Step By Step

Indirect Tax laws

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CENTRAL EXCISE LAW

Application of the central excise law

- It applies to the whole of India including Jammu & Kashmir.
- It's application to J&K was extended in 1954 vide the enactment of Taxation Laws (Extension to Jammu & Kashmir) Act, 1954.
- It also extends to

a) Designated areas in the Continental Shelf

b) Exclusive Economic Zone of India (EEZ). [The EEZ extends upto 200 nautical miles inside the sea from base line.]

- The Central Excise Tariff Act also applies to whole of India as CE Act, 1944

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Central Excise Duty

Latin word “Excisum/Excidre” => to cut out

Excise in on a manufacture or production

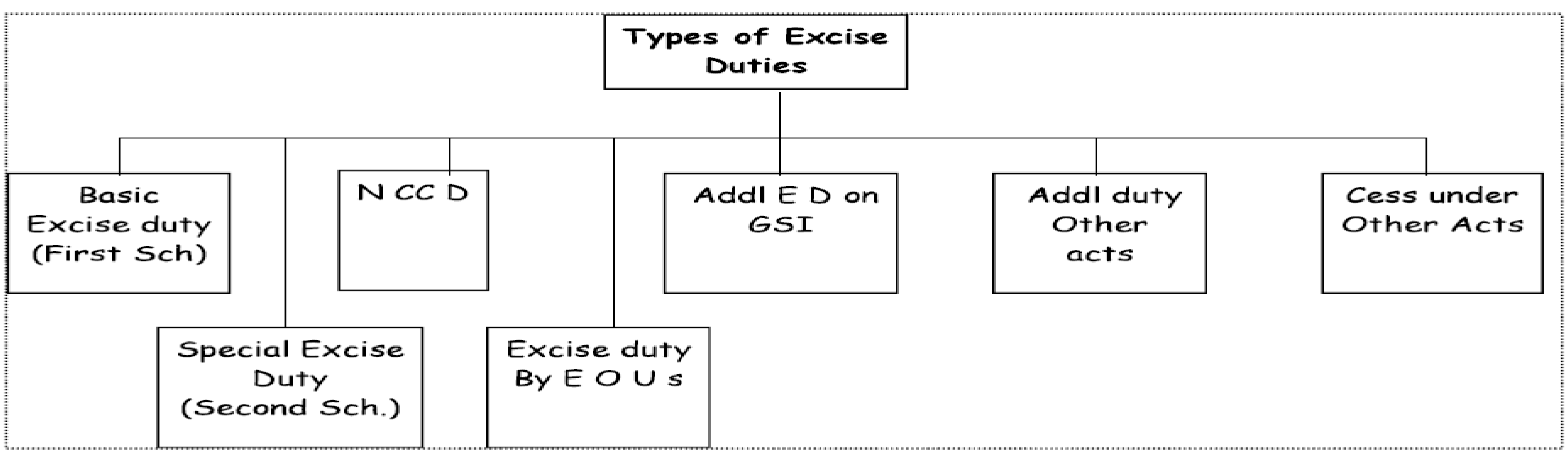
Excise duty also known as CENVAT

Central Government may levy excise on	State Government may levy excise on
(i) Tobaco	(i) Alcoholic liquor for human consumption
(ii) Goods manufactured/produced in India except Alcoholic liquors for human consumption	(ii) Opium (iii) Indian hemp (iv) Narcotics and
(iii) Medical & Toilet preparation containing alcohol	(v) Narcotics drugs etc

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

Types of excise duties



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Type of Duty	Particular
(1) Basic Excise Duty (BED)	As per sec-2A of CEA, It is Known as CENVAT also. It is levied at rate prescribed in Schedule **First** of CETA. General rate is @12%
(2) Special Excise Duty (SED)	It is levied at rate prescribed in Schedule **Second** of CETA.
(3) National Calamity Contingent Duty (NCCD)	Imposed vide Finance Act 2001, presently branded tobacco, cigarettes, pan masala containing tobacco, domestic crude oil mobile phones are covered. Rate @1%

Duties Under Other Acts	
(1) Additionally Excise Duty on Pan masala & Tobacco products	By way of surcharge vide clause 85 of FA 2005 w.e.f. 1-3-2005. @10 of aggregate normal rate of ED
(2) Duty on medical & toilet preparations	Duty imposed under Medical & Toilet preparations (Excise Duties) Act 1955
(3) Additional duty on mineral products	Mineral products like motor sprit, kerosene, diesel, & furnace oil liable under Mineral Products (additional Duties of Excise and customs Act 1958

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Cesses

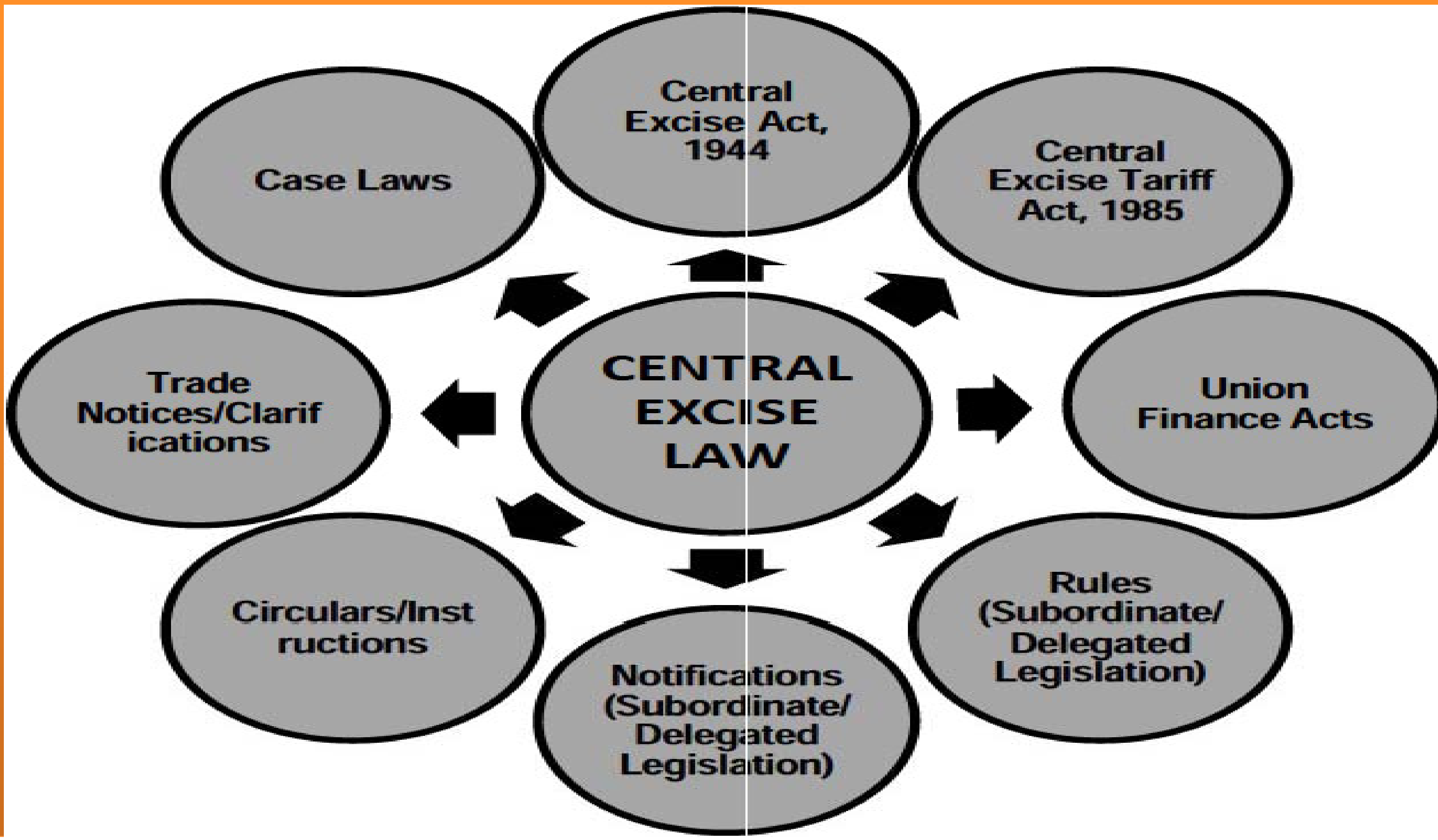
Cess is levied & collected for specific purpose while duty is charged for general revenue of Govt.

(1) On Automobile U/S 9(1) of IDRA
(2) On Tractor under Tractor Cess Rules 1992 @1/8% of Ad Valorem
(3) On Biri under Beedi workers Cess Act 1976 @Rs.5 per 1000 Biris
(4) On jute manufacturers under Jute Manufacturers cess Act 1984
(5) On Sugar @Rs.2424/quintal U/S 3 of Sugar cess Act
(6) On tea under Tea act 1953 for tea Board
(7) On Tobacco @Re 0.01 per kg under Tobacco cess Act 1975
(8) On coffee under Coffee Act 1942
(9) On paper & paper board @1/8% of Ad Valorem
(10) Similarly cess is levied on rubber,iron ore mines,maganese ore mines ,Mica etc under different Acts, cess on energy also

Queries

1. What are basic conditions for levy of excise?
2. “Goods manufactured in SEZ are excisable goods but no duty is leviable” is it true or false.
3. State different type of duties on excisable goods . Also explain under which Act these are levied?
4. “The duty under First Schedule of CETA 1985 is called CENVAT” Is it trure or false?
5. What is difference between Cess & duty?

Sources of central excise law



<u>Central Excise Act, 1944</u> : (CEA)

- It contains the basic provisions relating to the levy of excise duty.
- Comprising Chapters <u>I to VII</u>.

<u>Central Excise Tariff Act, 1985</u>:

- Originally it was a schedule to the CEA
- The Central Excise Tariff, Act 1985 containing the Tariff Schedule was enacted, based on the international product coding system called Harmonised System of Nomenclature (H.S.N.).
- The Schedules to the Act enlist all the excisable goods and provide for the corresponding rates of excise duty.
- All excisable goods are given schedule
- Rate of excised duty is against these goods in the schedule.

Union Finance Acts:

- Every year, the Finance Minister presents the Union Budget to the Parliament.
- **Part A** of the Budget-> contains the proposed policies of the Government in fiscal areas.
- **Part B** of the Budget-> contains the detailed tax proposals.
- To implement these proposals, the Finance Bill is introduced in the Parliament.
- Once the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act.

Purpose:- It is most significant way through which the Government makes amendments to the central tax acts (direct Tax & Indirect Tax both) like the Central Excise Act and Central Excise Tariff Act.

Rules:

- Framed by the Central Government
- For carrying out the provisions of the Act.
- Rules cannot override the provisions contained in the Act.
- Rules should be read with the statutory provisions contained in the Act.

The following significant rules have been issued under the Central Excise Act, 1944:

- **Central Excise Rules, 2002:**

Contain the procedure for the assessment and collection of duty including other procedures like manner of payment of duty, registration, maintenance of records, invoicing, rebate of duty, export without payment of duty etc.

- **Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:**

To prescribe valuation methods when transaction value cannot be determined under Section 4 of the Central Excise Act. 1944.

- **CENVAT Credit Rules, 2004:**

They provide for the manner of availing the credit and the utilization Cenvat duty and service tax across the Goods & services.

Some Other rules;- Central Excise (Appeal) Rules, 2001, Central Excise (Advance Rulings) Rules, 2002, Central Excise (Settlement of Cases) Rules, 2007, Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, Central Excise (Compounding of Offences) Rules 2005, Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008

<u>Notifications:</u>

- Issued by the Central Government or the Central Board of Excise and Customs (CBEC)
- Notifications are issued to provide rules

a) relating to excise duty,

b) make amendments therein,

c) provide or withdraw exemptions from excise duty or

d) deal with any other matter which the Central Government may think would facilitate the governance of excise duty.

<u>Circulars/Instructions:</u>

- The CBEC issues departmental circulars or instruction letters for the purpose of <u>ensuring uniformity</u> in the classification of excisable goods or with respect to levy of duty of excise on goods.
- They should be in conformity with the Act, Rules and Notifications.
- circulars are binding on the Department but not binding on the assessee and the Courts (Supreme Court, High Court or the Tribunal.)

<u>Trade Notices/Clarifications:</u>

- Issued by the Departmental <u>*for trade facilitation and clarification*</u> purposes.
- Binding on the departmental officers concerned. Authorities cannot take one stand in one State and another stand in another State.
- Trade notice disseminate the contents of the notifications and circulars/letters, define their jurisdiction; identify the banks in which excise duty can be deposited etc.

<u>Case Laws:</u>

<u>Why ?-</u>

It is not possible for the Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence, the judiciary hears the disputes between the assessee and the Department and gives decisions on various issues.

- The Supreme Court is the Apex Court of the country and the law laid down by the Supreme Court is the law of the land.
- The decisions given by various High Courts apply in the respective States in which such High Courts have jurisdiction.
- The case laws <u>facilitate in interpreting</u> the provisions of the Act and <u>comprehending the real intention</u> of the law makers.