

CENTRAL EXCISE

Central Excise is a levy (tax), levied on a commodity (manufactured within the country) by the Union Government by an Act of Parliament (usually in the Finance Bill, in the presentation of the Budget in the Parliament, generally on the last working day of February every year) by notifying under a Tariff.

It is an indirect tax paid by the manufacturer, who passes its incidence to the customers.

“Excise Duty” is levied the moment the process of manufacture is complete.

Objectives of Central Excise Act, 1944

1. To collect excise duty on manufactured goods more conveniently
2. To reduce collection costs
3. To control wasteful expenditures
4. To avoid tax evasion by appropriate control measures
5. To promote industrial growth in backward areas
6. To support local industries
7. To collect high revenues

Nature of Excise Duty

- Govt. has constitutional powers to levy Excise Duty

- Power to impose excise on alcoholic liquors, opium, and narcotics is granted to State Govt.
- Power to impose excise on other items is granted to Central Govt.

Basic Conditions for Excise Liability

- Following four conditions must be satisfied to levy Excise Duty on any article:
 - Duty is on goods (movable and marketable)
 - Goods must be excisable (included in CETA, 1985)
 - Goods must be manufactured or produced
 - Manufacture or production must be in India
- Levy means imposition and assessment but does not include collection of tax. Thus, duty is levied as soon as taxable event occurs, but collection can take place anytime - before, at the time or even after the taxable event.
- Taxable event is manufacture or production in India.
- Duty is payable by the manufacturer or producer of excisable goods. In case where goods are allowed to be stored in a warehouse without the payment of duty, the duty liability is of the person who stores the goods.
- Rate of duty is as applicable on date of removal i.e. clearance from factory
- Goods have to be classified and valued in the state in which the goods are removed from the factory. Any further processing done afterwards is not relevant.
- Duty liability arises even when goods are not sold or free replacements are given during warranty period.

- Duty is payable even when not collected from consumers.
- Duty is payable even if duty was paid on raw materials.
- Duty can be levied on Govt. undertakings.
- Duty is considered as a manufacturing expense and is included as an element of cost for inventory valuation, like other manufacturing expenses.

Types of Excise Duty

- Basic Excise Duty (BED) or CENVAT
- Special Excise Duty (SED)
- Excise Duty on clearances by EOU / SEZ in Duty Tariff Area
- National Calamity Contingent Duty (NCCD)
- Duties under other Acts
- Cess under other Acts

Definitions

GOODS

The word “goods” has not been defined under the Central Excise Act. Article 366(12) of the Constitution defined “goods” as “goods include all materials, commodities, and articles.” This definition is quite wide for the purpose of Central Excise Act.

As per judicial interpretation, for purpose of levy of Excise duty, an article must satisfy two requirements to be “goods” i.e.

- **Goods must be movable** - immovable property or property attached to earth is not “goods” and hence duty cannot be levied on it.
- **Goods must be marketable** - item must be such that it is capable of being bought or sold and must be known in the market. This is the test of “Marketability”

MANUFACTURE

The word “manufacture” is not defined completely in the Act. Definition in section 2(f) is inclusive. “Manufacture” includes any process -

- incidental or ancillary to the completion of manufactured product, or
- which is specified in relation to any goods in the Section or Chapter notes of the First Schedule of CETA, 1985 as amounting to manufacture, or
- which, in relation to goods specified in third schedule to the CEA, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer

Thus, manufacture means

- Manufacture specified in various Court decisions i.e. new and identifiable product having a distinctive name, character or use must emerge, or
- Deemed Manufacture

E.g. Manufacture of table from wood, conversion of pulp into base paper, conversion of sugarcane to sugar, etc.

The word “Manufacturer” shall be understood accordingly and shall include not only a person who employs hired labor in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

EXCISABLE GOODS

Section 2(d) of Central Excise Act defined 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.” Thus, unless the item is specified in the CETA as subject to duty, no duty is levied.

JOB WORK

Job work means processing or working upon raw materials or semi-finished goods supplied to job worker, so as to complete a part of whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.

- Job worker need not register with the Department of Central Excise.
- He need not maintain records as required by the Act.
- Job worker is not required to pay duty.
- However, if the process amounts to manufacture, he can pay duty and this duty paid by job worker will be available as a credit to the manufacturer who has sent material for job work.

Classification of Goods

There are thousands of varieties of manufactured goods and all goods cannot carry the same rate or amount of duty. It is also not possible to identify all products individually. It is therefore necessary to identify the numerous products through groups and sub-groups and then to decide the rate of duty. This is called “Classification” of products, which means determining of heading or sub-heading under which the particular product will be covered.

- The Central Excise Tariff Act, 1985 classifies all the goods under 91 chapters (actually 96 chapters out of which 5 are blank - 1, 6, 10, 12 and 77) and specific code is assigned to each item. There are over 1,000 tariff headings and 2,000 sub-headings.
- India adopted the International convention of Harmonized System of Nomenclature (HSN), called Harmonized Commodity Description and Coding System developed by World Customs Organization w.e.f. 28.2.1986
- CETA contains two schedules - the first schedule gives basic excise duties (i.e. CENVAT duty) leviable on various products, while the second schedule gives list of items on which special excise duty is payable. Second schedule contains only a few items.
- Central Excise Tariff is divided into 20 sections. A “section” is a grouping of a number of Chapters which codify a particular class of goods. *E.g. Section XI is “Textile and Textile Articles” and within that section, Chapter 50 is Silk, Chapter 51 is Wool, Chapter 52 is Cotton and so on*
- Each chapter is further divided into various headings depending on different types of goods belonging to the same class of products. *E.g. Chapter 50 relating to Silk is further divided into 5 headings - 50.01 relates to silkworm cocoons, 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. The headings are sometimes divided into further sub-headings. E.g. 5004.11 means silk yarn containing 85% or more by weight of silk or silk waste while 5004.19 means containing less than 85% by weight of silk or silk waste.*

- All excisable goods are classified using 4 digit system and 2 more digits are added for further sub-classification whenever required. In above example, first two digits i.e. 50 indicates the Chapter number, next 2 digits i.e. 01 or 02 relate to heading of goods in that Chapter and the last 2 digits indicate sub-heading.

Determination of Tariff Headings

Central Excise Tariff has four columns -

- Heading number
- Sub-heading number
- Description of goods
- Rate of Duty

Rules for Interpretation of Schedule are given in the Tariff itself. These are termed as “General Interpretative Rules” (GIR). These rules are briefly explained below -

- **Rule 1:** The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained.
- **Rule 2(a):** Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that the incomplete or unfinished goods have the essential character of the complete or finished goods.
- **Rule 2(b):** Any reference in a heading to a material or a substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given

material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.

- **Rule 3:** When by application of sub-rule (b) of rule 2 or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be affected as given in rule 3(a), 3(b) or 3(c).

- **Rule 3(a):** The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of materials or substances contained in mixed or composite goods or to part only of items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- **Rule 3(b):** Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to rule 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

- **Rule 3(c):** When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

- **Rule 4:** Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

- **Rule 5:** For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related Sub-heading notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purpose of this rule, the relative Chapter and Section Notes also apply, unless the context otherwise requires.

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 a % of Tariff Value fixed u/s 3(2)
- Duty based on Maximum Retail Price printed on carton after allowing deductions
- Compounded Levy Scheme
- Duty as a % on Assessable Value fixed u/s 4 (*ad valorem duty*)

Specific Duty

It is a duty payable on the basis of certain unit like weight, length, volume, thickness, etc. Calculation of duty payable is comparatively easy. In view of simplicity, many goods were covered under “specific duty”.

However, the disadvantage is that even if selling price of the product increases, the revenue earned by Govt. does not increase correspondingly. Hence, most goods are covered under “*Ad valorem*” duty.

Presently, specific rates have been announced for -

- Cigarettes (length basis)
- Matches (per 100 boxes / packs)
- Sugar (per quintal basis)
- Marble slabs and tiles (square meter basis)
- Color TV when MRP is not marked on package or when MRP is not the sole consideration (based on screen size in cm)

- Cement clinkers (per ton basis)
- Molasses resulting from extraction of sugar (per ton basis)

Tariff Value

In some cases, tariff value is fixed by the Govt. from time to time. This is a “*Notional Value*” for purpose of calculating the duty payable. The tariff value may be fixed on the basis of wholesale price or average price of various manufacturers as the Govt. may consider appropriate. Provision of fixing tariff value is used very rarely as frequent changes become necessary when prices rise.

Presently, tariff values are fixed for -

- Pan masala packed in retail packs of less than 10 gm per pack
- Tariff value of readymade garments falling under heading 6101.11 or 6201.00 has been prescribed as 60% of the retail sale price of such goods as specified on the package.

Compounded Levy Scheme

Central Govt. may, by notification, specify the goods in respect of which an assessee shall have the option to pay Excise duty on the basis of specified factors relevant to the production of such goods and at specified rates. This is termed as “Compounded Levy Scheme”.

It is devised for administrative convenience as a simplified scheme. It is an optional scheme i.e. the manufacturer can opt to pay duty as per normal rules and procedure also.

Under this scheme, the manufacturer has to pay prescribed duty for specified period on the basis of certain factors relevant to the production, like the size of equipment, etc. After making the lump-sum periodic payment, the manufacturer does not have to follow any procedure of excise regarding storage and clearances of goods.

Presently, this scheme is applicable to stainless steel pattas / pattis and aluminum circles. These articles are not eligible for SSI exemption. In case of cold rolled stainless steel pattas / pattis, the manufacturer has to pay Rs. 15,000 per cold rolling machine per month. In case of aluminum circles, duty is payable @ Rs. 7,500 per month if length of roller is 30 inch or less and @ Rs. 10,000 per month where length of roller is more than 30 inch.

Value based on Retail Sale Price

The provisions for valuation on MRP basis are as follows -

- The goods shall be covered under provisions of Standards of Weights and Measures Act or Rules.
- Central Govt. has to issue a notification in Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Govt. can permit reasonable abatement (deductions) from the “retail sale price.”
- While allowing such abatement, Central Govt. shall take into account excise duty, sales tax and other taxes payable on the goods
- 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, packaging, forwarding charges, etc. If under certain law, MRP is required to be without taxes and duties, that price can be the “retail sale price.”
- If more than one “retail sale price” is printed on the same packing, the maximum of such retail price will be considered. If different MRP are printed

on different packages for different areas, each such price will be “retail sale price” for purpose of valuation.

- Tampering, altering or removing MRP is an offense and goods are liable to confiscation. If price is altered, such increased price will be the “retail sale price” for the purpose of valuation.

Duty based on Value

Excise duty is payable on the basis of value called “*ad valorem duty*”. This “assessable value” is arrived at on the basis of Section 4 of the CEA. 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.

Transaction Value as Assessable Value

Following are the main requirements for 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 the 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.” 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 the 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.

Inclusions in Transaction Value

- Packing charges
- Design and Engineering charges
- Consultancy charges relating to manufacturing
- Compulsory after Sales Service / service in warranty period
- Pre-delivery inspection charges for vehicles
- Loading and handling charges within the factory

- Royalty charged in franchise agreement

Exclusions from Transaction Value

- Trade Discounts
- Outward handling, freight and transit insurance charges
- Notional Interest on security deposit / advances
- Installation and Erection expenses
- Interest on Receivables
- Bank charges for collection of sale proceeds

Valuation Rules

If “assessable value” cannot be determined u/s 4(1) (a), it shall be determined in such manner as may be prescribed by rules discussed below -

Value nearest to time of removal if goods are not sold - If goods are not sold at the time of removal, then value will be based on value of such goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments. Thus, this rule is applicable in case of removal of free samples or supply under warranty claims.

Goods sold at different place - sometimes, goods may be sold at place other than the place of removal e.g. in case of FOR delivery contract. In such cases, actual cost of transportation from place of removal up to place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.

Valuation when price is not the sole consideration - If price is not the sole consideration for sale, the “Assessable Value” will be the price charged by assessee, plus money value of additional consideration received.

The buyer may supply any of the following directly or indirectly, free or at reduced cost.

- Materials, components, parts and similar items
- Tools, dyes, moulds, drawings, blue prints, technical maps, charts and similar items used
- Material consumer, including packaging materials
- Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of the goods.

In such cases, value of such additional consideration will be added to the price charged by assessee to arrive at the “transaction value.”

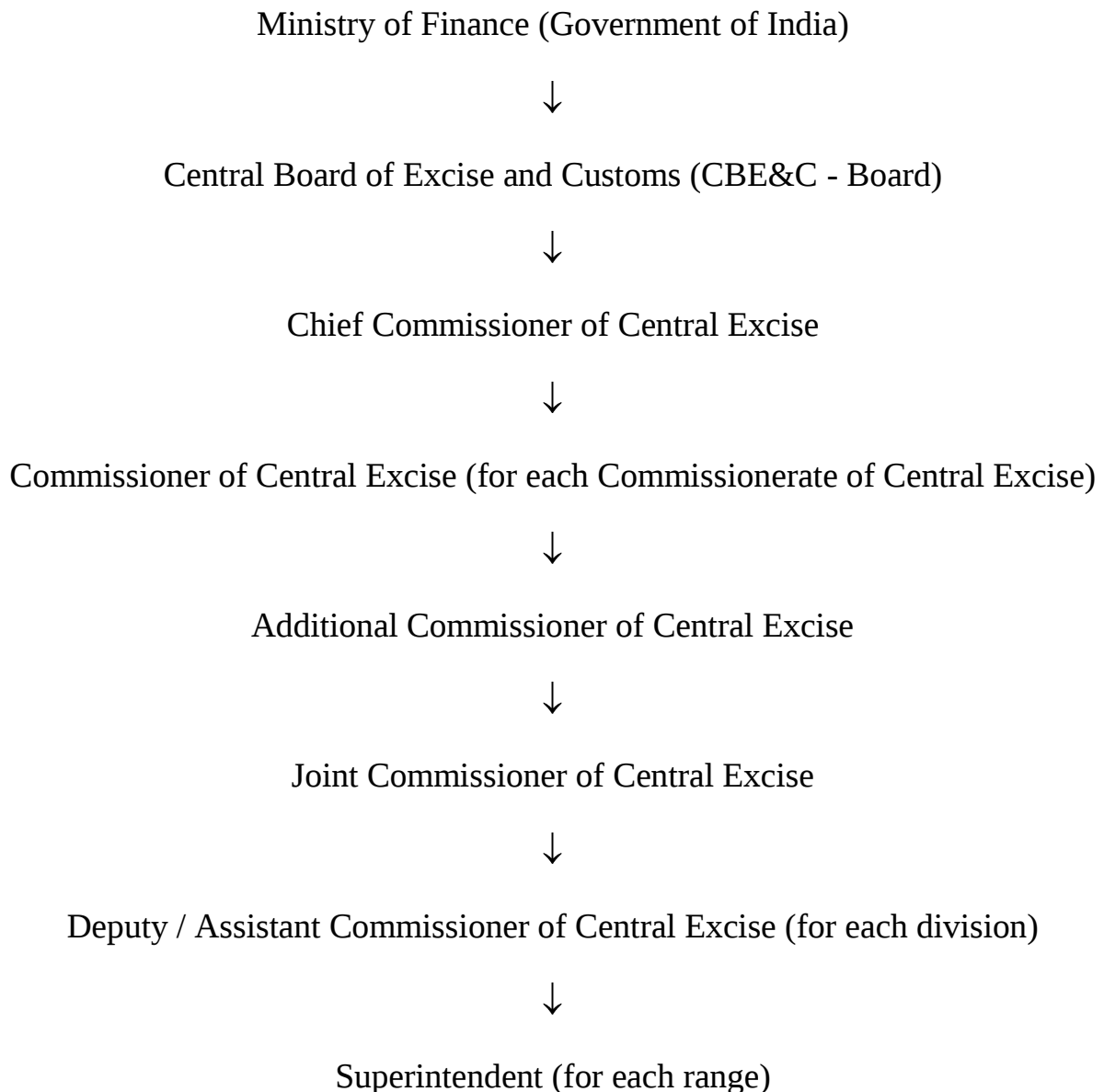
Sale at depot / consignment agent - when goods are sold through depot, there is no sale at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal of factory) shall be the basis of Assessable Value. The value should be “normal transaction value” of such goods sold from the depot at the time of removal or at the nearest time of removal from factory.

Valuation in case of Captive Consumption - Captive consumption means goods are not sold but consumed within the same factory or another factory of same manufacturer (i.e. inter-unit transfers). In case of captive consumption, valuation shall be done on the basis of cost of production plus 10%

- *Direct material cost + Direct labor cost + Direct expenses = Prime Cost*

- *Prime Cost + Production Overheads + Administration Overheads + R&D Cost (Appportioned) = Cost of Production*
- *Cost of Production + Selling Cost + Distribution Cost = Cost of Sales*
- *Cost of Sales + Profit = Selling Price*

Administrative Structure of Excise Department



(He is the lowest rank of Gazetted Officer)



Inspector (non-Gazetted officer)

Board - CBE&C: It has its headquarters in New Delhi. This Board consisting of six / seven members, headed by Chairman, has powers to administer the Excise Act. Chairman of the Board is empowered to distribute work among him and other members and specify cases which will be considered jointly by the Board.

Chief Commissioner of Central Excise: India is divided into 34 zones. Each “zone” is under the supervision of Chief Commissioner of Central Excise who has administrative powers to control the Commissioners and Commissioner (Appeals) within his zone. In the interiors i.e. non-coastal areas, the Chief Commissioner of Central Excise looks after customs work also.

Commissioner of Central Excise: Each “zone” covers various Commissionerates and Commissioner of Central Excise is the administrative-in-charge of the “Commissionerate”. Presently, there are 92 Commissioners and 71 Commissioner (Appeals). Commissioner has unlimited powers of adjudication.

Additional Commissioner of Central Excise: There may be one or more Additional Commissioner in a Commissionerate. Restrictions on powers of Additional Commissioner have been placed through administrative instructions. Additional Commissioner thus has restricted powers of adjudication.

Joint Commissioner of Central Excise: this post was created in May 1999, subsequent to implementation of report of fifth pay commission. (This post is equivalent to earlier Deputy Commissioner).

Deputy / Assistant Commissioner of Central Excise: Each Commissionerate of Central Excise is divided into divisions and each division is under the administrative control of Deputy / Assistant Commissioner of Central Excise. Assistant Commissioner (Senior Scale) is designated as Deputy Commissioner. However, both have same powers.

Superintendent and Inspector: The division under each Deputy / Assistant Commissioner of Central Excise is further divided into various ranges and each range is under control of Superintendent of Central Excise, who is of the rank of a Gazetted Officer. Inspectors work under Superintendent and have some powers. Inspector is not a Gazetted Officer.

Summary of Procedures:

- Every person who produces or manufactures excisable goods is required to get registered unless exempted. If there is any change in information supplied in form A-1, the same should be supplied in form A-1.
- Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock.
- Goods must be cleared under Invoice of assessee, duly authenticated by the owner or his authorized agent. In case of cigarettes, invoice should be countersigned by Excise officer.
- Duty is payable on a monthly basis through TR-6 challan / Cenvat credit by 5th of following month except in March. SSI units have to pay duty on monthly basis by 15th of following month.
- Cenvat records and return by 10th of following month.

- 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. EOU / STP units to file monthly return in form ER-2.
- Assessee paying duty of Rs. 1 Cr 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 FR-4.
- Every assessee is required to submit information relating to Principal Inputs every year before 30th April in form ER-5 to Superintendent of Central Excise. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days. Only assessee manufacturing goods under specified tariff headings are required to submit the return. Even in case of assessee manufacturing those products, only assessee paying duty of Rs. 1 Cr or more through PLA are required to submit the return.
- Every assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each Principal Input in form ER-6 to Superintendent of Central Excise by 10th of following month.
- Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sale or delivery of goods including inputs and capital goods.
- Inform change in boundary of premises, address, name of authorized person, change in name of partners, directors of Managing Director in form A-1.

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

- Export without payment of duty or under claim of rebate
- Receipt of goods for repairs / reconditioning
- Receipt of goods at concessional rate of duty for manufacture of excisable goods
- Payment of duty under Compounded Levy Scheme

- Provisional Assessment
- Warehousing of goods
- Appeals and settlement

Routine Procedures

Registration

Registration is compulsory for every manufacturer or producer of excisable goods and warehouse where goods are stored without payment of duty. Application of registration in form A-1 should be submitted in office of jurisdictional Assistant / Deputy Commissioner in duplicate. The requirements of registration are as follows

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- Separate registration is required for each premises, if person has more than one premises.
- Registration is not transferable. If business is transferred, fresh registration has to be obtained by the transferee.
- Registration certificate shall be granted within 7 days of receipt of duly completed application. Registration certificate will be issued in prescribed form RC.
- Change in constitution of partnership firm or Company shall be intimated within 30 days of change. In case of change, fresh registration is not required.
- If the manufacturer ceases to carry on operations for which he is registered, he should apply for de-registration.
- Registration can be revoked or suspended if the holder of registration or any person in his employment commits breach of any provisions of CEA or Rules or has been convicted u/s 161 of Indian Penal Code.

- If there is any change in information given in the form, it should be informed in the form itself.

Daily Stock Account of Stored Goods (DSA)

A daily stock has to be maintained by every assessee in a legible manner, indicating particulars regarding

- Description of goods manufactured or produced
- Opening balance
- Quantity manufactured or produced
- Inventory i.e. stock of goods
- Quantity removed
- Assessable value
- Amount of duty payable
- Particulars regarding to duty actually paid

The first page and last page of such account book shall be duly authenticated by the producer or manufacturer or his authorized agent. All such records shall be preserved for 5 years.

The quantity should be in the same unit quantity code in which rate is expressed.

Goods which are fully manufactured and entered in DSA are liable for duty. However, if goods entered in DSA are lost or destroyed in storage by natural causes or by unavoidable accident or are unfit for consumption or marketing, remission of duty can be given by Commissioner on application.

Goods can be confiscated and penalty can be imposed if DSA is not maintained up to date and there is overwriting and cutting in accounts.

Removal of Goods

Goods have to be cleared from factory under an Invoice. Invoice shall contain

- Registration Number
- Name of consignee
- Description and classification of goods
- Time and date of removal
- Mode of transport and vehicle registration number
- Rate of duty
- Quantity and Value of goods
- Duty payable on goods
- Other details like name and address of assessee and consignee

Invoice should be serially numbered. The serial number can be given either by printing or franking machines. Hand-written serial numbers shall not be accepted.

The serial number should start from 1st April and continue for the whole financial year.

Invoice shall be in triplicate and should be marked as follows

- Original for Buyer
- Duplicate for Transporter
- Triplicate for Assessee

Before making use of invoice book, serial numbers should be intimated to Range Superintendent.

There should be only one invoice book in use at a time. Separate sets of invoices can be maintained with different serial numbers with the permission of the Assistant / Deputy Commissioner.

General permission has been granted to use two different invoice books - one for removals for home consumption and other for removal of exports.

Each foil of Invoice shall be duly pre-authenticated by the assessee or any duly authorized person.

In case dispatch is cancelled, the assessee should keep the cancelled copies for record purposes as these are serially numbered and should be accounted for. Intimation of cancellation of invoice should be sent to Range Superintendent on the same day of possible.

If excisable goods are used within the factory (captive consumption), the date of removal will be the date on which the goods are issued for use within the factory. In case of goods consumed captivity in continuous process, one Invoice pay be made per day.

Payment of Duty

Duty is payable on a monthly basis by 5th of the following month except in March where duty is payable on 31st March.

Duty can be paid through Personal Ledger Account (PLA) and /or Cenvat Credit.

PLA

Any assessee who has obtained a 15 digit ECC number from Superintendent can operate a current account. The PLA is credited when duty is deposited in a bank by TR-6 challan and duty is required to be paid by making a debit entry in the PLA on a monthly basis. PLA contains the following details

- Serial number and date
- Details of credit like TR-6 challan number, date and amount - separately for each sub-head of excise duty like basic duty, special duty, additional duty, etc.
- Details of debit, and
- Balance

PLA has to be maintained in triplicate using indelible pencil and both-sided carbon. Each entry should be serially numbered and should start on a separate line - separate line for each debit and credit entry - from 1st April every financial year.

Mutilations or erasures of entries is not allowed. If any correction is necessary, the original entry should be neatly scored out and attested by the assessee.

TR-6 Challan

Four copies of the TR-6 challan are submitted to the authorized Bank marked Original, Duplicate, Triplicate and Quadruplet. Two copies are returned by Bank duly stamped and two are retained by Bank of which one is sent to Excise authorities directly for their accounting and cross verification of credit entries made by assessee. TR-6 challan requires details like

- Serial number
- Name, address and code number of assessee
- Excise Commissionerate, Division and Range
- PLA number, name of commodity
- Account head of duty (0037 for Customs duties, 0038 for Central Excise and 0044 for Service Tax)
- Amount deposited in cash / cheque / demand draft

CENVAT Credit

CENVAT Credit is a credit of duty paid on raw materials, capital goods and services used in relation to manufacture of excisable goods or in relation to services provided on which Service Tax is payable.

This credit is available on input goods, input services and capital goods.

Input goods eligible for Cenvat Credit

- All goods (except High Speed Diesel Oil [HSD], Light Diesel Oil [LDO] and petrol) used in, or in relation to, the manufacture of the final products. The input may be used directly or indirectly in or in relation to the manufacture of final product. The input need not be present in the final product.
- Input includes lubricating oils, greases, cutting oils and coolants, accessories of final products cleared along with the final product, goods used as paint, packing material or fuel, or for generation of electricity or steam used in or in

relation to manufacture of final product or for any purpose, within the factory of production.

- Input also includes goods used in manufacture of capital goods which are further used in the factory of manufacturer.

Input service eligible for Cenvat Credit

- Setting up, modernization, renovation or repairs of factory, premises of provider of output service or an office relating to such factory or premises
- Advertisement or sales promotion
- Market research
- Storage up to the place of removal
- Procurement of inputs
- Activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal.

Capital Goods eligible for Cenvat Credit

- Tools, hand tools, knives, etc. falling under chapter 82. Machinery covered under chapter 84. Electrical machinery under chapter 85. Measuring, checking and testing machines, etc. under chapter 90. Grinding wheels and the like goods falling under sub-heading no. 6801.10. Abrasive powder or grain on a base of textile material falling under 08.02.
- Pollution control equipment

- Components, spares and accessories of the goods specified above
- Moulds and dyes
- Refractories and refractory material
- Tubes, pipes and fittings thereof, used in the factory
- Storage tank

Similarities between Cenvat on Inputs and Capital Goods

- Credit of basic, special, CVD, NCD, AED(GSI), AED(TTW) and Education Cess is available.
- Should be used in factory (can be sent out to job worker for further processing, repair, reconditioning or any other purpose but should be brought back within 180 days)
- Credit can be utilized for payment of any duty / service tax on final product of final services or on inputs / capital goods if removed as such, etc.
- If inputs are removed as such, an amount is payable equal to Cenvat credit availed.
- Education Cess, AED(TTW) and NCCD can be utilized for payment of corresponding duty on final products / inputs only and not for payment for any other duty. Basic duty, Special duty and AED(GSI) are interchangeable.
- Cenvat credit is not allowed in respect of exempted final products, or final products on which duty paid is Nil.
- Invoice, Bill of Entry, Supplementary Invoice etc. are eligible documents for taking credit.
- Transfer of credit in case of merger, sale, lease or transfer of whole factory is permissible.

- Recovery can be made if credit wrongfully taken.
- Demand has to be raised within one year. If such wrong credit is availed or utilized on account of fraud, willful misstatement, collusion or suppression of facts or with intent to evade payment of duty, demand can be raised within five years.
- If inputs / capital goods are manufactured in northeast region of India or industry in Kutch district of Gujarat or in State of Jammu and Kashmir, Cenvat credit is available even if the manufacturer gets refund of duties paid by him.

Distinction between Cenvat on Inputs and Capital Goods

All inputs (except HSD, LDO and petrol) are eligible	Only capital goods are eligible
Inputs are required to be used “in or in relation to manufacture”	Capital goods should be “used in factory”. Purpose for which it is used is irrelevant
Credit is available as soon as input is received in factory	Up to 50% credit is available in current year and balance in subsequent financial year/s
There is no such provision in respect of Cenvat on inputs	Assessee cannot claim depreciation on excise duty portion of value of capital goods
Cenvat credit on inputs can be refunded if final product is exported and assessee does not claim duty drawback	Cenvat on capital goods cannot be refunded if final product is exported, but credit can be used for clearance of other final products

If assessee opts out of Cenvat, he has to pay / reverse credit of duty availed on inputs lying in stock on the day he opts out of Cenvat	This provision does not apply to Cenvat on capital goods
Inputs can be sent directly to place of job worker from supplier-manufacturer	Capital goods have to be brought in factory and then sent to job worker

Concession for SSI units

Since Excise is a duty on manufacture, it is payable even by a small unit manufacturing goods. However, it is Govt.'s policy to encourage the growth of small units. Moreover, it is administratively inconvenient and costly to collect revenue from numerous small units. A SSI is a unit having annual turnover less than Rs. 3 Cr.

All industries irrespective of their investment or number of employees are eligible for concession. In fact, even a large industry will be eligible for concession if its annual turnover is less than Rs. 3 Cr. The SSI unit need not register with any authority.

A unit is entitled for exemption only if its turnover in previous year was less than Rs. 3 Cr. Units who turnover crosses Rs. 3 Cr in 2005-2006 can still claim exemption but will have to pay regular duty from 1st April 2006.

SSI units have been given three types of exemptions -

- SSI Unit can avail full exemption up to Rs. 100 lakhs and pay normal duty thereafter. Such units can avail Cenvat credit on inputs only after reaching turnover of Rs. 100 lakhs in the financial year.
- SSI units intending to avail Cenvat credit on inputs on all its turnover have to pay 60% duty on first 100 lakhs and 100% duty for subsequent clearances.
- SSI Unit can also pay full 100% and avail Cenvat credit.

Turnover to be included

- Turnover of goods exempted under other notification
- Goods manufactured in rural areas with other's brand name
- Captive consumption not exempt if used in manufacture of final product which is exempt under any other notification
- Export to Nepal and Bhutan
- Goods cleared with payment of duty
- Goods cleared under Compounded Levy Scheme

Turnover to be excluded

- Export other than to Nepal / Bhutan
- Export under bond through merchant exporter
- Deemed exports
- Turnover of non-excisable goods
- Goods manufactured with other's brand name cleared on payment of duty
- Intermediate products when final products are eligible for SSI exemption
- Intermediate product when final product exempt under any other notification
- Job work amounting to manufacture done under specified notifications
- Job work or any process which does not amount to manufacture
- Strips of plastic used within the factory
- Inputs brought by assessee and cleared
- Turnover as trader along with own manufactured goods

Letter of Undertaking

In relation to Central Excise, following are the concessions / incentives for exports:

- Exemption from duty on final product (or refund or duty paid)
- Exemption / refund of excise duty paid on inputs.

For exports under bond, the manufacturer exporter can furnish a letter of undertaking (LUT) in form UT-1. The manufacturer exporter need not execute a bond.

The LUT once given is valid for 12 calendar months.

It is not necessary to submit LUT for each consignment.

Though manufacturer exporter is not executing bond, submission of proof of export is required. The LUT will not be discharged unless proof of export is submitted or duty is paid upon deficiency in interest.

Show Cause Notice (SCN)

Excise Officer can ask manufacturer to pay the difference of duty by issuing a show-cause notice. After considering the representation from the person concerned, the Central Excise Officer can determine the amount of duty payable and then the person chargeable to duty has to pay the amount.

- SCN is necessary but not issuing it is only irregularity
- Simple letter asking to pay duty is not a notice
- SCN is required even if assessee has admitted liability and agreed to pay duty

- No notice is assessee voluntarily pays the amount
- SCN has to be served on the person chargeable of duty within one year from “relevant date” which will be one of the following:
 - Return is to be filed within 5 days of close of month. The date of filing will be “relevant date”.
 - If return is not filed, then the date on which return should have been filed i.e. 10th of a month will be “relevant date”.
 - If no return is required to be filed, then date of payment of duty is “relevant date”.
 - If the demand is on account of erroneous refund, the relevant date is the date on which refund has been made.
- However, this period will extend up to 5 years if the non-payment of duty or short payment is by reason of fraud, collusion, willful misstatement or suppression of facts, or contravention of any provision of Excise Act or rules made with an intention to evade payment of duty.

Requirements of Show-cause Notice

- SCN to Manufacturer only
- Essential details should be given
- Penalty or Confiscation must be mentioned if it is proposed
- Allegations must be mentioned
- Copies of documents to be given

Adjudication

Adjudicate means to hear or try and decide judicially and adjudication means giving a decision.

Excise authorities are empowered to determine classification, valuation, refund claims and the tax / duty payable. They are also empowered to grant various permissions under rules and impose fines, penalties, etc. this is called “departmental adjudication”.

Uncontrolled authority may cause great damage to an assessee and hence opportunity of appeal against the order has been provided.

Departmental authorities have original adjudication powers as follows:

- *Superintendent* - remission of duty for loss of goods up to Rs. 1,000/-
- *Deputy / Assistant Commissioner* - remission of duty for loss of goods up to Rs. 2,500/- ; issuance of registration certificates; Cenvat credit / duty up to Rs. 5 lakhs.
- *Joint Commissioner* - Cenvat credit / duty above Rs. 5 lakhs and up to Rs. 20 lakhs; remission of duty for loss of goods up to Rs. 5,000/-; matters related to export under bond or under claim of rebate; loss of goods during transit to warehouse without upper monetary limit
- *Additional Commissioner* - Cenvat credit / duty above Rs. 20 lakhs and up to Rs. 50 lakhs; remission of duty for loss of goods up to Rs. 5,000/-; matters related to export under bond or under claim of rebate; loss of goods during transit to warehouse without upper monetary limit
- *Commissioner* - Cenvat credit / duty without upper limit; remission of duty for loss of goods without any limit.

When the order is given by officer below the level of Commissioner, appeal against such order will lie with Commissioner (Appeals) and appeal against order given by Commissioner will lie with CESTAT (Central Excise Custom and Service Tax Appellate Tribunal)

Appeal can be made to High Court against order of Tribunal if the case involves substantial question of law, except in cases relating to rate of duty and valuation.

Interest

- If duty is not paid when it ought to have been paid, interest is payable at the rates specified by Central Govt. by notification in official gazette. Such rate cannot be less than 10% and not more than 36%.
- The interest is payable from the 1st day of the month following the month in which the duty ought to have been paid.
- The actual rate of interest is 13% w.e.f 12-9-2003
- If assessee pays duty on order or instruction of CBE&C voluntarily within 45 days of such order, he is exempted from payment of interest. However, if he pays only a part of the amount but pays the amount reserving the right to appeal, the interest is payable from the month following the month in which the duty ought to have been paid.
- Relaxation of payment of interest is applicable only when the CBE&C issues a general order. This relaxation does not apply if assessee pays duty on receipt of SCN or pays duty on his own.

Penalty

There are 3 types of penalties in Central Excise:

- Civil Liability
- Criminal Liability
- General Penalty

Civil Liability - it will arise when the provisions of the act are violated. In this case, the penalty involves confiscation of goods and monetary penalty. It is imposed by Excise Authority as per the provisions of the Central Excise Rules.

Criminal Liability - it involves imposition of fine and imprisonment. It is granted by Criminal Court or prosecution as per the provisions of the Act.

General Penalty - if goods are removed in contravention of Act, rules or notification **or** goods are not accounted for **or** goods are manufactured, produced or stored without applying for registration **or** excise rules and notifications have been contravened with an intention to evade the duty, general penalty is applicable.

It includes confiscation of goods and penalty up to duty payable or Rs. 10,000 whichever is higher.

Refund

An assessee can claim refund of duty if due to him. Normally refund can be filed for various reasons like -

- Excess payment of duty due to mistake

- Forced by department to pay higher duty
- Finalization of provisional assessment
- Export under claim of rebate
- Duty paid under protect / pre-deposit of duty for appeal (appeal decided in favor of assessee)
- Refund of Cenvat credit if final product is exported
- Unutilized balance in PLA

If the manufacturer has charged excise duty to his buyer, it means that he has passed on the burden to the buyer and has already recovered duty from his customer. In such cases, refund of duty will lead to “unjust enrichment” as the manufacturer will get double benefit - first from customer and then from Govt. However, in majority of cases, it is not practicable to identify individual customers to pay refund to him. At the same time, the duty illegally collected and cannot be retained by Govt. In such cases, the refund is transferred to a *Consumer Welfare Fund* for protection and benefit of consumers.

Confiscation

Confiscation means the goods become property of Govt. and Govt. can deal with it as it wants.

Following can be confiscated -

- Contravening goods
- Conveyance for transport of goods / smuggled goods
- Packages in which contravening excisable goods are packed
- Goods used for concealing contravening excisable goods

- Contravening goods with form changed - even if mixed without other goods and cannot be separated
- Sale proceeds from sale of contravening excisable goods
- *No confiscation of container obtained on hire*

Seizure

Seizure means goods are taken into the custody by the department. The property of goods remains with the owner.

If goods are liable for confiscation, the same can be seized by Excise officers

If seized goods are to be confiscated, SCN must be given within 6 months of seizure of goods.

Panchnama must be made for seizure of goods and seized goods must either be kept in police station or in the custody of the Excise Department.

Payment of Duty under Protest

Sometimes it happens that the classification of goods, Assessable value determined by excise authorities in adjudication proceedings, etc. are not agreeable or acceptable to the assessee. In such cases, the assessee can file an appeal and in the meanwhile can pay duty under protest. The following procedure needs to be followed:

- Write a letter to Assistant / Deputy Commissioner stating that he desired to pay duty under protest and give grounds for paying duty under protest.
- Obtain dated acknowledgement which will be proof that assessee has paid duty under protest from that date .

- After submission of the aforesaid letter, he can pay duty under protest only till his appeal or revision is decided.
- An endorsement “duty paid under protest” should appear on all excise invoices or monthly / quarterly return. If lump sum is paid in respect of past demand, fact of duty payment under protest should be mentioned in PLA, Cenvat Credit Account and Daily Stock Account.
- As per ER-1 form of monthly/ quarterly return, number of invoices on which duty is paid under protest should be indicated in the return.

Excise Audit

Most of factories are under “Self Removal Procedure” and there is no physical control over production and clearance of goods. Assessment is mainly based on returns submitted by assessee. Department has evolved various checks and counter-checks to ensure that excise duty is not evaded.

For Central Excise purpose, Audit means scrutiny of the records of the assesses and the verification of actual process or receipt, storage, production and clearance of goods with a view to check whether the assessee is paying the Central Excise duty correctly and is following Central Excise procedures.

There are 3 types of audits carried out -

- Departmental Audit - an Audit section is attached to each Commissionerate. Some audit parties are functioning under Commissionerate headquarters while some may function at important industrial centers where Joint Commissioner or Additional Commissioner has been posted. Audit of assessee’s factory is carried out by visit by “audit party”. The Audit Party usually consists of 2 / 3 inspectors and a Deputy Office Superintendent, headed by Excise Superintendent. AC / DC and senior officers are associated with the audit of large units. The audit

parties visit the factories periodically. Audit done by these audit parties is called “departmental audit”.

- Central Excise Revenue Audit (CERA) - Comptroller and Auditor General of India also carries out audits of all assessees. These are called CERA. These audit parties audit the accounts of excise as well as customs assessees. Constitution specifies that the report of C&AG shall be submitted to the President of India, who causes these to be laid before each House of Parliament. Frequency of CERA Audits is as per the importance they attach and availability of time to CERA audit parties. Assessee is required to produce to audit parties - records, cost audit report and income tax audit report.

- Special Audit (Valuation Audit and Cenvat Credit Audit) - Valuation audit can be ordered at any stage of enquiry, investigation or any proceedings before Assistant / Deputy Commissioner regarding assessable value of goods manufactured but assessee. Audit of Cenvat credit availed or utilized by a manufacturer can be ordered by if Commissioner has “reason to believe” that Cenvat credit availed is not normal or the credit has been availed on account of fraud, willful misstatement, suppression of facts or collusion.