

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.
- 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
- EOUs /EPZ pay duty for their clearance in 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*
- ☐ *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 gods 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
- 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”

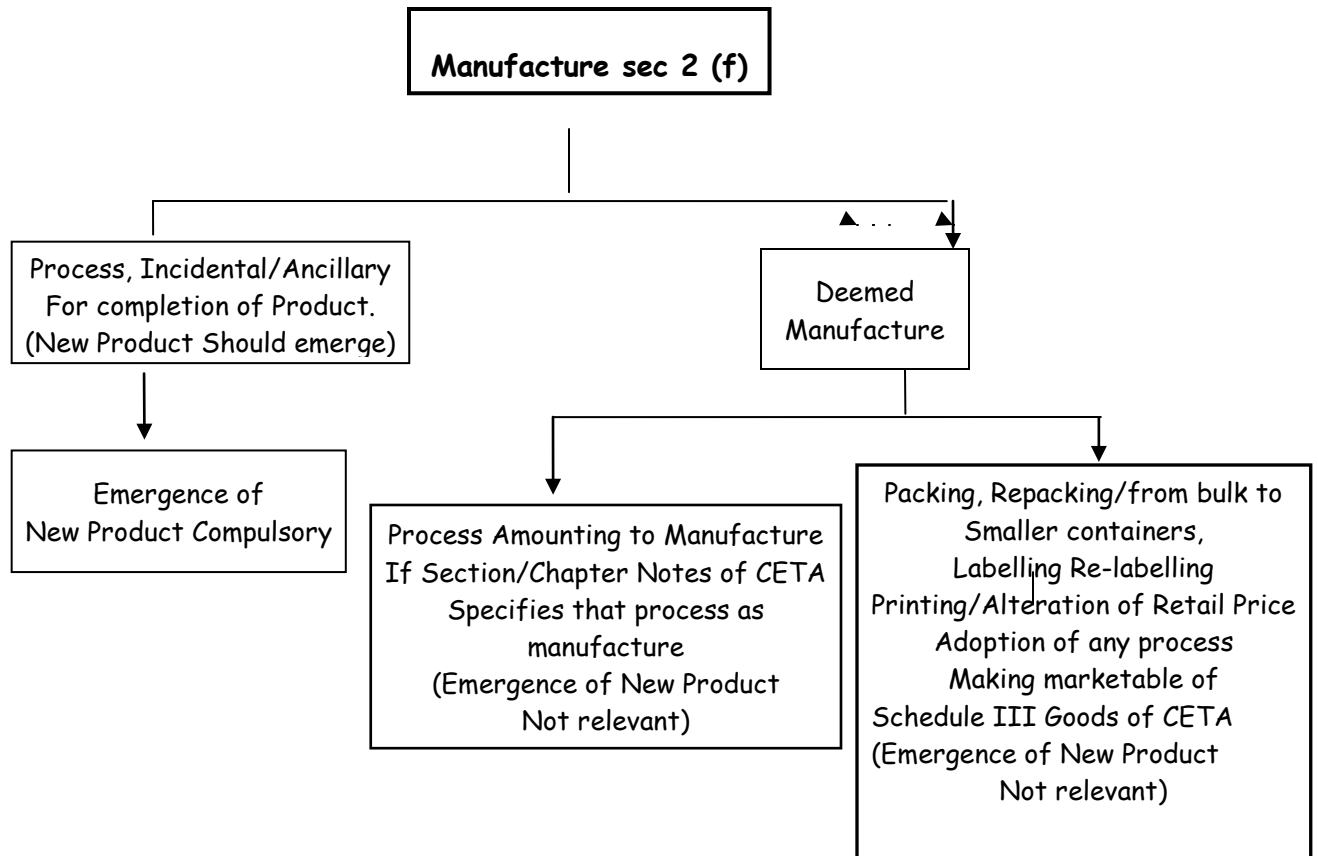
Manufacture

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



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
- 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
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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 per Gujarat Steel tubes case)	73	4
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'.

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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
- If good 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 in to 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

- 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-

Manufacturer in case of Cenvat Credit rules (Rule 2 (nna))

In case of Jewellery, articles of goldsmith, silversmith and clothing apparel, the person liability to pay excise duty (Notification No 3/2011 dated 01.03.2011)

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Manufacture must be in India

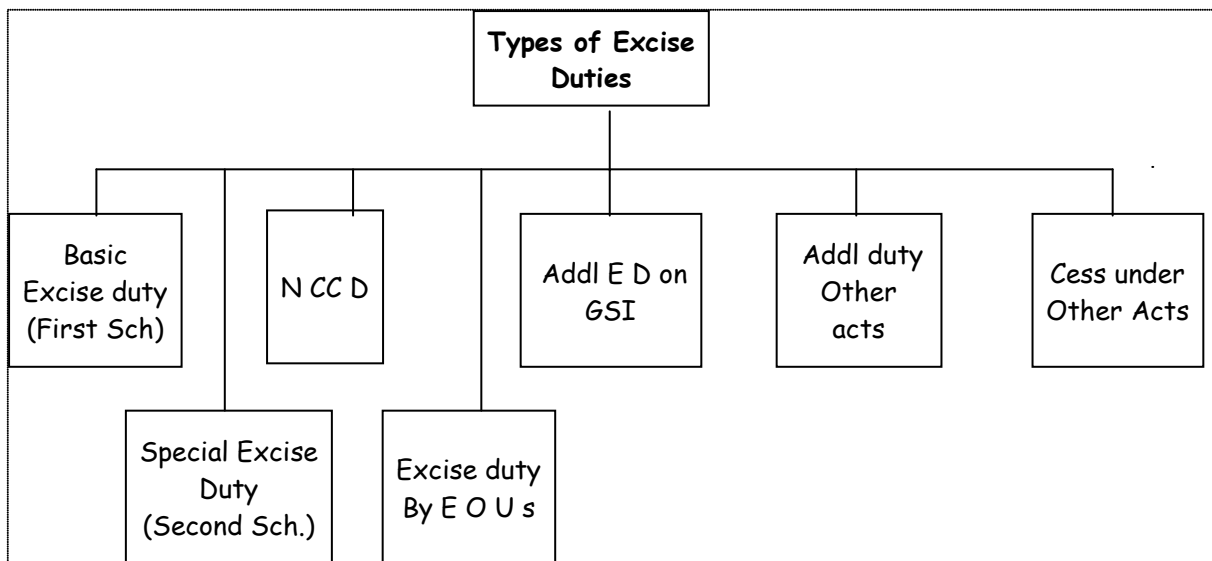
- Excisable goods must be manufactured or produced in India.
- Thus, excise levy cannot be imposed on imported goods or goods manufactured Outside India
- If goods are imported in SKD or CKD condition and they are only assembled in India, as no new product emerges -.
- However, Manufacture -If actually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

However for the purpose of Excise Duty , duty payable , if goods are manufactured up to 200 nautical miles (up to exclusive economic zone). Example -oil exploration in the sea.

Types of excise duties



Basic excise duty

- Cenvat- at the rates specified in First Schedule to CETA, read with exemption notification, if any... Normal rate 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%)

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
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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
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

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
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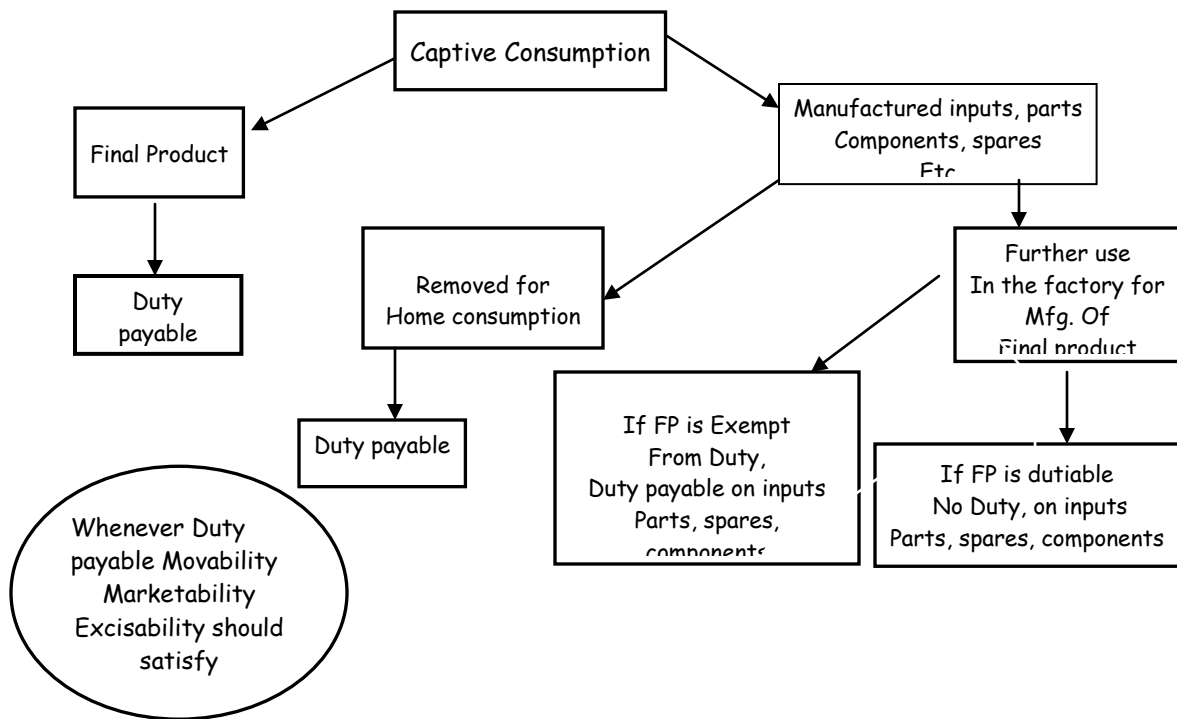
- A cess known as clean energy cess is payable on the specified goods(raw coal, raw lignite and raw peat) at the time of removal from mine
- Excise department will administer the cess.
- The effective date for payment of cess is 01.07.2010
- The rates will Rs.50 per ton (as of now).
- The due date for 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/-

Captive consumption

Meaning

- Goods used by manufacturer within 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.

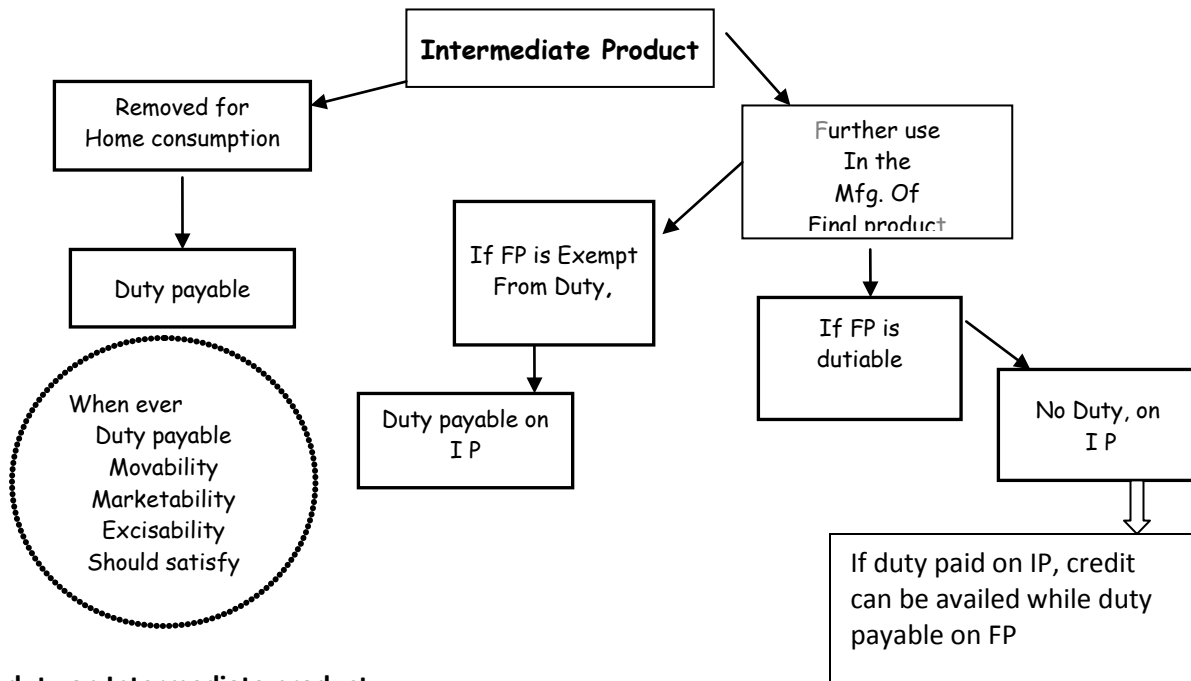
Exemption to captive consumption if duty paid on final product: The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used 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
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Examples

- Waste and Scrap
- 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 6% as per cervat 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 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

Dutiability 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.

- 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.
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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 . Duty payable at the time of removal.

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-Ware house keeper/Person who stores goods without payment of duty (Rule 20)
3. In case of Khandasari Molasses- person who Purchases or Procures , whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable shall liable to pay as if molasses was produced by him.– Rule 4(2)
4. In case of readymade garments, made-up articles of textiles manufactured on job-work basis, duty liability is on the merchant manufacturer. However job worker can also pay duty on behalf of merchant manufacturer (Notification No. 4/2011 date 01.03.2011).

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
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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 consumption	Rate on the date when goods used/issued for 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 Tobbacco-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
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- 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,
- 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)
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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.

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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

Classification of Incomplete Goods/unassembled as 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 all the parts are removed over a period of time in different consignments this rule is not applicable. In such case they have to be 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 football, the bladder is made of rubber and outer case is made of leather. But football was specifically classified under chapter 95 Toys, games and sports requisites. Here Chapter 40 and 42 general headings to be ignored and football is classified under chapter 95.

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

- If Rule 3 cannot be 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.**

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

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
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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)