

CONCEPT OF EXCISE DUTY

Excise duty is a duty on **Production or Manufacture** of excisable goods in India. The Central Government has power to levy excise duty since the subject matter is covered under Entry 84 of Union List which reads as under - "Duties of excise on tobacco and other goods manufactured or produced in India except –

- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub paragraph (b) of this entry.

Thus, the power to levy excise duty on alcoholic liquors for human consumption opium, Indian hemp and other narcotic drugs and narcotics, vests with the State Government as the subject matter is covered under Entry 51 of the State List.

However, in case of medicinal and toilet preparations containing alcohol or opium, Indian hemp and other narcotic drugs, the Central Government has the power to levy excise duty.

CONDITIONS FOR LEVY OF DUTY under Section 3 of the Central Excise Act

The charging Section i.e., **SECTION 3** of the Central Excise Act, 19M, contains the provisions for levy of excise duty duties specified in the First Schedule and second schedule to the Central Excise Tariff Act, 1985 to be levied / Charging Section [Section 3] :

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

- (a) a duty of excise to be called as the Central Value Added Tax (**CENVAT**),-
 - on all excisable goods (excluding the goods produced or manufactured in SEZ)
 - which are produced or manufactured in India
 - as, and at the rates set forth in the **First Schedule** to the Central Excise Tariff Act, 1985.
- (b) a **SPECIAL DUTY OF EXCISE**, in addition to the duty of excise specified in clause (a) above,-
 - on excisable goods specified in the **Second schedule** to Central Excise Tariff Act, 1985;
 - which are produced or manufactured in India (excluding the goods produced or manufactured in SEZ)as, and at the rates set forth in the Second Schedule.

Basic conditions for levy of excise duty:

- (a) There must be goods.
- (b) Such goods must be excisable.
- (c) Such goods must result out of production or manufacture.
- (d) Such production or manufacture must take place in India (other than special economic zones).

Extent and scope of Central Excise Law

- Central Excise law **extends to whole of India**: The Central Excise Law extends to the whole of India including the state of Jammu and Kashmir. India includes the territorial waters of India.

- **No levy on goods manufactured in SEZ** As per section 3, there is no levy of excise duty on the goods produced or manufactured in Special Economic Zones.
- **Rate of excise duty:** The general rate of CENVAT (BED) as per the First Schedule to Tariff Act is 16%, however, by exemption notifications it is 12% w.e.f. 17-3-2012. In addition Education Cess @ 2% and Secondary & Higher Education Cess @ 1% is also leviable on all excise duties.
- Hence, if basic excise duty is 12%, then, effective rate thereof will be 12.36% (including EC & SHEC).

PROVISIONS RELATING TO TAXABLE EVENT

- **TAXABLE EVENT:** Taxable Event is that event, which on its occurrence, creates or attracts the liability to tax. The taxable event in the context of Central Excise is production or manufacture of excisable goods in India.
- **Levy on manufacture and collection as per Rules:** Thus, levy of excise duty is on manufacture of excisable goods in India. Levy is governed by the Statute i.e. the Central Excise Act, 1944. Collection of duty is in accordance with the rules, after manufacture takes place.
- **Duty payable on removal:** According to Rule 4 of Central Excise Rules, 2002, unless otherwise provided, no excisable goods on which duty is payable shall be removed without payment of duty from any place where they are produced or manufactured. Thus excise duty is payable on removal of excisable goods from factory or registered warehouse.
- **Date for determination of rate of duty and tariff valuation:** According to Rule 5 of Central Excise Rules, 2002, the rate of duty or tariff value applicable to any excisable goods, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be. Thus, imposition is on manufacture but duty is payable at the rate prevalent on the date when the excisable goods are removed from factory or registered warehouse.

(Imposition = Date of manufacture;

Rate of duty = date on which goods are removed)

Goods to be excisable must be moveable, marketable

Movability: The first aspect of goods is that they should be moveable. In *Union of India v. Delhi Cloth Mills* and in *South Bihar Sugar Mills v. Union of India*, the Supreme Court enunciated the principle that to be called goods, the articles must be such as are capable of being bought and sold in the market. The articles must be something which can ordinarily come or can be brought to the market to be bought and sold. Thus, in case of immovable properties that are attached to earth, no excise duty can be levied as they lack movability.

Marketability: Marketability is the capability of the product of being bought and sold into the market. The Supreme Court in, *Bhor Industries v. CCE*, held that merely because an article is specified in the Tariff schedule it will not be liable to duty of excise unless it is marketable in the condition in which the department wants to levy excise duty.

EXCISABLE GOODS, NON-EXCISABLE GOODS, NON-DUTIABLE GOODS

Excisable goods [Section 2(d)]:

"Excisable goods" means goods specified in the **First Schedule and the Second Schedule** to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt.

Meaning of goods [Explanation] : For the purposes of section 2(d) of the Central Excise Act, "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Non-excisable goods

Goods which are **not listed in Tariff** E.g. water (there is no entry in Tariff), **or** goods which are mentioned in Tariff but the **column of rate of duty is blank**, are non-excisable goods. Excise law is not applicable on non excisable goods.

Non-dutiable goods

Non-dutiable goods are excisable goods **listed in Excise Tariff**. Excise law is applicable to them, but they are not liable to excise duty. Non dutiable goods may be -

- (i). Nil duty goods : Tariff rate for such goods is nil, and
- (ii). Exempted goods: 100% exemption is available under Section 5A of the Central Excise Act, 1944 for such goods.

MANUFACTURE

[Section 2(f)] : "Manufacture" includes any process -

- (a) **incidental or ancillary** to the completion of a manufactured product;
- (b) which is specified in relation to any goods, in the **Section or Chapter notes** of the **First Schedule** to the Central Excise Tariff Act, 1985, as amounting to manufacture (Deemed Manufacture) ; or
- (c) which in relation to the goods specified in the **Third Schedule**, involves **packing or repacking** of such goods in a unit container or **labelling or re-labelling** of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer (Deemed Manufacture),

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

Manufacture Vis-a-Vis Processing:

Where the **original commodity loses its existence** and a **new commodity comes into existence** having **separate name, character and use**, it will amount to manufacture. Any process which is incidental or ancillary to the completion of a manufactured product is covered within the definition of manufacture.

CAPTIVE CONSUMPTION

- **Meaning of Captive consumption** : As per Cost Accounting Standard 4 issued by the Institute of Cost Accountants of India "captive consumption" means consumption of goods manufactured by one division or unit and consumed by another division or unit of same organisation or related undertaking for manufacturing another product(s).

For example, Clinkers produced from lime stone is consumed within the factory of production for production of cement, such type of consumption is known as captive consumption.

- **Intermediate goods liable to duty only if moveable and marketable** : Intermediate goods which are captively consumed shall be liable to excise duty only if such goods are moveable and marketable or deemed marketable in the condition in which the department wants to levy excise duty. Therefore articles captively consumed shall be liable to excise duty when they have reached the stage where they can be identified as goods i.e. if they are marketable and moveable.

The Supreme Court in **Moti Laminates Pvt. Ltd vo. CCEx.** has held that Articles in crude and elementary form are not dutiable, as they are merely intermediate products, not marketable in that condition.

- **Valuation in case of intermediate goods**: If here the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be 110% of the cost of production or manufacture of such goods.
- **Date for determination of rate of duty**: As per rule 5 of the Central Excise Rules, 2002 the applicable rate of duty is of that date when the excisable goods are removed from a factory or a warehouse, as the case may be.
If any excisable goods are used within the factory, the date of removal of such goods shall mean the date on which the **goods are issued for such use**. Hence, captively consumed goods are liable to excise duty at the rate in force on the date on which they are issued for such consumption.
- **Exemption notification in respect of intermediate goods**: At present there are exemption notifications in force exempting intermediate products from excise duty, if the final products are chargeable to duty. If the final product is wholly exempt or chargeable to NIL rate of duty, the intermediate products shall not be exempt the same shall be chargeable to duty.
- **Payment of duty where more than one process involved**: Where more than one process are carried out on goods, each process independently amounting to manufacture, the duty may be paid after completion of the last stage of such processes i.e. at the final stage. - CCEx. v. Textile Corpn. Marathwaila Ltd.

DUTIABILITY OF WASTE & SCRAP

Dutiability of waste & scrap

The issue relating to dutiability of waste and scrap was settled by the Supreme Court through its decision in Khandelwal Metal & Engineering works v. UOI, by holding that notwithstanding that process waste and scrap arose as intermediate products or byproducts out of final products, such process waste and scrap, if marketable, would be chargeable to duty in view of the incorporation of the specific subheadings in various chapters of the tariff.

The Apex court has held that process waste and scrap is a commercially distinct and identifiable product and has commercial value. Hence, such waste and scrap is chargeable to duty if covered in the Tariff.

Condition for levy of duty on waste and scrap: Thus, if process waste and scrap -

- (a) arises during course of manufacture; and
- (b) it is moveable, marketable; and
- (c) listed in tariff the same shall be liable to excise duty.

Waste of exempted goods - Exempt [Notification No, 88/9S-CE, dated 18-5-1995]: Waste, parings and scrap arising in the course of manufacture of exempted goods is exempt from duty, if only exempted goods (i.e. fully exempted or 'NIL' rated goods) are manufactured in that factory.

Waste of containers - Not excisable: Containers in which inputs are received cannot be treated to be a waste arising out of manufacturing process and therefore, **no duty is leviable** on such containers at the time of their clearance from factory

MANUFACTURER?

As per **Rule 4**, the **manufacturer** of excisable goods or the person **who stores** such goods in a warehouse shall be liable to pay the duty leviable on such goods in the manner provided under Rule 8 or under any other law.

The term **manufacturer** has been defined under **section 2(f)** to include not only a person who employs hired labour in the production or manufacture of excisable goods but also a person who engages in their production or manufacture on his own account i.e. for his captive consumption.

CHAPTER 2

CLASSIFICATION

(1) **Classification**: choosing the right heading or sub- heading of the Tariff and determining the applicable rate for the particular goods is commonly referred to as classification of goods. Thus, classification of goods consists of determining the headings or sub-headings of the Central Excise Tariff under which the said goods are covered.

(2) **Need for classification**:

- (a) **Determination of rate of duty** : The actual amount of excise duty payable on excisable goods is, inter alia, dependent upon the rate of duty. The rate of duty is determinable on the basis of classification of goods.
- (b) **Determination of eligibility of exemption** : The classification of goods is also required to be decided for the Purpose of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub headings.
- (c) **Determination of deemed manufacture**: Certain processes are specified in relation to goods falling under a particular tariff heading as amounting to manufacture. For that purpose proper classification of goods in the tariff is necessary.

(3) **Relevant time** for classification: Classification is done at the time of removal of goods.

Emergency Power of Central Government to increase the duty of excise : **section 3** of the Central Excise Tariff Act, 1985, empowers the Central Government to increase the duties of excise by amendment to the First Schedule, by notification in the official gazette, in the following manner:-

	case	Increased upto-
a	Where the rate of duty specified in First and Second Schedule as in force immediately before the issue of such notification is NIL	A rate of duty not exceeding 50% ad Valorem expressed in any form or method.
b	In any other case	A rate of duty not exceeding twice the rate of duty specified in respect of such goods in First Schedule and Second Schedule as in force immediately before issue of the said notification.

No second increase unless the first approved: However, the Central Government shall not issue any notification for substituting the rate of duty in respect of any goods as specified by an earlier notification, before such earlier notification has not been approved by the parliament with or without modifications.

MAIN FEATURES OF THE CENTRAL EXCISE TARIFF

- (a) Detailed and comprehensive.

- (b) **Based on HSN:** It is based on Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature), which is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs & Trade (GATT).
- (c) Same class of goods grouped together :
- (d) Section Notes/Chapter Notes: It contains Section/Chapter Notes and Chapter Sub-Notes giving detailed explanation as to the scope and ambit of the respective chapter. These notes have been given statutory backing and have been incorporated at the top of each Chapter.
- (e) **Eight digit coding system:** New eight digit codes have been introduced at par with Customs Tariff assigning first four digits to the Chapter Heading, first six digits to the Chapter sub-heading and eight digits to the Tariff Item No. to facilitate more items in the chapter.
- (f) No separate residuary Chapter: Residuary items have been provided separately for each class of goods under each Chapter.
- (g) Rules for interpretation: Interpretative rules have also been provided to serve as statutory guidelines for interpreting the Tariff Schedule.
- (h) Residuary Entries: Residuary entries have been incorporated under most of the headings and sub-headings.

HARMONISED COMMODITY DESCRIPTION AND CODING SYSTEM (HSN)

- (1) The term Harmonised Commodity Description and Coding System (HSN) is used with reference to categorisation and classification of commodities for the purpose of fixation of rates of tariff for levying of duties of excise and customs. Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade (GATT). It forms the basis of the system of classification in the Central Excise Tariff Act, 1985.
- (2) **Explanatory Notes to the HSN**
 - (a) Official notes issued by the Customs Co-operation Council: The Explanatory Notes to the HSN are the official notes issued by the Customs Co-operation Council, Brussels.
 - (b) Explain and clarify the scope of headings of HSN: They explain and clarify the scope and extent of each and every heading of the HSN, on the basis of which the present Central Excise Tariff has been patterned.
 - (c) Do not have a legal backing-are only of persuasive value: It is to be remembered that the Explanatory Notes do not have legal backing, unlike the Chapter Notes and Section Notes contained in the Tariff. Consequently, these Explanatory Notes are only of persuasive value and can be used as an aid to classification of goods when there is ambiguity as to the scope of the entry.
 - (d) Can be resorted to only in case of ambiguity in tariff items in Central Excise Tariff.

RULES OF INTERPRETATION

Section and Chapter Titles have no legal validity [Rule 1]

[RULE 2(a)]: Classification of Incomplete or unfinished articles - Classification as Complete/Finished goods

[RULE 2(b)] Classification of Mixture/Combinations of a Material/Substance with other Materials/Substances - To be classified as that Material or Substance.

The classification of the goods consisting of more than one material or substance shall be according to the principle of Rule 3.

[RULE 3]: Classification when goods classifiable under two or more headings

When by application of Rule 2(b), or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows :-

- (a) **Most Specific description shall prevail over general description** [Rule 3(a)]: The heading, which provides the most specific description, shall be preferred to headings providing a more general description.
- (b) **Classification on basis of essential character** [Rule 3(b)]: Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, so far as this criterion is applicable. This Rule will be applicable only on the failure of Rule 3(a).
- (c) **Latter the better maxim** [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 numerical order among those, which equally merit considerations. This rule is also known as “latter the better maxim”.

[RULE 4] AKIN RULE: 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] Classification of Packing materials: In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein –

- (a) **Classification of cases/containers used for packaging of goods:** Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.
- (b) **Classification of packing materials and packing containers:** Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

RULE 6

Only sub-headings at the same level are comparable [Rule 6]: For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-heading 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 purposes of this rule, the relative Chapter and Section Notes also apply, unless the context otherwise requires.

TRADE PARLANCE THEORY

According to the Trade Parlance theory, the goods are to be **classified as they are known in trade and commerce**. If a product is neither defined in Schedule to Central Excise Tariff Act, 1985 nor in the Central Excise Act, 1944, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it i.e. in its commercial sense. But, where the Tariff heading itself uses highly scientific or technical terms, they are to be classified in scientific or technical sense.

Trade meaning and the commercial nomenclature would be applicable if a particular product description occurs by itself in a Tariff entry and there is no conflict between the Tariff entry and any other entry requiring to reconcile and harmonise that Tariff entry with any other entry.

CHAPTER 3

VALUATION

Basis on which excise duty is payable

As per the Central Excise Tariff Act, 1985, excise duty is payable on the following basis -

- (1). **Specific Duty**;
- (2). Duty based on value (**ad-valorem duty**) i.e. fixed percentage of _
 - (a) **Tariff value** fixed under section 3(2) of the Central Excise Act, 1944.
 - (b) **Transaction value** determined under Section 4 of the Central Excise Act, 1944.
 - (c) **Retail Sale Price** determined under Section 4A, of the Central Excise Act, 1944.
- (3). Duty based on **annual capacity of production** (Section 3A of the Central Excise Act, 1944).
- (4). **Compounded Levy scheme** (Rule 15 of the central Excise Rules, 2002).
- (5). **Specific duty-cum - Ad-valorem duty**.

SPECIFIC DUTY: a Specific Duty is payable on the basis of length, area, volume, etc. The greatest advantage of this method of valuation of excisable goods is its simplicity. Though this duty is simple to calculate but the government revenue doesn't change with the change in the price of goods. Hence it demands frequent revision to increase the revenue with the increase in the selling price.

AD-VALOREM DUTY: when duty of central excise or customs is levied by **applying the given %age of the value of goods** then, it is known as "Ad valorem rate". Ad valorem rates are the rates based upon the value of goods. The incidence of levy in this case is different from product to product and from manufacturer to manufacturer, with goods of higher value being subject to greater amount of duty and so on. Ad valorem rates have inbuilt elasticity and change with the change in the value of item. The quantum of duty levied automatically varies between superior varieties and inferior varieties of the same goods.

CONCEPT OF TARIFF VALUE

Provisions of **Central Excise Act, 1944** relating to Tariff Value:

1. Power to fix tariff values vests with Central Government [Section 3(2)]:

The Central Government has power to fix tariff values of any article enumerated in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985. **If tariff values are fixed, the duty shall be payable on the basis of such tariff values.** The Central Government may alter the tariff values for the time being in force.

2. Different tariff values may be fixed in respect of excisable goods [Section 3(3)]:

Different tariff values may be fixed -

- (a) for **different classes or descriptions** of the same excisable goods; or
- (b) for excisable goods of the same class or description -

- ❖ Produced or manufactured by different classes of producers or manufacturers;
- ❖ Sold to different classes of buyers.

3. Different tariff values may be fixed having regard to sale prices of such goods:

In fixing different tariff values in respect of excisable goods, regard shall be given to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.

DUTY ON BASIS OF ANNUAL CAPACITY OF PRODUCTION AND COMPOUNDED LEVY SCHEME

Power of Central Government to charge excise duty on the basis of capacity of production in respect of notified goods [Section 3A]

(1). Section 3A has an overriding effect over section 3:

Section 3A is an independent code for levy and collection of excise duty in respect of notified goods. The excise duty in respect of notified goods shall be **levied and collected on the basis of annual capacity of production** as per the provision of this section. This section overrides the charging Section 3 i.e. normal provisions of the Act will not apply for levying excise duty in respect of notified goods.

(2). Excisable Goods to be notified having regard to nature of manufacturing process, evasion of duty and protecting interest of revenue:

If the **Central Government**, after having regard to-

- ❖ The nature of the process of manufacture or production of excisable goods of any specified description;
- ❖ The extent of evasion of duty in regard to such goods; or
- ❖ Such other factors as may be relevant.

Is of the **opinion that it is necessary to safeguard the interest of revenue** then, it may specify, by **notification in the Official Gazette**, such goods as notified goods.

Levy and collection of duty: The duty of excise shall be levied and collected on such goods in accordance with the provisions of this section.

(3). Rules to be framed for determination of annual capacity of production which shall be deemed annual production:

The Central Government may, by rules,-

- (a) (i)** Provide the **manner for determination** of the annual capacity of production of the factory, in which such goods are produced.
- (ii).** The annual capacity so determined shall be **deemed to be the annual PRODUCTION**.
- (iii).** The capacity will be determined by an **officer not below the rank of Assistant Commissioner of Central Excise**.

- (b) (i) Specify the **factor relevant to the production** of such goods and the quantity that is deemed to be produced by use of a unit of such factor;
- (ii). Provide for the **determination of the annual CAPACITY of production of the factory** in which such goods are produced on the basis of such factor, by an officer not below the rank of Assistant Commissioner of Central Excise; and
- (iii). Such **annual capacity of production shall be deemed to be the annual production** of such goods by such factory.
- (4). Annual production to be calculated on **PROPORTIONATE BASIS** if factory is in **OPERATION DURING PART OF YEAR:**
Where a factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production.
- (5). **RE-DETERMINATION of** annual capacity of production on proportionate basis **if RELEVANT FACTOR ALTERED OR MODIFIED:**
In case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regarding such alteration or modification.
- (6). **Levy and collection of duty as per rules :**
The duty of excise on notified goods shall be -
- (a) levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and
- (b) Collected in such manner as may be prescribed.
- (7). **ABATEMENT OF DUTY in case of continuous closure for period of 15 days or more:**
Where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period, if the manufacturer of such goods fulfills such conditions as may be prescribed.
- (8). Provision **not to apply to** clearances in India by **100% EOU:**
The provisions of this section shall not apply to goods produced or manufactured by a hundred per cent export-oriented undertaking and brought to any other place in India.
- (9). **ADDITIONAL DUTY OF CUSTOMS (ADC)** to be calculated as per normal provisions :
The excise duty for the purpose of ADC in respect of notified goods shall be calculated in accordance with normal provisions i.e. Section 3 of Central Excise Act, 1944 and not Section 3A of the said Act. The duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the 1st Schedule and the 2nd Schedule to the Central Excise Tariff Act, 1985, read with any notification for the time being in force.
- (10). Pan Masala, Gutkha, Branded unmanufactured tobacco & Chewing tobacco, notified under this section : Pan Masala containing more than 15% betel nut Pan masala containing tobacco (i.e. gutkha); Unmanufactured tobacco bearing a brand name; Chewing Tobacco; and Jarda scented

tobacco manufactured with the aid of packing machine and packed in pouches shall be liable to duty based on production capacity. **The declaration of retail sale price is mandatory in case of such notified goods.** The **duty is fixed PER MONTH PER PACKING MACHINE based on retail sale price of the pouches.** The amount of duty specified in the notification is inclusive of the EC and SHEC.

COMPOUNDED LEVY SCHEME

- (1). Compounded levy scheme is an **optional scheme** and is covered under **Rule 15 of Central Excise Rule, 2002**. This scheme is meant for **small scale decentralised sectors** and at present, it covers stainless steel pattis/pattas and aluminum circles. ***Duty is fixed on the basis of number and types of machines.*** Payment of such duty absolves the manufacturer from maintenance of day to day excise records and other excise formalities.
- (2). **Special procedure for payment of duty** [Rule 15 of Central Excise Rules, 2002]: The Central Government may, by notification, specify the goods in respect of which an assessee shall have the option to pay the duty of excise on the basis of such factors as may be relevant to production of such goods and at specified rate subject to specified limitations and conditions, including those relating to interest or penalty. The Central Government may also specify the manner of making an application for availing of the special procedure for payment of duty, the abatement, if any, that may be allowed on account of closure of a factory during any period, and any other matter incidental thereto.
- (3). **Rate of excise duty**: The rate of excise duty for the sectors covered under the compounded levy scheme has been fixed as follows,-
 - (a) In case of Stainless Steel Pattis/Pattas – Rs. 40,000 (**notification no. 5/2013**) per machine per month. (+ EC & SHEC)
 - (b) In case of Aluminium Circles produced from sheets manufactured on cold rolling machines – Rs. 12,000 per machine per month. (+ EC & SHEC)
- (4). **Abatement on closure of factory**: The Central Government may also allow abatement on account of closure of factory during any period.
- (5). **Cenvat Credit not admissible**: No credit of duty paid on any raw material, component part or machinery or finished products used for cold rolling of stainless steel pattis/pattas or aluminium circles, is allowed under the CENVAT Credit Rules, 2004.

TRANSACTION VALUE - SECTION 4

The essential features of **valuation of excisable goods under section 4** of the Central Excise Act, 1944 are as under -

- (1). **Applicability of Transaction Value** - Conditions to be satisfied: As per section a(f)(a) of the Central Excise Act, 19M, where duties of excise is leviable with reference to value, then on each removal of such goods, the value shall be the **“TRANSACTION VALUE”** if the following conditions are satisfied -
- (i). There should be sale of excisable goods by the assessee;
 - (ii). The goods sold should be for delivery at the time and place of removal;
 - (iii). The assessee and the buyer of the goods should not be related persons; and
 - (iv). The price should be sole consideration for the sale.

The above conditions must be satisfied in respect of each removal of excisable goods.

- (2). **Valuation in accordance with Rules**: As per section 4(1)(b), in case any of the above condition is not satisfied then value will be determined in accordance with the Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000.

ASSESSEE [Section 4(3)(a)] :

Assessee means the person who is **liable to pay the duty** of excise under this Act and includes his agent.

RELATED PERSON [section 4(3)(b)]:

Persons shall be deemed to be related if –

- (i). they are inter-connected undertakings; or
- (ii). they are relatives; or
- (iii). amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- (iv). they are so associated that they have interest, directly or indirectly, in business of each other.

Note : Relative shall have the meaning assigned to it in section 2(41) of the Companies Act, 1956.

PLACE OF REMOVAL [Section 4(3)(c)] :

Place of removal means –

- (i). A **factory** or any other place or premises of production or manufacture of the excisable goods;
- (ii). A **warehouse** or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii). A **depot**, premises of a **consignment agent** or any other place or premises from where **excisable goods are to be sold after their clearance from factory**, from where such goods are removed.

TIME OF REMOVAL [Section 4(3)(cc)]:

Time of removal in respect of the excisable goods removed from the place of removal referred to in section 4(3)(c)(iii) above i.e. (depot, premises of consignment agent or any other place) shall be deemed to be the ***time at which such goods are cleared from the factory.***

TRANSACTION VALUE [Section 4(3)(d)] :

Transaction value has following ingredients –

- (a) Transaction value is the ***price actually paid or payable*** for the goods when sold.
- (b) It includes, ***in addition*** to the amount charged as price, ***any amount that the buyer is liable to pay*** to the assessee or to any other person on behalf of the assessee.
- (c) Such amount is payable by ***reason of or in connection with sale.***
- (d) Such amount is payable at the ***time of sale or at any other time.***
- (e) It ***includes*** any amount charged for, or to make provision for the following -
 - (i). Advertising or Publicity;
 - (ii). Marketing, selling and organisation expenses;
 - (iii). Storage;
 - (iv). Outward handling;
 - (v). Servicing;
 - (vi). Warranty;
 - (vii). Commission;
 - (viii). Any other matter.
- (f) It **DOES NOT INCLUDE** the amount of –
 - (i). Duties of excise;
 - (ii). Sales tax;
 - (iii). Any other taxes,actually paid or payable on such goods.

CENTRAL EXCISE VALUATION (DETERMINATION OF PRICE OF EXCISABLE GOODS) RULES, 2000

RULE 2(b)

➤ **NORMAL TRANSACTION VALUE**

Normal transaction value means the transaction value at which the greatest aggregate quantity of goods is sold.

[RULE 4]

- Value of goods in a case where the **VALUE OF GOODS IS NOT KNOWN** at the time and place of removal?

The value of the excisable goods shall be based on the value of such goods sold by the assessee for delivery at any other time nearest to the time of the removal of goods under assessment subject to, if necessary, such adjustment on account of the difference in the dates of delivery of such goods and of the excisable goods under assessment, as may appear reasonable to the proper officer.

(Removal of free samples or free replacement under warranty claims will be covered under this rule).

[RULE 5]

- Valuation in case excisable goods are **SOLD FOR DELIVERY AT A PLACE OTHER THAN PLACE OF REMOVAL:**

Where any excisable goods are sold in the circumstances specified in Section 4(1)(a) of the Act, except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the **transaction value excluding the cost of transportation from the place of removal upto the place of delivery** of such excisable goods.

Thus, Assessable value shall be arrive as under –

Transaction value of such goods	xxx
Less: Cost of transportation from place of removal upto place of delivery thereof ***	xxx
Assessable value of excisable goods	xxx

***If factory is not the place of removal, then, cost of transportation from the factory to the place of removal, shall not be excluded.

1. **COST OF TRANSPORT** : includes -
- the **actual cost** of transportation and
 - in case where **freight is averaged**, the cost of transportation calculated in accordance with generally accepted **principles of costing**.

Thus, exclusion shall be available not only on account of actual cost of transportation but also on average freight or equalised freight from the place of removal to the place of delivery, provided the same is computed as per the principles of costing. Moreover, cost of transportation is excludible from the transaction value irrespective of whether the same is separately shown in the invoice or not.

2. **COST OF TRANSPORT FROM FACTORY TO PLACE OF REMOVAL - INCLUDIBLE :**

The cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods.

Thus, where the goods are transferred from factory to a depot, premises of consignment agent or any other place or premises from where the goods are sold after the clearance from the factory, the cost of transportation from the factory to such depot, where the goods are sold, shall be included in the transaction value.

3. **TRANSPORTATION BY ASSESSEE'S VEHICLE**: In case transportation is by assessee's vehicle, the cost of transportation can be calculated through **costing method** following the accepted principles of costing. A cost certificate from a certified Cost Accountant/Chartered Accountant/Company Secretary may be accepted.
4. **TRANSIT INSURANCE - Deductible/Not includible**: Transit insurance is excludible in same manner as cost of transport. The transit insurance should either be shown separately in the invoice or can be included in the transportation cost shown separately.
5. **COST OF RETURN FARE - Not includible**
If the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount will also be excluded. When onward freight is not includible in the assessable value of the excisable goods, there is no question of return freight be included in the assessable value, whether or not the return freight is mentioned in the relevant invoices.

ILLUSTRATION

Computation of assessable Value - Average/equalised cost of transport:

A manufacturer having a factory at Jaipur has uniform price of Rs. 1,000 per unit (excluding taxes) for sale anywhere in India. During the financial year 2013-14, he made the following sales:

- (a) Sale at factory gate in Jaipur: 1,000 units - no transport charges.
 - (b) Sale to buyers in Delhi: 500 pieces - actual transport charges incurred t 12,000.
 - (c) Sale to buyers in Chennai: 600 pieces - actual transport charges incurred T 48,000.
 - (d) Sale to buyers in Mumbai: 900 pieces - actual transport charges incurred T 30,000.
- (Find assessable value per unit under the central excise. (CS June 2005))

SOLUTION

In this question/ since the goods are sold at uniform price of Rs. 1000 per unit (excluding taxes) for sale anywhere in India, hence the manufacturer will get deduction on account of cost of transportation on average or equalised basis as per Rule 5 of Central Excise Valuation Rules, 2000.

The assessable value per unit shall be [Price per unit - Cost of transport on average basis] i.e. [Rs.1000 - Rs. 30] = Rs. 970.

The cost of transportation on average basis shall be computed as under,-

Total actual transport charges incurred during the year (Nil + Rs. 12,000 + Rs. 48,000 + Rs. 30,000)	90,000
Total number of units sold (Rs. 1,000 + Rs. 500 + Rs. 600 + Rs. 900)	3,000
Average or Equalised Freight (Transport Charges) per unit (Rs. 90,000 + Rs. 3,000)	30

[RULE 6]

➤ **value when PRICE IS NOT SOLE CONSIDERATION for sale**

The value of such goods shall be deemed to be the **aggregate** of -

- (a) Such transaction value; and
 - (b) the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.
- **Apportioned value of goods and services supplied by the buyer FREE OF CHARGE OR AT REDUCED COST to be added to TV**, to the extent such value has not been included in transaction value -
 - (a) value of materials, components, parts and similar items relatable to such goods;
 - (b) value of tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used in the production of such goods;
 - (c) value of material consumed, including packaging materials, in the production of such goods;
 - (d) value of engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of such goods.
 - **NOTIONAL INTEREST on advance not to be added unless price influenced**
Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods, -
 - (a) by way of charging a lesser price from; or
 - (b) by offering a special discount to the buyer who has made the advance deposit.

[RULE 7]

➤ **Valuing excisable goods that are to be SOLD FROM DEPOT/BRANCH or PREMISES OF a CONSIGNMENT AGENT**

1. **Assessable Value = Normal Transaction Value of identical goods prevalent at depot, etc.**
2. In case, the "normal transaction value" from the depot or other place is **not ascertainable** on the **day** identical goods are being **removed** from the factory/ warehouse, **the nearest day** when clearances of the goods were affected from the depot or other place should be taken **into consideration**.
3. **First time depot transfer** - Goods to be **provisionally assessed**: In case the goods are transferred to depot for the first time, there is no normal transaction value prevalent at the depot. Hence the manufacturer has to apply for provisional assessment under Rule 7 of Central Excise Rules, 2002. On ascertainment of normal transaction value at depot, such assessment shall be finalised by Central Excise Officer.

[RULE 8]

➤ **Valuation in case OF CAPTIVE CONSUMPTION**

- Value shall be **110% of the cost of production or manufacture** of such goods.
- Cost of production to be computed as per **CAS-4 issued by ICWAI**
- The amortization** cost of moulds, tools, dyes & patterns etc. received free of cost shall be included in the cost of production. ** (the reduction of the value of an asset by prorating its cost over a period of years).
- Interest and financial charges being a financial charge shall not be considered to be a part of cost of production.
- The material cost shall be taken as net of excise duty if Cenvat credit is availed of excise duty paid on raw material.
- If goods are captively consumed, there is no requirement of declaration of RSP. Hence, section 4A shall not apply in case of Captively consumed goods.

[RULE 9]

- **Valuation in case of sale of goods to or through “RELATED PERSON, OTHER THAN CONNECTED UNDERTAKINGS”**
1. The value of the goods shall be the **normal transaction value** at which these **are sold** by the related person at the time of removal,-
 - To **buyers**, i.e., **related person to unrelated buyers**; or
 - Where such goods are not sold to such buyers, **related person to related retail dealer**
 2. **Consumption of goods by related person**: value shall be as per **Rule 8** i.e. 110% of cost of production of assessee.

[RULE 10]

- **Valuation in case if goods sold only through “INTER-CONNECTED UNDERTAKING”**
1. **Meaning of Inter-connected undertakings [Explanation to Section 4(3)(b)]**: Two or more undertakings which are inter-connected with each other in any of the following manners, namely:-
 - (a) if one owns or ***controls the other***;
 - (b) where the undertakings are owned by ***FIRMS***, if such firms have one or more common partners;
 - (c) where the undertakings are owned by ***BODIES CORPORATE***
 - (i). if one body corporate manages the other body corporate; or
 - (ii). if one body corporate is a subsidiary of the other body corporate; or
 - (iii). if the bodies corporate are under the same management ;or
 - (iv). if one body corporate exercises control over the other body corporate in any other manner;

- (d) where one undertaking is owned by a **BODY CORPORATE** and the other is owned by a **FIRM**, if one or more partners of the firm,
- (i). hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate; or
 - (ii). exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;
- (e) if one is owned by a body corporate and the other is owned by a **FIRM HAVING BODIES CORPORATE AS ITS PARTNERS**, if such bodies corporate are under the same management
- (f) if the undertakings are owned or controlled by the **SAME PERSON OR BY THE SAME GROUP**;
- (g) if one is connected with the other either **DIRECTLY OR THROUGH** any number of **undertakings which are inter-connected undertakings** within the meaning of one or more of the foregoing sub clauses.
2. When the assessee sells the excisable goods only to or through an interconnected undertaking, the value of goods shall be –

Case:	Value shall be:
When inter-connected undertaking is related in term of section 4(3)(b) (ii)/(iii)/ (iv) or buyer is a holding or subsidiary company of assessee.	Determined as per Rule 9.
In any other case	Determined as if they are not related persons.

[RULE 10A]

➤ **Value when the goods are manufactured on JOB WORK BASIS:**

(i). **Goods SOLD** by the principal manufacturer directly **From The Job-Worker Premises:**

In a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are **not related** and the **price is the sole consideration** for the sale, the value of the excisable goods shall be the

- **transaction value** of the said goods **sold by the principal manufacturer;**

(ii). **Goods TRANSFERRED** by principal manufacturer **TO DEPOT/CONSIGNMENT AGENT, ETC. FOR SALE:**

In a case where the goods are **not sold** by the principal manufacturer **at the time of removal** of goods from the factory of the job-worker, but are **transferred to some other place** from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are **not related** and the **price is the sole consideration** for the sale, the value of the excisable goods shall be the

- **normal transaction value** of such goods **sold** from such other place **at or about the same time** and,
- where such goods are **not sold** at or about the same time, **at the time nearest** to the time of removal of said goods from the factory of job-worker;

(iii). **ANY OTHER CASE:**

In a case not covered under (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis** apply for determination of the value of the excisable goods.

(** "changing [only] those things which need to be changed")

Transportation cost after the place of removal - Not includible

(iv). **Computation of value of GOODS NOTIFIED u/s 4A**

In case the excisable goods manufactured on job work are covered under MRP based excise duty, then the value will be determined in accordance with Section 4A of the Central Excise Act, 1944.

(v). If none of the Rules 4 to 10 apply, then value to be determined as per Rules 11 read with Section (1) in accordance with Ujagar Prints v. UOI [7989] 38 ELT535 (SC).

RETAIL SALE PRICE BASED VALUATION - SECTION 4A

- This section applies if the following **CONDITIONS** are fulfilled:
 - The goods must be excisable goods.
 - The goods must be chargeable to duty with reference to value.
 - The goods must be sold in package.
 - The declaration of retail sale price on the package of such goods is mandatory as per the provisions of the Legal Metrology Act, 2009 or the rules made there under or under any other law for the time being in force.
 - The said goods are notified by the Central Government for the purpose of this section.

2. **Provisions of Section 4A has overriding effect over Section 4**

This section has overriding effect over Section 4, since it is worded as "Notwithstanding anything contained in Section 4. But, this section doesn't have overriding effect over section 3(2) "tariff value".

- Valuation of goods to which Section 4A applies : Such goods shall be valued as follows –

Retail sale price (RSP) declared on such goods	XXX
<u>Less:</u> Such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.	XXX
Assessable Value for the purposes of levy of excise duty	Xxx

4. **Abatement to be given having regard to the amount of duty of excise, sales tax and other taxes** : The Central Government may, for the purpose of allowing any abatement, take into account, the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.
5. **Confiscation of goods and RSP to be determined in accordance with rules** : Where any notified goods are excisable goods and the manufacturer
- (a) removes such goods from the place of manufacture, **without declaring the retail sale price** of such goods on the packages or declares a retail sale price which is **not the retail sale price** as required to be declared under the provisions of the Act, rules or other law as referred above; or
 - (b) **tampers** with, **obliterates** or **alters** the retail sale price declared on the package of such goods after their removal from the place of manufacture.
- Then, such goods shall be **liable to confiscation** and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.
6. **Retail Sale Price (RSP)**: For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale.
7. **Increase of RSP at the time of clearance from the place of manufacture** - Such increased RSP to be considered.
8. **Valuation in case when more than one RSP declared** - Maximum RSP to be considered.
9. **Valuation when area wise different RSP declared on different packages** - Each RSP to be considered.
-

➤ VALUATION IN CASE OF MULTI-PIECE PACKAGES

There is no uniformity in valuation of multi-piece packages consisting of 2 or more consumer items of the same kind, with MRP printed on both the individual items and the multi pack. For valuing such multi-packs, it is clarified that –

- (i). If the individual items comprising the multi-pack have clear markings that they are **not to be sold separately** or are packed in such a way that they **cannot be sold separately**, then the MRP indicated on the multi-pack would be considered for payment of duty **under section 4A**.
- (ii). If the individual items do not contain any such inscription (that they are not to be sold separately) and are **capable of being sold separately** at the MRP printed on the individual pieces, then the **aggregate of the MRPs** of the pieces comprising the multi-pack would be **considered for payment of duty** on the multi-pack under section 4A.

- (iii). If the individual items have **MRPs printed on them but are scored out**, then the MRP printed on the multipack will be taken for Purposes of valuation under section 4A.
- (iv). If an individual item is **supplied free in the multi-pack** and has **no MRP** printed on it, the **MRP printed on the Multipack** will be taken for purposes of valuation under section 4A.

VALUATION AUDIT - SECTION 14A

- Audit to be directed by Assistant Commissioner or Deputy Commissioner if value is not properly declared by assessee.
- Nominated Cost/Chartered Accountant, to submit audit report to Central Excise officer, Total period cannot exceed 180 days.
- Accounts to be audited even if they have been already audited under any other law.
- Opportunity to the assessee of being heard

CHAPTER 4

CENVAT

Value Added Tax as the name implies, is a tax on value addition. Value addition means the value of the output as reduced by the value of bought-out inputs. In a pure value added tax system, all taxes paid on bought out inputs are allowed to be set off against the taxes paid on the output, in order to subject only the value addition at each stage to taxation.

CENVAT is the abbreviated form of Central Value Added Tax. Under CENVAT scheme the credit of the excise duty/additional duty of customs paid on the inputs and capital goods and service tax paid on input services is allowed to be utilised for the payment of excise duty on the final products or service tax on output services in order to avoid cascading effect of the duty/tax.

CONCEPT OF CASCADING EFFECT: Cascading effect in simple terms means **duty on duty**. When a raw material passes through various stages of manufacture before being available to the ultimate consumer as a finished good, at every stage duty is levied and this results in cascading effect of duty i.e. duty on duty. The **ultimate burden of such cascading effect of duties is on the consumer**. Therefore, in order to avoid this cascading effect of duty CENVAT scheme was introduced. Since credit is allowed of the duties paid on inputs and capital goods and service tax paid on input services, hence the same **do not form the part of the cost of production** and hence it prevents cascading effect.

Basic features of CENVAT scheme.

1. **Objective- To prevent cascading effect:** It is introduced with the object to prevent cascading effect of duty on final products and service tax on output services. For this purpose, Cenvat Credit Rules, 2004 have been framed.
2. **Persons eligible - Manufacturer as well as service providers:** A manufacturer or producer of final product or taxable service provider can take Cenvat credit. The scheme applies to all excisable goods, manufactured or produced from eligible inputs, or by using input service. Similarly the scheme also applies to all output services provided by using eligible inputs or input service.
3. **Credit is allowed of duties paid on inputs, capital goods and taxes paid on input services:** Cenvat scheme is devised to allow credit of duties of excise and additional duties of customs paid on inputs and capital goods and service tax paid on input services. Inputs, capital goods and input service have been defined in the Cenvat Credit Rules, 2004.
4. **Cross sectional credit is allowed amongst goods and services:** The Cenvat Credit is allowed of duties of excise paid on inputs and capital goods. The said credit can be utilised not only for payment of excise duty on final Products, but also for payment of service tax on output services. Similarly, credit of service tax paid on input services is allowed, which can be used not only for payment of service tax on output services but also for payment of excise duty on final products.

5. **Credit only if final products are dutiable/services provided are taxable:** The Cenvat credit is allowed only for payment of duties of excise on final products or payment of service tax on output services. Thus, if final products are exempted or output services are exempted, no Cenvat credit shall be allowed.
6. **Time limit for taking of Cenvat credit:** The Cenvat credit can be taken immediately on receipt of inputs. In respect of capital goods, credit can be taken not exceeding 50% in the financial year in which capital goods are received and balance credit can be taken in subsequent years. In respect of tax paid on input services, Cenvat credit can be taken on receipt of invoice provided payment of such invoice is made within 3 months of the date of invoice.
7. **Refund of Cenvat Credit:** The Cenvat credit can be refunded to manufacturer/service provider if inputs/input services are used for manufacturing final products or for provision output services which are exported.
8. **Documents and Accounts:** The Cenvat credit can be taken only on the basis of specified documents and maintenance of proper records in relation to such inputs, capital goods and input services.
9. **Burden of proof:** The burden of proof regarding admissibility of Cenvat credit shall be on the manufacturer or service provider.
10. **Penalty and confiscation:** Penalty provisions have been made in case the manufacturer or service provider violates the provision of said rules.
11. **Applicability:** The Cenvat credit Rules, 20M came into force with effect from 10-9-2004. They extend to the whole of India. However nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir. Services provided in J&K are not liable to service tax.

CAPITAL GOODS Rule 2(a)

Capital Goods means:-

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
- (ii) Pollution control equipment;
- (iii) Components, spares and accessories of the goods specified at (i) and (ii);
- (iv) Moulds and dies, jigs and fixtures;
- (v) Refractories and refractory materials;
- (vi) Tubes and pipes and fittings thereof; and
- (vii) Storage tank,
- (viii) Motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 & their chassis but including dumpers and tippers,

used:-

- (1) **IN THE FACTORY** of the manufacturer of the final products, but **does not include** any equipment or appliance **USED IN AN OFFICE**; or

- (1A) outside the factory of manufacturer of final products for generation of electricity for CAPTIVE USE within the factory; or
- (2) for providing output service;
- (B) Motor Vehicle designed for TRANSPORTATION of goods including their chassis registered in the name of the service provider, when used for-
- (i) providing an output service of renting of such motor vehicle; or
 - (ii) transportation of inputs and capital goods used for providing an output service, or
 - (iii) Providing an output service of courier agency.
- (C) Motor Vehicle designed to CARRY PASSENGERS including their chassis, registered in the name of the provider of service, when used for providing output service of –
- (i) transportation of passengers; or
 - (ii) renting of such motor vehicle; or
 - (iii) imparting motor driving skills.
- (D) components, spares and accessories of motor vehicles which are capital goods for the assessee.

INPUT Rule 2(k)

Input means-

- (i) all goods used in the factory by the manufacturer of the final product or
- (ii) any goods including accessories, cleared along with the final product the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam for captive use; or
- (iv) all goods used for providing any output service;

BUT EXCLUDES

- (A). light Diesel oil high speed diesel oil or motor spirit, commonly known as Petrol;
- (B). any goods used for-
 - (a) construction or execution of Works Contract of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act.
- (C). Capital Goods except when used as parts or components in the manufacture of a final product;
- (D). Motor vehicles;
- (E). any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment when such Goods Are Used Primarily For Personal Use Or Consumption Of Any Employee; and

(F). any goods which have no relationship whatsoever with the manufacture of a final product.

*** (For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer).***

INPUT SERVICE Rule 2(I)

means any service, -

- (i) used by a provider of output service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products upto the place of removal

and includes services used in relation

to modernisation, renovation or repairs of a factory premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting auditing financing recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal

BUT EXCLUDES

- (A). Service Portion in the Execution Of A Works Contract And Construction Services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –
 - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
- (B). Services provided by way of Renting Of A Motor Vehicle in so far as they relate to a motor vehicle which is not a capital goods; or
- (BA) Service of General Insurance Business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by –
 - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
 - (b) an insurance company in respect of a motor vehicle insured or re-insured by such person; or
- (C). Such as those provided in relation to outdoor catering beauty treatment, health services, cosmetic and plastic surgery, membership of a club health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

EXAMPLES

- ❖ Assessee would not be entitled to CENVAT credit of duty paid on **machinery purchased from other manufacturers** when such machinery had not even been unpacked by assessee in his own factory and it had been transported in the exact condition along with the machinery manufactured by himself to foreign country. **KCP LTD. V. CCEX- [2013]**
- ❖ **Two different units of a manufacturer**, adjoining each other, set up within a common boundary wall, having a **common PAN** but **separate Central Excise registration**, shall be treated as two different factories. Credit can be availed on eligible inputs utilised for the generation of electricity only to the extent the same is utilised in the unit registered for that purpose but not to the extent it was supplied to the other unit having separate registration. **SINTEX INDUSTRIES LTD V. CCEX. [2013]**
- ❖ **Structural components of Boiler** are classified under Heading 8402 and eligible as inputs. Circular No. 9t5QX7/2072-CX, dated 2-4-2012 and Circular No. 966/09/2012
- ❖ **Inputs used for tests or quality control check:** have relationship with manufacture of final product and eligible for Cenvat credit. **Allowed**
- ❖ **Inputs contained in waste etc.:** Credit shall be **admissible**.
- ❖ **Inputs consumed and do not retain identity in the final product:** the same shall be **eligible** for credit.
- ❖ **Materials used for repairs of capital goods:** All the goods used within the factory of manufacturer, which have relation whatsoever with manufacture of final products, shall be **eligible** for Cenvat credit.
- ❖ **Inputs are pilfered from the store-room:** **Not allowed** since credit on inputs is available only for inputs used in the factory of manufacturer of final products.
- ❖ **Final product is cleared in durable and returnable packing material:** **Allowed**, The definition of input covers all goods used in the factory of production by the manufacturer and such packing has relationship with the manufacture of the final products.
- ❖ **An input becomes a waste and is sold as scrap:** In case the inputs have become waste during the manufacturing process, then the CENVAT credit shall be **allowed** on such waste, even if such waste is exempted or chargeable with nil rate of duty.
- ❖ Whether the tool kits or the **first aid kit sold along with the two wheelers** are inputs to be eligible for Cenvat credit: Central Motor Vehicle Rules, 1989 has made it mandatory that every vehicle cleared by the manufacturer must carry a set of tool kit and a first aid kit. The definition of 'Input' as given under Rule 2(k)(ii) of Cenvat Credit Rules, 2004, includes within its ambit accessories of final product cleared along with the final product. **ELIGIBLE**

OUTPUT SERVICE [Rule 2(p)]

Output service means any service provided by a provider of service **located in the taxable territory**, but shall **not include** -

- (i) a service specified in **Section 66D** of the Finance Act; or
- (ii) a service where the whole of service tax is liable to be **paid by the recipient** of service.

NOTE:

- (i) The provider of service must be located in the taxable territory (i.e. India excluding State of Jammu and Kashmir) for provision of any service to be output service therefore if a provider of service located in jammu and Kashmir or outside India provides any services, such services will not be output service.
- (ii) Under Section 66D of the Finance Act, 1994, services specified in the Negative list are covered which are not chargeable to service tax. Hence, such services are not output service.
- (iii) If under reverse charge mechanism, 100% of service tax is payable by recipient, such service will not be regarded as "output service" for service provider. Therefore, he will not be allowed to take CENVAT credit of Inputs, Input Services and Capital goods used for provision of such services.

JOB WORK [Rule 2(n)]

Job work means processing or working upon raw material or semi-finished goods supplied to the job worker, so as to complete a Part or whole of the process, resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process, and the expression "job worker" shall be construed accordingly.

EXEMPTED GOODS [Rule 2(d)]

Exempted goods, means –

- Excisable goods which are exempt from the whole of the duty of excise leviable thereon, and
- includes goods which are chargeable to "NIL" rate of duty; and
- goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE or under entries at serial Numbers 67 and 128 of Notification No. 12/2012-CE, is availed.

NOTE:

- (i) Notification 1/2011-CE, those goods are listed which are chargeable with 2% duty of excise subject to condition that Cenvat credit should not be availed.
- (ii) Notification 12/2012-CE, serial 67 is of coal, serial 128 is of fertilizers. The duty is 1% subject to condition that Cenvat credit should not be availed.

EXEMPTED SERVICES [Rule 2(e)]

Exempted services means -

- (i) taxable service which is exempt from the whole of the service tax leviable thereon; or
- (ii) service, on which no service tax is leviable under section 66B of the Finance Act; or
- (iii) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall **not include** a service which is **exported** in terms of Rule 6A of the Service Tax Rules, 1994.

NOTE:

- (1) A service which is exported in terms of Rule 6A of the Service Tax Rules, 1994, shall not be regarded as exempt service and credit will be available in respect of inputs/input services used for provision of such service.
- (2) Services which are covered in the negative list under section 66D of the Finance Act, 1994 are exempted services since no service tax is leviable under section 66B of the Finance Act, 1994 on such services.
- (3) Services provided outside the taxable territory (i.e., services provided in J&K or outside India) are exempted services since no service tax is leviable u/s 66B of the Finance Act, 1994 on such services.

CENVAT CREDIT - RULE 3

Various **TYPES OF DUTIES/TAXES** on which Cenvat credit can be taken in terms of Rule 3(1) of Cenvat Credit Rules, 2004.

[RULE 3(1)]

A manufacturer or producer of final products or a provider of output service shall be allowed to take credit of the following duties paid on any input or capital goods received in the factory of manufacturer of final product or by the provider of output service or taxes paid on any input service received by the manufacturer of final product or by the provider of output services.

- (i) The duty of excise specified in the **First Schedule** to the Excise Tariff Act, leviable under the Excise Act i.e. **Basic Excise Duty (BED)**;
However, CENVAT credit of such duty of excise shall **not be allowed** to be taken when paid on any goods,-
 - (a) In respect of which the benefit of an **exemption** under Notification **No. 1/2011-CE**, dated the 1st March 2011 is availed; or
 - (b) **Specified in serial** numbers **67 and 128** in respect of which the benefit of an **exemption** under Notification No.12/2012-C.E., dated 17th March, 2012 is **availed**.
- (ii) The duty of excise specified in the **Second Schedule** to the Excise Tariff Act, leviable under the Excise Act i.e. **Special Excise Duty (SED)**;
- (iii) The **additional duty** of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 i.e. **AED (TTA)**.
The restriction is that the credit of such duty can be **utilized only for payment of AED (TTA)** leviable on final products or on inputs removed as such or on partially processed inputs.
- (iv) The **additional duty** of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 i.e. **AED (GOSI)**.
The restriction is that the credit of such duty can be **utilized only for Payment of BED or SED**.
- (v) The **National Calamity Contingent duty** leviable under section 136 of the Finance Act, 2001 i.e. **NCCD**.

The restriction is that the credit of such duty can be utilized only for payment of NCCD leviable on final products or on inputs removed as such or on partially processed inputs.

In case of mobile phones, credit of other duties cannot be utilized for payment of NCCD on such mobile phones.

- (vi) The Education Cess on excisable goods leviable under section 93 read with Section 93 of the Finance (No. 2) Act, 2004. The restriction is that the credit of such cess can be utilized only for payment of Education Cess leviable on final products or on inputs removed as such or on partially processed inputs or any output service.
- (via) The Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007. The restriction is that the credit of such cess can be utilized only for payment of SHEC leviable on final products or on inputs removed as such or on partially processed inputs or any output service.
- (vii) The additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) , (vi) and (via).
- (viia) The additional duty leviable under section 3(5) of the Customs Tariff Act. However, a provider of output service shall not be eligible to take credit of such additional duty.
- (viii) The additional duty of excise, leviable under section 157 of the Finance Act, 2003. The restriction is that the credit of such duty can be utilized only for payment of Additional Duty of excise on final products or on inputs removed as such or on partially processed inputs.
- (ix) The service tax leviable under section 66 of the Finance Act.
- (ixa) The service tax leviable under section 66A of the Finance Act.
- (ixb) The service tax leviable under section 66B of the Finance Act.
- (x) The Education Cess on taxable services leviable under section 91 read with Section 95 of the Finance (No. 2) Act, 2004.
- (xa) Secondary and Higher Education Cess on taxable services leviable under section 136 read with Section 140 of the Finance Act, 2007.
The restriction is that the credit of such cess can be utilized only for payment of SHEC leviable on final products or on inputs removed as such or on partially processed inputs or any output service.
- (xi) The additional duty of excise leviable under section 85 of the Finance Act, 2005.

RULE 3(2)

The manufacturer of final products shall be allowed to take CENVAT credit of the duty paid on –

- inputs lying in stock or
- in process or
- inputs contained in the final products lying in stock

on the date on which such final goods ceases to be exempted goods.

RULE 3(3)

In relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received and lying in stock on the date on which any service ceases to be exempted services and used for providing such service.

UTILISATION OF CENVAT CREDIT [RULE 3(4)]

The CENVAT credit may be utilized for payment of,-

- (a) Any duty of excise on any final product
- (b) An amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed;
- (c) An amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such
- (d) An amount under Rule 15(2) of Central Excise Rules, 2002;

Note:

Rule 16 of Central Excise Rules, 2002 contains provision regarding sales return of duty paid goods. When such returned goods are subsequently removed from factory, the manufacturer is required to pay an amount equal to Cenvat Credit availed in respect of duty paid goods (in case such goods are not subjected to process amounting to manufacture) or pay excise duty on transaction value (in case such goods are subjected to process amounting to manufacture). Thus, for payment of such amount under Rule 16, Cenvat credit can be utilised.

- (e) Service tax on any output service.
Service tax payable under reverse charge – Cenvat cannot be used for such payment

CONDITION:

1. While paying duty of excise or service tax, as the case may be, the CENVAT credit shall be **utilized only to the extent such credit is available on the last day of the month or quarter**, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be.
2. CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed.
3. No credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.
4. CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.

RULE 3(5) Removal of inputs/capital goods as such without use – 100% credit to be paid

- When inputs or capital goods, on which CENVAT credit has been taken,
- are removed as such from the factory, of premises of the provider of output service,
- the manufacturer of the final products or provider of output service, as the case may be,
- shall **pay an amount equal to the credit availed** in respect of such inputs or capital goods and

- such removal shall be made under the cover of an invoice referred to in rule 9.
- Provided that such **Payment shall not be required** to be made where any inputs or capital goods are removed outside the premises of the provider of output service **for providing the output service**.
- Provided further that such **Payment shall not be required** to be made where any inputs are removed outside the factory for **providing free warranty for final products**.

Computation of amount of Cenvat credit to be reversed - Rule 3(5);

PQR Ltd., Ghaziabad purchased plastic granules valued t 1,15,000 (inclusive of central excise t 10000) for manufacture of plastic moulded chairs. It availed CENVAT credit of excise duty of t 16,000 paid on the said inputs. It subsequently cleared the said inputs as such from the factory in the following manner -

- | | |
|--|--------------|
| (a) Sales to Sansar Ltd. (purchase price: Rs 20,000) | Rs. 40,000 |
| (b) Sales to Krishna Trading Co. (purchase price: Rs 10,000) | Rs.10,000 |
| (c) Clearance to PQR Ltd.'s own factory at Kanpur (purchase price : Rs.70,000) | Free of cost |

PQR Ltd. has sought your advice on the excise duty payable by it on the above clearances.

Give your advice in the matter. **(CS lune2006)**

Solution; Rule 3(5) of the CENVAT Credit Rules, 2004, when inputs are removed as such from the factory, the amount of duty payable shall be equivalent to the credit availed in respect of such inputs. The sale price has no bearing on the duty payable if the inputs are cleared as such from the factory.

Computation of excise duty payable by PQR Ltd.

(a) Excise duty payable on sales to Sansar Ltd. [Rs 20,000 x Rs 16,000 + Rs 1,00000]	Rs.3200
(b) Excise duty payable on sales to Krishna Trading co. [Rs 10,000 x Rs 1.6,000 +Rs 1,00,000]	Rs.1600
(c) Excise duty payable on clearance to own factory at Kanpur [{Rs70,000 x Rs 15,000 + Rs 1,00,000}]	Rs.11200

[RULC 3(5A)]

Rule 3(5A)(a) REMOVAL OF CAPITAL GOODS AFTER USE

Amended vide Notification No.12/2013-CE (NT): As per Rule 3(5A)(a) of the Cenvat Credit Rules,2004, where a manufacturer of final product or a provider of output service removes capital goods after use from his factory or premises, then he shall be liable to pay higher of the following two amounts i.e. (I) or (II), whichever is higher –

Computers & computer peripherals	Other capital goods
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(I) Amount of Cenvat credit taken as reduced by the following percentage points calculated by straight line method for each quarter of a year or part thereof from the "date of taking the Cenvat credit"- for each quarter in the 1st year : @ 10% ; for each quarter in the 2nd year: @ 80%; for each quarter in the 3rd year: @ 50%; and for each quarter in the 4th and 5th year:@1%. (II). Amount equal to the duty leviable on transactional value of such capital goods.	(I) Amount of Cenvat credit taken as reduced by the following percentage points calculated by straight line method for each quarter of a year or part thereof from the "date of taking the Cenvat credit" @ 2.5% for each quarter. (II) Amount equal to the duty leviable transactional value of such capital goods.
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- **[RULE 3(5A)(b)] REMOVAL OF CAPITAL GOODS AS WASTE AND SCRAP:**
- **W.E.F. 27-09-2013** in case the capital goods are removed as waste and scrap, the manufacturer or service provider will be liable to pay duty leviable on transaction value.
- Amount paid by the manufacturer or service provider eligible as Cenvat credit to the buyer of such capital goods : **Rule 3(6)**
- If the manufacturer of goods or the provider of output service fails to pay the amount payable under Rule 3(5A), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken. [inserted by CENVAT Credit (Amendment) Rules, 2013 w.e.f. 1-3-2013]

RULE 3(5B)

- **Inputs/Capital goods written off- 100% credit to be reversed:**
If the value of any,
(i) input, or
(ii) capital goods before being put to use,
on which CENVAT Credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of accounts then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.
- **Credit admissible if input or capital goods is subsequently put to use:**
Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of output services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules.
- If the manufacturer of good or the provider of output service fails to pay the amount payable under sub-rules (5)(3B), it shall be recovered in the manner as provided in rule 14 for recovery of CENVAT credit wrongly taken. [inserted by CENVAT Credit (Amendment) Rules, 2013 w.e.f. 1-3-2013]

[RULE 3(5C)]

Remission of duty on final products and CENVAT reversal on inputs [Rule 3(5C)]: Where, on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002 the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

No reversal required on input service and capital goods: It must be noted that provisions of Rule 3(5C) is applicable in case of inputs only i.e. duty credit related to inputs is required to be reversed. However, no reversal is required in relation to input service and capital goods used for manufacture of final products which is destroyed by fire.

RULE 3(7)

CENVAT credit on inputs and capital goods manufactured by 100% EOU and sold to DTA:

CENVAT credit in respect of inputs or capital goods produced or manufactured by a hundred per cent Export-Oriented Undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of notification No. 23/2003-Central Excise, dated the

RULE 4

CONDITIONS FOR ALLOWING CENVAT CREDIT [RULE 4(1)]

The **TIME LIMIT** for availment of CENVAT credit in respect of **"INPUTS"** is as under

- (1) Cenvat credit to be allowed immediately on receipt of input by manufacturer or provider of output service:

- (2) Credit to Service provider on maintenance of documentary evidence of delivery of inputs and location of inputs.

TIME LIMIT for availment of CENVAT credit in respect of “**INPUT SERVICE**” **[RULE 4(7)]**

- (1) Cenvat Credit on input service on receipt of invoice: The CENVAT credit in respect of input service shall be allowed, **on or after the day on which the invoice, bill or, as the case may be, challan referred to in Rule 9, is received.**
- (2) **REVERSAL OF CENVAT CREDIT** in case the **payment in not** made **within 3 months** and re-credit after payment: In case, the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service.
Subsequently if the payment is made, the manufacturer or output service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.
- (3) **DISCOUNTED PAYMENT** - Proportionate credit admissible: Even if the service receiver doesn't pay the full invoice value of taxable services, he can take proportionate credit of the service tax relatable to proportionate value of the taxable services paid.
- (4) Cenvat credit only on payment of value and service tax thereon, where service tax is paid under **REVERSE CHARGE**: In case of an input service, where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed, on or after the day on which payment is made, of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan, referred to in Rule 9.
- (5) Reversal of credit when **PAYMENT IS REFUNDED OR CREDIT NOTE IS GIVEN** to manufacturer or service receiver: If any Payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider, who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited.
- (6) **DUE DATE OF MAKING ABOVE PAYMENTS** [Explanation I]:
- (i) **Monthly payments**: Manufacturer or output service provider shall pay the above amounts **on or before** –
 - (a) the **5TH DAY** of the following month (except for March)
 - (b) the **31st March** (for the month of March)
 - (ii) **Quarterly Payments**: Manufacturer availing SSI exemptions and an output service provider, who is an individual or proprietary firm or partnership firm, shall pay the above amounts on or before
 - (a) the **5TH DAY** of the month succeeding the quarter (except for the quarter ending with the month of March)
 - (b) the **31st March** (for the quarter ending with March)

The payment can be made by debiting the CENVAT credit or otherwise.

- (7) **RECOVERY** as per Rule 14 [Explanation II]: If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.

CENVAT Credit in respect of “CAPITAL GOODS”:

- (1) Availment of credit **not exceeding 50%** in year of acquisition **[Rule 4(2)(a)]**: The CENVAT credit in respect of capital goods received –
- in a factory or
 - in the premises of the provider of output service or
 - outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory,

at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year.

If capital goods not received in premises of service provider - credit on maintenance of documentary evidence of delivery and location; CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods, irrespective of whether it is received in the premises or not.

- (2) **Balance credit** to be allowed in subsequent years, provided **capital goods are in possession [RULE 4(2)(B)]**

The balance of CENVAT credit may be taken

- in **any financial year subsequent** to the financial year
- in which the **capital goods were received** in the factory of the manufacturer, or in the premises of the provider of output service,
- **if the capital goods are in the possession** of the manufacturer of final products, or provider of output service in such subsequent years.
- However, Possession requirement **not necessary** in case of **components, spares and accessories, refractories, moulds**,

- (3) **100% Credit shall be allowed in year of acquisition:**

- (a) if capital goods are **removed as such** in the year of acquisition then credit for the whole amount of duty paid on such goods shall be allowed in the same financial year.
- (b) 100% Credit of **Additional duties of customs** leviable under section 3(5) shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer.
- (c) 100% Credit to units availing **SSI Exemption**, CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

- (4) **Credit available even if capital goods acquired on lease, hire purchase or loan agreement** [Rule 4(3)]

- (5) Credit not admissible if **depreciation** claimed on duty element [Rule 4(4)]

- (6) In case of capital goods imported under **Project Import Scheme**, the additional duty of customs paid under section 3 of the Customs Tariff Act will be eligible for CENVAT Credit.
- (7) No CENVAT credit on capital goods shall be allowed which are exclusively used for the manufacture of **exempted goods**.

The procedure for REMOVAL OF INPUTS for JOB WORK to a job worker on which CENVAT has been availed under the Central Excise Act, 1944 is as under -

- (1) Cenvat credit in case of job work [Rule 4(5)(a)]: The CENVAT credit shall be **allowed even if** any inputs or partially processed inputs or capital goods are sent to job worker,-
- (a) for further processing, testing, repairing, reconditioning; or
 - (b) for the manufacture of intermediate goods necessary for the manufacture of final products; or
 - (c) any other purpose.

The removal of such inputs or partially processed inputs or capital goods shall be sent to job worker under cover of job work challans.

- (2) The **processed input/capital goods** to be
- returned within **180 days by the job worker** under cover of prescribed challans.
 - If the inputs or the capital goods are **not received back** within 180 days, the manufacturer or provider of output service **shall pay an amount equivalent to the CENVAT credit** attributable to the inputs or capital goods, by debiting the CENVAT credit or otherwise.
 - Subsequently, the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.
- (3) Credit admissible on figs, fixtures, moulds & dies sent by a manufacturer of final products to another manufacturer or job worker [Rule 4(5)(b)]
- (4) Removal of goods from job worker's premises on permission of Deputy Commissioner /Assistant Commissioner, which shall be valid for one financial year. [Rule 4(6)]

[RULE 5]

REFUND OF CENVAT CREDIT

- (1) Refund of Cenvat credit admissible to exporters of goods or services: A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula:

$$\text{Refund amount} = \frac{\text{Exports of goods + Export turnover of services}}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

The refund shall be admissible subject to procedure, safeguards conditions and limitations as specified in the notification

- (a) **Refund amount**: Refund amount means the maximum refund that is admissible;
- (b) **Net CENVAT credit**: means total CENVAT Credit availed on inputs and input services by the manufacturer or the output service provider, reduced by the amount reversed in terms of Rule 3(5C), during the relevant period;
- (c) **Export turnover of goods** means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking
- (d) **Export turnover of services**: means the value of the export service calculated in the following manner
Export turnover of services =
Payments received during the relevant period for export services
ADD: Export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period
SUB: Advances received for export services for which the provision of service has not been completed during the relevant period.
- (e) **Total Turnover** means sum total of the value of –
- all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
 - export turnover of services determined in terms of clause (d) above and the value of all other services, during the relevant period; and
 - all inputs removed as such under rule 3(5) against an invoice, during the period for which the claim is filed.
- (f) **Export service**: means a service which is provided as per Rule 6A of the Service Tax Rules 1994;
- (g) **Relevant period**: means the period for which the claim is filed.
- (h) **Value to be determined as per Rule 6(3A)/6(3)**: The value of services, shall be determined in the same manner as the value for the purposes of Rule 6(3) and 6(3A) is determined.
- (2) **No refund if** exporter avails duty drawback/rebate under the Customs, Central Excise, Services Tax.
- (3) Refund claim is **filed quarterly** (April-June; July-September; October-December and January-March;
- (4) **Refund claim** - Other Conditions
- (i) Amount of refund claimed shall **not be more than** the amount lying in balance
- at the **end of the quarter** for which refund claim is being made;
 - at the **time of filing** of refund claim;
 - **whichever is less.**
- (ii) **Claim to be reversed** : The amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim. However, if the **amount of refund sanctioned is less than the amount of refund claimed** then the claimant may **take back the credit of the difference** between the amount claimed and amount sanctioned.

[RULE 5A]

REFUND OF CENVAT CREDIT TO UNITS IN SPECIFIED AREAS

Where a manufacturer has **cleared final products** in terms of Notification No. 20/2007-CE (i.e. has cleared goods **from** a unit located in **States of Assam, Tripura, Meghalaya Mizoram, Manipur, Nagaland, Arunachal Pradesh, Sikkim** claiming exemption under the said notification)

- (a) and if he is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification (other than final products which are exempt or subject to nil rate of duty) for payment of duties of excise on said final products,
- (b) Then, the Central Government may allow the refund of such credit, subject to such procedure, conditions and limitations, as may be specified by notification.

[RULE 5B]

Refund of CENVAT Credit to service providers providing services taxed on REVERSE CHARGE BASIS

- A provider of service providing services notified under section 68(2) of the Finance Act (i.e. services charged on reverse charge basis); and
- He is unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services,
- Then shall be allowed refund of such unutilised CENVAT credit
- subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.

Note: It must be noted that in case if 100% reverse charge is applicable i.e. entire service tax is paid by the receiver of service, in such a case for the service provider the said service cannot be regarded as output service, hence he will not be entitled to take CENVAT credit of the taxes and duties paid used for the provision of the said services. When he is not entitled to take the CENVAT credit, the question of refund does not arise.

[RULE 6]

OBLIGATION OF A MANUFACTURER AND OUTPUT SERVICE PROVIDER

- (I) **No CENVAT credit if final product or output service exempt [RULE 6(1)]**: The CENVAT credit shall not be allowed on –
- (a) such quantity of inputs –
 - (i) used in or in relation to the manufacture of exempted goods; or
 - (ii) for provision of exempted services,
 - (b) input service used –
 - (i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or

(ii) for provision of exempted services.

(II) Method to be adopted for credit on inputs and input services by manufacturer of dutiable & exempt goods or provider of taxable & exempt services [Rule 6(2), 6(3), 6(3A) to (3D)]: If the manufacturer or service provider uses the inputs/input services for manufacture of dutiable and exempt goods or for providing taxable and exempt services, then he can follow the **under mentioned options**:

(A) Maintenance of separate accounts for inputs and input services [Rule 6(2)] : The manufacturer or provider of output service shall **maintain separate accounts for**,

(a) The receipt, consumption and inventory of <u>inputs used</u> -	(b) The receipt and uses of input <u>services</u> -
(i). in or in relation to the manufacture of exempted goods;	(i). in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
(ii). in or in relation to the manufacture of dutiable final products excluding exempted goods;	(ii). in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
(iii). for the provision of exempted services;	(iii). for the provision of exempted services; and
(iv). for the provision of output services excluding exempted services.	(iv). for the provision of output services excluding exempted services.

and shall take CENVAT **credit only on inputs and input services under (ii) and (iv) of (a) and (b)** respectively.

(B) Non-Maintenance of separate accounts for inputs and input services [Rule 6(3)]: The manufacturer or the provider of output service, opting not to maintain separate accounts, shall **follow any one of the following conditions**, as applicable to him, namely,-

❖ **CONDITION 1 - ADHOC REVERSAL [RULE 6(3)(i)]**: Pay an amount **equal to 6%** of value of the exempted goods and exempted services.

However, following points have to be considered here:

(a) Excise duty paid on exempted goods to be reduced: If any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable as mentioned above.

(b) If benefit of abatement is taken, then abatement value to be considered: if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the adhoc reversal shall be on such abated value i.e. 6% of the value so exempted.

Example: If gross amount charged is Rs. 100, abatement is 60%, then the abated value being Rs. 60, the adhoc reversal shall be 6% of Rs. 60.

- (c) **Transportation of goods or passengers by rail service:** In case of transportation of goods or passengers by rail, the amount required to be paid under above shall be an amount equal to 2% of value of the exempted services, instead of 6% of value of exempted services.

Other points to be noted:

- (a) **Option to be exercised for all exempted goods /exempted services** [Explanation I]: If the manufacturer of goods or the provider of output service, avails any of the option under this sub rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option **shall not be withdrawn during the remaining part of the financial year.**
- (b) **No credit of input/Input services exclusively used in manufacture of exempted good/exempted services** [Explanation II]: Credit shall not be allowed on
- (i). inputs used exclusively
 - in or in relation to the manufacture of exempted goods or
 - for provision of exempted services
 - (ii) and on input services used exclusively
 - in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or
 - for provision of exempted services.
- (c) **Credit not allowed on ineligible inputs/input services** [Explanation III]: No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.
- (d) Payment of amount under Rule 6(3) deemed to be non avilment of Cenvat credit **[Rule 6(3D)]**: If as per the exemption notification, the exemptions granted on the condition that no CENVAT credit on inputs and input services shall be taken, then adhoc reversal as made above shall be deemed to be CENVAT credit not taken for the purpose of exemption notification i.e. it shall be deemed to be non avilment of CENVAT credit.

❖ **CONDITION 2 - FORMULA BASED (PROPORTIONATE) REVERSAL for inputs and input services**
[RULE 6(3A)]:

- (i). **Provisional payment:** The manufacturer of goods or the provider of output service shall determine and pay, **provisionally for every month,-**
- (a) **Inputs used for exempted final products:** The amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods during the month. let us denote it as A,
This has to be done on basis of actuals (if possible) or input-output ratio or on basis of some reasonable technical estimate.
- (b) **Inputs used for exempted services:** The amount of CENVAT credit attributable to inputs used for provision of exempted services is to be **calculated as follows –**

B	Total value of exempted services provided during the preceding financial year
C	Total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services

	provided during the preceding financial year
D	Total CENVAT credit taken on inputs during the month minus A
(B/C) X D	Amount to be reversed every month on provisional basis (as calculated above) for inputs used for exempted services

- (c) **Input services** used in or in relation to manufacture of exempted goods or provision of exempted services : The amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) is **calculated as follows**,-

E	Total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year
F	Total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year
G	CENVAT credit taken on input services during the month
(E/F) X G	Amount to be reversed every month on provisional basis for input services used in or in relation to manufacture of exempted goods or provision of exempted services.

- (ii) Calculation of '**final amount**' after year end: The manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year, in the following manner, namely -

- (a) **Inputs used for exempted final products**: The amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

- (b) **Input used for exempted services**:

J	Total value of exempted services provided during the financial year,
K	The total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the financial year
L	Total CENVAT credit taken on inputs during the financial year minus H
(J/K) X L	Amount to be reversed on actual basis

- (c) **Input services used for exempted goods and exempted services**:

M	Total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year,
N	Total value of output and exempted services provided and total value of dutiable and exempted goods manufactured and removed, during the financial Year,
P	Total CENVAT credit taken on input services during the financial year
(M/N) X P	Amount to be reversed on actual basis

(iii) PROCEDURAL COMPLIANCE :

- (i). **Intimation in writing to the Superintendent** before exercising the option: While exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the **following particulars**, namely –
- (i). name, address and registration no. of the manufacturer of goods or provider of output service;
 - (ii). date from which the option under this clause is exercised or proposed to be exercised;
 - (iii). description of dutiable goods or output services;
 - (iv). description of exempted goods or exempted services;
 - (v). CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.
- (ii). Payment of **differential amount by 30th June** of the **financial year**: In case the amount of actual **Cenvat credit computed as above** is **greater than aggregate of**, amount **provisionally reversed**, then the manufacturer or service provider **shall pay the differential amount** on or before 30th June of the financial year, **otherwise** he shall be liable to **pay interest @ 24% p.a.** from the due date i.e. 30 June of the financial year till the date of payment.
- (iii). **Re-credit in case provisional amount of Cenvat credit reversed is greater than actual amount to be reversed**: Where the actual amount of credit as determined above is less than the aggregate amount determined and paid on provisional basis, the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount
- (iv). Intimation to the Superintendent : The manufacturer of goods or the provider of output service shall intimate to the Jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, respectively, the following particulars, namely,-
- (i). details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally,
 - (ii). CENVAT credit attributable to exempted goods and exempted services for the whole financial year, on actual basis,
 - (iii). amount short paid alongwith the date of payment of the short-paid amount! i.e. if actual reversible is more than provisional reversal,
 - (iv). interest payable and paid, if any, on the amount short-paid and
 - (v). credit taken on account of excess payment.
- (v). **In case provisional amount cannot be determined**: Where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined Provisionally, due to **reasons that no dutiable goods were manufactured and no output service was provided in the preceding financial year**, then the manufacturer of goods or the provider of output service is **not required to determine and pay such amount provisionally for each month** but shall **determine the CENVAT credit** attributable to exempted goods or exempted services **For The Whole Year** and **pay the amount** so calculated **on or before 30th June** of the succeeding financial year, otherwise he shall be liable to pay interest as discussed above.

❖ **CONDITION 3 Separate accounts for inputs and formula based reversal for input services [Rule 6(3)(iii)]**

This is a **combination of Condition I and II** as discussed above. Accordingly, under this method,-

- (i). **For Inputs** : Separate accounts are to be maintained for the receipt, consumption and inventory of inputs and CENVAT credit be availed only on dutiable final products and provision of taxable output service.
- (ii). **For input services** : The formula based reversal for input services (only with respect to input services) must be made.

(C) Other common points for Rule 6(3)/Rule 6(3A)

MEANING OF VALUE: "Value" for the purpose of sub-rules (3) and (3A), -

- (a) In case of **services**: shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made there under or,
- (b) In case of **excisable goods**: shall be, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder.
- (c) In case **composition scheme** for payment of service tax is availed :

$$\text{value} = \frac{\text{Service Tax paid under the composition scheme}}{\text{Rate of service tax}}$$

- (d) In case of **trading of goods**: In case of trading, value shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchases) or 10% of the cost of goods sold, whichever is more.
- (e) In case of **trading of securities**: In case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or 1-% of the purchase price of the securities trade4 whichever is more.
- (f) Services by way of **extending deposits, loans or advances**: Value shall not include the consideration as is represented by way of interest or discount.

(D) Special provisions for reversal of CENVAT credit in case of banking company and a financial institution including a non-banking financial company- Reversal of 50% credit taken each month

[RULE 6(3B)]

Notwithstanding anything contained in sub-rules (1), (2) and (3), A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

(E) Other common points relating to Rule 6(3), (3A) and (3B) :

- (a) **Amount to be paid by using Cenvat Credit or in cash**: The amount mentioned in sub-rules (3), (3A) and (3B), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise.
- (b) **Monthly payments**: The above payments shall be made:

- On or before the 5th day of the following month (except for the month of March); and
 - on or before 31st March, for the month of March
- (c) **Quarterly payments** in certain cases: In case of manufacturer availing SSI exemption and a service provider who is an individual or proprietary firm or partnership firm, the above payments can be made
- (d) **Recovery** of the amount in accordance with Rule 14 : If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A) and (38), it shall be recovered, in the manner as provided in Rule 74, for recovery of CENVAT credit wrongly taken.

(III) No CENVAT on capital goods exclusively used for exempted goods/services [RULE 6(4)]:

No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services. However, the units availing exemption under any notifications based upon the value or quantity of clearances made in a financial year (SSI exemption), will be entitled to avail CENVAT credit on capital goods. The said credit can be utilised when such units start paying duties of excise.

(IV) Non applicability of above provisions - i.e entire CENVAT credit of duty/tax paid on inputs/input services/capital goods will be allowed **if goods cleared to SEZ, EHTP etc.**[Rule 6(6)]:

The provisions discussed above [sub-rules (1), (2), (3) and (4)] shall not be applicable,-

- (a) In case of manufacturer of excisable goods: If the excisable goods removed without payment of duty are either,-
- (i). cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or
 - (ii). cleared to a 100% export-oriented undertaking or
 - (iii). cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
 - (iv). supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, or
 - (iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents or
 - (v). cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
 - (vi). gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting or
 - (vii). all goods, which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under section 3(1) of the said Customs Tariff Act, when imported into India-and are supplied-
 - (a) against International Competitive Bidding or
 - (b) to a power project from which power supply has been tied up through tariff based competitive bidding or
 - (c) to a power project awarded to a developer through tariff based competitive bidding,
 - (viii) supplies made for setting up of solar power generation projects or facilities

(d) **In case of provider of taxable services**: If the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations or when a service is exported.

For the Purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when, -

- (i). the service is exported as given under Rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and
- (ii). such payment has not been received for a period of six months or such extended period as may be allowed from time-to-time by the Reserve Bank of India from the date of provision.

DISTRIBUTION OF CENVAT CREDIT

(1) **Input Service Distributor Rule 2 (m)** means

- an office of the manufacturer or producer of final products or provider of output service,
- which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and
- issues invoice, bill or, as the case may be, challan
- for the purposes of distributing the credit of service tax paid on the said services
- to such manufacturer or producer or provider, as the case may be;

(2) **Manner of distribution of credit by input service distributor** [Rule 7 of CENVAT Credit Rules, 2004]:

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely,-

- (a) the credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon;
- (b) credit of service tax, attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services, shall not be distributed;
- (c) credit of service tax, attributable to service used wholly in a unit, shall be distributed only to that unit and
- (d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

(3) **Filing of return**: The input service distributor, shall furnish a **half yearly return** in such form as may be specified by notification by the Board, giving the details of credit received and distributed during the said half year to the **Jurisdictional Superintendent of Central Excise**, not later than the **last day of the month** following the half year period.

Submission of revised return: The input service distributor may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the original return.

(4) **Input Service Distributor** (ISD) and Applicability of Rule 6:

As ISD does not provide any service, and is like a trader, therefore, the question of applicability of Rule 6 of the CENVAT Credit Rules, 2004 and consequent availment of either of the options contained therein by ISD would not arise.

RULE 7A

Distribution of credit on inputs by the office or any other premises of output service provider:

- Where the provider of output service receives input/capital goods in one premises
- But purchase invoice is issued in the name of another premises of such service provider;

Then the latter office can issue an invoice/bill/challan with respect to such inputs/capital goods on basis of which such provider of output service can avail the CENVAT credit.

Provisions of First Stage Dealer/Second Stage Dealer to be applicable: The provisions of first stage dealer or second stage dealer shall apply to such office or premises issuing such invoices.

FIRST STAGE DEALER [Rule 2(ii)]: means a dealer who purchases the goods directly from,-

- (i). The manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
- (ii). An importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

SECOND STAGE DEALER [Rule 2(e)]: means a dealer who purchases goods from a first stage dealer.

PROCEDURAL REQUIREMENTS TO BE FOLLOWED BY FSD, SSD: The first stage dealer and second stage dealer are eligible to pass on the Cenvat credit only if they comply the following procedural requirements -

- (a) **Registration formalities:** The first stage dealer or second stage dealer are required to get registered themselves with the excise authorities.
- (b) **Stock register to be maintained:** The first stage dealer or second stage dealer are required to maintain register for receipts and issue of inputs on daily basis.
- (c) **Issue of Invoice:** As per Rule 9(4) of the CENVAT Credit Rules, 2004, the Cenvat credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.
- (d) **Return to be Filed:** As per Rule 9(8) of the CENVAT Credit Rules, 2004, the first stage dealer or a second stage dealer, as the case may be, shall electronically submit within 15 days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.

RULE 8

Storage of input outside the factory of the manufacturer

- (1) Power vests with AC/DC: The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products, may permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory.
- (2) Circumstances when inputs can be stored outside: Such permission shall be granted in exceptional circumstances having regard to nature of goods and shortage of storage space at the premises of such manufacturer subject to such conditions or limitations as may be specified by him.
- (3) Reversal of credit when input not used: Where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

RULE 9

DOCUMENTS AND ACCOUNTS

The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-

(1). INVOICE:

- (a) An invoice issued by a manufacturer for clearance of,-

Inputs or capital goods from his-

- (i). factory; or
- (ii). depot; or
- (iii). from the premises of his consignment agent;

- (b) An invoice issued by an importer from,-

- (i). depot; or
- (ii). from the premises of his consignment agent;

Provided the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

- (c) An invoice issued by the First stage dealer or Second stage dealer in terms of the provisions of Central Excise Rules, 2002;

(2). SUPPLEMENTARY INVOICE:

- (a) Issued by a **manufacturer or importer** of inputs or capital goods in terms of Central Excise Rules-

- In case of additional amount of excise duty leviable u/s 3 of the Customs Tariff Act has been paid by the manufacturer or importer of inputs or capital goods; and
- a supplementary invoice is issued by the said manufacturer or importer from:
 - (i). his depot
 - (ii). premises of his consignment agent or
 - (iii). any other premises from where goods are sold by or on behalf of him.

- (b) Issued by a **Provider of output service** in terms of Service Tax Rule, 1994.

Exception : No credit of additional duty/service tax where intention was to defraud the revenue

- (3) Bill of entry (in case of import of goods);
- (4) Certificate issued by an appraiser of customs in respect of goods imported through a Foreign post Office;
- (5) Challan evidencing payment of service tax, service recipient as the person liable to pay service tax.
- (6) Invoice, Bill or Challan issued by a provider of input service issued on or after 10th September 2004.
- (7) Invoice, Bill or Challan issued by an input service distributor under Rule 4 of the Service Tax Rule 1994.

[RULE 12A]

CENVAT SCHEME FOR LARGE TAX PAYERS

- (1) Large taxpayers means a person who,-
- (a) has one or more registered premises under the Central Excise or Service Tax law; and
 - (b) is an assessee under Income-tax, who holds a Permanent Account Number (PAN) ; and
 - (c) being a manufacturer of excisable goods or provider of taxable services has paid during the financial year preceding the year in which application is made -
 - (i). duties of excise of more than Rs. 5 crores in cash or through account current or
 - (ii). service tax of more than Rs. 5 crores in cash or through account current or
 - (iii). advance tax (under Income-tax law) of more than Rs.10 crores.

However, manufacturers of goods falling under Chapter 24 (tobacco, etc.) or pan masala under Chapter 21 of Central Excise Tariff have been kept out of the scheme.

- (2) [Rule 12A] : A large may remove -
- (a) inputs as such or, capital goods as such (except motor spirit, commonly known as petrol, high speed diesel and light diesel oil),
 - (b) without payment amount required to be paid under CENVAT Rule 3(5) Cenvat Credit Rules, 2004,
 - (c) under cover of a transfer challan/invoice, from any of his registered premises ('sender unit')
 - (d) to his other registered premises, other than premises of a first/second stage dealer ('recipient unit,)
 - (e) for further use in manufacture/production of finished excisable goods in recipient premises, subject to the condition that the finished goods are -
 - (i). manufactured or produced using the said inputs; and
 - (ii). within a period of 6 months, from the date of receipts of inputs in the recipient premises -
 - (a) cleared on payment of appropriate duties of excise leviable thereon; or
 - (b) exported out of India, under bond or letter of undertaking.
 - (iii) any other condition prescribed by the Commissioner of Central Excise, LTU are satisfied.

Liability to pay interest under section 11AA if finished goods not cleared/exported within 6 months as aforesaid : If -

- (i). finished goods are not cleared or exported within the period of six months, as aforesaid or
 - (ii). inputs are cleared as such from the recipient premises,
- then -

- (a) CENVAT credit taken on inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under section 11AA of the Act; and
- (b) in case of payment of CENVAT Credit in respect of inputs by the recipient premises, as per Rule 12A(2), the first recipient premises may take Cenvat credit of the amount paid as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

Capital goods used for exempted goods/cleared as such - Credit reversible: If such capital goods -

- (a) are used exclusively in the manufacture of exempted goods, or
- (b) are cleared as such from the recipient premises,

an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of the CENVAT Credit Rules, 2004.

Failure to pay amount required to be pay as aforesaid; If a large taxpayer fails to pay any amount due in terms of the aforesaid provisions, it shall be recovered along with interest in the same manner as provided u/s 11A and 11AA of the Act.

Contents of transfer challan/invoice: The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee.

Aforesaid provisions of Rule 12A(1) not to apply: The aforesaid provisions of sub-rule (1) of the said rule shall not be applicable -

- (a) to a export oriented unit or a unit located in an Electronic Hardware Technology Park or Software Technology Park.
 - (b) if the recipient premises is availing area-based exemption notification.
- (3) Credit of sender premises not to be varied/denied [Rule 12A(3)]: Cenvat credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, -
- (a) removed as such, on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in Rule 3(5) of the CENVAT Credit Rules, 2004; or
 - (b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under Rule 12BB.
- (4) Inter-unit transfer of CENVAT Credit [Rule 12A(4)]: A large taxpayer may transfer, Cenvat credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by, -
- (a) making an entry for such transfer in record maintained under rule 9 of CENVAT Rules, and
 - (b) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry made in record maintained under said Rule 9,
- and such recipient premises can take Cenvat credit on the basis of such transfer challan.

Such transfer or utilisation of Cenvat credit shall be subject to limitations given under Rule 3(7)(b) (i.e. restriction relating to utilization of credit, E.g., education cess may be used against education cess, etc.).

[RULE 15]

CONFISCATION AND PENALTY

- (1) If any Person takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of the provisions of these rules, then, all such goods, shall be liable to confiscation and such person, shall be liable to a penalty,-
 - not exceeding the duty or service tax on such goods or services, as the case may be,
 - or two thousand rupees, whichever is greater.
- (2) the manufacturer shall also be liable to pay penalty in terms of the provisions of Section 11AC of the Excise Act.
- (3) General Penalty: If any Person contravenes any provisions of CENVAT Credit Rules, 2004 for which no specific penalty has been provided therein, he shall be liable to a penalty of upto Rs. 5,000.

CENVAT AUDIT

- (1) Cenvat Audit to be ordered by Commissioner: credit of duty availed of or utilised
 - (a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate; or
 - (b) has been availed of or utilised by reason of fraud, collusion or any willful misstatement or suppression, of facts,He may direct such manufacturer to get the accounts of his factory, office depot distributor or any other place, as may be specified by him **audited by a cost accountant or chartered accountant nominated by him.**
- (2) Nominated Cost/Chartered Accountant, to submit duly signed and certified audit report to Central Excise officer within the period specified.
- (3) Accounts to be audited even if they have been already been audited.
- (4) Opportunity to the assessee of being heard.
- (5) Expenses to be borne by department.