23-12-2014 Topic :- Exige Duty G.Vinay Bhargav Kumar.

→ Constitution of India is foundation of all laws in India. Any Act contrary to Provisions of Constitution is ultravires the Constitution and void.

→ Article 246 with 7^{th} schedule gives bifurcation of powers between Union and state.

- List I - Union List (Central)
- List II - State List (State)
- List III - Concurrent List ie., both state & Central.

→ Entry No. 84 - Duties of Excise on tobacco and other goods manufactured or, produced in India except alcoholic liquors for human consumption, opium, narcotic drugs, but including medicinal and toilet preparations containing alcoholic liquor, opium or, narcotics.

→ Entry No. 97 - Any other matter not included in List II, List III and any tax not mentioned in List II or List III will come under List I ie., 'Residual Entry'.

Four Pillars of Central Excise

- Duty liability
- Valuation
- Classification of goods
- Cenvat

Charging section of Central Excise:

Section 3 of Central Excise Act 'There shall be levied and collected in such a manner as may be prescribed duty of excise on all Excisable goods (excluding goods produced or manufactured in SEZ) produced or, manufactured in India.'

→ Generally excise duty rate is 12% plus education cess of 2% and SHE cess 1%. Thus, normally, total duty is 12.36% w.e.f. 17-03-2012. In some cases, partial or full exemption is available.

Basic requirements for Excise duty:-

→ Duty is on 'goods'.

→ Goods must be 'excisable goods'.

→ Goods must be manufacured or, produced.

→ Such manufacture or production should be in India.

Goods:-

→ Goods must be movable and marketable (Not marketed).
→ Actual marketing not necessary.
→ Mere mention in central Excise Tariff not sufficient.

Dutiability of Waste & scrap:-

→ Waste & scrap is 'final product' for excise.
→ Waste & scrap are 'goods' if these are normally salable.
→ waste & scrap is dutiable only if 'manufactured'.
→ Waste & scrap is dutiable only if it is specified in central Excise Tariff'

Excisable Goods:- (section-2(d))

Excisable Goods means 'Goods specified in the schedule to CETA as being subject to a duty of excise and includes salt'.

→ Goods include article capable of be sold.
→ Nil Duty and Exempt from Duty - Both are 'excisable goods'.
→ for the purposes of section 2(d) - 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.

Manufactured or produced:-

→ 'production' is broader than 'manufacture'. i.e., production included manufacture
→ In both production and Manufacture, new and identifiable product should emerge.
→ usually, 'production' term is used for new product by natural process. 'Manufacture' dervied from 'manu' i.e., by hands.

production → inputs into out puts.
manufacture → Rawmaterial into Finished Goods.

Manufacture [sec:-2(f)]:- 'Manufacture' includes any process -

i) incidental or ancillary to the completion of manufactured product;
ii) 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; or
iii) which, in relation to goods specified in Third schedule to the CEA, involves packing or, re packing of such goods in a unit Container or labelling or re-labelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer.

Taxable event in central Excise :-

> Manufacture or production of excisable goods in India is taxable event.

> ownership irrelevant in Excise. Excise Duty payable on intrinsic value of goods.

> clearance of goods is not taxable event, though duty is payable at the time of clearance.

Manufacturer: "The word manufacturer shall be understood accordingly and 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."

→ Duty liability is on manufacturer. Exceptions: a) molasses produced
b) goods in warehouse.
c) Job work.

Classification:-

> classification tells rate of duty, while valuation tells on what value that rate should apply.

→ Goods have to be classified and sub-classified and then rate of each sub-classification is to be specified.

→ Tariff to specify rate of duty payable on each Article - central Excise Tariff Act.

→ All goods classified in 20 sections in Excise Tariff and sections are divided into 96 chapters.

→ Central Excise Tariff has four columns - 1) Tariff item 2) Description of goods 3) unit and 4) Rate of duty.

Rules for Interpretation of schedule to tariff:-

→ Rules are given in Tariff itself. These are termed as 'General Interpretative Rules'.

Rule 1 of GIR:

→ The titles of sections and chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding section Notes and chapter Notes.

→ If there is no ambiguity or confusion, the classification is final.

→ If there is no classification, then go to other rules of GIR. These rules are to be applied sequentially.

Rule 2(a):

→ If goods are incomplete, or, un-finished, but classification of finished product is known, find if the un-finished item has essential characters of finished goods. If so, classify in same heading.

Rule 2(b):

→ Any reference to a material, or, substance includes a reference to mixtures, or, combinations of that material or, substance with other material, or, substance.

→ The classification of goods consisting of more than one material, or, substance shall be according to principles contained in rule 3.

Rule 3(a):

→ Find out which heading is specific and which heading is more general. Prefer specific heading.

Rule 3(b):

→ If problem is not resolved in rule 3(a), find which material or, component is giving essential character to the goods.

Rule 3(c):

→ If both are equally specific, find which comes last in the Tariff and take it. ie, Latter the better.

Rule 4:-

→ If you are unable to find which entry matches the goods, find goods which are most akin ie, related.

→ Such classification cannot cover goods specifically excluded from Central Excise Tariff.

Rule 5:-

→ Cases for camera, musical instruments, drawing instruments, necklaces etc. specifically (specially) shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases.

→ Packing materials and containers are also to be classified with the goods except when the packing is for repetitive use.

classification of parts:-

→ Parts suitably solely for a particular machine generally fall in the Same heading number in which main item falls.

Trade paralance Theory:-

→ A word in statute should be construed in its popular sense and not in its strict or, technical sense (unless Tariff uses technical words).

→ 'popular sense' means that which people Conversant with the subject matter with which the statute is dealing, would attribute to it.

Exemption from Excise Duty:-

→ Government can grant exemption from time to time from Excise duty - partial or Complete - Conditional or, unconditional by issue a notification - section 5A (1).

→ SSI exemption notification is one important exemption notification.

SSI Exemption:-

→ Unit whose turnover was less that Rs 4 Crores in previous financial year are entitled to full exemption upto Rs 150 lakhs in Current financial year.

→ If in Current financial year, turnover exceeds Rs 400 lakhs, even then ~~no~~ on first 150 lakhs no excise duty payable, but next year no SSI exemption will be available.

→ Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, products Covered under compounded levy scheme etc., are specifically excluded i.e. not eligible for SSI exemption.

→ No excise duty if goods manufactured on job work basis and sent to Principal Manufacturer, if principal manufacturer pays duty on his final product.

calculation of 150/400 lakhs:-

→ Exports, deemed exports, job work under Excise Notifications to be excluded for both 150/400 lakhs limit.

→ value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of ₹400 lakhs, but excluded for limit of ₹150 lakhs.

→ Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.

→ Firm, Company, HUF, proprietary firm are seperate entities for SSI exemption even if some partners / directors are common.

→ If in same factory, there are more than one manufacturers in a year, their turnover will be clubbed.

<u>Manufacture without aid of power:-</u>

→ Few products eligible for exemption if manufactured without aid of power.

→ Power should not be used even in minor process - not even for material handling

<u>other concessions to SSI:-</u>

→ quarterly return instead of monthly return and quarterly payment of excise duty.

→ 100% cenvat credit on capital goods in first year itself.

→ No registration required if turnover less than 150 lakhs - declaration of turnover exceeds Rs. 90 lakhs.

<u>Valuation of Excisable Goods:</u>

Excise duty = value of excisable goods × Rate of Excise duty.

→ for Rate of Excise duty, refer to Tariff heading of central Excise Tariff Act, 1985.

<u>valuation of Excisable Goods</u>

- specific duty
- Duty based on value
  - Tariff value Sec-3(2)
  - ~~Tariff value~~ Transaction value sec-4 of CEA, 1944
  - MRP sec-4A of CEA, 1944.
- compounded levy scheme
- Duty based on Capacity of production

<u>Specific duty:-</u>

› Duty for certain Excisable goods is payable on the basis of certain unit, length, weight, volume, etc., Eg:- Duty on cigarettes is based on its length, Duty paid on Sugar is based on quintals.

› specific duties donot keep pace with inflation so require frequent revision.

Duty based on valuation:-

1.) Tariff value - sec 3(2)

2.) Transaction value - sec 4 of CEA, 1944 (TV)

3.) MRP - sec 4A of CEA, 1944.

Whether Goods are covered under section 3(2) for Tariff value $\xrightarrow{\text{yes}}$ value as per the tariff value fixed by CG u/s 3(2).

↓ NO

whether Goods are covered under section 4A of CEA, 1944 $\xrightarrow{\text{yes}}$ value on MRP basis allowing abatement as per notification.

↓ NO

valuation under sec-4 (TV)

1.) → Duty as a percentage of Tariff value fixed by CG u/s 3(2) of the CEA, 1944.

→ Tariff values may be prescribed on the basis of whole sale price or, Avg. price of various manufacturers.

→ The CG may Fix or, alter the tariff value.

3) For MRP based valuation, Both the conditions must be satisfied -

→ Good must be notified under Legal metrology Act, 2009 or, rules made there under or, under any other law to declare on the ~~page~~ package the retail sale price thereof and

→ Article which are notified and covered under schedule III of CETA.

Note:- If any of the conditions are not satisfied the valuation will be done as per sec - 4(1)(a).

→ products covered under MRP provisions - More than 110 products, duty is payable on basis of MRP printed on the package, after allowing abatement at specified rates.

→ If MRP is printed voluntarily then valuation will be done as per 4 and not 4A.

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, local or, otherwise, freight, transport charges, Commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and as like, and the price is the sole Consideration for such sale.

→ for determination of retail sale price, refer Central excise Rules, 2008.

→ As per rule 4 if - a) No MRP is printed or
b) MRP printed but not as per law or
c) MRP tampered.

Valuation will be -

* MRP of identical goods manufactured and removed within a period of one month, before or, after removal of such goods or,
* MRP shall be as per enquiries on sample basis, in the retail market at or, about the same time of removal of such goods & if more than one MRP is available take the highest.

2) Transaction value as Assessable value → when duty is payable on ad valorem basis.
assessable value.

→ 'Transaction value' is taken as Assessable value only if

- Goods are sold
- At the time and place of removal
- seller and Buyer are unrelated and
- price is sole Consideration.

→ Transaction value doesnot include any taxes, paid or actually payable on such goods.

→ price to be taken as inclusive of excise duty - If goods are cleared without payment of duty. The price taken as 'Cum duty' price and excise duty payable should be Calculated by back Calculations.

Compounded levy scheme:-

→ CG via Notification specify the goods in respect of which an assessee shall have the option to pay excise duty on the basis of specified factors relevant to production of such goods (size of equipment employed, no. & type of machines) at specified rates for specified period.

uty based on capacity of production :- (sec -3A)

- CG has notified following goods manufactured with the aid of packing machine, and packed in pouches for the purpose of sec 3A of CEA.
- PAN masala containing tobacco, commonly known as 'gutkha'.
- unmanufactured tobacco bearing a brand name.
- chewing tobacco.
- Jarda scented tobacco.
- Duty will based on annual capacity of production of the factory by an officer not below the rank of Assistant Commissioner of CE.
- This section shall not apply to goods sold by 100% EOU.

Payment

→ For goods removed during month/quarter ending 31st march – pay duty by 31st march.

→ For units eligible under SSI exemption – quarterly duty payment – within 5th/6th of the close of quarter.

→ For other units, – monthly duty payment – within 5/6 days from close of month.

→ In both cases, duty paid electronically through internet banking last date is 6th and in other case it is 5th.

→ Assesse who has paid total duty of Rs. 10 lakhs or more (including utilised CENVAT) in preceding F.Y to pay duty electronically through internet banking.

→ Interest

upto 6 months	– 18%	W.E.F 1st october, 2014.
6 to 1 year	– 24%	
> 1 year	– 30%	

Daily stock account :-

→ Maintain proper record on daily basis regarding description of goods produced or, Manufactured.

→ No prescribed form but maintain private records to show all prescribed particulars.

→ preserve such records for 5 years immediately after the financial year to which such records pertain.

Returns :

→ for Assesses eligible for SSI exemption → Quartely, 10th of the ~~quarter~~ month following the quarter of collection.

→ for other Assesses → monthly, 10th of the month following the month of collection.

Form

ER1 → All Assessees except SSI

ER-2 → EOU's

ER-3 → SSI

ER-4 → Assessees paying duty of ₹ 1 Crore, or, more per annum either through PLA, or, CENVAT or both together → Annual return ↓ By 30th Nov. of succeeding year.

ER-5 → Assesses paying duty of ₹1Cr or more p.a & manufacturing goods under specified tariff headings. → Annual return ↓ By 30th April of current year.

ER-6 → Assesses required to submit ER-5 declaration → monthly ↓ 10th day of following month

ER-7 → Annual installed capacity statement → Annually ↓ 30th of April succeeding F.Y.

ER-8 → Assesses paying 1% / 2% excise duty → Quarterly ↓ 10th day of the month following quarter.