# EXCISE LAWS

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# EXCISE - BASIC CONCEPTS

## SECTION 2A
## REFERENCES OF CERTAIN EXPRESSIONS

→ In this Act, save as otherwise expressly provided and unless the context otherwise requires,

→ references to the expressions "duty", "duties", "duty of excise" and "duties of excise" shall be construed to include a reference to "Central Value Added Tax (CENVAT)".

## SECTION 3
## CHARGING SECTION

Section 3 of the Act is the charging section which states that:-

1. There shall be ***LEVIED AND COLLECTED*** in such manner as may be prescribed:-

(a) ***DUTY OF EXCISE*** to be called the Central Value Added Tax (CENVAT)

- on all excisable goods
- which are produced or manufactured in India
- excluding goods produced or manufactured in SEZ

**at the rates**, set forth in the ***First Schedule to the Central Excise Tariff Act, 1985 (CETA).***

(b) ***SPECIAL EXCISE DUTY (SED)***, ***[Presently SED has been Exempted on all goods]***

- in addition to the duty of excise specified in clause (a) above,
- on excisable goods
- specified in the ***Second Schedule to the Central Excise Tariff Act, 1985 (CETA).***
- which are produced or manufactured in India
- excluding goods produced or manufactured in SEZ

***at the rates***, set forth in the said ***Second Schedule of CETA.***

The above definition of charging section is very important since it stipulates the following ***CONDITIONS FOR LEVYING EXCISE DUTY***:-

1. There shall be ***GOODS.***
2. Such goods shall be ***EXCISABLE GOODS***
3. Such goods must be ***MANUFACTURED OR PRODUCED*** and
4. Such manufacture or produced must be ***IN INDIA***

Thus always remember a basic funda that though an article may be mentioned in Schedule to CETA but To levy duty on the said article that article must be capable of being bought and sold for a consideration. In other words, it shall be known to the market and thus should be marketable.

## SECTION 3 (1A)
## GOODS PRODUCED BY GOVERNMENT

The provisions of section 3(1) shall apply in respect of all excisable goods **other than salt**

- ➔ which are produced or manufactured in India
- ➔ by, or on behalf of Government,

***as they apply*** in respect of goods ***which are not produced or manufactured by Government.***

## EXCISABLE GOODS - SECTION 2 (d)

Excisable Goods

MEANS ➔ Goods specified in the First Schedule and the Second Schedule to the CETA on which duty of excise is levied and

Includes ➔ salt

## CASE LAWS

- ***GOODS EXCISABLE EVEN IF EXEMPT FROM DUTY* - WALLACE FLOUR MILLS CO. LTD (SC)**

  Excisable goods do not become non-excisable goods merely because they are exempt from duty by an exemption notification. They still remain Excisable Goods.

- ***NIL RATE OF DUTY IS ALSO A RATE OF DUTY* - NANDI PRINTER PVT. LTD (SC):-**

  If by virtue of an exemption notification the rate of duty was reduced to NIL, the goods specified in the Tariff Act would still be regarded as excisable goods on which NIL rate of duty was payable.

- ***GOODS NOT INCLUDED IN CETA OR WITH BLANK DUTY RATE ARE NON –EXCISABLE GOODS* - SOLARIS CHEMTECH (SC) 2007**

  - ✓ Some goods like Red Rose etc are not mentioned in CETA and thus are ***NON-EXCISABLE GOODS***,

  - ✓ ***Similarly*** some goods like Newspaper, specified in Chapter 49 etc are ***mentioned in CETA but with BLANK rate of duty***, they are also ***NON-EXCISABLE GOODS*** and thus duty cannot be levied on such goods.

Recently in case of ***SOLARIS CHEMTECH (SC) -2007*** it was noted that Electrical energy is specified in heading 27 16 00 00 in CETA with a BLANK rate of duty. Hence it is not Excisable Goods. Thus it was observed that electricity is not an excisable item.

## GOODS
## Explanation to Section 2(d)
***{Definition inserted vide Finance Act – 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.***

Thus, the goods capable of being sold would now be deemed to be marketable. The scope of the term has been enhanced by the insertion of explanation to Section 2 (d)

## *GOODS - As Per Judgment of Supreme Court*

***UOI VS DELHI CLOTHES AND GENERAL MILLS CO. LTD. (SC)***

Under the Central Excise Act (CEA) definition of "excisable goods" was given but not that of "goods.Thus, when a matter went to SC including in it a issue regarding definition of goods, SC rendered landmark judgment in the case of Delhi Cloth and General Mills (DCM), where the SC defined "goods" to mean an article which is MOVABLE and MARKETABLE.

Thus as per various SC decisions, to be goods, the article,material or substance must be:-

(a) ***Movable***: - Manufacture or production is associated with movables.

- **Municipal Corporation of Greater Mumbai (SC) -** Article capable of being transferred to another place of use as such (without being dismantling) shall be movable.

(b) ***Marketable***: - Goods must be known in the market, something which can be ordinarily brought to the market to be bought and sold. (Ordinarily word should be taken note of since in the newly inserted definition it doesn't find place at all which leads us to the conclusion that an article to be goods now should be capable of being sold and in result of which would be deemed to be marketable . The scope of the word GOODS has been increased beyond the normal meaning as stipulated by the SC in DCM and other cases by the insertion of explanation to section 2(d).

***WHAT HAPPENED IN THE CASE OF DCM***

- ***DCM were manufacturing 'Vanaspati'. Raw material was groundnut and til oil.***

***During manufacture***, 'refined oil' got produced at intermediate stage which was consumed within factory for manufacture of '*Vanaspati*'. Excise department demanded duty on this 'refined oil'. [During the relevant period when the SC passed decision, there was no excise duty on 'Vanaspati', but 'refined oil' was excisable.] This stand was negated by Supreme Court. It was observed that process of deodorisation was not carried out on the 'refined oil'. In the market, the product is not known as 'refined oil' unless it is deodorized. ***Applying this 'marketability test', it was held that the 'refined oil' which is not 'deodorized' is not 'goods'.*** [Deodorisation was carried out in the manufacturing process after hydrogenation only.]

## *A RECENT CASE ON MANUFACTURE*

***PRACHI INDUSTRIES (SC) - SWAGGING AMOUNTS TO MANUFACTURE***

- ✓ *Swaging is a general term which is applied to a number of Metal Forming Operations. Production Swaging Operations are commonly performed on rotary swaging machines.*
- ✓ *Swaging has proved to be an economical production method for forming shapes confined to a portion of the total length of a given pipe or tube, by tapering, pointing, reducing or sizing.*
- ✓ *Swaging process is also used for joining and fastening operations. It is also used in assembling two or more components by joining a bushing to a shaft, swaging of rings onto wire for use as electrical connectors, and for attaching fittings to tubes.*
- ✓ *MS plane pipe/tube can carry water to the overhead tank whereas the workpiece produced in the present case is useful as a decorative item or as an item which provides a strong grip in the case of auto-rickshaw. Therefore, a distinguishable identity is acquired of a lasting character imparted to a plane MS pipe/tube by use of dies and presses.*

***Manufacture - process: The definition of "manufacture" includes "any process incidental or ancillary to the completion of a manufactured product". Therefore, on analyzing Section 2(f), it becomes clear that the word "process" must be in relation to manufacture.***

- *By this definition, it is made clear that the process must be incidental to the completion of the manufactured product.*

- *In other words, incidental process must be an integral part of manufacture resulting in a finished product which has to be of a different physical shape, size and use. The said process must impart a change of lasting character to the* *original product or raw material.*

- *After the process, a new finished product must come into existence. It comes into existence only when it acquires a distinguishable identity.*

***For example,*** *in the case of blending of ore what emerges after the process of blending is an ore but of different type. Once the process amounts to manufacture, the fact that the goods belong to the same entry would not be relevant.*

**BHOR INDUSTRIES LTD (SC) - MERE MENTION IN TARIFF IS NOT ENOUGH, GOODS MUST BE KNOWN TO THE MARKET**

- *Marketability is an essential ingredient in order to be dutiable under the Schedule to Central Excise Tariff Act, 1985.**MERE ENTRY IN TARIFF IS NOT ENOUGH.***
- *Simply because a certain article falls within the schedule (of Central Excise Tariff), it would not be dutiable if the article is not 'goods' known to the market.* ***TEST OF MARKETABILITY Still TO BE FULFILLED.***

Thus, mere entry in the Schedule to CETA is not enough, for levying duty article or product in question must be goods known to the market. The test of marketability must be fulfilled.

***Burden of proof - the burden of proof as to marketability is on the Department***

It is the duty of the revenue to adduce evidence or proof that the articles in question were goods known in the market. In this case, No evidence or proof was produced and hence, goods were held as not chargeable to duty.

**MOTI LAMINATES PVT LTD (SC) - DUTIABILITY IN CASE OF INTERMEDIATE PRODUCT OR CAPTIVE CONSUMPTION**

- *If a product which is complete,* ***identifiable and which can be sold in the market*** *comes into existence during manufacturing process at intermediate stage, it will* ***amount to manufacture and will be chargeable to duty if mentioned in CETA*** *even if it is not sold but is used within the same factory (i.e. Captive Consumption).*

The above view has been supported by ***Explanation to Rule 5(2)***, Excisable goods **consumed as such** or ***utilized for manufacture of any other commodity*** shall be deemed to be removed from the place just before such consumption or utilization.

Thus, the Intermediate Goods/ goods captively consumed if capable of being sold and known to market as such then they will be chargeable to duty if mentioned in CETA.

**DCM (SC) - MARKETABLE IN THE CONDITION IN WHICH IT EMERGES**

The intermediate product, which came into existence, should have been a complete product known as such to the market. ***But if something more was to be done on the product to bring it***

***into a form known to the commercial community then it could not be treated as excisable goods.***

**INDIAN CABLE CO. LTD. (SC) - MARKETABILITY MEANS SALEABLE OR SUITABLE FOR SALE**

- ***"Marketability" is a decisive test for dutiability.***
- ***It only means "saleable", or "suitable for sale".***
- ***It need not be in fact, "marketed". The article should be capable of being sold to consumers in the market, as it is - without anything more.***

*Thus the Concept of Marketability is clear that, the product must be known in the market as different commercially identifiable goods and capable of being sold in market and. It need not be actually sold. CAPABLE word to be taken note of in this regard.*

## ***MANUFACTURE OR PRODUCED***
## ***SECTION 2(F)***

***"MANUFACTURE" includes ANY PROCESS,—***

(i) ***Incidental or ancillary to the completion of a manufactured product;[DCM applicable]***

***AND***

***(ii) Which is specified in relation to any goods in, the Section or Chapter notes of the First Schedule to the CETA as amounting to manufacture; or [DEEMED MANUFACTURE]***

***(iii) Which, in relation to any goods specified in the Third Schedule of CEA, 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 it or***
- ***adoption of any other treatment on the goods to render product marketable toconsumer.[DEEMED MANUFACTURE]***

Again we can understand the concept of manufacture under EXCISE Laws on the basis of Judgment of SC in the famous case of ***DELHI CLOTH AND GENERAL MILLS CO. LTD (DCM) - (SC), the apex court with regard to manufacture (under section 2(f)(i) only, other two clauses are deemed manufacture) held as follows:-***

- ***Manufacture implies a change, but every change is not manufacture and***
- ***yet every change of an article is the result of***
  - ✓ ***treatment,***
  - ✓ ***labour and***
  - ✓ ***manipulation.***

- ***But something more is necessary and***
- ***there must be transformation;***
- ***a new and different article must emerge having a distinctive name, character or use.***

**STERLING FOODS LTD (SC) - TRADE PARLANCE IS IMPORTANT**

The test to be applied is whether a commodity subject to processing retains its original character and identity or whether the processed commodity is regarded in the trade by those who deal in it, as distinct identity from original commodity. Nature and extent of processing may vary. With each process, the original commodity experiences change. But it is only when the change or series of change take commodity to a point where commercially it is recognised as a new and distinct commodity, then it can be said that new commodity has come into being.

***Therefore, the test is whether in the eyes of those dealing in the commodity or in commercial parlance, the processed commodity is regarded as distinct in character and identity from the original commodity.***

**RELEVANCE OF CHANGE OF TARIFF**

***LAMINATED PACKINGS (SC) - When input and output are covered by SAME TARIFF ENTRY:-***

- *The fact that input and output are covered under same tariff entry is not relevant for determining dutiability.*
- *Duty can be levied if both are differently identifiable goods in the market.*

***TECHNOWELD INDUSTRIES (SC) - When input and output are covered by DIFFERENT TARIFF ENTRY:-***

- *Merely because there are two separate entries, it does not mean the product becomes dutiable.*
- *The product becomes dutiable only if there is manufacture.*

**KHANDELWAL M & E WORKS LTD. (SC) - WASTE AND SCRAP ARE ALSO LIABLE TO DUTY**

- Waste and scrap are by-products of the process of manufacture and are inevitably incidental to the manufacturing process. Thus, Levying excise duty on waste and scrap is not ultra vires section 3 of CEA.
- ***Waste and scrap mentioned in CETA can be dutiable if MARKETABLE***.

Although no prudent businessman would ever like to manufacture waste, still it is true that waste is by product of manufacturing process

.

- It was also held that the intention of the manufacturer is not relevant in manufacturing.
- Goods like waste and scrap even if not covered by the word manufacture, can still be covered by the word “Produced”.

- ***The word "Produced" has been specifically used by the legislature to cover those items which emerge by themselves although no manufacturing process was carried out.***

**J G GLASS INDUSTRIES LTD – <u>WHETHER PRINTING ON GLASS BOTTLES AMOUNTS TO MANUFACTURE</u>**

***Printing on glass bottles -The question is, whether the product would serve any purpose but for the printing- If the product could serve a purpose even without printing and there is no change in the commercial product after the printing is carried out, the process cannot be said to be one of "manufacture".***

Thus, Printing on bottles will not amount to `manufacture' within the meaning of Section 2(f) of the CEA.

***<u>Manufacture vis-à-vis Process - A two-fold test emerges for deciding whether the process is that of "manufacture"-</u>***

***First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist*;**

***Secondly, whether the commodity already in existence will be of no commercial use without printing.***

In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such- By the process of printing names or logos on the bottles, the basic character of the commodity does not change- They continue to be bottles- It cannot be said that but for the process of printing, the bottles will serve no purposes or are of no commercial use.

## <u>WHAT IS DEEMED MANUFACTURE</u>

The provisions of deemed manufacture are covered u/s 2(f)(ii) and 2(f)(iii).

2(f)(ii) Which is specified in relation to any goods in, the Section or Chapter notes of the First Schedule to the CETA as amounting to manufacture;

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'

**Examples of deemed Manufacture u/s 2(f)(ii):-**

1. ***Labelling and Packing etc. of :-***

   - ✓ *natural or artificial mineral water*
   - ✓ *ice cream*
   - ✓ *Perfumes and beauty preparations*
   - ✓ *soaps etc.*

2. ***Recording on audio or video tapes and other media.***

(iii) Which, in relation to any goods specified in the Third Schedule of Central Excise Act (CEA), 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 it or*
- ✓ *adoption of any other treatment on the goods to render product marketable to consumer.*

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 those on which excise duty is payable u/s 4A on basis of MRP printed on the package.

As per the amended definition above as applicable w.e.f. 1.3.2008, the following should be noted:-

- ❖ Mere repacking will amount to manufacture.
- ❖ Mere labeling or re-labelling without repacking will also amount to manufacture.

**EMPIRE INDUSTRIES (SC) - VALIDITY OF DEEMED MANUFACTURE**

*The provisions of deemed manufacture are constitutionally valid .Even if they are not covered by Entry No. 84 still they get covered by Entry No. 97.*

## MANUFACTURER
## SECTION 2(F)

***The word manufacturer shall be understood accordingly and shall include***

- ✓ ***not only a person who employs hired labour***
- ✓ ***but also any person engaged in the production or manufacture on his own account.***

Thus there are two aspects discussed as follows:

### MANUFACTURE THROUGH HIRED LABOUR

- ➢ Master Servant Relationship, Supervision Required.

### ENGAGES IN MANUFACTURE ON HIS OWN ACCOUNT

- ➢ Note that 'Engages' to be read as 'engages others'. 'On his own account' to be read as 'under his direction and control'

**In TECHMA ENGINEERING ENTERPRISE (CEGAT)** it was held that - A person will be treated as 'Manufacturer' if he engages 'hired labour' who may be Employee or Contractor for manufacture of excisable goods. A hired labour is one who hires himself out to work for and under control of another for wages. However, if he undertakes manufacture on own account, he cannot be said to have hired himself out to another even if he manufactures for other.

**In MARUTI UDYOG LTD (CEGAT),** it was held that – If there is Master Servant Relationship between the raw material supplier and the job worker then the Raw Material supplier will be the Manufacturer.

**VOLTAS LTD (CEGAT)** - Sub-contractor is manufacturer if relation to the main contractor is on principal to principal basis, even when job work is done at site, if relationship between sub-contractor and main contractor is on principal to principal basis.

**M. M. KHAMBATWALA (SC) - RAW MATERIAL SUPPLIER IS NOT MANUFACTURER IF NO SUPERVISION**

In a famous case of M. M. Khambatwala (SC), ***the appellant was supplying raw material and the household ladies were manufacturing 'Dhoop, agarbatti' etc. in their house***. The final product was directly sold from premises of the ladies and was not brought to the factory of the appellant.There was ***NO SUPERVISION*** over their work by the appellant. Payment to the ladies was on basis of number of pieces manufactured. It was held that the manufacturer. Thus the ***LADIES CANNOT BE TERMED AS HIRED LABOUR, they are the real manufacturer of the goods and thus liable to pay duty.***

**CIBATUL LTD. (SC) - BRAND OWNER IS NOT THE MANUFACTURER :-** the apex court has held that if the goods are produced with Customer's brand name under his quality control, it does not mean that the Customer is the Manufacturer

Two points remaining – assembly and short shelf life

## TAXABLE EVENT FOR EXCISE DUTY

- ***Manufacture or Production of excisable goods is the Taxable Event for Central Excise.***
- ***Payment of duty is related to the date of removal of SUCH GOODS***

**Relevant portion of Rule 4 and 5 of Central Excise Rules, 2002 are as follows:**

- ✓ *Rule 4 of CER, 2002 states that the Excisable goods can be removed only after payment of duty. Manufacturer // Warehouse Keeper shall pay duty as per Rule 8.*

- ✓ *Rule 5 of CER, 2002 states that the rate of duty and tariff valuation shall be of the date on which goods are removed from the factory or warehouse.*

*Even though the taxable event is the manufacture or the production of an excisable article, the duty can be levied and collected at a later date for administrative convenience.*

*THUS,*

- ➔ ***EXEMPTED GOODS** will be chargeable to excise duty at the time of removal, if subsequent to manufacture but before removal, the exemption is withdrawn.*

- ➔ *Similarly, **NIL RATED GOODS** would also be chargeable to an increased rate of duty if subsequent to manufacture but before removal the rate is increased.*

- ➔ *However, **GOODS NOT MENTIONED IN CETA** will not be chargeable to duty even if made chargeable before removal.*

*This is correct since Exempted goods and NIL rated goods are also Excisable Goods and goods not mentioned in CETA are non – Excisable goods.*