CHAPTER-1 **BASIC CONCEPTS**

TAX STRUCTURE IN INDIA

DIRECT TAXES

Income Tax
Wealth Tax

INDIRECT TAXES

Central Excise
Customs Duty
Service Tax
VAT/Octroi
Entry Tax

Direct tax
Where the impact of tax and the incidence of tax are on one and the same person; The term impact means "he who has to pay" and the term incidence means "he who suffers the payment".

Indirect tax
It is a tax where the impact is on one person (seller of goods) and the incidence is on another person (Consumer). It is a tax on goods & services.

DIRECT TAX VS. INDIRECT TAX

BASIS	DIRECT TAX	INDIRECT TAX
1. Levy	Imposed on other than goods	Imposed on goods and services
2. Impact & incidence	Impact & incidence is on a same person.	Impact is on (seller) but incidence is on (consumers)
3. Credit	Not allowed	Allowed
4. Supervision	CBDT	CBEC
5. Shifting of burden	No shifting of tax burden	Tax burden is shifted to consumer

Points to remember:
1. Income tax, Wealth tax, Central excise, Service tax, Customs duty are governed by C.G.;
2. VAT is governed by S.G.;

Background of Central Excise

Constitution of India

Article 246 (1) → gives power to CG to make laws in respect of matters given in **<u>List-I</u>** in **<u>Seventh Schedule</u>** to the constitution. **(UNION LIST)**

Article 246(3) → gives power to SG to make law in respect of matters given in **<u>List-II</u>** in **<u>Seventh Schedule</u>** to the constitution. **(STATE LIST)**

<u>UNION LIST- ENTRY No. 84</u>
☛ empowers **<u>CG</u>** to levy excise duty.
"Duties of excise on **<u>tobacco and other goods</u> MANUFACTURED OR PRODUCED IN INDIA**
<u>Except:-</u>
- ✓ Alcoholic liquors for human consumption, opium, narcotics **BUT INCLUDING**

- ✓ Medical and toilet preparation containing alcohol, opium or narcotics."

Analysis of Entry No. 84:

1. Excise duty- a duty on goods produced or manufactured in India.
2. In case of alcoholic liquor for human consumption, opium etc.:- SG empowered to levy ED.
3. However, in case of medicines and toilet preparations containing alcohol or opium etc.- CG to levy ED.

STRUCTURE OF CENTRAL EXCISE LAW

The study of Central Excise involves understanding and analysis of:

1. **Central Excise Act, 1944 (CEA)**
   - ➢ Basic Act for providing for charging of duty, valuation, powers of officers, penal provisions etc.

2. **Central Excise Tariff Act, 1985 (CETA)**
   - ➢ Classifies all the goods under 96 chapters where specific code is assigned to each item;
   - ➢ This classification forms basis for prescribing duty to be charged on that particular product;

3. **Central Excise Rules**
   Section 37(1) of CEA:-
   - ✓ Empowers CG to frame rules to carry into effect the CEA.
   - ✓ Rules made by issue of notification and are placed in parliament when parliament is in session.

   Important Rules under Central Excise:-
   - ✓ Central Excise Rules, 2002
   - ✓ CENVAT Credit Rules, 2004
   - ✓ Central Excise (Advance Ruling) Rules, 2002
   - ✓ Central Excise (Appeals) Rules, 2001
   - ✓ Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000
   - ✓ C. Excise (Removal of goods at Concessional Rate of duty for manufacture of excisable goods) Rules, 2001.

4. **Circulars (issued by CBEC), trade notices (issued by Commissioner of CE) and notifications (issued by CG);**
   Trade notices are issued for the general benefit of trade and circulated among field officers. These are also supplied to trade associations.

5. **Decisions laid out by the judiciary. Judiciary here includes:-**
   - ❖ Commissioner (appeals)
   - ❖ CESTAT (Appellate tribunal)
   - ❖ High court
   - ❖ Supreme court

Note: The circulars issued by the CBEC can not be given primacy over the decisions of the court.

RELEVANT SECTION SUMMARY

Section	Particulars
1	Short Title, Extent and Commencement of the Act
2	Definitions:- (c):- Curing (d):- Excisable Goods (e):- Factory (f) :- Manufacture (including deemed manufacture) (k):- Wholesale dealer
3(1)	Charging Section- Basic Excise Duty/ Special excise duty to be levied on all excisable goods manufactured in India. 3(1) (a):- Basic Excise Duty- rates specified in First Schedule to CETA 3(1) (b) :- Special Excise Duty- rates specified in Second Schedule to CETA
Proviso to Sec. 3	Special provision for goods produced in 100% EOU & sold in DTA. ED = Aggregate of all customs duties for which valuation will be made as per Customs Act, 50% duty exempt.
3(1A)	Provisions of the Act applicable on government as well as applicable on non government
Rule 4 (CE Rules)	Goods will be allowed to be removed from the factory only after the duty is paid.
Rule 5 (CE Rules)	Date of determination of duty and tariff valuation. **Explanation to Rule 5:-** Date of removal for goods captively consumed.

Extent and Commencement: - **(Section 1)**

- This Act:- called C.E. Act, 1944. Extends to the **whole of India;**
- Further extended upto designated areas in the Continental Shelf and Exclusive Economic Zone (E.E.Z.) i.e. up to 200 nautical miles in the sea.

India

- **Land**
  - **Inside India** → **Excise Duty (Levied)**
    - J&K
    - Export Oriented Undertakings
    - Electronic Hard-Ware Trade Park
    - Software Trade Park
    - Domestic tariff Area
  - **Inside India** → **Excise Duty (Not levied)**
    - S.E.Z.
- **Sea**
  - **Inside India** → **Excise Duty (Levied)**
    - Designated areas in continental shelf & E.E.Z. i.e. up to 200 nautical miles
  - **Outside India** → **Excise Duty (Not levied)**
    - High Seas i.e. beyond 200 nautical miles

CHARGING SECTION – SECTION-3

Section 3(1):

"There shall be **levied** and **collected** in such manner as may be prescribed---

(a) a duty of excise to be called **Central Value Added Tax (CENVAT)**

- on all **EXCISABLE GOODS produced or manufactured in India,**
- **EXCLUDING** those produced or manufactured in **S.E.Z.**
- At the rates given in the **FIRST SCHEDULE** to the C.E. Tariff Act, 1985.
- General BED rate is 16% but the same by virtue of exemption notification is 10% w.e.f 27-2-2010 + EC + SHEC i.e. 10.30%.

Note: E.D. u/s 3(1) (a) is known as **"Basic Excise Duty (BED)".** If a person is able to take input credit of the BED, it is referred to as CENVAT.

(b) a **Special Duty** of Excise, **in addition to** the duty of excise specified in (a) above

- On excisable goods specified in **SECOND SCHEDULE** to the C.E. Tariff Act
- Which are produced or manufactured in India
- **EXCLUDING** goods produced or manufactured in **S.E.Z.**

- At the rates given in the Second Schedule.

Note: This is called as **"Special Excise Duty (SED)".** Presently, SED has been exempted on all goods. Goods mentioned in Second Schedule suffer both B.E.D. and S.E.D.

Analysis of Section 3(1) (a)/ 3(1) (b)

1. Meaning of 'Levy':
Includes both imposition of taxes as well as assessment but does not include collection. **(ACCEx. Vs. National Tobacco Co. India Ltd.) (S.C.)**
2. Thus, Basic conditions for levy of E.D. are-
1. The duty is on the **goods**. 2. The goods must be **excisable** (included in CETA)
3. Goods must be **produced or manufactured** 4. Such manufacture/ production must be **in India**.

3. There is no levy of E.D. on the goods manufactured or manufactured in Special Economic Zones.
- ✓ As per S.E.Z. Act, 2005, S.E.Z.s are treated as a territory 'Outside India'.
- ✓ So, Any goods removed from S.E.Z. to DTA are liable to import duties of customs;
- ✓ Any goods taken from DTA to S.E.Z. are treated as 'Exports'.

The goods manufactured in SEZ may also be called "Excluded Excisable Goods".

E.D. on goods manufactured by Govt. [Section 3 (1A)]
The provisions of **SECTION 3(1)** shall apply-
- ❖ To all the goods produced or manufactured by **Government**
- ❖ As they apply in respect of any goods produced or manufactured by non-government.

Analysis of Section 3(1A)
Goods manufactured by or on behalf of CG/ SG are also liable to excise duty.

Note: Excise duty should be considered as a manufacturing expense and should be considered as an element of cost for inventory valuation.

Question From examination:
1. What are the basic conditions for levy of duty u/s 3 of the Central Excise Act, 1944? **(May 2003)**
2. Discuss briefly whether excise duty is attractable on excisable goods manufactured in the following cases:
(i) in the State of J&K (ii) by or on behalf of government **(Nov. 2008 2 Marks)**

PROVISO TO SECTION 3:
In case of any excisable goods which are-
1. produced/ **manufactured by a 100% EOU AND**
2. **Brought to any other place in India**,

the **duties of excise** shall be levied and collected thereon shall be an **amount equal to AGGREGATE of duties of customs**, which would be leviable under the Customs Act, 1962, **on like goods** produced or manufactured outside India **if imported into India**.

ED = Aggregate of customs duties (as per Customs Act) however, 50% BCD exempt.

The value of such goods will be determined as per the provisions of the Customs Act. Where, in respect of any such like goods, any duty of customs is leviable at different rates, then, such duty shall be deemed to be leviable at the highest of those rates.

Analysis of Proviso to Section 3:

- ✓ Excisable goods manufactured in 100% EOU attract Excise duty.
- ✓ But if these goods are removed to DTA, Excise duty is payable as per Customs Tariff.

DTA	To	**DTA**	→	**Pay excise duty as per Central Excise Tariff**
EOU	To	**DTA**	→	**Pay Excise Duty as per Customs Tariff (BCD, CVD & Special CVD only)** **Note:** **BCD is exempt 50%**
SEZ	To	**DTA**	→	**No Excise Duty. Pay Customs Duty (all duties)**

Author's Note: For understanding above proviso, we need understanding of Section 3 of Customs Tariff Act. We will discuss practical aspect therefore, at a later stage.

Question From examination:
"A 100% EOU engaged in the manufacture of excisable goods should pay excise duty in a special manner and general provisions do not apply to them." Test the veracity or otherwise of the aforesaid assertion. **(Nov. 98, Nov. 2007)**

MEANING OF GOODS

From Section 3(1) (a)/ (b) of C.E. Act, 1944, Excise duty can be levied on **GOODS** which are manufactured in India. But the word **"Goods"** has not been defined under the Act.

- **As per Constitution of India: -** "Goods" means all articles, materials and commodities.
- **As per Judicial interpretations-**

  For the purpose of levy of Excise duty, an article must satisfy 2 requirements:-

  ❖ It must be **MOVABLE** and
  ❖ It must be **MARKETABLE.**

(UOI Vs. Delhi Cloth & General Mills Co. Ltd.)

✱ JUDICIAL PRONOUNCEMENTS ON MOVABILITY

Dy. CCEx. Vs. Tungabhadra Steel Products Ltd. (2004)
Electric Overhead Travelling Cranes fabricated by assessee for their own use at work spot are not excisable, since they are immovable property.

Mallur Siddeshwara Spinning Mills (P) Ltd. Vs. CCEx. (2004)
Generating sets bolted on frame, which are capable of being unbolted and shifted from that place, are not immovable property.

Virdhi Brothers (2007 SC)
Refrigeration plant, cold storage plant, central Air conditioning plant fabricated at the site out of duty paid bought out goods is basically systems comprising various components. System as a whole is **not movable** and hence not goods.

Sirpur Paper Mills Ltd.(1998 SC)
The attachment of the machine to the earth is for operational efficiency only. Plant is fastened to earth superficially, and not attached like tree or building. So, it is easily removable. Hence, it is goods.

Triveni Engineering (2000)
The assessee combined "steam turbine" and "alternator" by fixing them on a platform. Thus, a new product "Turbo Alternator" has been created. Thus, there is a manufacture but is it goods. The Turbo-Alternator can not be pulled out as such from the base as in case of Sirpur case. The turbine and alternator are to be separated first and then pulled out from base. Hence not movable as such and so not goods;

✱ JUDICIAL PRONOUNCEMENTS ON MARKETABILITY:

LANDMARK CASE: DELHI CLOTH MILLS

The assessee was manufacturing "Vanaspati" on which there was no excise duty. Raw material was ground nut oil and Til oil. During manufacture, "Refined oil" got produced at intermediate stage which was consumed within factory to manufacture "Vanaspati". Excise dept. demanded duty on "Refined oil".
It was observed that refined oil at that stage was not deodorized. And in the market deodorized refined oil can not be sold even if it is mentioned in tariff. So, No duty is leviable in that stage.

1. Goods must be marketable in the condition in which department wants to levy duty of excise. <u>Mere mention in tariff is not enough</u>

Bhor Industries Vs. CCEx. (1989 SC)
☛ Marketability essential if an article is to be liable to excise;
☛ Merely because an article is specified in Tariff, it will not be liable to excise unless marketable in condition dept. wants to levy duty.
☛ To attract duty, the goods should find place in the Tariff as well as in the market.
☛ The burden to prove that an article is marketable is on the department.

2. Whether there should be large number of buyers/sellers

AP State Elec. Board (1994 SC)
☛ Marketability does not depend upon number of buyers/ sellers in the market;
☛ Even a single buyer is available in the market for a particular product, it can be said that there is a market for such product and hence marketable.

3. Actual sale is not necessary to constitute marketability:
☛ Marketability is the capability of the goods of being bought and sold in the market.
☛ Actual sale is not necessary to constitute marketability.
☛ So, Captive consumption of goods also results in duty liability if such consumed goods are marketable.
Refer Case: Indian Cable Co. (SC)

4. Mere selling does not mean marketability. The Article must be <u>commercially known</u> product and must be <u>worthwhile to trade in</u>:

CCEx. Vs. TISCO (2004 SC)
Held that the dross and skimming are merely the refuse or rubbish produced during the process of manufacture of iron and steel; Even if dross and skimming are sold, it can not be inferred that they are marketable commodity as even rubbish can be sold. For being marketable, the goods must be known to commerce and which may be worthwhile to trade in.

Ahmedabad Electricity Co. Ltd. (2003 SC)
Cinder is unburnt or partly burnt coal incapable of further use as fuel. Not a marketable commodity even though sold for a small price. (Cost of removal is more than price it fetches). Hence not goods;

Recent Case law: CIPLA LIMITED (2008 SC)
Mere transfer of goods from one unit of factory to another unit does not show that the product is marketed or marketable.

Questions from examination:
1. Explain the concept of Movability? **(May 1999)**
2. Vendibility criterion/ Marketability is a litmus test to be fulfilled before any goods can be subjected to levy of excise duty. Discuss this statement with the help of decided cases.
(Nov. 2000, Nov. 2001)
3. "Mere saleability, i.e., the fact that an item is bought and sold does not necessarily constitute marketability for the purpose of charging excise duty". Critically analyze the statement.
(Nov. 06, May 05)

MEANING OF EXCISABLE GOODS **SECTION 2(d) of CEA, 1944**
"Excisable Goods" means goods
- Specified in the First & Second Schedule to CETA, 1985 **AND**
- As being subject to a duty of excise; **AND**
- Includes salt;

Analysis of above:
1. Non Excisable goods:
are those goods which have not been clearly mentioned in the CETA, 1985 either in First or Second Schedule.

2. Excisable goods does not itself become non excisable even if nil rate of duty is prescribed in the CETA for them **(Vazir Sultan Tobacco Co. Ltd. SC 1996)** or these are made exempt by virtue of a notification. **(Wallace Flour Mills Co. Ltd. 1989 SC)**
Note:
"Nil" rate of duty is also a rate of duty and goods with nil rate can not be treated as "Non excisable".

3. Dutiable Goods: Excisable Goods which has a rate of duty greater than zero;

Questions from examination:
1. Define "Excisable goods". Is there any difference between non-excisable goods and goods carrying nil rate of duty as per CETA, 1985? **(May 1998, Nov. 2001)**

EXPLANATION TO SEC. 2(d) **Inserted by Finance Act 2008**
Marketability has been defined through this 'explanation' in the following manner:-
"Goods" includes any article, material or substance
- which is **CAPABLE OF BEING BOUGHT & SOLD for a consideration AND**
- such goods shall be **DEEMED TO BE MARKETABLE.**

Analysis of this explanation:
- If goods are capable of being bought & sold in the market for a consideration
- these shall be **deemed to be marketable**.
- Thus, the requirement that such article/ goods must be commercially known product and must be worthwhile to trade in, has been dispensed with.
- Actual sale is not necessary. Only capability of being sold is required.

- The burden to prove that an article is marketable is on the department.

Note:
This explanation has a "prospective" effect. So, past cases can not be taken up by the department under the new provisions.

Circular No. 904/24/09-CX dated 28-10-2009:-
In view of above explanation, bagasse, aluminum/ zinc dross and other such products termed as waste, residue which arise during course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to duty of excise.

Question from Examinations:-

Examine the correctness of following statements with reference to CEA, 1944: "Parts used for repair or replacement during warranty period are excisable?" (November 2006)

Sol:- The statement is correct. It was held in **ECE Industries Ltd. (SC 2004) that parts** used for repairs and replacement is excisable. Merely because manufacturer chooses to offer such incentives does not mean that a goods, which is otherwise excisable, should be exempted from excise duty.

SUMMARY OF CONCEPT OF GOODS AND EXCISABLE GOODS

Any article, material or substance shall be liable for excise duty if:-
- Such article/ goods are manufactured or produced in India
- Such article/ goods is movable;
- Such article/ goods is capable of being sold for a consideration;
- It is listed in Ist or IInd Schedule to CETA, 1985

CASE STUDIES:

CASE-1: A Limited manufactured product "Z". At the time of manufacture, the name of the product has not been specified in the CETA, 1985. This product is movable and there is a heavy demand for the product in the market. Is A Limited liable to pay excise duty on product "Z"?

Sol: Z is a non excisable product. Hence, no ED is payable.

CASE-2: A composite mill spins yarn from cotton lint and weaves cloth. The yarn spun is not sold. It is capitvely consumed. Yarn is a excisable goods under CETA, 1985. Is the company liable to pay ED on yarn?
Sol: Actual sale is not necessary for deciding the taxability. The capability of being bought or sold is sufficient. If the yarn fulfil all the conditions for goods for being liable as discussed above, it will be taxable even if it is captively consumed.

Goods (Movable & marketable)

Excisable Goods
- Listed in Excise Tariff
- Excise law is applicable

Non Excisable Goods
- Not listed in Excise Tariff
- Excise law is **NOT** applicable

Non Dutiable Goods

Dutiable Goods

(No duty payable) (Duty is payable)

Nil Duty Goods **Exempted Goods (100%)**

TAXABLE EVENT – LEVY & COLLECTION OF EXCISE DUTY

- **"LEVY" means** imposition of tax/ duty.
- **Taxable Event** means- event the happening of which attracts the liability to pay tax.

RELEVANT PROVISIONS:

1. Section 3(1) (a)/ (b) of CEA, 1944:- Already narrated above

2. RULE 4 of Central Excise Rules, 2002:-

(1) <u>**EVERY PERSON**</u> who

- produces or <u>**manufactures**</u> any <u>**EXCISABLE GOODS,**</u> or
- who <u>**stores**</u> such goods in a warehouse

shall pay the duty leviable on such goods in the manner provided in <u>**RULE 8**</u> or under any other law,

AND

No excisable goods, on which duty is payable, shall be **REMOVED without payment of duty** from any place, where they are manufactured or produced, or from a warehouse, unless otherwise provided:

(2) Notwithstanding anything contained in sub-rule (1), where **MOLASSES** are produced in a khandsari sugar factory, the <u>**person who procures**</u> the molasses, whether directly from the factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, <u>**shall pay the duty**</u> leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

(3) *** deleted ***

(4) The **COMMISSIONER** may, in exceptional circumstances having regard to nature of the goods and shortage of storage space at manufacturer's premises , <u>**permit a manufacturer**</u> **to store his goods in any place outside such premises, <u>without payment of duty</u>.**

3. RULE 5 of Central Excise Rules, 2002:

(1) <u>**Rate of duty**</u>/tariff value for <u>**any excisable goods, other than Khandsari molasses: -**</u> **Rate**/ value in force <u>**on the date when such goods are removed**</u> from the factory/ warehouse.

(2) Rate of duty in case of Khandsari molasses:- Rate in force on the date of receipt of molasses in the factory of procurer of such molasses.

Explanation: If any excisable goods are <u>**USED WITHIN THE FACTORY**</u>, the <u>**date of removal**</u> of goods shall mean the <u>**date on which the goods are issued for such use**</u>.

<u>**ANALYSIS OF THE ABOVE PROVISIONS:**</u>

- <u>**Taxable event**</u>: - <u>**PRODUCTION OR MANUFACTURE OF GOODS.**</u> It means that the liability to pay excise duty arises as soon as the goods are manufactured and they fulfill conditions of movability/ marketability/ excisability under CETA.

- **Rule 4(1):** Duty is payable **AT THE TIME OF THE REMOVAL** of the goods from the factory or warehouse.

Thus, the taxable event arises as soon as goods are manufactured but the payment of duty has been postponed to the stage of removal of goods.

- Rule 4(1) of CE Rules, 2002 clearly shows that excise duty is payable by manufacturer or producer of excisable goods. The only exception are:-
  - Goods stored in warehouse;
  - Molasses produced in Khandsari Sugar factory;
  - **Job Work under Notification No. 214/86 CE; (Discussed in later)**

  Goods stored in warehouse: (Rule 20 of CE Rules, 2002):- Duty liability is of the person who stores the goods.

  Molasses produced in sugar factory:
  - ✓ Duty liability is of the purchaser of the molasses.
  - ✓ Duty payable on the date of receipt of such molasses in the factory of procurer;
  - ✓ @ prevalent when molasses are received in the factory of procurer;
  - ✓ But such molasses must be used in the manufacture of any commodity (whether such commodity excisable or not);

- Taxable event is the manufacture or production of excisable goods but Rule 4 & 5 clearly states that duty is payable at the time of removal at the rate prevalent at the time of clearance of such goods from factory/ warehouse & **<u>not at the rate at the time of manufacture.</u>**

- Explanation to Rule 5 clears that on captive consumption, duty is payable at the rate in force when such goods are issued for captive consumption.

LANDMARK CASES ON LEVY & COLLECTION OF DUTY

BOMBAY TYRES INTERNATIONAL (SC)
- Levy and collection of duty need not in the time synchronize;
- The collection of duty may be postponed due to administrative convenience;
- Duty can be **<u>levied</u>** only **<u>if</u>** goods were **<u>excisable when</u>** they were **<u>manufactured</u>** and not when they are removed; **(CA Final May 1998)**

VAZIR SULTAN TOBACCO CO. LTD. (SC)
Duty **CANNOT** be levied on non excisable goods, if those goods are brought within purview of CETA, 1985, subsequent to manufacture but before removal. Duty **WILL** be levied on the non dutiable goods if, subsequent to manufacture but before removal of goods, the exemption from the duty is withdrawn.

<u>Fill in the blank:-</u>

1. At the time of manufacture, goods are non excisable but at the time of removal, these are subject to 12% duty, ______duty will be payable on the goods.

2. At the time of manufacture, goods are exempted but at the time of removal of goods, exemption notification has been withdrawn, ______ duty will be payable on the goods.

3. At the time of manufacture, goods are taxable at nil rate of duty but at the time of removal of goods, rate has been 12%, ______ duty will be payable on the goods.

Answer:-

1. No duty 2. Yes, payable 3. yes, 12%

CASE STUDIES

1. Product P is produced 10,000 kgs. on 30 Nov. 2008. On that date, P is not excisable as it is not named in CETA. On 8th January 2009, it is included in CETA @ 14%. The company sold 6000 kgs. on 2nd January 2009 and another 4000 kgs on 20th Jan. 2009. Is the product excisable?

Hint: Not taxable as when "Taxable Event" occurred, the item was not in the tariff.

2. Product Q is produced on 30th April 2008. On that date, Q is an excisable commodity with a tariff rate of 8%. Later on, Product Q was removed from tariff on 31st May 2008. On 20th June 2008, The company sold 50,000 kgs. of Q that were produced on 30th April 2008. Will this be excisable?

Hint: Yes, it is dutiable because on the date of taxable event, the item was covered in the CETA. The relevant rate is the rate prevalent on the date of manufacture. Once, the duty levy is attracted then discharge of duty is certain. Discharge of duty takes place at the time of removal. Hence, The company is liable to pay duty @ 8% on the value of goods cleared on 20th June, 2008

(VAZIR SULTAN TOBACCO CO. LTD.)

3. Product V was produced on 1st May 2008 by X Ltd. On that date, product attracts 14% duty. On 1st July 2008, there is a notification by CG stating 0% duty for the product. X Ltd. cleared the goods on 1st September 2008, the entire quantity of 1000 units. Whether, X Ltd. liable to pay duty?

Hint: At the time of taxable event, Product V is excisable @ 14% so it is dutiable goods. However, duty is payable on the rate on the date of removal. Hence, duty @ 0% is applicable. So, the company is not liable to pay duty.

4. X Limited manufactures excisable goods. Excise duty is as follows:-

At time of manufacture:- Nil rate At time of removal of goods: 16%

What rate of ED is applicable?

Hint: 16%

5. X Limited manufactures Product R on 30th April 2008 which are exempted by virtue of CG notification. On 10th June, exemption is withdrawn and goods are removed after 10th June. Will the company liable?

Hint: Yes, as the goods were excisable at the time of manufacture.

6. Goods manufactured by X Limited were chargeable to ED @ 14% + EC + SHEC. From 1.3.10, additional excise duty @ 8% + EC + SHEC was imposed on such goods. On 4.3.2010, X Limited removed goods valuing Rs. 200,000 out of lot manufactured before 1.3.2010. Compute the excise duty on such removal.

Hint: Goods manufactured were not liable to pay additional ED before 1.3.2010. Hence, no additional duty can be charged on the goods manufactured before 1.3.2010 even if they are removed on or after 1.3.2010. So, the duty is payable @ 14.42% on 200,000 i.e. Rs. 28840.

7. Goods manufactured by X Limited were chargeable to excise duty @ 14% + EC + SHEC. With effect from 1.3.2010, the goods have been granted 50% exemption from duty.

On 4/3/2010, X Limited removed goods valuing Rs. 2,00,000 out of lot manufactured prior to 1.3.2010. Compute the amount of excise duty payable on such removal

Hint: 2,00,000 x 7.21% = 14420

Questions from examination:

1. Explain the concept of taxable event and the significance of date of removal of goods in the context of levy and collection of excise duty? **(November 1997)**

2. A person is neither a producer nor a curer nor a manufacturer of excisable goods, but he only stores such goods in the warehouse. Can he be called upon to pay the excise duty? **(May 98, May 07)**

3. What is the prescribed date for determination of duty in respect of goods on which duty has been paid and which have been loaded into railway wagons for which the railway has issued a receipt in favour of purchaser of said goods, but the wagons with the said goods continue to be stationed in the factory premises? **(May 1998)**

Refer Rule 5 of CE Rules, 2002

4. **Decide in the following cases the rate at which the duty is payable:- (4 marks)**

(a) Goods were manufactured on 16.1.1995, but were removed from the factory on 3.3.1995. These goods were brought into purview of CETA first time w.e.f. 1.3.95 with a rate of 20% duty ad valorem.

(b) Goods were manufactured on 18.1.96 and were removed from the factory on 2.3.96. Prior to 1.3.96, the goods were chargeable to "Nil" rate of duty as per CETA but became chargeable 15% w.e.f 1.3.96.

5. X Limited manufactures paper and in the course of such manufacture, "wastepaper" is produced (paper being main product and dutiable goods). CETA was amended w.e.f. 1.3.09 to include "wastepaper" also in the tariff entries @ 10% ED. X Limited was issued show cause notice by CEO, demanding duty of 2 Lakhs on waste paper produced during October 2008 to February 2009 but cleared during April-May 2009. Decide on the legality of above SCN? **(Nov. 96)**

Hint: VAZIR SULTAN TOBACCO INDUSTRY CASE

The waste paper produced prior to the levy will not be chargeable to duty even though it has been cleared after such levy. So, above SCN is illegal and is liable to be quashed.

CONCEPT OF MANUFACTURE & DEEMED MANUFACTURE

SECTION 2(f) of CE ACT:-

"Manufacture" includes ANY PROCESS:-

(i) **INCIDENTAL OR ANCILLARY** to the **completion** of a manufactured product;

Incidental process = Occasional or causal process, not an absolute necessity (optional)
Ancillary process = Auxiliary process, an absolute necessity (compulsory)

Example of ancillary:-

A pharma manufacturer purchases tablets from small manufacturer in lots and after printing and labeling and endorsement of user warning, sells them in the market. Such warning is mandatory for sale in open market by law. Without this process, tablets can not be sold. So, it will amount to manufacture.

(ii) which is **specified** in relation to any goods in, the Section or Chapter notes of the **First Schedule** to the CETA,1985 as amounting to manufacture **(DEEMED MANUFACTURE) or**

(iii) which in relation to the **GOODS SPECIFIED IN THE THIRD SCHEDULE** of CEA involves-

- packing or repacking of such goods in a unit container or

- labeling or relabelling of containers
- including the declaration or alteration of retail sale price on it or
- adoption of any other treatment on goods to render product marketable to consumer.

(DEEMED MANUFACTURE)

For example: X Limited gets wafers manufactured from Y Limited and gets in a packing of 5 kg. On receipt of the same, the company repacks it in a packet of 20 gm. Wafers are included in the third schedule. Therefore, although X Limited carries out only repacking of the wafers, still it amounts to manufacture. So, it is required to pay duty on the removal of the same.

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 their own account.

Thus, Manufacture is not completely defined in the Act. We will use case laws for this purpose.

UNION OF INDIA VS. DELHI CLOTH & GENERAL MILLS CO. LTD.

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

"Manufacture" can be said to have taken place when:-

- ✓ after **process**,
- ✓ a **new** and different article emerges
- ✓ having a **different name, character** or use.

Take some examples:

1. A big log of woods is cut by a sawing process into small pieces of logs. It does not amount to manufacture as no new product emerges but such log of wood is used to make a table, a new product emerges and now wood will be known as table having a different use

2. There was a washing process of iron ore by which dusty iron ore becomes dust free iron ore. there is no manufacture.

LATEST CASE LAW: FEDDERS LLOYD CORP. LTD. 2008 SC

Assessee:- 2 branches one in Delhi- manufactures condensing units & clears to Mumbai Branch on payment of ED.
Mumbai Branch:- purchases cooling units & combined it with condensing units, & after fixing brand name, cleared complete units of AC with remote etc. Department contended that process at Mumbai amounts to manufacture.
Held That, By combining condensing unit & cooling unit, a complete unit of AC comes into existence; So, AC is a commercially new article. Hence, the process amounted to manufacture.

Manufacture and Processing: - **(Nov. 2007)**

Manufacture is the end result of one or more processes through which the commodity passés. A Process through which the original commodity loses its existence and a new commodity comes into existence having a separate name, character and use, will amount to manufacture.

Questions from examinations:-

1. What is manufacture in Central Excise? **(Nov. 01, Nov. 02, Nov. 03, Nov. 05)**

MEANING OF TERM "PRODUCED": Not defined in the Act

In manufacture, raw materials are used to turn out something altogether different. Production does not require raw materials as in manufacture, it needs some human activity and spending of energy on things to bring them in state of being fit for consumption.

The term "Produced" is much wider than "manufacture". Every manufacture can be said to be production but every production need not amount to manufacture.
The word 'Produced' covers:-

- Items like coffee, tea, tobacco dairy products etc. which are produced and live products such as fish, flowers etc.
- **By products, waste, scrap etc**. which are **not** really **manufactured but they do get produced**.

CASE LAW:

CIT VS. SESA GOA LIMITED (2005 SC)
Held that As per dictionary meaning, production means 'a thing that results as from any action, process or effort, a product; a product of human activity or effort'. In this case, it was held that mining activity for purpose of mineral ore would come under definition of "production" since ore is a thing which is the result of human effort.
In the case of Hyderebad Ind., it was decided that removal of asbestos fibre from asbestos rock is not manufacture. But in view of SESA GOA Case, this decision requires reconsideration.

ANALYSIS:

1. Thus, Main product comes under the definition of "Manufacture"
2. By product comes under definition of "Production"
3. However, for excisability, both manufacture and production are covered.

CIT VS. TARA AGENCIES (2007 SC)
In case of tea business, production takes place in tea gardens; manufacture happens when tea leaves are plucked from tea bushes and by mechanical process, they are converted into tea; and blending of different qualities of tea to smoothen its marketability is its processing. Such blending can not be said to be manufacture.

Questions from examinations
1. What is manufacture in Central Excise? **(Nov 01, Nov 02, Nov. 03, Nov. 05)**

Case laws on "Manufacture"

Aditya Mills Limited (1989) SC:-
Manufacture is the end result of one or more processes and when the change occurs to a point where commercially it can be identified as a new separate article, manufacture is said to have taken place. **It means that identity of original article should be lost.**

Tega India Limited 2004 SC:-
Held that when Tariff does not make any distinction between coated and uncoated goods, then mere process of coating would not amount to manufacture of some new commodity;

Metlex (India) P. Ltd. 2004 SC:-
If Revenue claims that there is manufacture, then the burden of proving the fact is entirely on the Revenue. Department has to prove that a new and distinct product has come into existence.

Cases where Manufacture has taken place

Indian Cine Agencies 2009 SC:- Similar decision in Kores India Ltd. 2004
Conversion of jumbo rolls of photographic films into small flats and rolls in the desired sizes amounts to manufacture.

Grasim Industries Ltd. 2008 Raj.
Metal waste and scrap generated during the manufacture of spare parts for plant in a factory is manufacture. Because, any process incidental or ancillary to completion of manufactured product also amounts to manufacture.

Prachi Industries 2008 SC:-
Swaging (shaping a metal) on duty paid MS Tube/pipe amounts to manufacture as after undergoing swaging process, a workpiece of different shape and use emerges.

Phil Corporation Limited 2008:-
Roasting, salting of peanuts, pista, cashew or almonds amounts to manufacture.

Mahavir Aluminum Limited 2007 SC:-
Conversion of aluminum ingots into aluminum billets by re-melting is manufacture since ingots and billets are 2 different commercial commodities.
Ingots= mass of metals or block billets = a short bar/ bearing

CBEC Circular No. 848 dated 18.4.2007:-
Obtaining fine powder ammonium nitrate from crude lamps of ammonium nitrate is manufacture.

A.P. Products 2007 SC:-
Preparing masala powder by grinding and mixing of various spices and condiments is 'manufacture'.

Sonebhadra Fuels 2006:-
Production of oil from oil seeds amount to manufacture.

Kapri International 2002 SC:-
Cutting of fabrics from running length into small pieces and giving them a definite shape to form a new article like bed sheets, table cloths etc. is manufacture as new commodity has been produced having a distinct identity.

Lucky Mineral P. Ltd. 2001 SC:-
Conversion of limestone into lime or lime dust or concrete by stone crushers be considered to be manufacture.

Aspinwall & Co. 2001 SC:-
Making coffee beans after plucking or receiving coffee berries after 9 processes is 'manufacture' as the net product is absolutely different and separate from input.

Gramophone Co. of India Ltd. 1999:-
Recording of sound on the duty paid blank audio cassettes amounts to manufacture as pre recorded cassettes are known in the market as distinct and different from blank cassettes. However, receiving cassettes from customer and recording as per customers' choice on realization of charges is mere service activity. It is not manufacturing.

Decorative Laminates 1996 SC:-
Processing of commercial plywood to make slip proof commercial plywood was held as "manufacture".

In a similar decision in the case of **Laminated Packing 1990 SC:-** it was held that when craft paper is laminated, a new commercial product called laminated craft paper is obtained. So, it is manufacture. Even if both plain craft paper and laminated craft paper is in the tariff entry, it amounts to manufacture as **tariff entry is not a deciding criterion.**

Cases where no Manufacture has taken place

Raj-Purohit GMP India Ltd. 2008 SC:-
Slitting/ Cutting of hot rolled steel sheets and polyster films, which are used for the purpose of lamination is not manufacture, as the resultant product was not having different character, name and use.

Swastik Rayon Processors 2007 SC:-
Twisting and doubling of cellulosic filament yarn with a blended yarn comprising polyster and viscose does not amount to manufacture because yarn continues to be yarn even after twisting and doubling.

Hindustan Poles Corporation 2006 SC:-
Welding of electric resistant pipes of different diameters to desired length does not result in new product.

Pan Pipes Resplendents Ltd. 2006 SC:-
Processing of duty paid plain glazed tiles into decorated ceramic tiles does not amount to manufacture as no new distinct commodity comes into existence.

Ranbaxy Laboratories 2004:-
Some bulk drugs were cleared on payment of duty. They were found to be defective and brought back. After repairing, these were cleared without payment of duty under new batch number. Held that there was no manufacture.

Gabriel India Ltd. 2003:-
Mere affixing of a brand name or changing brand name would not amount to manufacture as no new product emerges. So, purchasing goods in bulk and selling them under own brand name can not be treated as manufacture.

Technoweld Industries 2003 SC:-
Wire rods are drawn into wires. Both the products are wires only. Input is thicker gauge and output is thinner gauge. No manufacture even though in CETA, they fall under different entries- wire rods under 72.13/72.15 and wires under 72.17 (But not covered under "Deemed Manufacture")

Aman Marble Industries Pvt. Ltd. 2003 SC:-
Cutting of marble blocks into slabs is not manufacture as no new substance comes into existence. (but covered by deemed manufacture now)

Kunwa Stone Crushers 2000 SC:-
Crushing of boulders into small stones is not manufacture. Big stones have become small stones.

Fenner India 1999:-
Testing, inspection and packing of items manufactured by others is not manufacture.
UOI Vs. JG Glass Industries 1998 SC:-
It was held that process will amount to manufacture, if the commodity which is already in existence will serve no purpose or will be of no commercial use but for the process. In this case, printing of colour and logo was done on a glass bottle. It was found that even before printing, glass bottle was commercial commodity and could be sold without printing.
Hence, held that printing of bottles with ceramic colour and decoration is not manufacture.

So, as regards labeling, packing etc. check whether the product would serve any purpose without labeling.

Jodhpur Mukhya Mandi 1996:-
Loose tea not loses its character as such when it is put in packets of different sizes, small or large.

CBEC Circular No. 454 dated 12.4.99:-

Upgradation of computer system by increasing its storage/ processing capacity such as hard disk and RAM is not manufacture as new goods with different name, character and use do not come into existence.

CBEC Circular No. 479/45/79-CX dated 17-08-1999:-

Assembly of components of air conditioner in car does not amount to manufacture as the parts are fitted at various places and at no point of time, a car air conditioner as a separate and distinct commodity comes into existence. Similarly, fitting of AC Kit in the car does not amount to manufacture.

CONCEPT OF DEEMED MANUFACTURE: **Section 2(f) (ii)/ 2(f) (iii)**

As seen in above cases, court may have held a process as not amounting to 'Manufacture'. However, if any activity is specified in the Section or Chapter Notes of the **First Schedule to CETA, 1985**, it will be deemed to be manufacture irrespective of court decision (u/s 2(f) (ii)).

The following processes will amount to deemed manufacture as specified in Section or Chapter Notes:-

Chapter and Section notes related to	**Process amounting to deemed manufacture**
Water including natural or artificial mineral water	Filtration, purification, labeling or relabelling of containers or repacking from bulk packs to retail packs.
Glass and Glass wares	Printing, decorating or ornamenting.
Pharma products and essential oils & resinoids	Conversion into powder into capsules, labeling or relabelling of containers intended for consumers and repacking from bulk packs to retails packs.
Refined edible vegetable oils	Process of refining namely treatment of crude oil with alkali, bleaching, deodorization.
Base Metals & articles thereof	Process of drawing or redrawing a rod, wire or any other similar article into wire.
Marble, Granite, Sandstone etc.	Process of cutting or sawing or sizing or polishing blocks or any other process of converting blocks into slabs or tiles.
Plastic, plates, sheets, foils, film and strips	Process of metallization, lamination or lacquering
Betel nut product known as "Supari"	**Process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients other than lime, katha or tobacco to betel nut, in any form (w.e.f. 7.7.2009)**
Audio/ Video cassettes	Recording of sound

In addition, According to **Section 2(f) (iii),** the following processes in relation to goods specified in **Third Schedule** will also amount to deemed manufacture:-

i. Packing or repacking of such goods in a unit container; or
ii. Labeling or relabelling of containers including declaration or alteration of retail sale price on it; or
iii. Adoption of any other treatment on the goods

to render the product marketable for consumer;

Logic of this provision

In some instances, it was found that manufacturer manufactures products and clears the goods from the factory without mentioning MRP and paying duty u/s 4 instead of section 4A.
Then, the goods are packed and labeled and MRP affixed by the buyer who makes substantial value addition but he escaped duty as he is not manufacturing the goods. So, Such buyer is liable to pay duty on the basis of MRP, but he will get CENVAT Credit of duty paid at the time of clearance from factory.

Interpretation:-

1. Simply labeling or relabelling or repacking is not a process amounting to manufacturer;
2. But if such process is undertaken on goods covered u/s 2(f) (iii), then it will amount to manufacture & liable for duty;

Johnson & Johnson 2005 SC:-

It was held that mere packing for convenience is not manufacture for the purpose of Chapter Note. If the product was already marketable, any amount of treatment to enhance its marketability would not amount to manufacture. If the product is imported as ready to market retail packs, mere affixing the stickers, containing information like names and addresses of importer, MRP etc. will not amount to manufacturer.

Refer the latest cases as under:-

1. Aero Packs Products 2009 SC
2. Textile Corporation Marathwada Ltd. 2008 SC
3. Sony Music entertainment Pvt Ltd. 2010 SC

Question from Examination:-

Whether packing, labeling, branding amounts to manufacture? **(May 96, Nov. 2007)**

Sol:-

Packing is essentially a process of manufacture as normally goods can not be sold without being packed. But labeling, branding or repacking of already packed product does not amount to manufacture.
But if such repacking, labeling or branding is undertaken u/s 2(f) (ii) or (iii), such treatment shall be deemed to be manufacture.

Issues arising out of the above discussions:-

Dutability of waste and scrap:- **(May 06, Nov. 99)**

If waste or scrap is:-

- Manufactured product
- Movable and
- Marketable or deemed to be marketable and
- Covered under CETA

It will be liable for the excise duty.

In the case of WEST COAST INDUSTRIAL GASES LTD. 2003 SC:-

It was held that containers in which inputs are received can not be treated to be a waste arising out of a manufacturing process and therefore, no duty is leviable on such containers at the time of clearance from the factory.

Notification No. 89/95 dated 18/5/95:-

Waste or scrap arising in the course of manufacture of exempted goods is exempt from duty, if only exempted goods are manufactured in that factory.

Whether change in Tariff is relevant:-

Examine whether the following would constitute “manufacture” for purposes of Excise:-

1. Both inputs and the final products fall under the same tariff heading under the First Schedule to the CETA;
2. Input and final product fall under different tariff headings of CETA; **(May 08)**

<u>If input and output are covered by SAME ENTRY:-</u>
Manufacture is resulted only if a process leads to a new product being emerged having distinct name, separate identity and use. So, even if input and output are falling under the same tariff entry, the taxability arises if the output is distinct in use and name.
The fact is supported in the case of **Laminated Packings SC and Kapri International (P) Ltd. 2002 SC.**

<u>If input and output are covered by DIFFERENT ENTRY:-</u>
Case:-
Technoweld Industries SC:- **already discussed above**
Also,
Merely because there are 2 separate entries for input and output does not mean that manufacture is involved. It can not be presumed that process of obtaining finished product from such raw material automatically constitutes "manufacture". **(SR Tissues 2005 SC)**

<u>Assembly of components:-</u> **(Nov. 03)**
If assembly of components results in the emergence of a product which has a distinct character and use will be manufacture.
Held in the case of **BPL India Ltd. 2002 SC:-** Assembly of imported kits into colour monitors by using fasteners constituted process of manufacture as because of such process, a transformation has taken place which made the product having distinct character and use.

<u>SITE RELATED ACTIVITES:-</u> **(Nov. 99, May 04)**
Plant and machinery assembled and erected at site can not be treated as goods for the purpose of excise duty, if it is **<u>not movable</u>** and marketable.

In the case of Triveni Engineering 2000 SC, the court suggested how to check the dutability of onsite assembled machinery:-

- If any goods installed/embedded at site (example paper making machine) are **<u>capable of being shifted as such, without dismantling</u>**, then the goods would be considered to be movable and dutiable;
- But if machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable.
- If the goods are capable of being shifted without dismantling, but they are actually dismantled for ease of transportation, they will remain dutiable.

On the above basis of above case, we will judge following circumstances:-

1. Where a plant comes into existence in a fully manufactured condition in the factory of manufacturer, and is removed into CKD/ SKD condition:- **It is dutiable** but subsequent assembly at site of customer will not be dutiable.

2. Where various parts are purchased and manufactured at site and a new plant and machinery comes into existence in a **<u>movable manner</u>**:- **It is dutiable.**

3. Where such assembly at site of customer results in existence of a plant which is **<u>immovable</u>**:- **It is not dutiable.**

4. Integration of various plants into a system:- Mere assembly of various manufactured goods into an integrated plant may not amount to manufacture. For example:- connecting of various computers on a LAN.:- **hence, not dutiable.**

Specific Instances of site related activities:-

1. **Turnkey projects** like steel plants, cement plants, power plants etc. :- involving supply of large number of components, machinery, equipments, pipes etc. for their assembly/ erection/ integration on foundation/ civil structure etc. will not be considered excisable goods.

2. **Huge tanks made of metal for storage of petroleum products:-** these tanks though not embedded in earth, are erected at site, stage by stage, and after completion they can not be physically moved. On sale, they have necessarily to be dismantled and sold as metal sheet/ scrap. Such tanks are **not movable.**

3. **Refrigeration/ Air conditioning plants:-** are basically comprising of compressor, ducting, pipings and cooling units etc. Though each component is separately dutiable, the refrigeration/ air conditioning system as a whole can not be considered as goods.

4. **Lifts and escalators:-** Though mentioned in CETA, those which are installed in buildings and **permanently fitted** in the civil structure, can not be taken to be goods.

However, there may be instances of fabrication of complete lifts and escalators that are movable in nature as a whole and can be temporarily installed at construction sites or exhibitions for carrying men or material. These type of lifts and escalators alone would be liable to duty.

Also read latest case:-
"Solid & Correct Engineering Works 2010 SC"
"Virgo Industries (Engineers Pvt. Ltd.) 2009 Chennai"
"Larsen & Toubro Ltd. 2009 Bombay"

CAPTIVE CONSUMPTION OF INTERMEDIATE PRODUCTS:-

- Captive consumption means consumption of goods manufactured by one division or unit by another division or unit of same organization.
- For example, yarn produced from cotton is consumed within same organization for manufacturing ready made garments.
- In case of captive consumption, there is not actual removal of goods from factory.

We have already discussed according to Rule-5 that date of issue of intermediate goods for captive consumption in the factory shall be deemed to be date of removal of such intermediate goods. So, such captively consumed goods are liable to excise duty at the rate in force on the date of issue thereof for consumption.
But, the intermediate goods will be dutiable only if they are excisable goods in the purview of Excise Act as discussed above.

However, there are exemption notifications which provide that intermediate goods will be exempt from duty if the final product is liable for duty. But if the final product is wholly exempt or chargeable at nil rate of duty, the intermediate goods will be chargeable to duty.

Also read latest case laws:-

1. Bata India Limited 2010 SC

Concept of Manufacturer for Excise

Section 2(f) provides that
The word "Manufacturer" shall include 2 categories:-

- a person who employs hired labour in the production or manufacture of excisable goods
- a person who engages in the production or manufacture on his own account.

In the first category, a person is engaging labour who will manufacture on behalf of the former person. Keep in mind that there is a relation of employer and employee between that person and labour. Such, former person will be the manufacturer and not the labourers. **<u>So, Check the existence of master servant relationship.</u>**
If such relationship exists, raw material supplier (former person) is the manufacturer.

But if such person supplies raw material and gets goods manufactured from independent contractor, then such former person can not become the manufacturer merely because of the fact that he has supplied the raw material & his trade mark or brand name is affixed on those goods but such independent contractor will be treated as manufacturer. (Basically Job worker). Ownership of the raw material is not relevant.

Under Second category, The person may be engaged in the manufacture of the goods **<u>on his own account</u>**. "On his own account" means for "Captive consumption" and not for sale. Even though, the goods are not sold, he is called the "manufacturer".

<u>Examples:-</u>

1. X supplies raw material for getting goods manufactured from an independent job worker Z according to his designs, specifications or with his name or brand name.
   Sol:
   Z, the job worker is the manufacturer. **(MM Khambatwala 1996 SC)**

2. If X exercises full control and supervision over the job worker as master
   Sol:
   X is the manufacturer.
3. If the job worker manufacturing goods on behalf of X is a dummy of X:-
   Sol:-
   X will be the real manufacturer of the goods.
   One unit is said to be dummy of other when there is a common source of funding & financial flow back of profits from one to another.

Thus to check who is manufacturer, keep in mind that ownership of raw material, or ownership of brand name or license is not a criterion.

<u>Leading Case Law:- MM Khambhatwala 1996:-</u>
The appellant was supplying raw material and the household ladies were manufacturing "Agarbatti" in their houses. The final product was directly sold from premises of the ladies and was not brought to the factory of appellant. There was no supervision over their work by the appellant. Payment to ladies was on basis of number of pieces manufactured. It was held that household ladies are the manufacturers and raw material supplier is not the manufacturer. The ladies can not be termed as "Hired Labour".

<u>Case Law:- Gujarat Electricity Board, 1996 CESTAT:-</u>
Contractors made poles with cement, cinder etc. supplied by electricity board. The latter controlled wages, quality etc.
Held that electricity board is not the manufacturer. Only the contractor is the manufacturer. **(Control over production process is not the criterion)**

<u>Case Law: Mohan Breweries 1999:-</u>
Raw material supplier will not be manufacturer even when fabrication is carried out in the premises of the raw material supplier, if relationship between the fabricator and raw material supplier is on principal to principal basis and raw material supplier has no control over the manufacturing process. **(location is not important)**

Case Law:- SM Auto Engineering Pvt. Ltd. 1999:-

The appellant had entered into labour contract with buyer for carrying out the assembly in factory of buyer, out of raw material supplied by the buyer. He was paid labour charges on piece rate basis. It was held that appellant is not the manufacturer as it is only the contract for labour supply.

Definition of "Factory":- **(May 2006, Nov. 1997, Nov. 2003)**

Section 2(e):-

Factory means **ANY premises,** including precincts thereof,-

a. wherein or in any part of which any excisable goods **other than salt** are manufactured, or
b. wherein or in part of which any manufacturing process connected with production of these goods is being carried on or is ordinarily carried on.

1. Any Premises:- whether registered or not;
2. Precincts mean area enclosed by compound wall of premises.
3. Salt is excisable goods and covered in CETA but its tariff rate is nil. Salt is produced in salt pans- open spaces on sea shore which changes on account of tides. Hence, no fixed boundaries.

Wholesaler Dealer:- **(May 06, Nov. 2000, Nov. 2001)**

A person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

Curing:- **(Nov. 2008)**

Includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

Broker or commission agent:- **(Nov. 2008)**

A person who in ordinary course of business makes contracts for sale or purchase of excisable goods for others;

Sale and Purchase:-

Transfer of the possession of goods by one person to another in ordinary course of business for cash or deferred payment or other valuable consideration.

Questions Work Sheet

Self test Questions

1. Multiple choice questions

1. Excise duty can be levied on those goods which are :

(a) Manufactured in India (b) Sold in India

(c) Removed from the factory (d) None of the above

2. Place of Removal under Central Excise means :

(a) Removing the goods from the place of distributor

(b) Removing the goods from the place of customs station

(c) Removing the goods from the lace of factory

(d) None of the above

3. Non-Dutiable goods means :

(a) Name of the product not mentioned in the Tariff Act
(b) Name of the product mentioned in the Tariff Act
(c) Name of the product mentioned in the Tariff Act with the Rate of Duty
(d) Name of the product mentioned in the Tariff Act with the Zero Rate

4. **Payment of Central excise Duty depends up on :**
(a) Removal goods from the place of removal
(b) Manufacture of goods in the factory
(c) Deemed manufacture of goods
(d) Removal goods for branch transfer

5. **The excise duty on alcoholic goods manufactured by the manufacturer is payable to :**
(a) State Government
(b) Central Government
(c) Corporation
(d) Local authority

6. **Which of the following duties is covered under the First Schedule of the Central Excise Tariff Act :**
(a) Basic Excise duty
(b) Special Excise duty
(c) Additional Excise duty
(d) Education Cess

7. **At the time of manufacture of product X attracts 14% BED. At the time of removal the rate of duty is 8%. Which is the duty attracts for the product X :**
(a) 14%
(b) 8%
(c) 11% (Average)
(d) Zero (Because the rate has changed)

Say yes or no, give reasons

1. All goods manufactured are subject to central excise duty.
2. All Excisable goods are dutiable goods.
3. No duty can be levied if the goods manufactured by the manufacturer is not movable but marketable.
4. Goods has been defined in the Central Excise Act.
5. There is no difference between levy and collection.
6. Duty can also be collected even if the goods are non excisable at the time of manufacturer, but are excisable at the time of removal of goods from the place of removal.
7. Marketability is essential to levy the central excise duty.

Essay Type Questions

1. What are the dates for determination of rate of central excise duty under Central Excise Rules, 2002?
[CA Final May 2005]
2. "Mere selling of commodity does not mean it is marketable". Elucidate.
[CA Final May 2005]
3. "Everything that is sold is not necessarily a marketable commodity chargeable to excise duty under the provisions of the Central Excise Act, 1944".
[CA Final Nov. 2006]
4. Briefly explain any two of the following the reference to the provisions of the Central Excise Act, 1944:
(i) Manufacture and processing
(ii) Dutiability of site related activities
(iii) Labelling and branding activities

[CA Final May 2007]

5. Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:
   (i) In the State of Jammu and Kashmir;
   (ii) By or on behalf of the Government

[CA Final May 2008]

Case studies

1. **Discuss briefly with reference to the provisions of the Central excise Act, 1944 whether the following process would amount to "manufacture".**
   XYZ Corporation is engaged in the process of mixing aluminum paste, metal lacquer and thinner resulting in the production of aluminium paint having a shelf life of 8-10 hours. **[CA Final Nov 2004]**
2. M/s SYL purchases film from the manufacturer thereof on payment of appropriate central excise duty. The undertake the processes of lamination/metallization of the said film. The department directs them to pay central excise duty as the processes undertaken by them amount to manufacture.
   Place offer your comments with the help of decided case law. **[CA Final May 2005]**
3. TCL purchases duty paid metal rods and draws them into wire of a thinner gauge. Both the items fall under different tariff headings. The assesses claims that the process undertaken by it does not amount to manufacture. You are required to advise with reference to the present position of law in this regard. **[CA Final Nov 2005]**
4. ABC Company imported medicines in pallets with one big box containing assorted medicines in smaller units which were, then, repacked in thermo Cole boxes of different sizes which again were put into cardboard boxes. The cardboard boxes were in turn labelled containing, inter alia, the name of the medicine, the name of the manufacturer, the quantity, batch no., manufacturing date, expiry date and name of the marketing agency. The department relying upon note 5 to chapter 30, claimed that the activities as aforesaid amount to manufacture i.e. bulk pack to retail pack.
   Decide whether the above activities tantamount to manufacture. **[CA Final May 2006]**
5. Odyssey Machines Limited manufactures C.I. castings which are captively consumed for producing C.I. Chilled Rolls. These Chilled Rolls are exempted from payment of excise duty. Revenue alleges that C.I. casting which are intermediary product, are marketable. Therefore excise duty is payable on them as the final product is exempt from duty. However, the Revenue fails prove the marketability of C.I. castings.
   Discuss, with reference to a decided case law, if any, whether the allegation made by the Revenue is justifiable. **[CA Final June 2009 RTP]**
6. Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers and reacting and installing them at site of customers, from whom it has produced the order. After receiving the orders from its clients, a team of engineers prepares a lay out on computer aided design system where ready made furniture systems and work stations manufactured by independent manufactures/suppliers are superimposed. Thereafter, based on the clients."

Specification, orders are placed upon the manufacturers of the furniture for each works station. After procuring the various elements of furniture system from the manufacturer, they join the same together according to the site drawing and the project code.

The assessee contends that that they are only marketing OFS/WS. However, the Revenue alleges that PFL is liable to pay duty as the said activity amounts to manufacture. Examine, with reference to a decide case law, if any, whether the Revenue's allegation is tenable in law? **[CA Final RTP Nov 2009 Old Syl.]**

7. Rishabh Dev & Co. is engaged in the manufacture of liquid mosquitoes destroyer. It obtains concentrated a alletherin and converts it into diluted alletherin by adding solvent deodorized kerosene oil, perfume (as a masking agent) and DHT (as a stabilizing agent). Revenue alleges that the addition of stabilizing agent, masking agent etc. amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, 1944. Do you thin that Revenue's allegation is tenable in law? **[CA Final RTP Nov 2009 New Syl.]**

Answer Work Sheet

1. Multiple Choice Questions

1	A	2	C	3	D	4	A
5	A	6	A	7	B		

2. Say yes or No, Give Reasons

1. **NO.** Goods manufactured in India may be excisable goods or non excisable goods. No central excise duty, if the goods are non excisable.
2. **NO.** Excisable goods may be dutiable or non dutiable goods.
3. **YES.** No duty can be levied if the goods manufactured by the manufacturer is not movable but marketable as per the decision of the Supreme Court of India in the case of Union of India v Delhi Cloth and General Mill Ltd.
4. **NO.** "The term goods has not been defined in the Central Excise Act, 1944.
5. **NO.** "The term "LEVY" means imposition of tax/duty. Collection of duty is postponed to the stage of removal of goods. [Rule 4 of the Central Excise Rules, 2002]
6. **NO.** Duty can not be collected if the goods are non excisable at the time of manufacture, but are excisable at the time of removal.
7. **YES**. Marketability is essential to levy the central excise duty.

3. Essay Type Questions

Please consult the notes for the answers

4. Case Studies

1. The mixing of aluminium paste lacquer and thinner in exact proportions resulted in the formation of a separate and distinct product with an identity of its own and the same was known in the market as a aluminium paint. Hence, this product has marketability and movability. Therefore, the Supreme Court of India in the case of T.N . State Transport Corporation Ltd. v. Contractor of Central Excise Madurai 2004 (166) ELT 433 (SC), had held that mixing of aluminum paste lacquer and thinner in exact proportions resulted a new product. Hence, the mixing process would amount to manufacture. It was held by the Court that the shelf life of 8-10 hours of the product was sufficient to market if.
2. With effect from 10th May 2008 The Central Excise Tariff Act, 1985 has been amended to specify that the process of lamination or of lacquering shall also amount to manufacture in additional to the process of metallization.
3. The process of drawing of redrawing a rod, wire or any other similar article, into wire shall amount to manufacture because the Finance (No. 2) Act, 2004 has inserted Note No. 10 in Section XV of the First Schedule to the Central Excise Tariff Act, 1985. Therefore, TCL claim in not correct.
4. No, the above activity of bulk pack to retail pack can not considered as manufacture [CC EX., Mumbai v Johnson & Johnson Ltd. 2005 (188) ELT 467 (SC)]
5. In the given case the intermediary product which is used as captive consumption is dutiable only if the intermediary product is marketable and movable, since the final product (namely C.I. Chilled Rolls) was

exempted from the duty. However, the intermediary product is not marketable (i.e. C.I. Chilled Rolls), there is no duty can be levied. [White Machines v CCEx. Delhi 2008 (224) ELT 347]

6. The Office Furniture System or Work Stations (OFS/WS) was procured by the PFL after payment of duty thereon. Hence, the manufacture has already taken place at the premises of the supplier (i.e. manufacturer). Therefore, nothing new product had come into existence in the hands of assessee (i.e. PFL) at the time of installing the same at the site of customers. Thereby no duty is required to pay by the assessee. From the above it is evident that the revenue allegation is not tenable in the eyes of central excise law.

7. The final product manufactured by the respondent was a diluted form of insecticide alletherein which would only kill small insects like mosquitoes. Hence, only the potency of the insecticide was being reduced. Therefore, it could not be termed to be manufacture. Therefore, the Revenue's allegation is not tenable in law, [CCE v Karam Chand 2009 (236) E.L.T. 647 (H.P.)]