized Documents/ books Rule 24 A of Central Excise Rules (Notification No 17/2009 dt 07.07.2009

The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made there under, shall be returned within **thirty days** of the issue of said notice or within **thirty days** from the date of expiry of the period for issue of said notice:

Provided that the Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.

Excise Officers power to issue summons sec 14

- Asking a person to appear before the named authority and give evidence and produce documents or other things.
- Person summoned is bound to attend and state the truth upon the required subject

Excise officer power to arrest a person [Section 13].

- An Excise Officer not below the rank of Inspector, to arrest a person whom they have '*reason to believe*' to be liable to be punished under provisions of the Act
- Such arrest can be only with prior approval of Commissioner of Central Excise.

Indirect taxes- Central Excise- simplified

Cenvat Credit

Cenvat Credit Highlights

- Cenvat Credit Rules, 2004 with effective from. 10-9-2004.
- Integration of Central Excise and Service tax
- Applicable for Manufacturer, Service provider
- Manufacturer can take credit for excise duty and Service tax
- Service provider will take credit for service tax and Excise duty
- Credit of duty paid on inputs and Service tax paid on input services providing output service
- The input may be used directly or indirectly in or in relation to manufacture
- No input credit if final product/output service exempt from duty/ service tax –
- Cenvat Credit Rules do not require input-output correlation to be established
- Credit for specified duties
- Credit of duty service tax only based on documents
- Records to be maintained and returns to be furnished

Important Definitions

Exempted Goods

- Excisable goods fully exempted from duty
- Excisable goods Charged to Nil duty

Exempted Service

- Services Where no service tax payable;
- Taxable service wholly exempted from tax

Final Product

- Excisable goods manufactured or produced using input or input service

First Stage Dealer

- Dealer who purchases goods directly from Manufacturer from his factory, depots, Consignment agent with invoice

Second Stage Dealer

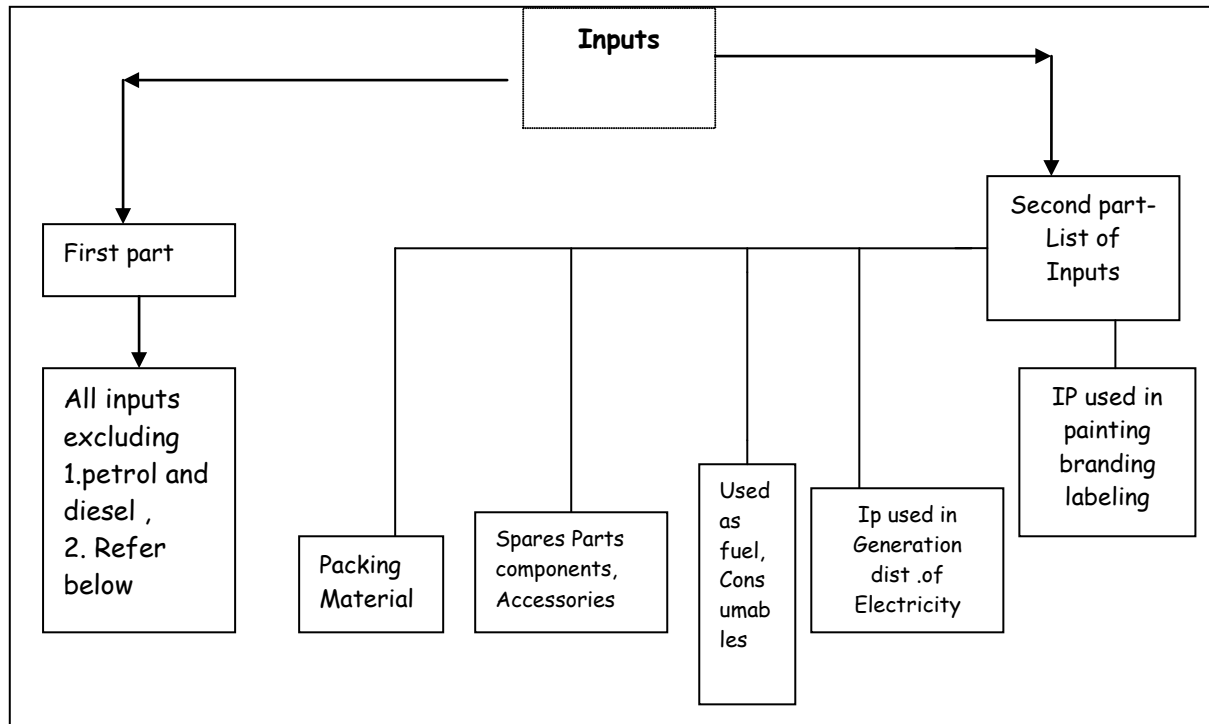
- Dealer who purchases goods directly from First Stage dealer

Output service“

- any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person

Pictorial diagram of Inputs

Indirect taxes- Central Excise- simplified



2. Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer **but shall not include** cement, angles, channels, Centrally Twisted Deform bar(CTD) or Thermo Mechanically Treated bar(TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods ;

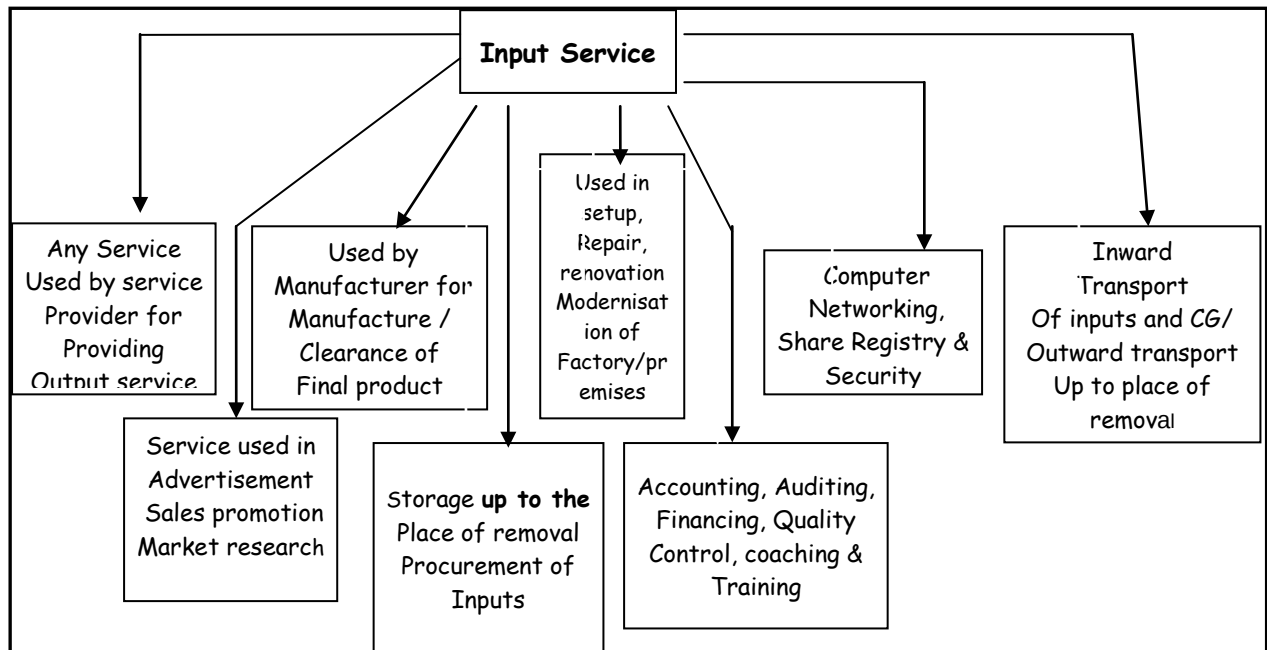
Conditions for availing the credit

- Inputs should be used in the factory
- If Inputs used outside factory, no credit .(in case of cement manufacture inputs can be use outside factory (mines). Credit can be availed.- Vikram Cement (SC)
- Inputs can be used directly or indirectly for manufacture of final product or providing output service.
- Inputs may or may not present in final product
- Input output correlation not necessary i.e. One to one Correlation not required
- Credit on input process loss will also be allowed
- No credit if inputs destroyed during transit or before issue for production
- Credit can be availed if inputs destroyed during the process/in the course of manufacture.
- In case of service provider Inputs should be **used in relation to providing output put service is eligible. ie inputs directly used for providing service only eligible for cenvat credit.**

Illustrations on inputs eligible for cenvat credit

- Process losses and handling loss are allowable
- Loss of inputs during handling eligible
- Excessive loss also permissible
- Inputs required for quality control tests are eligible
- Repeated use is not a bar for availing Cenvat credit
- Inputs used in effluent treatment plant eligible
- Defective final product is 'input' for purpose of availing Cenvat credit
- All the inputs necessary to make goods marketable are eligible for cenvat credit

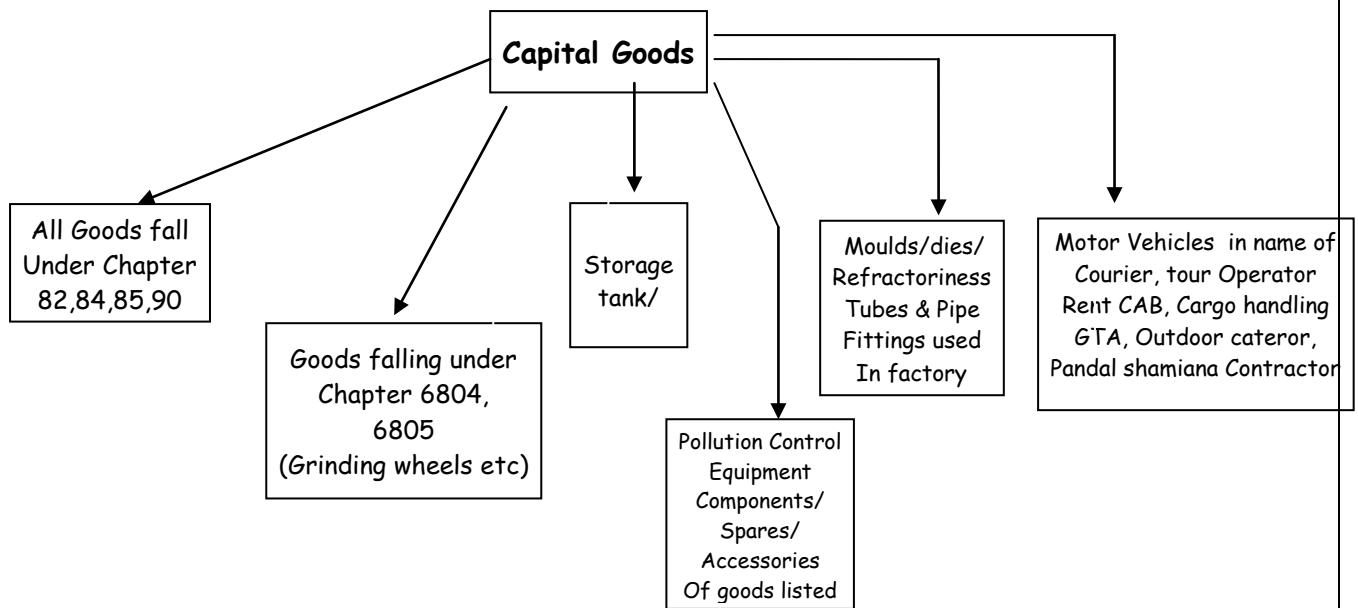
Indirect taxes- Central Excise- simplified



Illustrations for input service eligible for cenvat credit- Payments made for

1. Any service where the amount is includible in valuation
2. Outward freight whether includible in value or not
3. Inward freight
4. Courier
5. Vehicle servicing
6. Premises, Machinery service, repairing
7. Outdoor catering
8. Travelling agents, Rent a cab
9. Manpower
10. All expenses up to port in case of export
11. Commission paid to agents, brokers
12. Amount paid to consultants
13. Group insurance of family
14. Mobile phones directors employees
15. Landline phones at residence of officer used for business
16. Import of services in case of- service receiver

Indirect taxes- Central Excise- simplified



Office equipments/Appliances are not capital goods for manufacturer. Service provider can take credit on office equipment and appliance if they use for providing output service
Capital Goods should be received in the factory of manufacturer/premises of service provider to avail cenvat credit

Dumpers or tippers, falling under Chapter 87 of the First Schedule to the CETA is the Capital goods for the services (1) site formation and clearance, excavation and earthmoving and demolition and such other similar activities & (2) mining of mineral, oil or gas Services (WEF 01.04.2010)

Items used in Ceramic industry such as alumina balls/ ceramic pebbles & bolting cloth/ screens/ silicon cylinders are the parts and Components of Machines, hence they are capital goods *Circular No. 920/10/2010 - CX dated 01.04.2010*

Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services such as Courier, tour Operator Rent CAB, Cargo handling GTA, Outdoor cateror, Pandal shamiana Contractor site formation and clearance, excavation and earthmoving and demolition and such other similar activities & (2) mining of mineral, oil or gas Services Notification No. 29/2010-CE (NT) Dated 24/9/2010

Capital goods which are not defined as capital goods will be eligible as inputs if they used in the manufacturing- Telco Ltd (SC)

Cenvat Credit Rule 3

Who can avail Cenvat Credit?

- Manufacturer
- Service provider
- E O U when they clear goods to DTA

Duties on which credit can taken

- 1.Basic excise duty – First Schedule of CETA
- 2.Special excise duty- Second Schedule of CETA
3. Additional Excise Duty Of GSI
- 4.Additional Excise Duty of Textile Articles
- 5.Additional Excise Duty Clause 85 of Finance Bill 2005 (Payable on tobacco Products)

Indirect taxes- Central Excise- simplified

- 6.National Calamity Contingent Duty
- 7. Education cess on duty of all above
- 8. Additional Customs Duty (CVD) u/s 3(1) & 3(3) of CETA equivalent to 1 to 6
- 9. Additional Customs duty CVD u/s 3(5) (service provider cannot avail)
- 9. Education cess and secondary/higher education cess Levied on imports equal to above 1 to 6
- 10, Service tax paid on input Services

Note

- Credit for 4 to 6 and corresponding CVD will be utilized only for payment of respective duties
- Additional Excise Duty Of GSI credit can be utilised only for same duty as well as Basic excise duty and special excise duty
- Credit on Education cess will be available only for payment of EC

The credit of additional duty of customs under 3(5) of the Customs Tariff Act, 1975 shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

There is provision for refund of CVD u/s 3(5) if cenvat credit was not availed, when sales tax was paid on the removals

Utilization of Cenvat Credit Rule 3(4)

The Credit of Cenvat can be utilized for the following- for the payment of

- duty on final product by manufacturer
- an amount equal when inputs removed as such or after partial processing
- amount when capital goods cleared as such
- an amount when goods cleared after repairs
- an amount when inputs sent for Job work not returned within 180 days
- an amount When payment of 10% on the exempted value of goods
- For reversal of Cenvat credit when common inputs used for dutiable and exempted products
- For payment of Service tax by service provider

By product, waste scrap and Intermediate product is treated as final product for availing cenvat credit

Credit can be availed only up to month end supplies

Cenvat credit of any duty cannot be utilized for payment Clean energy cess WEF 01.07.2010

Cenvat Credit When F P ceases to exempt and dutiable Rule 3(2)

Cenvat credit can be taken on

- Input lying in stock
- Input present in process and final product

Cenvat Credit When dutiable F P become to exempt and no duty payable Rule 11(3) & 11(4)

When the dutiable product becomes exempt by virtue of notification u/s 5 A of Central Excise Act or where the manufacturer /service provider is availing conditional exemption,

The manufacturer or service provider should be reverse or pay an amount equal to cenvat credit availed on

- Input lying in stock
- Input present in process and final product

There is no necessity to reverse or pay on cenvat credit availed on input service.

Similar Provision also made in case of SSI units who is not availing the benefit of exemption notification and decided to avail exemption notification

Removal of Inputs/Capital goods Rule 3(5)& (5A)

When manufacturer/Service provider removes inputs/ Capital goods" as such" after availing Credit- (as such means- without using)An amount equal to cenvat credit availed should be paid. Such

Indirect taxes- Central Excise- simplified

payment is not required when service provider removing inputs or capital goods for providing Output service.

- If capital goods removed after use an amount equal to cenvat credit availed is reduced by points calculated on the straight line method @ 2.5 % per quarter of **from the date of availment** is to be paid. In case of computers and peripherals , the amount reduced will be for each quarter in the first year @ 10%, (ii) for each quarter in the second year @ 8%
- (iii) for each quarter in the third year @5% (iv) for each quarter in the fourth and fifth year @1% (Notification No 6/2010 dated 27.02.1010. wef 01.04.2010)
- If capital goods removed after use as a scrap duty should be paid based on transaction value

Written off of inputs and Capital goods in books of account before use Rule 3 (5B)

If the value of any,

(i) Input, or

(ii) Capital goods before being put to use,

on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

If the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules."

Written off of finished goods and Work in progress Circular No. 907/27/2009

CX dated 07.12.2009

In case, finished goods are written off in the books of accounts:-

(i)

S.No.	Excise duty on the finished goods under rule 21 of the Central Excise Rules, 2002 has	Treatment
1.	Not been remitted (No waiver of duty)	The manufacturer would be liable to pay excise duty. Thus, he need not reverse the CENVAT credit taken on inputs.
2.	been remitted (waiver of duty)	The manufacturer would be required to either:-reverse the credit on the inputs used, or pay the excise duty.

(ii) In casework in Progress are written off in the books of accounts:-

S.No.	Stage of Completion of WIP	Treatment
1.	It can be considered as manufactured goods	same treatment as applicable to finished goods in point (i) mentioned above
2.	It cannot be considered as manufactured goods	Treat it as inputs and reversal of Cenvat credit is required

Breakage loss of inputs –reversal of Cenvat credit:

In case of breakage loss of input, which is fully written off in the books of account, credit availed is required to be reversed as per the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004.
Circular No. 930/20/2010-CX dated 9.7.2010

Indirect taxes- Central Excise- simplified

Reversal of Cenvat Credit in case of Remission of duty Rule 3 (5C)

Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed."

Cenvat Credit in respect of amount paid on Capital goods removed Rule 3 (6)

The amount paid when capital goods removed after use and duty paid when capital goods removed as scrap is eligible for Cenvat credit for the buyer .

Cenvat Credit in respect of EOU/STP/EHTP Rule 3(7)

When goods cleared to DTA Cenvat credit can be availed as below

- $X \times \{(1 + \text{BCD}/200) \times (\text{CVD}/100)\}$
- where X is the assessable value,
- BCD is the basic customs duty and
- CVD is the additional duty of customs. [Notification No. 48/2008 CE (N.T.) dated 05.12.2008.

Cenvat Credit in case of Buyer of goods from EOU/STP/EHTP

The buyer who purchases goods from the EOU/STP/EHTP can avail cenvat credit on CVD (additional Customs duty) paid u/s 3(1) and Special CVD u/s 3(5) – ie 4% - Notification No 22/2009 dt 07.09.2009

Reversal of Cenvat Credit in case of discount after removal/reduction in duty

- When manufacturer availed credit on duty on the basis on invoice
- Subsequently the supplier gives discount by way of reduction of price, but duty was not reduced , no need to reverse of cenvat credit availed,
- However supplier gives discount in reducing the duty also, the manufacturer can avail cenvat credit only the duty amount paid to supplier.
- The reduced amount of duty should be reverse
- CBEC Circular No. 877/15/2008-CX Dated 17/11/2008

Direct despatch from manufacturer to final buyer, but sale is through dealer i.e. Transit sale - If whole consignment is despatched to buyer from manufacturer, Cenvat will be permissible, if name of the final buyer is shown as consignee. (Invoice will be in name of dealer). The consignee can avail Cenvat on the basis of duplicate copy of manufacturer issued under Rule 11 (*that time Rule 52A*). In such cases, the goods need not be brought to the premises of registered person. Invoice of Registered person (dealer) is not required for availing Cenvat by the consignee -**CBE&C Circular No. 96/7/95-CX dated 13-2-1995.**

Cenvat credit on capital goods used in manufacture of exempt intermediate product - It may happen that capital goods may be used in manufacture of an exempt intermediate product, but final product may be dutiable. In such case, Cenvat credit is available on such capital goods, if final product is chargeable to duty. - **CBE&C circular No. 665/56/2002-CX dated 25-9-2002.**

Conditions for availing credit Rule 4

When Credit can be availed

- In case of inputs Immediately after receiving in to factory, No need to wait till utilization
- In case of Input service only after payment of input service bill
- In case of capital goods after receiving in to factory/Premises of service provider.

Indirect taxes- Central Excise- simplified

•In case of transaction between associated enterprises, credit can be availed in respect of input service, when entries made by way of debit notes, credit notes or any other mode. Circular No 122/03/2010 dt.30.04.2010

Quantum of Credit

For Inputs- Full on all eligible duties

In case of Capital goods- 50% in the First year and Balance in next years

When Capital goods cleared in the same year as such full 100% credit can be availed. However reversal of credit is required.

In case of an SSI Full credit of 100% in the first year can be availed in respect of capital goods (Notification No 6/2010 dated 27.02.2010 wef 01.04.2010)

CENVAT credit can also be availed even capital goods acquire on lease, hire purchase or loan agreement.

No Cenvat credit on duty amount, if manufacturer claims depreciation on duty amount u/s 32 of Income tax Act

If inputs, Capital goods, can be sent to job worker.

•They should be returned back within 180 days. If not returned, an amount equal to cenvat credit availed is payable. Credit can be taken after they receive back.

•Jigs, fixtures, moulds, jigs, dies can also be sent to job worker, no provision to return in 180 days.

Cenvat credit can be availed and no need to reversal of credit when they sent for use in another manufacturer/Jobwork- Notification No 6/2010- dated 27.02.2010 wef 01.04.2010

Clearance of goods from Job worker place

•Prior approval of commissioner to be obtained

•Approval for each job worker in one financial year is required,

•Bond to be executed if necessary

•Commissioner can impose any restrictions.

Refund of Cenvat Credit Rule 5

Where any input or input service is used in the final products/providing output service which is cleared for export under bond or letter of undertaking, or any input used in intermediate product which is cleared for export the CENVAT credit in respect of the input or input service shall be utilized towards payment of,

▪(i) Duty of excise on any final products cleared for home consumption or for export on payment of duty; or

▪(ii) Service tax on output service,

And where for any reason such adjustment is not possible,

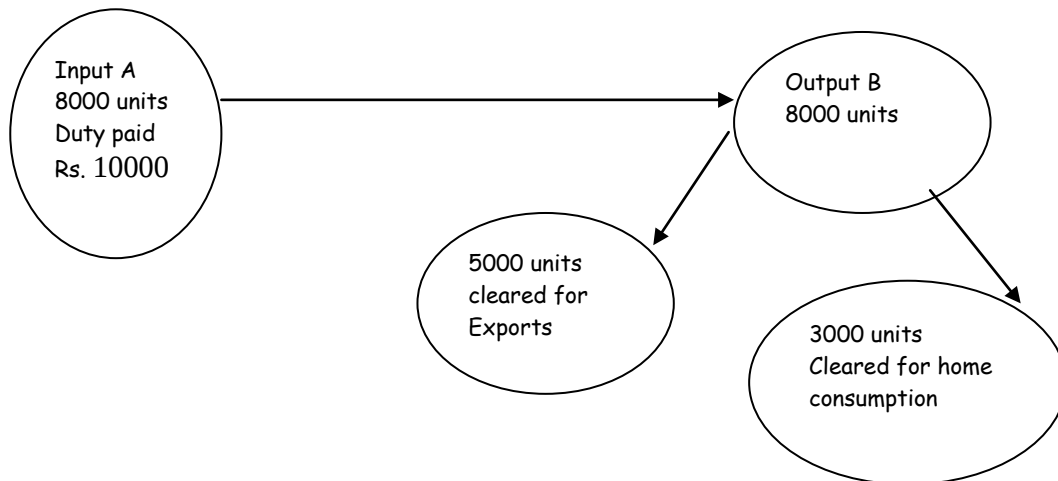
▪The manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations.

▪Cenvat refund not eligible for Exports to Nepal/Bhutan

▪No Cenvat if goods exported and exporter claims duty drawbacks. However customs portion will be paid.

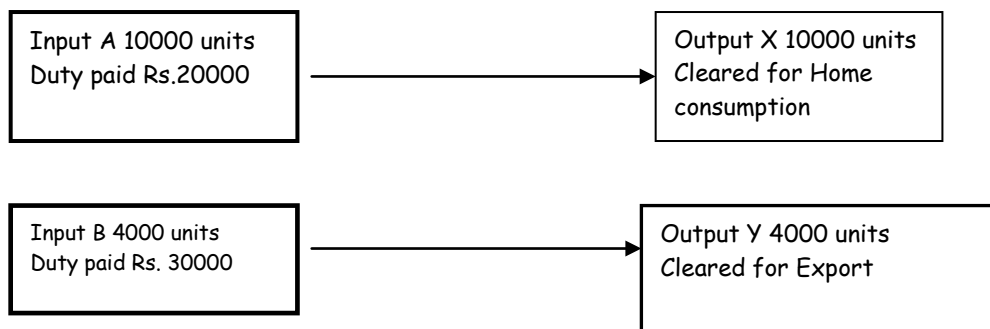
Example 1

Indirect taxes- Central Excise- simplified



Credit of duty paid on inputs used in 5000 units of product exported, can be utilised on while paying duty on 3000 units cleared for home consumption.

Example 2



While paying duty on X, credit can be utilised on the duty paid on Input A as well as Input B

Refund of Cenvat Credit in case of goods cleared to North eastern states Rule 5 A

The new rule provides that the Central Government may allow refund of CENVAT credit of duty taken on inputs used in the manufacture of dutiable final products cleared to North eastern states, if the manufacturer unable to adjust the credit in respect of clearances for other part of country for home consumption.

Indirect taxes- Central Excise- simplified

Common inputs for dutiable and exempted goods Rule 6

Where any input/input service which is exclusively used for manufacturing of exempted final product or exempted service no Cenvat credit

When inputs/input services are used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services.

In such cases, the manufacturer/service provider has three options –

Option 1

- Maintain Separate books for all inventory used for exempted goods/Services and dutiable goods and taxable service
- No Cenvat available on inputs used in exempted goods/exempted services

Option 2

- Where there is no separate books
- Manufacturer has to pay an amount at 5% on the assessable value of Exempted goods and he can avail credit on all inputs and in case of Service tax pay 6% on the Assessable value of exempted services.

Option 3

- Where there is no separate books
- Manufacturer has avail cenvat credit based on prorated and reverse of credit on prorated on exempted goods and services. An Intimation to CEO about exercising option.

Example: Input A quantity purchased 2000 units and duty paid Rs. 50,000 and it is used for Manufacture of two Products X and Y, where X is dutiable and Y is exempted. In such cases The manufacturer has three options as below

Option 1

Maintained separate records How much quantity of A was used to X and How much quantity of A was used to Y and avail credit only duty paid on Quantity used to manufacture A

Option 2

If separate records are not maintained, pay an amount of 10% on the Assessable value of Y and credit can be taken on all units of A

Option 3

- Where there is no separate books, avail credit prorated Manufacturer has avail cenvat credit based on prorated

•In case of service provider if no separate records are maintained, service provider has to pay an amount equal to 6% of Assessable value.

In case of service provider who is rendering general insurance services 6% is optional and he can follow other prescribed procedure,

Payment of 6% not Applicable (Non applicability of separate records)

In case of certain 17 categories of service tax such as (Repairs & maintenance, Installation, inspection, consultancy, interior decoration, Real Estate agency, Auditing etc) These service should not be used exclusively for exempted services. They can be used partly for exempted service/taxable service

The maintenance of separate records/payment of 5% on exempted product will not applicable (Credit can be availed) in case of (Preferential removals) clearances to

- Final product is dispatched to SEZ unit or developer of SEZ unit, EOU, EHTP or STP.
- Final product is supplied to United Nations or an international organisation for their official use or supplied to projects funded by them, which are exempt from duty.
- When final product is exported under bond without payment of duty
- Gold or silver arising in course of manufacture of copper or zinc by smelting.
- Goods supplied against International Competitive Bidding
- all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under of section 3 (1) of the

Indirect taxes- Central Excise- simplified

said Customs Tariff Act when imported into India and are supplied, Notification No 6/2010 dated 27.02.2010 WEF 01.04.2010

- (a) against International Competitive Bidding; or
- (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
- (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006
- supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents (WEF 01.07.2010)

Eligibility of Cenvat Credit on 5% or 6% amount: It is an amount and not duty, hence no EC payable. The amount to be paid within due dated specified in rule 8. In addition the amount of 5% or 6% should be shown separate column mentioning duty nil. **No cenvat credit** to the buyer on 5% or 6% of the amount CBEC Circular No 870/08/2008 dated 16.05.2008.

Distribution of Credit by Input Service Distributor
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Rule 7

Input service distributor Meaning

- Managing Office of business of manufacturer/Service Provider
- Which receives invoices under service tax rules and who distribute the credit through bill, invoice Challan

Conditions

- Credit can be availed only when input service bill was paid
- Total amount of distribution of credit should not exceed the amount of Service tax paid
- Credit of service tax cannot be distributed when the input service was used exclusively for exempted service

Example

- An advertising agency renders service for a company Head office and for its various branches
- Ad agency raises bill on Head office and charges service tax of Rs. 3 lakhs on the bill
- Head office is known as input service distributor
- Head office can distribute this service tax to head office and various branches based on suitable proportion, by way of challan
- Branches can take credit on the basis of challan issued by Head office

Storage of inputs outside factory Rule 8

- AC/DC under exceptional Circumstances
- Considering the
- Nature of goods
- Shortage of space in factory
- By order
- permit manufacturer to store inputs outside the factory
- Cenvat credit can be availed in respect of these inputs
- AC/DC Can impose restrictions/Conditions/Limitations
- If these inputs are not used as per rules, the manufacturer shall pay an amount equal to cenvat credit availed

Documents for Availing cenvat credit Rule 9
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Cenvat Credit can be availed only based on the following documents

For Excise Duty / CVD

- An invoice of the manufacturer factory/deport/consignment agent place
- An invoice of the importer
- An invoice of the First / Second Stage Dealer
- A supplementary Invoice
- A bill of entry

Indirect taxes- Central Excise- simplified

- A certificate issued by an appraiser of customs in case of goods imported through post office

For Service Tax

- Invoice / bill / challan of the service provider
- Invoice / bill / challan of the input service distributor
- Where the specified persons are liable to pay Service Tax on the basis of challan

Essential Requirements of Documents to avail cenvat credit

- Payment of duty or service tax
- Description of goods or taxable service
- Assessable value
- Registration Number of Central excise or service tax
- Name and address of the factory or warehouse or provider of input service.
- New rule 9(2) of Cenvat Credit Rules provides that Cenvat Credit can be taken only if document contain all details as prescribed in Rules (rule 11 of excise and service tax rules) are available. If even one detail as required under Rules is missing, permission from Assistant/ Deputy Commissioner will be required.
- In case of invoice issued by FSD/SSD, credit can be taken only, the invoice should indicate duty suffered or prorated duty suffered in case proportionate stock is sold.

Records and Returns in Cenvat credit.

▪ For Inputs and Capital Goods: -

The Manufacturer/ provider of output service shall maintain proper records containing the following details:

- Receipt;
- Disposal;
- Consumption;
- Inventory of Input and Capital Goods;

For Value of input / capital goods;

- Duty paid ;
- Cenvat Credit Taken;
- Cenvat Credit Utilized; and
- Particulars of Supplier of input or capital goods.

For Input Services: -

The provider of output service shall maintain proper records containing the following details;

- Receipt of input services;
- Consumption of input services;
- Value of input services;
- Tax Paid;
- Cenvat Credit Taken;
- Cenvat Credit Utilized; and
- Particulars of provider of service

Returns under Cenvat Credit

- Monthly return by manufacturer within 10 days from close of Month [rule 9(7)]
- Quarterly return by SSI within 20 days from close of quarter [rule 9(7)]
- Quarterly return by first stage/second stage dealer within 15 days from close of quarter [rule 9(8)]
- Half yearly return within one month from close of half year, by provider of output services [rule 9(9)]
- Half yearly return within one month from close of half year, by Input Service Distributor [rule 9(10)]
- Monthly return by manufacturer in respect of principal inputs within 10 days from close of Month [rule 9A]
- Output service provider or the input service distributor to rectify mistakes or omission and file revised return within 60 days from the date of filing of original return

Indirect taxes- Central Excise- simplified

Transfer of Cenvat Credit

Rule 10

If a manufacturer shifts his factory to another site, transfer his business/ provider of output service transfers his business by way of

- Change of ownership
 - Sale, lease
 - Merger, Amalgamation
 - Manufacturer/Service provider can transfer unutilised Cenvat Credit
- Transferee can avail the cenvat credit when only
- Transfer was with the specific provision for transfer of liabilities
 - The transferor transfers Inputs, Inputs in process and Capital goods
 - Transferee should account credit properly to the satisfaction of AC/DC

Procedure for LTP units Rule 12 A
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LTP can avail the following facility-

- Can remove excisable goods, except petrol and diesel oil without duty to any person registered premises except FSD/SSD
- Removal should be with invoice or transfer challan
- The goods can be cleared for Home consumption or export within 6 months from the date of sending the material
- If not cleared the recipient premises has to pay duty with interest u/s 11 AB
- The transfer challan or invoice should contain similar particulars of invoice Rule 11

Procedure for LTP units

- A large taxpayer shall submit the monthly returns, as for each of the registered premises.
- A large taxpayer, on demand, may be required to make available all records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.
- Availment of LTP scheme is optional
- A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

Power to impose restrictions in certain types of cases

Central Government, if necessary in the public interest to provide for certain measures

Consideration for taking measures

- Extent of evasion of duty,
- Nature and type of offences or
- Such other factors as may be relevant

Measures:

- May place restrictions on a manufacturer, FSD/SSD or exporter, specify nature of restrictions including suspension of registration in case of a dealer

Types of facilities to be withdrawn

- Procedure for issue of such order by an officer authorized by the Board.

Power to impose restrictions

The circumstances under which the restrictions are place

- Removal of goods without the cover of an invoice and without payment of duty;
- removal of goods without Correct Value
- Excess sale price realized not accounted;
- Availing CENVAT Credit without the receipt of goods/ specified documents
- Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine
- Issue of excise duty invoice without delivery of goods specified in the said invoice;
- Claiming of refund or rebate which are not genuine

Indirect taxes- Central Excise- simplified

▪ If a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in the removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs i

Restrictions include, when evasion exceeds Rs. 10 lakhs

- Withdrawal of monthly payment, restrictions on availing credit
- the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken
- the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order

Recovery of Cenvat Credit wrongly taken or erroneously refunded
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Rule 14

- Where the CENVAT credit has been taken or utilized wrongly has been erroneously refunded
- same along with interest shall be recovered from the manufacturer/Service provider
- sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply

Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization

Interest shall be recoverable when credit has been wrongly taken, **even if it has not been utilized**, in terms of the wordings of the present Rule 14. P&H high court ruling in the case of CCE, Maruti Udyog Ltd. [2007] and supreme court order was in case of old rule 57 I was not relevant now.

Circular No. 897/17/2009-CX Dated 3/9/2009

Confiscations and Penalty Rule 15 (new wef 01.04.2010

- ✦ If any person, **takes** CENVAT credit in respect of input/ capital goods/*input services* wrongly or in contravention of the rules the goods are liable for confiscation and penalty will equal to duty payable on goods, *tax payable on services* or Rs. 2000 which ever is higher.
- ✦ If any person, takes CENVAT credit in respect of input/ capital goods/input service on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made there under with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act (penalty equal to duty or service tax If duty and Interest paid with in 30 days penalty reduced to 25% of duty)/sec 78 of service tax (Penalty equal to twice the amount of Service tax)
- ✦ Before issuing SCN on above, the rules of natural justice should be followed

Non reversal of CENVAT credit. Sec 5 B of Central excise Act

"Where an assessee has paid duty of excise on a final product and has been taken credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for **non-reversal** of such credit allowed to the assessee subject to such conditions as may be specified in the said notification:

The order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him:

Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product."

Indirect taxes- Central Excise- simplified

Export and Other procedures for removal of goods

Export Procedures

No Excise duty on exports, but control is necessary to avoid goods diverted for Home consumption
There are basically two procedures for exporting the goods out of India

(a) In the first procedure, duties are paid and subsequently rebate (refund) is claimed after exportation of such goods (**Rule 18 of Central Excise Rules**).

(b) Another procedure is to export goods under bond without payment of excise duty. On actual exportation of goods the bond is released on presentation of necessary proofs regarding exports, (**Rule 19 of Central Excise Rules**).

Export can be made either of the following ways

Export procedure under supervision of C E O

Export procedure under self Sealing of Manufacturer

Export procedure under supervision of C E O:

- 1 The application for removal should be made with in 24 hours before removal of goods in form No. ARE I
- 2 ARE I has to be prepared in 5 copies. Original White, Duplicate Buff, Triplicate Pink. Quadruplicate Green. Quintuplicate-Yellow Color band can also used
- 3 Particulars of ARE I are Similar to that of Invoice. Additional Particulars are Duty Paid/Bond details, Amount of rebate Claim, Certification of CEO in part A., Certification of Customs officer in Part B and Rebate sanctions order.
- 4 CEO will verify Value inspect the goods Certification and endorse the ARE I
- 5 Two Copies of ARE I retain and three copies handover to assessee CEO seal the packets Out of 2 copies retain one will send by CEO to maritime commissioner
- 6 Export should be made with in 6 months
- 7 At the port exporter has to submit documents. No Physical verification at port unless seals tampered.
- 8 Customs officer will certify Part B of ARE I
- 9 Manufacturer has to submit ARE I and Other documents to claim rebate

Export procedure under self Sealing of Manufacturer: The procedure is similar to that of above. Except the following

- One Copy of ARE I will be delivered to CEO with in 24 hours of export
- There is no verification and endorsement by CEO on ARE I
- Goods will be verified at customs port and certification of ARE I by Customs officer
- In case of in case of exports under free Shipping Bill, i.e., Shipping Bills wherein no export benefits are being sought, the manufacturer-exporter shall mandatorily resort to self-sealing of containers.

Export within 6 months - Goods must be exported within 6 months from date of removal from the factory, unless extension is granted. Extension can be granted by AC / DC / Maritime commissioner. - **Chapter 7 Part II Para 2.2(i) of CBE&C's CE Manual, 2001.**

LOUT under excise

When goods are exported without payment of duty

■Manufacturer has to execute –**Letter of Undertaking**- LOUT

■Other Persons has to execute-Bond

LOUT

■Submitted by Manufacturer to CEO/Maritime commissioner in form UT-1

Indirect taxes- Central Excise- simplified

- Executed in favor of President of India through CEO
- Contains the particulars of manufacturer and registration number

In LOU or in Bond Manufacturer/exporter has to declare that

- Export goods within 6 months
- Comply with excise rules, regulations, Act
- Export the goods to the satisfaction of AC/DC
- Duty, interest will be paid in event of failure to export

LOU should be accepted by CEO

Bonds under Excise

Bond means an undertaking given by the assessee to Government for due fulfillment of certain obligation

Types of Bond – 2 types

Surety Bonds and Security Bonds

Surety Bonds

- Surety bonds are covered Indian Contract Act.
- In Surety Bond, another person stands as surety to guarantee the performance
- Surety should be for full value of bond. Surety should be solvent to the extent of bond amount.
- The department is at liberty to enforce the recovery of dues either from the obligor or from the surety. –

Security Bonds

- Executed where security is offered instead of guarantee
- Security can be in nature of Post Office saving deposit, NSC, Bank Deposits, Govt. Securities etc
- Bank Guarantee can also be accepted as surety/security

Particulars of Bonds

- Name address, registration no of assessee
- Declaration about compliance of rules, regulations,
- Surety liability clause, damages etc.
- Bond should be accepted by CEO

Forms/ kinds of Bonds

Bonds are of different nature and for various purposes. Forms of bond etc. have been standardized.

The main bonds are as follows:

B-1 general bond

- The bond is for due dispatch of excisable goods removed for export without payment of duty.
- The bond can be with surety or security.

B-2 Bond

- This is a General Bond for provisional assessment.
- It can be with security or surety.

B-4 Bond

- The bond is for provisional release of seized goods.
- It can be only security bond.
- Bond should be for whole value of seized goods.
- Amount of security will be as determined by adjudicating authority taking into consideration of gravity of offence (normally 25%)

B-8 Bond

- This bond is for obtaining goods at Nil or concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules.

B-11 Bond

- This is not prescribed under new rules.
- However, it has been clarified that the old B-11 form should be used to clear seized goods on provisional basis. –

B-17 Bond

Indirect taxes- Central Excise- simplified

- This is a general surety / security bond to be executed by EOU, EHTP/ STP units.
- It is for provisional assessment of goods for export of goods to foreign countries without payment of duty and for account / disposal of excisable goods procured without payment of duty.

Bringing goods for repairs, re making, Recondition etc .Rule 16

- Assesses can take Cenvat credit of duty paid as if such goods are received as inputs under Cenvat Credit Rules.
- All such goods brought back should be accompanied by duty paying document,
- If No such document Prior permission from Commissioner is required before bringing such goods to the factory

Removal after repairs / re-making etc.

- At the time of clearance, duty should be paid under Invoice as follows –
- If the process carried out on the goods brought amounts to manufacture, assessee should pay duty at the rate applicable on date of removal.
- If the process does not amount to manufacture, and amount' equal to Cenvat credit taken at the time of receipt of final product is payable.
- The buyer can avail Cenvat credit of this 'amount'. [Rule 16(2)].

Credit on duty paid goods return to Factory Rule 16

When buyer returns goods or reject the goods as they the goods can be brought back.

- There is no time limit and goods can be brought any time.

Procedure to be followed

- Goods should accompany duty paying document
- Intimation to Superintendent with in 24 hours of receipt
- Assessee should wait 48 hours to enable CEO to verify
- Such goods should be stored separately from non duty paid goods.
- Cenvat credit can be availed.

At the time of clearance

- duty payable if any process done which amount to manufacture on Assessable value
- If no process cenvat credit availed should be reversed

Removal of goods for Job Work Rule 16 A

Any inputs received in a factory may be removed for a job worker

- Goods can be removed only under Job work challan
- Permission of the Commissioner to be obtained
- Manufacturer has to undertake duty liability
- If required, Bond to be executed
- If goods not returned within 180 days cenvat credit should be reversed
- Commissioner can impose any restrictions and conditions.

Removal of excisable semi finished goods for Certain purposes Rule 16 B

- The Commissioner of Central Excise may by special order and subject to conditions permit a manufacturer to remove semi finished excisable goods for carrying out certain manufacturing processes, to some other premises
- After the process the goods can be bring back to factory
- The manufacturer can remove these goods for home consumption with payment or duty or for export without payment of duty from such other registered premises.

Removal of excisable goods for test or for any process not amounting to manufacturing Rule 16 C

- The Commissioner of Central Excise may by special order and subject to conditions permit a manufacturer to remove semi finished excisable goods for carrying out certain manufacturing processes, to some other premises

Indirect taxes- Central Excise- simplified

- After the process the goods can be brought back to factory
- The manufacturer can remove these goods for home consumption with payment of duty or for export without payment of duty from such other registered premises.
- This rule shall not apply to the goods known as “prototypes” which are sent out for trial or development test.

Procedure to be followed for sending goods under Rule 16 A, 16 B and 16 C

- The goods can be removed along with prescribed Challan or Consignment note
- If the manufacturer desires to remove the goods from the place where the goods are sent, he shall pay duty on such excisable goods and prepare an invoice, as per rules 8 and 11 **except for mentioning the date and time of removal of goods** on such invoice.
- The original and the duplicate copy of the invoice so prepared shall be sent by him to other premises, where goods intended to clear.
- The processor shall fill up the particulars of date and time of removal of goods before the clearance of goods and after such clearance the processor 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.
- The processor 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 processor and no excisable goods shall be removed except under the invoice.
-

Removal of Goods by EOU to DTA (Rule 17)

Procedure

- Invoice is to be prepared under Rule 11
- The duty is paid through debiting PLA (50% of aggregated of customs duties and CVD)
- Cenvat credit can be availed (Based on the restricted formula)
- The Monthly payment of duty facility not available
- Daily Stock Account should be maintained in Form AC 1, with the Particulars similar to DSA (rule 10)
- The unit should submit monthly return in ER2 by 10 of the following month.

Capital Goods manufactured for Captive Consumption within the 100% EOU shall be liable for duty at the time of clearance of such capital goods outside the 100% EOU or debonding or exit from the EOU Scheme. **[Circular No.22/2009 dt.19.08.2009]**

Procedure for clearance to warehouse Rule 20

- Goods are removed from factory on payment of duty. However, in respect of certain goods, provision has been made to store the goods in warehouses without payment of duty.

Applicable to following goods.

- Petroleum products such as benzene, toluene and xylene
- Goods transferred to customs bonded warehouse as ‘Stores’.
- Goods removed by export houses or star trading houses for subsequent exports under rule 18 or rule 19 of Central Excise Rules - Notification No. 46/2001-CE(NT) dated 26-6-2001

Procedures to be followed

- Consignor is required to prepare application in quadruplicate in form ARE III
- Warehouse should be registered under excise provisions
- He is also required to prepare invoice under rule 11
- Three copies of application and duplicate of invoice should be sent along with goods to consignee.
- On arrival at destination, Consignee has to verify the goods notify the discrepancy if any.
- Consignee will send original to his range superintendent duplicate with endorsement (rewarehousing certificate) to the consignor

Indirect taxes- Central Excise- simplified

Range superintendent of consignee will counter sign ARE II and send his counterpart of consignor.

- If rewarehousing certificate is not received within 90 days, consignor shall pay the duty.
- Proper accounts shall be maintained at the warehouse. He will be responsible for payment of duty, penalty etc.
- Registered person can keep only goods belonging to him and not to someone else. He can keep other's goods only with permission of Commissioner.
- Owner of warehouse can sort, pack or repack the goods in warehouse and make such alterations as may be necessary for preservation, sale or disposal thereof.
- Maximum period of storage in warehouse 90 days

Conditions for bringing duty paid packing materials into the export warehouse:

The exporters shall be allowed to bring the duty paid packing materials into the export warehouse. The exporter must submit a written request to the Jurisdictional AC/DC who may grant the permission for one year.

The exporter has to maintain proper account of such goods and shall not claim any export benefit like rebate of duty paid on the said material. [Circular No.900/20/2009 dated 06.10.2009]

Receipt of Goods at concessional rate of duty

■ The provisions are contained in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. Earlier these procedures are known as Chapter X procedures

Procedure

- The manufacturer intending to procedure excisable goods to avail the benefit of notification u/s 5 A, should apply to AC / DC in quadruplicate in form specified at Annexure I to rules
- Separate application shall be filed for each supplier.
- B 8 Bond to be executed for duty liability for the amount prescribed by AC/DC
- Copy of this application duly signed by AC/DC will be sent to supplier-manufacturer.
- The supplier can clear goods on receipt of the certificate duly countersigned by AC / DC
- The removal details will be recorded on the application by the supplier-manufacturer.
- Proper accounts should be maintained for Goods
- **AC/DC should endure** that Goods should be used only for intended purpose (mere intention is not sufficient)
- If the goods are not used for intended purpose the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods and interest if any
- Clearance to another unit under same procedure

Return of goods to supplier

- The Supplier will add this return to his non-duty paid stock (in Daily Stock Account) and then deal with it.
- Monthly return should be submitted by procurer in prescribed form given in Annexure II by 10 of the following month. Regarding quantity received, used and balance etc)

Goods lost or destroyed during transport –

- It will not be treated as 'used for intended purpose'. Differential duty and interest will become payable. –

Indirect taxes- Central Excise- simplified

SSI Units -- Notification No 8/2003

The term SSI is not defined in the Central excise Act. The meaning of SSI can be understood as per notification No. 8/2003 dated 1-3-2003.

- ◆ As per the notification a unit is said to SSI where the previous year turnover is less than Rs. 4 crores. (400 lakhs)
- ◆ All industries irrespective of their investment or number of employees are eligible for concession if its previous turnover is less than Rs. 4 crores. (400 lakhs)

Concession for SSI-

- ◆ First 150 lakhs turnover No duty
- ◆ First 150 lakhs turnover means turnover starting from April 1st of financial year
- ◆ Balance turnover Normal duty
- ◆ No cenvat credit on first 150 lakhs turnover
- ◆ Balance turnover cenvat credit can be availed

Goods Eligible for SSI concession

- ◆ SSI exemption is available only if the goods covered under notification.
 - ◆ Many of goods manufactured by SSI are eligible for the concession.
- However, some items are not eligible for example goods like
- ◆ Pan masala, matches, watches, some textile products,
 - ◆ Tobacco products, Automobiles, primary iron and steel etc.

Other Concessions for SSI units

- ◆ Quarterly return
- ◆ No registration till crossing 150 Lakhs
- ◆ Duty payment Quarterly instead of monthly (Except for March). This facility is available even whether it do not want avail SSI benefit. The facility available for whole financial year, ie even it crosses 400 lakhs in the current year.
- ◆ Full 100 % Cenvat credit availability on Capital goods in the first year
- ◆ One Consolidated entry in PLA for all day removals
- ◆ SSI premises inspection with Prior Approval of C/CC
- ◆ Audit Once in 2 to 5 years
- ◆ Exemption for payment of duty if goods manufactured under brand name of others in rural area.

Obligation of SSI

- ◆ To file a declaration with Superintendent when turnover crosses 90 lakhs
- ◆ Registration and maintenance of records when turnover crosses 150 lakhs

Clubbing provisions of SSI

When calculating the limits of 150 lakhs and 400 lakhs, the following will be clubbed.

- ◆ Turnover of the all products manufactured by assessee
- ◆ Turnover of all the factories / Units of Assessee
- ◆ Turnover of factory used by more than one manufacturer in a financial year
- ◆ Turnover of Clearance in the name of bogus /dummy/sham units
- ◆ Turnover of two units where there is substantial funding between two units.
- ◆ Turnover of two units when change of ownership takes place during the previous year

No Clubbing of Turnover of

- ◆ Turnover of units of relatives
- ◆ Turnover of same management units
- ◆ Units having Separate registration
- ◆ Units having Separate Assessment
- ◆ Units having Common Partners/Common Directors

SSI Other Provisions

- ◆ Availment of concession of duty is not mandatory it is purely optional
- Assessee who does not want to avail benefit should intimate to AC

Indirect taxes- Central Excise- simplified

He should inform in writing to Assistant Commissioner with a copy to Superintendent of Central Excise, the following

- ◆ Name and address of manufacturer
- ◆ Location / locations of factory / factories
- ◆ Description of specified goods produced
- ◆ Date from which option under the SSI exemption notification has been exercised.
- ◆ Aggregate value of clearances of specified goods
- ◆ The option is available any time during the year,
- ◆ Once option once availed cannot be withdrawn during the financial year.

Reversal of Cenvat Credit on stock, WIP and final product when availing benefit subsequent year is required.

Simultaneous availment of Cenvat and SSI exemption not permissible –

CBE&C has issued instructions that if a manufacturer manufactures various products, he has to avail Cenvat for all items or opt for exemption from Cenvat for all products. It is not permissible to avail Cenvat for some items and avail SSI exemption for other products. - CBE&C Circular F. No. 22/46/86-TRU dated 8-9-1986 - reiterated in Circular Nos. 9/93-CX.8 dated 24-8-1993 and 361/77/97-CX dated 3-12-1997.

Calculation of turnover for limits

- ◆ The calculation mode for Rs. 150 and 400 lakhs is same except few items.

Exclusions from total turnover

The following shall not be considered/be excluded from the turnover calculation

- ◆ Export Turnover Other than exports to Nepal and Bhutan
- ◆ Clearance to SEZ/STP/EHTP/EOU/FTZ/EPZ/United Nations organisation
- ◆ Export under bond through merchant exporter
- ◆ Turnover of Goods Which are exempt from duty
- ◆ Turnover of Goods Which are Charged to Nil rate of duty
- ◆ Turnover of Non Excisable Goods ie which are not included in tariff

Turnover of Goods manufactured with other's brand name in urban area (Exclude for 400 lakhs calculation and include for payment of duty in 150 lakhs)

- ◆ Turnover of Goods of packing material manufactured with other's brand name
- ◆ Turnover of Inputs/Capital goods bought by assessee and cleared as such
- ◆ Job work turnover exempt under notification 214/86 ,83/94 and 84/94
- ◆ Goods may be exempt under some other notification, i.e. other than SSI exemption notification
Final product of such goods
- ◆ Value of intermediate products manufactured while producing final products which are eligible for SSI exemption
- ◆ Job work of test, repairs, reconditioning, processing etc which is not a manufacture.
- ◆ Packing material manufactured under brand name of others such as plastic bottles, and Plastic containers. Notification No 4/2010 dated 27.02.2010.

Inclusions

The following shall be taken in to account while calculating the turnover

- ◆ Exports to Nepal and Bhutan
- ◆ Goods manufactured with other's brand name in rural area (Includable in for 400 lakhs limits and exclude for 150 lakhs .SSI need not pay duty on these goods)
- ◆ Goods may be exempt under some other notification, i.e. other than SSI exemption notification
Intermediate product of such goods

Indirect taxes- Central Excise- simplified

Assessment Procedure

Assessment means determination of duty liability.

Assessment' includes self-assessment of duty made by the assessee and provisional assessment made under rule 7- rule 2(b)

Meaning of 'assessee' - Rule 2(c)

- any person who is liable for payment of duty assessed
- a producer or manufacturer of excisable goods
- a registered person of a private warehouse in which excisable goods are stored
- Includes an authorized agent of above persons.

Types of Assessments

Self Assessment- Rule 6

Provisional Assessment- Rule 7

Best of Judgment Assessment

Self Assessment Rule 6

- ◆ Assessee determines classification
- ◆ Assessee determines Valuation
- ◆ Assessee pays duty at appropriate rate
- ◆ Assessee file Monthly/Qty Returns

Assessee Declare in Self Assessment memorandum in the return that

- ◆ Value declared correctly
- ◆ Duty paid correctly
- ◆ GAR 7 Challan is genuine.

After submission of return by assessee, CEO will scrutinize the return

- ◆ Inspect assessee premises if require
- ◆ Verify the records and document
- ◆ Demand will be issued if necessary, based on verification

Provisional Assessment Rule 7

Assessee can request for provisional assessment in following circumstances

- ◆ Assessee is unable to determine the value of excisable goods
- ◆ Assessee is unable to determine rate of duty applicable.

Procedure:

- ◆ Application should be made to AC/DC requesting for Provisional Assessment stating reason
- ◆ AC/DC may allow Provisional assessment and state the rate of duty payable
- ◆ Bond to be executed (B2 bond) for differential rate of duty minus Probable final rate of duty and provisional duty.
- ◆ Returns/records should be marked as Provisional Assessed wide order no.....
- ◆ Time limit to complete final assessment 6 months from the date of P A order
- ◆ At assessee request Commissioner can extend further 6 months by writing reasons
- ◆ Chief Commissioner can extend time beyond the period of one year
- ◆ After final assessment, difference duty paid/refunded
- ◆ If assessee does not pay duty within 15 days Bond will be enforced

Interest Assessee to pay 13% ,department on refunds 6% from the first day of succeeding month from the amount determined till the date of payment

- ◆ Doctrine of unjust enrichment is applicable in case of refunds.

Assessee cannot do on his own Provisional Assessment. Provisional assessment is only at express order of AC/DC

Best judgment assessment

When B O J Assessment is made

- ◆ Where assessee fails to provide record /information for the purpose of assessment
- ◆ department is unable to issue demand

Burden on Assessee

Indirect taxes- Central Excise- simplified

- ◆ Burden to provide information for re-determination of duty is on assessee
- Assessment done be based on available information. Demand will be issued if necessary

Demands of Central Excise Duty Sec 11A

Demand of duty means excise department asking assessee to pay excise duty

Normally, excise duty has to be assessed at the time of clearance of goods and to be paid as per rule 8

- ◆ Sometimes it is possible that the duty paid may be lower than the duty actually payable, or
- ◆ Department may erroneously refund duty to assessee.

In such cases need for demand for duty will arise

Normally the following are Circumstances resulting demand

- ◆ Assessable value declared by assessee is not acceptable to Excise authorities.
- ◆ Classification and/or exemption notifications claimed by assessee are not acceptable to excise authorities.
- ◆ Excise duty paid at concessional rate though concession was not available.
- ◆ Treating dutiable goods as exempted goods/goods charged to nil rate of duty
- ◆ Clandestine removal, non-accounting of goods etc
- ◆ Clearance in name of dummy bogus units
- ◆ Duty erroneously refunded by department

Any other reasons due to which the excise officer is of the opinion that the duty paid is not correct

Issue of Show cause notice

- When duty is not levied or Not paid or
- has been short levied or short paid or
- erroneously refunded,

A notice can be issued by C E O asking the person why he should not pay the amount specified in the notice- sec 11 A (1)

Who can Issue of Show cause notice (SCN)

- Only CEO can issue
- SCN Contain date, name and address of assessee duty payable along with calculations

Serving of SCN

- By Register Post Acknowledgement Due to Assessee Address
- BY affixing at notable space of Assessee factory
- BY affixing Notice board of Excise office of assessee jurisdiction

Time limit to issue SCN

- One year from relevant date
- 5 years from relevant date in case of fraud, collusion, willful misstatement, violation of excise law with intention to evade duty, suppression of facts
- **Relevant date means**

S No	Circumstance	Relevant date
1	When assessee file return	Date of filling return
2	When assessee does not file return	Due date for filing of return
3	In case of Provisional assessment	Date of adjustment to final duty
4	In case of erroneous refund	Date of refund
5	In any other case	Date of payment of duty

Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

Option to a person to pay duty with penalty after receipt of SCN sec 11A (1A)

Indirect taxes- Central Excise- simplified

- This option available only to assessee involving fraud, collusion mis-statement suppression of facts intention to evade duty etc.,
- Assessee can voluntarily pay duty full or in part as accepted by him with interest and Penalty equal to 25% of duty
- Such payment should be made within 30 days of receipt of SCN
- This is an additional facility given to settle the dispute at an early stage to reduce litigation and also aid in collection of tax dues more expeditiously
- In case of part payment, the remaining amount will be subject to regular proceedings as per the law.

Obligations of CEO after issue of SCN (Adjudication orders of CEO) sec 11 A (2)

- The CEO has to consider, the representation if any by person whom notice issued
- CEO should determine the duty payable **not exceeding** the amount specified in notice
- If the duty determined in excess of SCN issued, fresh SCN to be issued for excess amount
- **Where it is possible to do so** CEO should determine the amount of duty payable within six months or within one year in case of fraud, collusion, intention to evade duty etc., from the date of service of notice.
- The time limit of one year and six months for passing adjudication order are not mandatory,

Example:

Situation 1- Representation of Assessee fully acceptable- SCN to be dropped

Situation 2- Representation of Assessee fully not acceptable-duty to be determined

Situation 3- Representation of Assessee partly acceptable and partly not acceptable

Acceptable portion SCN to be dropped and non acceptable portion duty to be determined

Payment of duty by a person before receiving SCN Sec 11A (2B)

- This facility available only to person who has not paid short paid duty under normal circumstances. It is not available in case of fraudulent cases
- Assessee can also pay duty before receiving SCN
- Such payment of duty can be on the basis on his own ascertainment or ascertainment by CEO
- No penalty will be levied if assessee paid duty before issue of SCN(WEF 01.04.2010)
- Assessee should inform CEO about the payment in writing.
- CEO cannot issue show cause notice after receiving intimation from Assessee.
- If a person does not pay the duty as determined by CEO, CEO can proceed to recover the duty from a person by issue SCN, the time limit of one year will be reckoned from the date of receipt of information from a person

Interest for late payment of duty Sec 11 AB of CEA and 28 of Customs Act

◆ Where the duty payable as per SCN or as per duty determined by assessee or by CEO

◆ Interest is payable on duty @ 13% per annum

Period of Interest

◆ from the first day of following month of due date of duty payable to till the date of payment

◆ In case of erroneous refund from the date of refund

Example

Situation 1. September month removal- Due date for payment 5th October

- Interest payable from 1st November

Situation 2. March month removal- Due date for payment 31st March

- Interest payable from April 1st

Situation 3. Duty erroneously refunded on April 16th

- Interest payable from April 16th

Other points

◆ Interest payable even during the period of stay or appeal

Indirect taxes- Central Excise- simplified

- ◆ As per Sec 37 B CBEC has power to issue instructions to Commissioners
- ◆ If a person pays duty voluntarily as per Board instruction within 45 days from the date of issue of board circular, without reserving right to appeal in future, **no interest payable**. In all other cases interest payable on whole amount including amount already paid
- ◆ Where the duty determined is increased or decreased, interest is payable on the increased or decreased amount.

Penalty for short levy or non levy of duty in certain cases	Sec 11AC
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- Applicable only in case of demand arising in case of fraudulent cases
- Where the person payable duty as per adjudication order of CEO, person is liable to pay penalty equal to duty so determined.
- If the duty paid with in **30 days** from the date of communication of order of CEO penalty will be reduced to 25% of duty.
- Reduction in penalty of 75% is available only if duty and penalty of 25% paid with in 30 days
- If the duty is increased/decreased by the order of appellate authority penalty is also increased or decreased.
- It is clarified that *when the conditions spelled out under section 11AC are fulfilled*, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice. Circular No 889/09/2009 dt 21.05.2009
- Benefit of reduced penalty under provisos to section 11AC not available at the appeal stage ie , if assessee pays duty, interest and the reduced penalty, benefit of reduced penalty is not available *within 30 days of the communication of the order of appellate authority*. Circular No 898/89/2009 dt 15.09.2009

Demand based on estimated production

- Applicable in case of clandestine removal,
- Clandestine removal means removals in name of dummy bogus units/removal of goods without invoice/without entry in DSA etc.

CE Officer can fix normal production based on

- installed capacity,
- raw material utilizations,
- labour employed,
- power consumed and
- such other relevant factors as necessary
- CEO will work out production and demand will be issued.

Recovery of Duty

Sec 11

When Assessee fails/ or refuses to pay Duty/any sum due under CE ACT or Rules / sum of duty recovered from buyer and not credit to Government/duty determined by Settlement Commission not paid

Department can recover the above amount from any of the following modes

- ❖ By setoff against refund due to assessee (Example duty, interest, rebate, drawback)
- ❖ Attachment of excisable goods belonging to Assessee
- ❖ As Arrears of Land revenue by issuing certificate to district revenue collector (sale by auction all property except cooking vessels and cloths)
- ❖ Recovery from surety in case of surety Bond
- ❖ Recovery from sale of securities in security bond
- ❖ Recovery from partner of firm, if firm fails to pay

Indirect taxes- Central Excise- simplified

- ❖ Recovery from Legal heirs/Representative from the movable or immovable property inherited by the legal heirs
- ❖ Recovery from successor of business from all assets acquired in succession with the permission of Commissioner of Central excise
- ❖ Detain of movable and immovable property of assessee with permission of Commissioner, if duty not paid within 30 days .sale of property (sec 142 of customs applicable to Excise)
- ❖ Chief Commissioner can grant maximum 36 Monthly installments for duty payment (CCE Hyderabad trade notice).Mandatory Interest is payable

Payment of Duty under Protest

Payment of duty under protest covered in Chapter 13 Part III Para 4 of CBE&C's CE Manual, 2001

Circumstances:

- ◆ If assessee does not agree with classification of goods by Department and he file appeal

Procedure

- ◆ Intimate Ac/DC and Obtain dated acknowledgement.
- ◆ Payment of duty under protest only till appeal is decided
- ◆ All Invoices, returns, PLA, Challan indicate duty paid under protest
- ◆ After appeal disposal- difference duty if any to be paid or claim refund.
- ◆ If he does not file appeal, he cannot pay duty under protest after period of appeal is over.

Advantage

The time limit of one year for refund is not applicable.

Refund of Duty

Sec 11 B

Assessee can claim refund when he has paid higher duty than required.

Such higher payment of duty may be due to

- ◆ wrong classification of goods
- ◆ treating exempted goods as dutiable goods,
- ◆ Pays higher duty to clear goods urgently

Who Can Claim Refund

- ◆ Assessee
- ◆ Buyer (FSD/SSD) if he does not pass burden to other

Procedure to claim refund of duty

- ❖ Application in Form No R along with supporting document as a proof for payment of duty , pre stamped receipt to made to AC/DC
- ❖ Refund less than Rs. 100 will not be entertained.

Time limit to claim for refund

- ◆ One year from relevant date

Relevant date means

1	In case of Export Rebate	
	Export through aircraft/vessel	Date of leaving aircraft/Vessel
	Export through vehicle	Date of leaving custom frontier
	Export through post	Date of dispatch of article
2	In case of Compound levy scheme	Date of reduction of duty
3	In Case of Exemption u/s 5 A	Date of exemption order
4	In Case of Provisional Assessment	Date of final adjustment of duty
5	In case of FSD/SSD	Date of Purchase of goods
6	In case of Order of court/Appellate authority	Date of order
7	In any other case	Date of payment of duty

Indirect taxes- Central Excise- simplified

Note: When duty paid under protest there is no time limit to claim refund.

Refund claim is scrutinized by AC/DC and will be sanctioned

Refund to assessee/buyer 11 B (2)

Refund amount instead of payment to manufacturer/buyer the amount will be credited to consumer welfare fund.

Refund of excise duty can be made to assessee /buyer only in following cases:

- ◆ Rebate of duty paid excisable goods exported out of India
- ◆ Rebate of excise on inputs used in manufacture of goods exported out of India (if he has not availed Cenvat credit)
- ◆ Refund of duty paid on inputs (if payable according to any rule or notification)
- ◆ To Manufacturer, if he has not passed on incidence of the duty to another person
- ◆ To Buyer, if he has borne the duty and if he has not passed on incidence of the duty to another person

Doctrine of Unjust Enrichment/Refund credit to consumer welfare fund

- ◆ It is always assumed unless contrary proved by manufacturer that excise Duty burden normally fully passed on to buyer sec 12 B
 - ◆ In such cases, refund of excess duty paid to the manufacturer will amount to excess and undeserved profit to him.
 - ◆ He will get double benefit – One from consumer and again from the Government.
 - ◆ At the same time, the duty is illegally collected and hence cannot be retained by Government.
 - ◆ In such cases, the refund due should be transferred to a Consumer Welfare Fund instead of paying it to the manufacturer.
 - ◆ The fund may be used for activities of protection and benefit of consumers.
- Provisions of Unjust enrichment will apply to all types of refund, (Provisional Assessment, Captive consumption Duty paid under protest etc)

Non Applicability of Doctrine of Unjust enrichment (Refund paid to manufacturer / buyer)

- ◆ When duty is paid under protest and only lower amount of duty is charged to customer
- ◆ Pre-deposit of duty pending appeal
- ◆ When duty is paid subsequent to clearance
- ◆ When contract is for price inclusive of all duties
- ◆ When debit note is raised by buyer and amount deducted from bill
- ◆ When credit note issued to buyer and buyer account is credited,
- ◆ Refund of export rebate/incentive.
- ◆ Deposit taken from buyer against possible liability of excise duty. And deposit refunded

Time limit to sanction and pay refund [section 11BB of CEA,/ section 27A of Customs Act

- ◆ Refund due must be sanctioned within three months from date of application.
- ◆ Delay in sanction refund beyond three months interest@ 6% p.a., immediately after expiry of three months till the date of refund

Refund in cases where levy is declared unconstitutional

If the levy has been declared as unconstitutional, refund claim can be made by way of suit or a writ petition. Such refund claim will also be subject to provision of unjust enrichment,

Power not to recover duty of excise not levied or short Levied as a result of general practice.	Sec 11C/ Sec 28 A of customs
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- Applicable in case of misinterpretation or wrong understanding of law both by the manufacturer and CEO
- Such wrong understanding was occurred in assessment resulting short levy of duty
- Wrong understanding was because of Bonafide mistake on either side
- Such mistake should be not because of collusion/fraud cases

Indirect taxes- Central Excise- simplified

- In such cases C G is empowered to make an order **not to recover/collect** such short levy
- If a manufacturer paid differential duty despite C G notification, he is entitled to refund subject to doctrine of unjust enrichment
- Time limit to claim refund is **6 months** from the date of C G Notification

Duties of excise collected from the buyer to be deposited with the Central Government Sec 11D/ section 28B of Customs Act]

- Every person liable to pay duty, if he collect excess duty than assessed/ determined, paid/ he should pay such excess duty to credit of Central Government
- If a person does not pay the duty, CEO can issue SCN
- CEO after representation if any made by person CEO should determine duty
- Delay in payment to credit of Government interest @13% p.a., payable from the first day of succeeding month which duty payable. (sec 11 DD)
- The amount of duty paid by person will be adjusted in the final assessment
- If a person paid excess and if any surplus left after final assessment the excess amount will be refunded subject to doctrine of unjust enrichment

Provisional Attachment of Property in certain cases Sec 11DDA

- CEO can provisionally attach the property of assessee to protect the interest of revenue and if it is necessary to do so
- Such provisional attachment can be made in the course of proceedings where SCN was issued u/s 11 A and 11D
- Such provisional attachment can be made with the previous approval of Commissioner of excise by order in writing,
- Attachment order will be in force for a period of 6 months from the date of order
- Chief Commissioner has got power to extend time as he think fit.
- Total extension period by CC will be maximum two years
- Where the application made by assessee to Settlement Commission the period between from where the application made and order of settlement commission will be excluded in calculating the time limit of 6 months/ two years.

Special audit in certain cases Sec 14 A

Circumstance under which special audit ordered

- ◆ In case of nature and complexity of the case
- ◆ the interest of revenue
- ◆ the value has not been correctly declared or determined

Approval for ordering Special Audit

Ordered by AC/DC above rank previous approval of the Chief Commissioner

Areas of Audit:

- ◆ Factory,
- ◆ office, depots, distributors or
- ◆ any other place, as specified by the C E O

Period for completion

- ◆ Maximum including extension 180 days.

Who can do the Special audit?

- ◆ Cost accountant, or Chartered Accountant nominated by the C C Excise./

Other Points

- ◆ Order can be made to Audit of the accounts even if the accounts audited under any other law
- ◆ Audit report will be submitted to C E O.
- ◆ Opportunity to be given to assessee if any material of audit report proposed to be utilized

Indirect taxes- Central Excise- simplified

Special audit in cases where credit of duty availed utilized is not within the normal limits	sec 14 AA
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Circumstance under which special audit ordered

- ◆Credit of duty availed /utilized not within limits
- ◆ Utilization of credit with fraud, willful misstatement, collusion etc

Approval for ordering Special Audit

Ordered by AC/DC above rank previous approval of the Chief Commissioner

Areas of Audit:

- ◆Factory,
- ◆office, depots, distributors or
- ◆any other place, as specified by the C E O

Period for completion

- ◆Maximum including extension 180 days.

Who can do the Special audit?

- ◆Cost accountant/Chartered Accountant, nominated by the C C Excise.

Other Points

- ◆ Order can be made to Audit of the accounts even if the accounts audited under any other law
- ◆Audit report will be submitted to C E O.

Excise Departmental Checks

Visits of Officers

The Superintendent and Excise Inspectors working under him do occasionally visit factories.

And verify the records

Stock taking

New Central Excise Rules make no provision for 'store room' or 'stock taking'. However, stock taking by excise authorities stock taking can be done of finished goods and Cenvat goods.

Road Checks

Surprise road checks are carried out to see that all goods moving are accompanied by duty paying documents.

Excise departmental audit/ 'EA-2000' [Excise Audit 2000]

An Audit section is attached to each Commissionerate. The Audit Party usually consists of inspectors and a Deputy Office Superintendent, headed by a Excise Superintendent. AC/DC and senior officers are also associated with the audit of large units. These audit parties visit factories periodically.

Frequency of audit

CBE&C has specified frequency of audit and time limit during which audit should be completed, as follows -

The schedule should be -

- ☐ All EOU units - mandatory audit every year
- ☐ Units paying duty through PLA over Rs. one crore per annum - 10 working days - to be audited every year
- ☐ Units paying duty of Rs. 10 lakhs to one crore per annum through PLA - 7 working days - to be audited at least once in two years
- ☐ Units paying duty less than Rs. 10 lakhs through PLA per annum - 5 working days - to be audited at least once in five years.

Duration of audit (5/7/10 working days as above) is the entire period spent on audit of a particular assessee from desk review to preparation of audit results. In case of audit of units paying less than Rs. 10 lakhs per annum through PLA, not more than three days should be normally spent in assessee's factory - CBE&C circular No. 731/47/2003-CX dated 1-8-2003.

Indirect taxes- Central Excise- simplified

EA-2000 AUDIT OF EOU - EOU in port cities are under administrative control of Commissioner of Customs. Since customs have no system of internal audit, the audit should be conducted by jurisdictional Commissioner of Central Excise.

Procedure of Excise Audit 2000 - Procedure of EA-2000 is explained in CBE&C's CE Manual, 2001, is as follows -

Selection of assessee

In each Commissionerate few units are selected based on 'risk factors', For example assessees who have bad track record (like evasion cases, major audit objections, past duty dues etc.) are given priority for conducting audit over those having clean record.

Desk review

Auditors assigned to assessee are required to gather advance information about assessee, from departmental records, published documents like balance sheet, annual statements and through market enquiries. This is done without interacting with assessee.

Gathering and Documenting assessee Information

At the stage of desk review, auditors will identify the areas which require closer examination. The auditor gather evidence based on documents and by a questionnaire

Touring of premises

The auditor then visits the unit of assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections, system of movement of goods and related documents within the unit. This gives auditor overview of the procedure adopted by assessee and the possible loopholes through which revenue leakage can take place.

Audit Plan

Based on the experience and the information, the auditor prepares an 'audit plan'. Based on the plan the auditor selects some of the documents/records maintained by assessee for actual verification, as verifying all records is impossible. Plan can be alter the audit plan midway after obtaining approval of the superior officers.

Verification

This consists of verification of actual records with the returns submitted. Auditor may enquire about vague entries. .

Audit Objection and audit para

If auditor finds instances of short payment of duty, he is required to discuss the issue with assessee. If he is not satisfied with the explanation of assessee, he will record the same as 'audit objection' or 'audit para' in his draft audit report. If possible, quantification of duty short paid should be made on the spot and incorporated in 'audit para'. If this is not possible, a note may be made in audit report.

Audit report

At the end of verification, auditor prepares a 'Draft Audit Report' which incorporates all audit objections/audit pars. It discusses the issue in brief, reply or explanation of assessee, reason for auditor not being satisfied with the reply or explanations, amount of short payment (if tabulated) and recoveries of same, it could be made on the spot. The draft audit report is submitted to superior officers for review, and finalization.. If assessee has not paid duty on the spot, demand notices are issued to assessee by department.

Form of audit report

Report should be submitted in the as per prescribed form. Apart from other information, the report should contain 'Risk Loss Analysis', 'Trend Analysis' etc.

EA-2000 is a participative audit

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The assessee is given full opportunity to explain his stand in the audit findings so that matters are resolved in full appreciation of legal position. Thus, EA-2000 is a participative audit.

CBEC instructions for EA audit 2000

Board has clarified that factories yielding annual revenue of Rs. 5 crores and above, or those availing annually Cenvat credit of Rs. one crore and above should be visited by Addl Commissioner/Jt Commissioner when the audit of factory is in progress. In addition, suspected units manufacturing commodities with particularly intricate complexities etc. may also be visited by Jt Commissioner (Audit) (that time - Dy Commissioner) -

The highlights of new system are as under -

- ☐ 15 days notice should be given before commencing audit.
- ☐ Audit will normally be completed in 5 to 7 days. If required, two audit teams may be deputed.
- ☐ Additional/Jt Commissioner (Audit) should join the team for some days. He should supervise audit notes/report and sign the same.
- ☐ Audit party will not issue any summons and powers of search, seizure or interrogation will not be exercised. If information is not supplied, they may refer the matter to Anti-Evasion wing of Commissionerate.
- ☐ Audit Wing will not issue show cause notices arising out of objections. The matter will be referred to Proper Officer (Jurisdictional Superintendent/Assistant/Deputy Commissioner).
- ☐ Proper data base will be created. Specially trained staff will be used.
- ☐ Workshop for trade and industry should also be organised
- ☐ An EA-Monitoring Cell consisting of 4-5 officers will be constituted headed by Commissioner. The cell will hold meetings once in fortnight and monitor the new audit system.
- ☐ Audit parties should check 'source documents/records' connected with production, manufacture, storage, delivery or disposal of goods, including raw materials; such as ledgers, inventory records, income tax returns, sales tax returns, balance sheets etc. Only relevant returns/records should be demanded.
- ☐ Audit work must be clearly documented in working papers. Summary sheet will be prepared.
- ☐ Assessee profile (database) shall be collected in standard prescribed format. Audit report will also be in prescribed format. It should be prepared within 20/25 days from commencement of audit. Scoring system has been evolved to evaluate audit report.
- ☐ Director General (Audit) will monitor the work of EA-2000.

Audit of registered dealers (FSD/SSD)

Selective audit of such registered dealers will be carried out with prior approval of Additional commissioner. Advance intimation of 15 days will be given. However, preventive checks can be carried out by surprise visits without any prior intimation to dealers. However, prior approval of Jt Commissioner (Prev.) will be taken. - CCE, Mumbai IV TN 39/2000 dated 1-6-2000.

CERA audit

Comptroller and Auditor General of India also carry out audits of all assessees. These are called 'CERA' i.e. Central Revenue Audit. These audit parties audit accounts of excise as well as customs assessees. These audits are conducted in addition regular audit under other laws. Frequency of CERA Audits depends upon the importance and availability of time.

Assessee is required to produce to audit parties (i) Records (ii) cost audit report (iii) Income Tax audit report.

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Penalties and Offences

CEA provides for penalties and punishments for violation of excise law. Penalties can be levied for civil and criminal liability. Civil Liability includes fines, confiscation of goods, etc., where as Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Section 34A of CEA and section 127 of Customs Act specifically provide both departmental penalties and criminal prosecution for same offence is permissible.

Offence under central Excise Rule 25 of Central Excise Rules

Under rule 25(1) of Central Excise Rules, following are offences:

- Removing excisable goods in contravention of Excise Rules or notifications issued under the rules.
- Not accounting for excisable goods manufactured, produced or stored
- Engaging in manufacture, production or storage of excisable goods without applying for registration certificate u/s 6 of CE Act
- Contravening any provision of Central Excise Rules or notifications issued under these rules with intention to evade payment of duty.

Penalties imposable under rule 25

- (a) Confiscation of contravening goods
- (b) Penalties up to duty payable on such contravening goods or Rs.2000 whichever is higher.
- (c) Penalties can be imposed on Manufacturer, warehouse keeper, FSD/SSD

Mandatory penalty in case of fraud, suppression of facts etc. - Provisions of Rule 25(1) are subject to section 11AC, which means that provisions of section 11AC prevail over provisions of rule 25(1). The penalty u/s 11 AC is mandatory which is equal to duty evaded - **neither more nor less**. However, if the duty, interest and penalty are paid within 30 days from communication of order, penalty payable will be reduced to 25%.

Rules of Natural Justice

Penalty can be levied only by giving opportunity being heard to assessee

Personal penalty on director / partner / employee/ transporter / driver/Any person etc: Rule 26 of Central Excise rules

Rule 25 is applicable only to manufacturer, producer, and registered person of a warehouse or registered dealer. Penalty on others like transporter, person concealing goods etc. can be levied under rule 26

Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or rules, shall be liable to a penalty up to the duty payable on such goods or Rs 2,000 whichever is greater.

A director or partner or an employee will be personally liable to penalty if he is personally involved in clandestine removal etc.

Penalty on any person

Non issuance of excisable invoice, issuance of excise invoice without delivery of goods specified therein or issuance of any documents whereon receiver takes any ineligible benefit of CENVAT or refund. A penalty on such offence would be Rs.5000 or amount of benefits, whichever is greater.

Residual Penalty – Rule 27 of Central Excise Rules:

For breach of excise rules, if no penalty has been prescribed under Act or rules, the penalty would be Rs. 5,000 plus confiscation of goods in respect of which offence has been committed.

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Confiscation of goods

Section 12 of CEA authorises Central Government to apply provisions of Customs Act These are (a) section 105(1) - Powers of search (b) section 110 - seizure of goods, documents and things (c) section 115 - confiscation of conveyances (d) section 118(a) - confiscation of packages containing goods (e) section 119 - confiscation of goods for concealing goods (f) section 120 - confiscation of goods even if form changes (g) section 121 - confiscation of sale proceeds of contravening goods (h) section 124 - issue of show cause notice before confiscation of goods (i) section 142(1)(b) and 142(1)(c)(ii) - Recovery of duty (j) section 150 - procedure for sale of goods.

Contravening goods liable to confiscation

- Under rule 25 of CE, following goods are liable to confiscation –

- Goods removed in contravention of Central Excise rules,
- Goods not accounted for
- Goods on which Cenvat credit is wrongfully taken
- Goods manufactured without registration of the factory.

Confiscation of Conveyance

Following conveyances are liable to confiscation under section 115(1) of Customs Act, as made applicable to Central Excise:

- any conveyance from which goods are thrown overboard or destroyed to prevent seizure
- Conveyance which is required to land or stop for inspection but fails to do so.
- Conveyance by which warehoused goods are cleared for export, but goods is unloaded without permission.

Confiscation of packages

When the goods are liable for confiscation, the packages in which contravening excisable goods are packed, such packages are also liable for confiscation.

Confiscation even form changes

Contravening goods are liable for confiscation even if there is any change in its form for example mixing with other.

Confiscation of sale proceeds

If the contravening goods are found to have been sold, sale proceeds of such sale are liable to confiscation

Redemption fine in lieu of confiscation

Whenever confiscation of goods is ordered, the adjudicating officer *may* give option to owner of goods to pay 'fine' in lieu of confiscation. After payment of redemption fine; the goods are returned to the owner of goods. Section 125(2) of Customs Act makes it clear that where any fine in lieu of goods is imposed, the owner of goods or the person from whom the goods were seized is liable to pay duty and charges in respect of such goods, in addition to the fine.

Limit for imposing redemption fine – As per proviso to section 125(1) of Customs Act, redemption fine up to market price of goods less duty chargeable thereon can be imposed.

Procedure after confiscation Rule 28(1) of Central Excise Rules

After confiscation, the goods shall vest in Central Government. The Central Excise Officer adjudging confiscation shall take and hold possession of things confiscated. Every Police Officer is required to assist excise officer in taking and holding such possession. (Parallel provision in Customs section 126.)

If the assessee does not pay fine in lieu of confiscation, the goods will be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct. [Rule 29].

If the assessee exercises option to pay fine in lieu of confiscation, he may be asked to pay storage charges as may be determined by adjudicating officer. [Rule 30]

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Prosecution for Offences

Section 9 defines following as offences punishable:

- Contravening provisions of restrictions of possession of goods in excess of prescribed quantity as prescribed under section 8.
- Contravening provisions of rules regarding transit of excisable goods
- Contravening provisions of rules regarding registration of a unit
- Evading payment of duty payable under CEA.
- Removing excisable goods, in contravention of provisions of Central Excise Act and Rules.
- Acquiring or in any way concerning himself with transporting, depositing, concealing, selling, purchasing or otherwise dealing with excisable goods where he knows or has reason to believe that the goods are liable to confiscation under Central Excise Act or Rules.
- Contravening any provision of Central Excise Act or rules in relation to Cenvat credit.
- Failure to supply information or knowingly supplying false information.

Quantum of Punishment that can be imposed

A. For first time Conviction

If the duty exceeds Rs. 1 lakh: imprisonment up to seven years (minimum 6 months) and fine (without limit) *or both* can be imposed.

If the duty does not exceeds Rs. 1 lakh: imprisonment up to three years or fine (without limit) *or both* can be imposed.

B. For subsequent conviction:

Irrespective of value of duty: imprisonment up to seven years (minimum 6 months) and fine (without limit) *or both* can be imposed.

Imprisonment less than 6 months when

If there are special and adequate reasons for granting lesser punishment.

The following are **shall not be treated** as adequate reasons

- First time offence
- Age of the accused
- Accused is not a principal offender
- Punishment for second time for the same offence under CE Act

Further punishments Sec 9B/sec 135 B- Court has powers to order for further punishments like revocation of offer of redemption of fine and Publication of names, place of business or residence, nature of contravention etc in news paper.

Burden of proof – The burden of proof is on Excise department to prove the commitment of offence by a person. Similarly accused has to prove that there was no culpable state of mind like intention, knowledge, belief etc. Both proofs should be beyond reasonable doubt.

Relevancy of Statement before Excise / Customs Officer

[Section 9D of CEA – parallel section 138B of Customs Act]. Statement made and signed before any Central Excise Officer / customs officer of gazetted rank is allowed as evidence in the prosecution as follows

(a) In case of a person who is dead or if he cannot be found or whose presence cannot be obtained without undue delay or expenses, the statement *will be* allowed as evidence

(b) In case of person who is present before the Court and is examined as witness, Court *may* admit the statement if it is of the opinion that the statement should be admitted in the interest of justice. Discretion is given to Court in case of statements made before Excise Officer, only if such person is examined as witness.

The provisions apply to adjudication and appeal proceedings also.

Presumption regarding Documents seized from a person

Any document seized from a person shall be *presumed* to be true about the contents therein.

Signature and other part of hand written document on such seized document, purporting to have been of a person or reasonably assumed to be of that person shall be presumed to be of that person.

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If such person claims that the document is not true or not signed by him, *the burden of proof* is on him

Computer print outs

Statement printed by Computer is admissible if

- Computer printout was produced during the period when the computer was used for storing and processing the information
- The information contained in the statement was regularly supplied to computer during the period
- computer was operating properly during the period or breakdowns were not significant to affect accuracy of documents
- The print out is reproduced in ordinary course of activities

Central excise Offence is non-cognizable [Section 9A of CEA]. - As per section 2(c) of Criminal Procedure Code, 'cognizable offence' means an offence for which a police officer may arrest without warrant. Offences under section 9 of CEA are non-cognizable. For offences under excise action will be taken by police only at the instance of CEO.

Offences by Companies Sec 9AA

For the offences committed by companies, Directors, officers are also responsible if they are involved in committing of breach/offence.

Compounding of Offence Sec 9A(2)

Any offence committed from sec 3 to Sec 12 of CE Act may, either before or after institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

Power of Central Government to Publish Names of persons (new section 37 E)

- This section provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest.
- The Central Government may publish name of any person and any other particulars relating to any proceedings in the public interest. The Government can do the publication in such manner as it thinks fit.
- The publication in respect to penalty shall be only after appeal time limit is expired or appeal is disposed of.
- In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

Appeals and Revision

Excise Law as well as Customs Act makes elaborate provisions for departmental adjudication, appeals and revision. The provisions are almost identical in both the Acts, as below

Orders of the Authority	Appeal can be made with
Superintendent, Assistant Commissioner, Dy Commissioner, Jt. Commissioner, and Additional Commissioner)	Commissioner
Commissioner,	Tribunal.
Tribunal.	High Court
High Court	Supreme Court

Appeal to Commissioner (Appeals)

Appeal against order of Superintendent, Assistant Commissioner, Dy. Commissioner and Additional Commissioner lies with Commissioner (Appeals), u/s 35(1) of CEA - parallel section 128(1) of Customs Act.

Time limit for filing appeal

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Appeal must be filed within 60 days from date of communication of order. Commissioner (Appeals) has powers to extend this period by further 30 days if *sufficient cause* is shown.

Form of Appeal to Commissioner (Appeals) –

Appeal should be in prescribed form No. EA-1 (CA-1 in case of Customs) in duplicates and should be accompanied by a certified copy of the decision or order against which appeal is filed.

Stay application - If duty demanded and penalty/fine imposed is not paid, separate application for waiver of pre-deposit of duty and stay of recovery should be filed. If appeal is filed but stay application is not filed, appeal may be dismissed without hearing-

Duty demanded includes, duty payable as per sec 3, duty collected from buyer as per sec 11 D, duty erroneously refunded, amount payable as per cenvat credit rules and interest payable under act or rules.

Departmental appeal –

Departmental appeal should be in form EA-2 in duplicate (form CA-2 in case of Customs), with two copies of decision or order passed by adjudicating authority and a copy of order passed by Commissioner of CE directing the authority to apply to Commissioner (Appeals). The time limit for this appeal is one month.

Affixing Court fee stamps

In case of appeal to Commissioner (Appeals), the memorandum of appeal should bear court fee stamp of 50 Ps, while appeal to CESTAT should bear court fee stamp of Rs 2/-.

Order that can be passed

The Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. [Section 35A(3) of Central Excise Act – parallel section 128(3) of Customs Act]

Order of Commissioner (Appeals)

The order should be in writing, shall state all points for determination, give decision and reasons for the same [section 35A (4)]. Copy of the order should be communicated to (i) Appellant (ii) the adjudicating authority against whose order the appeal was filed and (iii) Commissioner.

Revision by Central Government

In some cases appeal does not lie with CESTAT. In such cases, a revision application has to be made with Central Government. [An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government].

Appeal against order of Commissioner or Commissioner (Appeals) lies with Tribunal against all orders, *except*

- (a) Loss of goods occurring in transit from factory to warehouse or to another factory
- (b) Rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and
- (c) Goods exported without payment of duty.

In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government under section 35EE of CEA within three months. Central Government can annul or modify the order. In all other matters, appeal lies with Tribunal. , Assessee or the Commissioner of CE can file revision application.

In case of Customs, CESTAT has no jurisdiction in the matters of

- (a) baggage
- (b) payment of duty drawback and
- (c) Goods short landed in India. In these matters, revision application lies with Central Government [section 129DD of Customs Act].

Time limit for filing application –

Revision application must be filed in 3 months from communication of the order. This period can be further extended by three months on sufficient cause being shown. - .

Revision application by Commissioner –

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Application for revision can also be made by Commissioner of Central Excise, if he is of the opinion that order of Commissioner (Appeals) is not proper. No fees are payable along with such an application. No time limit has been prescribed for filing the application.

No provision of appeal against revision order

There is no provision of appeal against decision of Central Government in such revision applications (The only remedy is writ petition to High Court or SLP in Supreme Court).

Appeal to Tribunal (CESTAT)

Tribunal is a *quasi-judicial* body. This Tribunal hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals). Tribunal orders are binding on lower authorities. Tribunal is final fact finding authority. Finding of facts arrived at by Tribunal cannot be upset by higher authority unless found to be based on no evidence or irrelevant evidence or incorrect principles. Tribunal is creature of Statute and cannot traverse beyond provisions of Statute.

Constitution of CESTAT

Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has been formed under section 129 of Customs Act. The Tribunal is empowered to hear appeals in cases of Customs, Excise and Service Tax. CESTAT was known as CEGAT upto 14-5-2003]. The Tribunal consists of Judicial Members and Technical members, which give the Tribunal a balanced overall view of legal background and practical implementation of law.

Benches of Tribunal - Tribunal sits in benches. The benches may be single member bench and larger benches etc. Work among various benches will be allotted by President or in his absence senior most Vice President by special or general order.

Procedure for Appeal to CESTAT

Some procedures are prescribed in Central Excise Rules. Besides, Tribunal is empowered to regulate its own procedure vide section 129 C(6) of Customs Act, which has been made applicable to Excise Act. These procedures must be within the provisions of Act and Rules of Central Excise. Under these powers, Tribunal has framed CESTAT (Procedure) Rules, 1982

Filing of appeal – Appeal / application / cross objection should be filed within prescribed period. In case of appeals, the period is three months from date of receipt of order to be appealed against. In case of departmental appeal time limit is one month. Appeal / application / cross objection can be personally presented to Registrar of Tribunal or sent by registered post.

Fees payable for appeal - a fee must accompany the appeal. No fee is payable if appeal is filed by department.

Affixing Court fee stamps – Court fee stamp of Rs 2/- is required to be affixed on memorandum of appeal and 50 Ps on copy of order appealed against. However, non-affixing court fee stamp is a curable defect.

Stay applications and its immediate hearing - Application for stay of requirement of making deposit of any duty or penalty shall be presented in triplicate. Contents of application for stay must be supported by a verification regarding their correctness. The Bench may, in a particular case, direct the filing of affidavit by the applicant/respondent. [Rule 28A (4) of CESTAT Rules].

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Appeal in prescribed form - Appeal should be in prescribed form No. EA 3 (CA-3 in case of Customs) in quadruplicate with copy of order appealed against also in quadruplicate. –Departmental appeal should be in form EA-5 (CA-5 in case of Customs) in quadruplicate with equal number of copies of order appealed against and copy of order of CBE&C (Board) directing Commissioner to file appeal to CESTAT. – Rule 7(1) of Central Excise (Appeals) Rules [earlier Rule 217].

One of the copies of order should be a certified copy. The appeal can be in triplicate if it is to be heard by a single member bench. Further, if appeal is to be heard by larger bench, additional copies have to be supplied

The prescribed form asks for details like name, address, details of order appealed against, whether duty demanded has been deposited etc. Grounds of appeal, statement of facts and reliefs claimed are also to be given. Grounds of appeal should be concise and without argument or narrative and should be numbered consecutively.

Documents to be attached with Appeal

The appeal must be accompanied by (a) Copies of order appealed against - one of the copies must be a certified copy (b) Copies of original order appealed against, if appeal to CESTAT is a second appeal - one copy must be a certified copy. [CESTAT Procedure Rule 9(1).]

Grounds of Appeal - Applicant is expected to mention all grounds of appeal in the appeal memorandum. A ground not mentioned in grounds of appeal can be accepted only with permission of Tribunal.

Paper Book - A Paper Book containing copies of documents, statement of witnesses and other papers on which appellant wants to rely at the hearing of appeal should be filed.

Allocation of work - Appellant and respondent - In appeal filed by person other than Commissioner, Commissioner shall be respondent, while in case of appeal by Commissioner, other party shall be respondent.

Inherent Powers of Tribunal

Granting stay for recovery of duty

Tribunal can grant stay for recovery of duty and penalty pending appeal -.

Recall of order passed ex parte

Tribunal can recall an order passed *ex parte*, if sufficient cause is shown for absence of the party -

Recall if deposit of duty as ordered paid late - Tribunal can dismiss appeal if duty is not deposited. If assessee deposits duty though late, Tribunal can recall and restore order of dismissal of appeal.

Recall if glaring mistake - order was recalled when it was found that a different issue was decided and issue in appeal was not decided in final order at all.

Tribunal can quash its own order

Tribunal can recall and quash its own order in exceptional cases where it is shown that it was obtained by fraud or palpable mistake or was made in utter disregard of statutory provision.

Correct an error so that justice is done

Tribunal can review on merits where the error is apparent on the face of record. It was held that inadvertent error committed by Tribunal can be corrected.

Tribunal can recall an order to correct any error committed by itself so that justice is done to assessee and the revenue. Tribunal can also recall its order if there has been a mistake of the court prejudicing the party.

Limitations on inherent powers

Tribunal cannot use its inherent powers when (a) Alternate remedy is available (b) If the order can be appealed against (c) If the power would conflict with any specific provision of law which prohibits such a remedy. However, it can exercise power if (a) Non-exercise of power may result in abuse of the process of court (b) Non-exercise of power may result in failure of justice.

Tribunal is Final fact finding authority

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Tribunal is the final fact finding authority. High Court cannot go behind the facts found by Tribunal

Rectification of mistakes

Tribunal has no powers to review its orders. -. However, Tribunal can pass order for rectifying a mistake apparent from the records, within six months of passing of order. - Section 35C(2) of CEA - similar section 129B(2) of Customs Act. The mistake can be corrected only if it is apparent from records. The error could be of fact or an error in law

Limitations of Tribunal

Tribunal has no inherent powers to review its order –

Tribunal has to presume and accept legal validity of provisions of Central Excise Act and Rules. The Tribunal is created by Statute and cannot challenge validity of any provision of the statute itself. Tribunal cannot declare a provision of Statute as *ultra vires*

Tribunal is not empowered to issue writs.

Tribunal is not a Court, though it has been granted various powers. A Tribunal is a Tribunal and though exercises judicial powers; it cannot be equated to a court -

Tribunal is bound by judgments of High Court (and of course Supreme Court). In case of conflicting decisions of High Courts, decision of High Court in which the appellant is situated should be followed.

Appeal to High Court

Appeal to High Court on substantial question of law

Tribunal is final fact finding authority. However, if there is a substantial question of law arising out of order of Tribunal (in cases other than relating to rate of duty and valuation); an appeal can be made to High Court within 180 days. [Section 35G(1) of CEA] - parallel section 130(1) of Customs Act] The high court can admit appeal even after expiry of 180 days if there is a sufficient cause for not filing appeal within time limit of 180 days.- In case of question relating to rate of duty and valuation, appeal lies with Supreme Court.

The appeal can be made either by the Commissioner of CE/Customs or the other party. If other party makes the appeal, the application should be accompanied by prescribed fee. The memorandum of appeal shall clearly state the substantial question of law involved. [Section 35 G(2)(c) of CEA - parallel section 130(2)(c) of Customs Act]. Appeal to High Court can be made against interim orders of Tribunal.

Hearing of appeal

High Court bench of at least two judges will hear the appeal. [Section 35G(7) of CEA – parallel section 130(7) of Customs Act]. Decision will be by majority. If the judges are equally divided on the issue, matter will be referred to third judge. He will hear only on the point on which the judges were differing. Majority, including those who had first heard the appeal, will then decide the point. [Section 35G(8) of CEA - parallel section 130(8) of Customs Act]. Provisions of Code of Civil Procedure relating to High Court will apply in case of such appeals.

Appeal to Supreme Court

Appeal to Supreme Court can be made in following cases:

Judgment of High Court in appeal, if High Court certifies it to be a fit case for appeal to Supreme Court

Order of Appellate Tribunal where it relates to question relating to rate of duty excise or value for purpose of duty.

By Special Leave Petition (SLP) under Article 136 of Constitution i.e. permission of Supreme Court, even in cases where High Court does not certify it to be a fit case for appeal to Supreme Court.

Such appeal should be presented within 60 days from the date the order is communicated. Appeal should be with seven extra sets and should recite all relevant facts and set forth objections to the order and ground of appeal. An authenticated copy of order appealed against should be attached. These are 'civil appeals'. Supreme Court passes orders after hearing appeals.

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Settlement Commission

Constitution of Settlement Commission

Settlement Commission has been constituted in June, 1999; The Commission consists of Chairman, Vice Chairmen and members, functioning under Department of Revenue, Ministry of Finance. The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of Customs and Central Excise laws.

The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary. Settlement Commission deals with Customs and Central Excise matters. The purpose of constitution of settlement commission is for speedy completion of assessments and settlement of pending cases at the earliest.

Conditions to be fulfilled for making an application

- Assessee can make an application to settlement commission only when the case is pending before the adjudicating authority as on the date of application. It can only be approached when original adjudication is pending.
- The assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, and inapplicability of exemption notification or CENVAT credit
- the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;
- a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- The additional amount of duty accepted by the applicant in his application exceeds Rs. 3 lakhs (before 01.06.2007 Rs.2 lakhs).
- The applicant shall deposit the additional amount of excise duty accepted by him along with interest due under section 11AB at the time of **filing** of applications
- Where any excisable goods, books of account, other documents have been seized the assessee entitled to make an application only after the expiry of 180 days from the date of the seizure.
- In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty by 30th June, 2007, failing which the application shall be rejected.
- Once application is made to SC it cannot be withdrawn.

Application to Settlement Commission cannot be made

- Settlement Commission **cannot be** approached when an appeal is pending before a central excise officer or Central Government.
- It can also not be approached when the matter is remanded for further adjudication.

Procedure of Settlement Commission [New section 32F]

- Assessee should make application giving full disclosures along with all relevant documents should be submitted in quintuplicate in prescribed application along with prescribed fees.
- After receipt of application Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, asking the reason why application should be allowed
- Settlement commission will take into consideration the explanation provided by the applicant.
- Settlement Commission shall, within a period of 14 days from the date of the notice to assessee shall pass an order for allowing or rejecting the application.
- Where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed.

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- In case of rejection of application, the proceedings before the Settlement Commission shall abate on the date of rejection.
- A copy of accepting /rejecting order shall be sent by settlement Commission to the applicant and to the Commissioner of Central Excise having jurisdiction.
- Settlement Commission shall, within 7 days from the date of acceptance order shall, call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction.
- The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.
- Where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.
- Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary and it may direct, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation
- The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.
- Where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order without such report.
- The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and on the matters not covered by application as per report of commissioner.
- An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order

Time Limit for passing order for Settlement commission

- In respect of application received before 01.06.2007 order should be passed by 29.02.2008
- In respect of application received on or after 01.06.2007, within 9 months from the last day of the month which application was made..
- This 90 days limit can be extended by another 3 months, by recording the reasons in writing (WEF 01.04.2010)

Consequences if SC not passed order with in Time limit

- The proceedings of SC shall abate.
- The adjudicating authority under which the case is pending shall proceed, as if no application is made to SC.

Order of Settlement Commissions

- The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant
- In case of rejection of application, the order shall contain the reasons therefor.
- The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- Where the order of Settlement is void, The Central Excise Officer complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void

Assessee should pay the amount

- The duty, interest, fine and penalty payable as per SC order shall be paid by the assessee within 30 days of receipt of a copy of the order by him.
- If the assessee fails to pay the amount which remains unpaid shall be recovered along with interest due thereon, as per sec 11 of CE Act.

Powers of Settlement Commission

- Settlement Commission has all powers of a Central Excise/Customs Officer.

Indirect taxes- Central Excise- simplified

- It can attach property of applicant during pendency of proceedings, in the interest of revenue.
- It can regulate its own procedure and decide places where the bench will sit.
- The proceedings before the Commission are judicial proceedings.
- Every order of settlement is conclusive as to the matters covered by the order.
- SC has powers to grant immunity from prosecution penalty for an offence under Central excise and Customs Act
- SC has power to withdraw the immunity granted, if the payment is not made as per order,
- SC has power to send back case to CEO if assessee not cooperated during proceedings,

Settlement Commission has no power

- To grant immunity from prosecution or offence under Indian Penal Code any other Central Act
- To grant immunity from payment of interest under Central excise and Customs Act.
- To reopen completed Proceeding of Assessment in respect of cases where application made on or after 01.06.2007.
- To grant extension of time to pay the final sum specified in the settlement order.

Application for settlement permissible only once during the lifetime of the assessee in certain cases where application made before 01.06.2007

In respect of application made before 01.06.2007, Assessee cannot make subsequent application when

- Where the settlement commission imposed penalty in the order for concealment of duty liability
- After the Order Assessee convicted an offence under the Excise and customs Act
- When case referred back to CEO due to non co-operation of assessee

Remaining all other circumstances assessee can make application to Settlement commission more than once (ie application made before 01.06.2007 other than three above and all applications made after 01.06.2007)- WEF 01.04.2010.

Appeal against order of Settlement Commission

There is no specific provision for appeal against order of Settlement Commission; however writ can be filed in High Court.

Authority for Advance Ruling Sec 23 A to 23 H

Advance Ruling' means determination of a question of law or fact specified in the application submitted by applicant regarding the liability to pay duty in relation to activity (of manufacture/production/import/export) proposed to be undertaken by the applicant.

Advance ruling brings certainty in determining duty/Service tax liability and it helps in avoiding long drawn and expensive litigation at a later date.

Constitution of the Authority

The Central Government shall, by notification in the Official Gazette, constitute an Authority for giving advance rulings, to be called as "the Authority for Advance Rulings (AAR) for Central Excise, Customs and Service Tax".

AAR under the Income Tax Act, 1961 shall exercise the powers of the AAR under Central Excise Act, 1944 (Sec 28 F Customs Act)

The Authority shall consist of the following Members appointed by the Central Government, namely:

- A Chairperson, who is a retired Judge of the Supreme Court/High Court

Indirect taxes- Central Excise- simplified

- An officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board;
- An officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

Who can apply to the authority

- Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident
- A resident setting up a joint venture in India in collaboration with a non-resident or
- A wholly owned subsidiary Indian company, of which the holding company is a foreign company, where such holding company is undertake joint venture in India
- A Public sector Indian Company

“Joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders are a non-resident having substantial interest in such arrangement. Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

Application can be made in respect of activity of production or manufacture (in case of Central Excise) or import and export (in case of customs) or liability to pay service tax in relation to service provided or proposed to be provided (in case of service tax). Such person is called ‘applicant’

Application for Advance ruling

The application in the question can be in respect of –

- classification of goods (or services in case of service tax)
- applicability of an exemption notification
- principles to determine value of goods for purpose of assessment
- notifications issued in respect of excise duty payable under CEA, CETA or any other law where duty is chargeable in same manner as duty of excise or customs duty payable under Customs Tariff Act or
- Admissibility of Cenvat Credit (service tax credit in respect of service tax).
- Whether a good is excisable goods or not” or “whether the process amounts to manufacture or not?”

The application shall be made in quadruplicate and be accompanied by prescribed fees.

An applicant may withdraw his application within thirty days from the date of the application.

Procedure on Receipt of Application

- Authority send a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:
- Authority may admit or reject the application.
- Authority may reject the application if the case is already pending before appellate authority or court. Or court /Tribunal already decided the case.
- If application is admitted, authority will examine the material submitted by applicant or obtained by authority.
- On a request received from the applicant, personal hearing will be entertained.
- Authority will then pronounce its advance ruling within 90 days of receipt of application.
- Copy of the order, signed by members of Authority, will be sent to the party and Commissioner.

Applicability of Advance Ruling

The advance ruling will be applicable and binding only

- On the applicant who had sought it;
- In respect of any matter referred to it

Indirect taxes- Central Excise- simplified

- On the Commissioner and authorities subordinate to him, in respect of the applicant.
- Advance ruling not applicable if law changes.

Advance ruling to be void in certain circumstances.

If authority finds that the advance ruling was obtained by fraud or misrepresentation of facts, the authority can declare the ruling as void *ab initio*.

Powers of Authority

The authority will have powers of discovery and inspection, enforcing attendance of any person and examining him on oath, issuing commissions and compelling production of books. The Authority shall be deemed to be 'civil court' and every proceeding before authority will be a 'judicial proceeding'. Procedures for authority will be determined by Authority itself.

End of Central Excise

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Chapter – II

Customs

As amended by FA 2010 and included notifications and circulars
up to 31.1 .2010

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Chapter 2 Customs

Customs Basics

- Customs duty is an indirect tax and it is levied on import into India and export out of India, as per entry list No. 83 List I of Indian Constitution.

Customs is governed by

- Customs Act
- Customs Tariff Act
- Customs Rules
- Customs Notifications and Circulars and
- Customs Manual.

Purpose of Customs Act, 1962 is

- to Regulate imports and exports
- to Protect Indian industry from dumping
- To collect revenue of customs duty.

Customs Tariff Act, 1975

- Consists of Two schedules
- Schedule 1 gives classification and rate of duties for imports,
- Schedule 2 gives classification and rates of duties for exports.
- In addition, the CTA makes certain provisions for levy of duties like additional duty (CVD), preferential duty, anti-dumping duty, protective duties etc.

Rules under Customs Act –

- Section 156 of Customs Act, 1962 provides C.G has been empowered to make rules, consistent with provisions of the Act, to carry out the purposes of the Act.

Major rules among those are

- Customs Valuation Rules, 1988:
- Customs and Central Excise Duties Drawback Rules, 1995:
- Baggage Rules, 1998:
- Regulations under Customs Act –
- Section 157 of Customs Act, 1962, provides Board (CBE&C) has been empowered to make regulations,

Major Regulations among these are:

- Project Import Regulations, 1986:
- Customs House Agents Licensing Regulations, 1984:
- Import export thorough courier regulations

Customs Manual, 2001

- The Manual gives an overview of Customs Law and Procedures.
- Instructions in Manual should be followed.

Public Notices

- Commissioners of Customs issue Public Notices.
- Public notices for local requirements are also issued.

Notifications under Customs Act

Central Government has got power to issue notifications. Example

- Section 25(1) to grant partial or full exemption from duty
- Section 11 to prohibit import or export of goods.

Board Circulars–

- CBE&C is empowered u/s 151A of customs Act to issue circulars, CBE&C issues circulars giving various instructions / prescribing various procedures etc.
- These instructions should be followed.

Similarities in excise and customs

- Both are central Acts, Derive from the constitution

Indirect taxes Customs Simplified

- Both are performed under C B E C
- Organizational hierarchy is same from top to AC/DC
- Both tariffs are based on HSN and Classification rules are same.
- Principle of determining Assessable value (Transaction value) are same
- Provisions of Refunds, demand, exemption from duty, search, confiscation, authority for advance ruling, settlement commission, Appeals are same

Important Definitions

Export: section 2(18),

- Taking out of India to a place outside India.

Import: section 2(23)

- Bringing into India from a place outside India.

India: Section 2(27)

- 'India' as inclusive of territorial waters.

Territorial Waters of India

- A portion of sea, which is adjacent to the shores of a country, 12 nautical miles from the base line. (1 nautical mile = 1.853 Kms)
- 'Import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters.

Indian Customs Waters

- Area beyond 12 nautical miles and up to 24 nautical miles from base line of India'.
- The C G has got powers to take measures in this area for security of India and immigration,

Significance and importance of 'Indian Customs Waters'

- Customs officer has power to arrest a person in India or within Indian customs waters.
- To stop and search any vessel in India or within the Indian Customs waters.
- If such vessel does not stop, it can be/confiscated/ fired upon.

Exclusive economic zone'

- Area extends to 200 nautical miles from the base line.
- In this zone, the coastal State has exclusive rights to exploit it for economic purposes like constructing artificial islands (for oil exploration, power generation etc.),
- fishing, mineral resources and scientific research
- Beyond 200 nautical miles, the area is 'High Seas', where all countries have equal rights.
- These high seas are reserved for peaceful purposes.

Goods' Sec 2(22)

'Goods' includes

- vessels,
- aircrafts
- vehicles
- Stores,
- baggage,
- currency
- negotiable instruments and
- Any other kind of movable property.
- The duty is payable on goods belonging to government also

Imported Goods - Section 2(25)

- any goods brought in India from a place outside India,
- And does not include goods which have been cleared for home consumption.

Export Goods –Sec 2(19)

- Any goods, which are to be taken out of India to a place outside India. &
- Goods brought near customs area for export purpose.

Dutiable Goods - Section 2(14)

Indirect taxes Customs Simplified

- Any goods which are chargeable to duty and on which duty has not been paid.
- Goods continue to be 'dutyable' till they are not cleared from the port.
- Once goods are assessed at 'Nil' rate of duty, they no more remain 'dutyable goods'.

Foreign-going vessel or aircraft

- Vessel/Aircraft engaged in the carriage of goods or passengers between any port or airport in India and outside India, whether touching any intermediate port or airport in India or not, and includes—
- Any naval vessel of a foreign Government taking part in any naval exercises;
- Any vessel engaged in fishing/ other operations outside the territorial waters of India;
- Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

Nature of Customs Duty and taxable event

Charging section, Sec.12

- Duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', on goods imported into, or exported from, India.
Thus Goods become liable to import duty or export duty when there is 'import into, or export from India'.

Taxable event for imports

- Import is completed only when goods cross the customs barrier.
- The taxable event is the day of crossing of customs barrier
- The date when goods landed in India or had entered territorial waters is not relevant for taxability
- The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed.
- This view was held in *Kiran Spinning Mills v. CC* 1999 (SC) / *Garden Silk Mills Ltd. v. UOI* 1999 (SC)

Taxable event for exports

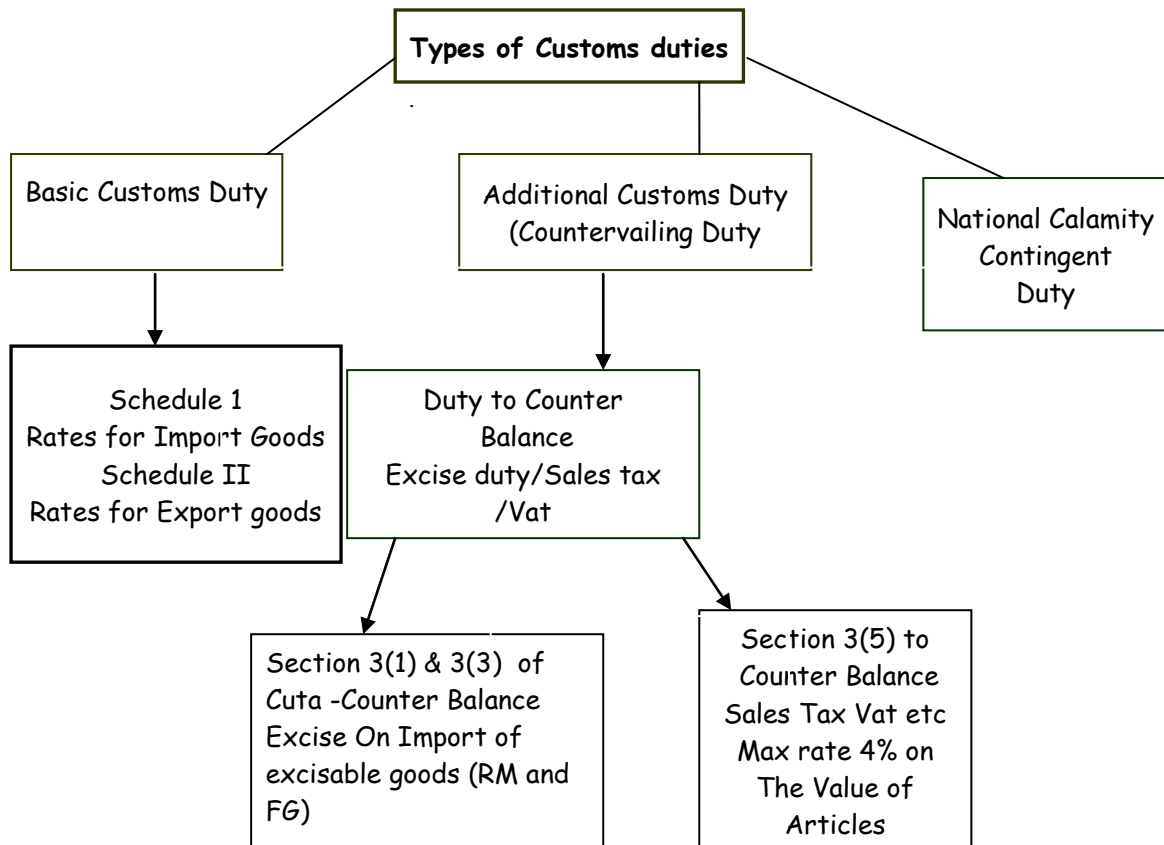
- export commences when goods cross customs barrier,
- export is completed only when it crosses territorial waters
- Taxable event occurs only when goods cross territorial waters.

Taxable event in case of ware house goods

- In case of warehoused goods, the goods continue to be in customs bond.
- 'Import' takes place only when goods are cleared from the warehouse.
- Where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters.

Indirect taxes Customs Simplified

Types of Customs Duty



Basic Customs Duty

Levied under section 12 of Customs Act

- Levied as a percentage of Value as determined under section 14(1).
- The rates vary for different items ex 5%, 12.5% 15%, 25% and 30%
- Normal rate (peak rate) 10%

Additional Customs Duty (CVD) Sec 3(1)

- Also Called 'Countervailing Duty' (CVD).
- Duty is equal to excise duty levied on a like product manufactured or produced in India.
- If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base.
- If the product is leviable with different rates, then highest rate among those rates is to be considered.
- In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. Finance Act 2009 (*Effective from 19.08.2009*)

- The duty is leviable on Value of goods plus basic customs duty and NCCD payable.

- CVD Payable at effective rate of Excise duty

- CVD payable even if similar goods not produced in India

Additional Customs duty u/s 3(3) C V D

- To counter Balance excise duty on raw material, components etc
- After extension of cenvat on inputs there is no need to counter balance duty on inputs

Calculation of CVD

- ❖ CVD is payable on Av+Basic Customs Duty+NCCD

- ❖ Av will be as per Customs Act/rules

Indirect taxes Customs Simplified

- ❖ In case of Where Excise payable on MRP Av will be MRP less abatement
- ❖ When goods are subject to different excise duties CVD is also payable for all the corresponding duties.

Example on Calculation of CVD and Education Cess

- Mode of calculation of education cess has been illustrated in Ministry of Finance letter No. D.O.F. 34/3/2004-TRU dated 8-7-2004, as follows -
- Assuming that value of an item is Rs. 1000, customs duty is 20% and excise duty (CVD) is 16%, the calculation will be as follows - The duty will be worked out as under:

(A) Assessable Value	Rs. 1,000.00
(B) Customs Duty @20%	Rs. 200.00
(C) Sub-Total for calculating CVD (A+B)	Rs. 1,200.00
(D) CVD @16.48 % of Rs 1,200 (16%+3% E.Cess)	Rs. 197.76
(E) Sub-Total for calculating Cess (B+D)	Rs. 397.76
(F) Education Cess @ 3% of Rs 397.76	Rs 11.94

However, while calculating CVD, following duties are not to be considered - * Special Additional Duty payable u/s 3A of Customs Tariff Act * Safeguard duty u/ss 8B and 8C of Customs Tariff Act * Countervailing duty, if any, u/s 9 of Customs Tariff Act * Anti-dumping duty payable u/s 9A of Customs Tariff Act * CVD itself which is payable u/s 3(1). [Section 3(2) of Customs Tariff Act].

Where the Central Government has notified Tariff Value for similar products manufactured in India, the same value shall be considered for imported goods for computation of ACD. (Sec.3 of CETA)

Countervailing duty u/s 3(5) of Customs tariff Act

- It is duty levied on imports to counter balance sales tax and vat in India
- Maximum rate leviable is 4% on the total value of article
- Total value includes CIF price plus all customs duty excluding duties to protect Indian Industry.

NCCD of customs

- Duty imposed vide section 129 of Finance Act, 2001
- This duty is imposed on pan masala, chewing tobacco and cigarettes. Polyester yarn
- It varies from 1% to 45%. –

Examples

- 1% was imposed on PFY, motor cars, multi utility vehicles and two wheelers
- Rs 50 per ton on domestic crude oil,

Export duty –

Levied only on few products

At present, Export Duty is levied only on

- hides, skins and leather,
- Snake skins hides, and fur lamb skins.

There is no export duty on any other product.

Education Cess

2% education cess and 1% higher secondary education cess total 3% on all duties will be levied by government and should be payable.

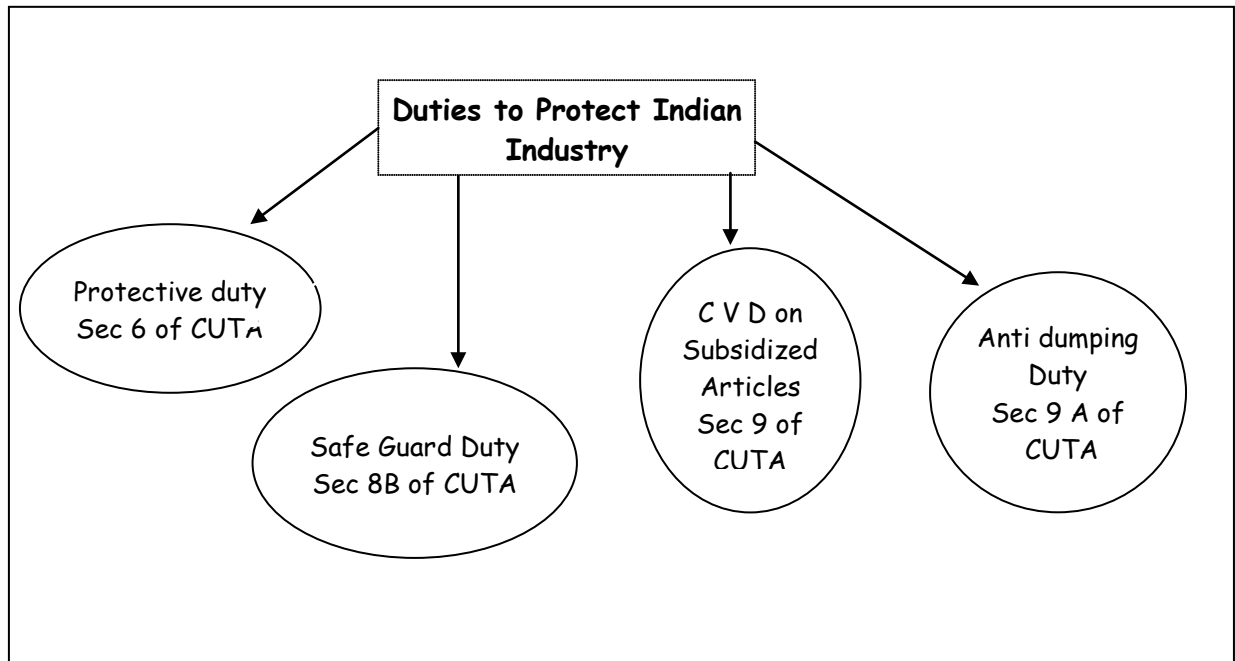
A secondary and higher education cess @ 1% has been imposed on imported goods. The Proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of customs. However, following duties shall be excluded for computing this cess:–

- (a) The additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;

Indirect taxes Customs Simplified

- (b) The safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;
- (c) The countervailing duty & anti-dumping duty leviable under section 9 & 9 A of the Customs Tariff Act, 1975;

Import duties to protect Indian Industry



Protective Duties Section 6 CUTA

If C G is satisfied that immediate action is necessary to protect interests of Indian industry;

- Rate of duty is as per recommendation of Tariff Commission
- Notification for levy should be introduced in Parliament
- If Parliament not in session, introduced in next session by way of a Bill.
- Notification should Pass in parliament with in 6 months,
- If not passed the notification ceases to have force, but action already taken remains valid.
- The protective duty will be valid till the date prescribed in the notification.
- The protective duty can be rescinded, reduced or increased by a notification.
- Such notification should also be placed before Parliament for approval in next session.

Safeguard duty Section 8 B of CUTA

Circumstances to Impose

- When the goods are being imported in large quantities
- That they are causing or threatening to cause serious injury to domestic industry.

Procedure for Levy

- CG is empowered to impose 'safeguard duty' on specified imported goods
- Such duty is permissible under WTO agreement.
- Government has to conduct an enquiry and then issue a notification.
- In case of imports from developing countries, such safeguard duty can be imposed only if import of that article from that country is more than 3% of total imports of that article in India. so long as the aggregate of the imports from "developing countries each with less than 3% import share" taken together does not exceed 9% of the total imports of that article into India.

Indirect taxes Customs Simplified

- Central Government can impose provisional safeguard duty, pending final determination up to 200 days.
- The duty is in addition to any other customs duty being imposed on the goods. .
- The duty, once imposed, is valid for four years, unless revoked earlier.
- This can be extended by Central Government,
- Total period of 'safeguard duty' cannot be more than ten years.
- No safe guard duty in case of EOU/SEZ unless specified in notification
- Special provision for imports from China in similar lines above provided in section 8 C

C V D on subsidized goods Sec 9 of CUTA

If a country pays any subsidy (directly or indirectly) to its exporters for exporting goods to India,

- CG can impose Countervailing duty up to the amount equal to such subsidy
- If the amount of subsidy cannot be ascertained, provisional duty can be levied
- After final determination, difference may be refunded.
- Such imposition should be by way of a notification.

Anti dumping duty Sec 9 A of CUTA

Circumstances to impose

- When large manufacturer from abroad may export goods to India at very low prices compared to prices in his domestic market.
- Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock.
- In order to avoid such dumping, C G can impose, anti-dumping duty up to margin of dumping on such articles,

Procedure

- This duty is permissible as per WTO agreement
- Duty can be levied only when there is an Indian industry producing 'like articles'.
- If it is a pending in determination of margin of dumping, duty can be imposed on provisional basis.
- After dumping duty is finally determined, C G can reduce such duty and refund duty extra collected than that finally calculated
- Margin of dumping' means the difference between normal value and export price
- 'Normal Value' means comparable price in the exporting country
- Margin of dumping is determined on basis of *records concerning normal value and export value maintained and informed by the exporter or producer (WEF FA 2009)*
- Export Price' means the price at which goods are exported.

Quantum of dumping duty

- The anti-dumping duty will be dumping margin or injury margin, *whichever is lower.*

Injury margin' means

- Difference between fair selling price of domestic industry and landed cost of imported product.

Applicability of rules and Regulations to duties under Customs tariff Act (FA 2009)

The rules regulations made under customs Act with regard to, demand, refund, assessment, interest, penalty, Offences and Appeals will also applicable to duties levied under Customs tariff Act such as safe guard duty, protective duty, duty on subsidized articles and antidumping duty (Amended by Finance Act 2009 retrospectively)

Prohibition of Importation/ exportation of goods sec 11
--

- The C G has powers to prohibit
- either absolutely or
- subject to such conditions (to be fulfilled before or after clearance)
- the import or export of goods

Indirect taxes Customs Simplified

- Of any specified description.
- Official gazette should notify the prohibitions.

Purposes where prohibition should be made.

The maintenance of public order and standards of decency or morality;

- The prevention of smuggling/ Shortage of goods;
- The conservation of foreign exchange and the safeguarding of balance of payments;
- The prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- The prevention of surplus of any agricultural product or the product of fisheries;
- The maintenance of standards for the classification, grading or marketing of goods in international trade;
- The establishment of any industry;
- The prevention of serious injury to domestic production of goods of any description
- The protection of human, animal or plant life or health;
- The protection of national treasures of artistic, historic or archaeological value ;
- The conservation of exhaustible natural resources;
- The protection of patents, trademarks and copyrights;
- The prevention of deceptive practices;
- The fulfillment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
- The implementation of any treaty, agreement or convention with any country
- The compliance of imported goods with any laws, which are applicable to similar goods produced or manufactured in India;
- The prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
- The prevention of the contravention of any law for the time being in force; and
- Any other purpose conducive to the interests of the general public.

Duties of Person possessing specified goods

Duties of Person who owns, possesses or controls, specified goods, the value exceeds Rs.15000

- Inform the proper officer about the particulars of the place where such goods are kept.
- Before acquires intimate to the proper officer containing goods where such goods are to be stored after such acquisition:
- In case of shift, intimate the place to which such goods are proposed to be shifted.
- No person shall, after the expiry of seven days from the specified date, keep or store any specified goods at any place other than the intimated place.

Other Points

- Shifting and transport of specified goods should be covered by voucher
- Persons possessing specified goods to maintain accounts with regard to acquisition usage and balance.
- Difference between record and physical stock. if any unless proved contrary deemed illegally exported
- Person selling or transferring any specified goods For cash exceeding Rs. 2500/per day - should mention full address of buyer

Customs Classification

Similar to that of excise except Customs Tariff contains only two schedules and tariff contains two rates of duty viz., standard rate and preferential rate. If no rate is mentioned in the column 'Rate for Preferential Area', then Standard rate is applicable.

Indirect taxes Customs Simplified

Customs Valuation

- Customs duty is payable as a percentage of 'Value' called 'Assessable Value'
- The Value may be either
- Transaction Value' as per Section 14 (1) or
- Tariff value prescribed as per 14 (2).

Tariff Value Sec 14 (2)

- Tariff Value can be fixed by CBE&C (Board)
- Government should consider trend of value of such or like goods
- Once T V fixed, duty is payable as percentage of this value.
- The percentage applicable is as per Customs Tariff Act
- Example for tariff value fixed were crude palm oil; RBD Palmolein and palm oil

Transaction value as per section 14 (1)

Transaction value Requirements

- The price actually paid or payable for the goods
- The price shall be for delivery at the time and place of importation or exportation,
- the seller and the buyer are not related
- price is the sole consideration for the sale e:

Price should be for delivery at the place of importation/exportation

In case of import

- All expenses up to the destination port, including freight, transit insurance, unloading and handling charges are to be included.
- In case of export all expense up to Indian port/airport to be included

Price should be for delivery at the time of importation –

- Time of importation means price ruling when the goods were imported is relevant.
- price prevalent on date of contract not relevant

● Buyer or Seller should be treated as relatives in the following circumstances

- They are officers or directors of one another's businesses;
- they are legally recognized partners in business;
- they are employer and employee;
- any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- They are members of the same family.
- Person includes legal person
- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Price must be the sole consideration

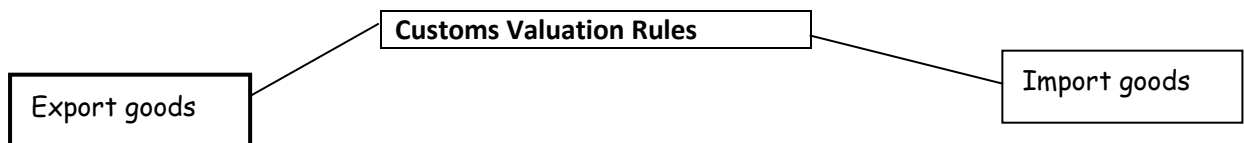
- Price should be sole consideration for sale.
- If there is other consideration, it should be added to the transaction value.

For import goods price also include

- commissions and brokerage,
- engineering, design work,

Indirect taxes Customs Simplified

- royalties and licence fees,
- costs of transportation to the place of importation,
- Insurance
- loading, unloading and handling charges
- The price of goods for valuation shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented in case of imported goods and as a shipping bill or bill of export,
- The rate of exchange is notified by CBEC is to be considered for valuation.
- The valuation rules provide to determine the value if the above conditions are not satisfied. For Example if there is no sale, buyer and seller are relatives and when price is not sole consideration.



Export goods valuation Rules (new rules comes to effect from 10.10.2007)

Transaction value Rule 3

The values will transaction value as per sec 14. The transaction value will be accepted even buyer and seller are relatives, if the price is not influenced

Determination of export value by comparison. Rule 4

If the value cannot be determined as per rule 3 value can be determined as per Rule 4 as below.

- The value of the export goods shall be based on the transaction value of goods of like kind and quality goods
- The price of such goods should be at the same time and same country and same manufacturer.

If the above are not fulfilled the value to be determined by proper officer as it appears reasonable by adjusting with respect to

- Difference in the dates of exportation,
- Difference in commercial levels and quantity levels,
- Difference in composition, quality and design between the goods to be assessed and the goods, with which they are being compared,
- Difference in domestic freight and insurance charges depending on the place of exportation.

Computed value method Rule 5

If the value cannot be determined as per rule 4 the value will be determined as per rule 5 by computed value method which include following

- cost of production , manufacture or processing of export goods;
- charges, if any, for the design or brand;
- an amount towards profit.

Residual method Rule 6

Where the value of the export goods cannot be determined as per rule 4 and 5, the value shall be determined with respect to general provisions of these rules. The local market of export goods not only the basis and other factors will be considered,

Declaration of value by exporter Rule 7

The exporter shall furnish a declaration relating to the value of export goods in the specified manner.

Rejection of declared value Rule 8

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- When the proper officer has reason to doubt the truth or accuracy of the value declared for export goods, he may ask the exporter to furnish information, documents or other evidence,
- After receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value, it is deemed that transaction value not determined properly.
- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to exporter, before taking final decision.

Explanation to rule 8

- This rule by itself does not provide a method for determination of value.
- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 6
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the exporter.

Reasons where Proper officer will get doubt about truth and accuracy

- the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
- The significantly higher value compared to the market value of goods of like kind and quality at the time of export.
- The misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Import goods valuation Rules (new rules comes to effect from 10.10.2007)

Determination of the method of valuation. Rule 3

The value of the imported goods is the transaction value as per sec 14 adjusted with the cost and services as per rule 10

The transaction value will be accepted under the following conditions

- there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
 - (i) are imposed or required by law or by the public authorities in India; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
- no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
- the buyer and seller are not related,

Inclusions of costs and services in transaction value Rule 10

The following will be included if the following are not included in the price

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- Commission and Brokerage paid to local agent in India
- Service charges paid to canalizing agency: when canalizing agency makes imports, goods are sold to Indian buyer on 'high sea sale' basis. Indian buyer clears the imported goods. In such cases, 'service charges' payable to the canalizing agency to be included
- Packing cost labour and material
- Cost of containers
- Value of Goods supplied by buyer at free/concessional rate

Cost of tooling:

- If purchased the cost of tooling, if manufactured production cost
- If previously used the tooling, its original cost less depreciation.
- Apportioning of Cost of Tools to the value - apportioned over the quantity produced.
- Such apportionment should be made on basis of documentation provided by importer.
- engineering, development, art work, design work, and plans and sketches undertaken work undertaken outside India necessary for the production of the imported goods;
- materials, components, parts and similar items incorporated in the imported goods;
- The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Royalty and license fees

- Royalties and license fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods are not included in the price

The following types of royalty not includable

- Royalty payment to collaborators un-connected with imported goods
- charges for the right to reproduce the goods in India
- payments made by buyer (importer) for right to distribute or resale the imported goods
- Charges for reproduction of software in India

Other inclusions in Valuations

- Freight Actual, if actual data not available 20% of FOB
- In case of Air. actual freight or 20% of FOB w e l
- Insurance actual, If actual data not given 1.125% of FOB
- Handling/Landing Charges 1% on CIF

Exclusions from Customs valuation

- ❖ Charges of purchasing agent abroad
- ❖ Cost of durable and re-usable containers, if importer agrees to execute a bond to re-export the containers within six months.
- ❖ Charges for construction, erection, maintenance, installation etc, after importation of machinery, equipment
- ❖ Transport insurance after import (transport from port/airport to factory)
- ❖ Local taxes in India
- ❖ Demurrage charges for later clearance of goods.
- ❖ Bank charges paid to banker for services rendered by them

Valuation when import from relative

Where the buyer and seller are related, the transaction value shall be accepted when

- That the relationship did not influence the price.
- the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time—
- the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

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- the deductive value for identical goods or similar goods;
- the computed value for identical goods or similar goods
- in applying the values used for comparison, Rule 10 additions of costs to be considered

Transaction value of identical goods Rule 4

If transaction value of same goods not available because of

- ❖ abnormal discount, unconditional sale,
- ❖ sale not in competitive conditions,
- ❖ No sale because lease, hire, gift and sample
- ❖ In such cases transaction value of identical goods will be considered

Meaning of identical goods

Goods should be the same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance

When applying the value of identical goods the following should be considered

- Goods have been produced in the same country
- They should be produced by same manufacturer, if same manufacturer not available price of goods produced by another manufacturer in the same country. However brand reputation and quality of other manufacturer should be comparable.
- Imported at or around about same time
- Adjustment for distances and transport costs if any required to be considered
- Costs and services as per rule 10 are required to add.
- If more than one value of identical goods is available, lowest of such value should be taken.

Transaction value of similar goods Rule 5

- If Transaction value of identical goods cannot be used, valuation is to be done based on Transaction value of similar goods
- Similar goods are same as with identical goods additional requirement is that performing same function and commercially inter-changeable
- When applying the value of similar goods consideration should be governed will be the same as identical goods
- Value adopted under provisional assessment cannot be considered for valuing under rule 4 and rule 5

Value When value cannot be determined under Rule 3 4 and 5

Rule 6

When Value cannot be determined under Rule 3, 4 and 5, the value can be determined under deductive value method (rule 7) or computed value method (rule 8.)

Deductive Value method

Rule 7.

- If T V of identical & similar goods is not available then deductive value method is used.
- When same, identical or similar imported goods are sold in India and price in India is available and the sale should be in the same condition as they are imported.
- Assessable Value is calculated by reducing post-importation costs and expenses from this selling price.

Deductions

- Selling Expenses (commission etc.) and selling profits
- Direct and indirect cost of marketing the goods in India.
- Transport, insurance and associated costs within India
- Customs duties, sales tax and other taxes levied in India.

The price will be Unit price sold in greatest numbers of quantity to be considered for valuation

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If the imported goods, identical similar imported goods are not sold at or about the same time of importation of the goods being valued, the valuation will be unit price at the earliest date after importation but before the expiry of ninety days after such importation.

If the imported goods, identical similar imported goods are not sold, but goods sold after processing, adjustments should be made for processing cost if any

Computed Value Rule 8

- If valuation is not possible by deductive method, computing the value can be used.
- This method can be used before deductive value method If Customs Officer approves

In this method, value is the sum of

- Cost of value of materials, labour and processing charges for producing the imported goods
- amount General expenses and profit
- The cost or value of all other expenses under rule 10 transport, insurance, loading, unloading and handling charges.

Residual Method Rule 9

- ❖ similar to 'best judgment method'
- ❖ This method can be considered if valuation is not possible by rule 3 to 8
- ❖ Mix of the all other rules and general provisions of all rules.
- ❖ Assessment will be done based on with available data in India.

Residual value cannot be determined on the basis of

- the selling price in India of the goods produced in India;
- a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- the price of the goods on the domestic market of the country of exportation;
- the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- the price of the goods for the export to a country other than India;
- minimum customs values; or
- Arbitrary or fictitious values.

Declaration by the importer. Rule 11

The importer or his agent shall furnish -

- a declaration disclosing full and accurate details relating to the value of imported goods; and
- any other statement, information or document including an invoice necessary for determining the value of imported goods
- proper officer of customs can ask any document to verify the truth and accuracy of value of imported goods

If the importer furnishes wrong declaration, submit wrong information, the provisions of Customs Act with regard to confiscation and penalty will apply.

Rejection of declared value. Rule 12

- When the proper officer has reason to doubt the truth or accuracy of the value declared for imported goods, he may ask the exporter to furnish information, documents or other evidence,
- After receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value, it is deemed that transaction value not determined properly.

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- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to importer, before taking final decision.

Explanation to rule 12

- This rule by itself does not provide a method for determination of value.
- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 9
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the importer.

Reasons where Proper officer will get doubt about truth and accuracy

- the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- the sale involves special discounts limited to exclusive agents;
- the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- The fraudulent or manipulated documents.

Valuation of old machinery/cars

- The concept of transaction value is applicable to second hand machinery also,
- When exactly comparable imports can be found or exist.
- Invoice value of second hand machine supported by Chartered Engineer's certificate is acceptable
- Depreciation will be allowed on value of old machinery on following scale:
 - for every quarter in 1st year: 4%
 - for every quarter in 2nd year: 3%
 - for every quarter in 3rd year 2.5%
 - for every quarter in 4th and
 - Subsequent year : 2%
- Maximum: 70% [Vadodara Commissionerate No. Cus/t/93 dated 15-6-1993].
- Same depreciation rate applied for old cars also.

Customs Valuation Format for solving numerical problems (Imported Goods)

FOB (Free on board) Value	XXXXXXXXXX
Add: Freight – Actual freight ,If actual is not given 20% of F O B Note; In case of air, 20% of F O B or actual air freight which ever is less has to consider	XXXXXXXXXX
Add: Insurance- Actual insurance, if actual is not given 1.125% of FOB	XXXXXXXXXX
Add: Inclusions in valuation if not included in price (rule 10)	XXXXXXXXXX
Less: deductions if any not includable (if included in price)	XXXXXXXXXX
C I F(Cost insurance and freight) value	XXXXXXXXXX
Convert the C I F value in to Indian rupees as per rate of exchange announced by CBEC/Central government Note: Do not consider rate announced by R B I, Banks, FEDAI	XXXXXXXXXX

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Add: 1% towards handling charges	XXXXXXXXXXXX
Total C I F Value (Assessable value for the purpose of duty payment)	XXXXXXXXXXXX

Import and Export Procedures

Customs Import procedures

- Goods are imported in India or exported from India through sea, air or land.
- Goods can come through post parcel or as baggage with passengers.
- Procedures naturally vary depending on mode of import or export.

This topic covers import procedure through sea, air or land,

Important Definitions

Entry: Section 2(16)

- 'Entry' in relation to goods means an entry made in a Bill of Entry, Shipping Bill or Bill of Export and includes
 - label or declaration accompanying the goods which contains description, quantity and value of the goods, in case of postal articles or
 - Entry to be made in case of goods to be exported
 - Entry in respect of goods imported which are not accompanied by label or declaration made as per provisions of section 84. .

Customs stations/Customs areas

Section 7 of Customs Act provides CBEC (Board) to appoint by notification

Customs ports

Customs airports

Places for inland container depots

Coastal ports. - Where the goods can be transported

Section 8 authorizes Commissioner of Customs

- Approve proper places in any customs port,
- Customs airport or coastal port for unloading and loading of goods and specify the limits of customs area.
- Place (city / town / village etc.) is approved by CBEC,
- While exact location within that city / town / village is approved by Commissioner.

Person in charge means

- In case of vessel - its master
- In case of aircraft - its commander or pilot-in-charge
- In case of train - its conductor or guard and
- In case of vehicle or other conveyance - its driver or other person in charge

Duties and responsibilities of Person in charge

- He is responsible for submitting Import Manifest and Export Manifest
- He is responsible to ensure that the conveyance comes through approved route and lands at approved place only.
- He has to ensure that goods are unloaded after written order, at proper place. Loading also has to be only after permission.
- He has to ensure that conveyance does not leave without written order of Customs authorities.

He can be penalized for

- (a) Giving false declaration and statement
- (b) shortages or non-accounting of goods in conveyance

Procedure to be followed by the Carrier in case of import

1. Arrival at Vessel/aircraft at customs port/airport only Sec 29

- Person-in-charge entering India shall call or land at customs port or customs airport only.

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- While arriving by land route, the vehicle should come by approved route to 'land customs station' only.
- It can land at other place only if compelled by accident, stress of weather or other unavoidable cause.
- In such case, he should report to nearest police station or Customs Officer.
- Person in charge without the consent of officer permits any goods to be unloaded from, or any of the crew or passengers to depart from the vicinity.
- Where the departure or removal is necessary for reasons of health, safety or the preservation of life or property it can be carried on.

2. Delivery of Import Manifest / Report- Section 30

- Person-in-charge has to submit IMF /import report prior to arrival of a vessel or aircraft.
- Import report (in case of vehicle) has to be submitted within 12 hours of arrival at the customs station.
- If the report / manifest could not be submitted within prescribed time, person-in-charge liable to penalty up to Rs 50,000
- Such penalty will not be imposed if the Proper officer is satisfied that there was sufficient cause for the delay. .

Procedure to be followed by Importer

1. filing of Bill of entry
2. Filing of other documents for assessment

1. Filing of Bill of Entry by importer Section 46

The Bill of Entry should be in prescribed form, in quadruplicate

- Original and duplicate for customs,
- triplicate for the importer
- Fourth copy is meant for bank for making remittances.
- Importer to present bill of entry up to 30 days before expected date of arrival of vessel/aircraft

Types of Bill of Entry

Bill of Entry for Home Consumption

- This form is used is used when the imported goods are to be cleared on payment of full duty. It is white color
- Home consumption means use within India.

Bill of Entry for warehousing –

- It is also called 'Into Bond Bill of Entry' as bond is executed for transfer of goods in warehouse without payment of duty.
- If the imported goods are not required immediately, He can store to store the goods in a warehouse without payment of duty under a bond
- This Bill of Entry is printed on yellow paper

Bill of Entry for ex-bond clearance

- This is used for clearance from the warehouse on payment of duty
- It is printed on green paper.
- The goods are classified and value is assessed at the time of clearance from customs port.
- Value and classification is not required to be determined in this bill of entry.
- Declaration by importer is not required as the goods are already assessed.

Noting of Bill of Entry –

- Bill of Entry submitted by importer or Customs House Agent is cross-checked with 'Import Manifest' submitted by person in charge of vessel / carrier
- It is noted if the description tallies. '
- Noting' really means taking on record by customs officer. This date is relevant for determining rate of customs duty.

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- Thoka number (serial number) is given in the import section. Otherwise, it is returned for clarifications.
- In case of EDI system, noting is done by the system itself, which also generates bill of entry number.

2. Documents to be submitted by Importer

Documents are required for purpose of to check the goods and for

- Decide value and classification of goods and
- To ensure that the import is legally permitted.

The documents that are essentially required are:

- Invoice, Packing List, Bill of Lading, Delivery Order
- GATT declaration form duly filled in by Importers /
- CHAs declaration duly signed
- Import License or attested photocopy when clearance is under licence
- Letter of Credit / Bank Draft wherever necessary
- Insurance memo or insurance policy
- Industrial License if required
- Certificate of country of origin, if preferential rate is claimed.
- Technical literature of product & Test report in case of chemicals
- Advance License / DEPB in original, where applicable
- Split up of value of spares, components and machinery
- No commission declaration. – A declaration in prescribed form about correctness of information should be submitted.

Amendment to documents Section 149

BoE, IMF, EGM can be amended by person who files with the permission of Customs authorities

- Amendment may be due to change in classification, clerical mistake in document, change in unloading / loading plan of vessel etc.
- Such permission can be given if there are no fraudulent intentions.
- In case of bill of entry, shipping bill or bill of export, it can be amended after clearance only on the basis of documentary evidence, which was in existence at the time the goods were cleared, warehoused or exported, and not on basis of any subsequent document.

Grant of Entry Inwards by Customs Officer

Imported goods not to be unloaded from vessel until entry inwards granted. Sec 31:

- Goods to be unloaded only at the place specified in IMF/report.
- Unloading only with the supervision of the proper officer:
- Board may, by notification relax these conditions or any class of goods. (Section 34)
- No unloading on any Sunday or on any holiday or after working hours
- Person in charge has to give notice and has to pay the prescribed fees, if he wants to unloading at Sundays/holidays (Section 36)

■

Carrier responsible for shortages during unloading

- If the goods are short landed, the carrier is liable to pay penalty up to twice the amount of duty payable on such short landed goods.

Restrictions on custody and removal of imported goods. Section 45

All imported goods unloaded in a customs area shall remain in the custody of Port/airport authorities until they are cleared

- The person having custody of any imported goods in a customs area, shall keep a record of such goods and send a copy thereof to the proper officer;
- Shall not permit such goods to be removed from the customs area without written permission of the proper officer.

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- If any imported goods are pilfered after unloading thereof in a customs area port authorities are liable to pay duty.

Storage of imported goods in warehouse pending clearance. Sec 49

Any imported goods, whether dutiable or not, entered for home consumption, the AC/DC is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a warehouse, but such goods shall not be deemed to be warehoused goods. This is also known as warehouse without warehousing.

Disposal if goods are not cleared within 30 days section 48

- Goods must be cleared within 30 days after unloading.
- Customs Officer can grant extension.
- If not cleared goods can be sold after giving notice to importer.
- Animals, perishable goods and hazardous goods no time limit
- Arms & ammunition can be sold only with permission of CG.

Rate of duty and tariff valuation sec 15

- If the goods are entered for home consumption, Rate on the date on which bill of entry is presented or rate on the date of entry inward whichever is later
- In case of warehoused goods, rate on date of clearance from warehouse and
- In other cases, date of payment of duty.

Assessment of Customs duty sec.17

- Assessment of goods will be made after Bill of Entry is filed.
- Date stamp of receipt is put on the 'Bill of Entry' and then it is sent to appraising department.
- Various Appraising groups for different Chapter headings. Each group is under an AC/DC

Appraiser has to

- correctly classify the goods
- decide the Value for purpose of Customs duty
- find out rate of duty applicable as per any exemption notification and
- Verify that goods are not imported in violation of any law.
- He can call for any further documents that may be required for assessment.

Types of Assessment

- Two types
- First Appraisal system/First check procedure sec 17(2)
- Second Appraisal system/Second check procedure sec 17(4)

First appraisal system" or 'first check procedure

- When the appraiser is not able to make assessment on the basis of documents submitted and deems that inspection is necessary.
- Goods are examined first and then these are assessed.
- The importer himself may also request 'first check procedure',
- Request at the time of filing of Bill of entry
- Request can be made only if he cannot give all required details regarding description / value of goods.
- He has to give reason for seeking first appraisal.
- The examination order is recorded on Bill of Entry and then returned to importer

First appraisal is generally carried out in following cases –

- If complete documents are not submitted
- Goods are to be tested for correct classification*
- Goods are re-imported
- Goods are damaged or deteriorated and abatement is claimed
- Goods are abandoned and remission of duty is applied for

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- When goods are provisionally assessed
- When importer himself requests for examination of goods before payment of duty.

Examination of Goods

- Examiners carry out physical examination and quantitative checking like weighing, measuring etc.
- Selected packages are opened and examined on sample basis in 'Customs Examination Yard'. The examiner prepares examination report.

Second Appraisal/Second Check/ Risk Assessment

- In second Appraisal Assessment is done on basis of documents submitted by importer and then goods are examined.
- Such examination is not mandatory.
- It is done on selective basis on the basis of 'risk assessment' or specific information
- Initially assessment is done on basis of documents,
- Re-assessment can be done after examination or testing of goods or otherwise, if it is found any information supplied is not true

Speaking Order in case of Assessment Contrary to claim of importer/Exporter sec 17(5)

It is mandatory for issuance of separate assessment order in case the assessment done by Customs Office is contrary to what is claimed by the importer in Bill of Entry or Shipping Bill. Such an order shall be passed within 15 days of filing of Bill of Entry or Shipping Bill. It shall be a speaking order (i.e., shall give the reasons on which findings in the orders are based.)

Payment of Customs Duty

- Regular importers and Custom House Agents through current account with Customs department. or
- Duty can be paid in cash/DD through GAR 7 challan in designated banks.
- After payment of duty, delivery of goods can be taken from custodians (port trust) after paying their dues.
- Interest @15% p .a. if duty was not paid within 5 working days after B O E returned for payment

Provisional Assessment Sec 18

Provisional assessment can be done in following cases

- When Customs Officer is satisfied that importer or exporter is unable to produce document or furnish information required for assessment
- It is deemed necessary to carry out chemical or other tests of goods
- When importer/exporter has produced all documents, but Customs Officer still deems it necessary to make further enquiry.
- The importer/exporter has to furnish bond/ guarantee/security for payment of difference if any.
- Goods can be cleared after payment of duty provisionally assessed and after providing the security.
- After final assessment, difference is to be paid/refunded.
- In case of goods were warehoused bond to execute for twice the difference in duty,

Interest in case of provisional Assessment

- Recovery of interest from importer/exporter @ 13% p.a. in cases where finally assessed duty is more than the provisionally assessed duty. The interest is payable from the first day of the month which duty was provisionally assessed till the date of payment.
- Payment of interest to importer/exporter @ 6% p.a. to assessee in cases where finally assessed duty is less than the provisionally assessed duty. The interest is payable if the refund is not sanctioned within 3 months from the date of final

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assessment of duty till the date of payment of duty. For refund of duty provisions of doctrine of unjust enrichment will apply.

Export Procedure

Procedure to be followed by 'person in charge'

✓ Person in charge should file Export Manifest/Export Report in prescribed form before departure.

✓ Person in charge should declare that contents in EMF are true

Procedures to be followed by Exporter

- Exporter should obtain IEC CODE from DGFT. It is a PAN based number
- Exporter should Open current account with designated bank for credit of duty drawback claims
- Register licenses / advance license / DEPB etc. at the customs station is required, if exports are under Export Promotion Schemes
- Exporter has to submit 'shipping bill' for export by sea or air and 'bill of export' for export by road. (Sec 50)s
- Shipping bill should be submitted in quadruplicate. If drawback claim is to be made, 5 copies

Types of Shipping Bill

for export of goods under claim for duty drawback - Green color

■ for export of dutiable goods -yellow color

■ for export of duty free goods -white color

■ for export of duty free goods ex-bond - i.e. from bonded store room - pink color

■ For export under DEPB scheme - Blue color.

Customs authorities give serial number (called '*Thoka Number*') to shipping bill, when it is presented

■ After shipping bill is passed by export department, Goods are presented to shed appraiser (exports) in dock for examination.

■ Goods will be examined by examiner.

Inspection of goods is necessary

- to ensure that prohibited goods are not exported
- goods tally with description and invoice
- duty drawback, where applicable, is correctly claimed

Let Export Order Sec 51, the customs officer will

- will verify the contents
- to Satisfy that goods are not prohibited for exports
- Ensure applicable duty if any is paid,
- Will permit clearance by giving 'let ship' or 'let export' order.

Entry Outward – Sec 39

the vessel should be granted 'Entry Outward'.

■ Loading can start only after entry outward is granted.

■ Loading should be done with permission of proper officer

■ Export goods can be loaded only after Shipping Bill or Bill of Export, duly passed

■ Shipping bill is handover by Exporter to the person-in-charge of conveyance.

■ In case of baggage and mailbags, shipping bill is not necessary, but permission of Customs Officer is required (section 40).

.Conveyance to leave on written order section 42 –

- The vessel or aircraft, which has brought imported goods ,which carry export goods cannot leave that customs station unless Customs Officer gives a written order
- Such order is given only after export manifest is submitted

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- Shipping bills or bills of export, bills of transshipment etc. are submitted
- Duties on stores consumed are paid or payment of the same is secured
- No penalty is leviable, export duty, if applicable, is paid. –
- Such permission is not required if the conveyance is carrying only luggage of occupants

Re-importation of goods. Sec 20

■ If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, which goods of the like kind and value are liable or subject, on the importation thereof. -Tata tea (SC)/Super cassettes (SC)

Re-import within 3 years: If the same goods which are exported earlier were re-imported by same person within 3 years, No customs duty and No CVD payable. At the time export if any drawback amount is claimed, it is payable. The exemption of duty not applicable to EOUs Notification No 94/1996 dated 16.12.1996

Imported for repair/Rectification etc: No duty payable if re-export within 6 months. Bond to be executed. Notification No 158/1995 dated 15.11.1995

Imported goods re-exported for repairs and importing after repairs: duty payable on the values of repairs charges + freight and insurance on both ways. Notification No 94/1996 dated 16.12.1996

Rate of duty and tariff valuation in case of export goods Sec 16

- in the case of goods entered for export under section 50, on the date of let export order
- In the case of any other goods, on the date of payment of duty.
- The provisions of this section shall not apply to baggage and goods exported by post.

Customs Other Procedures

Boat Notes/ Restrictions on goods being water-borne. Section 35

- If the vessel has to unload only a small cargo, it may not spend time in having berth in the port.
- If the small cargo is to be sent to shore, it may be loaded in a small boat and sent to shore.
- As per section 35, such small boat must be accompanied by a 'Boat Note'.
- Boat Notes Regulations provide that Customs Officer will issue such Boat Notes.
- It will be maintained in duplicate and should be serially numbered.
- Boat Note should be in prescribed form.
- Loading in to small boat from ship should be done only when such small boat accompany boat note
- Unloading from small boat to ship for export should not require boat note, when small boat carrying shipping bill. Otherwise boat note is required
- Board may, by notification relax these conditions to any class of goods,
- Boat Note is also required for transshipment of cargo, i.e. transfer from one ship to another or for re-shipment.

Transit and transshipment of goods Sec 53 & Sec 54

Transit Goods - Section 53

- Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of customs duty, to any place out of India or any customs station. All these goods must be mentioned in import manifest or import report. Such goods should not be 'prohibited goods' under section 11 of Customs Act. The conveyance may be vehicle, ship or aircraft after transit, the goods may go to another customs station.

Transshipment of goods sec 54

- Transshipment means transfer from one conveyance to another.
- Goods imported in any customs station can be transshipped without payment of duty,

Indirect taxes Customs Simplified

- The conveyance may be vehicle, ship or aircraft
- Such transshipment may be to any major port or airport in India
- The goods can be transshipped to any other customs station in India if customs officer is satisfied that the goods are *Bonafide* intended for transshipment to any customs station.
- The facility is available at all customs ports and Inland Container Depots (ICDs)..
- Goods to be transshipped must be specified in Import Manifest
- Bill of Transshipment' should be submitted to Customs Officer.
- Such goods should not be 'prohibited goods' under section 11 of Customs Act
- If so Customs officer should seal the goods during transshipment.
- A bond has to be executed for the purpose.
- After execution of bond, a certificate from customs officer has to be submitted within one month that goods have been properly transferred..

Distinction between Transit and Transshipment –

- In 'transit' goods continue to be on same vessel, while in transshipment, goods are transferred to another vessel / vehicle. Hence, procedures are also different.

Liability of duty on goods transited under transit and transshipment section 55.

- Where any goods are allowed to be transited or transshipped to any customs station, On their arrival at such station, goods shall be liable to duty as if first import,.

Coastal goods Section 91 to 99

- Coastal goods means goods transported from one port in India to another port in India,
- Coastal goods do not include imported goods.
- No export or import is involved, but Control is necessary to ensure that coastal goods are not illegally diverted for export. Coastal goods can leave only after obtaining written order from Customs Officer

Loading of Coastal goods –

- The Consignor should submit bill of coastal goods to Customs Officer (section 93).
- Form of the bill has been prescribed.
- Master of vessel only will load these after 'bill of coastal goods' is passed (section 93).
- Master of Vessel will carry an 'Advice Book' where Customs Officer will make entries.
- This 'Advice Book' has to be presented for inspection of Customs Officers, if called for after loading, the vessel

No coasting vessel to leave without written order.

- The master of a vessel which carrying coastal goods shall not to depart from such port until a written order to that effect has been given by the proper officer.

No such order shall be given until—

- The master of the vessel has answered the questions put to him under section 38;
- All charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by guarantee
- The master of the vessel has satisfied the proper officer that no penalty is leviable or the payment of any penalty has been secured by guarantee or deposit of such amount as the proper officer may direct;

Unloading of coastal goods –

- Unloading of coastal goods should be done only at Customs Port or coastal port appointed by CBEC under section 7 of Customs Act.
- On arrival, all bills relating to goods which are to be unloaded will be delivered to Customs Officer
- Unloading can be done only after obtaining permission from Customs Officer.
- Customs Officer can inspect goods and ask for questions and documents relating to goods.
- Goods will be unloaded at approved place under supervision of Customs Officer.

Indirect taxes Customs Simplified

Determination of duty where goods consist of articles liable to different rates of duty sec 19

- Where goods consist of a set of articles, duty shall be calculated as follows: —
- Articles liable to duty with reference to quantity shall be chargeable to that duty;
- Articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- Articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that, —

- Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- If the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Warehousing

section 57 to 73

- After the goods are imported, the importer can keep the goods in warehouse without payment of customs duty.
- He can pay customs duty and clear imported goods from the warehouse as and when needed.
- This facility is available to exporters/manufacturers as well as direct importers.

Appointing of public warehouses. Section 57A

- At any warehousing station, the AC/DC may appoint public warehouses where in dutiable goods may be deposited.

Licensing of private warehouses. Sec 58

- Warehouses can be public or private
- At any warehousing station, where facilities for deposit in a public warehouse are not available, AC/DC may license private warehouses wherein dutiable imported goods are stored.

The AC/DC of Customs may cancel a license

- (a) By giving one month's notice in writing to the licensee; or
- (b) If the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the license:
- Before any license is cancelled, the licensee shall be given a reasonable opportunity of being heard. License can also be suspended, pending enquiry

Warehousing bond. Sec 59

- The importer of in respect of warehoused goods and assessed to duty shall execute a bond in a sum equal to twice the amount of the duty—
- To observe all the provisions of this Act and the rules and regulations in respect of such goods;
- To pay on or before a date specified in a notice of demand, —
- All duties, and interest, penalties for violation of act or rules ;
- Rent and other with interest
- The AC/DC may permit an importer submit a general bond for specified amount for specified period.
- Where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee

Indirect taxes Customs Simplified

Period for which goods may remain warehoused. Sec 61

In case of 100% E O U

- (a) Capital goods till the expiry of 5 years from the date of deposit
- (b) Other goods till the expiry of 3 years from the date of deposit
- In case of other persons till the expiry of one year,

The above period may be extended by Commissioner in case of goods which are not in the nature of deteriorate

- In case of E O U the period a may think fit
- In case of other persons a period of 6 months
- In case of goods, which are likely to deteriorate, the period of one year may be reduced
- When the license for any private warehouse is cancelled, the owner of goods shall transfer to another warehouse within seven days or within such extended period as the proper officer may allow,

Interest payable beyond warehousing period

- In case of EOU, beyond 3 years /5 years
- In case of other than EO U beyond 90 days
- Rate of Interest 15%
- Interest should be payable up to *and including* the date of payment of duty. –
- Board may, if it considers it necessary so to do in the public interest, waive whole or part of interest.

Control over warehoused goods. Sec 62

- All warehoused goods shall be subject to the control of the proper officer.
- No person shall enter a warehouse or remove any goods there from without the permission of the proper officer.
- The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.
- The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

Payment of rent and warehouse charges. Sec 63

- The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges.
- If any rent or warehouse charges are not paid within ten days from the date when they became due,
- The warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer caused to be sold

Owner's right to deal with warehoused goods. Section 64

With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same—

- Inspect the goods;
- Separate damaged or deteriorated goods from the rest;
- Sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
- Deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- Show the goods for sale; or
- Take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

Manufacture and other operations in relation to goods in a warehouse Section 65

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- With the sanction of the AC/DC and subject to such conditions, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse.
- Prescribed conditions may include bond, fees for supervision, maintaining accounts, order of special audit by cost accountant etc.,

Duty liability on imported goods present in the waste/Final product:

- If waste generated when the waste was exported/or waste destroyed no duty payable
- If the waste cleared for Home consumption import duty payable on the waste as if the waste was imported
- If final product is exported no duty payable
- If final product cleared for home consumption, duty is payable on the imported material present the final product

Exemption from excess duty Sec 66:

- If any imported materials are used manufacturing operations in warehouse
- And the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, t
- CG if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette,
- Exempt the imported materials from the whole or part of the excess rate of duty.

Clearance of goods from bonded warehouse

Clearance from warehouse can be any of the following

- Transfer to other bonded warehouse Sec 67
- Clearance to Home consumption sec 68
- Clearance for export- sec 69

Transfer to other bonded warehouse

- Transit bond for customs duty involved backed by bank guarantee / security should be furnished
- In the case of EOU, bank guarantee for transfer of goods is not required. –

Removal for home consumption –

- Importer has to submit bill of entry in prescribed form.
- Duty, penalties, rent and interest is payable as per rules.
- Goods are then allowed to be cleared by Customs Officer.
- Rate of duty as prevalent on date of presentation of Bill of Entry for clearance from warehouse. –

Clearance for export –

- Warehoused goods can be exported without payment of duty,
- A shipping bill has to be presented.
- Export duty, penalties, rent, interest etc. is payable as applicable
- And then goods are allowed to be exported.
- There is no assessment at warehouse
- Assessment will be done at the time of filing of bill of entry for warehousing

Allowance in case of volatile goods. Sec 70

- Any warehoused goods at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss,
- The AC/DC may remit the duty on such deficiency.

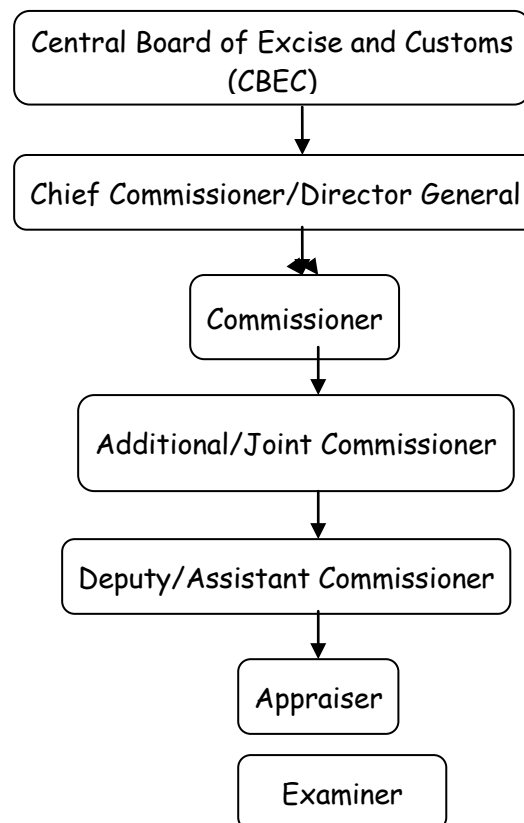
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Warehouse without warehousing/ Storage without warehousing

- Warehouse goods means goods assessed for duty and stored in ware house
- When assessment was not made at the time of import because of want of some clarification/reports –
- If assessment is likely to be delayed, section 49 allows that goods can be stored in public warehouse.
- However, such goods are not to be treated as 'warehoused goods' for purposes of Customs Act as the goods are not assessed. Hence, it is called 'storage without
- The goods are cleared from the warehouse after duty is assessed and paid.

Hierarchy of Customs

Organization hierarchy of Customs department



Power of Customs Officers

Power of Customs Officers to inspect sec 106 A

- Customs officers have powers to inspect the storage premises notified/specified goods the inspection can be at any reasonable time, with or without notice.
- The officers can check the records and inspect the goods.
- The person in charge of premises is required to produce accounts records

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Power to stop and inspect conveyance sec 106

- Customs Officer is empowered to stop any aircraft, vessel, vehicle to examine and search the aircraft, vehicle or vessel.
- He can break open any lock of door or package, if key is withheld.
- If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased
- If it refuses to stop after firing a signal, the vehicle may be fired upon. s

Power to search other persons sec 101

- An Officer of Customs empowered by special order of Commissioner of Customs can search any person (anywhere in India),
- If he has reason to believe that such person is carrying gold, diamonds, manufacture of gold and diamonds or watches, *which are liable to confiscation*.

Search of premises -section 105

- AC, who has reasons to believe that any goods liable to confiscation or
- Any document or thing are secreted in any place,
- Can authorize any Customs Officer he may himself search for such goods, documents or things.
- Search should be as per provisions of Criminal Procedure Code,
- Report of search is to be submitted to Commissioner of Customs.

Vexatious search/arrest by Customs Officer - Section 136

Vexatious search means

- Searching a person or place/arresting a person without any 'reason to believe'
- Officer is punishable with imprisonment up to six months or fine up to Rs. 1,000 or both.
- This punishment can be imposed only by Court of Law.

Seizure by Customs Officers – Sec 110

- During search, some goods are found, Customs Officers can seize if he reason to believe the goods are liable for confiscation,
- If the goods are bulky, they can be kept in possession of the owner himself
- A notice is served on him that he should not remove or in any way deal with the goods. s

Immediate sale of seized goods section 110(1A),

- If the goods are perishable or hazardous or if storage space is not adequate or if the goods depreciate fast., Customs Officers can dispose of such goods immediately

Before disposing them of, full inventory will be taken and application will be made by Customs Officer to Magistrate to

- Certify correctness of inventory
- Certify photographs of goods
- Take samples and certify its correctness.

The goods covered under this section are:

- Liquor, photographic films, medicines, wrist watches, electronic goods, Gold, Silver, dangerous drugs, vehicles, etc.
- If the goods are not confiscated or if the confiscation is set side by appellate authority, sale proceeds must be refunded to owner of goods.

Return of seized goods within 6 months if no SCN

- If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation,
- Asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act.
- If no show cause notice is issued within six months of seizure,

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- the goods shall be returned to person from whose possession they were seized

Seizure of documents [section 110(4)].

- Documents relevant to proceedings under the Customs Act can also be seized.
- The person from whom the documents are seized is entitled to take copies in presence of Customs Officer

Power of Customs Officers to X ray bodies Sec 103

- If Customs Officer has reasons to believe That any person coming to India or leaving from India or Any person in customs area has secreted inside his body any goods liable to confiscation,
- He can detain and take him to nearest magistrate.
- If the Magistrate is satisfied that reasonable grounds exist, he can order that body of such person may be X-rayed.
- A qualified radiologist will take the X-rays and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out goods as per advice of qualified doctor.
- Magistrate can order that the person may be kept in custody.
- If the person himself admits that the goods are secreted inside his body and voluntarily submit for action to bringing out the goods, X-ray etc. may not be taken.

Power to call for documents and examine a person - section 107,

- An officer of Customs, empowered by Commissioner, During enquiry in connection with smuggled goods,
- May require any person to produce relevant document or examine any person acquainted with the facts of the case.

Power to summons Sec 108

- All Gazetted Officers of customs to issue summons to any person for inquiry in connection with any provisions under customs Act.
- He can require a person to produce any document relevant to enquiry and examine a person.

Power to arrest Sec 104-

An officer of customs who has been empowered by Commissioner of Customs by general or special order,

- Can arrest a person whom they have 'reason to believe' indulge for evasion of duty or importing prohibited goods or dealing in goods liable to confiscation
- The officer can arrest him and inform him ground of arrest.
- The person arrested has to be forwarded to the Magistrate.
- He must be produced before a magistrate within 24 hours.
- The magistrate may grant the bail on bond or refuse the bail and remand him to custody. .

Powers of adjudication of customs officers

Competent Authority	Powers of Adjudication	
	Cases involving suppression of facts	Other Cases
Inspector	No power	No power
Superintendent	No power	No Power
Asst. / Dy. Commissioner	Value of goods up to Rs.2 Lakhs	Value of goods up to Rs.2 Lakhs
Addl. Commissioner/ Joint	Duty amount involved up to Rs.50 Lakhs	Value of goods upto Rs.50 Lakhs
Commissioner	Without limit	Without limit

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Import and export through Courier

- Import/Export through courier is permitted only through Mumbai, Delhi, Calcutta, Chennai, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum and land customs station
- Courier Agency should register with Commissioner of customs and should financially viable.
- Courier Agency should execute bond/security if any
- Registration can be cancelled for misconduct or failure to comply with regulations.
- Agency should advise the client about rule and regulations
- Agency should disclose all the information to assessing officer
- It is not necessary the goods should carry by courier agency itself. Person in charge can carry the goods
- Some goods like animals, pets, maps perishables, chemicals, depicting boundaries etc should not be imported./exported
- Weight of each pocket in courier should not exceed 70 kgs.
- All goods should be classified in to documents, free gifts, samples and dutiable goods
- Authorized Courier also has to file 'Courier Bill of Entry'/Courier Shipping bill in prescribed form.
- The courier bags should be kept separately and shall be dealt with only as per directions of Commissioner of Customs.
- Dutiable goods should be packed separately with appropriate labels.
- These goods must be accompanied by a declaration by sender in respect of contents of the package and its value.
- Free gifts and samples up to Rs. 10,000 (exclusive of freight and insurance) can be imported per consignment in case of Exports free gifts 25000/ samples Rs. 50000
- Import/export of jewellery /diamond, each consignment does not exceed Rs. 25 lakhs.
- Authorized Courier has to submit declaration in prescribed form.
- If imported goods are not cleared within 30 days, these will be disposed of.
- Goods brought in customs area must be exported within 7 days
- If not exported within 7 days, these will be disposed of. The period can be extended by Assistant Commissioner in deserving cases

Import and export through post

- Separate provisions for import/export through post
- Label and declaration is the Entry for purpose of postal articles Sec 82
- Filing of separate Bill of Entry or Shipping Bill is not necessary for import/export

Regulations for import / export by Post - Section 84

- Board makes regulations for procedures for examination and assessment of duty and transit/transshipment of goods imported by post.

Accordingly, CBEC have made rules as below

The parcel bill/letter mail bill will show details like

- Serial number assigned by office of posting, Name of office of posting
 - Destination, weight, local number, Contents as ascertained by Customs
 - Declared value in foreign currency, Rupee Value, Rate of duty, Amount of duty and Remarks.
 - Postal parcels will be allowed to pass from port/airport to Foreign Parcel Department of Post Offices without payment of customs duty.
 - Postmaster will hand over packets to Principal Appraiser;
 - The mailbag will be opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs
- Customs Appraiser will mark the parcels which are required to be detained as
- Necessary particulars are not available or

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- Mis-declaration or under-valuation is suspected or
- Goods are prohibited for import.
- Other parcels will be assessed without opening, on the basis of details given in parcel bill or despatch notes.
- The duty will be assessed and will be entered on parcel bill.
- These will be audited and returned to Postmaster.
- Postmaster will hand over parcel to addressee only after collecting the customs duty.
- Customs duty collected by postal department will be periodical credited to Customs department

Rate of duty tariff value for post

➤ A. In Case of Imports

1	In Case of Goods arrived by air/ road	The rate of duty and valuation as on date on which postal authorities submit the list to Customs Officer
2	In Case of Goods arrived by Vessel	The rate of duty and valuation as on date on which postal authorities submit the list to Customs Officer or date of arrival of vessel whichever is latter.

B. In Case of Exports: *The rate and tariff valuation as applicable on date on which exporter handed over goods to postal authorities for verification will be considered.*

Exemptions to post parcels

- Post Parcel where customs duty payable is less than Rs. 100 are fully exempt from duty
- Gifts from abroad up to Rs. 10,000 of goods, are duty free if sent by post or through courier
- If the value exceeds Rs 10,000, customs duty is payable on whole value even if gift was received unsolicited.

Export by post

- Export must be declared in exchange control form PP.
- Indian and foreign currency, bank drafts, cheque, NSC are not allowed unless accompanied by permit issued by RBI,
- Goods up to Rs 25,000 can be exported as gifts.
- Export of purchases made by foreign tourists is permitted on submission of proof that payment was received in foreign exchange.

Provisions relating to Stores (Sec 85 to 90)

Meaning of Stores: Sec 2(38)

- Goods for use in a vessel or aircraft and include diesel and spare parts and other articles of equipment, whether or not they are required for immediate fitting.

Examples

- Food, Beverages, crockery cutlery, fuel
- Consumables, Tools, Equipments, Spare parts

Provisions relating to Stores (Sec 85 to 90)

- Imported stores on board a vessel or aircraft can be consumed as stores without payment of customs duty, as long as the vessel or aircraft is a foreign going vessel or aircraft.
- The stores can be removed from warehouse without payment of duty to be taken back on foreign going vessel. A 'shipping bill' has to be submitted
- Warehouse rent and other penalties etc. if applicable, are payable before removal of stores.
- Imported stores can be kept in warehouse without assessment/without payment of duty for supply to ships / aircrafts. –
- Stores can remain on Board of vessel or aircraft while in India.
- Imported can be transferred to another vessel or aircraft with permission of Customs officer, without payment of duty, if the vessel is a foreign going vessel. –

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- If stores are to be removed for home consumption, Bill of Entry has to be filed duty, penalties, rent and interest as may be payable.
- Imported duty paid stores can be supplied as 'stores' to foreign going vessel. Drawback can be claimed
- Stores manufactured or produced in India may be exported without payment of export duty, as stores on any foreign going vessel with permission of Customs Officer,
- Customs Officer will determine the requirement based on size of vessel or aircraft, length of journey etc.- Since the supply is treated as 'export' it will be eligible for duty drawback.
- The provisions with regard to stores regarding supply to foreign going vessel drawback provisions will also apply to stores supplied to for Indian Navy Vessel

Baggage

Meaning of baggage

- Baggage means all dutiable articles, imported by passenger or a member of a crew in his baggage
- Un-accompanied baggage, if dispatched previously or subsequently within prescribed period is also covered
- Baggage does not include motor vehicles, alcoholic drinks and goods imported through courier, articles imported under an import license for his own use or on behalf of others.

Declaration of Baggage

- The owner has to make Declaration about the contents of baggage- Sec 77 -
- Rate of duty and tariff valuation in case of baggage shall be the rate and valuation in force on the date of declaration. (Sec 78)
- Bona fide Baggage Exempt from duty as per baggage rules. Sec 79

Clearance procedure of baggage

Green Channel

- Passenger who has nothing to declare can simply walk through green channel with baggage on basis of oral declaration
- Declaration should be made on their disembarkation cards at time of incoming
- Customs Officer can also stop and check
- Any passenger found walking through green channel with dutiable or prohibited goods is liable to strict penal action of seizure and confiscation.
- He can even be arrest / prosecuted.

Red Channel –

- Person carrying dutiable goods should pass through red channel and should submit declaration.
- The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but customs officer can inspect baggage.

Exemptions/Remissions of duty

Exemptions of Customs duty by Notification Sec 25 – This provision is similar to sec 5A for exemption of Central Excise

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Demands and Refunds

Demand of Customs Duty

➤ When duty is not levied or short levied or erroneously refunded, Customs officer can raise a show cause notice [section 28].

Time limit for issue SCN

- Within six months from relevant date.
- In Case of import for personal use, or import by hospitals, Govt., Charitable inst one year from relevant date
- 5 years in case of due to collusion, willful mis-statement, and suppression of facts or fraud

Relevant Date

- If duty or interest was not levied, date of order of clearance of goods
- if the duty was provisionally assessed, then date when it was adjusted after final assessment
- if duty or interest was erroneously refunded - date of refund
- If duty was paid or interest levied - date of payment of duty or interest.
- In case of Tribunal/ court order – date of order.

Refund of Duty

- Importer/buyer CHA with POA can apply for refund
 - Time Limit 6 months from the date of payment of duty
 - In case of personal use, or import by hospitals, Govt., Charitable inst. one year
 - If duty was paid on provisional basis, period of 6 months / one year will be calculated from the date of adjustment of duty after final assessment
 - If duty was paid under protest, time limit of 6 months / one year is not applicable.
 - The Provisions of doctrine of unjust enrichment will apply for refund of duty
- Refund of customs duty/interest can be made to importer/buyer only in following cases:**
- If importer/buyer not passed on incidence to customer
 - If importer/buyer used goods for personal purpose
 - In case of Refund of export duty,/duty drawback if any

Section 26A of Customs Act 1962 – Refund of duty for defective goods Inserted by Finance Act 2009

Where on importation of goods, any duty has been paid on clearance of such goods for Home consumption such duty shall be refunded to the person by whom it was paid if (a) the goods are found to be defective or not in conformity with the specifications agreed upon between the importer and supplier of the goods

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with specifications.

(b) the goods are satisfied to the satisfaction of the AC or DC as the goods which were imported.

(c) the importer does not claim drawback and the goods are exported or importer relinquishes his title to the goods and abandons them to the customs or such goods are destroyed or rendered commercially valueless in the presence of the proper officer. in such manner as may be prescribed, within a period of 30 days from the date on which order for Home consumption was made. The period of 30 days may be extended by Commissioner for a period not exceeding 3 months.

(d) No refund shall not be allowed if any offence has been committed.

(e) An application for refund shall be made before the expiry of 6 months from the relevant date as below

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If goods are exported out of India	Date on which proper officer makes an order permitting clearance and loading of goods for exportation
Title to goods is relinquished	Date of relinquishment
If goods are destroyed or rendered commercially valueless	The date of such destruction or rendering of goods valueless

(f) No refund shall be allowed in respect of perishable goods or goods which have exceed their shelf life.

(g) CBEC may specify any other conditions subject to which refund shall be allowed.

Exemption of Duty on pilfered goods. Sec 13

- If any imported goods are pilfered after the unloading
- Before the proper officer has made an order for clearance for home consumption or deposit in a warehouse,
- The importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.
- There is no remedy if goods are pilfered after the order for clearance is made but before the goods are actually cleared.

Duty on pilfered goods is payable by port/Airport authorities

- They are in position of 'bailee'
- The customs duty is payable by port trust authorities or airport authorities under whose custody the goods were lying [section 45(3)].

Remission of duty on lost destroyed or abandoned goods. Sec 23

- If AC/DC satisfied that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
- At any time before clearance for home consumption, remission will be granted

Relinquishment of title of goods by Importer

- Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit in to warehouse.
- Even if goods are warehoused, the owner of warehoused goods can relinquish the title of goods any time before order for home clearance is made.

Reasons for relinquishment –

- The goods are in much deteriorated condition and it is not worthwhile to pay duty
- The assessment of duty is done on much higher side than expected
- If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23 (2) of Customs Act]
- In case of relinquishment of ware house goods he will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable

Abatement of duty on damaged goods - Sec 22

Reduction in duty will be allowed, if goods are damaged or deteriorated in any of the following cases

- Damaged before or during unloading in India
- Damaged by accident after unloading but before examination of goods for assessment by Customs Officer –
- Damaged by accident in warehouse before clearance of goods –
- The accident is not due to willful act, negligence or default of importer, his employee or agent
- The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration
- AC may decide the value of damaged goods, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.

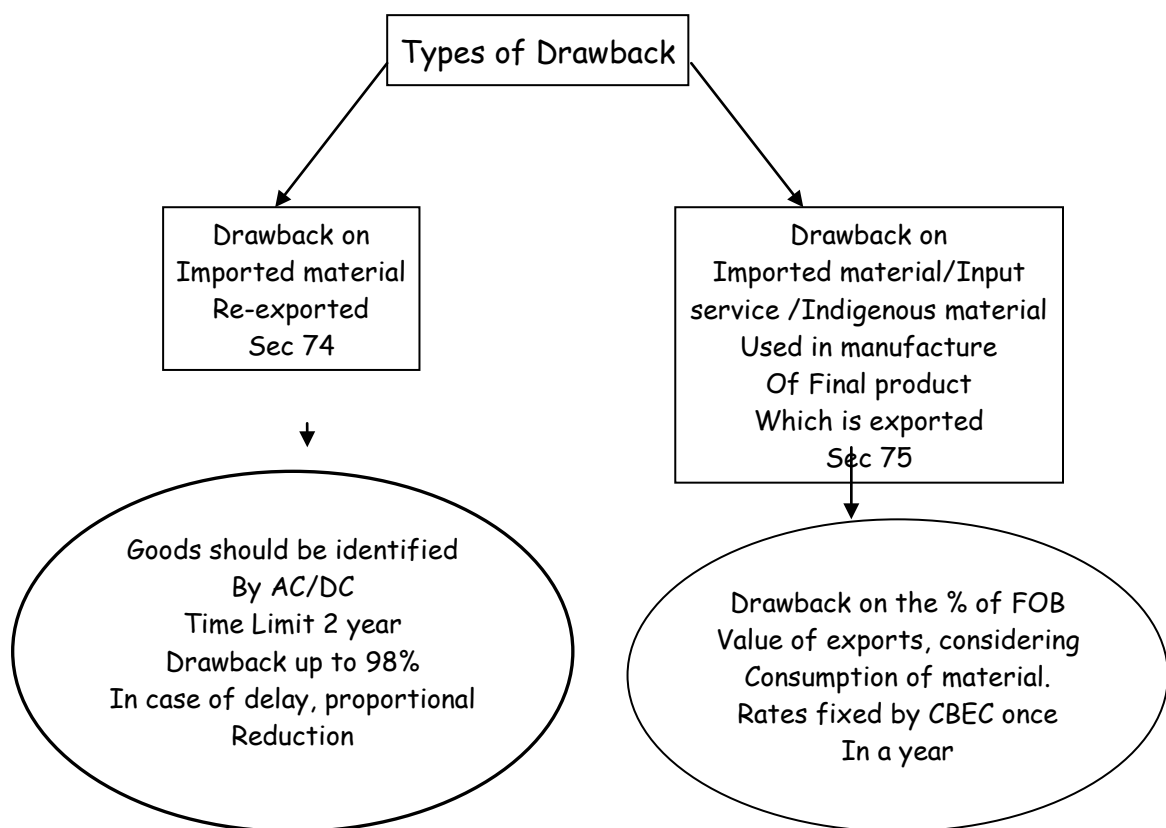
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Import for repairs, reconditioning etc

- Goods can be imported for repairs, reconditioning or re-engineering.
- These have to be re-exported within three years of imports.
- After imports, the repairs, reconditioning or re-engineering has to be in a bonded warehouse under customs bond.
- It is not necessary that goods must have been manufactured in India

Duty Drawback Sec 74 and Sec 75

- Drawback means refund of excise duty and customs duty paid on inputs to the exporter.
- Drawback provisions covered in section 74 & 75 of Customs Act.



- Sec 74 is applicable when imported goods are re-exported as it is an article is easily identifiable.
- Where section 75 is deals with when imported materials & indigenous material/ Input service are used in the manufacture of goods, which are then exported,
- Duty Drawback is equal to (a) customs duty paid on imported inputs and excise duty paid on indigenous inputs. And (c) Service tax paid on input services used in the manufacture of final product.
- Duty paid on packing material is also eligible.
- No drawback is available on other taxes like sales tax and octroi.
- Drawback also will be paid when the goods supplied from DTA to SEZ.

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Eligibility for draw back on duty paid

1	In case of Entered for export	Proper officer made order for clearance for loading /exportation U/s 51
2	Are to be exported as baggage	When Owner makes a declaration of its contents to the proper officer u/s 77
3	Are entered for export by post	Proper officer makes an order permitting clearance of the goods for exportation, U/s 81

Quantum of Drawback

- In case of sec 74 drawback up to 98%
- In case of goods exported after some time or usage the drawback will be allowed as below

Goods meant not for personal and not for private use – Notification No 23/2008 dt 1.03.2008

Period between date of clearance for home consumption and date when goods are placed under Customs Control for export	Percentage of import duty to be paid as drawback.
< 3 months	95%
>3 months < 6 months	85%
>6 months < 9 months	75%
>9 months < 12 months	70%
>12 months < 15 months	65%
>15 months <18 months	60%
> 18 months	NIL

Goods for personal and private use –

- If the goods (including motor car) were imported for personal use, the reduction in import duty refundable is as below

- First year of use ----- 4% per quarter
 - Second year of use ----- 3% per quarter
 - Third year of use ----- 2.5% per quarter *
 - Fourth year of use ----- 2% per quarter *
 - * Eligibility is subject to Approval of Commissioner
- For example a motorcar was used for 2 years
- The drawback will be allowed as below
- For first year of use (4 x 4 %) and
 - For second year of use (4 x 3%),
 - Total 28%. -- The drawback will be paid 100-28% = 72%

Negative list:

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■The following goods are not eligible for drawback: Wearing apparel, tea chest, exposed cinematographic films passed by censor board, un exposed cinematographic films, X-ray films, paper and plates.

Drawback u/s 75

■Drawback will be paid based on % of F O B as per on All Industry rates notified by C B E C.

All Industry rates (Rule No 3)

■Fixed considering average quantity and value of each class of inputs imported or manufactured in India.

■Average amount of duties paid/Service tax paid on input service is considered.

■ These rates are fixed for broad categories of products. The rates include drawback on packing materials.

■The C G will revise these rates and specify the period in which the rates will be in force (Rule 4 and 5)

Non-applicability of All Industry rates -

■Goods manufactured in customs bonded warehouse

■Manufactured and exported as per export incentive schemes

■Exports by EOU or SEZ unit

■Goods exported after obtaining rebate of excise duty on inputs under rule 18 of Central Excise

■Goods exported without payment of duty under rule 19(2) [However, customs portion of duty drawback rate will be allowable

Brand Rate (Rule 6): -

■Brand rate is fixed if it is not possible to fix All Industry Rate in case of some special products,

■The manufacturer has to submit application with all details to Commissioner, Central Excise.

■Such application must be made within 90 days of export. Extension 90 days + another 90 days by CC

■There should not be '*negative value addition*'.

Special Brand Rate (Rule 7)

■ All Industry rate is fixed on average basis.

■A particular manufacturer may find that the actual duty paid on inputs is higher than All Industry Rate fixed for his product.

■In such case, he can apply for fixation of Special Brand Rate, within 90 days from export. + extension 30 days

■The conditions of eligibility are The all Industry rate fixed should be less than 80% of the duties paid by him

Access to Officers and Information: (Rule 9 & 10):

■Manufacturer and exporter has to submit information to officers sent by AC/DC with regard to class of material, correctness of data, duty paid etc.,

■Officers authorized by AC/DC should be allowed to access factory, examine the process of manufacture, entitlement of drawback.

Drawback claim procedure (Rule 11 to 13)

■Application with Covering Letter along with DB K Statement

■All these statements are to be certified by the manufacturer and/CE by CA/CWA.

Enclosures

■The triplicate copy of shipping bill, Let Export' order, copy of export contract,

■Copy of packing list, Export Invoice, Copy of ARE-1, insurance certificate,

■Copy of communication regarding rate of drawback. In case of brand rates,

■Import Invoice, Evidence for payment of duty,

■ RBI permission for re-export (If required), Export Invoice and packing list, and Copy of Bill of Lading

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- Declaration by Exporter that duty paid, No rebate claimed,
- Declaration of availment or non availment of cenvat credit
- The claim is scrutinized. After claim is found to be complete, a dated acknowledgement is given.
- Commissioner can also pay drawback on provisional basis, on execution of a bond.
- Appraiser can sanction drawback claim up to Rs. one lakh.
- Assistant Commissioner Sanctions claim above Rs. one lakh.

When drawback not eligible

- If sale proceeds of export goods are not received within time stipulated by RBI/FEMA [This provision does not apply to goods supplied from DTA unit to SEZ unit]
- If no customs/excise duty is paid on the inputs
- If imported inputs were obtained under export promotions schemes without payment of duties
- If Cenvat was claimed on indigenous inputs. [In such case, excise portion of duty drawback will not be available].
- In case of negative value addition - i.e. selling price of exported goods is less than value of imported goods.
- Where specific rates are provided, drawback will not be paid if it is less than 1% of FOB Value of the product,
- Exports to Nepal/Bhutan. If payment received in INR
- No drawback of sales tax, octroi or other taxes
- If drawback is less than Rs. 50.

Interest payment if drawback paid late Sec 75 A-

- Duty drawback must be paid within one month.
- If not so paid, interest is payable to the claimant @ 8%
- If the drawback claim is deficient, the interest will commence only after all required papers are submitted.
- Where any drawback has been paid to the claimant erroneously, demand can be raised and interest is payable by exporter @ 13% from the date after expiry of 2 months from the date of demand till the payment of duty.

Distinction between drawback under 74 and 75

S No	Drawback u/s 74	Drawback u/s 75
1	It is applicable when imported goods are re-exported as it is and article is easily identifiable,	It is applicable when imported materials are used in the manufacture of goods which are then exported
2	Available for all goods	Available for only notified goods
3	Rules Cover Customs Duty only	Rules Cover Customs and excise Duty
4	Based on Import duty actual paid	Based on Import duty on average Consumption
5	Goods should be easily identifiable	No such condition
6	There is no manufacturing	Manufacturing and process is must.
7	There is a time limit for export	No time limit for export
8	There is uniform rate of drawback (98%)	Different rates of drawback, Brand rate, All industry rate and Special brand rate etc

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Export Incentives

The export promotion scheme normally consists of Duty Exemption Scheme and duty remission scheme.

Advance Licence

- Advance Licences are issued under Duty Exemption Scheme to allow import of inputs, and consumables without payment of duty,
- Advance Licences are issued by Government of India (Director General of Foreign trade-DGFT) for Physical exports, Intermediate supplies and Deemed exports in accordance with Exim policy
- The Advance Licence holder fulfils export obligation by exporting the resultant product specified in the Advance Licence upto specified quantity/value.
- Advance licence specifies the Value and quantity of each item permitted duty free import
- In order to ensure fulfillment of such export obligation, the Advance Licence holder executes a bond with or without Bank Guarantee (B.G) with Customs undertaking to fulfill the specified export obligation.
- Advance Licences are also issued on the basis of annual requirement for exports /supplies. This enables the exporter to plan out his manufacturing/export programme on long term basis.
- Advance Licences for deemed exports are issued to (i) manufacturer exporter or main contractor in case of deemed exports, and (ii) Merchant exporter having supporting manufacturer.
- All Advance Licences and/or materials, imported there under are not transferable even after completion of export obligation.
- Advance Licences are issued with a positive value addition stipulation.
- All Advance Licences are normally valid for import of goods upto 18 months from the date of issue. Extension can be granted by DGFT.
- No duty drawback is normally admissible to an Advance Licence holder. However the licence holder is entitled to claim brand rate of duty drawback in respect of inputs which are not imported against the advance licence and on which Customs/excise duty has been paid.
- Duty Entitlement Exemption Certificate (DEEC) Book is issued alongwith the Advance Licence to monitor and utilisation of inputs imported against Advance Licences (except Advance Licence for deemed exports), At the time of import and export against Advance Licence, entries are made in the DEEC Book by Customs to keep record of the import/export made against it.
- After completion of export obligation and imports against the Advance Licence, the DEEC book, along with documents will be submitted to DGFT for issue of export obligation (EO) discharge certificate. On the basis of EO discharge certificate issued by DGFT, redemption of bond/B.G. filed by the Advance Licence holder with Customs is allowed.

Duty Remission Scheme:

Duty Remission Scheme consists of;
Duty Free Replenishment Certificate and
Duty Entitlement Passbook Scheme.

Duty free Replenishment certificate

- It is an export promotion scheme under which DFRC licences are issued permitting duty free import of inputs which were used in the manufacture of export product on post export basis as replenishment.
- (DFRC) Licence is issued to a merchant-exporter or manufacturer-exporter.

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- DFRC licensees are issued only in respect of export products covered under the Standard Input Output Norms (SION) as notified by DGFT.
- The validity of such licence is normally 18 months and relevant DGFT authority (who issues the licence) is competent to grant extension of validity period.
- DFRC licence and or the material(s) imported against it are freely transferable.
- Exporters operating under DFRC Scheme are entitled for availing AIR of duty drawback in respect of that duty paid materials, whether imported or indigenous, used in the export product, which are not specified in the DFRC licence. Brand rate of duty drawback can also be availed in respect of such inputs.

Duty Entitlement Pass Book (DEPB) Scheme:

- It is an export promotion scheme and envisages grant of DEPB Credit Entitlement to an exporter at the time of export at an ad-valorem rate notified by DGFT, in relation to FOB value of the export product.
- The DGFT have so far notified DEPB rates for nearly 2000 export products. These rates are based on the computation of Basic Customs Duty suffered by the exporters on the inputs listed in the Standard Input-Output Norms (SION) applicable to the export product.
- The normal validity period of a DEPB Scrip is 12 months and DGFT authority (who issues the scrip) is empowered to grant revalidation.
- This scrip are for a certain amount of DEPB credit and can be utilised for adjusting Customs Duties (Basic or CVD) against import of any products into India, without the necessity of any co-relation between the export product and the import goods, i.e. it is not necessary to import only the relevant inputs corresponding to the export product.
- No duty drawback is allowed on exports made under DEPB Scheme. However, in cases where CVD is paid in cash on imported inputs, or where indigenous duty paid inputs, not specified in SION, are used in the manufacture of export product, drawback is allowed at brand rate.

Export Promotion capital Goods (EPCG) Scheme:

- Under EPCG Scheme import of capital goods which are required for the manufacture of resultant export product specified in the EPCG Licence is permitted at concessional rate of Customs duty.
- This Scheme also enables up gradation of technology of the indigenous industry. For this purpose
- EPCG Licences are issued on the basis of approval granted by EPCG Committee. The EPCG Committee comprises of officers from DGFT, MOF and concerned Administrative Ministry
- At present the EPCG licence holder is permitted to import capital goods at 5% or 10% Customs duty. EPCG Scheme the licence holder is required to undertake to fulfill export obligation. They have to submit bond/bank guarantee where ever required.
- EPCG licenses are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers.
- Capital goods imported under EPCG Scheme are subject to actual user condition and the same cannot be transferred/sold till the fulfillment of export obligation specified in the licence.
- The licence holder is required to produce certificate from the jurisdictional Central Excise Authority (CEA) or Chartered Engineer (CE) confirming installation of such capital goods in the declared premises. This is to ensure the the capital goods imported under EPCG Scheme are utilized in the manufacture of resultant export product

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- The normal validity period of EPCG licence is 24 months and DGFT authority (who issues the licence) is empowered to grant further revalidation.
- After fulfillment of specified export obligation, the licence holder submits relevant export documents alongwith EPCG licence to the DGFT authorities for the purpose of obtaining EO discharge certificate. After obtaining EO discharge certificate from DGFT, the licence holder produces the same before Customs for the purpose of obtaining redemption of bond/B.G. filed by him.

In addition to the above incentives, duty draw back also provide for refund of duty paid on inputs

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Penalties and Confiscation

Provisions of penalties and offences are quite similar to Excise Law. Like Excise, Customs Law envisages two types of punishments

- (a) **Civil Liability:** Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods.
- (b) **Criminal Liability:** Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Both penalty and punishment can be imposed for same offence.

Some important definitions

Smuggling - Smuggling, in relation to any goods, means any act or omission, which will render such goods liable for confiscation under section 111 or 113. [Section 2(39)]. Thus, improper importation attempting improper importation or * attempting improper export will amount to 'smuggling'. *'Smuggling' is much broader term than we normally understand.*

Prohibited goods - Section 2(33) of Customs Act defines - 'prohibited goods means any goods the import or export of which is prohibited under Customs Act or any other law for the time being in force, but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

Penalties

Customs authorities are empowered to impose (a) monetary penalty (b) confiscation of goods, conveyance etc. When a person is not traceable, it is not possible to impose penalty, but goods can be confiscated. Penalty can be imposed for improper import as well as attempt to improperly export.

Penalty for Improper Import - Section 112 of Customs Act provide that penalty can be imposed on any person: (a) who does or omits to do any act which act or omission would render such goods liable for confiscation under section 111 of Customs Act or who abets in doing or omission of such act (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

Quantum of Penalty leviable for improper imports

Section 112 provides monetary penalties for improper imports as below:

S No	Nature of goods	Quantum of Penalty
1	Prohibited for imports under Customs Act or any other law	Value of goods or Rs 5,000 whichever is greater,
2	Dutiable goods, which are not prohibited goods	Duty sought to be evaded in case of or Rs 5,000 whichever is greater
3	Actual value is higher value than Declared value of Bill of entry	Difference in actual value and declared value or Rs 5,000 whichever is greater

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4	If the goods are prohibited and the value is mis-declared	Difference in actual value and declared value or Rs 5,000 whichever is greater
5	If the goods are not prohibited but duty is sought to be evaded and the value is mis-declared,	Difference in actual value and declared value or Rs 5,000 whichever is greater

Quantum of Penalty leviable for Attempt to improperly export

S No	Nature of goods	Quantum of Penalty
1	Prohibited Goods under Customs Act or any other law	Value of goods or Rs 5,000 whichever is greater,
2	Dutiable goods, which are not prohibited goods	Duty sought to be evaded in case of or Rs 5,000 whichever is greater
3	In case of Other goods (inflation value etc)	Value of goods, as declared by exporter, or as value determined under Customs Act, whichever is greater.

Liability of Ship Owner/Airlines

If goods are unloaded without including in 'Import manifest' or loaded without entering in 'export manifest', the shipper is liable. When Ten packages were sent to London without entering in 'Export manifest', penalty was imposed on Air India'.

Penalty upon any person Sec 114 A

Any person who willfully / intentionally makes/signs/uses any Declaration, Statement or Document which is false or incorrect in any material particular in any transaction of business for the purpose of this Act. The maximum penalty leviable is "5 times the value of goods".

Residual Penalty

Section 117 of Customs Act provide general penalty to a person who contravenes any provision of the Act or abets in contravention and *if no penalty has been prescribed*, the penalty would be upto Rs. 10,000.

Procedure for imposing penalty

Section 124 of Customs Act provide that before imposing a penalty, show cause notice must be issued to the person, informing grounds for confiscation and he should be given opportunity to make representation and being heard. *Such notice and representation can be oral at the request of the person concerned.* It is obligatory for such officer to obtain prior approval of Customs Officer not below the rank of DC before issuing SCN

Penalty for short landing Sec 116

If the goods were loaded for importation in India, but they were not unloaded in India - partly or fully - the Shipping Agent must explain the reason for deficiency. If it is not satisfactorily explained, Assistant Commissioner can impose penalty up to twice the amount of duty normally payable on the imported goods, The penalty is payable by the 'person in charge of conveyance' i.e. carrier of goods. This provision is to make sure that carrier unloads goods at authorised places only and that there is no smuggling with connivance of the carrier.

Confiscation of Goods

In addition to penalty on the person liable, some goods can be confiscated. 'Confiscation' means the goods become property of Government and Government can deal with it as it wants. On the other hand 'seizure' means goods are in custody of Government, but the property of goods remains with the owner.

Goods that can be confiscated

Goods improperly imported (-section 111) and goods attempted to be improperly exported (section 113) can be confiscated. In addition, following can be confiscated - * conveyance for

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transport of smuggled goods * packages * Goods used for concealing * The Procedure for confiscation, effect of wrong confiscation and provisions of redemption fine in lieu of confiscation are identical to provisions under Central Excise Act.

Confiscation of goods after clearance from port

It is permissible to take action under section 28 of Customs Act and confiscate the goods, even after goods are cleared from customs. This can be done by issuing a show cause notice cum demand.

Re-export of offending goods

Often it is found that goods are not eligible for import as per Import Policy. In such cases, re-export of such goods is permitted as per EXIM Policy. However, in such cases, penalty and redemption fine is payable.

Provisions for release of goods seized on provisional basis. Sec 110 A

The officer adjudging confiscation may permit release of seized goods to the owner upon execution of bond by the owner. The bond for this purpose shall be executed before the CC.

Prosecution for Offences

Who can be punished

The punishment is imposable on a person (a) who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty or of any prohibition imposed on the imports/export of such goods (b) who acquires possession or is any way concerned with carrying, harbouring, keeping, concealing, selling or purchasing, or otherwise dealing with goods which he knows or has reason to believe are liable to confiscation under section 111 i.e. improper imports or under section 113 i.e. attempt to improperly export (c) who attempts to export any goods which he knows or has reason to believe are liable to confiscation u/s 113. [Section 135(1)]

Punishment that can be imposed

Punishment imposable is in case of goods covered under section 123 (i.e. gold, watches, synthetic yarn and metallised yarn, fabrics of synthetic yarn, electronic calculators, zip fasteners and silver bullion): imprisonment upto seven years and fine (without limit) except in exceptional cases, the imprisonment cannot be less than three years (b) In other cases : three years or with fine or both [second part of section 135(1)] (c) repeat conviction : a person already convicted for offence under Customs Act is convicted again, the imprisonment punishment can be seven years and fine and in absence of special and adequate reasons, the punishment shall not be less than one year. [Section 135(2)]

Publication of Name

If a person is convicted under this Act, Court can order publication of names, place of business or residence, nature of contravention etc., under section 135B. Such publication will be at the cost of accused and in newspaper or otherwise as directed by Court.

Other Offences

False declaration

Person making, signing or using any statement, declaration or document knowing or having reason to believe that such statement, declaration or document is false in any material particular, shall be punishable with imprisonment upto 2years or fine or both (section 132 of Customs Act).

Obstruction of officers of customs

Punishable with imprisonment up to two years or fine or both (section 133 of Customs Act).

Refusal to be X-rayed

Punishable with imprisonment upto six months or fine or both (section 134 of Customs Act). This provision is mainly in respect of persons smuggling goods by hiding the same in their body.

Preparation for improper export

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Attempting to make exports in contravention of Customs Act is punishable with imprisonment up to three years or fine or both.

Offence In Case Of Company

Penalties *can be imposed on* person who was in-charge of or was responsible to affairs of the Company/firm such as *employee, partner and Director of the company*. *Person will be relived from penalties if he prove that offence was committed without his knowledge or he had taken due care to prevent the offence.*

Offence by Officers of Customs

If an Officer of Customs enters into any agreement to do or abstains from doing or permits any act whereby any fraudulent export is effected, or by which duty of customs is evaded or prohibited goods are allowed to enter India or go out of India, he shall be punishable with imprisonment up to a term of three years or with fine, or both. [Section 136(1)].

If any customs officer (a) requires a person to be searched for goods without any reason to believe that he has such goods (b) Arrests a person without any reason to believe that he has committed an offence u/s 135 or (c) Searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place; he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. [Section 136(2)].

If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. Of course, he can disclose the information in discharge of his duties on in compliance with any law in force. [Section 136(3)].

The prosecution can be launched in Court only with previous sanction of Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required. [Section 137(2)]

End of customs

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A Comparison of similar provisions in Excise, customs and Service tax

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Comparison of Classification Excise, Customs and Service tax

	Excise	Customs	Service tax
Classification rules	Rules under CETA 1985 Rule 1 to 6	Rules under CETA 1985 1to 6 repeated under CUTA	Only 3 1.Essential character Classification- same as excise 2.Prefer specific definition, than general definition If not possible under 1 or 2, Classify under first sub clause- In Excise- Classify under last
Tariff headings HSN, tariff Nos	Similar in excise & customs Ex: Chapter 39- Plastics	Similar in excise and customs Ex: Chapter 39- Plastics	N/A

Comparison of Valuation Excise Customs

	Excise	Customs
Tariff valuation	Sec 3(2) Similar	Sec 14 (2) Similar
MRP, Annual Capacity Production, Compound levy scheme	Sec 4A, Sec 3A, Rule 15	No such valuations in customs. MRP Valuation will be considered for CVD payment.
Transaction value	Sec 4 1.Price of goods sold at the time and place of removal 2.Buyer and seller not related to each other (Relative means- list 4 persons) 3. Price is sole consideration for sale	Sec 14(1) and Valuation rules 1.Price of goods sold at the time and place of Importation/exportation 2.Buyer and seller not related to each other (Relative means- list 8 persons Ex: Employee-, Employer, director, 5% share etc. (these persons are not relatives under excise) 3. Price is sole consideration for sale
Inclusions and exclusions in Transaction value	More or less same Ex Packing, design etc Installation, discount, local taxes	More or less same Ex Packing, design etc Installation, discount, local taxes
Valuation Rules	Applicable when value cannot determined under transaction value Sec 4	Transaction value determined as per Sec 14 (1) read with valuation rules.

Comparison of demand, recovery of duty and tax in case of excise, customs and service tax

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	Excise	Customs	Service tax
I Demand	Sec 11 A :Not levied, Not paid, Short Levied, Short paid Erroneously Refunded	Sec 28 :Not levied, Not paid, Short Levied, Short paid Erroneously Refunded	Sec 73 of FA 1994 Similar to Sec 11 A of CE Act
Relevant date	Return filed: Date of filing Return not filed: Last Date of Filing Provisional assessment: date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment Time Limit: Normal: 1 Year Extended (Fraud cases): 5 years	Non-levy: Date of clearance order Short-levy: Date of payment Provisional assessment: date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment Time Limit: Normal: In case of imports made by Any Individual for his personal use, or Govt. // Educational, Research or Charitable (ERC) Institution or Hospital :--- 1 Year In any other case :--- 6 months Extended (Fraud cases): 5 years	Same as under Excise Same as under excise
Levy of interest on recovered duty/tax)	Sec 11-AB (@13% p.a.)	Sec 28-AB (@13% p.a.)	Sec 73 (@13% p.a.)
Penalty in fraud cases	Sec 11-AC Similar	Sec 114-A Similar	Similar
Deposit Amount collected in excess from buyer /customer	Sec 11-D Similar	Sec 28-B of Similar	Sec 73 A Similar
Interest leviable on amount collected in excess	Sec 11-DD (@13% p.a.)	No Corresponding provision No interest liability will arise under Customs	Sec 73 Similar to excise
Provisional attachment of property	Sec 11-DDA Similar	Sec 28-BA Similar	Sec 73 C Similar
Publication of name of persons	Sec 9 B, Sec 37 E	Sec 135 B, 154 B	Sec 73 D
II	Sec 11	Sec 142	Sec 87

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Recovery of amount due to government	1. Adjustment ag., Refund 2. Attachment of movable immovable property 3. Certificate recovery 4. Recovery from successor	Same as excise	Same as excise
III Power to Grant exemption in public Interest	Sec 5 A Similar	Sec 25 Similar	Sec 93 Similar

Comparison on refunds under Excise, Customs and Service tax

	Excise	Customs	Service tax
Refund	Sec 11 B Time limit: "1 Year from Relevant date" Exceptions to Doctrine of Unjust Enrich: (a) Rebate on export of goods (b) Refund of Cenvat Credit; (c) Unspent balance of PLA; (d) ED paid and borne by manufacturer; (Cum duty price) (e) ED paid and borne by buyer (f) ED paid and borne by notified persons	Sec 27 Time limit: 2 time limits (a) In the case of any import made - by any Individual for his personal use or - by Government or - by any Educational, Research or charitable institution or hospital, -- 1 year from relevant date; (b) Other Cases: - 6 months from relevant date Exceptions to Doctrine of Unjust Enrich: (a) Duty Drawback on export of goods; (b) CD paid and borne by importer/exporter; (c) CD paid and borne by buyer (d) CD paid and borne by notified persons (e) CD paid on imports made by an individual for his personal (f) Refund of Export duty on re-import of goods (in situation covered in section 26);	Sec 83 of FA 1994 - Provides Sec 11 B of CE Act will apply

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Interest on delayed refund	Sec 11-BB	Sec 27-A.	Sec 83 of FA 1994 provides Sec 11 BB of CE Act will apply
ED/ST to be shown separately on invoice	Sec 12-A	Sec 28-C (Though provision says, Customs duty will not be shown and charge in invoice like excise, service tax.	Sec 83 of FA 1994- provides Sec 12 A of CE Act will apply
Presumption that duty burden passed on Consumer	Sec 12-B	Sec 28-D	Sec 83 of FA 1994 provides Sec 12 B of CE Act will apply

Comparison of Admin and Appeals Excise Customs and Service tax

	Excise	Customs	Service tax
Admin Hierarchy	CBEC To Inspector	CBEC to DC/AC same as excise No Supt/Inspector- Instead Appraiser/Examiner	Excise Dept will administer Service tax
Appeal Hierarchy	CESTAT and Commissioner	CESTAT and Commissioner	CESTAT and Commissioner
Appeal to Commissioner	Sec 35 and Sec 35 A Form EA1 & EA2 (Dept)	Sec 128, Sec 128 A Form CA1 & CA2 (Dept)	Sec 85 Form ST 4
Appeals to CESTAT	Sec 35B, 35 C and Sec 35 D Form EA 3, EA 4, EA 5 Exception : : Order of 1. Goods lost in transit 2. Rebate on exports 3. Export payment of duty 4. Admissibility of Cenvat credit Revisionary Application to C G- Form EA 8	Sec 129 A, 129 B and 129 C Form CA 3, CA 4, CA 5 Exception : : Order of 1. duty drawback 2. baggage 3. short landing of goods Above cases Revisionary Application to C G- form CA 8	Sec 86 Form ST 5, ST 6, ST 7 Exception : : Order of No corresponding provision.

Comparison on settlement Commission

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Particulars	EXCISE	CUSTOMS	SERVICE TAX
Case	Sec 31 Case- means pending adjudication proceedings before CEO When a tribunal, court, or any authority sent back proceedings to Adj. authority it is not a case	Sec 127A Case- means pending adjudication proceedings before Proper Officer. When a tribunal, court, or any authority sent back proceedings to Adj. authority it is not a case	Settlement facility is not available in Service Tax. Since there is no prosecution in service tax
Conditions for Admissibility of Settlement Application	Sec 32-E (a) Applicant has filed returns showing production, clearance and duty paid; (b) SCN for recovery of duty has been issued by CEO; (c) Additional ED accepted by the applicant in his application should exceed Rs 3,00,000/-. (d) Additional ED accepted has been deposited along with interest @13%; (e) Question involved is not to be related to "Classification of Goods"; (f) When the case is pending before tribunal/court- Application will not be accepted (g) Where seizure operation has been carried out & Excisable Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure	Sec 127-B (a) Applicant has filed Bill of Entry // Shipping Bill (b) A SCN has been issued by PO; (c) Additional customs duty accepted by the applicant in his application should exceeds Rs 3,00,000/-. (d) Additional ED accepted has been deposited along with interest @13%; (e) Question involved is not to be related to "Classification of Goods"; (f) When the case is pending before tribunal/court- Application will not be accepted (g) Where seizure operation has been carried out & Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure No settlement is possible in relation to : Sec 123 Goods (smuggled	

Indirect taxes Customs Simplified

		goods) Goods in relation to which offence under NDPS (Narcotics Drugs & Psychotropic Substances) Act has been committed	
Procedure after Receipt Of Application	Sec 32-F Similar	Sec 127-C Similar	
Powers of Settlement Commission	Sec 32-G to 32-L Similar	Sec 127-D to 127-I Similar	
Order of settlement	Sec 32-M Similar	Sec 127-J Similar	

Comparison on Authority for Advance Ruling

	EXCISE	CUSTOMS	SERVICE TAX
Activity	Sec 23-A “Activity” means production or manufacture of goods.	Sec 28-E “Activity” means Import or Export.	Sec 96-A “Activity” means provisioning of service.

Indirect taxes Customs Simplified

Applicat ion For Advance Ruling	Sec 23-C Eligible Issues on which Advance Ruling can be sought: (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) Determination of liability to pay ED	Sec 28-H Eligible Issues on which Advance Ruling can be sought: (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Determination of liability to pay Customs Duty (f) Determination of origin of the goods in terms of rules notified under CTA, 1975; (Admissibility of Cenvat Credit not applicable)	Sec 96-C Eligible Issues on which Advance Ruling can be sought: (a)Valuation of services; (b) Classification of services; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) Determination of liability to pay Service Tax
Procedu re On Receipt Of Applicat ion	Sec 23-D Similar	Sec 28-I Similar	Sec 96-D Similar
Applicab ility Of Advance Ruling.	Sec 23-E Similar	Sec 28-J Similar	Sec 96-E Similar
Advance Ruling To Be Void In Certain Circums tances	Sec 23-F Similar	Sec 28-K Similar	Sec 96-F Similar

Indirect taxes Customs Simplified

Excise Provisions Applicable to Service tax

As per Section 83 of the Finance Act, 1994, provisions of the following sections of the Central Excise Act, 1944 have been made applicable to service tax

Excise Section No.	Contents of the Section	Parallel Custom Section No. for reference
9C	Presumption of culpable mental state	138A
9D	Relevancy of statements under certain circumstances	138B
11B	Claim for refund of duty	27
11BB	Interest on delayed refunds	27A
11C	Power not to recover duty of excise not levied or short levied as a result of general practice	28A
12	Application of the provisions of Act No. 52 of 1962 to Central Excise Duties	N.A.
12A	Price of goods to indicate the amount of duty paid thereon	28C
12B	Presumption that the incidence of duty has been passed on to the buyer	28D
12C	Consumer Welfare Fund	2(21A)
12D	Utilization of the Fund	N.A.
12E	Powers of Central Excise Officers	5
14	Power to summon persons to give evidence and produce documents in inquiries under this Act	108
14AA	Audit of CENVAT records by CA/cost accountant	Special Audit of Warehouse

Indirect taxes Customs Simplified

15	Officers required to assist Central Excise Officers	151
33A	Adjudication procedure	122A
35F	Deposit, pending appeals, of duty demanded or penalty levied	129E
35FF	Interest on refund of pre-deposit if delayed beyond three months [section inserted vide Finance Act, 2008]	129EE
35G	Appeal to High Court	130
35H	Application to High Court	130A
35I	Power of High Court or Supreme Court to require statement to be amended	130B
35J	Case before High Court to be heard by not less than two judges	130C
35K	Decision of High Court or Supreme Court on the case stated	130D
35L	Appeal to the Supreme Court	130E
35M	Hearing before Supreme Court	130F
35N	Sums due to be paid notwithstanding reference, etc.	131
35O	Exclusion of time taken for copy	131A
35Q	Appearance by authorized representative	146A
36	Definitions	131C
36A	Presumption as to documents in certain cases	139(i)
36B	Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence	138C
37A	Delegation of Power	152
37B	Instructions to Central Excise Officers	151A

Indirect taxes Customs Simplified

37C	Service of decisions, orders, summons, etc.	153
37D	Rounding off of duty, etc.	154A
38A	Savings clause – Amendments in law	159A
40	Protection of action taken under the Act	155

Customs sections Applicable to Excise

Section 12 of CEA authorizes Central Government to apply provisions of Customs Act these are

	Section	Content of Section
(a)	105(1)	Powers of search
(b)	110	seizure of goods, documents and things
(c)	115	confiscation of conveyances
(d)	118(a)	confiscation of packages containing goods
(e)	119	confiscation of goods for concealing goods
(f)	120	confiscation of goods even if form changes
(g)	121	confiscation of sale proceeds of contravening goods
(h)	124	issue of show cause notice before confiscation of goods
(i)	142(1)(b) and 142(1)(c)(ii)	Recovery of duty
(j)	150	Procedure for sale of goods.

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Indirect taxes - Vat

Chapter4 VAT (VALUE ADDED TAX)

Vat is indirect tax levied on sale of goods

Vat was introduced primarily as a replacement of existing sales tax in many states in India with effect from 01.04.2005

.The Vat structure has been evolved on the basis of consensus among the states.

•The basic features of Vat will be therefore will be same through the country.

What is Value Added Tax ('VAT')

¬Tax on Value addition

¬Multi-point taxation

¬A state subject

MEANING OF VAT

•Vat is a tax levied on the value added to any product AT EVERY STAGE"

•Provision for input tax credit tax Credit paid at the previous point of purchase.

•The tax paid by a registered dealer is netted. Tax is ultimately borne by the consumer

No VAT

VAT not levied on

•Inter-state sale / Inter-state branch transfer

•Imports/Exports

•Dealers below threshold level

Merits of Vat

•Eliminates multiple taxation of full sale price

•No tax evasion. Because of input tax credit on valid vat invoice

•Neutral on choice of production technique, the vat liability will not vary

•Simple method.

•Lowering tax burden.

•Transparency. – purchase price value addition, vat paid

•Better revenue collection and stability.

•Better accounting systems.- tax paid at earlier stage received back

Demerits of vat

•VAT does not cover services.

•Non integration of central VAT with state VAT. Discourage in purchasing outside state

•Accounting burden.

•Cost of administration for government as the number of dealers will increase

•Exemptions on good, Non applicability of vat, make more cascading effect

METHODS FOR VAT TAXATION (Computation of value added)

Addition method

•Invoice Method

•Subtraction Method

Addition Method

Indirect taxes - Vat

This method aggregates all the factor payments including profits to arrive at the total value addition on which the rate is applied to calculate the tax. This type of calculation is mainly used with income variant of VAT. Addition method does not easily accommodate exemptions of intermediate dealers.

A drawback of this method is that it does not facilitate matching of invoices for detecting evasion.

Invoice Method

This is the most common and popular method for computing the tax liability under 'VAT' system.

Under this method, tax is imposed at each stage of sales on the entire sale value and the tax paid at the earlier stage is allowed as set-off. In other words, out of tax so calculated, tax paid at the earlier stage i.e., at the stage of purchases is set-off, and at every stage the differential tax is being paid.

The most important aspect of this method is that at each stage, tax is to be charged separately in the invoice.

This method is also called the 'Tax Credit Method' or 'Voucher Method'. From the following illustration, the mode of calculation of tax under this method will become clear:

Subtraction Method

Under this method, the tax is charged only on the value added at each stage of the sale of goods. Since, the total value of goods sold is not taken into account, the question of grant of claim for set-off or tax credit does not arise. This method is normally applied where the tax is not charged separately. Under this method for imposing tax, 'value added' is simply taken as the difference between sales and purchases.

Variants of Vat

The gross product variant

The gross product variant allows deductions for taxes on all purchases of raw materials and components, but no deduction is allowed for taxes on capital inputs. That is, taxes on capital goods such as plant and machinery are not deductible from the tax base in the year of purchase and tax on the depreciated part of the plant and machinery is not deductible in the subsequent years. Capital goods carry a heavier tax burden as they are taxed twice. Modernization and upgrading of plant and machinery is delayed due to this double tax treatment.

The income variant

Income variant of VAT on the other hand allows for deductions on purchases of raw materials and components as well as depreciation on capital goods. This method provides incentives to classify purchases as current expenditure to claim set-off. In practice, however, there are many difficulties connected with the specification of any method of measuring depreciation, which basically depends on the life of an asset as well as on the rate of inflation.

Consumption variant

Consumption of VAT allows for deduction on all business purchases including capital assets. Thus, gross investment is deductible in calculating value added. It neither distinguishes between capital and current expenditures nor specifies the life of assets or depreciation allowances for different assets. This form is neutral between the methods of production; there will be no effect on tax liability due to the method of production (i.e. substituting capital for labour or vice versa). The tax is also neutral between the decision to save or consume.

Among the three variants of VAT, the consumption variant is widely used. The reasons for preference of this variant are:

Advantages of Consumption variant

Indirect taxes - Vat

Firstly, it does not affect decisions regarding investment because the tax on capital goods is also set-off against the VAT liability. Hence, the system is tax neutral in respect of techniques of production (labour or capital-intensive).

Secondly, the consumption variant is convenient from the point of administrative expediency as it simplifies tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand and consumption goods on the other hand.

In practice,, most countries use the consumption variant. Also, most VAT countries include many services in the tax base. Since the business gets set-off for the tax on services, it does not cause any cascading effect.

Input and Output Tax

Input Tax

VAT paid by a registered business dealer on taxable input purchases for business such as raw material, trading goods, capital goods and Consumables

Output Tax

VAT charged by a registered business dealer on sales made by the business to its customers

Input Tax Credit (ITC)

Input tax credit means, credit available on the Purchases made by dealer. Credit of VAT paid will be available only on purchases made within the State. ITC available only to VAT registered **dealer** on purchases made from another VAT registered dealer against a valid VAT invoice, Purchases include raw material, consumables, packing material, capital goods.

Input Tax Credit on Capital goods

- Available and to be adjusted over a period of 24 monthly instalments (2 years)- some states 36 installments.
- States can reduce this period
- No input tax credit on Capital Goods specified in negative list

Use of inputs to avail credit

The purchased inputs can be used for

- For sale/resale with in state or outside state
- As raw material for manufacture of goods for sale inside state or outside state
- As a packing material/consumables in sale of goods
- As goods in execution of works contract.
- For export of goods out of India

The Purchased Capital goods can be used for

For manufacture of taxable goods

Carry forward of Input Tax Credit

- Unutilised Credit will be carried over till the end of the succeeding financial year and if it remains unutilised will be refunded.
- VAT Credit will be refunded within three months in case of exports

Units in SEZ and EOU have an option of either

- Not paying VAT on inputs; or
- Claim full refund within three months
-

Indirect taxes - Vat

No input tax credit in case of

- Inputs used in the manufacture of exempted goods
- Purchases for other than manufacture/re-sale (Captive Consumption)
- Purchases made inter State/in-transit
- if VAT registered dealer purchases from Unregistered dealer (Output tax payable on full sale price)
- Purchase from a registered dealer who opts of composition scheme.
- Purchased from registered dealer where invoice does not show tax amount separately.

Purchases of goods of negative list for example

- Delhi - Fuel in the form of Petrol, Diesel and Kerosene, LPG, CNG, Coal
- AP - Fuel, Coal and Natural Gas used for power generation
- Jharkhand - Consumables
- Tripura – Credit available in excess of 4% on petroleum products (other than petrol, ATF and diesel) and other fuels

Input tax credit on stock transfers

Inputs used in the manufacture of finished goods which are stock transferred; or purchases of goods which are stock transferred Input tax credit available to the extent of 4% of vat paid on such purchases. In excess of 4% if availed it should be reversed

Utilization of vat Credit

Credit can be utilized towards

- VAT payable on Finished Goods
- CST payable on Inter State Sales
- Any interest or penalty under VAT

Common inputs for exempted sale and taxable sale

- Option 1- maintain separate records for inputs used in exempted sale and taxable sale
- Option 2- Proportionate input tax credit on inputs used in taxable sale

Vat payable

- Vat payable = Output tax – Input Tax credit.

In other words, out of the tax charged on your sales, you will first deduct the tax charged on your purchases, and pay balance to the department.

For example, input worth Rs. 1,00,000/- is purchased and sales are worth Rs. 2,00,000/- in a month, input tax rate and output tax rate are 4% and 12.5% respectively, then input tax credit/set-off and calculation of VAT will be as shown below:

(a)	Input purchased within the month	Rs. 1,00,000/-
(b)	Output sold in the month	Rs. 2,00,000/-
(c)	Input tax paid	Rs. 4,000/-
(d)	Output tax payable	Rs. 25,000/-
(e)	VAT payable during the month	Rs. 21,000/-
	after set-off/input tax credit	
	[(d) – (c)]	

Composition scheme under vat

- Applicable to Every registered dealer who is liable to pay vat and whose turnover does not exceed Rs.50 lakhs in the last financial year
- The scheme is optional. Intimation to Commissioner to exercise option in any whole year or part of year

Indirect taxes - Vat

- Dealer need not maintain any statutory records as prescribed under the Act. The records for purchase, sales, inventory should be maintained
- Turnover will be taxed at low rate as 0.25%
- No input tax credit on purchases
- Cannot issue tax invoice, the buyer from composition scheme dealer cannot avail input tax credit

Non eligibility of composition scheme

For the following dealers composition scheme not applicable. They cannot avail

- Dealers of importers and exporters
- Dealers having interstate sales
- Dealers having interstate branch /depot/works contract transfers

Rates of VAT

- 0% -36 commodities –Agricultural Products., sea products
- 1%- 3 commodities (Gold, Silver, Precious metals & Stone, etc.)
- 4%-About 340 commodities Industrial, Packing and IT products
- 12.5% (RNR) All other goods (Some states increase it to 13.5%)

RATES OF VAT NOT APPLICABLE

- Non Applicability of VAT on Petrol, Diesel, Aviation Turbine Fuel, Liquor, Lottery Tickets,
- These goods may be taxed under VAT Act or any other Act at higher rates.

Zero rated sale/Exempted sale- Certain sales are 'zero rated' i.e. tax is not payable on final product in certain specified circumstances. In such cases, credit will be available on the inputs i.e. credit will not have to be reversed. Distinction between 'zero rated sale' and 'exempt sale' is that in case of 'zero rated sale', credit is available on tax paid on inputs, while in case of exempt goods, credit of tax paid on inputs is not available. As per para 2.5 of White Paper on State-Level VAT, export sales are zero rated, i.e. though sales tax is not payable on export sales, credit will be available of tax paid on inputs.

Procedures under Vat

Threshold limit on Vat

0-5 Lacs No Vat- Not liable for Registration
5-50 Lacs - can opt for composition at lower rate up to 0.25% (Only for retailers)
50 Lacs Above - Compulsory VAT
Some states the limit is Rs. 10 lakhs instead of 5 lacs

Registration under Vat

Automatic registration under the VAT Act of all the existing dealers

New dealers require to register after vat come in to existence

Dealers who 'Cross the basic threshold limit

Composition scheme dealers

Time limit- within 30 days from the date of commencement of business

TIN will be allotted all dealers. It will be a 11 digit numerical code. First two digits will indicate State Code. TIN will have to be indicated on each invoice issued

Cancellation of registration

- discontinuance of business; or disposal of business
- transfer of business to a new location

Indirect taxes - Vat

- annual turnover of dealer falling below the specified amount.

Dealer obligation : Inform surrender original RC, pay tax up to date

Records under vat

- Purchase records
- sales records
- VAT account (Input tax credit, utilization, balance)
- Separate record of any exempt sale
- Other documents such as tax invoice, delivery note, bills, credit notes, debit notes

Declaration forms under vat

- No declaration forms
- Old declaration forms under sales tax law dispensed with.
- No concessional sale under vat, Hence no need of forms.

Vat Invoice

- Invoices are important documents for administering VAT.
- In the absence of invoices VAT paid by the dealer earlier cannot be claimed as set off
- Every registered dealer whose turnover of sales exceeds the specified amount shall issue to the purchaser a serially numbered tax invoice, .
- The tax invoice shall be dated and signed showing the required particulars.
- The dealer shall keep a counterfoil or duplicate of such tax invoice duly signed and dated.

•Particulars of Vat Invoice

- the words 'tax invoice' in a prominent place
- name and address of the selling dealer;
- registration number of the selling dealer;
- name and address of the purchasing dealer;
- registration number of the purchasing dealer (not under all VAT legislations);
- pre-printed or self-generated serial number;
- date of issue;
- description, quantity and value of goods sold;
- Rate and amount of tax charged in respect of taxable goods;
- signature of the selling dealer or his regular employee duly authorized by him for such purpose.
- The provisions relating to tax invoice do not apply to a selling dealer who has opted to avail the composition scheme '.

Example on Vat payment

Vat Return

Returns will be filed monthly/quarterly, as prescribed, along with challans. Returns will be scrutinized and if there is technical mistake, it will have to be rectified by dealer

Return normally contains the following particulars

- Name Address and Registration Number of dealer.
- Period of Return.
- Turnover of sales and purchase.
- Claim of Set-off.
- Amount of set-off carried forward.

Indirect taxes - Vat

- Amount of set-off claimed as refund.
- Calculation of Tax
- Declaration that particulars given in return are true and correct

Assessments under Vat

• Most are the self assessment, where dealer calculate vat liability and pay vat as per law and files monthly returns

• Cross checking by department at the end of year to ensure vat paid correctly.

Audit under vat

- Some states provide vat audit by CA
- Other cases, department do audit on specific selected criteria

Vat in case of special transactions

Vat on Works Contract

- The works contract is a deemed sale
 - Vat is levied on goods involved in works contract (Steel. Cement, paints, fittings etc)
 - Sale price of goods transferred in works contract is the turnover for the purpose of Vat
 - The amount representing labour and other service charges incurred for such execution should be excluded from vat purview.
 - Where such labour and other service charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit + all other expenses in transferring the property
- Tax rates on works Contract
- Option 1- Normal vat schedule rate on goods involved in works contract. Rate applicable for each items is considered Input tax credit is available on Purchases
 - Option 2- Composition scheme rate on the total value of works contract including labour and overheads. No input tax credit is available on Purchases
 - Input credit on Capital goods purchased in works Contract is not available, as the works contract execution is not manufacturing and processing of goods.

Vat on Lease transactions

- Constitution provides power to levy tax on the transfer of the right to use any goods (lease)
- Lease is a deemed sale and vat can be levied
- Taxable event is the transfer of the right to use any goods
- Lease rentals collected by lessor is consideration and treated as turnover. Some states provide deduction of interest and finance charge from lease rentals
- Tax rate applicable on the goods given on lease
- Sub lease is also taxable
- Lessor can get input tax credit on the tax paid on purchase of leased asset

Vat on hire Purchase transactions

- Delivery of goods under hire-purchase or installment sale will be taxable event for vat. And not the completion of sale on exercise of option by hirer or last installment paid by buyer
- VAT laws as applicable to normal sales are equally applicable to hire-purchase and installment sales.
- Hire charges/ Installment amount will be taxed
- When all the hire charges and installments are taxed no vat tax on when the sale was concluded on last installment/when hirer exercise option to buy.

Vat & CST

Indirect taxes - Vat

- CST levied on Interstate sales where vat levied on local state sales.
- CST paid on outside state purchases is not vatable hence CST have the cascading effect.
- CST is an origin-based tax collected by the exporting State whereas VAT is a destination based consumption tax, both cannot go together
- After vat was introduced it is decided to phased out CST slowly by 2010-2011. Now 2008-09 it is 2% and in 2009-10 it is proposed to 1% and in 2010-2011- 0%

AMENDMENTS IN CST ACT TO FACILITATE INTRODUCTION OF VAT

- CST act sec 15 amended to tax declared goods at more than one stage and Notification u/s 8 to reduce CST to 2% wef 01.06.2008

End of chapter

[illegible]

Indirect taxes

Service tax

Amended FA 2010

RAJASEKHAR N., FCA

Notifications and circulars up to 31.12.2010

Indirect taxes service tax

Chapter 3 Service tax

Service tax is an indirect tax levied on Services

- Services tax was imposed by chapter V of Finance Act 1994
- No separate “Service Tax Act”.
- Service tax is imposed every year by making amendment to the Finance Act 1994
- Central excise department has been entrusted to look after the administration of service tax
- Service tax is a destination based consumption tax, as per CBE&C Circular No. 56/5/2003 dated 25-4-2003.
- **Service implies existence of two parties** - Service tax is attracted when there are two parties. One cannot give service to himself.

Coverage of Service tax

The following is various legislatures to cover Service tax

Finance Act, 1994 [Sections 64 to 96]

- Service Tax Rules, 1994
- Service Tax (Registration of Special Category of Persons) Rules, 2005.
- Export of Services Rules, 2005.
- Cenvat Credit Rules 2004
- Service Tax (Advance Rulings) Rules, 2003
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
- Service Tax (Determination of Value) Rules, 2006.
- Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005
- Central Excise (Appeals) Rules 2001
- Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982
- Service tax circulars, notifications and case laws

Approaches to levy Service tax

Selective or comprehensive coverage of service tax: The levy of a service tax can be based on either of the following 2 approaches:

1. Comprehensive coverage/approach
2. Selective coverage/approach

1. Comprehensive coverage/approach: The comprehensive approach contemplates taxation of all services and a negative list is given in case some services are to be exempted.

2. Selective coverage/approach: In the case of selective approach, only selective are subject to service tax. In this case, the legislator attempts to specify and list the services that would be taxable and the scope of coverage of each service. There is no residuary category for taxing all services.

Applicability of Service tax

Service tax extends to whole of India except the state of Jammu and Kashmir.

- There shall be no service tax on the services provided/consumed in the state of Jammu and Kashmir.
- However if service provider is in the state of Jammu and Kashmir and provides services to anyone outside the state of Jammu and Kashmir then service tax shall be imposed on such services rendered

Indirect taxes service tax

Charging Section Sec 65(105) and Sec 66

Service tax is imposed on taxable services provided or to be provided in future, by the service provider.

- Services to be provided in future shall be chargeable to service tax only if the advance payment for it is received
- Taxable services are mentioned in section 65(105) of Finance Act 1994
- Total 110 + services listed in Sec 65(105), which are liable for service tax.
Taxable Event is for service tax is date of rendering of Service
- All taxable Services charged to Service tax @ 10.3%

Alternate rate of service tax in case of certain services: Rule 6 (7) (7A)(7C)-

Although service tax is levied at the basic rate of 10% but in case of certain services, an Alternative **Optional** rate is also provided. Some of these are as under:

1. Specified immovable properties an optional composition tax rate of **4%** of gross value has been provided.

2. In case of life insurance services alternate mode of discharge of service tax liability has been provided and the rate of service tax in this case is **1%** of total premium.

3. In case of Air Travel Agents services, the Air Travel Agent, shall have the option to pay service tax of an amount calculated as under:

In case of domestic bookings – **0.6%** of the basic fare. In case of international bookings – **1.2%** of the basic fare

4. In case of foreign exchange dealer, 0.25% on the Gross amount of currency exchanged.

5. In case of lottery distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organizing or in any other manner assisting in organizing lottery shall liable to pay as below: **Notification No 49/2010 dated 08.10.2010**

No.	Rate	Condition
(1)	(2)	(3)
1.	Rs 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	Rs 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of service under the said sub-clause and such option shall not be withdrawn during the remaining part of that financial year.

Persons other than distributor and selling agent of lottery tickets is exempts from payment of service tax. If distributor and selling agent of lottery tickets opt for the composition scheme as above.

Notification No 50/2010 dated 08.10.2010

Small Service Providers Exemption: Notification No. 6/2005(Small service providers

CA N RAJA SEKHAR CHENNAI, 9444019860 rajdhost@yahoo.com

Indirect taxes service tax

Each year service receipt up to 10 lakhs exempt , If previous year service rendered up to 10 lakhs.

Conditions

- Exemption is optional;
- Exemption limit not for individual service or individual premise – aggregate value of 10 lakhs is exempt.

No Cenvat credit of Input+ Input Service + Capital goods can be availed till limit of 10 lakhs.

Calculation of monetary limits for Rs. 10 lakhs

- Where the previous year's value of taxable service provided exceeds Rs. 10 lakhs, service tax would be payable even if the current year's turnover is less than Rs. 10 lakhs.
- Where the previous year's turnover is Rs. 10 lakhs or below and the current year's turnover exceeds Rs. 10 lakhs, no service tax is payable up to Rs. 10 lakhs if the specified conditions are complied with.
- Further, the sum total of first consecutive payments '**received**' during the financial year towards the taxable services up to Rs. 10 lakhs would be exempt.

The payments received towards wholly exempt services are to be excluded for determining the amount of Rs. 10 lakhs

10 lakhs Small Service Provider exemption not applicable

- Where taxable services are provided by a person under a brand name / trade name of **another** person whether registered or not.

Thus, service provided by a person under his own brand name would not be affected by this restriction and would be entitled for the exemption.

Where service tax is payable by a person As a receiver of service (reverse charge) e.g.

- Services provided by Non-residents / foreign companies who do not have an office in India
- Services provided by insurance agents
- Service provided by a mutual fund distributor

–As a payer of service - for transport services

Thus, the exemption would apply only in cases where service tax is payable as a provider of service.

All taxable services are exempt under following situations

Provided to United Nation or International Organization;

- Provided to SEZ Unit or Developer of SEZ(subject to certain conditions).
- Provided to RBI;
- Provided by RBI;
- Provided to Foreign Diplomatic Missions / Consulates;
- Provided for personal use of member (or his family) of a Foreign Diplomatic Mission/ Consulates;
- Cost of goods or material sold by service provider to the receiver of such services.

Notification No. 12/2003.

- Export of services i.e. services rendered abroad. Notification No. 9/2005.
- Exemption available to small service providers (10 lakhs)

Services provided to EOU - Services provided to EOU/EHTP/STP are **not** exempt from service tax. EOU/EHTP/STP units can avail Cenvat credit of service tax paid. The EOU units can claim rebate of service tax paid on their input services vide Rule 5 of Cenvat Credit Rules

Condition for getting exemption from Service tax for SEZ- Notification No 15/2009 dt 20.05.2009

Indirect taxes service tax

Where the services are consumed wholly within SEZ

Procedure to be followed :

Approval of list of services

The developer or units of SEZ shall get the services required in relation to the authorized operations in the S EZ approved from the Approval Committee

Actual use of specified services

The developer or units of SEZ claiming the exemption actually uses the services in relation to the authorised operations in the SEZ

Exemption from payment of service tax

In case of the services consumed wholly within the sez, the exemption can be claimed by the developer or units SEZ without following the refund route.

No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone.

Exemption under no other notification claimed

Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification

Proper records of receipts and utilization of services

The developer or unit of a special economic zone shall maintain proper account of receipt and utilization of the taxable services for which exemption is claimed.

II. Where the aforesaid services are consumed partially or wholly outside SEZ

The above referred same procedure to be followed, exemption is provided to the services consumed within the SEZ following the refund route, first they and claim refund as per prescribed procedure.

Partial exemption in respect of Materials/ goods and services involved in service: **Notification No 12/2003 [applicable to all taxable service]**

That part of value of service = Value of goods and material sold in course of service shall be exempt if the following conditions are satisfied

Conditions:

- Invoice of service shall separately show the value of goods and material;
- Cenvat Credit of input shall not be availed [However, Cenvat Credit of input service and capital goods can be taken]

Calculation of service tax when service tax not charged

Where a service provider not collected service tax or not charged service tax

- Service Provider has to pay service tax treating the value service is inclusive of Service tax
- Service tax is to be calculated using backward calculation as below

Taxable value of service = amount collected x 100/100 + Rate of service tax

For example, if Bill amount is Rs. 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by backwards as follows -

Assessable Value = (Cum tax price)/(1 + rate of tax)

Indirect taxes service tax

Assessable Value (AV) = $1000 \times 100/110.3 = 906.62$.Assessable Value is Rs. 906.62 and service tax @ 10% will be Rs. 90.67. Education cess @ 2% of service tax will be Rs. 1.81 . SAH education cess 1% is Rs. 0.91 . Thus, total service tax including ec will be Rs.93.38

Short Recovery or excess Recovery of Service tax

- Where there is short recovery of the billed amount, service provider should revise the bill. Otherwise he shall be liable to pay service tax on the full amount which has been billed to service receiver.
- Where there is excess recovery from a client or customer then such excess amount can be refunded to such client or customer, or it should pay to Government.

Reverse Charge in case of Service tax

Normally service Provider will have to pay service tax. But in the following cases service Receiver has to pay service tax

Service	ST to be paid by
Insurance Auxiliary Service of Insurance Agent	Insurer
Service provided by a person from outside India	Service receiver in India (except in case of individual where the service received for personal purposes)
Goods transport Agency – when either Consignor or Consignee is of “specified category	Person paying the freight to GTA
Business Auxiliary Service of Distribution of Mutual Fund	Mutual Fund or Asset Management Company
Sponsorship service	Body Corporate or Firm receiving such service If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient

Service tax Valuation: Sec 67 and Service tax Valuation Rules 2006

Free service No service tax liability

Sec 67 (1)

Situation	Value
Where total consideration is monetary consideration	Taxable Value = Gross Amount Charged Exclusive of ST
Where consideration is in kind ["non-monetary consideration"] ☐ Wholly in Kind	Taxable Value= Monetary Equivalent of "non-monetary consideration" Rule 3 of Service Tax Valuation Rules, 2006 Method-1: Taxable Value= GAC by service provider for similar service provided to third party
☐ Partly in Kind	Method-2: Taxable Value = [Monetary Consideration + Mkt Value of Non-Monetary Consideration] [but it shall not be less than the cost of provisioning of service]
Where consideration is "not- quantifiable"	Taxable Value = Value determined in prescribed manner No manner prescribed so far – but it is practically best judgment assessment

Other points

Indirect taxes service tax

Consideration also includes any amount which is payable for the taxable services provided or to be provided.

2. Money includes any currency, Cheque, promissory note, letter of credit, draft, pay order, travelers Cheque, money order, postal remittance and other similar instruments but does not include currency that held for its numismatic value.

3. Gross amount charged include payment by Cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

4. Service tax is payable on the gross amount and not on the net amount.

5. Section 67 provides that the amount charged has to be in relation to services rendered.

Rejection of Value by CEO Rule 4

- ❖ Where the CEO is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue SCN, why cannot fix the value at the amount specified in SCN
- ❖ The CEO after providing reasonable opportunity of being heard, determine the value of such taxable service as per provisions of the Act and these rules

Treatment of Reimbursement of Expenses for Service

Cost/Exp incurred by Service provider and then recovered from service receiver ---

Treatment of such recovery in valuation is as below:

Where such cost/exp was incurred in the capacity of "PURE AGENT" of service receiver [Pure Agent:-- 4 features: i) Separate agreement to act as pure agent ii) No title over the goods/services so procured iii) Does not use such goods/services iv) Recovery cost on actual basis	Such costs/expenses are not includible in valuation
All Other cases	Such costs/expenses are includible in valuation

Commission Costs etc (list) includible in Service for valuation purpose (Rule 6)

Rule 6, provides the list of certain items includible/excludible in valuation in case of certain specific services. They are as below:

Inclusions:

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) The amount of premium charged by the insurer from the policy holder;
- (iv) The commission received by the air travel agent from the airline;
- (v) The commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (vi) the reimbursement received by the authorized service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- (vii) The commission or any amount received by the rail travel agent from the Railways or the customer;
- (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and

Indirect taxes service tax

(ix) The commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

Exclusions

- (i) Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- (ii) The airfare collected by air travel agent in respect of service provided by him;
- (iii) The rail fare collected by rail travel agent in respect of service provided by him;
- (iv) Interest on loans.
- (v) The taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger (Notification No 15/2010 dt.27.02.2010)

Actual consideration to be the value of taxable service provided from outside India Rule 7

The value of taxable service received shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

Notwithstanding above, the value of taxable services in respect of Services partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India

Classification of Service- Sec 65 A

If one service – classifiable into more than 1 category

- i) Choose specific over general
- ii) If Composite service – determine which service provides the essential character and classify composite service into that
- iii) Choose first in numerical order

Service tax payment Rule 6

As and when Payment is received

- ST is payable only on the amount received
- Service tax is payable even advance payments received
- Service tax is payable even amount received in installments or on part payments received
- Any amount received whether before or after provisioning of Service shall attract Service tax upon its receipt.
- Free Service- Sec 67 not applicable -No ST payable

Service on sub-contract basis

CBE&C vide circular No. 999.03/23.8.07 has clarified that a sub-contractor is also a taxable Service provider. His services are taxable even if these are used by main provider for Completion of his work. The sub- contractor is liable even if the service is input service of the main contractor and main contractor is paying service tax on entire value of contract.

Due dates: Service tax had to be paid on a monthly / quarterly basis depending upon the status of the service provider as below

Service provider	Due dates April to February/ April to December -3 QTRS	Due date for the month of March and Quarter ending March
Individuals and Firms (Quarterly Payment)	5th of the following the Quarter ended June, Sep, Dec	31 st March
Others (Monthly)	5th of the following month	31 st March
E payment	6 th instead of 5 th	31 st March

1. Assessee who paid Service tax 10 lakhs in Previous year or they have already paid 10 lakhs in current year they should pay tax electronically.).

Indirect taxes service tax

2. If the last date for paying tax is a public holiday, tax may be paid on the next working day.
3. Tax is paid by debit to CENVAT account (if credit available) or through GAR – 7 challan.
4. The date of presentation of Cheque to the designated bank shall be deemed to be the date of payment of service tax (But the Cheque is honored).
5. If tax has been paid to Government for service not provided, then the excess payment made to Government may be adjusted in future dues, provided, the excess is refunded to customer.
6. Service Tax collected by the Service provider/ Service receiver as the case may be, should be remitted within the due date to the credit of the Central Government.
7. Rounding off of tax: The payment of service tax should be round of in multiple of Rupees. Where such amount includes 50 paise or more it should be increased to one rupee and if it is less than 50 paise it should be ignored.

Self Adjustment of Excess service tax paid

1. In case of reason not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification, adjustment cannot be made
2. On account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.
3. In case other than specified in clause 2 above, for example difficult to accurately estimate the amounts he is going to receive from his customers in last two days in the month of march the excess amount paid may be adjusted with a monetary limit of rupees **One lakh** for a relevant month or quarter, as the case may be
4. The details and reasons for such adjustment shall be intimated to the jurisdiction Superintendent of Central Excise within a period of fifteen days from the date of such adjustment. This is directory provision and not mandatory provision, since in many cases, it is impossible to inform in 15 days. In such cases, information at the time of filing return should be sufficient
5. Self- adjustment of excess credit is not allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification [Rule 6(4B)(i)]. In such cases, refund application should be filed and self adjustment is not Permissible.

Adjustment if service not provided partly or fully - If excess tax is paid, in respect of service which is not provided either wholly or partly for any reason, the excess service tax paid can be adjusted against service tax payable for subsequent period, if the value of services and tax thereon is refunded to the person from whom it was received. [Rule 6(3)]. Such adjustment is permissible only when refund is on account of services not provided. Thus, if the person refunds on account of giving some discount to client, this provision does not apply.

Adjustment in case of service tax on renting of immovable property - In case of service tax on renting of immovable property, abatement is available in case of property tax paid to local authorities. If such tax is paid at a later date, self adjustment in service tax payable is permissible within one year from date of payment of tax, without any monetary limit. Assessee should inform Superintendent within 15 days of making adjustment [Rule 6(4C) of Service Tax Rules].

Excess collection of tax – Sec. 73A & 73B

1. The service provider shall not collect tax in excess of what he pays to the Government.

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2. The case his collection is more than his payment, he shall promptly deposit the excess with Government or refund the amount collected excess to the customer.

3. Any delay in this regard attracts payment of interest @ 13% p.a.

Service tax abatements in case of certain specific services: Notification No 1/2006

Certain % of "Gross Amount Charged" is Exempt, if the service includes the cost of materials, goods and other items. No Cenvat credit. ST payable on Taxable value The following are the details

Sl No.	Nature of Service	Abatement Allowed	Taxable Value	Remarks
(i)	Rent-A-Cab Scheme Operator's Service	60%	40%	Service include fuel cost
(ii)	Tour-Operator's Service 4 Package Tour [i.e., accommodation cum-transport, part of tour] 4 Non-package Tour [say,	75%	25%	
		60%	40%	
		90%	10%	
(iii)	Mandap Keeper Service	40%	60%	Service include supply of food
(iv)	Convention services	40%	60%	Service include supply of food
(v)	Outdoor Catering	50%	50%	Service include supply of food
(vi)	Pandal & Shamiana Contractor's Service	30%	70%	Service include supply of food provided
(vii)	Commercial or Industrial Building Construction Service	67%	33%	Service including the value of materials
(viii)	Residential Complex Construction Service	67%	33%	includes value of material
(ix)	Erection, Commissioning & Installation	67%	33%	includes value of material
(x)	Transport of goods in Containers by Rail	70%	30%	Service including the value of materials.
(xi)	Business Auxiliary Service in relation to production/ <u>processing of PARTS</u> and <u>ACCESSORIES</u> which are used in	30%	70%	inclusive of cost of inputs and input services, whether or not supplied by the client

Indirect taxes service tax

	the manufacture of "Cycles / Cycle Rickshaws / Hand-operated Sewing Machines."			
(xii)	Goods Transport Agency	75%	25%	Tax on amount in his Invoice [Payment will be made by consignor/consignee who is actually paying freight]]
(xiii)	Chit fund	70%	30%	

Service tax Registration Sec 69 / Rule 4

Persons requiring Registration

Person	Time Limit
Person liable for payment of Service tax (Normally Service providers and in some cases service receivers – reverse charge)	Within 30 days of service becoming taxable ,if business is commenced later on, then within 30 days of commencement of business
Service exempt – no liability for payment Service Tax – Aggregate value of service exceeding 9 lacs	Within 30 days of value exceeding 9 lacs
Input Service Distributor	Within 30 days of commencement of business

The following persons who are receivers of service liable to pay service are required to be Registered

	Category of Service	Specified Person
1	General Insurance Business	Insurer of Re-insurer
2	Insurance Auxiliary Service provided by an Insurance Agent.	Insurance Company
3	Service provided by a Goods Transport Agency for transport of goods by road.	Person Liable: Specified Consignor/ Consignee who pays or is liable to pay freight should pay the Service Tax. ☐ Specified consignor or consignee includes – (i) Factory; (ii) Company; (iii) Corporation, (iv) Society; (v) Co-operative Society; (vi) Registered Dealer of Excisable
4	Business Auxiliary Services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund	Asset management Company
5	Sponsorship Service provided to any Body Corporation or Firm	Body Corporate or Firm,
6	Any Taxable Service provided by any person from a country other than India u/s 66A.	Person receiving such service

Indirect taxes service tax

Premises to be registered

S No	Premises details	Registration required
1	Single Premise, Single Service or Single premises multiple services	Single Registration
2	Multiple Premises, Single Service/Multiple Services	Centralized Billing System or Centralized Accounting System not in existence - ☐ Registration required for all premises registration with Superintendent of Central Excise] ☐ Centralized Billing System or Centralized Accounting System in existence - ☐ Registration only those premises where CBS/CAS is in existence with Commissioner of Central Excise

Procedure for Registration

Registration should be made in Application by form No ST-1 duly filled up and signed along with self certified copy of PAN

Other enclosures normally required are MOA, AOA in case of Company, Partnership deed in case of Firm, Power of Attorney copy in case of appointment of Manager, declaration about date of commencement of service/business. Board resolution in case of director who sign the application and returns and records.

Document to be Submitted with ST-1 As per Hyderabad-IV, Trade Notice No. 76/2003, dated 6-11-2003

- Proof of address of the premises office sought to be registered
 - PAN number of the assessee
 - List of Branches offices or premises of the assessee
 - Brief note on accounting system adopted by the assessee
 - Branch-wise series of invoices maintained along with a sample copy thereof
 - Previous years audited balance sheet along with gross trial balance of different branches
 - Details of records accounts maintained at different branches and Central Office
- Bank account numbers of the Branches and Central Office through which the receipts are deposited, transacted

The application will be scrutinized and registration certificate will be granted in form NO ST-2 within 7 days)

STC code i.e. registration number- Registration No., also known as 'Service Tax Code (STC)' is a fifteen digit PAN based number. First 10 digits of this number are the same as the PAN of such person. Next two digits are 'ST'. Next three digits are serial numbers indicating the number of registrations taken by the service taxpayer against a common PAN - CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Premises code - The registration certificate gives details of 'premises code' which is given on the basis of Commissionerate + Division + Range + Serial No. The number is given in the registration certificate ST-2 at Sl No. 5. This number is used for easy identification of location of registration of tax payer – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

- Penalty for failure to obtain registration - Rs. 5000/ Rs 200 per day whichever is higher

Change in the Constitution of firm

- Intimate any change in the details furnished in ST1 to AC/DC

CA N RAJA SEKHAR CHENNAI, 9444019860 rajdhost@yahoo.com

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–Within 30 days of such change

Surrender of Registration

- Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately. rule 4(7)
- Assessee should file up-to-date returns and apply for cancellation. Registration may not be cancelled if any demands are pending.

Records and Returns under Service tax

Invoice by Service Provider

Invoice should be raised and prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

Details required to be shown in invoice/bill/challan - As per Rule 4A(1),

the invoice/challan/Bill should be signed by authorised person of provider of input services, should be serially numbered and should contain following details -

- (1) Name, address and registration number of person providing taxable service
- (2) Name and address of person receiving taxable service
- (3) Description, classification and value of taxable service provided or to be provided and
- (4) Service tax payable on the taxable service

The Rule does not make mention of date, but actually, date should be mentioned.

Education Cess and SAH education Cess to be shown separately in the Invoice for complying with requirements of Cenvat Credit Rules to facilitate availment of Cenvat credit by recipient
Relaxation in case of banking and financial services

In case of banking and financial services provided by banking company, FI, NBFC or a commercial concern, the invoice/challan need not be serially numbered and name and address of person receiving taxable service need not be contained on the invoice/challan.[proviso to Rule 4A(1) of Service Tax Rules]. This facility is also available to input service distributors of such type of service Para 5.3 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Invoice in case of continuous service/Periodical billing

In some cases, service is provided continuously for successive periods of time and value of such taxable service is determined or payable periodically. In such cases, the Invoice or challan shall be issued within 14 days from last date of the period [second proviso to Rule 4A(1) .

Invoice at end of billing period

In case of some services like services of commission agent, it is impractical to prepare invoice of commission for each sale. Billing is done at end of the agreed period (say month or quarter), which is termed as 'Billing Period'. In such cases, it can be argued that such services are provided on continuous basis and Billing at end of the period should be acceptable.

Maintenance of Records Rule 5

No separate form has been prescribed.

☐ Records can be kept in electronic form also.

☐ Record should normally include

- (1) Register for value of services billed giving bill wise details
- (2) Register for value of services received/collected giving bill wise details

Indirect taxes service tax

(3) Register for Cenvat credit for Credit available, utilized and balance as per Cenvat credit rules 9

(4) Usual financial records such as cash, bank book general ledger, copies of invoices and Bank statements etc.,

☐ Records should be preserved for a period of five years.

☐ They should be made available for inspection by departmental officers

Returns to be filed under Service tax

Person liable for payment of Service tax	April to September - Due date October 25th October to March – Due date April 25th
Service exempt - no liability for payment of Service Tax - Aggregate value of service exceeding 9 lacs	April to September - Due date October 25th October to March – Due date April 25th
Input Service Distributor	April to September - Due date October 30 th October to March – Due date April 30 th

ST return can be revised to correct error or omission – revised return can be filed within 90 days. From the date of filing ST3. Revised return can be filed only when the original ST3 filed in time. If return is revised, then Relevant Date for the purposes of sending SCN shall be “Date of

filing of revised return” [Rule 7-B of STR, 1994]

Where the St paid(Gross) was Rs. 10 lakhs or more returns to be filed electronically

Documents to be attached along with return

The following documents that are to be attached along with ST-3

1. Copies of GAR-7 challans, for payments made. (Now it is not mandatory. 20 digit CIN to be quoted)
2. Memorandum ST-3A, incase of provisional payment of tax.
3. In case of first return, details of accounts maintained in relation to service tax should be furnished to superintendent of Central Excise, at the time of filing first half yearly return i.e., ST-3, a list of all accounts maintained by him in relation to service tax including memorandum received from his branch office

Penalty of belated filing of service tax return

Sec 70 has been amended by FA, 2007. It provides for payment of late fees for belated return .As per Rule 7C. Amount to be paid for delay in furnishing is as below

Period of delay	Late fee payable
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 plus Rs 100 for every day from the 31st day till the date of furnishing the said return

Provided that the total amount of late fee shall not exceed Rs.2000/-.

Penalty can be waived if no tax was payable

Where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.

Department is required to accept late return even non submission of proof of late fee is not paid – In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department.

Indirect taxes service tax

Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return – para 6.4 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

E filing of Returns

☐ Mandatory where the Service tax paid is Rs. 10 lakh (Gross) during PY or already paid Rs. 10 lakhs in CY. Optional- Other cases

☐ Basic Requirement PAN Based Service Tax Code (STC)

Procedure

☐ File Application to Divisional AC/DC in Annexure 'A' with a Trusted email id & a Contact No.

☐ AC/DC will Provide User id & Password within Ten Days of receipt of Application through e-mail

☐ You can Change Password ☐ File return on www.aces.gov.in

Condonation of Delay

☐ Only for those using e-filing Facility first time

☐ Assessee has faced technical difficulties

☐ Delay of 1 month shall be condoned as per Circular No. 71/2004

Import of Services

Import of Service [Service provided from outside India and received in India]

Charge of Service Tax on services received from outside India Sec 66 A

Person residing out of India, Providing or to be provided service having (SP)	Person residing In India, (Service Receiver)
(i) established a business or has a fixed establishment or	(i) established a business or has a fixed establishment or
(ii) or has his permanent address or usual place of residence	(ii) or has his permanent address or usual place of residence

Taxable service shall be treated as if the recipient had himself provided the service in India and Service recipient is liable to pay service tax

Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted

Indirect taxes service tax

Non Applicability of Service recipient liability

Where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce. I.e. personal purpose. In such a cases as per charging section 65 (105), Service provider, Nonresident liable to pay service tax

Taxation of Service (Provided from outside India and received in India) Rules 2006

Rule 3: It provides Criteria for charge in case of import of services, as below

<i>Immovable Property Criteria</i>	Immovable property situation in India
<i>Performance Based Criteria</i>	Service is physically performed in India (whether wholly or partly)
<i>Residuary</i> Excluding 2: a) Foreign Travel Air b) Travel by Cruise Service	<i>Provided in relation to Business or Commerce</i> <i>Service recipient is located in India</i>

Rule 4 Service recipients shall get him registered.

Rule 5 the service imported into India for which service recipient is liable for payment of ST Shall not be treated as “Output Service” for the purpose of using Cenvat credit of other services for payment of such amount.

India” includes the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone (UP to 200 nautical miles) of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

Liability of Service tax in case of import of services

S No	Nature of Transaction	Liability of service tax
1	Services performed by Nonresident in India	Liability is on recipient (If recipient deals with foreign establishment,)
2	Services performed by Nonresident outside India, but consumed in India	Liability is on recipient
3	Services performed and consumed Outside India but paid from India	No ST Liability
4	Services performed and consumed Outside India but paid from India, Accounted in India books	No ST Liability
5	Services performed and consumed Outside India but paid by branch outside India but claimed as reimburse of expenditure from Indian H O	ST liability may arise

Export of Services/ Export of service rules 2005

Rule 3

<i>Immovable Property Criteria</i>	Immovable property situation in India
<i>Performance Based Criteria</i>	Service is physically performed in India (whether wholly or partly)
<i>Residuary</i> Excluding 2: a) Foreign Travel Air	<i>Provided in relation to Business or Commerce</i> <i>Service recipient is located in India</i>

Indirect taxes service tax

b) Travel by Cruise Service	<i>Other cases ---Service receiver is located outside India at the time of provision of service is made.</i>
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Additional Conditions for all 3 categories:

- 1) Service must be provided from India and used outside India
- 2) Payment must be received in convertible Foreign Exchange.

How to export service

2-Options

Export without payment of Service tax (Rule 4 of Export of Service Rules, 2005)

Pay ST and then claim rebate (Rule 5 of Export of Service Rules, 2005)

[Rebate is also admissible of related input and input service]

"India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof

Exemption to specified taxable services used for export of goods

Notification No. 40/2009 ST dated 30.09.2009 has amended Notification No.17/2009 ST dated 07.07.2009 which exempts Service provided for transport of export goods through national waterway, inland water and coastal shipping (zzzzl)

The exporter shall produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; and produce evidence to the effect that the said transport is provided for export of relevant goods.

SERVICE TAX RETURN PREPARERS SCHEME

Service Tax Return preparers Scheme:

1. Definitions:

- a. **Service Tax Return Preparer:** It refers to an individual who has been authorized to act as a "Service Tax Return Preparer" under a scheme framed under this section.
- b. **Specified Classes of persons:** It refers to persons specified in the Scheme, who are required to furnish a return required to be filed under section 70.

2. Power of Board: The CBEC is empowered to frame a scheme for furnishing return of income by any specified classes through a Service Tax Return Preparer.

3. Duty of Service Tax Return Preparer: Every Service Tax Return Preparer should assist the specified classes of persons to prepare and furnish the service tax return in the manner specified in the scheme.

4. Structure of the Scheme: The scheme framed by the Board may provide for the following
–Manner in which and the period for which the Service Tax Return Preparer shall be authorized,

- a. Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return, Preparer,
- b. Code of Conduct for the Service Tax Return Preparer,
- c. Duties and Obligations of the Service Tax Return Preparer,
- d. Circumstances under which the authorization given to a Service Tax Return Preparer may be withdrawn, Any other matter which is required to be specified by the Scheme for the purposes of this section.

Indirect taxes service tax

Assessments demands, refunds and recoveries, settlement Commission, AAR etc.

The provisions are similar to excise and excise provisions will be applicable: Check the comparison chart available at the end of customs notes

Rectification of Mistake apparent on record Sec 74

The Central Excise Officer who has passed order (of assessment or demand or penalty) can rectify any mistake apparent from the record, within two years of the date on which the order was passed. The mistake must be 'apparent from the records'. Any rectification that reducing the refund or increasing the liability, opportunity should be given to assessee.

Revision orders by Commissioner Sec 84

The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed anytime within two years of the original order, but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) [Section 84]. Appeal against the order of Commissioner (after revision) lies with CESTAT under Section 86.

Power of Central Excise Officer to Access to a registered premises Rule 5 A

(1) An officer authorized 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 shall, on demand, make available to CEO or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

Penalties under Service tax – Sec. 76, 77 & 78

S.N	Nature of Violation	Penalty
1.	Failure to pay Service tax [Sec.76	Not less than Rs.200 per day of default or 2% per month of tax whichever is higher. In no case penalty can exceed the amount of tax.
2.	Suppression of Value (fraud cases)	100% to 200% of duty sought to be charged. Penalty is reduced to 25% of if service tax paid within 30 days.
3.	Failure of registration	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
4.	Failure to furnish information called by officer on Central Excise Officer	Rs.5,000 or Rs. per day whichever is higher from the first day after due date till the day of actual compliance.

Indirect taxes service tax

5.	Failure to appear before the Central Excise Officer when issued with a summon for appearance to give evidence or to produce document.	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
6.	Failure to maintain books of	Maximum Rs.5,000/-
7.	Fails to pay through e-payment	Maximum Rs.5,000/-
8.	Where no penalty is mentioned	Maximum Rs.5,000/-

No penalty will be levied if assessee proves; there is a reasonable and sufficient cause for Failure to Comply- Sec 80

Power to search premises: Section 82:-

If the Commissioner of Central Excise has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under this Chapter are secreted in any place, he may authorize any AC/DC to search for and seize or may himself search for and seize, such documents or books or things.

The Criminal code Procedure will apply with regard to searches.

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