

STUDY NOTE - 1

OVERVIEW CENTRAL EXCISE

This Study Note includes

- Background
- Classification of Goods
- Valuation of Goods
- Duty on ad-valorem basis
- Other Important Provisions
- Procedures in Central Excise
- Demands, Penalties and Appeals
- Important Provisions of Central Excise Act, 1944
- Important Provisions of Central Excise Rules, 2002
- Important Rules of Central Excise Valuation Rules, 2000
- Rules of Classification

The study notes of final examination of ICWA have been prepared on the basis that basics of the subject have already been studied by students in their intermediate examinations. Hence, initially, overview of each topic is given and then some critical issues are discussed.

1.1 BACKGROUND

Central Excise is a duty on excisable goods manufactured or produced in India, other than alcoholic liquor. Duty liability is principally on 'manufacturer', except in a few cases. In majority of cases, duty rate w.e.f. 1-3-2008 is 14% plus education cess of 2% and Secondary and Higher Education Cess of 1%. Thus, generally, duty is 14.42% (The general duty was 16.48% upto 29-2-2008). There are some exclusions, partial or full exemptions and higher duties in some cases.

Constitutional Background - The duty is levied under powers conferred vide entry 84 and 97 of List I in the Seventh Schedule to Constitution. (Called 'Union List'). The entries read as follows -

Entry No. 84 - Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption, opium, narcotic drugs, but including medicinal and toilet preparations containing alcoholic liquor, opium or narcotics.

Entry No. 97 - Any other matter not included in List II, List III and any tax not mentioned in list II or list III. (These are called 'Residual Powers'.)

Conditions for levy of excise duty - Basic excise duty is levied under section 3 of Central Excise Act at rates specified in First Schedule and Second Schedule to Central Excise Tariff Act, 1985 (Other duties and cesses are levied under different provisions of law). Section 3 of Central Excise (which is the 'charging section') clearly signifies that there are four basic conditions for levy of Central Excise duty.



- (1) The duty is on goods.
- (2) The goods must be excisable.
- (3) The goods must be manufactured or produced
- (4) Such manufacture or production must be in India.

Unless all of these conditions are satisfied, Central Excise Duty cannot be levied.

Ownership of raw material is not relevant for duty liability - Ownership of raw material is not relevant for duty liability – *Hindustan General Industries v. CCE* 2003 (155) ELT 65 (CEGAT)

* *CCE v. Mahindra & Mahindra* 2001(132) ELT 632 (CEGAT).

1.1.1 Duties Leviable

- **Basic Excise Duty u/s 3 of Central Excise Act, which is 14% in vast majority of the cases w.e.f. 1-3-2008 [Till 29-2-2008, it was 16%].**
- Education Cess @ 2% of excise duty under section 93 of Finance (No. 2) Act (w.e.f. 9-7-2004).
- Secondary and Higher Education Cess (SAH Education Cess) @ 1% of the total duties of excise vide section 136 read with section 138 of Finance Act, 2007 w.e.f. 1-3-2007.

Thus, total excise duty is 14.42% in majority of the cases.

National Calamity Contingent Duty – A ‘National Calamity Contingent Duty’ (NCCD) has been imposed vide section 136 of Finance Act, 2001 on some products. NCCD of 1% has been imposed on mobile phones w.e.f. 1-3-2008.

In addition, cesses and duties have been imposed on some specified products.

1.1.2 Excisable Goods

- As per judicial interpretation, for purpose of levy of Excise duty, an article must satisfy two requirements to be ‘goods’ i.e. (a) it must be movable *and* (b) it must be marketable. However, actual sale is not necessary.
- Marketability is to be decided on the basis of condition in which goods are manufactured or produced.
- Everything that is sold is not necessarily ‘marketable’.
- Waste and Scrap can be ‘goods’ but dutiable only if ‘manufactured’ and are mentioned in Tariff.
- The marketability test requires that the goods *as such* should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied. Thus, if machinery

has to be dismantled before removal, it will not be goods - *Triveni Engineering v. CCE* AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC).

- Branded Software is goods. However, service tax will be payable on tailor made software after Finance Bill, 2008 is passed.
- Section 2(d) of Central Excise Act defines Excisable Goods as 'Goods specified in the Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. As per explanation to section 2(d), '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'. Thus, unless the item is specified in the Central Excise Tariff Act as subject to duty, no duty is leviable.

1.1.3 Manufacture

- Taxable event for central excise duty is manufacture or production in India.
- The word 'produced' is broader than 'manufacture' and covers articles produced naturally, live products, waste, scrap etc.
- 'Manufacture' means : (a) Manufacture as specified in various Court decisions i.e. new and identifiable product having a *distinctive name, character or use* must emerge or (b) Deemed Manufacture.
- Deemed manufacture is of two types – (a) CETA specifies some processes as 'amounting to manufacture'. If any of these processes are carried out, goods will be said to be manufactured, even if as per Court decisions, the process may not amount to 'manufacture' [section 2(f)(ii)] (b) In respect of goods specified in Third Schedule to Central Excise Act, repacking, re-labelling, putting or altering retail sale price etc. will be 'manufacture'. The goods included in Third Schedule of Central Excise Act are same as those on which excise duty is payable u/s 4A on basis of MRP printed on the package. [section 2(f)(iii) w.e.f. 14-5-2003]
- In *Union of India v. Delhi Cloth Mills Co. Ltd.* AIR 1963 SC 791 = 1963 Suppl (1) SCR 586 = 1977 (1) ELT (J199) (SC) and 1990 (27) ECR 151 (SC five member constitution bench) it has been held that the manufacture means bringing into existence a new substance. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a *distinctive name, character or use*.

1.1.4 Manufacturer

- Manufacturer is the person who actually brings new and identifiable product into existence.
- Duty liability is on manufacturer in most of the cases.
- Mere supplier of raw material or brand name owner is not 'manufacturer'.



- Loan licensee is not 'manufacturer'. Loan licensee can be treated as manufacturer only if the manufacture is carried out by use of his own raw material under his own supervision by hiring the premises and equipment shift-wise or otherwise.

1.2 CLASSIFICATION OF GOODS

The rate of duty is found out by classifying the product in its appropriate heading under Central Excise Tariff. The Central Excise Tariff Act, 1985 (CETA) classifies all the goods under 96 chapters and specific code is assigned to each item. CETA is based on International convention of Harmonised System of Nomenclature (HSN), which is developed by World Customs Organisation (WCO) (That time called as Customs Cooperation Council). This is an International Nomenclature standard adopted by most of the Countries to ensure uniformity in classification in International Trade. HSN is a multi purpose 6 digit nomenclature classifying goods in various groups.

Central Excise Tariff is divided in 20 broad sections. Section Notes are given at the beginning of each Section, which govern entries in that Section. Each of the sections is divided into various Chapters and each Chapter contains goods of one class. Chapter Notes are given at the beginning of each Chapter, which govern entries in that Chapter. There are 96 chapters in Central Excise Tariff. Each chapter and sub-chapter is further divided into various headings and sub-headings depending on different types of goods belonging to same class of products.

All goods are classified using 4 digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.

Rules for Interpretation of Schedule to Tariff are given in the Tariff itself. These are termed as 'General Interpretative Rules' (GIR). GIR (General Interpretative Rules) are to be applied for interpretation of Tariff, if classification is not possible on the basis of tariff entry and relevant chapter notes and section notes. Following are the steps of classification of a product.

- (1) Refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion, the classification is final (Rule 1 of GIR). You do not have to look to classification rules or trade practice or dictionary meaning. If classification is not possible, then only to GIR. The rules are to be applied sequentially.
- (2) If meaning of word is not clear, refer to trade practice. If trade understanding of a product cannot be established, find technical or dictionary meaning of the term used in the tariff. You may also refer to BIS or other standards, but *trade parlance* is most important.
- (3) If goods are incomplete or un-finished, but classification of finished product is known, find if the un-finished item has *essential characteristics* of finished goods. If so, classify in same heading - Rule 2(a).
- (4) If ambiguity persists, find out which heading is specific and which heading is more general. Prefer specific heading.- Rule 3(a).

- (5) If problem is not resolved by Rule 3(a), find which material or component is giving 'essential character' to the goods in question - Rule 3(b).
- (6) If both are equally specific, find which comes last in the Tariff and take it - Rule 3(c).
- (7) If you are unable to find any entry which matches the goods in question, find goods which are most akin - Rule 4.
- (8) Packing material is to be classified in the heading in which the goods packed are classified – Rule 5.
- (9) In case of mixtures or sets too, the procedure is more or less same, except that each ingredient of the mixture or set has to be seen in above sequence. As per rule 2(b), any reference to a material or substance includes a reference to mixtures or combinations of that material or substance with other material or substance.

1.3 VALUATION OF GOODS

Excise duty is payable on *one of the following basis* :

- Specific duty, based on some measure like weight, volume, length etc.
- Duty as % of Tariff Value fixed under section 3(2)
- Duty based on basis of Maximum Retail Price printed on carton after allowing deductions - section 4A of CEA.
- Compounded Levy Scheme.
- Duty as % based on *Assessable Value* fixed under section 4 (*ad valorem duty*) (If not covered in any of above)

Specific Duty - It is the duty payable on the basis of certain unit like weight, length, volume, thickness etc. For example, duty on Cigarette is payable on the basis of length of the Cigarette, duty on sugar is based on per Kg basis etc.

Tariff value - In some cases, tariff value is fixed by Government from time to time. 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.

Compounded Levy Scheme - Normal excise procedures and controls are not practicable when there are numerous small manufacturers. Rule 15 of Central Excise Rules provides that Central Government may, by notification, specify the goods in respect of which an assessee shall have option to pay duty of excise on the basis of specified factors relevant to production of such goods and at specified rates. The scheme is presently applicable only to stainless steel pattas/pattis and Aluminium circles. These articles are not eligible for SSI exemption.



1.3.1 Value based on Retail Sale Price

Section 4A of CEA empowers Central Government to specify goods on which duty will be payable based on 'retail sale price'.

The provisions for valuation on MRP basis are as follows -

- (a) The goods should be covered under provisions of Standards of Weights and Measures Act or Rules [section 4A(1)].
- (b) Central Government has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price' [section 4A(2)].
- (c) While allowing such abatement, Central Government shall take into account excise duty, sales tax and other taxes payable on the goods [section 4A(3)].
- (d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [Explanation 1 section 4A].
- (e) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [Explanation 2(c) to section 4A].
- (f) Removing excisable goods without MRP or wrong MRP or tampering, altering or removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A(4)] If price is altered, such increased price will be the 'retail sale price' for purpose of valuation [Explanation 2(b) to section 4A].

For example, Government had issued a notification to the effect that excise duty on 'cosmetics and toilet preparations' will be payable on the basis of MRP printed on retail carton after allowing abatement of 40%. In such case, if MRP printed on carton is Rs 200 and if the duty on 'cosmetics & toilet preparations' is 16% plus education cess of 2% plus SAH education cess of 1%, the duty @ 16% will be payable on Rs 120 (i.e. after allowing 40% abatement on MRP of Rs 200). Thus duty payable per pack will be Rs 19.20, plus education cess Rs 0.38 plus SAH education cess of Rs 0.19.

MRP provisions are overriding provisions – Section 4A(2) of Central Excise Act uses the words 'notwithstanding section 4'. Hence, when section 4A is applicable, provisions of section 4 for determination of assessable value are not applicable.

Provision of MRP based valuation are applicable only when product is statutorily covered both under Weights and Measures Act and notification issued under CEA - reiterated in *Swan Sweets v. CCE 2006 (198) ELT 565 (CESTAT)*.

Same product sold in wholesale and under MRP - CBE&C has clarified in circular No. 737/53/2003-CX dated 19-8-2003 that when goods covered u/s 4A are supplied in bulk to large buyer (and not in retail), valuation is required to be done u/s 4. Provisions of section 4A apply only where manufacturer is legally obliged to print MRP on the packages of goods. Thus, there can be instances where the same commodity would be partly assessed on basis of section 4A and partly on basis of transaction value u/s 4.

Products covered under the MRP valuation scheme - So far, 96 articles have been covered under this scheme [Notification No. 2/2006-CE(NT) dated 1-3-2006].

Non-applicability of provisions of MRP - If an article is not covered under provisions in respect of marking MRP, provisions of duty payable on basis of MRP do not apply and in those cases, duty will be payable on *ad valorem* basis as per section 4. As per rules 2A and 34 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (as amended w.e.f. 14-1-2007), the provisions of marking MRP are not applicable to following commodities – Packages above 25Kg (50 Kg in case of cement) * Packaged commodities for industrial or institutional consumers * Small packages of 10gm / 10 ml or less * Fast food items * Scheduled drugs and formulations * Agricultural farm produce * Bidis for retail sale * Domestic LPG gas.

Deemed Manufacture of products covered under MRP - In respect of goods specified in third schedule to Central Excise Act, any process which involves packing or repacking of such goods in a unit container or labelling or re-labelling 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’. [section 2(f)(iii) effective from 14-5-2003].

1.4 DUTY ON AD VALOREM BASIS

If a product Central Excise is payable on the basis of value. This is called “**ad valorem duty**”. The ‘assessable value’ is arrived at on the basis of Section 4 of the Central Excise Act and duty is payable on the basis of such value. Assessable Value (AV) is the ‘**Value**’ on which duty is payable as a percentage.

- When duty is payable on *ad valorem* basis, it is payable on assessable value as defined in section 4 of CEA.
- ‘Transaction Value’ is taken as Assessable Value if goods are sold at the time and place of removal, buyer is unrelated and price is sole consideration.
- Transaction value is the price paid or payable for the goods ‘by reason of, or in connection with sale’.
- Transaction value does not include duty of excise, sales tax and any other taxes on goods.
- If goods are cleared without payment of duty, the price is taken as ‘cum duty’ price and tax payable should be calculated by back calculations.



The basic provisions of new Section 4(1)(a) state that 'assessable value' when duty of excise is chargeable on excisable goods with reference to value will be 'transaction value' on each removal of goods, if following conditions are satisfied -

- The goods should be sold at the time and place of removal.
- Buyer and assessee should not be related.
- Price should be the *sole consideration* for the sale.
- Each removal will be treated as a separate transaction and 'value' for each removal will be separately fixed.

Following are main requirements of 'transaction value'.

- Price actually paid or payable
- Price is for the goods
- Price includes any amount that the buyer is liable to pay to, or on behalf of assessee. Thus, payment made by buyer to another person, on behalf of assessee, will be includible.
- The payment should be 'by reason of, or in connection with the sale'. As explained later, these terms have always been construed strictly in judicial interpretation.
- The amount may be payable at the time of sale or at any other time. Such time may be before or after sale.
- Any amount charged 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 aforesaid 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.
- Amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods is to be excluded while calculating 'transaction value'. The amount may be 'payable' any time in the future.

1.4.1 Inclusions in assessable value

- An amount charged is includible in assessable value if it is by reason of or in connection with sale of such goods.
- Duty is payable on packing charges and design charges related to manufacture.
- Duty is payable in case of price escalation after clearance, but not when price was final at the time of clearance.
- Trade discount is allowable as deduction from assessable value.

- Transport charges upto place of removal are includible in assessable value.
- Notional interest on advances is includible only if there is evidence that it has depressed the selling price.

1.4.2 Bought out goods, accessories for valuation

- Price of Bought out goods supplied along with manufactured goods is includible if these are essential part of manufactured goods.
- Price of accessories and optional bought out items is not includible in Assessable Value.

1.4.3 Valuation Rules

- If transaction value is not acceptable, valuation is required to be done as per Valuation Rules [Rule 3]
- Valuation can be done on value of 'such' goods (i.e. goods of same class of same manufacturer) [Rule 4]
- Cost of transport upto 'place of removal' is includible not beyond that [Rule 5]
- If price is not sole consideration, money value of other consideration should be added e.g. Cost of material, patterns, dies, designs etc. supplied by buyer is required to be added to Assessable Value [rule 6].
- In case of depot sale, duty is payable on basis of depot price prevailing at the time of removal of final product from the factory [Rule 7]
- In case of captive consumption, duty is payable on basis of cost of production plus 10%. Cost of Production should be calculated on basis of CAS-4 [Rule 8]
- In case of entire sale through related buyer, valuation should be on basis of price at which related buyer sales goods to unrelated buyer [Rule 9 and 10]
- In case of job work, valuation is done on the basis of price at which raw material supplier (Principal Manufacturer) sales the manufactured final product in market [Rule 10A inserted w.e.f. 1-4-2007]
- In other cases, on basis of 'best judgment' assessment, i.e. value shall be determined using reasonable means consistent with the principles and general provisions of Valuation rules and sub-section (1) of section 4 of the Act [Rule 11]



1.5 OTHER IMPORTANT PROVISIONS

Other important provisions are summarized below.

1.5.1 Refund of excise duty

- Assessee can claim refund of duty within one year from relevant date u/s 11B, in form R.
- Refund is subject to doctrine of unjust enrichment, i.e. refund will be available only if the amount was not recovered from buyer. These are overriding provisions.
- Doctrine of unjust enrichment applies to captive consumption, provisional assessment and also when duty was paid under protest.
- If refund is delayed beyond three months, interest is payable @ 6% p.a.

1.5.2 Exemption from Duty

- Section 5A(1) of Central Excise Act and section 25(1) of Customs Act empower Central government to exempt any excisable goods from duty, by issuing notification in Official Gazette.
- Such exemption may be partial or full, conditional or unconditional.
- Absolute i.e. unconditional exemption is compulsory, while conditional notification is at option of assessee.
- Central Government can also grant exemptions in exceptional cases u/s 5A(2).
- An exemption notification should be strictly construed, but purposeful construction is permissible.
- Principle of promissory estoppel can apply to an exemption notification.

1.5.3 Exemption to SSI

- SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3-2003. The SSI unit need not be registered with any authority.
- Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not conforming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.
- Unit whose turnover was less than Rs 4 crores in previous year are entitled to full exemption upto Rs 150 lakhs in current financial year.
- SSI units manufacturing goods with brand name of others are not eligible for exemption,

unless the goods are manufactured in rural area.

- Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.
- Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one.

While calculating limit of Rs 400/150 lakhs -

- Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture, strips of plastics used within factory is to be excluded.
- Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included.
- Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of Rs 400 lakhs, but excluded for limit of Rs 150 lakhs.

1.5.4 Captive consumption

- Excise duty is payable on goods manufactured and used within the factory.
- 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. 67/1995 dated 16-3-1995].
- Duty is payable only if intermediate goods are marketable.
- If duty is payable on intermediate products, valuation will be on basis of cost of production plus 10%.
- Cost of production should be calculated on basis of CAS-4.

1.5.5 Job work under Central Excise

- Since excise duty is on manufacture, duty will be payable even if goods are manufactured on job work basis.
- Job Work means processing or working upon of raw materials or semi-finished goods supplied to job worker, 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 – *Explanation I* to Notification No. 214/86-CE dated 25-3-86 – same definition in



rule 2(n) of Cenvat Credit Rules.

- As per rule 10A of Valuation Rules inserted w.e.f. 1-4-2007, duty is payable on the basis of price at which raw material supplier sales the final product in the market.
- If product is covered under MRP, duty is payable as per section 4A.
- Job work is exempt if material is sent to job worker under Cenvat Credit Rule 4(5)(a).
- Job work is exempt if material was sent under Cenvat provisions or under notification No. 214/86-CE. The supplier of raw materials or semi-finished goods has to give an undertaking that he will discharge the duty on final product.
- Service tax is payable on Job work if (a) Activity is not manufacture or (b) Material is not sent under Cenvat provisions.

1.5.6 EA 2000 Excise Audit

An Audit section is attached to each Commissionerate. Audit of assessee's factory is carried out by visit by 'audit party'. The Audit Party usually consist of 2/3 inspectors and a Deputy Office Superintendent, headed by a Excise Superintendent. The audit system is termed as 'EA-2000' [Excise Audit 2000]

The frequency of audit will be on basis of excise duty paid annually. The 'duty paid' means paid by cash plus through Cenvat credit. The frequency is as follows, as per CBE&C letter No. 381/145/2005 dated 6-6-2006 –

- Units paying duty more than Rs three crores – every year.
- Units paying duty between Rs one crore and Rs 3 crores – once every two years.
- Units paying duty between Rs 50 lakhs and Rs one crore – once every five years.
- Units paying duty below Rs 50 lakhs – 10% of units every year.

CERA audit - In addition to departmental audit, C&AG carries out selective audits, which is termed as 'CERA' (Central Revenue Audit').

1.6 PROCEDURES IN CENTRAL EXCISE

Some procedures are basic, which every assessee is required to follow. Besides, some procedures are required to be followed as and when required.

Basic Procedures

- (1) Every person who produces or manufactures excisable goods, is required to get registered, unless exempted. [Rule 9 of Central Excise Rules]. If there is any change in information supplied in Form A-1, the same should be supplied in Form A-1.

- (2) Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock. [Rule 10 of Central Excise Rules]
- (3) Goods must be cleared under Invoice of assessee, duly authenticated by the owner or his authorised agent. In case of cigarettes, invoice should be countersigned by Excise officer. [Rule 11 of Central Excise Rules]
- (4) Duty is payable on monthly basis through GAR-7 challan / Cenvat credit by 5th/6th of following month, except in March. SSI units have to pay duty on monthly basis by 15th/16th of following month. Assessee paying duty through PLA more than Rs 50 lakhs per annum is required to make e-payment only [Rule 8].
- (5) Monthly return in form ER-1 should be filed by 10th of following month. SSI units have to file quarterly return in form ER-3. [Rule 12 of Central Excise Rules] - - EOU / STP units to file monthly return in form ER-2 – see rule 17(3) of CE Rules
- (6) Assessee paying duty of Rs one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules].
- (7) Specified assessee is required to submit Information relating to Principal Inputs every year before 30th April in form ER-5, to Superintendent of Central Excise. Return for 2004-05 was required to be submitted by 31-12-2004 [rule 9A(1) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days [rule 9A(2) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only assessee manufacturing goods under specified tariff heading are required to submit the return. The specified tariff headings are – 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; 54.02, 54.03, 55.01, 55.02, 55.03, 55.04. Even in case of assessee manufacturing those products, only assessee paying duty of Rs one crore or more through PLA (current account) are required to submit the return.
- (8) Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by tenth of following month [rule 9A(3) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. *Only those assessee who are required to submit ER-5 return are required to submit ER-6 return.*
- (9) Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sales or delivery of goods including inputs and capital goods, input services and financial records and statements including trial balance [Rule 22(2)].
- (10) Inform change in boundary of premises, address, name of authorised person, change in name of partners, directors or Managing Director in form A-1. [Refer Instructions given below form A-1]



These are core procedures which each assessee has to follow. There are other procedures which are not routine.

Non-core procedures - The non-core procedures are as follows -

- (a) Export without payment of duty or under claim of rebate [Rules 18 and 19 of Central Excise Rules]
- (b) Receipt of goods for repairs / reconditioning [Rule 16 of Central Excise Rules]
- (c) Receipt of Goods at concessional rate of duty for manufacture of Excisable Goods.
- (d) Payment of duty under Compounded Levy Scheme
- (e) Provisional Assessment [Rule 7 of Central Excise Rules]
- (f) Warehousing of goods.
- (g) Appeals and settlement.

1.6.1 Invoice for removal of final products

Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate.

As per Rule 11(2) of Central Excise Rules, Invoice shall contain –

- (a) Registration Number
- (b) Address of jurisdictional Central Excise Division.
- (c) Name of consignee
- (d) Description and classification of goods
- (e) Time and date of removal
- (f) Mode of transport and vehicle registration number
- (g) Rate of duty
- (h) Quantity and Value of goods
- (i) Duty payable on the goods.

1.6.2 Export Procedures

- Exports are free from taxes and duties.
- Goods can be exported without payment of excise duty under bond under rule 19 or un-

der claim of rebate of duty under rule 18.

- Excisable Goods should be exported under cover of Invoice and ARE-1 form.
- Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue Letter of Undertaking.
- Export to Nepal/Bhutan are required to be made on payment of excise duty.
- EOU has to issue CT-3 certificate for obtaining inputs without payment of excise duty.

1.6.3 Bringing goods for repairs, re-making etc.

- Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16.
- The goods need not have been manufactured by assessee himself.
- Cenvat credit of duty paid on such goods can be taken, on basis of duty paying documents of such goods.
- After processing/repairs, if the process amounts to 'manufacture', excise duty based on assessable value is payable.
- If process does not amount to manufacture, an 'amount' equal to Cenvat credit availed should be paid [rule 16(2)].
- If some self manufactured components are used, duty will have to be paid on such components.
- Buyer/recipient of such goods can avail Cenvat credit of such amount / duty.
- If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)].

1.6.4 Receipt of Goods at concessional rate of duty

Some users of excisable goods can obtain goods at nil or lower rate of duty, subject to certain conditions. In other words, the exemption is based on end use. If the buyer is entitled to obtain excisable goods at nil or concessional rate of duty, he is required to follow prescribed procedure. The provisions are contained in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001.

1.6.5 Returns to be filed

Form of Return	Description		Who is required to file
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	20 th of next month of the quarter
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 2005-06 is to be filed by 30-4-2005).
ER-6 [Rule 9A(3) of Cenvat Credit Rules]	Monthly return of receipt and consumption of each of Principal Inputs	Assessee required to submit ER-5 return	10th of following month

1.7 DEMANDS, PENALTIES AND APPEALS

1.7.1 Demands of Excise Duty

- If duty is short paid or not paid or erroneously refunded, show cause notice can be issued u/s 11A(1) of CEA within one year from 'relevant date'.
- In case of allegation of suppression of facts, wilful misstatement, fraud or collusion, the show cause notice can be issued within five years.
- Show cause notice is to be issued by authority who is empowered to adjudicate the case.
- Adjudicating authority is required to follow principles of natural justice. He has to pass orders with reasons
- In case of delay in payment of duty, interest @ 13% is payable u/s 11AB(1) of CEA.
- Property of person to whom show cause notice has been issued can be attached provisionally during adjudication, to protect interest of revenue.

Adjudication powers - The adjudication powers are as follows -

Authority	Issue of SCN and Demand of duty	Remission of duty for loss of goods	Other powers
Commissioner	Without limit	Without limit	
Additional Commissioner	Between Rs 20 lakhs to 50 lakhs	Rs 5,00,000	Cases relating matters under <i>proviso</i> to section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Joint Commissioner	Between Rs 5 lakhs to 50 lakhs	Rs 5,00,000	Cases relating matters under <i>proviso</i> to section 35B(1) i.e. export under bond or under claim of rebate, loss of goods during transit to warehouse - without upper monetary limit
Deputy/ Assistant Commissioner	Upto Rs 5 lakhs	Rs 1,00,000	(1) Issue registration certificate (2) Refund claim without limit
Superintendent	No powers	Upto Rs 10,000	



Note (1) Demand of duty or differential duty may be relating to * determination of valuation and / or classification or * Cenvat credit cases or * duty short paid or not paid or erroneously refunded for any reason. Such demand may or may not contain for allegation of fraud, suppression of facts etc. (in other words, whether or not there is allegation of fraud / suppression of facts etc., the monetary limit of adjudication remains same.

Note (2) As per CBE&C circular No. 809/6/2005-CX dated 1-3-2005, in case of refund claim, AC/DC can pass order without any monetary limit. However, claims of Rs 5 lakhs and above will be subject to pre-audit at level of jurisdictional Commissioner

Note (3) It has been clarified that value of goods / conveyance, plants, machinery, land, building etc. liable to confiscation will not alter the powers of adjudication as the powers solely depend upon the amount of duty / Cenvat credit involved on the offending goods].

Who can issue show cause notice - Show cause notice should be approved and signed by officer empowered to adjudicate the case.

1.7.2 Appeals

Excise and Customs Law empower excise/customs officers to pass adjudication orders demanding duty and interest and imposing penalty and confiscation of goods.

Excise and Customs Act have made elaborate provisions for appeals against adjudication orders passed by excise / customs authorities. There is only one appeal in case of orders of Commissioner, while in case of other orders (i.e. orders of Superintendent, Assistant Commissioner, Dy. Commissioner, Jt. Commissioner, and Additional Commissioner), first appeal is with Commissioner (Appeals) and other with Tribunal. In some matters, revision application lies with Government against order of Commissioner and Commissioner (Appeals).

Tribunal is final fact finding authority and no further appeal lies against facts as found by Tribunal (CESTAT). In case of order of Tribunal relating to classification or valuation, appeal lies with Supreme Court. In other matters, appeal can be made to High Court only if substantial question of law is involved.

Pre-deposit for filing appeal - Section 35F of Central Excise Act (similar section 129E of Customs Act) provides that person desirous of appealing against the order shall, *pending the appeal*, deposit the duty demanded or penalty levied. In case of customs, pre-deposit of duty, interest and penalty is required. However, the appellate authority [Commissioner (Appeals) or Appellate Tribunal] is empowered to dispense with such deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to the person. Such waiver may be subject to such conditions as may be imposed to safeguard interests of revenue.

Meaning of 'duty demanded' - As per *explanation* to section 35F of CEA (inserted w.e.f. 11-5-2007), 'duty demanded' shall include following – (i) amount determined u/s 11D (ii) amount of erroneous Cenvat credit taken (iii) amount payable under earlier Central Excise Rule 57cc (iv) amount payable under rule 6 of Cenvat Credit Rules (v) Interest payable under provisions of Central Excise Act and Rules.

Coercive action for recovery when stay application pending - CBE&C has issued a circular that if stay application is pending with Commissioner (Appeals), coercive action for recovery of dues will not be initiated - CBE&C Circular No. 396/29/98-CX dated 2-6-1998. In a further circular No.788/21/2004-CX dated 25-5-04, it has been clarified same principle should apply in respect of appeals lying with Tribunal against original order of Commissioner

1.8 IMPORTANT PROVISIONS OF CENTRAL EXCISE ACT, 1944

Section No.	Brief Contents
2(d)	'Excisable Goods' means goods specified in the Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. <i>Explanation</i> - '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
2(e)	'Factory' means any premises, including the precincts thereof, wherein or in any part of which, excisable goods other than salt are manufactured; or wherein or in any part of which any manufacturing process connected with production of these goods is being carried on or is <i>ordinarily</i> carried on.
2(f)	" <i>Manufacture</i> " includes any process - (i) incidental or ancillary to the completion of manufactured product; (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture; or (iii) which, in relation to goods specified in Third Schedule to the CEA, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer; - - and the word 'manufacturer' shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. <i>[Clauses (ii) and (iii) are called deemed manufacture]</i> . The definition of 'manufacture' is inclusive and not exhaustive.

2 (h)	'Sale' and 'purchase' with their grammatical variations and cognate expressions, means any transfer of possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuation consideration.
3 (1) (a)	This section is the 'charging section' of 'basic excise duty' and reads as follows - There shall be levied and collected in such manner as may be prescribed duties on all excisable goods (<i>excluding goods produced or manufactured in special economic zones</i>) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985.
3 (2)	Central Government can fix tariff values for purpose of levying excise duty. Once tariff value is fixed, valuation section 4 will not apply, as made clear in section 4(2).
3A	On goods to be notified by Central Government, duty will be payable on the basis of annual capacity of production. The production capacity will be determined by Assistant/Deputy Commissioner on the basis of rules. The provision will not apply to goods manufactured by EOU.
4 (1)	Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall – (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value; (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.
Explanation to section 4(1)	Price actually paid to assessee (less sales tax and other taxes) will be price-cum-duty and shall be deemed to include the duty payable on such goods.
4 (3) (b)	Persons shall be deemed to be 'related' if – (i) They are inter-connected undertakings (ii) They are relatives (iii) Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or (iv) They are so associated that they have interest, directly or indirectly, in the business of each other. <i>Explanation</i> (i) inter-connected undertakings shall have meaning assigned to it in section 2(g) of Monopolies and Restrictive Trade Practices Act, 1969 (MRTP) (ii) 'relative' shall have meaning assigned to it in section 2(41) of the Companies Act.