CHAPTER II

CENTRAL EXCISE DUTY – AN OVERVIEW
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INTRODUCTION

The word "tax" is derived from the Latin word "taxore". The meaning of taxo is to estimate, appreciate or value. Tax is the amount paid by persons staying within a territorial limit of Sovereign state and is levied on the individuals' goods, property, business, services etc. Tax constitutes the revenue of the government. Justice Holmes of Supreme Court, United States of America, rightly said that "Tax is the price paid for civilised society."

Taxes are classified as Direct Taxes and Indirect Taxes. Direct Taxes are those which the tax payer pays directly from his income, wealth, estate, etc. Indirect Taxes are those which the taxpayer pays indirectly (i.e) while purchasing goods and services.

Direct Taxes are those which are paid after the income reaches the hands of tax payer while indirect taxes are paid before the goods reaches the tax payer. Important indirect taxes are Central Excise Duty, Customs Duty, Sales Tax, Octroi, Service Tax, Expenditure Tax, etc.

In the basic scheme of taxation in India, it is envisaged that the Central Government will get tax revenue from Income Tax (except on agricultural income) Excise (except on alcoholic drinks) and Customs.

The State Government gets tax revenue from sales tax, excise on liquor and tax on agricultural income. Municipalities get revenue from octroi and house property tax.

Income tax, central excise and customs duty are administered by the Central Government. Article 246 of the Indian Constitution discusses bifurcation of powers to make laws between Union Government and State Government. Parliament has exclusive powers to make laws in respect of matters given in List-1 of the Seventh Schedule (Union List). List-2 (State List) contains items under the jurisdiction of States. List-3 (State List) contains items where both Union and State can exercise powers.

Item No.82 of Union List empowers the Central Government to tax on income other than agricultural income. Item No.83 empowers the Central Government to levy and collect duties of customs including export duties. Item No.84 talks of duties of excise on tobacco and goods manufactured or produced in India except on alcoholic liquor for human consumption, opium and narcotics but including medical and toilet preparations containing alcohol, opium or narcotics. Item No.85 empowers the State Government the right of levying and collecting Corporation Tax.\(^2\)

Article No.265 of the Constitution states that the no tax shall be levied and collected except by authority of law. Article 300 of the constitution says that no person shall be deprived of his/its property

\(^2\) ibid., p.7.
except in accordance with the procedure of law. The effect of this provision is that any taxation beyond the powers of law is illegal and government has no authority to levy it.

Provisions regarding Central Excise are covered under various Acts and Rules which are as under:

(i) Central Excise Act (CEA) 1944

This is the basic Act providing for charging of duty, classification and valuation, MODVAT, clearance of goods etc., It has been amended from time to time.

Section 37 of the Central Excise Act, grants power to Government to frame rules for prescribing procedure, forms, etc. Accordingly, Central Excise Rules have been notified by Central Government. The Central Excise Rules provide for various procedures to be followed for clearance, storage of goods, accounting of goods, refund procedures, appeal procedures, etc. Rules are important as the prescribed procedures have to be followed. In case of Central Excise, the rules are more important because excise is a procedure oriented Act.

Manytimes substantive benefits are lost and penalties are imposed merely because proper procedures were not followed. Further, rules provide for granting concessions and relief and hence they must be studied thoroughly.

Under section 5A and 11C of Central Excise Act the Central Government has been granted powers to issue notification for granting partial or full exemption from excise duty. Each of the Rules and
Notifications has to be placed before each House of Parliament for a total period of 30 days. The period may be comprised in one or more sessions. The rules and notification are treated as part of Act itself.

(ii) Central Excise Tariff Act, (CETA) 1985

Since it is essential to prescribe different duties for different types of products, it is necessary to classify them under various heads. The Central Excise Tariff Act, 1985, classifies all goods under 96 chapters and specific code is assigned to each item. This classification is essential to classify the goods under chapter head and sub-head to prescribe duty to be charged on that particular product.

The Central Excise Act has been amended from time to time to remove the lacunae. In 1953-1954, a Taxation Enquiry Committee was appointed by the Government of India. This Committee reviewed the tax structure of indirect taxes and recommended for broadening the excise duty base. The Committee suggested additional taxation on luxury and semi-luxury goods at substantial rates. The year 1955 was the beginning of renaissance in the field of levy of excise taxes. During 1955-1960 many more items were included in the excise domain. In 1960s metals, dyes, chemicals, plastics, yarns and various inputs were brought within the scope of excise duty.

In 1965, Boothalingam Committee was appointed by the Government to examine and report on the rationalisation and simplification of direct and indirect taxes in India. The Committee recommended levy of uniform ad valorem duty on all manufactured goods.
The Central Excise Re-organisation Committee\textsuperscript{3} was appointed by the Government to make the law comprehensive and to widen the tax base. A Bill was introduced on August 14, 1967 to consolidate and amend the existing excise laws.

Duty of excise on all goods specified in the Central Excise Tariff are levied and collected in a manner prescribed under the Central Excise Act. The ceiling rates are to be approved by Parliament. They are known as Tariff Rate. Within the ceiling of Tariff Rate the actual rates of duties can be fixed by the Board of Central Excise and Customs (CBEC). Such rates are known as effective rates.

When the First Schedule to Central Excise Act was introduced in 1944, it comprised only 11 items arranged in alphabetical order. Over the years, these items increased in number. In March 1960, the number has increased to 30 and items were rearranged in accordance with the Standard International Trade Classification (SITC). By 1970, almost all important raw materials and manufactured inputs had been brought within the ambit of excise levy. In 1975, residuary tariff item covering all goods not elsewhere specified was included.

The Indirect Taxation Enquiry Committee appointed by the Government in 1976, made innumerable recommendations on the role of indirect taxation for the promotion of economic use of scarce resources. There was an attempt to fashion the description and definition of the

\textsuperscript{3} V. Balachandran, Indirect Taxation, Sultan Chand and Sons., New Delhi, p.12.
tariff entries on the lines of CCCN (Customs Co-operation Council Nomenclature) in respect of certain items for example petroleum products, iron & steel products, non-ferrous metals and synthetic resins and plastics. All other items are continued to be based on common trade parlance. The development of Central Excise Tariff over the years has not been a systematic process.

A Technical Study Group was appointed to review and revise the Central Excise Tariff with reference to the need for simplification and rationalisation of the tariff and assessment procedures so as to reduce the area of conflict between the tax payers and tax collectors, facilitate collection of data. The Technical Study Group after considering various options, decided to adopt Harmonised System of Nomenclature (HSN) formulated by the Customs Co-operation Council, with suitable modification.

Based on the recommendations of the Technical Study Group, New Central Excise Tariff Act, 1985, was duly enacted by Parliament. This Act came into force on February, 28, 1986, thus replacing the erstwhile First Schedule of the Central Excise Act 1944.

iii) Central Excise (Valuation) Rules 1975

Valuation means determination of value for the purpose of charging excise duty. The basic provisions for determining value are contained in Section 4 of Central Excise Act.
iv) CEGAT (Procedure) Rules 1982

Customs Excise and Gold (control) Appellate Tribunal (CEGAT) (Procedure) Rules, 1982, made by CEGAT, prescribe the procedures of filing and hearing appeals to CEGAT.

v) Additional Duties on Goods of Special Importance Act, 1957

Additional Duty under this Act is levied on goods of special importance like sugar, cigarettes, wool, woollen fabrics, silk, cotton fabrics, man-made fibre, special woven fabrics, coated or covered or laminated textile fabrics. This is in lieu of Sales Tax and the amount is passed on to State Governments. These are declared goods under Central Sales Tax.

Thus, it is clear that Central Excise Law is not covered under one enactment but under various Acts and Rules. Further some provisions of the Customs Act, Criminal Procedure Code, Indian Penal Code, etc. are also made applicable to Central Excise.

Union Excise Duties are levied mainly under the provisions of Central Excise Act, 1944. This duty is functionally called the Basic Excise Duty. The excise tariff in this regard is enumerated in the Schedule to the Central Excise Tariff Act, 1985.

The Annual Finance Acts, passed by the Union of India, may provide for the levy of "Special Excise Duty" as percentage of the Basic Excise Duty on some commodities like sugar, tobacco, cotton fabrics, man made fabrics, etc. Such duties of excise are in lieu of sales tax, under an arrangements with the State Government. The State Government has
exempted these commodities from the levy of sales tax which they can impose under the Constitution. The Union of India collects these duties under the Additional Duties of Excise (Goods of special Importance) Act, 1957 and distributes the same among the States as per recommendation made by the Finance Commission. The major consideration which have compelled the levy of Additional Excise Duties in lieu of Sales Tax are:-

a) Simplification of structure of commodity taxation with reference to these specific products.

b) Removal of administrative complexities involved in the collection and payment of sales tax by the State Government.

c) General preference by the trade, industry and consumers for the levy of tax at one point (i.e) at the point of production.

d) Minimising chances of leakage and evasion of tax.

e) Ensuring inter-state uniformity in levy of taxes.

f) Effective control of overall incidence of commodity taxation on these products.

Excise Duties enable government to raise revenue from those sources which cannot be reached by direct taxation. They are important instruments for restructuring consumption of both essential and non-essential item. Excise Duty is first paid by the manufacturer and then is passed on to the ultimate consumers.

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4 R. Krishnan and R. Parthasarathy, Valuation under Central Excise and Customs Law, Commercial Publishing House, Delhi, pp.2-3.
DEFINITION

Entry No.84 of List-1 of Seventh Schedule to the Constitution gives definition of Excise Duty "Duties of Excise on tobacco and other goods manufactured or produced in India, except alcoholic liquor for human consumption, opium, narcotics but including medical and toilet preparation containing alcohol, opium and narcotics.

Section 3 of this Act, States that "there shall be levied and collected in such manner as may be prescribed duties on excisable goods other than salt, which are produced and manufactured in India". There are 4 basic conditions for levy of Excise Duty.

1. The duty is on goods.
2. The goods must be excisable
3. The goods must be manufactured or produced.
4. Such manufacture must be in India.

Unless all these conditions are satisfied central excise duty cannot be levied.

For the levy of excise duty, various bases are used:

a. Specific Duty.
b. Duty as percentage of Tariff Value fixed under Section 3(2).
c. Duty based on Maximum Retail Price printed on carton after allowing deductions under section 4(A) of Central Excise Act.
d. Duty based on Production Capacity as determined under Section 3A of Central Excise Act.

e. Duty as percentage based on Assessable Value under Section 4 (i.e.) Ad Valorem Duty.

Specific Duty

It is the duty payable on the basis of weight, length, volumes, thickness, etc. for example duty on cigarette, duty on edible oil. Duty on cigarette is levied according to its length. Specific duty is easy to levy and convenient to collect.

Tariff Value

In some cases, tariff value is fixed from time to time. This is a notional value for the purpose of calculating duty payable. According to 3(2) of Central Excise Act. The Government can levy different tariff rates for different classes of goods manufactured by different classes of manufactures or sold to different classes of buyers.

Value Based on Maximum Retail Price

Section 4A of Central Excise Act (with effect from May 14, 1997) empowers the Central Government to specify the goods on which duty will be payable based on Maximum Retail Price printed on carton. But these goods must be covered under "Standards of Weights and Measures Act". The Central Government can permit reasonable abatement (deduction) from maximum retail price. While allowing such abatement, the Central Government will take into account, excise duty, sales tax and other taxes payable on the goods. If more than one price is printed
on the same packing, the maximum of such prices will be considered. The maximum retail price should be the maximum price at which the goods in packaged form are sold to ultimate consumers. It includes all taxes, freight, transport charges, commission payable to dealers, expenses on advertisement, delivery, packing and forwarding charges. The Central Government will issue notification in the Official Gazette specifying commodities for which this provision is applicable and abatement permissible.

The following table gives the list of goods subject to excise duty under Section 4(A) of the Act and its respective abatement.

**TABLE X**

**COMMODITIES ASSESSED WITH DUTY UNDER MAXIMUM RETAIL PRICE AND THEIR ABATEMENT**

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>ABATEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radio Sets</td>
<td>30%</td>
</tr>
<tr>
<td>Cosmetics and Toilet Preparations</td>
<td>50%</td>
</tr>
<tr>
<td>Paints and Varnishes</td>
<td>40%</td>
</tr>
<tr>
<td>Foot Wear and Parts</td>
<td>50%</td>
</tr>
<tr>
<td>Aerated Water</td>
<td>50%</td>
</tr>
<tr>
<td>Colour Television Sets</td>
<td>30%</td>
</tr>
<tr>
<td>Tooth Powder and Tooth Paste</td>
<td>30%</td>
</tr>
<tr>
<td>Detergents</td>
<td>35%</td>
</tr>
<tr>
<td>Chocolates</td>
<td>35%</td>
</tr>
<tr>
<td>Pan-Masala Containing 10 gms or More per pack</td>
<td>50%</td>
</tr>
</tbody>
</table>

continued
<table>
<thead>
<tr>
<th>Product</th>
<th>Duty (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cosmetics</td>
<td>50%</td>
</tr>
<tr>
<td>Soap</td>
<td>35%</td>
</tr>
<tr>
<td>Glazed Tiles</td>
<td>50%</td>
</tr>
<tr>
<td>Cooling Appliances and Plastic Warmers</td>
<td>40%</td>
</tr>
<tr>
<td>Razor, Blades</td>
<td>40%</td>
</tr>
<tr>
<td>Primary Cells &amp; Batteries</td>
<td>40%</td>
</tr>
<tr>
<td>Electro Mechanic Domestic Appliances with Self Contained Electric Motors</td>
<td>40%</td>
</tr>
<tr>
<td>Shavers, Hair Clips, Hair Removing Appliances (Electric)</td>
<td>40%</td>
</tr>
<tr>
<td>Electric Water Heater, Immersion Heaters, Hair Dryers, Hair Curlers,</td>
<td>40%</td>
</tr>
<tr>
<td>Hand Dyers, Electric Smoothing Iron</td>
<td></td>
</tr>
</tbody>
</table>

Notification No. 18/98 Central Excise N.T. June 02, 1998.

Duty Based on Production Capacity

The Finance Act, 1997 has added Section 3A in Central Excise Act, with effect from May, 1997. As per this section, the Central Government may notify certain goods on which the manufacturer will have to pay duty on the basis of production capacity. Once the goods are notified, the Commissioner of Central Excise determines annual capacity of production of factory in which such goods are produced. Such annual capacity of production shall be deemed to be the actual annual production by that factory.

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5 V.S. Datey, op.cit., pp.146B-147.
If the factory is in production only for a part of the year, the production shall be calculated on proportionate basis of annual capacity of production. In respect of such goods, duty will be payable at rates prescribed by the Government by notification and not in accordance with the rate prescribed in the Central Excise Tariff.

For instance, non-alloy steel ingots, billets produced in induction furnace, a duty of Rs.750 per ton is payable at the time of clearance.

In respect of hot re-rolled steel products made by re-rolling mills a duty Rs.400 per ton is payable at the time of clearance.

These units can not take MODVAT credit on inputs. They are also not eligible for SSI concession.

**Ad Valorem Duty**

Fixing specific duty or tariff value is possible only for a few selected items like sugar, pan-masala, consumer goods, etc. Paying duty on the basis of maximum retail price is possible only for few selected items. In all other cases, excise duty is payable on the basis of value. This is called ad valorem duty. The assessable value is arrived at as per Section 4 of the Central Excise Act and the duty is payable on the basis of such value. Assessable value is the value on which duty is payable as a percentage. Excise Act fixes assessable value on the basis of normal wholesale price to independent buyer at the factory gate inclusive of packing cost but exclusive of all taxes and duties payable, trade discount, cost of durable and returnable containers.
The value of excisable goods for purpose of levy of duty at ad valorem rates is deemed to be the normal price of such goods. The normal price shall satisfy the following ingredients. (Sec 41(a)).

1. It should be a price at which goods are ordinarily sold by the assessee to buyers.

2. Such a sale must be in the course of wholesale trade.

3. The price should be the for delivery price at the time and place of removal.

4. The buyer should not be a related person.

5. The price of the goods should be the sole consideration of such sale.

6. If goods are sold at different prices to different classes of buyers, each such price is treated as normal price for such class of buyers.

Different prices may be charged for sale to Government department, industrial consumers, and wholesale dealers located in hilly regions.

With reference to each one of them, the manufacturer can adopt different wholesale prices.

At times, the Government fixes the price of certain commodities under some Statute. For instance, price may be fixed under the Essential Commodities Act or Industries Development (Regulation) Act. In such a
case, the prices fixed by the Statutes are deemed to be normal price of goods.

Relationship often influences pricing. In order to safeguard the revenue interest, Section 4 specifically provides that the price charged from such related persons will be ignored and the Department will go to that point at which the related person sells to unrelated persons.

Section 4(1)(a) will not be applicable under these circumstances;

a) Where the assessee does not sell the goods but captively consumes them.

b) Where the assessee does not sell in wholesale but in retail directly.

c) Where the price is not known at the factory gate.

d) Where the assessee sells the goods to related person.

e) Where the assessee while charging the price has other considerations other than the mere price of this goods and there is flow back of consideration.

For applying Sec.4(1) (a), it is necessary that the price should be one which is charged in wholesale trade. Wholesale dealing means sale to a person who buys for the purpose of selling again as defined under Pharmacy and Poisons Act 1933 and Radioactive Substances Act, 1948. "Selling by wholesale" means selling goods of any class to person who carries on a business of selling goods of that class. (Purchase Tax Act, 1963)
Wholesale price means the price which a wholesale dealer charges for his goods when he sells them his trade.

Section 4A(3) envisages a possibility where the assessee makes an arrangement by which goods are sold through related person, the price charged by such related person to dealers will be considered as "normal price". Illustration of "related persons" are a) Inter-company shareholders b) Common Director c) Common Partners d) Manufacturing arrangement by which the entire production is bought by a buyer e) Buyers providing Technical know-how f) Buyers allowing the manufacturer to use his brand names. In all the above cases, there is presumption as to relationship.

Normal Price in Other Situation

Where the normal price is not determinable under section 4(1)(a) of the Act, then Central Excise Valuation Rules 1975, are referred to:

a) **Where price of goods at the time of removal is not known**

Where the price of excisable goods is not known at the time of removal, the value shall be based on the value of such goods sold by the assessee at any other time nearest to the time of removal of the goods under assessment.

b) **Where price is not the sole consideration**

Where price is not the sole consideration of sale, Rule 5 of Central Excise Rules provides that the value of such goods sold shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing from the buyer to the assessee.
This rule has been framed with the legitimate objective of ensuring that the assessees does not adopt any practice or device by which the price is not the sole consideration so as to reduce the duty liability.

c) Retail sale of goods by the assessees

Section 4 does not provide for any mechanism by which assessable value of the goods can be derived as in the case where the assessee sells goods directly in retail. Therefore Rule 6(a) of Central Excise provides that, the value shall be based on the retail price of such goods reduced by such amount as is necessary and reasonable in the opinion of Central Excise Officer, to arrive at the wholesale price.

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Price</td>
<td>XXX</td>
</tr>
<tr>
<td>Less : Trade Discount</td>
<td>XXX</td>
</tr>
<tr>
<td>Freight</td>
<td>XXX</td>
</tr>
<tr>
<td>Cost of Returnable Pack</td>
<td>XXX</td>
</tr>
<tr>
<td>Duty Element</td>
<td>XXX</td>
</tr>
<tr>
<td>Whole sale Price</td>
<td>XXX</td>
</tr>
</tbody>
</table>

d) Captive consumption of goods by the assessees

Sometimes manufactured goods may not be sold by the assessees, but might be captively consumed in the factory. In such cases, valuation of the goods shall be done as per Rule 6(b). The value shall be based on the value of comparable products produced by the assessees or by any
other assessee. The proper officer while determining the value, shall make reasonable adjustments as to the materials used etc.

It is noted that the Central Excise Valuation can be below manufacturing cost. Excise is not to be levied on manufacturing cost and manufacturing profit. It is levied under section 4 on the normal price of goods. It is payable as percentage of value. Thus, the assessable value is determined in the light of normal wholesale price to an independent buyer at factory gate including packing cost but excluding all taxes and duties payable, trade discount and cost of durable and returnable containers.

\[
\text{Assessable Value}^6 = \frac{\text{Selling Price} - \text{Permissible deductions}}{1 + \text{Rate of Excise Duty}}
\]

Section 4 creates a legal fiction in as much as the value of excisable goods is deemed to be at the normal price. The normal price is the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery, at the time and at place of removal, where the buyer is not related person and the price is the sole consideration for sale.

The assessee has to declare the normal price at which the goods are to be sold by them at the depot at the time of clearance from the factory. Whenever the normal price is not ascertainable, the nearest ascertainable equivalent of the normal price, which is taken to be the

\[ \ldots \ldots \ldots \ldots \]

value is to be determined in terms of Central Excise (Valuation) Rules, 1975.

There are 7 rules. Rules 1 to 3 are merely introductory in nature. Rules 4 to 7 contain the methodology to be adopted.

**Rule-4**

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 removal of goods under assessment. But reasonable adjustments are required to be done on account of the difference in dates of such goods and of the excisable goods under assessment.

At times, the value of goods for delivery at the time of removal may not be ascertainable for various reasons. If that be so, then the value of excisable goods may be based on the value of such goods sold by the assessee for delivering at almost the same time of removal.

**Rule-5**

When the excisable goods are sold and the price is not the sole consideration, the value of such goods shall be the aggregate of such price and the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

**Rule-6**

This rules talks about three situations which are detailed below:
Rule-6(a)- Retail Sales

Where the goods are sold by the assessee in retail, Rule 6(a) authorises the determination of the value on the basis of retail price after making suitable deductions, to bring it to wholesale price.

Rule-6(b) - Captive Consumption

If the goods are not sold but consumed within the factory by the manufacturer for manufacture of other goods, then there are two ways to determine the value;

I. Valuation may be based on the value of comparable goods produced by any other assessee.

II. If no such comparable goods are available then valuation may be based on the cost of production or manufacture including profit which the assessee would have normally earned on the sale of such goods.

Rule-6(c) - Sales through related person

a) Where the assessee sells goods to related persons, who sells such goods in retail, the retail price shall be taken to arrive at wholesale price 6(a).

b) Where the assessee sells the goods to a related person, who does not sell the goods but uses or consumes such goods in the production of other articles then valuation is determined as per Rule 6(b).
c) Where the assessee sells goods to a related person who in turn sells to a class of buyers, then valuation may be based on the price at which the goods are ordinarily sold by the same related person to such buyers.

Rule-7 - "Best Judgement Rule"

If the value of excisable goods cannot be determined under any of the Rules from 4 to 6, then the proper officer shall determine the value of such goods according to the best of his judgement. It does not imply an arbitrary or whimsical determination of the value but one which is objective, reasonable and related to the circumstances of the case.

By virtue of Notification No.4/94-Central Excise Notice dated March 01, 1994 the assessment and clearance of goods subject to central excise duty is on the basis of invoice price. Clearance of goods on the basis of gate pass has been abolished. Rule 52A of Central Excise Rules, 1944 has been amended to provide for the delivery of goods on Invoice instead of Gate Pass. The assessee's invoice can be used as a transport document. It serves as the basis for determining the assessable value under section 4 of the Central Excise Act, 1944.

Rule-173(c) of Central Excise Rules

Every assessee who produces or warehouses goods chargeable with duty at a rate dependent on the value of goods and clears such goods as provided in Rule 9,49,144, 152 and 151, shall declare the value under section 4 of the Act of such goods in the documents such as sales invoices, invoice-cum-challan used for removal of goods.
The documents shall:

a) indicate separately the value of goods under Section 4.

b) also contain a declaration of the price.

c) indicate the Central Excise Duty, other taxes, discounts and other consideration for the difference between the price and value of goods under section 4 of the Act.

d) indicate the date and time of removal of the goods.

Where an assessee

a. sells goods to or through related persons.

b. uses such goods for production of other goods in this factory.

c. removes such goods for free distribution.

d. removes such goods in any manner which does not involve sale.

e. removes goods of the same kind and quality from his factories located in the jurisdiction of different Commissionerates of Central Excise or Assistant Commissioner of Central Excise, he shall file with proper office a declaration declaring the value of goods under section 4 of the Act and other elements constituting the price of such goods.

The assessee shall certify in each document that the amount indicated in such documents represents the price actually charged by him and that there is no additional consideration from such sales over and above what has been declared.
The proper officer duly empowered by the Central Government may require any person to produce/deliver any document/thing relevant to the enquiry and examine any person acquainted with the facts and circumstances of the particulars, declared in such document.

The proper officer may, after enquiry reassess the duty under Section 11A of the Act. Whatever be the type of duty, specific, ad valorem or maximum retail price, the following conditions must be fulfilled to be assessed and levied with duty under Central Excise Act.

EXCISABILITY

The Duty is on Goods

The word 'goods' has not been defined under Central Excise Act, Article, 366(12) of the Constitution defines goods, "Goods includes all materials, commodities and articles". The Sale of Goods Act defines that "Goods means every kind of movable property other than actionable claims and money; it includes stocks, shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale". For the purpose of levy of excise duty, goods must satisfy two requirements (i.e) (a) they must be movable (b) they must be marketable. Immovable property or property attached to earth is not goods and hence duty cannot be levied on it. The item must be such that it is capable of being bought or sold. This is the test of marketability. The goods must be known in the market. Marketability is an essential ingredient in order to be dutiable. It means saleable or suitable for sale. The waste or scrap will be goods and taxable only if specifically mentioned in Central Excise Tariff Act. For
example waste alloy steel, waste copper, ferrous waste, waste goods, HDPE waste, waste plastics, etc. are covered under CETA. If a particular waste/scrap is not mentioned in CETA, it may be goods but not excisable goods. Waste and scrap is not manufactured but arises during the course of manufacturing. Defective products unusable are "waste and scrap". If the wastes have marketability, it attracts duty. Waste or scrap metal arising during manufacture can be classified as waste or scrap only if it is usable for re-melting. If it is removable as such it is not waste or scrap. Moreover, no duty is levied on scrap if final product is exempt from duty.

**Excisable Goods**

The other essential requirement is that the goods must be excisable. Sec.2(d) of Central Excise Act defines excisable goods as goods specified in the schedule to Central Excise Tariff Act, 1985, as being subject to a duty of excise. All goods specified in CETA are excisable goods, even if they are exempt from duty or chargeable to nil rate of duty. Goods like wheat, rice, flower, houses, soya beans etc. are not mentioned in the CETA at all and hence they are not excisable goods, though they are goods.

Mere mention of the name of a commodity in the CETA is not enough to attract duty. These goods must be marketable or capable being marketed. Molten Iron is mentioned as a specific entry in Central Excise Tariff Act. It is at a temperature of 1300°c to 1400°c and it is not marketable at that stage. Hence, it is not excisable goods. It is the duty of the Central Excise Department to prove that the goods have marketability in order to levy excise duty.
Even if the particular item is subject to nil rate of duty they are treated as dutiable. To escape from excise duty, the particular item must not be mentioned in the Tariff Act. Nil assessment means assessed to duty. Just because an item is exempted from duty, that does not mean that it becomes "non-excisable goods".

Further, excisable goods are liable to duty only if they are manufactured or produced.

**Manufacture**

Excise is a duty on 'manufacture' or 'production' of goods. It is levied on goods manufactured or produced. If there is no manufacture, there is no liability of payment of duty. Even if CETA mentions an item, there is no duty liability unless the process is manufacture (i.e) if new and identifiable product does not emerge after the process.

Central excise duty has to be distinguished from sales tax. The sales tax is tax on sales and hence can be imposed only when there is sale. On the other hand, excise duty is a duty on manufacture and the duty liability is fastened immediately after goods are manufactured; whether these are sold or not, is immaterial for instance, if a company manufactures a machine or fabricates some furniture within the factory for its own use, there will be no sales tax on the machine as it is not sold. But the machine or furniture is levied with excise duty as it is manufactured.
Production Vs Manufacture

The word 'produced' covers a) items like coffee, tea, tobacco, coal, dairy products, ores etc. which are produced b) the word "produced" also covers 'live' products like house, fish, flower, etc. c) by-products, scrap, etc. which are not really 'manufactured' but they get produced, in the process.

Sec.2(f) of Central Excise Act merely states that "manufacture" includes any process (i) incidental or ancillary to the completion of manufactured products (ii) which is specified in relation to any goods in the CET Act as amounting to manufacture (i.e) deemed manufacture.

'Manufacture" as defined by courts, takes place only where the process results in a commercially different article or commodity for example a) manufacture of table from wood, b) conversion of pulp into paper (c) conversion of sugarcane into sugar d) crude diamond into jewellery.

In order to attract duty, the following conditions must be fulfilled.

a) new substance having distinct name, character or use must emerge. For instance, asbestos fibre removed from rock by manual or mechanical means is in every aspect the asbestos. No new and distinct commodity comes into existence. So, it is not manufacture.

Daya Sagar, Classification of Goods under Excise and Customs, 1998, Centax Publication Pvt. Ltd., p.36.
b) Commodity should be fit for commercial use.

Without the manufacturing process the original material or product is unfit for commercial use. For instance printing on glass bottle is a process. But even without printing, glass could be used as glass. Hence printing is not manufacture.

The test to be applied is whether a commodity subject to processing retains its original character and identity or becomes a different commodity. For example paddy and rice is not the same. Identity of paddy is changed after de-husking when rice is produced. Rice has commercial marketability. Wheat and wheat flour atta, maida are different commodities from wheat.

‘Manufacture’ is the end result of one or more processes and a change occurs at a point where it can be commercially identified as a new separate article and manufacture is said to have taken place. If original identity of the product is maintained, no manufacture has taken place.

Assembly of various parts and components may amount to manufacture if a new product emerges. But assembly of plant at site will not be liable to duty, if immovable property emerges after such assembly.

There can be manufacture even if both inputs and final product fall under the same tariff heading, if a different identifiable commercially known product comes into existence for example mixing various ingredients to make ‘pan-masala’ is manufacture.
It was also held that purchasing various items and packing them together will not amount to 'manufacture' if a new product does not emerge.

What is not Manufacture?

1. Conversion of strips from large size, cutting of paper, cutting of cloth into smaller piece, cutting of photographic paper into small sizes. These are 'processes', but do not amount to 'manufacture'.

2. Printing of aluminum foil or printing on plastic film is not manufacture.

3. Conversion of marble rocks into marble slaps.tiles is not manufacture as no new product emerges.

4. Cutting and polishing of granite stones amount to manufacture.

5. Grading, sorting, labelling are not manufacture.

6. Polishing and sizing of stones like cuddapah, shahbad and marble is not manufacture.

7. Only improving quality, utility or performance of a product, does not amount to manufacture, as no new product comes into existence. For example, process of distillation.

8. Making new model is not manufacture.

9. Coating and covering of bare electric wire with paper, cotton, fibre glass yarn is not manufacture.
10. Recharging of battery by adding chemicals, water and passing current through it, is not manufacture.

11. Process or conversion of copper wire into coil by wiring machine, inserting insulation paper between each layer of wire and treating these with insulated varnish is not manufacture.

12. Sizing of yarn is not manufacture.

13. Doubling or multi-folding of single ply yarn does not amount to manufacture.

14. Purification is not manufacture-conversion of castor oil (commercial grade) to castor oil (British pharmacopoeia grade) by filtration is not manufacture.

15. De-mineralisation of river water is not manufacture.

16. Pulverising, cleaning and washing is not manufacture.

17. Vanaspathi from groundnut oil is not manufacture. Vanaspathi is hydrogenated groundnut oil. Both vanaspathi and oil serve the same purpose in cooking. The only difference is vanaspathi is more staple, has better keeping quality and ease of packing and transport without leakage; hydrogenated groundnut oil is still groundnut oil. It is only purified and quality is improved.

18. Affixing brand name is not manufacture. Manufacture is complete even without putting a brand name. Branding is a mere process of identifying the end product and is not a manufacturing activity. Putting brand name on goods does not change the character of goods and cannot amount to manufacture.
19. Affixing sticker on imported goods is not manufacture. As per Drugs & Cosmetics Act, indicating name of manufacture and drug licence number is a statutory requirement. Hence putting sticker is not manufacture.

20. Re-conditioning or repair is not manufacture. Reconditioning, repairing, re-marking or re-processing will not amount to manufacture if no new product emerges. Refining worn-out articles is not manufacture. Repairing and reconditioning of motor, re-fixing new/old number plates is not manufacture.

21. Retreading of old tyres is not manufacture as no new commodity comes into existence.

22. Re-packing of goods from bulk packing into small packing does not amount to manufacture.

23. Galvanising or corrugation of steel is not manufacture as the process only improve utility of material.

24. Mere change in physical form (i.e) change of solid into liquid is not manufacture for example ice into water.

25. Making tablet and putting into strips is not manufacture. Converting powder into tablet and putting the tablet into strips does not amount to manufacture. Even without converting the powder into tablet, the powder is marketable.

26. Reduction in size, thickness and dimension of rods, bars, flat by cold rolling is not manufacture, as no new product emerges.
27. Crushing of limestone into fine line does not amount to manufacturer.

28. Making masticated rubber from natural rubber without adding any chemicals is not manufacture.

Processing can amount to manufacture if a new and identifiable product known in the market emerges. Manufacture involves a series of process. Process implies not only the production but the various stages through which the raw material is subjected to change by different operation. Each step towards production is a process. Where any particular process is so integrally connected with ultimate production of goods but for that process, manufacturing would be commercially in-expedient, the process is manufacture.

Process means treatment of raw material or development or preparation for the market to convert into marketable form (i.e) grain by milling; cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and re-packing. Thus, where any commodity is subjected to a process or treatment, with a view to its development or preparation for the market like sorting and repacking fruits and vegetables, it would be processing. Nature and extent of processing may vary from case to case. In one case it may be slight and in another case it may be extensive. The nature and extent of change is immaterial. What is necessary in order to characterise an operation as 'processing' is that the commodity must, as a result of operation, experience some change.
Process Amounting to Manufacture

Section 2(f) defines "Manufacture" as a deeming provisions that states that manufacture includes any process which is specified in relation to any goods in the section or chapter Notes of the Schedule CETA as "amounting to manufacture". Thus, the process may not amount to manufacture as per principles evolved by courts, but these will be liable to excise duty, if it is defined as "amounting to manufacture" under CETA.

Such "deemed manufacture" are as follows

a) blending, sorting, packing, re-packing of tea, tea-waste into smaller container.

b) labelling, re-labelling of containers and re-packing from bulk-packs to retail packs of preparation of vegetables, fruits, nuts.

c) labelling, re-labelling of containers and re-packing panmasala.

d) labelling, packing, re-packing of mineral waters.

e) labelling, packing, re-labelling of tobacco, cigar, cigarettes.

f) labelling, re-labelling of containers and re-packing from bulk packs to retail packs of organic, inorganic chemicals.

g) labelling or re-labelling of container and re-packing from bulk

packs to retail packs of perfumes, beauty preparation and preparations for use on hair.

h) labelling, re-labelling of containers and re-packing from bulk packs to retail packs of starches, glues, enzymes.

i) cutting, slitting, perforation of photographic plates, films, rolls,

j) recording of sound or other phenomena on audio, video, tapes.

k) bleaching/dying, printing, wool, cotton, synthetic fabric.

All the above processes amount to manufacture. They attract excise duty.

Manufacturer

Section 2(f) defines the term 'manufacturer'. It 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 the production or manufacture on his own account. The definition envisages two categories of manufacturers namely:

1. persons who manufacture goods by themselves on their own account.

2. persons who get the goods manufactured through hired labour.

A person will be treated as 'manufacturer' if he engages hired labour for manufacture of excisable goods. The hired labour must be working under the control of principal. There must be "master-servant' relationship. Thus an independent contractor dealing with another on principal to principal basis cannot be termed as hired labour.
The manufacturer may manufacture on his own accord (i.e.) manufacture or goods for his own consumption or use.

a) Raw Material Supplier not Manufacturer

It is common in industry to supply raw material to a job worker or processor and get the goods manufactured from him in his factory. Automobile manufacturers like Bajaj and Maruthi get many parts manufactured from outside on job work basis. In such a case Bajaj or Maruthi will not be treated as manufacturer for excise purposes.

The excise duty is on manufacture or production of goods and liability to pay duty is not dependent upon whether the manufacturer is owner or not. But, the relationship between the manufacturer and supplier should be on ‘principal to principal’ basis. Mere supplying raw materials to the sub-contractors and getting finished goods does not lead to the supplier of raw material becoming real manufacturer. The supplier will be the real manufacturer if the contract is a contract of agency. There is no principal to principal relationship and job worker functions like a hired labour. Supplier of raw materials (Loan Licensee) is not a manufacturer, but the actual manufacturer who manufactures the goods will be ‘manufacturer’.

b) Brand Owner's not "Manufacturer"

Some large units get their goods manufactured from others under their 'brand-name'. Bajaj Electrical may get goods manufactured from others. Bata procure foot-wear from others and supply under their brand names. In such cases, Bajaj or Bata are not manufacturers, if their relationship is principal to principal.
c) Goods Manufactured under Franchise

Sometimes, a common brand name is used by many manufacturers under "Franchise Agreement". (Eg.) Coca Cola, Pepsi. They supply the concentrate to the bottlers; the drink is manufactured by independent bottlers. They are directly sold by bottlers. Thus the bottlers are liable to pay excise as they are manufacturers.

d. Loan Licencee

In drug industry, the practice is that a person having licence, supplies raw materials to another person having manufacturing facility. The person supplying the raw material is termed loan licensee. He has to obtain loan licence as per Rule 138A of "Drugs and Cosmetics Rules". Goods are manufactured by the factory owners under the brand name of loan licensee. In such a case, the loan licensee is not the manufacturer. The owner of factory which carries the actual manufacturing is the manufacturer. The loan licensee can be treated as manufacturer only if the manufacture is carried out by use of his own raw material under his own supervision by hiring premises and equipment.

e. The Excisable goods must be manufactured in India

Thus, excise levy cannot be imposed on imported goods or goods manufactured outside India. If goods are imported into India and they are only assembled, no new product emerges. It is not subject to excise duty.
Thus in order to attract excise duty the goods must be excisable, manufactured and manufactured in India. Then the manufacturer is liable to pay excise duty.

CLASSIFICATION OF GOODS

Excise duty is on excisable goods manufactured or produced in India. Unless all these factors are present, there can be no duty liability. The liability of payment of duty is on the manufacturer. Once the liability of payment is established, the next is the determination of amount of duty payable. There are two steps involved (a) correct classification of goods (b) finding out the assessable value.

When the Central Excise Act was passed in 1944, the Act itself included various items (called tariff items) into which goods were classified. As more and more goods were covered under Central Excise, the tariff became complicated and unsystematic. Hence, Central Excise Tariff Act, 1985 was passed which came into effect from March 01, 1986. The CETA classified all goods under 96 chapters and specific codes are assigned to each item. There are more than 1000 tariff headings and 2000 sub-headings.

This classification forms the basis for classifying goods under particular chapter head and sub head to prescribe duty to be charged on that particular product.

CETA is based on International Convention of Harmonised System of Nomenclature (HSN). This is an International Nomenclature Standard adopted by most of the countries to ensure uniformity in
classification in International Trade. Though CETA generally follows HSN pattern, it is not a copy of HSN. There are variations between HSN and CETA.

Tariff is divided into 20 sections. Each section is related to a broad class of goods. Each section is divided into various chapters and each chapter contains goods of the same class.

There are 96 chapters out of which five are blank. Each chapter is further divided into various headings depending on different types of goods belonging to the same class of product.

The tariff is designed to group all goods relating to the same industry and all the goods obtained from the same raw material under one chapter.

All excisable goods are classified using 6 digits;
First 2 digits denote chapter number,
Next 2 digits denote heading of goods in that chapter,
Last 2 digits indicate sub-heading.

Following is the broad grouping of goods in CETA.
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continued
In order to determine the duty, it is important to classify the products. The rules for interpretation of schedule are given in the Tariff, itself.

Rule-1

The classification shall be determined according to the terms of headings, relevant section or chapter notes.

Rule-2

This rule extends the scope of heading which refers to a particular article to cover and only the finished articles, but also the unfinished articles provided such unfinished goods have the essential characteristic of finished goods. This rule further provides that any reference to material or substance will also include the mixtures or combination of that material or substance with other material or substance.
Rule-3

When there are two or more headings each referring to part of materials of substances contained in mixed or composite goods, they are to be considered as equally specific in relation to that goods.

Rule-4

According to this rule, where goods cannot be classified under the above rules, they shall be classified under the heading appropriate to the goods which they are most akin.

Rule-5

This rule is based on the assumption that only sub-headings, at the same level are comparable. Thus, first heading has to be decided and then the sub-heading within the heading has to be selected. While 'classifying goods' one has to apply commercial parlance or common usage test.

The object of Excise Act is to raise revenue and for this purpose, it is necessary to classify substances according to the general usage and known denominations of trade. "The scientific, botanical or technical name is not needed; what is more required is the meaning attached to them by those dealing in them".  

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10 Daya Sagar, op.cit., p.122.
There is no single universal test to classify the goods. There are several decided cases based on different interpretations. There may be cases, particularly in the case of new products, the test of "commercial parlance" is inappropriate. In such cases, other tests like the test of predominant are to be applied. So, it is not possible to lay down any hard and fast rules of universal application. For example whether to treat clove as a spice or drug. In common parlance 'clove' is a spice. Dictionary meaning or pharmaceuticals code consider 'clove' as drug. But the court decided 'clove' as a spice. Carbon paper is classified under paper. It was decided by the court all types of paper including carbon paper is paper.

While classifying the goods, the advertisement and other publicity material in relation to the product may be taken into consideration to determine the exact heading/sub-heading into which such product falls.

The respondents in Union of India Vs. T.S.R. & Co were manufacturing 'thailam' which is mostly used before bathing as bath oil. The department classified these thailams as "perfumed hair oil" falling under item No.14F, the First Schedule to Central Excise Act stating their use as hair oil, cannot be ruled out, as the figure of the woman displaying her lavishly grown and flowing hair is suggestive of such use."11

11 Daya Sagar, ibid., p.175.
Wherever ad valorem basis of duty have been fixed, the actual amount of central excise duty is payable is worked out on the value of goods and the rate of duty. In turn, the rate of duty is ascertained on the basis of classification of the commodity. In Central Excise, classification of goods plays an important role. For a wrong classification would imply revenue loss to the Government or unjust burden on the assessee.

In terms of Rule 173B of the Central Excise Rules, 1944, all manufacturers working under Self Removal Procedure are required to file with the Superintendent of Central Excise, having jurisdiction over the factory, a declaration, in quadruplicate revealing:

a) the complete description of all excisable goods manufactured by him and all other goods manufactured, that are intended to be removed from the factory besides, description of all excisable goods deposited or likely to be deposited without payment of duty in his godown.

b) the chapter heading number, sub-heading number to which their goods come under.

c) the rate of duty leviable on each such goods.

d) the exemption notification, if any.

e) such other particulars as the Commissioner may require.

An assessee manufacturing excisable goods for the first time is required to file the above declaration within 30 days of producing such goods.
If any alteration is to be made, a fresh declaration or an amendment of the declaration must be filed within 30 days of alteration.

**Judicial Principles in Classification**

1. The nature, character, description and use of the goods determine the tariff heading to which the goods belong.

2. Classification of goods must be according to their popular meaning in the commercial sense and not as per the scientific or technical meaning.

3. Reliance on dictionary meaning is not a safe guide to determine the trade and commercial parlance of a product.

4. The specification issued by the Bureau of Standards and Specification for ensuring quality control has nothing to do with classification.

5. All material facts have to be considered by the Central Excise authorities in determining the classification of goods under CETA and in discharging the burden of classification, duty is cast on Central Excise authorities.

**REGISTRATION IN CENTRAL EXCISE**

The Budget of 1994 was a turning point in the history of central excise administration. The requirement of obtaining a licence under section 6 of Central Excise Act was dispensed with. A very simple and expeditious system of registration with Central Excise authorities was introduced as an assessee friendly measure. There is no fee for registration and it is a one time registration for an assessee.
Section 6 provides that persons engaged in
a) production or manufacture or process of specified excisable goods.

b) wholesale purchase, sale, storage of specified excisable goods are required to get themselves registered with Central Excise Department.

Registration is compulsory for person engaged in
a) producing or manufacturing excisable goods.

b) carrying on trade as a broker or commission agent

c) carrying a private store room or warehouse.

d) otherwise using excisable goods.

Rule 174(3) states that if there are more than one premises requiring registration, then each of such premises should be registered separately. The registration certificate is to be granted by the Superintendent of Central Excise in a prescribed form and it is valid only for the premises mentioned therein. The application for registration in the prescribed proforma shall be accompanied by ground plan of the premises showing the boundaries of the factory indicating the store room. The registration certificate or its certified copy must be conspicuously displayed in the registered premises.

Where the person transfers his business to another, the transferee has to obtain a fresh certificate.
Where there is change in the constitution of the firm or company or association (which are registered) such change must be intimated to the Central Excise Officer within 30 days of such change for incorporation in the certificate.

In case the registered person desires to manufacture a new product, he has to get the product endorsed on his registration certificate.

Where the registered person ceases to carry out his operation, then he has to surrender his registration certificate.

Once the application for registration is received, the proper officer has to grant certificate within 30 days of such application. If no such registration certificate is granted, it is deemed that registration is granted.

**Procedure for Registration**

1. Application for registration is to be made in the prescribed form R-1.

2. A ground plan in duplicate is required to be furnished to the Range Superintendent. The plan should show the boundaries of the factory and the main divisions into which the factory is divided.

3. The store room should be clearly shown on the ground plan and marked with a distinguishing mark.

4. The manufacturer is required to submit prior declaration of factory premises and equipment.
5. The application form should be accompanied by a schedule giving the details of applicant (firm/company) as well as the details regarding the excisable goods and their tariff classification.

Registration is granted after verification of ground plan, store room and other details submitted in the application. After scrutiny of the application with documents, the certificate of registration is issued in R-2 by the Superintendent of Central Excise. The validity of Registration Certificate is indefinite and no renewal is necessary. The manufacturer has to give in writing to the Commissioner for commencement of production for the first time. Events like stoppage of production, resumption, change in the nature of raw material also must be informed to the Commissioner.

Each registered person is given an assessee code. The registration certificate will be numbered according to the Electronic Control Code (ECC) number of the assessee granted by proper officer. The Electronic Control Code is a 10 digit number containing code number of Commissionerate, division, range, individual registered person and a check digit. The assessee should mention this code in his invoice, RG1, RG23A, Part I & II, RG 23C, Part I&II Registers, RT-12 Returns, TR-6 challans. Where a manufacturer pays duty under different chapter of CETA (like 39, 40, 52, 85) a separate registration is required for each of such chapter.

If any holder of Registration Certificate has committed breach of any conditions of the Act or Rules then the Registration Certificate may be revoked or suspended by the proper officer (Rule 174(1)). Further,
penal action can be taken against persons who have been convicted of an offence under sections 161, 109 or 116 of Indian Penal Code. The Registration Certificate will be revoked only under 'grave' situation.

Specific penal provision has been incorporated under rule 173Q(1)(c) in respect of persons engaged in production, manufacture, storage of excisable goods without having applied for registration certificate. Confiscation of such goods and penalty of Rs.5000 are provided in such cases.\textsuperscript{12}

The Central Board of Excise and Customs is empowered (174(2)) to grant exemption to any industrial undertaking from registration, if it is necessary and expedient in the public interest. The persons manufacturing goods chargeable to nil rate of duty or remain exempt from the whole of duty for the whole year, are exempted from registration. Similarly, Small Scale Industrial Units availing themselves of duty exemption under notification dated August 8, 1999 and whose value of clearance is below Rs.50 lakhs in current financial year, need not register themselves. But they have to file declaration.

It is not to be presumed that all units subject to nil duty are exempted from registration. Every unit has to obtain registration unless any notification issued under rule 174 entitles it to exemption from registration.

\textsuperscript{12} V.Balachandran, op.cit., p. B161.
Once the manufacturer is exempted from registration, he need not follow the procedural or other requirements of law of central excise. But such manufacturer must maintain proper books of records as to raw materials consumed and finished good produced by them.

Every assessee has to file a declaration in quadruplicate within 30 days of commencement of production of excisable goods.

Storage and Accounting of Goods

Excise duty is a duty on manufacture of goods, the duty liability is fastened as soon as the goods are manufactured. But they are permitted to store finished goods in a store room, without payment of duty.

Rule 53 talks of Daily Stock Account - RG-1. (RG.1. Form is annexed in Annexure I of this research report. Every manufacturer has to maintain a stock account in the form as prescribed by the Commissioner. The manufacturer shall enter, daily;

a) description of goods

b) opening balance

c) quantity manufactured

d) quantity deposited in the store-room or other places of storage approved by the Commissioner

e) quantity removed after payment of duty from such store room or premises
f) quantity delivered from the factory without payment of duty for export or other purposes.

g) the rate of duty and amount of such duty.

The RG1 register has to be pre-authenticated by Excise Authorities. The pages are to be serially numbered. The manufacturer has to enter in RG-1, the description, opening balance, quantity manufactured, quantity removed and closing balance. If the manufacturer manufacturers several grades or qualities of a particular product, separate daily stock account of each grade or quality in RG-1 is necessary. The manufacturer can use computer for maintaining production records after getting the permission from the Commissioner. They have to take a print out containing each day's transaction, closing stock, etc. At the end of the month, a consolidated monthly statement is prepared showing all receipts and issues during the month. Once the goods are entered in store room, they can be removed a) under an invoice on payment of duty b) cleared for export without payment of duty c) removed for captive consumption after making necessary entries.

Goods in store room are liable to duty. If these are lost or destroyed in storage remission of duty can be given by the Commissioner, on application. The rules of central excise provides that no ‘duty paid goods’ shall be retained in any premises of factory except with the order of the Board or Commissioner. Once the goods are entered in RG-1 Register the have to be removed only by making reverse entries. As per rules of Central Excise, goods cannot be entered in RG-1 Register unless they are marketable, packed and marked as per Rule 51(1) (i.e) goods must be ready and marked with batch number, serial number, etc. If
there is no production 'Nil' entry has to be made. In case of factories working in three shifts they can enter RG-1 Register before the end of the first shift of next day.

CLEARANCE OF GOODS

Rule 9 provides that excisable goods can be removed from the place of production only on payment of duty. But the rule allows storage of goods without payment of duty in approved store room or export of goods under bond without payment of duty. Rule 52A specifies that excisable goods can be removed from factory only under an Invoice. When Central Excise was first introduced, "excise gate pass" has to be prepared and signed by owner and countersigned by Excise Inspector. But this was cumbersome. Hence Self Removal Procedure was prescribed in 1968 for some items. Subsequently this procedure was extended to other items. Now the manufacturer can clear goods under his own invoice. The Invoice cum Delivery Challan should be serially printed and numbered, starting from 1st April. Invoice numbers can be printed with the help of automatic numbering machine. Handwritten numbers or rubber stamped invoice numbers are accepted. The invoice should be in book form (i.e) bound form. Original and duplicate are delivered to the consignee and the triplicate is retained in the invoice book. There are two sets of invoices. One for clearance for home consumption and the other for exports. Only one 'invoice' book of each type must be used at one time. Invoice should be in triplicate and should be marked at top in bold capital letters as follows:-

1) Original shall be marked 'original for buyers' 2) Duplicate copy is marked "Duplicate for Transporters" 3) Triplicate is marked
"Triplicate for Assessee". Goods must be removed from the factory with valid invoice only. If the goods are removed without invoice goods can be confiscated and duty can be levied. One invoice is made for each separate consignment. If consignment is split and despatched separately, separate invoice is made for each lot. In case of goods consumed captively in continuous process, one invoice may be made per day.

The invoice contains the following details:

a) full postal address and code number or registration number of factory.

b) name and address of range and division

c) full postal address of range and division

d) description and specification of goods

e) number and description of packages

f) total quantity of goods sold (net)

g) total price of goods

h) details of deductions and additions made to arrive at the assessable value as per section 4 of Central Excise Act.

i) assessable value per unit

j) total assessable value

k) tariff heading numbers and exemption notification number
l) total duty paid (both in words and in figures)

m) serial number of debit entry in PLA/RG23

n) date and time of issue of invoice

o) mode of transport and motor vehicle registration number

p) A certificate that the particulars are true and correct and the amount indicated represents the actual price charged and there is no additional consideration from the buyer or a certificate that the particulars given above, are true and correct.

It may happen that despatch is cancelled for any reason after an invoice is prepared and duty is debited, in such case intimation is given to Superintendent about cancellation of invoice and the duty debited can be re-credited. The assessee has to enclose the original and duplicate invoice with the intimation letter. This intimation letter has to be filed within 24 hours of cancellation.

Excise invoice is required only for removal of goods from factory. There is no such requirement in respect of goods removed from the place of dealers who are not registered with Central Excise department.

Payment of Duty

Goods are to be cleared from factory only on payment of duty, under an invoice. Every assessee has to keep an account-current with the Commissioner separately for each excisable goods falling under different chapters to CETA, in such form and manner as the Commissioner may decide, of duties payable on the excisable goods; such
accounts shall be maintained in triplicate by using indelible pencil and double sided carbon. (Rule 173 G)

Duty has to be paid by way of challan in the nominated bank. Payment of duty for each consignment separately in bank is very difficult and cumbersome. Manufacturers are allowed to operate a current account called Personal Ledger Account (PLA) for which permission is to be obtained. A manufacturer can pay duty in lump sum with the prescribed bank (Reserve Bank, State Bank of India and other banks as may be specified) by way of challan in form TR-6. The form TR-6 is annexed in Annexure I of this research report. On payment of such amount, credit can be taken in PLA maintained by manufacturer. While clearing the goods under invoice corresponding amount has to be debited in PLA. Where the amount to the credit of manufacturer in PLA reduces he can deposit further amount by way of challan and take credit for the same. At the end of the month, two copies of PLA should be submitted to Central Excise, within the period prescribed under rule 173G. Form of PLA contains the following details. a) serial number, date b) detail of credit like TR-6 Challan number, date and amount, separately for each sub-head of excise duty like basic duty, special duty, additional duty, etc. c) details of debit like invoice number, date, amount d) balance.

Where an assessee manufactures excisable goods falling under two or more chapters and the proper officer is the same for all the goods manufactured, the assessee may after getting necessary permission, maintain a single account current for payment of duty on all such goods.

Where an assessee maintains separately account current for each excisable goods, he may transfer from one account current to
another, in times of insufficiency in balance. Every assessee shall remove
the duty paid goods only under invoice. The invoice has to show the
amount of duty paid on such goods and the actual time of removal from
the factory.

The debit of duty to PLA is effective payment of duty. It is not
mere adjustment entry. The duty amount should be debited in PLA
before clearance of goods.

Usually there must be a separate entry for each invoice. But in
respect of assessees issuing more than 3000 invoices per year, a
consolidated entry can be made in PLA at the end of the day.

Goods are cleared from factory only on payment of duty. The
TR-6 form is the evidence of having deposited in duty. The TR-6 challan
contains details like;

a) serial number

b) name, address, code number of assessee

c) code no. of Excise Commissionerate, division, range

d) code of bank

e) PLA number, name of commodity

f) account head of duty

g) duty amount deposited.

The challan must be filed in quadruplicate. The challans must
be distinctly marked as original, duplicate, triplicate and quadruplicate.
Two copies of challans are retained by the bank, one for its own records and the other for submission to excise authorities. The other two copies are returned to the assessee. If the assessee deposits duty for more than one commodity in one challan, he must furnish details of the amount "tariff-item-wise" on the back of the challan.

The date of PLA debit entry is essential to calculate the period of limitation for refund purposes.

If cash is deposited, 'receipt challan' is given immediately by the Bank.

**Accounting Treatment of PLA**

When the amount is deposited in bank by TR-6 challans, it is an Excise Deposit, (like an Investment) hence Excise Deposit Account in General Ledger should be debited and Bank or Cash a/c is credited. When duty is debited in PLA at the time of clearance, it is effective payment of duty.

Excise duty a/c is debited and Excise Deposit Account is credited.

a. (i.e) Excise Deposit account Dr

To Bank / Cash account
b. Excise Duty Paid a/c Dr

To Excise Deposit a/c\textsuperscript{13}

After passing these entries, balance in "Excise Deposit a/c" and closing balance in PLA must tally. Whenever PLA is debited, entries are to be passed. But such accounting entry may be passed once at the end of the month. At the year end, balance in "Excise Deposit Account" will be reflected as "Current Assets" while amount paid in "Excise Paid Account" will be transferred to Profit and Loss account.

Vide Rule 173 G(3), a monthly return in quadruplicate in form RT12(Form Annexed) should be filed by fifth of the following month. The return is summary of quantity of production and clearance of goods during the month, stock at beginning and end of the month, duty paid through PLA and RG 23A, RG23C, goods cleared with duty and without duty for export or otherwise etc. The Return should be accompanied by original and duplicate copies of PLA, copies of TR6 challans evidencing payment of duty in PLA, one copy of RG23A and C, part I and II, documents on the basis of which MODVAT credit has been taken.

A Return should be filed even if there is no manufacture or clearance. The Return has to be acknowledged by superintendent of Central Excise and one copy duly acknowledged must be returned to the

\textsuperscript{13} V.S.Datey, op.cit., p.18.
assessee. But he need not enclose invoices issued by him under Rule 52A for clearance of his goods.\textsuperscript{14}

The RT-12 return should indicate items covered under each sub-heading and cleared. The rate of duty must also be specified.

The small scale industrial units shall file quarterly return. The monthly or quarterly return is a "Self-assessment of duty". The RT-12 Return contains a self assessment memorandum, where the assessee has to declare that the duty has been correctly paid.

Assessment means determination of tax liability. The assessee himself determines classification and valuation of goods and pay duty accordingly. Provision of self-assessment has been made from November 20, 1996.

The departmental officers will scrutinize the Return. They may carry out surprise checks. This scrutiny has to be completed within 3 months. They can call for documents from the assessee whenever necessary. The officer has to send a certificate to that effect to Assistant Commissioner, with a statement of RT-12 Returns, as regards to a) correctness of rate of duty b) arithmetical accuracy of duties and their debit to PLA/RG23 accounts c) Arithmetical accuracy of credit entries and TR-6 challans, MODVAT documents, scrutiny of MODVAT

declaration and MODVAT invoices. The MODVAT documents should be verified and defaced.

Range officers must maintain "Register of Scrutiny of RT-12 Returns and Revenue Realisations" in prescribed form. Progress of scrutiny of RT-12 return should be indicated in Monthly Technical Report.

Provisional Assessment

Provisional Assessment can be requested by the assessee or can be ordered by the Assistant Commissioner. Final assessment will be made by the Assistant Commissioner. In case of provisional assessment, demand can be raised within 6 months after the provisional assessment is finalised.

Where the assessee is not able to determine the value of excisable goods or unable to determine correct classification of the goods while filing declaration under rule 173(B), he can request Assistant Commissioner in writing apply for provisional assessment of duty. He has to make a written request declaring rate of duty and value as proposed by him. He should obtain dated acknowledgement. Thereafter the Assistant Commissioner will assess the duty.

Some times, the Assistant Commissioner of Central Excise can order for provisional assessment if he is not satisfied with the self assessment of the assessee.
Best Judgement Assessment

Central Excise has made provisions for Best Judgement Assessment though it is used very rarely. It is resorted to when assessable value cannot be finalised. It is done when the assessee does not submit necessary data and information or the assessment is not possible due to other reasons. If the assessee is maintaining false accounts to evade and it is not possible to find out precisely the turnover suppressed, best Judgement assessment maybe resorted to.

Removal of Excisable goods without payment of Duty

According to Rule 13(i)(b) the Central Government may notify those excisable goods whose removal may be permitted by the Commissioner, without payment of duty from the place of their manufacture or storage, if such goods are supplied for manufacture of specific articles to be exported in execution of any export order or for replenishment of duty paid excisable goods used in the manufacture of already exported goods.

SUMMARY OF ROUTINE PROCEDURES

All manufacturer assessees have to follow the following procedures:

1. Assessee has to apply for registration of his factory before he commences production. The registration certificate has to be amended if new product is added.
2. Declaration about goods manufactured has to be filed within 30 days of commencement of production. If there is any change, amendment a fresh declaration has to be filed.

3. Declaration about marketing pattern has to be filed before 15th April every year, in prescribed format.

4. Normally, value on which duty is paid will be indicated in the invoice. However, if goods are not sold, invoice must be raised for captive consumption, free distribution, etc.

5) Daily Stock Records of all finished goods in RG-1 must be maintained.

6) Goods must be cleared under Invoice or Invoice-Cum-Challan of manufacturer, duly authenticated by the owner bearing machine serial number.

7) Monthly Return in form RT-12 in required to be filedled by 5th of following month. The return should be accompanied by one copy of PLA, RG 23A Part I & II, RG 23C Part I & II, Copies of all documents on which MODVAT Credit has been availed. SSI units shall file quarterly return.

8) Every assessee should submit a list of accounts and returns in respect of production, storage, or disposal of finished goods and raw materials. Such a list should be submitted every year before 15th April.