CHAPTER – I

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Introduction
Indirect Tax in the form of Customs and Central Excise duties is the single largest source of revenue. Out of total revenue collection of Rs.2,52,162 Crore during the fiscal year 2003-04, the share of indirect taxes alone was Rs.1,47,484 Crore. It is levied and collected by the Central Government for the development, welfare and for improving the standard of living of its subjects. The extent of reliance placed by the Union Government on taxation at higher rates in the beginning was not unusual for a country in its early stages of development and industrialization. The Government was short of funds for the all round development in defence, health, education, agriculture, science and technology. The number of commodities and the scale on which these were manufactured in our country were very small and limited. Therefore, when the economic development was at infancy stage, most of the duties were levied at specific rate, i.e. a fixed amount of money was to be paid as duty on unit quantity of goods.

As the industrial growth and economic development reached at optimum level, the emphasis shifted from specific rates to ad-valorem rates in mid fifties due to the fact that they provided an in-built elasticity and ensured automatic buoyancy in revenues for the Government in an economic situation where cost and price tended to increase. Besides, they also conformed to an important canon of taxation, i.e. equity of sacrifice, as they tend to reward an efficient manufacturer, they also promote economies of scale, promote competition and efficiency without any compromise for the quality of the products. Having identified the goods to be
subjected to the duty of excise and having decided to charge duty on ad-valorem basis, i.e. on the basis of value, the Government preferred to define value and the manner in which this value had to be or deemed to had been determined.

**VALUATION – A CONCEPT:**

The connotations of the term 'value' are wide and diverse. Literally, the value of a quality, attitude, method etc. is its importance or usefulness, which makes people appreciate it or want to possess it themselves. The value of a thing is the amount of money that it is worth. Value is different from 'price'. The price of something is the amount of money that one must pay in order to buy it and generally it is used interchangeably with the word 'cost' in a very limited sense, as the cost of a thing is the amount of money needed to make it (Collins, 1996). Therefore, to a layman value is a synonym of price and cost. But literally, technically and legally they are wide apart. To put it differently but conjointly for a thing, the cost is the money one spends to make it, the price is the money one spends to buy it, value is the money worth of that thing. The value, therefore, is a variable and determinative entity and the process of determination of value is called valuation. This term is more frequently used in science and commerce. Another very closely related term is evaluation. This term, besides its use in science, is more frequently used in teaching – learning process. Evaluation is a decision about the significance, value or quality of
something, based on a careful study of its good and bad features relatively. Thus evaluation and valuation, unlike price or cost of a thing, are the ultimate results of a series of major and minor decisions in a judicious manner and style.

Valuation of excisable goods is done by the industry for the purpose of maximization of profits and payment of duty of excise on the ultimate value so determined, considering the costs of material, labour expenses, overheads, marketing expenses and margin of profit which the goods shall be able to provide when priced and sold to the buyer. This valuation of excisable goods is, to a large extent and invariably, is done with a view on the demand and supply position in the market and the challenges of the competitors. In other words this valuation exercise has purely commercial consideration. On the other hand valuation of these goods is done in an objective manner by the Taxmen arranged in pre-determined hierarchical levels. The main objective of their valuation exercise is to test and check whether the valuation done by industry broadly conforms to the principles of trade and industry; whether the value conforms to the standards prescribed for such determination in the statutes; whether the determined value represents the intrinsic value of the goods or not; whether in the value determination, all hidden costs etc. have been taken into account; whether discounts, deductions, rebates etc. are as per the normal trade practices or merely shams to hoodwink the revenue; whether words and phrases defined in statutes have been interpreted normally or
mischievously; whether some device has been created or planted in this valuation process to siphon off some amount out of the preview of tax and finally whether tax has been paid properly or not. Though it appears that industry and department work at cross purposes, it is not true as the duty of excise is an indirect tax which is to be borne by the consumer, industrialist have to collect and pay it to the Government. The Government or to be more precise, the Central Excise Department has to ensure that excise duty is levied on the goods manufactured and produced in India (The Central Provinces and Barar Sales of Motor Spirit and Lubricants Taxation Act, 1985) for which or on which it has been made applicable and to the extent of their value, as has been defined under the Central Excise Act, and at the same time valuation has not become a tool in the hands of a few unscrupulous industrialists whose only motive is profit maximization by all means.

Valuation of excisable goods is, therefore, a decision making process undergoing in the minds of Central Excise officers who, at the middle hierarchical level in the department, have been entrusted with this task. Literally, valuation means a judgement that someone makes about how much money worth is something. Undoubtedly, there are some set of rules and regulations, yet it being a psychological and judicious process, the decisions vary from individual to individual, one hierarchical level to another and from department to various tribunals, courts, resulting into more and more incongruities. This variation seems to be due to a good number of
internal and external factors that influence the decision making process of an individual.

The decision taken at one level is reviewed at another higher level. Where either it is confirmed as such or modified before moving to next higher level which finally adjudicates the matter and value of the goods stands determined. If aggrieved with the decision of the adjudicating authority, the party goes in appeal to the concerned next higher level officer. The appellate forum culminates in the highest court of law i.e. Supreme Court of India. In the appellate fora, the three fundamental principles of law i.e. justice, equity and good conscience, of the value determination decision are determined and finality is given to an hitherto incongruent issue.

For a moment it may appear to a layman as if prices of different commodities are under the charge and control of Central Excise Department, but the fact is that there is no such control or authority with the department to control them. Rather the valuation by the department, is re-determination of valuation done by an assessee to ascertain that it has been done correctly and as per statutes.

DECISION MAKING:

Decision making is a complex psychological, nebulous, elusive process that goes on incessantly in the minds of individuals for the purpose of dealing with a problem, which arises as and when an actual state of affairs differs from a desired state of affairs or a deviation from past
experience or set plan or an effect of other peoples’ or competitors’ action (Pounds, 1923). The finding of a problem is not a simple, straightforward task (Kiesler and Sproull, 1982). There can be an error in its identification or quantification due to false expectation of events and false perceptions. A beautiful distinction has been drawn between the ‘pessimistic’ word problem and an ‘optimistic’ word opportunity. Problem is defined “as something that endangers the organization’s ability to reach its objectives and the opportunity, as something that offers the chance to exceed the objectives” (Stoner et al. 1996). It is interesting to note that greater part of the research on decision making process has problem solution orientation than the problem finding.

Decision making is a dynamic process of identifying and selecting a course of action to deal with a specific problem or to take advantage of a latent opportunity. Time, space and human relationships are crucial in the decision making process, as on this action alone largely rests an organization’s present that will take it into future on the wings of its past experiences. The process of decision making is prone to all sorts of internal or external influences, i.e. within and the outside the individual taking or making a decision. It is very difficult to draw a clear line of distinction as to how and to what exact extent a particular decision has been influenced by such factors. However, it has now become possible to suggest as to whether a particular decision has been dominated by internal or external factors.
Significance of Decision Making:

The success or failure of an organization or an individual is the sum total of right or wrong, early or delayed decisions. A great many decisions are required to be made everyday by an individual as well as an organization for proper functioning, adaptation, progress and to overcome foreseen or unforeseen crises. Many decisions are taken several times a day whereas there are decisions which are required to be taken once in days, or weeks, or months or even years. The latter kind of decisions are a few but vital and most important and at one stage or the other prove to be a turning point for the individual or the organization. These non-programmed decisions are novel, unstructured and consequential. The extent of the impact of a decision determines the importance of a decision. If it affects an individual, a small group or a smaller private organization, the decision is considered of a little importance but, if it affects a larger group or population or organization, it is called more important one. But from the management point of view every decision is important particularly under the circumstances when it is going to be a guiding milestone or foundation stone upon which a huge edifice of the organization is going to be built in the times to come (Jennings & Wattim, 1944).

Factors Affecting Decision Making:

A number of models have been developed to decipher and conceptualize the ingredients, stages, steps and processes involved in
decision making and all of them have endeavored, in one way or the other, to emphasize and identify the role played by so called **internal** and **external** factors. So far, none of the individual model has been able to dissipate the mist surrounding the total process of decision making. From the psychological point of view there are two very important considerations (Simon, 1976; Freud, 1906; Hogarth, 1971). **Firstly,** it is difficult to ignore that decision making is strictly a personal process. **Secondly,** for a better and deeper conceptualization of the dynamics of decision making, a precise delineation of the role of subjective factors would be in order. Generally people respond to situations in the manner they interpret them and not as they exist in some objective reality. Therefore, in the act of decision making, a decision embodies in itself the personal information, socio-cultural affinity of the individual as well as the knowledge of environmental surroundings. Drawing upon such inferences, assertions and observations that some internal (**Psychological**) and external (**environmental**) factors play an important role in the decision making of an individual McClelland has done very extensive exploration about the role of various internal factors, especially of the motivational variables on different aspects of human behaviour.

A study of such factors i.e. internal and external ones, shall not only be informative but also interesting and thought provoking. For example study of effects of motivational constructs of need for achievement, need for affiliation and need for power, would be beneficial from individual's
organizational behaviour point of view. McClelland defined a motive as "a recurrent concern for particular goal state, based on a natural incentive, that energises, orients and selects behaviour of an individual". Achievement motivation concerns with doing things better and surpassing standards of excellence. It is that innate desire or resolve to do well not for the sake of prestige or social recognition but for the sake of inner feelings or for a sense of accomplishment. It is a need and not a want and as such requires intrinsic and extrinsic motivation and has a significant impact on some variables like occupational success, entrepreneurial success, innovativeness, task performance and risk taking behaviour etc. Affiliation motivation on the other hand is a concern for establishing, maintaining or even restoring a positive and effective affectionate relationship with others. It affects interpersonal relationship, co-operation, conformity, conflict and other facets of organizational behaviour (McClelland et al. 1987). Need for power is the desire to have an impact on others to affect their behaviour or emotions (Winter, 1992). Power motive is expressed by people in a number of ways like aggressive behaviour, assertive behaviour, entry into influential occupations, use of symbols of prestige and resorting to self-display to enhance visibility to others.

Judicial and Quasi-Judicial Decisions:

The so called objective decisions delivered by persons of high integrity and unquestionably sincere and honest integrity, the Judges, at
different hierarchical levels of judiciary, are the results of a judicial decision making which approximates the divine law. The judges administering justice tend to integrate the opposites — of facts and values, subjective and objective, law and customs, individual and state, in such a manner that each of their decisions has a semblance of a distinct and unique creation by itself. Therefore, the decision by a judge on the basis of facts, evidence etc. in the light of the law of the land is popularly called judicial decision (Upneet, 1998) Truly speaking, judicial decision's importance lies in the fact that it lays down the standard, principles, methodology, objectivity and the very purpose for which justice is administered in the country in the light of the law of the land. Any decision taken by anyone, other than a judge, but in somewhat judicial manner upholding the principles and objectivity of judiciary is popularly called a quasi-judicial one, as it has the semblances of a judicial decision making process in its pith and substance. Therefore, keeping in view their prime importance and law giving nature, usually matters pertaining to the rights and duties, civil liberties, offences against state or individual, unity and integrity of the nation and administration of the highest form of justice are dealt with by that part or organ of a Government which is popularly called judiciary. While other civil and non-cognizable matters pertaining to social welfare, revenue etc. are dealt by the executive organ of the Government.
Objective & Subjective Decision:

The extent of objectivity and divineness visible in judicial decisions is not reflected to the same extent in the quasi-judicial decisions of executive, as they do not always require proper and full application of basic law of the land similar to judicial decisions. These decisions are subjective and are required to be taken on the basis an altogether different set of rules, regulations, procedure and methodology. Quasi-judicial decisions are to be taken within the framework of specially enacted enactments prescribed in the basic law of land and are considered objective decisions.

In a Central Government organization like Central Excise Department, from the Management Science's point of view, Government officers or Managers are arranged or grouped in three separate, interdependent bureaucratic hierarchical levels as Group A, B, C managers in which Inspectors – Group 'C' officers, represent the first line managers, Superintendents – Group 'B' officers, represent the middle management and Assistant Commissioners/Deputy Commissioners and above – Group 'A' officers, represent top managers and all managers have to play the interpersonal, informational and decisional role in one form or the other. Therefore, the decisions of Government through the above hierarchical level managers are not only objective but also important as they affect the rights of citizens, guaranteed in our Constitution.

A mechanism is usually devised and implemented in such a manner that each and every decision taken at a lower level is reviewed or heard in
appeal or review by next successive higher levels having better training, knowledge, experience, skill and resources with so called maturity. If still something remains unresolved, it is made to pass through an acknowledged and acclaimed decision assaying organ called judiciary so that by all means, justice is administered, even in small matters, equally to all with a good conscience.

**The selection of Topic:**

Valuation of excisable goods chargeable to duty of Central Excise on ad-valorem basis is one such area where officers of each of the aforesaid levels have to take his/her own decision at his/her level, which is viewed or reviewed by successive levels in a prescribed manner with same set of rules or regulation till a final decision is delivered. The Government had to amend these rules and regulations number of times. Each time the Government claimed to have made the valuation process simpler and readily comprehensible yet the incongruence in decisions has been increasing. **Secondly,** valuation is considered to be complicated and much lego-technical subject where people do not prefer to venture unless and until compelled. **Third,** Central Excise duty is the biggest source of revenue of Government of India and valuation alone is the most important area or topic which can make or mar any ambitious revenue target silently but surely. **Fourth,** it is the only issue left where there is maximum incongruence amongst not only different hierarchical levels in the department but also the Courts. **Fifth,** valuation is said to be the largest
litigation prone area where the Government prefers to get the law amended through Parliament only on the basis of average sum total of interpretations of the Apex Court or of the decisions of other Courts, which Government considers final and unambiguous. Sixth, judiciary too sometimes has to take help of experts or pioneer institutions to get some customs, phrases, practices etc., pertaining to valuation, peculiar to a specific trade and business, elaborated and explained.

Therefore, a modest attempt has been made to study the process of valuation in theory and practice, to study and identify the important factors and their role in influencing the decision making process of valuation of excisable goods at middle hierarchical level.

**Scope of the Present Study:**

Besides the assessment of role of different internal and external factors influencing the decision making process, the present study tends to identify the factors which can enhance the congruence between different inter-personnel levels and to probe the possibility of a standard, uniformly acceptable decision making process for valuation purposes with a view to reduce litigation, without adopting coercive measures. Some other variables of age, experience, qualification, manner of entry in a hierarchical level also differentiate each level in some ways. The movement of an individual from lower hierarchical level to higher one, supposedly characterized by psychic differentiation and integration, is evident from maturity, wisdom, heightened awareness consciousness of status and
responsibility. Therefore, taking cognizance of each level is very important from the point of view of this study. Thus, one of the important feature of the present study is the endeavour to study the role of not only subjective psychological factors at different levels, but also the qualitative composition, quantitative inter-relationship and inter-dependence between different levels.

**About the Present Study:**

In the present investigation, the subjects were administered experimental tasks in the form of a number of simulated settled cases, variety of decision making situations in valuation of excisable goods with reference to statutory definitions, interpretations and settled case laws. The advantage of using this method of administering, simulated settled cases and situations is that it ensures *uniformity of factual information* provided to each level of officers and at the same time it permitted quantification of decisions as given by the officers at each level. This paradigm can thus help in assessing the role of external and internal psychological factors in the dynamics of decision-making.

**Objectives:**

Finally, it may be mentioned here that data in the present study has been collected directly from the extra-cautious, serving bureaucrats of India's one of the most famous and sought after Department, whose role in valuation of goods really matters. This too may not be out of place to mention here that none of the studies reviewed by the investigator has ever
focused on these bureaucrats as such and on such a vital issue which depicts their real inside on the subject to the outside world, in a way in which it has been accomplished by the present investigator. It is, therefore, hoped that this direct study of multifaceted personality and knowledge of the officers at the middle hierarchical level of Department of Central Excise on the valuation alone will certainly yield more reliable and authentic information about not only the valuation system, process, evaluation and optimization but other valuable facets of composition of a given level with its psychology and needs for a bright future. Therefore, main objectives of the study were :-

1. To investigate and evaluate the relationship between decision making process and decision delivered on simulated cases.

2. To assess the role of internal and external factors influencing the decision making.

3. To examine the possibility of a standard, uniformly acceptable to all, decision making process for valuation and to assess its efficacy.

4. To investigate into the optimization process of decision making at middle hierarchical levels for bringing about significant reduction in litigation and maximization of revenue without any recourse to coercive measures.