B. Com. Final Year

INDIRECT TAXES

Authors

Susil Kumar Pattanaik
Lecture in Commerce
KBDAV, College, Bhubaneswar

General Editor

Prof. S. P. Pani
Director, DDCE

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UNIT I CONSTITUTIONAL PROVISIONS IN RELATION TO TAX

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Structure

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1.21 Conditions for Allowing Cenvat Credit

1.0 OBJECTIVES

After going through this lession you will be able:

- to know the different provisions relating tax
- to understand the features of Indirect taxes and its structure in India.
- Define the different excise duty
- Identify the different methods valuation of Goods.

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1.1 CONSTITUTIONAL PROVISIONS IN RELATION TO TAX

The word "tax "was derived from the Latin word "taxore". Tax is the amount paid by persons staying within a territorial limit of a sovereign state and is levied on individuals, goods, property, business, services etc.The term 'tax' may also be defined as compulsory exaction of money by public authorities for public purposes enforceable by law.Tax is levied by the state by virtue of its sovereign powers. Both union parliament and the sate Legislatures are empowered under the constitution to make laws for the levy and collection of taxes.

The features of a tax are as follows:

1. A tax is a compulsory payment to be made by the citizens who are liable to pay. Refusal to pay a tax is a punishable offence.
2. A tax is levied to meet public expenditure made by the government in the general interest of the nation. It is a payment for an indirect service to be made by the government to the community as a whole.
3. A tax is payable regularly and periodically as determined by the taxing authority.

Taxes

1. A tax is a compulsory charge or payment levied or imposed by a public authority on an individual.
2. It is levied to meet public expenditure incurred by the government in the general interest of the nation.
3. Tax is a levy "other than goods". It is levied on transaction e.g. Sales Tax, Service Tax etc.

Fees

1. Fees are charge for rendering services to the beneficiaries.
2. A fee is a payment to defray the cost of each recurring service undertaken by the government, basically for the public interest. Generally the amount of the fee depends upon the cost of services rendered e.g. Court fees, license fees etc.

Duty

Duty is a levy on "goods", Pay it first and then remove the goods e.g. custom duty, excise duty. Etc.

Penalties

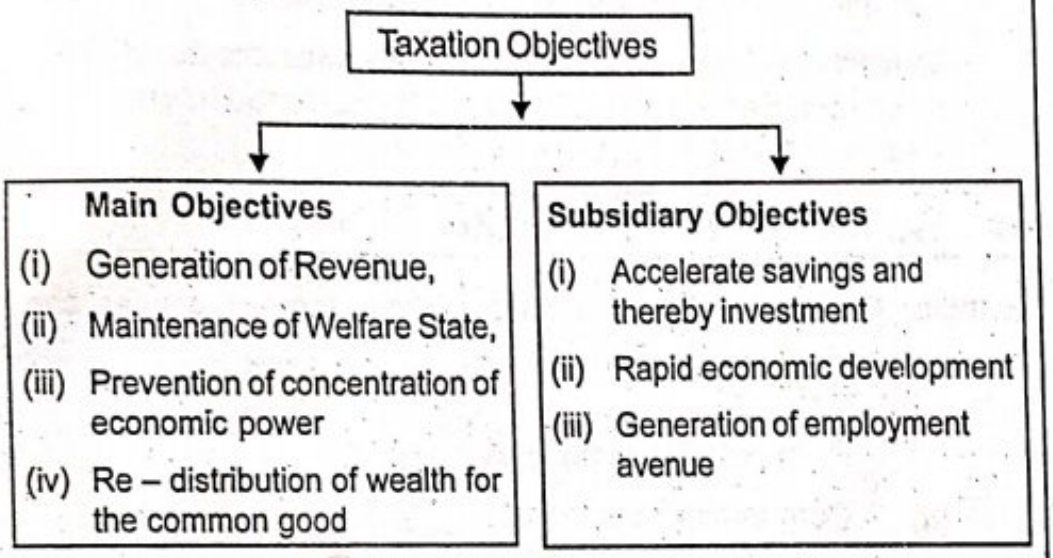
A tax is compulsory contribution made by tax-payer. Fines and penalties are the payments made for the contravention of law. These

NOTES

are arbitrarily determined and have no relation to the cost of administration or activities of the government. A public authority imposes taxes mainly to obtain revenue and impose penalties to punish people for violating certain laws.

1.2 OBJECTIVES FOR TAXATION

Tax revenue is the major source of income of the government for its expenditure. Taxation has been used for various socio-economic objectives by government. The tax revenue are collected either directly or indirectly . These are as direct taxes and Indirect taxes .The objectives of taxation are outlined below:



Direct Tax

A direct tax is paid by the person on the income derived by him/her or who can bear the tax .The burden cannot be shifted to others. Income tax is a direct tax.

Indirect Tax

Indirect Taxes are those taxes the burden of which by nature is shifted and where it is paid indirectly: i.e.while purchasing goods & commodities, paying for services etc. Central Excise Duty, Customs Duty, Central sales Tax, Service Tax, state sales Tax, Octroi, Interest Tax, Expenditure Tax, Foreign Travel Tax etc are indirect taxes.

Meaning Of Indirect Taxes

Indirect taxes are those taxes which have their primary burden or impact on a single person. But that person succeeds in shifting his burden to others. In other words, a indirect tax is imposed on one person but is paid partly or wholly by another. Indirect taxes are shifted and the incidence of these taxes falls on persons other than the original payers.

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1.3 FEATURES OF INDIRECT TAXES

The special features of indirect levies are stated briefly as follows:

1. In shifting of tax burden, the duty, which is paid indirectly, is just the shifting of tax burden from one level to another.
2. Indirect taxation is commodity taxation as the excise levy is made in respect of commodities manufactured in any part of India.
3. In respect indirect taxes, the ability of taxpayer is indirectly determined.
4. collection of Indirect taxes are easy and tax evasion is comparatively less in the case of organized sector.
5. Indirect taxes include Central Excise Duty, Customs Duty, Central sales Tax, Service Tax, state value aded Tax, Octroi, Interest Tax, Expenditure Tax, Foreign Travel Tax etc.

1.4 TAX STRUCTURE IN INDIA

The Indian Tax structure has been categorized in three categories as :

1. Taxes on income:
   - (a) Personal income tax, and
   - (b) Corporation income tax.
2. Taxes on property and Capital transactions:
   - (a) Wealth tax, and
3. Taxes on commodities and semies :
   - (a) Customs duties
   - (b) Excise duties
   - (c) Sales Tax
   - (d) Value Added Tax and
   - (e) Service Tax

(a) Custom Duties

The duties levied on imports and exports is custom duty. It provides about 26 percent of the total tax revenue of the Union Government. Most of the duties are now *advalorem*. In certain cases, additional specific duties are also provided.

Import duties in India are levied with having two objectives : (I) protection and (II) revenue. Since most of the import duties are raised to the protective level, income from them has been declining.

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As regards export duties, the recent trend is for their abolition or minimization so as to encourage exports for improving India's balance of payments.

(b) Excise Duties

Excise means a tax or duty on goods produced within the country, either in the process of their manufacture or before their sale to consumers. Most of the excise duties are *ad valorem*. However, excise revenue from items such as motor spirit, cement, tyres, steels, etc. is continuously increasing.

1.5 CONSTITUTIONAL PROVISIONS

Arctile 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. In keeping with the federal structure, the Constitution of India has empowered both the Centre and the States to enact laws relating to taxation (Article 246). The distribution of such legislative powers is explained below :

Article 245

(i) It empowers Parliament to make laws for the whole or any part of India.

(ii) It also empowers the Legislature of State of make laws for the whole or any part of State.

Article 246

(i) Article 246 empowers Parliament exclusively to make laws with respect to levy and collection of

UNION LIST (LIST – I)

Entry No. 82 Taxes on income except agricultural income;

Entry No. 83 Duties of Customs including export duties;

Entry No. 84 Duties of Excise on tobacco and other goods manufactured or produced in India, except preparation of liquors, narcotic, drugs, etc., medicinal and toilet preparation containing alcohol and narcotics. (vide List I - Union List – Seventh Schedule)

Entry No. 92 (A) Taxes on inter state sale or purchase of goods other than News papers (but collected and retained by state art 269).

Entry No. 92 (B) Taxes on consignment of goods in the course of inter – state trade or commerce (but no Act passed to levy consignment tax so far)

Entry No. 97 Any other matter not enumerated in List II (State List of List (Residual III (Concurrent list) including any tax not mentioned in either Entry) of these lists.

Note. *Service tax through Finance Act 1994 has been levied by involving power under Entry 97.*

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(ii) The State Legislature has exclusive power to make laws with respect to any of the matters listed in List II, namely STATE LIST – Seventh Schedule.

STATE LIST(LIST – II)

Entry No.

Entry 46 Taxes on Agricultural Income

Entry 51 Duties of excise on goods manufactured or produced in liquors, opium Indian hemp and other narcotic drugs and narcotic.

Entry 54 Taxes on sale or purchase of goods other than newspapers subject to provisions of Entry 92-A in List A (e.g. state value Added Taxes)

Note: (1) Income Tax and Central Excise duty are shared.
(2) Surcharge are not shared (Article 270)
(3) Custom duty and any cess levied for specific purpose not shared

Parliament and the State Legislatures both have power to make laws with respect any of the matters listed in List III, namely CONCURRENT LIST – Seventh Schedule.

Article 271 – Levy of surcharge

Parliament can levy surcharge on any of the duties or taxes and the proceeds of such surcharge shall go into Consolidated Find of India.

Article 272 – Distribution of Revenue

Article 272 provides for distributing of excise duties as mentioned in the Union List (List I) among the States in accordance with such principles of distribution as may be formulated by law. The Finance Commissions goes into detailed aspects of such revenue sharing among the States.

1.6 CENTRAL EXCISE ACT – CONCEPTS AND DEFINITIONS

Central Excise duties contribute approximately 36% share to the central government exchequer. These duties collectively are the single largest source of revenue of the Central Government. Central Excise duty is levied and collected through the machinery of Central Excise Act, 1944.

Feature of Excise Duty

Excise duty is a duty levied on the production or manufacturer of excisable goods in India. It is a tax levied upon manufacturer and not upon sale of goods.

The following conditions must be fulfilled to levy excise duty.

a) Goods must be there
b) Goods should be under excisable goods.
c) Goods must have been produced/manufactured in India.

Excise duty is paid by manufacturer in the first instance and then he passes it on to the ultimate consumers, so that , it is called as indirect tax.

1.7 TYPES OF EXCISE DUTIES

NOTES

1. Basic Excise Duty (BED)

This duty is levied on all excisable goods produced / manufactured within India at the rates specified in the 1st Schedule to Central Excise Tariff Act, 1985, read with exemption notification, if any issued u/s 5A of the Central Excise Act 1994. The Finance Act, 2000 has termed this duty as 'CENVAT" (Section 2A). There were three rates of CENVAT upto 29.02.2000

(i)8% - merit rate; (ii)16% - normal rate; (iii) 24% - demerit rate and w.e.f 1.03.2001, there is only one rate i.e. 16%. The basic duty proceeds are shared by Union and states.

These rates do not apply in the case of petroleum and tobacco products, pan masala and items attracting specific duty.

2. Special Duty of Excise(SED)

It is also levied u/s3 (i) of the CE.Act1944.SED also known as auxiliary duty is levied as surcharge on basic excise duty. The objective of imposing SED is to generate additional resources for some specified objects. This duty is mainly livable on goods and the rates of duty were 8%, 16% and 24% ad volorem in respect of two different categories of products.

Finance Act 2005 has confined SED to the following 2 items only:

(1) Air conditioners and components

(2) Aerated Soft Drinks and Soft drinks concentrates.

3. Additional Duty on goods of special importance

Additional duty of Excise(ADE)is levied under either additional duty of excise (goods of special importance)Act,1957 or under Additional Duty of Excise (Textile and Textile Article) Act, 1978. Former provides for additional excise duties in lieu of sales tax on specific items like Textile, sugar, tobacco and later provides for specified items of textile and articles of textile. Revenue generated from this duty is distributed among state governments on the basis of percentage given in the 11th Schedule of the Act.

4. National Calamity Contingent Duty (NCCD)

It is kind of surcharge levied under Finance Act, 2001 on items like cigarette, bidi ,pan masala and other tobacco products. Finance Act, 2003 added two more items on this list:

(a) 1% on polyester filament yarn, motor cars and two wheelers and

(b) 50 per metric tonne on the domestic crude oil. This duty was valid upto 29.2.2004 but it has now been continued without any time limit.

5. **Cess**

It is levied on certain commodities like tea, rubber etc. for the purpose of utilizing the proceeds for the development of industries and welfare of workers. In some cases, it's levy and collection is entrusted to Central Excise Department.

6. **Duties leviable under Other Acts**

For levy and collection of duties leviable under other Acts, sometimes, the machinery of Çental Excise Dept. is used. For exampl:

(a) Additional duty on Textile & textile articles @ 15%.

(b) Duty on Medical & Toilet preparations

(c) Additional duty on mineral products.

Comparison between Excise Duty, Custom Duty and Sales Tax are as follows :

	Excise Duty	Custom Duty	Sales Tax
1. Basis of Charge	Excise duty is a tax on manufacture/production of goods	Custom duty is charged on import/ export of goods from India.	Sales Tax is tax on sale of goods within India.
2. Classification of Goods	Central Excise Tariff Act 1985 classifies goods for the purposes of levy and rates of duty.	Custom Tariff Act 1985 classifies goods for the purposes of levy and rates of duty.	Central Excise Tariff Act classifies goods for C.S.T. on inter-state sales and states tax on sales within particular states for the determining rates of sales tax.
3.Taxable event	Taxable event for levy of this tax is production or manufacture goods within India.	Taxable event is entry inward/outward of goods into/from India.	Taxable event is sale of goods within inter-state.
4. Collection power	Excise duty is levied by Central government except on certain specified goods (e.g. alcoholic liquors, opium, Indian hump narcotics). State excise on above mentioned items is levied .	Custom duty on import/export is levied collected and retained by Central government.	Central Sales Tax is levied by Central Govt. but collected and retained by State Government. Collection of State Sales Tax is sole prerogative of concerned state.
5. Rate of Tax	Excise duty is uniform.	Custom Duty on specific goods is uniform.	C.S.T. rate @ 4% is uniform but rates vary from of State
6. Time of Payment	It is payable on removal of goods from factory godown.	It is payable on before custom clearance.	It is payable after sales take place.

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Central Excise Laws

The body of law of Central excise is government under the Central Excise Act, 1944 and (Central Excise Rules 2002 (Previously C.E. Rules 1944) and Central Excise Tariff Act, 1985. The provisions of various Acts and Rules are follows:

1. **Central Excise Act, 1944.** (as amended from time to time) provides or the basis of charging of excise duty, valuation of goods for excise purposes, powers of officers, penalties etc. This is the basic Act governing Central Excise.

2. **Central Excise Rules, 2002.** The Act itself, all such matters been framed, amended and notified by the central Government from time to time under powers granted to it by Section 37 of the Central Excise Act 1944. *Excise Rules 2001 have been reissued as Central Excise Rules 2002 effective from 1.03.2002.*

3. **Central Excise Tariff Act 1985. (CETA).** This Act classifies all the goods under various heads and sub-heads for prescribing different rates of duties. Each head has been assigned with a specific code.

4. **Central Excise (Valuation) Rules 2000.** Section 4 of the Central Excise Act contains provisions regarding determination of value for charging excise duty. These rules have been framed to supplement section 4.

5. **Notifications.** Section 5A and 11C of Central excise duty 1944 grant powers to central Government to issue notification granting partial or full exemptions from central excise.

The rules and notification have to be placed before each House of Parliament which has power to amend or modify these. So, these rules and notification have full legislative support and treated as part of the Act itself.

LEVY AND COLLECTION

The word 'Levy' means imposition of tax. Once a tax or duty is imposed, it is quantified and then 'collected'. The term levy includes both imposition of tax as well as assessment on value.

1.8 COLLECTION OF EXCISE DUTY

RULE 4 of Central Excise Rules, 2002

(1) The excisable goods, on which duty is payable, shall not be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse unless otherwise provided. According to C.E. Act, excise duty , it becomes payable at the time of removal only and that too at the rate applicable on the

date of removal and not at the rate prevalent on the date of manufacture – CE Rules 4 & 5.

RULE 8 of Central Excise Rule, 2002

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Different tariff values may be fixed by the central Government from time to time by notifications in the official gazette :

(a) for different classes or description of the same excisable goods; or

(b) for excisable goods of the same class ore description –

(i) produced or manufactured by different classes of producers or manufactures; or

(ii) sold to different classes of buyers;

Point of Levy

Taxation authority, subject to the legislative competence can levy duty at any convenient stage, so long as a duty on the manufacture or production of goods is not lost and the method of collection does not affect the essence of excise duty.

There is no rational ground for limiting the right of the state to levy excise duty at any stage it chooses before commodities reach the consumer.

Collection of Excise Duties [Sec. 11D]

(1) Duty to deposit exicse duty. Every person who is liable to pay duty under this Act or the rules made there under, and has collected any amount in excess of the duty assessed or determined and paid on any excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(2)Notice of Demand. Where any amount is required to be paid to the credit of the Central Government as above which has not been so paid, the Central Excise Officer may serve on the person liable to pay such amount, a notice is being given him to show cause on the said amount, as specified in the notice, should not be paid by him to the credit of the central Government.

(3)Liability to pay. The Central Excise Officer shall, after considering the representation, if any ,made by the person on whom the notice is served as above determine the amount due from such person (not being in excess of the amount specified in the notice)and thereupon such person shall pay the amount so determined .

(4) Adjustment against excise duty payable. The amount paid to the credit to the central Government shall be adjusted against the duty of excise payable by the person on finalisation of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods.

(5) **Refund.** Where any surplus is left after the adjustment, the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for the refund of such surplus amount.

1.9 CENTRAL EXCISE ACT

The goods are classified systematically following the footstep of HSN (Harmonised System of Nomenclature) as in customs Tariff (Schedule1-Import Tariff). Each chapter is divided into a number of headings and sub-headings to provide guidance in the classification of goods but there are marked variations between customs and Excise tariff.

Constitution of India (Article 265) provides that levy and collection of excise duty shall be under the authority of law. Excise duty is levied on articles produced or manufactured in India on the basis of entry 84 of List I (Union List) of the Seventh Schedule of the Constitution of India.

Entry 84 empowers the Central Government to levy duty of excise on all articles produced or manufactured in India (including tobacco) except alcohol, alcoholic preparations and narcotic substances like opium, but including medicinal and toilet preparations containing alcohol, narcotics etc. Power to collect excise duty on alcohol and opium has been assigned to the States and it is called State excise duty as against Union excise duty or Central excise duty levied and collected by the Centre on rest of the articles. To illustrate, central excise duty is leviable on medicines but if a medicine contains alcohol or opium derivative, like some cough syrups or pain killers, the same though leviable by the Union would be collected as State excise duty and the Central Government cannot collect excise duty on them.

1.10 FEATURES OF CENTRAL EXCISE TARIFF ACT 1985 (NEW TARIFF)

The salient features of this Act are as follows :

1. **Sections and Chapters** : The Central Excise Tariff Schedule contains 96 Chapters, (out of which 5 are blank) grouped into twenty Sections. Each of these Sections relates to a broad class of goods. Each of these sections has been divided into various chapters and each chapter contains goods of a particular class. Each chapter has been further divided into various Headings, depending upon the different types of goods belonging to the same class of products.

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2. Eight (earlier six) Digit Classification : The excisable goods have been classified by using a eight (earlier six) digit system effective from 28.02.05, with two more digits added for further subclassification, wherever needed. The first two digits refer to the chapter of the Tariff and the next two digits refer to specific items in the chapter. Two more digits have been added- for further sub-classification wherever needed.

3. Grouping of Goods : The salient feature of the Central Excise Tariff is that it adopts the principle of classifying all goods of a kind, beginning with the raw material and ending with the finished products, within the same Chapter, in progressive manner as far as possible.

4. HSN as the basis of CETA : New Tariff is based on internationally acceptable Harmonised System of Nomenclature (HSN). This system has been adopted by large number of countries in international trade. But CETA is not 100% copy of HSN. A wide variations in HSN and CETA been marked in certain cases.

5. Two Schedules : Schedule I of CETA contains basic duties i.e. CENVAT leviable on various products. Schedule II contains list of goods on which special Excise Duty (SED) is payable. SED is leviable on selected items only. Items and tariff headings in schedule II are the same as in schedule I and are to be interpreted accordingly.

6. Use of Single and Double dashes for coding : For grouping and sub-grouping of items, single dash (-) at the beginning of description indicates a group while double dash (- -) indicates a sub-group use of these is illustrated as follows :

A		Personal Computer
AA	–	Desktop PC
AA-1	–	Pentium
AA-2	–	Celeron
AB	–	Laptop
AB1	–	HP
AB2	–	IBM

7. Interpretive Rules. Interpretive rules have been provided to serve as statutory guidelines for interpreting the Tariff Schedule.

8. Comprehensive. CETA is more detailed and comprehensive as compared to earlier First schedule to CET Act1944.

Rates of central Excise Duty are contained in central excise Tariff Act 1985, popularly known as New Central Excise Tariff.

1.11 PRINCIPLES OF CLASSIFICATION

Classification of goods involves choosing the right heading or sub-heading of the Tariff and determining the appropriate rate for particular goods .Classification of goods is the prime function of Excise

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Department. Apart from the Rules of interpretation which have precedence over other aspects, the general principles for determining the classification of goods ,are as follows:-

1. **Classification as per Scientific meaning and trade parlance:** Two major criteria for determining the classification of excisable goods are (i) the scientific or technical meaning and (ii) the trade or commercial parlance. Classification of goods is to be based on statutory definition, if any, and in the absence thereof on trade parlance.

2. **According to function or use :** The basic character, function and use of goods is comparatively more relevant than the name or trade nomenclature of the product. When goods are specified in a Tariff Heading with reference to their specific names, the classification, in such a situation is to be done under such specific names and not on the basis of their functional character.

3. **According to constituent materials:** Constituent materials used in the manufacture of excisable goods are one of the parameters for determining the correct classification of excisable goods.

4. **As per accessories and components:** The component parts, which provide the essential characteristics of the main product are also to be classified along with the main product. In fact, the Central Excise Tariff deals differently with the classification of parts in different situations and circumstances. Accessories cannot be characterised as components or integral parts of an article and, so, they cannot be classified as the article to which they are attached. Accessories are by themselves articles and would be classifiable as such because they are not necessarily confirmed to particular machines for which they serve as aids.

5. **According to I.S.I. Marks :** An article specified by the ISI or BIS (Bureau of Indian Standards), is certainly evidence of the fact that the said article is known as such in the trade or commerce parlance since ISI specifications are with regard to the quality of goods. But ISI specifications or terms can only be used as supportive material as an expert opinion.

6. **According to expert opinion and evidence:** As per the Central Excise Rules, it is the responsibility of the excise officers to classify the goods under the appropriate heading of the Tariff, on the basis of the material or evidence available on record and after such enquiry as they may deem fit to conduct. In case of dispute regarding the nature of goods, the authorities should get the goods examined by an expert, rather than making a personal inspection of goods. However, expert opinion has to be given due respect but it cannot decide the classification of goods.

7. **Residual entries:** Goods, which cannot be brought under, the various specific entries in the Tariff are to be classified under the residual entries.

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8. **According to Time (Taxable Event) :** Classification of goods would be on the basis of Tariff heading as applicable at the time of their removal rather than at the time of manufacture.

9. **Asper the treatment for 'Exemption' :** In view of section 20 of the General Clauses Act, the meaning of goods should be same for 'exemption' as it is 'for the purpose of classification'. However, the onus of proving chargeability of 'duty' on goods is on the Department and proving exemption from duty on the manufacturer claiming the exemption.

1.12 VALUATION OF GOODS

Procedure of Valuation :

Central Excise Act specifies that the exciseable goods are chargeable with rate of duty mentioned in First and Second Schedule to the Central Excise Tariff Act, 1985 under Section 3(1). The rates specified in this Tariff for most of the goods are ad valorem. So, the valuation of the goods becomes very important in excise.

TABLE showing the basis of valuation

Section	Basis of Valuation
4 (1) (a)	Transaction Value
4 (1) (b)	Valuation Rules 2000
4 (2)	Tariff Value
4 A	Maximum Retail Price (MRP)
FTZ/EOU	No need of valuation
SEZ to DTA	Customs duty is paid and not ED

1.13 COMPUTATION OF ASSESSABLE VALUE

From cum-duty price, permissible deductions should be deducted first and thereafter excise duty should be deducted as shown in the following formula :

Assessable value: =Transaction value= Invoice price

(i) If the assessee and the buyer are not related persons and the price is also the sole consideration for sale but only the delivery of goods is made by the assessee at a place other than the factory/warehouse, then the assessable value shall be "transaction value" without the addition of the cost of transportation from the factory/warehouse upto the place of delivery.

(ii) If the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessable to his depots or consignment agents or any other place for sale, the assessable value in such case for

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the goods cleared from factory/warehouse shall be the normal transaction value of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse.

Examples:

Mr Nirmal sells certain goods to Mr.Paresh who is related person for Rs.2250.The buyer doesn't sell the goods but uses himself. The cost of production of such goods to Mrs Nirmal is Rs.2200.what is the assessable value of this goods?

Ans:

As per the valuation rule:

Cost of Manufacture	= Rs.2200
Add 15%	= Rs. 330
Hence, Assessable Value	= Rs.2530

"Normal Transaction Value" (NTV) in the valuation rules means the transaction value at which the greatest aggregate quantity of goods from the depots etc. are sold at or about the time of removal of the goods being from the factory/warehouse. If, however, the identical goods are not sold by the assessee from depot/consignment agent's place on the date of removal from the factory/warehouse, the nearest date on which such goods aware sold or would be sold shall be taken into account.

In either case if there are series of sales at or about the same time, the normal transaction value of sale to independent buyers will have to be determined and taken as basis for valuation of goods at the time of removal form factory/warehouse. It follows from the Valuation rules that in such categories of cases also if the price charged is with reference to delivery at a place other than the depot, etc. then the actual cost of transportation will not be taken to be a part of the transaction value and exclusion of such cost is allowed on similar lines as discussed earlier, when sales are effected from factory gate/warehouse.

For example, if an assessee transfers a consignment of paper from his dept from Gwalior to Cuttack on 15-9-2005, and that variety and quality of paper is normally being sold at the Cuttack depot on 15-9-2005 at transaction value of Rs.80,000 per ton to unrelated buyers, where price is the sole consideration for sale, the consignment cleared from the factory at Gwalior on 15-9-2005 shall be assessed to duty on the basis of Rs.80,000 per ton as the assessable value. If assuming that on 15-9-2005 there were no sales of that variety from Cuttack depot but the sales were effected on 11-9-2005, then the normal transaction value on 11-9-2005 from the Cuttack depot to unrelated buyers, where price is the sole consideration, shall be the basis of assessment.

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'Related person' includes "inter-connected undertaking" as defined in Section 2(g) the Monopolies and Restrictive Trade Practices Act, 1969. The definition of inter-connected undertaking in the said Act reads as follows :

"Inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner, namely :

(i) If one owns or controls the other,

(ii) Where the undertakings are owned by firm, if such firms have one or more common partners,

(iii) Where the undertakings are owned by bodies corporate, -

(a) if one body corporate manages the other body corporate, or

(b) if one body corporate is a subsidiary of the other body corporate, or

(c) if the bodies corporate are under the same management, or

(d) if one body corporate exercises control over the other body corporate in any other manner;

(iv) Where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm, -

a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity of the body corporate, or

b) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate,

(v) if one is owned by a body corporate and the other is owned by firm having bodies corporate as its partners, if such bodies corporate are under the same management,

(vi) if the undertakings are owned or controlled by the same person or (by the same group),

(vii) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more foregoing sub-clauses.

Summing up, if the assessee and the buyer are inter-connected undertakings, they become related persons. Inter-connection can be through ownership, control or management.

Thus the term inter-connected undertakings covers large categories of legal entities/undertakings to whom goods are sold by the assesses which may be held as "related person" under the new definition. While dealing with transaction between itner-connected undertakings, if the relationship as described in clause (ii), (iii) or (iv) does not exist and

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the buyer is also not a holding company or a subsidiary company, then for assessment purposes, they will not be considered related. "Transaction value" could then form the basis of valuation provided other two conditions, namely, 'price is for delivery at the time and place of removal and the price is the sole consideration for sale are satisfied.

1.14 ASSEASSABLE VALUE

Where rates of duty are *ad valorem* (expressed as a percentage of value of goods), assessable value of the goods has to be found out.

Tariff Value : Where, under Section 3(2) of the Act, the Central Government has fixed tariff values for the goods, the assessee's task is easy. He is to find out the tariff value for the particular variety from the relevant notification and pay duty thereon. But tariff values are rarely fixed by the Government.

Valuation under Section 4 : (1) Where the duty of excise is chargeable with reference to their value, then, (on each removal of the goods) such value shall :

(a) in a case where the goods are sold by the assessee, and the buyer of such goods are not related and the price is the sole consideration of the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Note. *Every removal of goods from the factory shall be accompanied by an invoice and the invoice price is the transaction value. From the use of the words "on each removal" it is clear that the price charged for each consignment shall constitute the assessable value for that consignment.*

To apply transaction value in given case the following requirements should be satisfied :

(a) The goods are sold by an assessee for delivery at the time and place of removal. The term "place of removal" has been defined basically to mean a factory or a warehouse or depot; or

(b) The assessee and the buyer of the goods are not related; and

(c) The price is the sole consideration for the sale.

Note : *(1) In case of delivery at some other time and place.*
(2) Related Buyer and assessee.
(3) Any other consideration besides 'price'. Section 4(1) (a) does not apply.

To apply Transaction Value/Invoice price, there should be :

Sale + Delivery at Time and place of Removal + Buyer and Seller unrelated + Price is the sole consideration.

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If any one of the above requirements is not satisfied, then the *transaction value shall not be assessable value and value in such case has to be arrived at under the valuation rules, notified separately as provided in sub-section 4(1)(b).*

In the following situations, transaction value will not be considered. Instead the goods will be valued in the prescribed manner, i.e., as per CE Valuation Rules, 2000.

The goods have not been sold i.e., there was removal of goods from the factory; but the removal was not in the course of sale.

Examples :

1. Consignment transaction from principal to agent.
2. Depot transfer.
3. Removal as sample.

The removal from factory is on account of sale; but one or more of the conditions prescribed for transaction value have not been fulfilled.

Examples :

1. Delivery at the door of the buyer. (not at assessee's factory gate).
2. Buyer and assessee are related persons.
3. Price is not the sole consideration.

Examples : The includibility/excludability of ED, Sales Tax, etc., in the Sale price is sought to be clarified through explanation introduced with effect from 14.5.2003.

The valuation rules have been notified under section 4(1)(b) by Notification No. 45/200-C.E. (NT), dated 30.6.2000. The rules define "normal transaction value' as the transaction value at which the greatest aggregate quantity of goods are sold.

1.15 MEANING OF TERM 'NORMAL TRANSACTION VALUE'

Value in common sense means price mentioned in invoice or bill.

The term 'Normal transaction value' means transactions of sale in the ordinary (routine) course. Usually it is the prevailing price in the general course of trade. It is the price accepted by majority of cases.

Units produced 1000 units

Of these 1000 units 800 units are sold at Rs.250 per unit.

100	210
100	285

Major portion of such goods were sold at Rs.250 per unit, the assessable value for the given 1000 units will be Rs.250 per unit.

Basis of Assessable Value : W.e.f 1.7.2000, excise duty is payable on **transaction value** if goods are sold at ex-factory price to an unrelated buyer when price is the sole consideration. If these requirements aren't met, valuation is done as per Central Excise (Valuation) Rules 2000.

Place of removal : According to Section 4(3)(c) 'Place of removal' means:

(i) A factory or any other place or premises of production or manufacture of excisable goods from where such goods are removed or

(ii) A ware house or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty from where such goods are removed.

(iii) A depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory and from where such goods are removed;

Transaction value is relevant only when goods are sold at the time and place of removal.

Buyer must not be related : Excise duty is payable when goods have been manufactured and removed for sale. No excise duty is collected at subsequent stages of wholesale or retail sales. Dishonest manufactures to reduce excise liability may sell goods to 'related person' at lower price, who may sell at 'normal price' afterwards to others.

1.16 RELATED PERSONS

Section 4(3) (b) states that persons shall be deemed to be related if :

(a) They are having inter-connected undertakings;

(b) They are relatives;

(c) Amongst them the buyer is a relative and distributor of the assessee or a sub-distributor; or

(d) They are so associated that they have interest directly or indirectly in the business of inter-connected undertakings shall have the same meaning as in the MRTP 1969, Act and relative to have the same meaning as the Companies Act, 1956.

The expression 'related persons' has been defined in Section 4(4) (c) of the Act and has been incorporated in the paragraph containing the text of Section 4. *The definition is unique in that it is both exhaustive and inclusive*. The first part of the definition is exhaustive and refers to

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"a person who is so associated with the assessee that they have interest, directly and indirectly, in the business of each other". The second part is inclusive and includes within the category of "related person", the following:

(i) holding company,
(ii) subsidiary company,
(iii) a relative and a distributor
(iv) a sub-distributor.

'Relative'. Section 2(41) of Companies Act, 1956 defines 'relative' to mean persons related as per section 6. According to section 6 following are relatives :

(a) members of a HUF,

(c) husband and wife;

(d) persons related to one another in the manner indicated in Schedule I-A. The Schedule is a detailed one and enumerates 22 different relationships. Thus, all of the above categories will be covered within the definition of relatives and transactions between an assessee and such relatives will be covered within the ambit of section 4(4)(c) of the Act.

Distributor. The phrase 'relative and a distributor of the assessee occurring in the section 4(4)(c) means that even a distributor should be a related person.

Thus, if a company or a firm is appointed as a distributor, it can never be related person since an impersonal body cannot be treated as a relative under section 4(4)(c).

The words 'relative and a distributor of the assessee" do not refer to any distributor who is relative of the assessee within the meaning of the Companies Act. 1956.

Thus **"Transaction Value"** includes receipts/recoveries or charges incurred or expenses provided for in connection with the manufacturing, marketing, selling of the excisable goods to be part of the price payable for the goods sold. Thus if assessee charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value.

Similarly **warranty charges** for any goods shall be included in the transaction value. It is immaterial whether the warranty is optional or mandatory.

Regarding the **time of removal,** the supreme Court, in the case of *Wallace Flour Mills vs. C.E.EX.*, has held that excisable products are dutiable at rates of duty prevalent on the date of removal. Therefore, goods which have been produced during the period wherein an exemption notification was applicable, but which were cleared thereafter when the exemption notification was no longer in force, are dutiable.

(3) Time of Removal : Section 4(3)(cc) states that "time of removal", in respect of goods removed from the place of removal shall be deemed to be the time at which such goods are cleared from the factory.

It is held that the price is determined only at the place of delivery and not at the place of removal. The Madras High Court held that transport charges were to be excluded in computing the assessable value.

(4) Related persons : The next requirement of normal price is that it should not pertain to sales to related persons. In other words, it is necessary that the transaction between the manufacturer and the wholesale buyer should be at "arm's length" i.e. not tainted by any extra commercial consideration. The buyer should not be a "related person".

The third proviso to section 4(1)(a) states that where the assessee arranges to have the goods sold, not in the course of wholesale trade, but only to or through a "related person", the assessable value is the price at which the goods are sold by such related person to subsequent wholesale buyers.

(5) Price the sole consideration for sale : The last criteria which determine the normal price of excisable goods states the price off excisable goods should form the sole consideration for the sale and that these should be no other extra commercial considerations flowing from the buyer to the assessee. Thus the normal price is to be determined on the basis of an arms length transaction between independent parties who contract with each other for sale of goods for a stated price.

In cases where goods are sold by the assessee at different prices to different classes of buyers (not being related person) each such price shall be deemed to be normal price of such goods.

1.17 CENTRAL EXCISE (VALUATION) RULES, 2000

Central Excise (Valuation) Rules, 2000 have introduced valuation mechanism based on concept of 'Transaction value'. As well as inclusions and deductions .

Inclusions and Deductions

Inclusions and deductions for determining assessable value of specific items of expenditure are discussed below :-

(A) Packing Charges : Section 4 does not make any specific reference to packing charges but does not mean that charges relating to packing will not form part of assessable value. Any charges recovered for packing are generally charges recovered in relation to

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the sale of the goods under assessment and will form part of the transaction value of the goods.

(B) Discounts : The duty is chargeable on the net price paid or payable.but not before discounts.**Quantity discount** for goods purchased or **cash discount** for the prompt payment etc. are not computed on part of the transaction value. The **differential discounts** extended as per commercial considerations on different transactions to unrelated buyer can not be objected to and actual prices paid or payable are to be accepted for working assessable value. different types of discounts are taken here as follows :

(i) Trade Discounts : A trade discount normally refers to a deduction from the regular catalogue price allowed by a manufacturer to a dealer. The allowance and nature should be known at or prior to the removal of the goods. The discount cannot be disallowed merely because it is not payable at the time of each invoice or deducted from the invoice price, even if given by way of credit notes in favour of the dealers.

(ii) Quantity discounts : A quantity discount has precisely the same effect as a money discount because, in both cases, there is a deduction of the price charged to the purchaser. A quantity discount is an accepted form of trade discount and should be deducted in fixing the assessable value of all clearances. A quantity discount based on the goods purchased during the year would be deductible, even if the customer does not purchase the full quantity of goods within the stipulated period. There is no reason to suppose that a trade discount must always be in the form of money and cannot be in the shape of goods.

(iii) Cash discounts : Cash discounts are deductible from the assessable value. Cash discounts are those that are granted as a deduction from price if 100% cash payment at the time of delivery. Both cash discounts and prompt payment discounts are eligible for deductions.

(iv) Other discounts : The Supreme Court had occasion to consider several categories of discounts for the purpose of eligibility to deductions under Section 4. These are discussed below :

(a) Special year end bonus : These are in the nature of bonus/ incentive and are not trade discounts and hence is an **inadmissible deductions.**

(b) Year end discounts : Year end discounts or campaign discounts are in the nature of bonus or incentive given much after the removal of the goods is complete and hence are **not deductible.**

(c) Tyres sold as seconds/defectives, at reduced prices : Since the discounts are known before delivery, they are **deductible.**

(d) Freight charges : Section 4(2), specifies that If the goods are manufactured at place 'X' but the assessable value is determined

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with reference to place 'Y', the freight charges from place X to place Y will be deductible. Further, there is no condition in Section 4(2) that if the freight and transit insurance are not shown separately in the invoice, they cannot be excluded.

(e) Loading/unloading charges : Loading and unloading charges normally form part of the costs incurred by the company on transportation and hence are eligible for deduction, if incurred outside the factory post removal of goods. It is held that loading and unloading charges incurred outside the factory gate are not includible in the assessable values of excisable goods. However, such charges, if incurred prior to removal, are chargeable to duty.

(f) Depot and other expenses : Section 4 specifies that, all the depot expenses including loading and unloading charges and depot handing charges cannot be excluded from the assessable value of the goods sold through such depots etc.

(g) Interest on delayed payments : Interest received on goods sold on deferred payment basis is not includible in assessable value. By the same token, loss of interest suffered due to late realization of sale proceeds is not deductible.

(h) Taxes : As regards exclusion of taxes while working out assessable value, the definition of transaction value itself mentions that whatever amount is actually paid or actually payable to the Government or the relevant statutory authority by way of **excise, sale tax** and **other taxes,** such amount shall be excluded from the transaction value. The assessee cannot claim that the excise duty or tax payable at the "normal rate" should be **allowed** to be deducted.

(i) Manufacture and Marketing Costs : There could be situations where the amount charged by an assessee does not reflect the true intrinsic value of goods marketed and total value split up into various elements like special packing charges, warranty charges, service charges etc. Such elements have been held to be includible in the assessable value under Section 4 .

(j) Transit Insurance : Supreme Court held that ownership in the property may not have any relevance in so far as insurance of goods sold is concerned. Thus, transit insurance charged separately is not required to be included.

1.18 VALUATION

Valuation for Central excise duty is very critical . Rules of CENVAT, transaction value, rate of duty and rebate are required to be considered to find out central excise duty payable. The following tables will be helpful in understanding complexities of computation :

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When Section 4A Applicable

Maximum retail price		xxxx
Less: % of rebate	xx	
Assessable value	xx	

Calculation of Excise Duty

(i) Basic Excise duty @ 16% which ever is applicable		xx
(ii) special excise duty @ 8%, 16% which is applicable	xx	
(iii) additional Excise Duty (if payable)		xx
(iv) national calamity contigent Duty (if Payable)	xx	

less: CENVAT credit to basic duty		
(i) on inputs	xx	
(ii) on capital goods @ 50%	xx	
(iii) on service tax payable	xx	

Procedure of Valuation : After the determination of levy and classification of goods, the next step is determination of value at which the liability of excise duty is to be discharged. The provisions relating to valuation of exciseable goods are contained in sections 3(2), 4 and section 4A of the CEA 1944 supplemented by Central Excise Valuation (Determination of Price of Exciseable Goods) Rules 2000. On excisable goods, the tariff duty is payable on of any of the following basis :

(1) Specific duty

(2) Ad Valorem Duty based upon

(i) Tariff value under section 3(2)

(ii) percentage of Assessable value under section 4

(3) Duty base upon maximum retail price under section 4A

(4) Duty based upon production capacity under section 3A

(1) Specific Duty : This duty is payable on the basis of unit like weight, volume, thickness, length etc. However, this method of levying duty demands frequent revisions in order to increase revenue.

(2) Ad Valorem Duty- (duty based on value of goods) may be charge on either of the following basis :-

(a) Duty as percentage of tariff value under section 3(2) or

(b) Duty as percentage of assessable value under section 4

Central Govemment fixes the percentage of tariff value and alters the tariff value for definite time for different classes of goods or goods manufactured by different classes or sold to different classes of buyers

but Government can't fix tariff value arbitrarily. Only Pan Masala (packed in less than 10 gms packs) and ready-made garments are being charged to duty under this method presently. But, incase of duty as percentage of assessable value (ad valorem duty), the duty of excise is chargeable on any excisable goods with reference to their value, As per Section 4 of Central Excise Act, 1944.

3. **Duty based on M R P – (U/S 4A) :** This method is applicable to those goods which are covered under the Standard of Weights and Measures Act, 1976 or any other similar law for the purpose of declaring permit reasonable deductions from 'retail sale price' after taking into account excise duty, sales tax and other price at which excisable goods in packaged form are sold to ultimate consumer.

98 articles are charged to duty under this method e.g. Choclate, Biscuits, Essences and concentrates, Toothpastes, Pressure Cookers with 35% abatement in MRP. But where affixation of MRP is not statutorily required, such packages, even if voluntarily marked with MRP, will be assessed under Section 4 only.

Retail Sale Price is the maximum price at which the exciseable goods in packaged form may be sold to ultimate consumer and includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

(4) Duty based on Production Capacity (U/S 3A). Central Government can notity in the Official Gazette certain goods on which excise duty will be levied and collected on the basis on annual production capacity of the factory in which such goods are produced. Such goods are notified after taking into consideration various factors like nature of the process of manufacture, the extent of evasion of duty of such goods or any other factor as may be relevant.

1.19 EXEMPTION FROM EXCISE DUTY

POWER TO GRANT EXEMPTION FROM DUTY OF EXCISE:

Taxation is the prerogative of the legislature. The duty of the executive is only to assess, demand and collect the tax levied by the legislature. It has no power to collect a single penny more or less. After the passing of budget may changes in economy warrant reduction in tariff rates. Some goods may need concessional levy in public interest. The Parliament may not be in session. Waiting for Parliamentary sanction to reduce duty may not be advisable. So this power is being utilized by the authorities of the central government .

The procedure and power of availing exemptions from Excise Duty are laid under section 5A as :

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1. Power to Notify Exemptions

The Central Government is empowered to exempt in the public interest, any excisable goods from the levy of whole or any part of excise duty. Such exemption may be granted either absolutely or subject to such conditions, as may be specified in the Notification.

Exemptions

However, unless specifically provided in such notification, no exemption shall apply to excisable goods, which are produced or manufactured :

(i) in a *free trade zone or special economic zone* and brought to any other place in India, or

(ii) by a 100% EOU and brought to any place in India.

2. Ad hoc Exemption by Special Orders.

If the Central Government is satisfied that it is necessary in the public interest to do so, it may by special order in each case, exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

Explanation to Exemption Notification. The Central Government may, if it considers it necessary or expedient to do so for the purpose of clarifying the scope or applicability of any notificiation issue or order issued, insert an *Explanation* in such notification or order, as the case may be, by notification or order, and every such *Explanation* shall have effect as if it had always been the part of the first such notification or order, as the case may be,

3. Levy and Exemption in differed forms: An exemption in respect of any excisable goods from any part of the duty of excise leviable thereon may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the duty statutorily payable.

Note. *Exemption notification order section 5A(1) or order under section 5A(2) need not necessarily be in the same form or method as of statutory duty as per tariff, e.g. one may be on the advalorem basis and the other at specific rate. Due to this variation, if the concessional rate of duty exceeds the tariff rate (statutory) then the first one shall be restricted to the later. To illustrate, suppose for a product,*

Tariff value = Rs.500per kg. (w.e.f. 1.4.2005)

Tariff value = Rs.1,000per kg. (w.e.f. 1.8.2005)

Statutory Tariff Rate = Rs.50per kg.

Exempted Tariff Rate = 8% a.v. advalorem = then

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Date	Tariff Rate	Exempted Rate
1.4.2005	Rs. 50per kg.	Rs. 40 (8% on Rs. 500)
1.8.2005	Rs. 50per kg.	Rs. 80 (8% on Rs. 1000)

Exempted Rate Rs. 80 exceeds statutory rate Rs. 50 w.e.f 1.8.2005

So, exempt duty shall be limited to Rs. 50 per kg.

Section 5A, empowers the Central Government to grant exemption, full or partial, from payment of duty either generally by issue of a notification or in a specific case of an exceptional nature by means of a special order. The power is exerciseable in public interest.

It is open to Govt. to grant different levels of exemption for different classes of manufactures or for different classes of goods provided it is in public interest. Power to exempt includes power to modify or withdraw exemption.

4. Old notifications or orders to Continue. All old comption notifications/orders issued under Rule 8 of old Central excise Rules 1944 shall continue to be in force.

5. Effective Date of Notification and their Publication.

Every notification shall :

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue

6. Publication of Notification before the Effective Date

Notes : *Unless it is specified otherwise, an exemption notification shall come into effect on the date of its issue.*

The Central Government has acquired power to clarify/explain the scope of an exemtion with retrospective effect by inserting an explanation to notification within one year of issue of notification/special order.

Burden to establish his eligibility to exemption is on the claiment. All notifications are independent and if more than one notification are applicable to a product, benefit of more than one notification is allowable.

7. Where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale on a date on or before the date on which the said notification comes into force.

Notes: *6) is applicable to exemption notification u/s 5A(1) only and not Exemption Order U/s 5A)2).*

(2) Beneficiaries of 5A(1) notification can claim refund within one year.

Procedure for Claiming Exemption. No specific procedure has been prescribed for claiming exemption. C.E. Rules 2002 (Rule 11(2)) provides

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that Invoice prepared by the manufactures should indicate the rate of duty and duty payable on the goods which amounts to claiming exemption. However, the assessee should fulfill the prescribed conditions and follow prescribed procedures if any provided in exemption notification.

Burden of Proof. An assessee claiming exemption has to prove his eligibility for exemption [Award Packaging vs. CCE 1994 (71) ELT 55 (CEGAT)].

Refund. It is not necessary to claim exemption before clearance of goods. It can be availed by making refund claim later on [CCE vs. ITC Ltd. 1993(67) ELT 852 (CEGAT)].

Further, if a particular assessee had period duty at higher rate than prescribed in the notification issued. Under Section 11C, he is entitled to refund of extra duty paid, provided the incidence of duty has not been passed on to customer C Section 11(B) (2) time limit for making application for refund is six months from date of exemption notification.

Note. *The exemption is available for all intermediate products except, LDO, HSD and petrol (thereare not eligible for input CENVAT credit) manufactured in the factory and used for captive manufacture of (a) Capital Goods (b) Final Products.*

1.20 CENVAT

VAT

CENVAT has its origin in the system of VAT (Value added tax), which is common is West European Countries. "Value added Tax" means that the tax is payable only on value added to commodities and on the services rendered. A comprehensive form of VAT covers the value added at all the three levels, that is manufacturing, wholeselling and retailing.

Objectives of VAT The objectives of VAT are enumerated below :

(i) To have a simple tax system to administer;

(ii) To implement a uniform tax system to administer;

(iii) To collect taxes with reference to location of economic activities by suitable mechanism;

(iv) To have uniform rules of taxation in international trade.

(v) To facilitate tax enforcement through different stages of production and sales with the help of audit.

CENVAT

Since excise duty is now leviable practically on all goods, whether raw materials, intermediates, components, sub-assemblies, assemblies, capital goods and final products, it is necessary to devise some scheme to neutralise the cumulative effect of multipoint levies and cascading effect on the price of the final products. Till the introduction of a more comprehensive Value Added Tax, the following schemes were in operation to provide for input duty relief-

(i) CENVAT credit scheme for inputs and capital goods

(ii) Exemption for captive use.

(iii) Remission of duty for special industrial purposes

Central Value Added Tax (CENVAT) Scheme replacing the MODVAT Scheme w.e, f. 1.4.2000 had been introduced by the Finance Act, 2000.

Meaning

CENVAT is designed to reimburse the user manufacturer with the duty paid on the inputs which have been absorbed as part of purchase price when busying the same for producing finished products CENVAT is basically an input duty relief scheme. CENVAT scheme has simplified all cumbersome procedures regarding MODVAT Credit.

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Features

(i) The scheme allows for availing CENVAT credit in respect of inputs as well as capital goods. These distinctions between capital goods and inputs for duty credit have been abolished.

(ii) No Statutory record is prescribed under CENVAT. Manufacturer is not required to submit MODVAT declaration.

(iii) Registration of dealer is not stipulated under CENVAT, thought the concept of first and second stage dealer remains and the invoices issued by such dealers shall continue to be accepted as valid duty paying documents.

(iv) Special excise duty paid on inputs can be availed as CENVAT credit and can be utilized for payment of basic duty and not for payment of special excise duty.

(v) All the items listed in the Tariff Schedule except High Speed Diesel (HSD) Oil and Motor Spirit (petrol) are covered. The detailed procedure of sending goods to job workers and the time limit for receiving then back has been dispensed with.

(vi) Onus has been placed on the manufacturer to prove admissibility of CENVAT credit and in case of wrong credit or utilization, the provisions of section 11A, 11AA and 11AB of the Act Shall be applicable for the recovery of such credit and interest.

Advantages of CENVAT Scheme

(i) Simplified rules for manufactures to avail and utilize CENVAT credit in respect of both inputs and input services and capital goods.

(ii) The coverage of inputs has been widened excepting High Speed Diesel oil and petrol, all other inputs as per Tariff Schedule are covered.

(iii) No statutory record has been prescribed. The records maintained by the manufacturer in the normal course of business are acceptable to the Department.

(iv) No declaration is necessary for availing of credit in respect of inputs immediately and in respect of capital goods.

(v) Assesses are not required to submit duty paid documents to the Department of defacing.

(vi) Manufacturers can avail of CENVAT Credit even in respect of inputs/capital goods sent to a job worker for further processing, testing, repair or any other purpose, without reversing credit equivalent to 10% of the value of goods and also without giving any intimation.

(vii) Assesses are allowed to transfer credit under certain specified situations without obtaining permission from the authorities concerned.

Remission of duty for specified inputs used for specified industrial purposes under Chapter X procedure rules do not suffer from the inhibitions of CENVAT scheme. Remission can be granted by notification even for fully exempted final products. So assessee can obtain the inputs without payment of duty under bond, use them for specified purpose and give an account thereof. Input credit under CENVAT Scheme is, however, not admissible where final products are removed without payment of duty.

CENVAT scheme covers cover capital goods and all inputs barring motor spirit (petrol) and high speed diesel and LDO. It covered all final products except matches. For textile the CENVAT Scheme is optional. Credit is allowable of service tax and CENVAT across goods and services but nothing relating to availing and utilizing of credit of service tax supplies to J & K State. The CENVAT scheme is a beneficial piece of legislation and is meant to provide instant credit of duty paid on inputs to manufactures to avoid cascading effect of duties on price of final products.

Section 37 (2) (xvia) of the C.E. Act 1944 empowered the Central Government to make rules to provide for credit of duty paid or deemed to have been paid on the goods used in or in relation to manufacture of excisable goods. MODVAT was introduced w.e.f. 1.3.86 for this purpose. MODVAT was re-christened to be as CENVAT scheme and CENVAT credit by the Union Budget 2000.

CENVAT Scheme tries to ensure that duty paid on input stage is offset against duty payable at the final product stage and thus prevent cascading effect of duty on final products. Finance Act 2000 unified rules for capital goods and inputs. By way of rationalization measure, entire rules were reframed and CENVAT Credit Rules 2002 effective 1.3.2002. These have been replaced by CENVAT Credit Rules 2004.

Inputs

The definition of the term is given in two parts. The first part gives the wide definition covering all the goods *used in* or *in relation to manufacture*. The use may be direct or indirect. Also it is not relevant whether the inputs form an identifiable part in the finished product on which duty has to be paid. The second part of the definition gives the list of various examples of inputs to be included in the definition of inputs.

Simply stated 'inputs' mean anything that is put into the stream of manufacture. Manufacture in excise is an inclusive definition that includes incidental and ancillary processes necessary for completion of manufactured product. The cardinal tests would be to see whether :

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(a) the inputs are used "in or in relation to manufacture" of the goods

(b) the inputs do not fall within the excluded category, for e.g., plant, machinery/ tools, etc. which are eligible for capital goods credit.

If the above tests are satisfied, then the item would be an eligible input for the purpose of CENVAT.

Rule 2. (f) "input service" means any service :

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation or inputs or capital goods and outward transportation upto the place of removal;

(a) Input Service Distributor :

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

(b) Job Work :

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

(c) Output service :

"Output service" means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, any other person, as the case may be and the expressions 'provider' and 'provided' shall be construed accordingly;

Explanation. For the removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service.

RULE 3 - Specified Duties eligible for CENVAT Credit

Rule allows manufacturer or producer of final products to take CENVAT credit of :

(i) basic excise duty

(ii) special excise duty

(iii) the additional duty of excise on (Textile and Textile Articles)

(iv) the additional duty of excise on (Goods of Special Importance)

(v) the National Calamity Contingent duty

(vi) education cess on excise duty

(vii) the additional custom duty leviable (Countervailing duty)

(viii) additional duty of excise leviable,

(ix) service tax; and

(x) education cess on taxable services paid on :

(a) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after 10-9-2004; and

(bi) any input service received by the manufacturer of final product or by the provider of output services on or after 10-9-2004, including the said duties paid on any inputs or capital goods used in the manufacture of any intermediate products by assessee's job worker, and CVD paid on project imports.

Credit is allowable to manufacturer of final product for the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which the final product becomes dutiable. In relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take credit of the duty paid on the inputs received on and after 10-9-2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

Utilisation of credit :

(i) For payment of excise duty on any final products (including waste and scrap); or

(ii) For payment of duty on inputs or capital goods removed as such (no depreciation for used capital goods being admissible

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now) or inputs removed after being partially processed, und invoice, such payment of duty shall be equal to reversal of the credit originally taken; or for payment of an amounts und Rule 16(2); or

For payment of service tax on any output service.

The service provider who removes inputs for rendering servic outside his premises can remove the inputs without payment of du In respect of removal of capital goods by the output service provide there is no duty liability unless the capital goods are not brought ba to the premises within 180 days from the date of removal.

Credit in respect of inputs used in manufacture of finishe goods on which duty remission is granted is allowable. But it shou be ensured that the insurance amount claimed by the assessee doe not include the said input duty element.

1.21 CONDITIONS FOR ALLOWING CENVAT CREDIT

(1) The CENVAT credit on Rule 4, inputs may be take immediately on receipt of the inputs in the user factory premises of the output service provider.

(2) **Credit on Capital goods.**

(a) 50% of duty-paid in the same financial year.

(b) balance credit in any subsequent financial year, if th capital goods, (other than components, spares an accessories, refractories and refractory materials an goods falling under heading No.68.02 and sub-heading No.6801.10) are in the possession and use of th manufacturer/provider of output service in such subsequen years.

Illustration : A manufacturer received machinery on April 16, 200 in his factory. CENVAT of two lakh rupees is paid on this machinery The manufacturer can take credit up to a maximum of one lak rupees in the financial year 2001-2002, and the balance i subsequent year.

(3) Credit allowed to a manufacturer even if the capital goods ar acquired by him on lease, hire purchase or loan agreement from a financing company.

(4) Credit in respect of capital goods shall not be allowed i respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer/output service provider claims as depreciation under section 32 of the Income-tax Act, 1961 o the amount o duty paid.

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Rule 5. Refund of CENVAT credit - For export under bond, credit on inputs or input service can be utilized for payment of duty on any final product cleared for home consumption or for export on payment of duty or service tax on output service.

If such adjustment be not possible, refund in cash is allowed of such credit amount subject to the conditions specified in the Notification issued under Rule5.

Provided duty drawback Rules, 1995 not availed. However, there is no objection to availing simultaneously All industry Rate of Drawback relating to Customs portion of duties only.

Rule 9. Documents and accounts.

(1) The CENVAT credit shall be taken on the basis of any of the following duty paying document :

(a) an invoice issued by :

(i) a manufacturer for clearance of :

(1) inputs or capital goods from his factory or from his dept or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(2) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer;

(b) a supplementary invoice, issued by manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under section 3 of Customs Tariff Act, 1975 has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful is-statement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 or the rules made there under with intent to evade payment of duty;

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(c) a bill of entry.

(d) a certificate issued by an appraiser of customs in respect goods imported thru a post Office.

(e) a challan evidencing payment of service tax by the person liab to pay service tax;

(f) an invoice, a bill or challan issued by a provider of input servic on or after 10-9-2004; or

(g) an invoice, bill or challan issued by an input service distributor

(h) CENVAT credit is allowable on (1) endorsed bill of entry and (2) Photostat copy of authenticated invoices.

A.C./D.C. has been authorized to condone technical lapses or procedural infringements on the part of assessee for availment of CENVAT credit so long as duty paid nature of the input/capital goods/service and their use name and address of the factory/warehouse/service provider are beyond doubt.

(2) (a) The manufacturer shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he had taken the CENVAT credit are goods on which the appropriate excise duty as indicated in the documents has been paid.

(2)(b) First stage and second stage dealers from whom inputs or capital foods are *purchased* should maintain record showing such goods supplied from duty paid stock and amount of duty indicated in the invoice on pro rate basis in he invoice. The other procedural requirements for such dealers as in force under earlier Excise Rules have been retained under the new CENVAT Rule, but pre-authentication of invoices issued by second stage dealers/dealers of imported goods and defacement of their purchase invoices by the Central Excise Officer have not been provided for.

(3) The manufacturer shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods regarding the value, duty paid, the person from whom the inputs or capital goods have been purchased is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit.

Same provisions to apply for output service provider and input service distributor. The manufacturer shall submit within five days from the close of each month to the Superintendent of Central Excise, a monthly return.

(4) A first stage or a second stage dealer shall submit a quarterly return in Form-2 (Annexure 10A) within 15 days of close of the

quarter to the Range Superintendent. Output service provider and input service distributor have to submit half yearly return/ statement in the prescribed form.

Rule 14. Recovery of CENVAT credit wrongly taken.

Where the CENVAT credit has been taken or utilized wrongly, the same along with interest shall be recovered from the manufacturer under provisions of section 11A and 11AB of C.E. Act 1944, Sections 73 and 75 of Finance Act, 1994.

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UNIT II REGISTRATION OF CENTRAL EXCISE

Structures

2.0 Objectives
2.1 Registration of Central Excise
2.2 Procedure for Registration
2.3 Exemption from Registration
2.4 Procedure of Registration
2.5 Revocation/Suspension of Certificate
2.6 Payment of Excise Duty And Assessment
2.7 Types of Assessment
2.8 Demand
2.9 Payment of Excise Duty
2.10 Modvat
2.11 Proforma Credit Scheme
2.12 Refund [Sec 11b]
2.13 Concession To Small Scale Industrial Undertakings (Ssis)
2.14 Penalty

2.0 OBJECTIVES

After going through this lession you will be able:

- Understand the registration procedure
- Identify the procedure of payment of Excise Duty

2.1 REGISTRATION OF CENTRAL EXCISE

The owner or entrepreneur of a must apply for registration before commencement of manufacturing, production or warehousing of excisable goods. The provisions governing registration are contained in rule 9 of the Central Excise Rules, 2002. The requirement of obtaining a License under section 6 of Excise Act has been removed.

Rule 9 of Central Excise Rules 2002

Defines that who produces, manufactures, carries on trade, holds private store-room pr warehouse or otherwise uses excisable goods shall get himself registered. The rule authorizes Board to issue notifications regarding :

(1) Specific conditions and procedure for registration.

(2) Grant of exemption from provisions of registration to person o class of person.

Registration - [Section 6]

According to Section 6, "any prescribed person who is engaged in

I. Production or manufacture or any process of production or manufacture of specified excisable goods, or

II. The wholesale purchase or sale (also as a broker or commission agent) or the storage of specified excisable goods, is required to get himself registered".

The requirements regarding registration are currently no longer restricted to manufacturing locations but also extend to depots and to dealers and, in reality, to any locations in which duty paid goods are intended to be stored and thereafter cleared out upon issuance of relevant excise documents. Registration granted under old rule 174 is valid under new rules.

2.2 PROCEDURE FOR REGISTRATION

Rule 9 has prescribed the following procedure for registration of certain persons :

1. Application for Registration [Rule 9(1)].

Every person, who cures, produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods shall gets registered and shall not engage in the curing, production, manufacture, trade, storing in private store-room or warehouse or use excisable goods without having applied for such registration to the jurisdictional range officer. Authority for granting registration is Deputy/Assistant Commissioner. Application is to be made in duplicate.

Under Rule 9 of C.E. Rules 2002, *Registration is compulsory* for following persons.

1) Every manufacturer of dutiable excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations) on which excise duty is levied.

2) Persons who desire to issue Invoices under the provisions of the Cenvat Credit Rules, 2001.

3) Persons holding private warehouses.

4) Persons who obtain excisable goods for availing end-use based exemption notification.

(1) Specific conditions and procedure for registration.

(2) Grant of exemption from provisions of registration to person or class of person.

Registration - [Section 6]

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3) Persons holding private warehouses.

4) Persons who obtain excisable goods for availing end-use based exemption notification.

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5) Exporters manufacturing or processing export goods by using duty paid inputs and intending to claim rebate of such duty or by using inputs received without payment of duty and exporting the finished export goods (i.e. exporters manufacturers under rebate/ bond procedure).

6) Persons getting yarns, fabrics, readymade garments etc. manufactured on job work under Rule 12 and 13.

These persons are required to register with jurisdictional Central Excise Offices (i.e. Range Superintendent).

The Registration is not for a company or an entity as a whole. It is for such company/entity in respect of specified premises for specified purposes (i.e. processes) except in cases where two or more premises are actually part of the same factory (where processes are interlinked) but are segregated by public road, canal or railway-line.

As per instructions in CBE & C Mannual 2001, the fact that two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as :

1. Interlinked process products manufactured/produced in one premise are substantially used in other premises for manufacture of final products.
2. Raw materials are common and these are received/proposed to be received commonly for both/all the premises.
3. Common electricity supplies.
4. Common labour/work force.
5. Common administration
6. Common sales tax registration and assessment.
7. Common Income Tax assessment.
8. Any other factor indicating inter-linkage of manufacturing processes.

This is neither an exhaustive list of indicators nor each indicator is necessarily present in each case. The Commissioner has to decide the issue from case to case.

Registration Certificate may be granted to minors provided they have legal guardians i.e. natural guardians or guardians appointed by the Court, as the case may be, to conduct business on their behalf.

2.3 EXEMPTION FROM REGISTRATION

Rule 9(2) authorizes Board to issue the notification for giving exemption from registration subject to the conditions and safeguards. Accordingly, following categories of persons/premises have been exempted from obtaining registration :

(i) Persons manufacturing the excisable goods chargeable to nil rate of excise duty or which are fully exempt from duty by a notification subject to the declaration to be made in the specified form.

(ii) Smalls scale units availing the slab exemption based on value of clearances under a notification. However, such units are required to give a declaration when the value of their clearances crosses Rs.90lakhs.

(iii) The job-worker of ready-made garments if the principal manufacturer undertakes to discharge the duty liability.

(iv) Persons following the warehousing procedure under the Customs Act, 1962 for manufacture of exciseable goods subject to the following conditions :

(a) such goods and any intermediary or by-product thereof including the waste and refuse arising during the process of manufacture under the Customs Bond.are either destroyed or exported.

(b) The manufacturer to file a declaration in the specified form in triplicate for claiming exemption under this notification;

(c) No drawback or rebate of duty of excise paid on the raw materials or components used in the manufacture of the such goods, to be admissible.

(v) The person or dealers in excisable goods who carries on wholesale trade goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2001).

(vi) A 100% EOU or a unit in FTZ/Special Economic Zone including STP/EHTP licensed or appointed.

(vii) Persons using excisable goods for any purpose other than for processing or manufacturing of goods by availing benefit of concessional duty exemption notification.

1. **Premises for Registration :** Rule 9 states that if there are more than one premises requiring registration, then each of such premises should be registered separately. Rule 9 states that every registration certificate granted shall be in specified form and shall be valid only for the premises specified in such certificate. It will be granted by the Superintendent of Central Excise.

If different sections or departments of same factory or manufacturer are located in adjoining premises, or merely separated by railway, road or canal, it is not necessary to register each portion separately. However, this fact must be mentioned clearly in ground plan submitted.

2. **There is no fee for registration.**

2. Original Copy of Form A–1 is to be returned the applicant after giving Registration Number and dated acknowledgement on the original form itself.

3. **Registration Certificate :** The DC/AC shall grant the Registration Certificate in Form RC containing PAN-based 15 digit registration number across the table. Registration Certification will be given on the spot, post-verification will be done later. The jurisdiction officer (either himself or through inspector) shall verify that the premises mentioned in the application are genuine and are to be used for the stated purposes and declarations made in the application are correct. If deviations are found, the same should be got corrected. Any major discrepancy shall be reported in writing to the Divisional Officer within 3 working days and the Range Officer shall initiate action to safeguard revenue. The registration number consists of 15 digits.

4. The certificate of Registration or its certified copy should be exhibited in a conspicuous part of the premises.

5. The RC No. should be printed on top of all Central Excise invoices, duty payment challans, PLA and other forms.

6. **Fresh Registration.** Registration certificate is non-transferable. If there is change in premises or change in ownership of business, fresh registration should be obtained. Registration is valid only for the purposes and premises specified in Form A–1. However, any new product added to existing line need not be got endorsed.

7. Corrections/ amendments in Registration Certificate can be made by request for such corrections in Form A–1 subsequently.

8. **Validity of Certificate.** Registration certificate is valid till the registrant carries on the activity for which certificate was issued or till he surrenders it or till it is revoked/suspended. So, registration certificate has permanent status unless it is suspended or revoked by the appropriate authority in accordance with law or is surrendered by the applicant. In case of sole-trader, on death of proprietor, the successor has to apply for fresh certificate because certificate ceases to be valid in the event of death of said individual.

In case of Partnership Firm-Change in name of partners may be got noted.

In case of joint stock company, death of director does not affect the status of Registration Certificate since company is a separate legal entity.

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Procedures for introduction of a new product as per Act :

(1) Apply for amendment to Registration Certificate.

(2) Amendment to declaration of 'goods manufactured a produced' in prescribed form in quadruplicate, within 30 da from commencement of production.

(3) Declaration of marketing pattern in triplicate.

(4) List in duplicate all records prepared or maintained by him connection with final product, inputs and capital goods.

Surrender of Certificate : Every registered person who ceases to car out the operation(s) mentioned in the Registration Certificate, sha surrender his certificate immediately. The application is to be made the prescribed from.

2.5 REVOCATION/SUSPENSION OF CERTIFICATE

This is subject to compliance of the statutory obligations unde the excise law, particularly the payment of all dues to the Governme including the duty on finished excisable goods lying in the factory warehouse. In case of mis-declaration regarding compliance, th surrender of registration shall not be valid.

The Registering authority may cancel Registration Certificat when the registered person voluntarily surrenders the Certificate du to closure of business.

The registration certificate may be revoked or suspended, if an holder of a registration certificate or any person in his employment, i found to have committed a breach of any conditions of the Act or th Rules, by the proper officer, as provided for in Rules. Further, pena action is liable to be taken against persons who have been convicted o an offence under Section 161, read with Section 109 or section 116 o the Indian Penal Code.

Revocation or suspension of a registration certificate (earlie known as licence) is a heavy Penalty which can be considered onl in cases where the offence is of grave nature.

[CEGAT in Mohanlal and Sons vs. Collector 1989(41)ELT176(T)]

The issue and cancellation of licence is a quasi-judicial act necessitating the observance of the principles of natural justice while issuing or canceling a licence/certificate.

Registration Certificate may be revoked or suspended by the Deputy/Assistant Commissioner of Central Excise, if the holder o any person under his employment has committed a breach of any condition of the Central Excise Act or the rules made thereupon o has been convicted of an offence under Section 161 read with section 109 or Section 116 of the Indian Penal Code.

Suspension or revocation of the registration is a heavy punishment. Hence this penalty should be resorted to only in cases where there is persistent misdemeanor involving serious loss of revenue.

Though technically, a registration Certificate can be suspended or revoked by the issuing authority, the power to revoke or suspended the Registration is vested only with the Deputy/Assistant Commissioner. In case of suspension or revocation, the Range Officer should refer the matter of the Deputy/Assistant Commissioner who will pass appropriate orders after affording a reasonable opportunity. Appeal against this order lies with the Commissioner [Appeals and this should be specifically spelt out in the order-in-original or the Deputy/Assistant Commissioner.

Duplicate Registration Certificates. When a Registration Certificate is reported as lost, the registered person shall submit a written application to the Range Officer for issuing a DUPLICATE REGISTATION CERTIFICATE. The same shall be issued after making necessary entries in the record or logs in the computer data.

When an importer intends to issue invoice under cenvat credit rules, 2001, will have to register himself in the following manner specified below:

1. A manufacturer who is exempt from the registration is required to file a declaration, which can be filed with the Assistant Commissioner of the jurisdiction Central Excise Division.
2. Manufacturers exempt from operation of Rule 9 by virtue of Notification no 36/2001-Central Excise (NT) dt.26/6/2001 have to file a declaration with the Assistant assessee will have to be filed separately, tariff head-wise in the divisional office.
3. In case of unregistered firm, by all the partners. In case of registered firm, by the managing partner or partner authorized in this behalf in the Partnership Deed.
4. Under new rules, there is no stipulation for marking area for storing finished goods. (i.e. bonded store-room under the old rules).

Penalty

It has been incorporated under Rule 25 in respect of registered dealers, persons engaged in the production, manufacture, storage of excisable goods without having applied for the Registration Certificate required under Section 6. Confiscation of such goods as well as imposition of penalty up to Rs.10,000 is provided for in such cases of failure to apply for Registration Certificate.

While the procedural formalities and conditions for obtaining a Registration Certificate have been simplified and streamlined, there

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are severe penal provisions in store for failure to apply for the Registration Certificate.

Registration Number : Each registered person is assigned with an excise code. The registration certificate is numbered according to ECC number of the assessee granted by the appropriate officer. The code number is of105 digit code, which contains code number of Commissionerate, division, range, individual registered person and a check digit. Assessee should mention this code in his all communications with CBEC etc. A separate registration is required for each chapter of the CETA.

Excise Control Code (ECC) and Permanent Account Number (PAN)

New Excise Control Code (ECC) has been introduced from 01.02.2000 and is used fro m01.04.2000 by all central excise assesses and registered dealers. This number is alphanumeric.

In the new system, PAN of Income Tax will be common identifier by various agencies like excise, custom, RBI and DGFT etc. PAN is generated centrally by the computer system and is a 10 digits alphanumeric code. Common identifier by all departments will facilitate linkages, exchange of information and verification. Assessee wil have to obtain and quote only one number to all departments. The ECC is a 15 digit code. First 10 characters PAN allotted by income Tax Department. Next two characters would be'XM' or 'XD' depending upon if the assesses is manufacturer or dealer. It will be followed by 3-character numeric code-001.002.003 etc.

The first part would be 10 characters PAN issued by Income-tax authorities to that concerned person to whom the New ECC Number is to be allotted.

It is compulsory for all Central Excise assesses and dealers registered under Central Excise Rules to obtain PAN whether or not they pay income Tax.

The second part would comprise of a fixed 2 character alpha code, which will be as follows:

	Category	Code
(1)	Central Excise Manufacturers (Including registered warehouse)	XM
(2)	Registered Dealers	XD

This will be followed by 3-character numeric code-001, 002.003...etc. In case a manufacturer registered with the Central Excise Department has only one factory/dealer's/warehouse, the last three characters will be "001".

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Illustration

1. Where the concerned person has applied for Registered Dealer New ECC Number will be PAN + XD + 001

Suppose PAN is PQRST 1234 H, then

The new ECC number = PQRST 1234 HX D001

Applying for ECC Number

1. Application in Prescribed Proforma should be made to DC/AC of CE or Customs In charge by Excise manufactures in duplicate in the prescribed from along with a certified copy of PAN (letter/ card) issued by the Income-tax Department,
2. The manufacturers have to obtain a dated acknowledgement from the office.
3. The applications received by the Range Superintendent will be forwarded to Divisional Office. Where the applications are found or more than one factory within the jurisdiction of the said division, new ECC number will be allotted within 3 working days and the letter will be issued by the Assistant/Deputy Commissioner to the concerned applicants. The New ECC Number will be allotted by DG-1 and intimated to the concerned applicant.

2.6 PAYMENT OF EXCISE DUTY AND ASSESSMENT

Payment of excise duty basically depends upon assessment. Assessment means assessing or determing tax liability. Goods are cleared from the factory/warehouse by payment of duty on self-assessment' basis by the manufacturer. This is done after the assessee has determined classification and valuation of goods for determination of liability of payment of duty. Central Excise Rules 2002 define assessment as assessment of duty made by proper officers and includes (a) self-assessment of duty made by assessee. (b) provisional assessment.

Through Central Excise Rules 2002 provide for only two types of assessment. CBE & C Manual provides for 'Best Judgement Assessment'.

Assessee. According to Central Excise Rules 2002, " An assessee means any person who is liable for payment of duty assessed or a producer or manufacturer of exciseable goods or registered person of a private warehouse in which exciseable goods are stored and includes an authorized agent of such person.

Rule 4 provides for payment of duty on removal of goods by every person who produces or manufactures any exciseable goods or who stores such goods in a warehouse. The duty leviable is payable in the manner laid down in Rule 8.

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2.7 TYPES OF ASSESSMENT

The types of assessment emerging out of Central Excise Rules 2002 are discussed briefly below :

(1) Self assessment (Rule 6 of Central Excise Rules 2002)

Under self assessment duty is paid by manufacturer himself while clearing goods from the factory/warehouse. Central Excise is basically an invoiced based Self assessment and assessee is under obligation to declare :

(a) Details of goods produced with its classification and exemption notification which he intends to avail.

(b) Correct 'assessable value' either on invoice or by a seprate declaration, if invoice cannot show the assessable value.

The assessee has to pay duty before removal (whether outside the factory or for captive consumption) of goods from the factory. The assessee is required under the Act to submit monthly return in ER-1 from to the Superintendent, Central Excise. Along with ER-1, asssessee files declaration regarding correctness of ER-1, fair payment of duty and genuineness of TR-6 Challans.

Self-assessment for the Central Excise Assessemnt has been introduced w.e.f. 1.10.96. The following self assessment procedure is to be observed by assessee :

(i) Ascertainment of date and time of intended removal of goods from factory/warehouse.

(ii) Classification of such goods and rate of duty at the time of removal.

(iii) Quantity of goods.

(iv) Valuation of Goods at the time.

(v) Assessing monthly return and submit it to jurisdictional Superintendent within 10 days of the succeeding month.

However, SSI assessee has to file quarterly return by 20ht of month succeeding the quarter.

The monthly/quarterly return should be accompanied by :

(a) Two copies of extracts of PLA;

(b) Receipted TR-6 Challans;

(c) Suppliers' invoices on the strength of which Cenvat credit has been availed by the assessee during the month in original. These invoices will be returned after verification and defacement by Range Superintendent to the assessee.

(d) Cenvat monthly return in prescribed form along with credit availment documents.

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(2) **W.e.f. 1.07.2000, new Excise Control Code number system** based on Permanent Account Number (PAN) of Income Tax has been introduced. PAN is generated centrally by the Computer system and is a 10 digit alpha numeric code. Common indetifier by all departments (Excise, Custom, RBI DGFT etc.) is facilitating likages for information and verification. ECC must be indicated on invoices, returns, declarations and prescribed records.

(i) The assessee will himself complete the self assessment memorandum in ER-1 return and sign it. It should also indicate serial number of clearance invoices issued during the month.

(ii) The assessee is required to preserve book of accounts, documents and floppies where any document is generated on computer for five years.

(iii) Assessee must be careful while signing and dispatching ER-1 as action under Section 11A/11B can be initiated by giving show cause notice/refund claim for any short payment/excess payment by assessee.

The excise officer will scrutinize the return. At the time of Scrutiny, surprise check, apart from critical audit of private and statutory records of assesses by spot visit, may be done. However, assessment order is not issued.

The Deputy/Assistant Commissioner of Central Excise scrutinize the returns of the units which pay duty of Rs.5crores PLA per annum every six months. They shall requisition all connecting documents including invoices and the records and scrutinize the correctness of assessment.

(1) **Provisional Assessment (Rule 7)** Where duty can not be determined at the point of clearance of goods, Rule 7 of Central Excise. Rules 2002 provide for provisional assessment.

Provisional assessment is an assessment made prior to final assessment. Provisional assessment can be requested by the assessee or can be ordered by the Deputy/Assistant Commissioner.

An assessee can request for provisional assessment if he is unable to determine the value of excisable to determine correct classification of goods. The assessee should make a written request declaring rate of duty and value as proposed by him. After such request, the Assistant Commissioner may direct, after enquiry, that duty shall be assessed provisionally. He shall also specify the rate or value at which duty will be assessed provisionally. The assessee should make a detailed request to Divisional Deputy/Assistant Commissioner so as to enable the proper officer to finalise the

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provisional assessment. Commissioner so as to enable the proper officer to finalise the provisional assessment.

The assessee may request for provisional assessment under the following circumstances :

(a) Where the assessee is unable to determine the value of excisable goods in terms of Section 4 of the Act on account of non-availability of any document or any information, or;

(b) Where he is unable to determine the correct classification of the goods.

Deputy/Assistant Commissioner can also direct assessee to resort to provisional assessment if he is satisfied that the self assessment made by assessee is not in order. The Deputy/Assistant Commissioner should issue a specific order, stating grounds, rate etc. while directing provisional assessment.

Where the proper officer is satisfied that the assessee has correctly requested for resorting to provisional assessment, he will issue a specific order directing provisional assessment.

Rule 7 of Central Excise Rules 2002 states :

1. Where the assessee is unable to determine the value of exasiable goods or determine the rate of duty applicable thereto, he may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in writing giving reasons for payment of duty on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him.

2. The Payment of duty on provisional basis may be allowed, if the assessee executes a bond in proper form with such surety or security in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, deem fit, binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed.

3. The assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall pass order for final assessment, as soon as it ma be after the relevant information, as may be required for finalizing the assessment, is available, but within a period not exceeding six months.

The period may, on sufficient cause being shown and the resons to the be recorded in writing, be extended by the

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Commissioner of Central Excise for a further period not exceeding six months and by the Chief Commissioner of Central Excise for such further period as he may deem fit.

4. The assessee shall be liable to pay interest on any amount payable to Central Government, consequent to order for final assessment under sub-rule (3), at the rate of twenty four percent per annum from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

5. Where the assessee is entitled to a refund consequent to order for final assessment under sub-rule (3), subject to sub-rule (6), there shall be paid an interest on such refund at the rate of fifteen percent per annum from the first day if the month succeeding the month for which such refund is determined, till the date of refund.

6. Any amount of refund determined under sub-rule (3) shall be credited to the Consumer Welfare fund :

Provided the amount of refund, instead of being credited to the fund, be paid to the applicant, if such amount is relatable to :

(a) the duty of excise paid by the manufacture, if he had not passed on the incidence of such duty to any other person, or

(b) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person.

The procedure prescribed as per CHE & C guidelines issued on 1.09.2001 for provisional assessment is :

1. A detailed request in writing to the Divisional Deputy/Assistant Commissioner by an asseesee if he finds that final assessment is not possible at the print of removal of goods. The request should indicate :

(a) Specific grounds/reasons, and the documents or information, for want of which final a ssessment cannot be made.

(b) Period for which provisional assessment is required.

(c) The rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for Provisional Assessment, and

(d) That he undertakes to appear before the Assistant/Deputy Commissioner of Central Excise within 7 days or such date fixed by him, and furnish all relevant information and documents within the time specified by the Assistant/Deputy Commissioner of Central Excise in his order, so as the enable the proper officer to finalise the provisional assessment.

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2. The Deputy/Assistant Commissioner of Central Excise will examine it, if necessary, in consultation with the concerned Range Officer, to ascertain whether provisional assessment is necessary at all. If the reasons/ground are not sufficient, he may ask the assessee to appear before him on an appointed day and time, and if he is satisfied that provisional assessment is not necessary, he may pass a reasoned order rejecting the same and also order the rate of duty or the value, to be applied by the assessee.

   The ER-1 returns and documents covered under provisional assessment may be marked by assessee as "PROVISIONALLY ASSESSED" Vide Order NO.....dated.....Provisional assessment must be finalized within a maximum period of 6 months.

3. **Best Judgement Assessment** is used when "Assessable Value" cannot be finalised. Best Judgement Assessment is done when the assessee does not submit necessary data and information or assessment is not possible due to other reasons. Though there is element of guesswork but it has reasonable nexus to the available matrial and circumstantial evidence.If because of fabricated accounts,the assessing officer fails to find out precisely the turnover suppressed, he can only make an estimate of the same on the basis of material before him .

2.8 DEMAND

Section 11A of the Central Excise Act is related to recoveries of excise duties not levied or not paid or short levied or short paid. Section 11B contains similar provisions pertaining to refund claims filed by assesses for whatever reason . Under the following circumstances, the Department of Excise demands payment of duty:

(i) Duties which had not been levied

(ii) Duties short paid

(iii) Duties not paid but should have been paid

(iv) Duties erroneously refunded.

If there is short-levy of duty, it is the manufacturer who would be liable to pay the duty on demand being raised under Section 11.Following are some of the circumstances where the Department can raise demand of excise duty:-

(i) When assessee resorts to clandestine removal of goods.

(ii) When the declared assessable value by the assessee is not acceptable to excise deptt.

(iii) When the duty paid by the assessee is not correct due to differences in valuation.

(iv) Classification or rate of duty.

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2.9 PAYMENT OF EXCISE DUTY

The liability for payment of excise duty is discharged by an assessee by following the undermentioned procedure:

(1) **Maintenance of PLA :** PLA denotes Personal Ledger account which is to be maintained by the assessee it has the following particulars:

(a) Serial No. and date

(b) Detalised of each debit-entry on consignment.

(c) Details of each credit on the basis of TR –6 challan

(d) Balance

Excise duty liability is discharged only if the amount payable is credited to the account of Central Government by the due date specified, but, if payment is made by cheque, credit in PLA for clearance of goods under all chapters. However, before doing so, he has to intimate the same to the Excise Officer. [Rule 15(1)]

(2) **Payment through TR-6 Challans** TR-6 challan serves the purpose of having proof/evidence of deposit of Excise duty. It contains the following particulars :

(i) Serial No.

(ii) Name, address and code number of assessee.

(iii) Excise commissionerate – Division and Range.

(iv) PLA number and name of commodity.

(v) Amount deposited in cash or by cheque/draft.

Manner of Payment of duty : The new provisions of Central Excise Act, 1944 regarding manner of payment of duty which are applicable from 1.4.2000 are as follows :-

(A) **Payment by Non-SSI units :** Non-SSI Units not availing of any concession of duty which is based on value of turnover, have to pay duty on monthly basis :

Duty in respect of clearances during a month is payable by 5th day of succeeding month (except for the month of march) when duty is to be paid by 31st March.

(B) **Payment by SSI Units** SSI units shall pay duty on monthly basis by 5th day of succeeding calender month.

Consequences for non-payment on due date by Non SSI Unit

Payment of interest:

(1) If duty is not paid on the due date, interest @24%p.a. on outstanding amount, from first day after due date till duty is paid is payable by the defaulter. There is no provision of waiver of this amount.

(2) In case of payment of excise duty by cheque or other similar instruments, the date of presentation to be nominated Bank should be taken as the date of payment of duty so long as the cheque is honoured, even if a few days later. However, if he cheque is dishonoured, the party will be penalized for non-payment of duty.

(3) In case of defult, the facility of paying duty in monthly installments will henceforth not be withdrawn nor will be the assessee be denied the use of CENVAT credit for payment of duty. There will only be an interest of2% per month or Rs. 1,000 per month whichever is higher, payable for the period of default subject to the amount of such interest payable not exceeding the duty amount which was not paid by due date. The manner of computation of this interest has also been indicated in the from of illustrations in rule 8 of the Central Excise Rules. This interest liability is automatic and no show cause notice or adjudication will be necessary.

(4) The duty self-assessed by the assessee under rule 6 and the interest above for the period of default can be recovered as an arrear of revenue under section 11 of the Central Excise Act, if not paid within a reasonable time. It has also been provided that till such time the amount of duty outstanding and the interest payable theron are not paid, the goods in respect of which the duty and interest are outstanding, shall be deemed to have been cleared without payment of duty and the consequences and the penalties as provided in the Central Excise rules shall follow.

The procedure for payment of duty under protest has been prescribed in Para 4 of part III of Chapter 13 of CBE & C Manual 2001.

Payment of Duty under Protest. Sometimes assessee may not agree to or accept classification of goods and/or valuation by excise officers, and then he can file an

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2.10 CENVAT SCHEME

This scheme was introduced by finance Act,2000 rep lancing the earlier MODVAT (modified values added) scheme. The scheme has already been discus in para 1.20

2.11 PROFORMA CREDIT SCHEME

Prior to the introduction of MODVAT Scheme with effect from 1-3-1986, the Proforma Credit Scheme as specified under Rule 56A of the Excise Rules was in operation. The Proforma Credit Scheme was also a scheme for setoff of input levies against the duty liabilities on output. However, the scheme was restricted to those raw materials and component parts and the finished products which were classified under the same Tariff Heading. In other words, the scheme was narrow in scope and only applied to specific situations. A similar procedure was also available under the setoff procedure which was also in force prior to introduction of the MODVAT Scheme. The setoff procedure was applicable to the specified inputs and final products which were covered under the two specific procedure was applicable to the specified inputs and final products which were cover under the two specific Notifications No. 201/79 and 105/82. The Proforma Credit Scheme and the MODVAT Scheme continued to co-exist from 1986 to 1994. The schemes were mutually exclusive and the input and final products which were specified under the Proforma Credit Scheme, in terms of their Chapter Headings, were excluded from the purview of the MODVAT Scheme. The MODVAT

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Scheme was itself initially applicable only to specific products and was gradually extended in terms of its coverage. Specific product categories which were outside the purview of the MODVAT Scheme were petroleum goods, tobacco and textiles. However, the Scheme was largely extended to the petroleum goods and textiles sectors in the 1994 Budget and consequently the Proforma Credit Scheme was discontinued by means of omitting Rule 56A altogether. Consequently, almost all manufacturing activities in India are currently covered within the ambit the of the MODVAT Scheme.

2.12 REFUND [SEC 11B]

Definition

"Refund" includes rebate of duty of excise on excisable goods exported from India or on excisable materials used in the manufacture of goods which are exported out of India.

Claim of Refund

An assessee who has paid duty or a buyer on whom the burden of duty has been passed, can file claim for refund.

Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in section 12A as the applicant may furnish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty had not been passed on by him to any other person.

The limitation of one year shall not apply where any duty has been paid under protest.

Procedure

Refund application should be filed in prescribed form 'R' duplicate in the office of AC/DC but a copy should be sent to Range Suptd. It should be for a refund claim of at least Rs. 100. The application should be accompanied by supporting documents like original TR-6 Challan (PLA) invoices etc. as per guidelines in CBEC Manual 2001.

The application should be signed by claimant and properly receipted.

Order for Refund of Duty

If, the Assistant commissioner of central excise or Deputy Commissioner of Central excise is satisfied on the excise duty p

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the applicant, can be refunded. The order accordingly is given the amount determined shall be credited to this fund .

Provisions are there , instead of being credited to the fund , it be paid to the applicant when the amount is related to :

rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacturer of goods which are exported out of India;

unspent advance deposits lying in balance in the applicants account current maintained with the commissioner of central excise .

refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued , under this act.

Duty of excise paid by the manufacturer, if he had not passed on the incident of such duty to any other person;

Duty of excise borne by the buyer , if he had not passed on the incident of such duty to any other person;

Duty of excise borne by any other such class of applicants as the central government , by notification in the official gazette specify.

terest on delayed refund :

If any duty ordered to be refunded under section 11(B) –2 to ny applicants is not refunded within 3 months from the date of receipt f the refund application, then interest at the rate fixed by BEC(between 9% to 24% per annum) shall be paid on such duty or the period between the expiry of 3 months from the date of receipt f the applications and the date of refund of such duty.

2.13 CONCESSION TO SMALL SCALE INDUSTRIAL UNDERTAKINGS (SSIs)

The Government of India has, for a very long time, followed the consistent policy of encouraging SSI undertakings. Both fiscal as well as monetary policy initiatives have been taken in this regard. Insofar as the area of Central Excise is concerned, the Government has followed a policy of issuing notifications from time to time laying down concessional rates of dirties applicable to such SSI undertakings. Notification No. 175/86 was in force from March 1986 to February 1993. Thereafter, a completely revised and updated Notification No. 1/93 was issued effective 1.3.93. This Notification was also amended subsequently vide Notification No. 59/94. The above Notification was replaced by Notification No.16/97.

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At present, the scheme of exemption of SSI units from excise duty is governed by two Notifications No. 8/99 & Notifications No. 9/99.

(a) MEANING OF SSI

Before going on the details of the Notifications, it is important to understand the definition of Small Scale Industrial Undertakings. The definition of Small Scale Industrial Undertakings is an indirect one and is to be understood as applying to those units which are exempted from registration under the Industries (Development and Regulation) Act, 1951. In terms of the aforesaid Act, the SSI units are those which have an investment in plant and machinery of a maximum of Rs.3crores. It is only such of those units which qualify as per the above criteria that are eligible for the benefit of concessional excise duties as laid down under the Notification. The erstwhile scheme of exemption of SSI units from excise duty has been replaced by a modified system, vide Notification No. 8/99 and 9/99. SSI units will continue to avail of the benefit of complete exemption from excise duty upto the initial level of 50lakhs value of clearances. Thereafter, upto Rs.100lakhs value of clearances, the flat rate of excise duty otherwise applicable would be payable. It is further specifier that SSI units have the option of not availing of the provisions of the new scheme as per above and hence to choose to pay excise duty at the effective rate on all clearances. Finally, the new scheme envisages availment of CEN VAT credits by the SSI units only when the aggregate value of clearances exceeds Rs.100lakhs. In other words, for clearances upto Rs.100lakhs on which flat rates of excise duties would be discharged, no CEN VAT credits would be admissible, on inputs under the Rule well as on capital goods. Obviously,s should the SSI units opt out of he scheme altogether, CEN VAT credits would be admissible independent of the level of clearances.

(b) IMPLICATIONS FOR CEN VAT

The above notifications grant SSI units the option of switching over to payment of duty at any point of time. In other words, manufacturers may avail of the exemption granted under the Notification at any point of time on the financial year. As regards availment of CEN VAT credits, it is axiomatic that once CEN VAT credits on inputs are acailed in terms of the declaration filed under Rule 57G, finished products manufactured out of such inputs must discharge duty liability. Consequently there is a one t one correspondence between availment of CEN VAT credits on inputs by such SSI units could be permitted to opt out of the CEN VAT Scheme at any point of time in the financial year The Tribunal has also held that the manufacturers availing of CEN VAT may switchover to full exemption at any time if they are ready to forego the credits. Thus, it

is now settled law that there is no compulsion on the SSI units to remain within the MODVAT Scheme. In a significant decision in Bengal Cardboard Industries and Printers Ltd. Vs. Asstt. Collector of C.EX. (1992 (62) ELT-684), the Calcutta High Court has held that the revenue does not suffer in any manner in case the SSI units switchover from CEN VAT scheme to full exemption and vice versa. The Court has held that the CEN VAT scheme is a piece of beneficial legislation and it cannot be said that the SSI units should continue to avail of the benefits for a particular period of time. Availment of CEN VAT and consequent payment of duty on final products is thus entirely optional.

An additional point involved in the matter is that simultaneous availment of CEN VAT as well as general exemption from duty is permissible. There can be no bar on an assessee who wishes to avail MODVAT credit in respect of specified goods and of the complete exemption from duty in respect & of certain other goods. In *Abhilash Rubber Priducts Vs. Collector of CJEX. (1991(56) ELT-168)*, the Tribunal held that as long as the simultaneous availment of MODVAT and complete exemption was mutually exclusive, there could be no bar on such simultaneous availment. Detailed procedures have been laid down through Trade Notices regarding the simultaneous availment of full exemption and MODVAT provisions.

- Recent Amendments (a) Rule 173G of the Central Excise Rules has been amended in order to require such SSI units to file quarterly RT-12 returns instead of monthly RT-12 returns.
- SSI Notification No. 1/93 has been amended in order to increase the overall limit of level of clearances for eligibility to exemption from Rs.2crores per annum to Rs.3crores per annum.
- The deemed credit order which was in force for small scale rerollers has been discontinued with effect from 31/3/95. Henceforth, MODVAT credits would only be permissible upon production of duty paying documents.
- Lineralisation of small scale industries exemption : *The following changes have been introduced by the Union Budget, 1999:*

  (i) Full exemption limit has been enhanced from Rs.30lakhs to Rs.520lakhs;

  (ii) Concessional rate of duty 3% which was payable on clearances between Rs.30lakhs and Rs.50lakhs has been abolished;

  (iii) The slabs of duty under SSI Scheme now are as follows:

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Clearances (Value in Rs.)	Present rate	Proposed rate
Upto 30lakhs	Nil	Nil
30-50lakhs	3%	Nil
50-100lakhs	5%	5%
100-300lakhs	Normal duty	Normal duty

2.14 PENALTY

Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any willful mis-statement or supression of facts or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty, the persons who is liable to pay duty as determined under section 11A(2), shall also be liable to pay a penalty equal to the duty so determined.

UNIT III CUSTOMS ACT, TERMS AND DEFINITIONS

NOTES

Structure

3.0 Objectives
3.1 Introduction
3.2 Role of Customs in International Trade
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3.4 Important Definitions in Custom Act-1962
3.5. Type Of Duties
3.6 Liability to Custom Duties
3.7. Organisation For Assessment And Collection
3.8. Custom : Exemptions from duty
3.9. Excise

3.0 OBJECTIVES

After going through this lession you will be able:

- Identify the Role of the Customs in International Trade.
- Define the Custom Act.
- Differentiate the Duties

3.1 INTRODUCTION

Duties on import and export of goods have been levied from times immemorial. In ancient times when a merchant used to enter the kingdom with goods, he bad to present a suitable gift to the king for the clearance of his goods. The custom of presenting a gift has eventually matured into what is called "Custom duty".

Custom duty in simple language may be regarded as duty imposed on goods imported into of exported out of the country.

The Customs Act was passed in 1962 replacing Sea Customs Act, 1878 while the Customs Tariff Act was passed in 1775. In 1985, the Customs Tariff Act was amended by Customs Tariff (Amendment) Act, 1985. In 1985. The amended Tariff Act is in the line with Harmonised Systems Nomenclature.

The Custom Acts are complete codes by themselves and provide effective machinery for solving problems relating to levy and collection of duties.

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Custom Duty in India

Every 83 to the Union List of Seventh Schedule to the Constitution provides for "Duties of Customs including Export Duties". The rate at which the duty is to be imposed are specified under "The Customs Tariff Act, 1975."

Article 266 of the Constitution provides that the proceeds from the Customs duty are to be kept by Union only and are not to be shared between Union and any States.

Customs Act 1962 : The Customs Act 1962 is the basic Act providing for levy of custom duty, appointment of customs officers, ports, air ports, landing stations to prevent and check illegal import and export and to provide administrative body to administer the Act, control over import and export, prohibition, exemptions from custom duty, time and manner of payment of duty, warehousing of imported goods, procedures for claiming duty drawback, confiscation and penalties in case of violation of provisions, search, seizure and arrest, offences and prosecutions, appeals and revisions, special provisions regarding baggage, postal imports etc.

The Act extends to the whole of India and it came into force on 1st Feb., 1963. There are 161 sections containing provisions relating to above mentioned aspects.

3.2 ROLE OF CUSTOMS IN INTERNATIONAL TRADE

International Trade involves movement of goods (Imports and exports) from one country to another country. Every country follows either a policy of free trade or protection. In a Free Trade Policy, there is no restriction on movement of goods between countries. Protection involves encouragement to home industry by providing subsidies to domestic producers or usually by improving tariffs (Customs duty) on imports and exports. Custom duties are levied with twin objectives of:

1. **Generating revenue for the state and**
2. **Protecting interests of domestic industry by making imports costlier.**

Thus, tariffs (customs) restrict international trade (Particularly imports). These are used as a tool for protection of domestic industry. Main advantages of protection are given below:

1. Infant industry in under-developed/developing countries require protection from competitors during early growth period for its proper nursing.
2. To bring about harmonious and balance growth of all industries and self, sufficiency, an country can bring diversification three protective measures.

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For expending employment and income.

To correct disequilllbrium in a balance of payments

For making terms of trade favourable to an importing country

Customs are also an instrument to beat down foreign duties that affect a country's exports.

Customs have been a very productive source of state revenue.

To present on healthy competition between countries having dear labour and those having cheap labours.

For conserving scarce natural resources of a country, (e.g. minerals and other raw materials) high export duties may be levied.

Key industries such as iron & steel, heavy chemicals, of have to be protected for a Btakle and Bound Industrial Structure.

To protect hence market from dumping by exporters from other countries, levy of high custom duties by come inevitable.

2. Developing countries agrarian/economies bring can develop industrial potentialities rapidly by minimizing foreign competition through high tariffs.

In nutshell, custom duties do affect import volume, prices, roduction and consumption. They also affect them of trade, balance of ayment etc.

Custom duties include import duties export duties and transit uties. Two types of duties are levied to achieve specified objective/ urpose.

Revenue Duties 2. Protective Duties/Tariffs

Revenue Tariffs are levied to generate revenue for the state. These are generally not intended to restrict/exclude imports

Protective Tariffs are meant to check imports to protect domestic industry.

Columnar Classification of Custom Duties : Based on country of rigin and application of duty rates, tariffs are of 3 types :

Single Column Tariff – One rate of duty on goods irrespective of country of origin

2. Multiple Column Tariff – Two or more different rates depending upon origin.

3. Traditional Tariffs – a basic duty for each class of commodity with a condition that such duty may be reduced on reciprocal basis due to treaties with other countries.

Every country wants to protect its domestic industry from foreign country by imposing custom (Import duty) on imports and tries to

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encourage exports by giving incentives to exports. It tries to channelise export to prevent shortage of goods in the country by levying export duty. Following measures are taken for these proposes:

1. **Tariffs :** Tariff or customs duty is a tax on import exports. Generally the aim of tariff is to reduce imports by taking their price.

Tariffs can be of three types:

(i) Special tariffs constitute a fixed monetary duty per unit of the imported commodity. For example, Rs. 50,000 per automobile may be charged as tariff on the imported automobiles.

(ii) Ad Valorem tariffs are levied as percentage of the total value of the commodity as it enters the country, including it cost and transportation charges. For example, 200% of the total value of imported Air conditioner may be charged as tariff.

(iii) Silding scale tariffs are imposed in relation to the price of the commodity; when the price falls, tariff is reduced and when the price rises, tariff is increased. Sliding scale tariff may be special (i.e., according to the number of commodities) or ad valorem (i.e., according to the value of the commodity)

2. **Import Quotas :** Import quota is a quantitative restriction on imports. It constitutes an absolute limit on the physical quantity or the value of goods and services that may be imported over a given period of time, say a year or a month. Import quotas aim at controlling and regulating imports to protect the home industries from foreign competition and to remove disequilibrum in the balance of payments. While tariffs indirectly reduce imports, quotes have direct and physical control on imports.

3. **Import Restriction :** Various forms of restrictions on imports are also used to reduce imports and encourage domestic production.

(a) Sometimes import of certain commodities is prohibited by law to protect the home industries.

(b) A country may refuse to permit the importation of ____ as vegetables, flowers, meats, etc., on the health grounds.

(c) A country may instruct the customs officials of check every item and ensure the correctness of the commodities. The delays and damage to goods caused by such regulations may reduce imports.

4. **Exchange Control :** Exchange control, i.e., controlling and rationing foreign exchange, is also used as a protective method. Under the exchange control system, the government has full control over the foreign exchange resource and foreign

exchange business of the country. The imports are allotted foreign exchange at the official rates and according to set priorities to enable them to make payments for the imported goods. In this way, through effective exchange control, the volume of imports can be reduced.

5. **Discrimination :** Discrimination refers to the system of:

(a) Differing tariffs or quotes on imports of goods; or

(b) Differing exchange control practices; or

(c) Multiple exchange rates applied to different countries. Thus, under this system, preferential treatment is given to certain countries and commodities discriminatory arrangements reduce international trade, create trade blocks and lead to retaliation.

6. **Subsidies:** Subsidy is a financial help given by the government to the domestic producers to make them more competitive in the international markets. When the cost of production of the domestic producers is very high and they cannot face the foreign competition, the government can help them in the form of cash incentives, tax concessions, making up the loss, etc. Subsidies do not restrict imports directly, but indirectly discourage them.

3.3 EFFECTS OF PROTECTION

Tariffs and quotas are two major methods of protection generally used by the trading countries in their commercial policies.

Tariff is a tax or duty on imports, whereas quota is a quantitative restriction on imports. While quotes restrict the imports directly, tariffs do so indirectly by raising the prices of imports. Various effects of customs (Tariffs) and quotas are discussed below:

Tariff : A Tariff is a tax on imports. The economic significance of a tariff is that (a) tariff causes the domestic price of the imported goods exceed its foreign price or, in other words, the price a domestic purchaser pays for an imported good exceeds the amount the foreign exporter receives by the tariff payment; and (b) tariff causes the domestic relative price of imports in terms of exports to exceed the foreign relative price or terms of trade. All other economic effects of tariff follow from these basis facts about tariffs.

Tariffs on the Imposing Country

Here it has been discussed eight effects of tariff on the imposing country: (a) Protective effect; (b) consumption effect; (c) revenue effect; (d) redistribution effect; (e) terms of trade effect; (f) Income effect; (g) balance of payment effect; and (h) competitive effect. In the words of Kindleberger, a tariff "is likely to alter trade, price, output, consumption,

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and to reallocate resources, change factor proportions, redistribute income, change employment and alter the balance of payments."

1. **Protective Effect :** A tariff has protective effect for the domestic industries. It tends to raise the domestic price of the imported commodity, reduce the domestic demand for the commodity and thereby stimulates its domestic production.

2. **Consumption Effect :** Imposition of tariff raises the price, and as a result, the demand for the commodity falls. Total outlay on consumption of the commodity is larger or samaller depending upon whether demand is melastic or elastic.

3. **Revenue Effect :** Tariff brings revenue to the government. The revenue to the government is equal to the amount of the import duty multiplied by the quantity of imports.

4. **Redistribution Effect :** Redistribution Effect refers to the transfer of real income from the consumers to the producers as a result of tariff. The tariff-imposed price increase results in the loss of consumers surplus.

5. **Terms of Trade Effect :** When a country imposes a tariff duty, its willingness to receive imports is reduced. For a given quantity of exports, the country now demands a larger quantity of imports because a part of these imports are to be surrendered to the customs authorities in the form of tariff payment or putting the same thing differently, the country is now willing to offer less of exports is exchange for a given quantity of imports. Thus, the tariff reduces the country's offer of exports for imports.

The extent of improvement in the term of trade of the tariff – imposing country depends upon (a) the elasticity of foreign offer curve and (b) retaliation from other countries..

3.4 IMPORTANT DEFINITIONS IN CUSTOM ACT-1962

[Sec 2(3)]"Baggage" : It includes unaccompanied baggage but does not include motor vehicles.

[Sec 2(14)] "Dutiable Goods" : It means any good which are chargeable to duty and on which duty has not been paid.

[Sec 2(15)] "Duty" : It means duty of Customs leviable under the Act.

[Sec 2(18)] "Export" : With the grammatical variations and cognate expressions, means taking good out of India to a place outside India.

[Sec 2(22)] "Goods" : Include

(a) Vessels, aircrafts and vehicles

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(b) Stores

(c) Baggage

(d) Currency and negotiable instruments; and

(e) Any other kind of movable property

[Sec 2(23)] **"Import"** : With its grammatical variations and cognate expression means bringing goods into India from a place outside India.

[Sec 2(43)] **"Warehouse"** : Means a public warehouse appointed under section 57 or private warehouse licensed under section 58.

[Sec 2(44)] **"Warehouse Goods"** : Means good deposited in a warehouse.

[Section 2(1)] **"Adjudicating Authority"** : Adjudicating Authority means any authority competent to pass any other or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

Adjudicating Authority adjudicates the cases, i.e. it issues show cause notices in case of short levy/non-levy of duty or non-payment/ short-payment of any duty. The adjudicating authority passes its decision or order after giving the assessee on opportunity of being heard.

In case the assessee is aggrieved by such decision or order, appeal can be field to the concerned Appellate authority i.e. Commissioner (Appeals) and Appellate Tribunal.

Board (CBSC) is not an adjudicating authority but is an administrative authority.

[Section 292] "Assessment" : Assessment includes provisional assessment, re-assessment and any order of assessment in which the duty assessed is nil.

It is procedure adopted for fixing the duty liability of particular goods by correctly determining the classification of goods and correctly ascertaining the value of goods.

[Section 2 (7)] **"Costal goods"** : Costal goods means goods, other than imported goods, transported in a vessel from one part in India to another.

In case the goods are loaded from Paradeep Port to be cleared at Bombay Port, then such goods are know as Coastal goods.

However, in case the goods are imported from London Port to be cleared at Kolkata Port and in between the vessel touches Bombay port, then such goods shall retain the characteristics of imported goods and will not become coastal goods.

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[Section 29 (14)] "Dutiable goods" : Dutiable goods means any goods which are chargeable to duty and on which duty has not been paid.

The goods that are chargeable with 'NIL' rate of duty also come within the ambit of "dutiable goods'.

[Section 29 (16)] "Entry" : Entry in relation to goods means an entry made in:

- A bill of entry in case of imported goods;
- A shipping bill or bill of export in case of export goods; and
- In the case of goods imported or to be exported by post, the label affixed or declaration accompanying the parcel under Sections 82 and 84

[Section 2 (19)],"Export goods" : Export goods means any goods which are to be taken out of India to a place outside India.

Thus, the goods intended for export, when brought to the port and shipping bills for export of the same field, become export goods.

But, where the goods had already been exported pursuant to the order made under section 51 of the Customs Act, 1962, such goods cannot be deemed to be 'export goods' within the meaning of this sub-section.

There is a distinction between **export goods and export goods.** The former is one which is to be taken out of India (and not taken out of India) while the latter is one which has already crossed the territorial waters of India.

[Section 2 (21)] "Foreign Going vessel or aircraft" : Foreign Going vessel or aircraft means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes:

1. Any navel vessel of foreign Government taking part in any naval exercise;
2. Any vessel engaged in fishing or any other operations outside the territorial waters of India;
3. Any vessel or aircraft processing to a place outside India for any purpose whatsoever.

Goods. (a) Vessels, aircrafts and vehicles; (b) Stores; (c) Baggage; (d) Currency and negotiable instruments and (e) Any other kind of movable property.

[Section 2 (25)] "Important goods" : Important goods means any goods brought into India from a place outside India but does not include goods which has been cleared for home consumption.

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[Section 2 (26)] **"Importer"** : Importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner or any person holding himself out to be the importer.

[Section 2 (27)] **"India"** India includes the territorial water of India. Territorial waters of India extend into sea to the distance of 12 nautical miles measured from appropriate base line on the coast of India and includes any bay, gulf, harbour, creek or tidal river. The outer boundary of the territorial water is international boundary of India beyond which the high sea lies.

[Section 2 (33)] **"Prohibited goods"** : Prohibited goods means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the gods are permitted to be imported or exported have been complied with.

[Section 2 (38)] **"Stores"** : Stores means goods for use in a vessel or aircraft and includes full and space parts and other articles of equipment, whether or not for immediate fitting.

[Section 2 (39)] **"Smuggling"** : Smuggling in related to any goods, means any act or omission which will render such goods liable to condiscation under section 111 or section 113.

[Section 2 (4)] **"Bill of Entry"** : means a bill of entry referred to in Section 46. Bill of entry is a certificate delivered to the customs authorities by the importers of goods giving particulars of such goods and the part or place from which they have been imported.

Bill of lading is a negotiable document, like air consignment note, which has to be surrendered to the carrier for getting delivery of goods in the case of cargo imported or exported by air.

Letter of Credit is an instrument delivered by bank intimating the seller that the buyer has instructed the bank and the bank will according to the instructions, pay the seller of goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.

Export Manifest: The person-in-charge of conveyance carring export goods is required, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest. Export manifest is a consolidated report of all such Bills of Lading/Air Consignment Note/Railway Receipt/Lorry receipt used for exportation of goods outside India.

Assessable Value is deemed value, which is a fictional value that relates to the concept of intrinsic value of goods, which it may fetch in the international market. It is need not to be the invoice price or the price agreed between the parties.

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3.5. TYPE OF DUTIES

Under Section 12 pf Customs Act, duties of customs shall be levied at such rates as may be specified under the CTA, 1975 or any other law for the time being in force. The different types of Custom duties are explained below :

1. **Basic Duty** : The authority for the levy of basic custom duty is under Section 2 of C.T.A, 1975. Basic duty is further divided into 2 parts.

Basic duty

(i) Standard Rate of Duty

(ii) Preferential rate of duty

(i) **Standard Rate** : The normal rate of duty specified in First Schedule is standard rate of duty. It is levied as a percentage of value as determined under section 14(1). The rate of duty very for different items. Custom duty rates are 5%, 15% and 20% for different commodities.

(ii) **Preferential Rate** : Preferential rate of duty is a special rate for trade to or from a particular country known as "Preferential Area". "Preferential Area" means any country or territory which the Central Government may by notification in the Official Gazette declare to be such area.

2. **Auxiliary Customs duty** : The Financial Act, 1999 has imposed a 10% levy called surcharge on all goods except :-
   - Crude oil & petroleum
   - Gold & Silver
   - Certain GATT bound items.

The surcharge continued upto March 31, 2000. Such Surcharge formed the part of Union Revenue only.

3. **Additional Duty of Customs** : This is popularly know as countervailing duty. The levy of this duty is authorized u/s 3 (i) of Customs Tariff Act.

Any article which is imported into India shall be in addition to the basic duty, liable to a duty equal to excise duty for the time being in force on a like article if produced or manufactured in India. The basic purpose of this duty is to equalize the price of home manufactured article and imported article and to rule out the difference of price in lieu of excise duty is the reason behind the application of this

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With effect from 1.3.2001, Additional duty is charged on 133 packaged goods on the basis of their M.R.P. in India.

Thought the rate of duty is equal to excise duty still it is not an excise duty, it is custom duty.

Mode of **Calculation of Additional duty**

(Assessable value + Basic Custom Duty) x Rate of Countervailing duty.

Eg. Example : Assessable value on Imports Rs. 500 per unit

Basic Customer Duty 20% advalorem

Rate of CVD (Countervailing Duty) 40% ad valorem

In this case calculation is as follows:

Assessable value per unit	Rs. 500
Basic custom Duty @ 20%	Rs. 100
Total	**Rs. 600**

Countervailing Duty @ 20% $\frac{600 \times 20}{100}$ = Rs. 120

Total Custom Duty payable = Basic custom Duty = 100
C.V.D = 120
Total = 220

It is important here to note that exemption from Basic Custom Duty does not mean exemption from countervailing duty also.

Explanation 1 to Section 3 (i) provides that if an article is leviable with different rates of duty, highest among them will be considered for calculation.

Countervailing Duty on Raw materials : In addition to countervailing duty u/s 3(i), there is another countervailing duty u/s 3(3) to counter balance excise duty leviable on raw materials components etc. similar to those used in production of such article.

4. **Special Additional Duty of Customs** : As countervailing duty of customs under section 3(i) is imposed to counter balance excise duty charge, this special additional duty is imposed to counter balance sales tax charge on articles so as to provide a level playing field to indigenous goods.

The value for the purpose of calculation of special additional duty of custom shall be aggregate of :

(Assessable value + Basic Duty of customs + Surcharge + Countervailing duty)

i.e. (AV + B.Duty + Surcharge + CVD)

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Till the introduction of this section there was no duty to offset the effect of sales tax or local tax in the country. To pluck this lacuna, the above duty was introduced. Initially the Finance Act provided that the Special additional duty) shall be levied and collected at the rate of 8% of the value of the article but it has been abolished on all items w.e.f. 9.1.2004.

This duty has been exempted on a goods (both agricultural non-agricultural)[1]

This duty is to offset the effect of sales tax, so if a trader imports goods he will not have to pay this duty as he would be subject to sales tax. Trader has simply to give a declaration that such goods will not be sold in an area where no tax is chargeable.

No drawback of special additional duty of customs is admissible. However Nil duty goods, Baggage free allowance, goods chargable to additional duty in lieu of sales tax, gold, silver and some other specific goods are exempt from this duty[2]. Peak rate of custom duty has been reduced to 15%.

5. **Protective Duties** : Imports can endanger the endanger the indigenous industry in two ways:

(a) The imported goods could be cheaper.

(b) They can be more attractive if a good of such things is brought into market.

To protect the indegeneous industry from the above cangers, protective duties are imposed. The protection through such a duty is intended good are not competitively cheaper than the indigenous goods.

The Central Government shall impose such duty on the recommendation of Tariff Commission established under Tariff Commission Act, 1951. If Central Government on such recommendation is satisfied that circumstances exist to take immediate action to provide for the protection of interests of any indigenous industry the Central Government may by notification in the official gazette impose protective duty at a rate which is recommended by Tariff Commission.

1. Notification No. 6,2004-cus.

2. Section 3A Custom Tariff Act 1975 and Notification No. 18/2000 Customs.

Under Section 7 of Customs Tariff Act following powers are provided to Central Government.

(i) Power to specify period upto which the protective duty shall be in force.

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(ii) Power to reduce or extend such periods.

(iii) Power to reduce or increase the effective rate of protective duty if the govt. is satisfied that the existing protective duty has become ineffective or excessive.

5. **Countervailing duty on Subsidised articles (Section 9) :**

Section 9 of the Customs Tariff Act 1975 deals with countervailing duty on subsidized articles. If any country pays directly or indirectly any subsidy to its residents for the protection and exportation of such produced articles to India then upon the importation of such article into India the Central Govt. may be Notification in Official Gazette impose a countervailing duty not exceeding the amount of such subsidy.

If the amount of subsidy cannot be ascertained, the duty can be collected provisionally pending determination of actual amount of duty. The difference, if any, can be collected further or refunded as the case may be [Section 9(2)]

In appropriate cases the Central Government is empowered to levy countervailing duty retrospectively from a date prior to the date of imposition of countervailing duty under section 9(2) but not beyond 90 days from the date of Notification.

The Countervailing duty chargeable under this Section shall be in addition to any other duty imposed under this Act or under any law for the time being in force. Normally such duty imposed under section 9 will cease to have effect on the expiry of live years from the date of imposition unless revoked earlier. The Central Government is empowered to extend the period of such imposition from time to time after review.

7. **Anti Dumping Duty (Sec 9A) :** Section 9A of Customs Tariff Act 1975 deals with the anti dumping duty. If provides that where an article is exported from any country or territory at less than its normal value then on its importation in India the Central Govt. may be Notification in the official Gazette impose an anti-dumping duty not exceeding margin of dumping.

Actually this duty is imposed in order to restrain the large exporters to export their goods at a low price in India in order to

(a) Cripple the Indian market by dumping their goods i.e. exporting much more than required

(b) Dispose off their excessive stock

Whenever such a situation arises Central Govt. imposes a duty known as Anti Dumping duty.

The Explanation to Section 9A classifies the following :

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(a) **"margin of dumpint"** : means the difference between normal value and export value or

Margin of Dumping = Normal Price – Export Price.

(b) **"Export Price"** means the price at which the goods are exported.

If the export price is unreliable due to arrangement between exporter and importer the basis will be the price at which the goods are first sold to independent buyer.

(c) **"Normal Price/Value"** : means comparable price in ordinary course in trade, for consumption in the exporting country, after making allowance for difference in terms and conditions of sales etc.

This section also empowers the Central Govt. to levy such anti-dumping duty which retrospective effect in appropriate cases. Basically Anti dumping duty protects the domestic industry from injury.

In Nippon Zone Co. Ltd Vs. Designated Authority 1979 ELT 126 (CEGAT 3 member bench) it was held that when material injury is caused to domestic industry and a material link is establisited between dumping and injury to domestic industry, imposition of anti-dumping duty is justified.

8. Safeguard Duty (Section 8B) Section 8B of Custom Tariff Act 1975 endowers the Central Govt. to impose a safeguard duty. This duty can be imposed if Central Govt. is satisfied that the specified or any article is imported into India in increased quantities and under conditions that cause or threaten to cause serious injury to domestic industry.

The Government cannot impose such duty on an article originating from developing country if the share of imports from that country does not exceed 3% or where the aggregate of imports from all such developing countries does not exceed 9% of the total imports of that article into India.

Such a safeguard duty shall normally cause to have effect on the expiry of four years from the date of its imposition unless revoked earlier. In appropriate cases, the Central Govt. can extend the period but in no case such period can be extended or such duty cannot continue to be imposed beyond the period of 10 years from the date of its imposition.

Till the determination of date of such duty the Central Govt. can impose provisional duty but in no case such provisional duty shall remain in force for more than 200 days from the date on which the duty was imposed.

9. **Export Duty** : At present 15% Export duty is levied only on hides, skins and leather and duty @ 10% on snake skin, hides, skin and leathers. There is no export duty on any other product.

Difference among Protective Duty, Safeguard Duty and Anti Dumping Duty.

Basis of Difference	Protective Duty	Safeguard Duty	Anti Dumping Duty
1. Legal Provision	Power to levy above duty u/s 6(i) of ACT, 1975	Power to levy above duty is u/s 8B of CTA 1975	Power to levy is u/s 9A of CTA
2. Conditions	Conditions are left to be determined by Tariff Commission. Normally imported cheaper goods which hinder growth of domestic industry.	If any article is imported into India in increased quantities and causes will threaten to cause serious injury to domestic Industry.	If any article is imported into India and its export price is less than its normal value.
3. Power to levy	Power to levy this duty rests with Central Govt. but a recommendation from Tariff Commission is necessary.	Power to levy duty rests with Central Govt. No recommendation from Tariff Commission is necessary.	Power to levy duty rests with Central Govt. No. recommendation from Tariff Commission is necessary.
4. Period	The power to decide and specify upto which date such duty shall be in force is with Central Govt.	Unless revoked earlier by Central Govt. such duty shall cease to have effect on the expiry of 4 years from the date of its imposition.	Unless revoked earlier by Central Govt., such duty shall cease to have effect on the expiry of 5 years from the date of its imposition.
5. Condition of Developing Country	No such conditions. Only recommendation of Tariff Commission is necessary.	The Govt. can't impose such duty if imports from a developing country of that article does not exceed 3% or where the aggregate of imports from all such developing countries does not exceed 9% of total imports of that article in India.	No such condition but the condition of export price being less than normal value exists.

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3.6 LIABILITY TO CUSTOM DUTIES

The customs duties are levied as such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into or exported from India. The Custom duty liability is based upon three determining factors. These are discussed in the chapter briefly as under.

Factors related to liability of duty

The liability to customs duty is broadly based upon the following factors:

(a) the goods, the point and the circumstances under which the customs duty becomes leviable;

(b) the mechanism and the organization for determining the amount of customs duty and collection thereof.

(c) The exemption from levy on grounds of equal/discretionary powers of government.

(d) Remission and Abatement of Duty

Any article coming into India on its own or otherwise is deemed to be an importation for the purpose of levy. The tax is considered to be levied on the goods and not on the person importing the goods or paying duty. Equitable taxation requires charging of duty at the same level if the circumstance of importation are similar.

The determining factors are explained below:

(A) POINT AND CIRCUMSTANCES OF LEVY

The point of levy and circumstances under which customs duties are levied can be divided into four parts for discussion as under:

(a) Rate of duty

(b) Clearance of goods

(c) Re-importation of goods produced in India

(d) Goods derelict, wrecks etc.

(a) Rate of Duty (Section 12)

The implications of Section 12 are :

(1) Duties of customs shall be levied on goods imported into, or exported from India.

(2) The levy shall be at such rates as is specified in the Customers Tariff Act 1975, or any other law for the time being in force.

(3) The saving from this import, or exception thereto is only provider under the Customs Act, 1962, or any other law for the time being in force, and

(4) Government goods shall be treated on par with non-governmental goods for the purpose of levy of the customs duty.

The Central Government has powers to issue adhoc exemption orders in circumstances of an exception nature.

(b) **Clearance of Goods**

Goods may be cleared directly for home consumption or may be stored in warehouse pending clearance for home consumption.

In the case of goods cleared for home-consumption, the customs duty on import has to be paid immediately and the goods are taken into the country for utilization or consumption. They are cleared by customs authorities after completion of all checks and collection of all duties and dues.

(c) **Re-importation for Goods Produced or Manufactured in India (Section 20):**

If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

(d) **Goods Derelict, Wreck etc (Section 21)**

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty free under the Act.

(B) ASSESSMENT OF DUTY

In order to understand the procedure relating to the assessment of Customs duty, it would be useful to know the statutory provisions relating to the movement of goods from the point of entry into India till the goods are either cleared for home consumption or deposited in a warehouse.

(1) The master of the vessel carrying the goods calls on the port, files the arrival report and the Import General Manifest (IGM) containing details of goods brought.

(2) Customs officers check the documents (IGM), grant entry inwards to the vessel, assign an IGM number to the manifest, and permit the master of the vessel to land and unload the cargo.

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(3) The vessel discharges the cargo into the custody of the Port Trust authorities, or any other authority appointed in the particular port to receive the cargo.

(4) The importer of the goods delivers the negotiable Bill of Lading received from the shipper of the goods to the master or the steamer agent of the vessel and obtains the delivery order.

(5) The importer thereafter presents a bill of entry for either clearance of the goods for home consumption or deposit in the warehouse with the import department of the customs. They check with IGM and delivery order and not the bill of entry in the IGM.

The Bill of entry can be filled :

(a) after the goods have landed,

(b) before the landing of goods but after entry inward is given

(c) even before grant of entry inwards.

(6) The bill of entry is then processed by the appraising department, where the tariff classification and valuation of the imported goods are decided.

(7) The goods are physically examined to confirm the correctness of the description of the goods in the documents and their valuation and tariff classification.

(8) Then (i) if the goods are being cleared for home consumption, duty determined on the goods is collected and "pass out of customs charge" is given under section 47.

(ii) if the goods are to be warehoused, the warehousing bond in the sum equal to double the duty determined is executed by the importer. It is accepted by the customs and "Deposit into warehouse" order is issued.

(9) On showing the customs clearance to the trust or any other custodian of the cargo the importers take delivery of the cargo.

(10) In the case of cargo deposited in a warehouse, the importer files another bill of entry, wherever he wants to clear the whole or part of the warehoused cargo.

(11) This ex-bond bill of entry is assessed again in terms of Section 15.

(12) After payment of customs duty so re-determined and other charges payable to the warehouse keeper including rent and interest, the goods are removed for home consumption.

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3.7 ORGANISATION FOR ASSESSMENT AND COLLECTION

The organization concerned with assessment and collection of duty is called the Customs House/Land Custom Station/Air Customs. Each major Custom House has separate departments for dealing with the various stages of the custom clearance. These departments are :

1) **Important Department** : For receiving arrival report and IGM from the Master of the Vessel and for receiving Bills of Entries for clearance of good.

2) **Appraising Department** : For scrutinizing the documents and making the assessment.

3) **Dock Examination Centres** : For the physical examination of the goods at the port of landing.

4) **Cash and Accounts Department** : For the collection of duty.

5) **Prevention Department** : For the over all supervision over the custody and movement of the cargo.

6) **Bond Department** : For dealing with the various process connected with the warehoused goods.

3.8 CUSTOM : EXEMPTIONS FROM DUTY

1) **Power to grant exemption from duty.** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs livable thereon.

2) **Special adhoc Exemption.** If the Central Government is satisfied that it is necessary and in the public interest so to do, it may, be special order in each case, exempt from the payment of duty, under circumstances of an exception nature to be stated in such order, any goods on which duty is livable.

(3) **Exemption not exceed Statutory duty.** An exemption in respect of any goods from any part of the customs duty livable thereon may be generated by providing for the levy of duty on such goods at a rate expressed in a different form or method and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

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(4) **Date of Implementation.** Every notification issued shall :-

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Where a Notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said Notification comes into force.

(6) No duty shall be collected if the amount is less than Rs.100

3.9 EXCISE

In order to adjust 'import-export trade' as per dynamic international business environment and to serve public interest, the power has been conferred upon the central government to give exemption from duty under section 5A of Central Excise Act, 1944.

(1) EXEMPTION FROM LEVY OF EXCISE DUTY [Section 5A(1)]

If Central Government is satisfied that it is in public interest to do so, it may by notification in the Official Gazette, exempt generally (either absolutely or subject to conditions specified in the notification) excisable goods of **any specified description** –from the whole or any part of duty of exise leviable thereon.

Provided that unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured in

- In a FTZ and brought to any other place in India : or
- By a 100% EOU and brought to any other place in India.

(2) EXEMPTION FROM PAYMENT OF DUTY [Section 5a(2)]

If Central Government is satisfied that it is in public interest to do so, it may, by special order in each case exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

ADHOC EXEMPTIONS Section 5A(2) of Central Excise Act, 1944 permits Central Government to issue adhoc exemption from excise duty by issue of special order. The order should specify the reasons for granting adhoc exemption. Such special exemption can be given in respect of any excisable goods. It has been clarified that such

exemption can be granted even after duty is paid. In such case, duty has to be refunded.

Effective Date of Exemption Notification

Every notification issued u/s 5A(1) and 5A(2) comes into force on the date of its issue by the Central Government for publication in its Official Gazette. On the same date, it is also required to be offered for sale by the Directorate of Publicity and Public Relations of the CBEC.

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(3) REMISSION AND ABATEMENT OF DUTY

There are certain exception in the Customs Act itself which provide for remission and abatement of custom duty. Apart from the statutory exception, the Central Government has been given powers to exempt the customs duty livable either wholly or in part, with or without condition, in respect of a class of persons or class of goods or in individual cases.

(1) Remission of duty on pilfered goods [Section 13] :

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty livable on such goods except where such goods are restored to the importer after pilferage.

Pilferage means stealing in small quantities.

(1) Before the arrival of the goods into India

(2) After the arrival of the goods into India, but before customs examinations.

(3) After customs examination, but before an order is made for clearance for home consumption.

In the first situation, there is no import. There is no liability to import duty also. In the second case there is import, there is liability to import duty on the pilfered goods, but the liability is extinguished by the provisions of Section 13 of the Customs Act. In the third case the pilferage does not come to light in the course of customs examination.

(2) Abatement of duty on damaged or deteriorated goods [Section 22] :

Where it is shown to the satisfaction of the Assistant Commissioner of Customs:

(a) that any imported goods has been damaged or had deteriorated at the time before or during the unloading of the goods in India or

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(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under Section 17, on account of any accident not due to any willful act negligence or default of the importer, his employee or agent, or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent, such goods shall be chargeable to duty.

The term "Damage" denotes physical damage to the goods e.g. glass ware being broken within the case, precision goods out of shape.

(3) Valuation of the Damaged or Deteriorated goods :

According to Section 11(3), the value of the damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner :

(a) the value of such goods may be ascertained by the proper officer or

(b) such good may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be value of such goods.

(4) Remission of duty on goods lost, destroyed or abandoned [Section 23] :

(1) Where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed at any time before clearance for home consumption, the Assistant Collector shall remit the duty on such goods.

(2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

It may be noted that in both the clauses the remission is mandatory. In the case of loss, it should be shown that the goods have been lost beyond recovery. The word loss implies total loss. Similarly the term "destroyed" also implied destroyed beyond "salvage".

Goods abandoned by importers : It some times happens that importers are unable and unwilling to take delivery and clearance of imported goods due to reasons like :

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the goods may not be according to the specification prescribed in the contract.

the goods would have damaged or deteriorated during voyage and the damaged/deteriorated goods may not be of any use of the importer.

there might have been breach of the contract and the importer may nor be interested in taking delivery of the goods.

Having put in a bill of entry a liability attaches to the person to pay customs duty. Section 23 (2) extinguishes this liability on the specific understanding that the importer/owner relinquishes his title to the said goods unconditionally and abandons them.

5. **Goods short packed or short landed :** If say 20 packages are manifested in a consignment for discharge at a particular customs port/customs airport, but only 15 packages are unloaded from the vessel, it means that five packages have not landed at the particular port. The possibilities are :

(a) the five packages were not all loaded/exported at the port of shipment

(b) the five packages were by mistake off-loaded at any port prior to the destination part.

(c) the five packages were omitted to landed, but were retained on board the vessel and over carried.

In the first two situations the goods did not come into Indian Territory; therefore there is no import and as such there is no duty liability. In the third situation the goods have been carried on transit. The duty liability is waived in terms of the provisions of Section 53 of the Customs Act.

6. **Determination of duty where goods consist of articles liable to different rates of duty (section 19)**

Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows:

(a) articles liable to duty with reference to quantity shall be chargable to that duty.

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rate, be chargeable to duty at the highest of such rates;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b) :

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Provided that

(a) accessories of and spare parts or maintenance and repairing implements for any article which satisfies the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) If the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

7. Power to make rules for denaturing or mutilation of goods:

The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more that one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form (Section 24).

UNIT IV VALUATION (DETERMINATION OF PRICE FOR IMPORTED GOODS RULES)

NOTES

Structure

4.0 Objectives
4.1. Introduction
4.2. Methods of Valuation
4.3. Inclusions in Custom Value – [Rule 9]
4.4 Clearance Procedure of Goods
4.5. Levy of Duty
4.6. Clearance Procedure for Cargo
.7 Warehousing
.8 Prohibition on Improper Removal and Penality

.0 OBJECTIVES

After going through this lession you will be able:

Understand the of valuation of imported goods.

Know the procedure for clearance of imported goods.

.1. INTRODUCTION

Normally the price paid by the Importer for the goods imported ito India is the value of goods imported. But under the Customs Act, 962 the concept of value has been treated separately. The duty is ayable on the basis of "value" of goods. Package goods have to be ssessed on the basis of their Maximum Retail Price (MRP) declared n the package in so far as charge of countervailing duty is concerned. uch a value can be either :

) Tariff value fixed by the Central Government by notification in the Official Gazette.

) 'Value fixed under section 14(i) of the Customer Act 1962.

) **Tariff Value :** In some cases, Tariff values are fixed by the Central overnment from time to time for some specified goods. Once the Tariff alue of any commodity is fixed then the value for the determination of uty is not the 'value' under section 14(1) but the tariff value. The Custom uty is payable according to the Tariff value fixed. Custom duty may be a ercentage, which should be applied to the Tariff value for determination f duty.

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Central Government can fix Tariff values for different commodities. But such a determination can't be done under whims and notions of Government. The Government will have to consider the trend of value of such or like goods.

Such a method is not popular since the proceeds from duty do not increases unless or until the amount/quantum of import increase. Under the Central Excise Tariff such a value has been fixed for pan masala packed in retail packs of less than 10 gms[1].

(b) Value as per Section 14(1) of Custom Act : Under the Custom Act, 1962 concept of value has special importance. Such a value is used specifically for assessing duty of customs. Thus is also called sometimes as "Assessable value" or "Customs value".

According to Section 14(1)(a)

- for the purpose of Custom Tariff Act, 1975, or any other law for the time being in force.
- where under the duty of customs is chargeable on the goods by reference to their value.
- the value of goods
- shall be deemed to be
- the price
- at which such or like goods are ordinarily sold
- or offered for sale
- for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade.
- where the seller and buyer have no interest in the business of each other.
- and the price is the sole consideration for the sale or offer for sale.

Analysis of the above definition

1. Customer value under section 14(1) is a "Deemed Value": Bombay High Court held in **UOI** vs. Glaxo laboratories that the price which is paid for goods is the real price in which the transaction is done but this price is not used for calculating Custom duty. The price used for calculating Custom duty is the value determined u/s 14(1). So valuation can be done on "Deemed value" basis even if the invoice value is the real price between buyer and seller.

2. At which such or like goods are ordinarily sold. If we break up the above line then we have two parts:

(a) At which such or like goods.

(b) Ordinarily sold.

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Taking the first part:

(a) It sales that the price at which such or like goods. Now first we must know what does it means by such or like goods.

This has not been exactly defined under Customs Act but Rule 2 of Custom Valuation Rules, 1988 provides that definition of identical and similar goods.

(i) **Identical Good.** Identical goods are those goods which are same in all respect including the physical attributes, quality etc. as the goods being valued except that they have minor differences in their appearance which do not affect their value.

(ii) **Similar goods** are those goods, which thought not alike in all respects, have like features which enable them to perform the same functions and which makes them commercially interchangeable with the goods being valued.

So, the price of such or like goods is to be taken into view and the price of "the goods" has to be ignored. The reason behind this connection seems to be the possibility that the buyer may incur any expense on behalf of seller and the consideration for that expense be deducted from the price of the goods imported. Under such a situation the price of such or like goods will represent true price/value for customs duty calculation.

(b) **Ordinarily Sold Goods:**

Goods imported should be such that they are ordinarily sold at such price. If in some case buyer is able to obtain goods at low prices which was not available to order importers at that time, such price can't be considered as price at which the goods are "ordinarily sold".

In one of the cases goods were offered at specially reduced price to buyer and the buyer was asked not to disclose the specially reduced price to any other party in India, it was held that this is not "ordinary price" and valuation cannot be done on that price.

1. **'Offer for Sale'**. In absence of sale price, "offer for sale" prices can be adopted. Though there is no actual sale at that prices but the seller intends to sell the goods at such prices. So in the absence of actual sale prices, the price lists or quotations etc. given by supplier can be considered for valuation purposes.

2. **At the time and place of Importation and Exportation.** The above statement involves two condition. One conditions of place of importation and other time of importation. Both have their own relevance. Place is relevant because import is not an agreement to supply goods till the territorial waters of India but the ports of India. So all expenses upto the destination port, including freight, transit insurance, unloading and handling charges are to be included.

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The time element is important because of Section 15(1) which states the date for determination of Custom duty. The relevant provisions of Section 15 and 16 will be discussed later on in this chapter.

Also if at the time of contract the price is fixed and later on due to cost factors becoming dearer, price increases then the price at the time of importation has to be taken.

3. **In the course of International Trade.** Domestic price is not comparable for the purpose of (Custom duty) valuation of goods. Price should be in the course of International Trade.

4. **Seller and buyer have no interest in the business of each other.** It is essential to note that the seller and buyer should have no interest in the business of each other. For determination of interest, mutuality of interest in important. Only buyer having interest in seller or seller having interest in buyer is not enough.

To sum up, it is important that the transactions between buyers and sellers should be at an arm's length and there should bot be any existence of mutual interest.

5. **Price is the sole consideration of sale or offer for sale.** Price should be the sole consideration of sale or offer for sale. No other consideration should flow to the supplier. If there is some other consideration also it should be added to the value of goods to arrive at the assessable value.

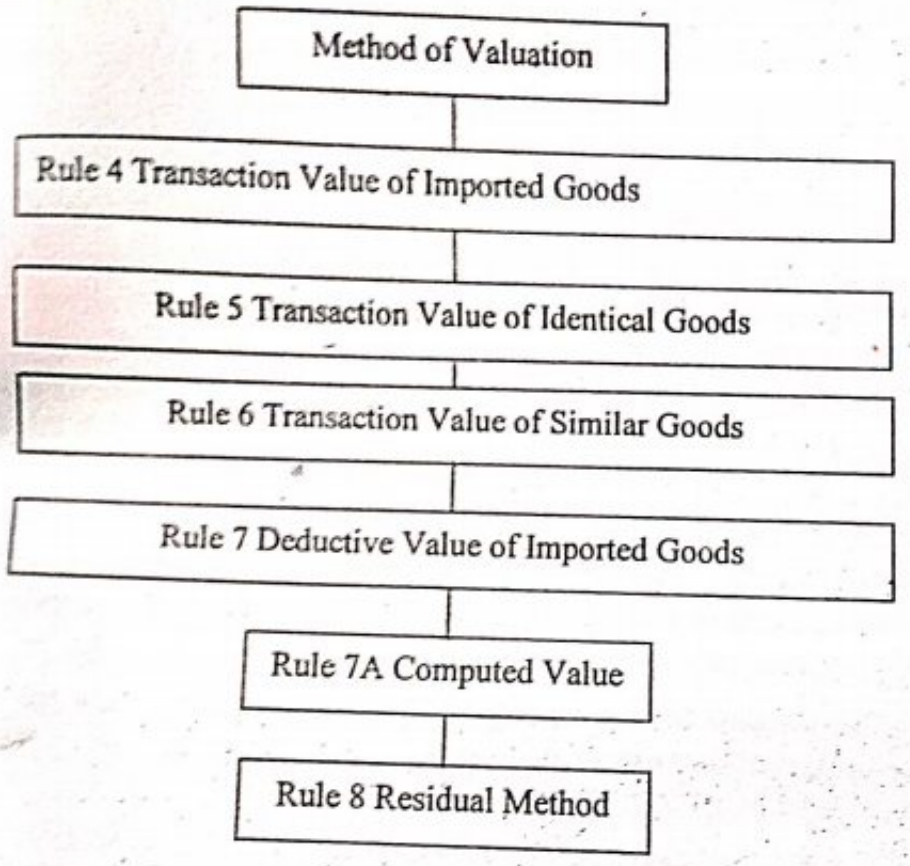
4.2. METHODS OF VALUATION

The Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provides for six methods of valuation. These rules follow the GATT and WTO provisions where under the norm is transaction value of invoice value of goods provided it is genuine. These methods are :

1. Transaction value of Imported goods.
2. Transaction value of Identical goods.
3. Transaction value of Similar goods.
4. Deductive value.
5. Computed value.
6. Residual method.

Above specified methods are to be applied in sequential order i.e. first of all method at serial no. one should be considered. It valuation can't be done with this method then the second method should be adopted. The only exemption to the sequential order is method 5 'Computed Value' method which can be used in super session or before method 4 i.e. 'Deductive value' method.

The above discussion can be summarized in a flow chart as shown below:



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Transaction Value of Imported Goods – [Rule 4 of Valuation Rules]

The transaction value of Imported goods shall be the price paid r the goods when they are imported into India. This price has to be djusted in accordance with Rule 9 of Valuation Rule [Rule 4(1)].

ansaction value should fulfill the following three conditions:

It should be the price at the time of importation. The date of contract, date of payment or date of production etc. is not relevant.

It should be the price at the place of importation. It implies any price of transportation or related incurred after place of importation is not considered.

) Extra ordinary or special prices are not considered for the purpose of calculation of transaction value.

There are some conditions to invoke transaction value. These nditions are as follows :

No restriction on the buyer on use or disposal of goods. First and foremost condition for the application of transaction value for valuation of goods for custom duty. This restriction states that after importation of goods or on such importation, the buyer should not be restrained to use the goods in a specified way.

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(ii) **Sales should be Unconditional.** If the sales is subject to some condition for which value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for custom purpose.

Example: For such condition shall include :

The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.

(iii) **The buyer will not provide any part of the proceeds of subsequent resale to the seller.** The Price paid for the imported goods to the seller should be the sole consideration for sale. No further consideration should be accrue directly or indirectly to the seller. If it happens so that some additional consideration follows the price paid then the additional consideration should be added to price paid for correct value determination.

Example : If seller is entitled to a fixed percentage commission on the sale of each article in India beyond the price paid then the price paid plus commission will form transaction value of imported goods.

(iv) **Buyer and Seller should not be related.** This concept has already been discussed under analysis of Sec. 14(1). Some condition apply here.

For the purpose of these rules, persons shall be deemed to be related if:

(a) they are officers or directors of one another's business.

(b) they are legally recognized partners.

(c) they are employer or employee

(d) one of them controls, directly or indirectly, other.

(e) any person directly or indirectly owns 5% or more of shares of both of them

(f) together they control a third person (directly or indirectly)

(g) they are members of some family

(h) both of them are controlled by third person.

2. Transaction Value of Identical Goods – [Rule 5]

When valuation method according to rule 4 cannot be adopted, this Rule comes into recognition then. Identical goods as explained either are goods as the goods being valued except for minor differences in appearance that do not affect the value of goods.

In applying this rule following conditions must be satisfied :

(i) The sale of identical goods should be at same commercial level and in substantially in same quantities. If such sale can't be found

then both the factors could be adjusted to arrive at a transaction value.

(ii) If in applying this rate more than one transaction value is arrived at, then the lowest of them will be accepted.

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3. **Transaction Value of Similar Goods – [Rule 6]**

Rule 6 provides for transaction value of similar goods. Similar goods means imported goods, which although not like in all respects have like characteristics and like material which enable them to perform some functions and make them commercially interchangeable with the goods being valued. All conditions as applicable to the transaction value of identical goods are applicable to similar goods.

Also in both cases of identical and similar goods if some engineering work, development work, are work, design work etc. in connection with production of imported goods was done by buyer directly or indirectly in India free of charge or at lower cost, then the goods can't be regarded as identical or similar goods.

. **Deductive Value – Rule 7 of Custom Valuation Rules**

Rule 7 of Custom Valuation Rules provides that if the goods cannot be valued according to the previous three methods, the Deductive value method should be adopted. Following points demand consideration for valuing the goods :-

) **Goods should in the condition as Imported:** If the goods imported are sold in the condition in which they were imported then the value of imported goods or identical goods or similar goods shall be based on the unit price at which the imported goods or identical goods imported similar goods are sold in the greatest aggregate quantity to persons who are not related to seller in India. [Rule 7(1)]

From the price obtained above the following deductions shall be made :

Margin of profit and general expenses in connection with the sale,

Transport, insurance and other taxes paid on account of import and sale.

Custom duties and other taxes paid on account of import and sale.

So the name of deductive value is justified here as the value is deducted from sale price according to the procedure given above.

Goods not sold in the condition as Imported: If neither the imported goods nor identical goods or similar goods are sold in India in the condition as imported then the value shall be based on the unit price which the goods after processing are sold in greatest aggregate quantity.

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[In such a case due allowance should be made for the value added by processing and also the deductions as specified in previous point. **Rule 7(3)**] It is generally believed that the method of valuation produced for under rule 7(3) would not be normally applicable when due to further processing the goods loose their identity. However, there can be instances where although the identity of goods is lost, the value added by processing can be accurately determined. In such cases valuation under this rule is justified.

(c) Price at or about the time of valuation. Price at or about the time of valuation should be considered. However Rule 7(2) provides that if such price is not available, price at the date after importation but within 90 days can be considered meaning thereby that if the price is not determined, it can be determined within 90 days in which other goods with more determinable value may get imported. And or also 90 days is enough time to sell the products in the market and hence value can be arrived at.

5. Computed Value – Rule 7A of Custom Valuation Rules

This is the fifth method of valuation introduced on 24.04.95. This method is the only exception to the sequential order condition. This method can be used before deductive value method if and only if Custom Officer approves on the request of the assessee.

Under this method the value is the sum of the following :

(a) Cost of value of materials and processing charges involved in producing imported goods.

(b) Amount of profit and general expenses equal to reflected in sales of goods of the same class or kind.

(c) The cost of value of all other expenses under Rule 9(2) i.e. transport, insurance, loading and handling charges.

Computed value = (a) + (b) + (c)

This method of valuation is possible if the exporter is ready to reveal his records of costing in which all the information as above is available. The records should be on the basis of commercial accounts, which should further be based on generally accepted accounting principles.

Cost of commission and brokerage and packing cost has to be added. Similarly development cost, engineering cost, tooling cost etc. has added to the above three elements (a), (b) and (c) of cost.

6. Residual Method – [Rule 8]

This is the sixth and the last method of valuation. Where the value of imported goods can't be determined under any of the provisions of preceding rules, the value shall be determined using reasonable means consistent with the provisions of previous Rules and Sec. 14(1). This

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method is also compared to "Best judgment method" of Central Excise or Income Tax Act. The three basic conditions, features for the application of this Rule are :

(a) It was not possible to determine value under any of the preceding rules.

(b) The proper officer should be satisfied with the conditions.

(c) The value is then determined according to best judgment and means consistent with the principles and general rules of these rules.

Rule 8(2) specifically excludes certain methods for arriving at customs value

(a) Use of wholesale selling price of similar Indian goods.

(b) System that provides for the acceptance of highest of the alternative values.

(c) Sales price prevalent in the country of origin. (e.g. if the goods are manufactured in America then the price prevailing with (i.e. local price) as compared to export price in America can't be considered.

d) Price, to some other country, of goods when exported.

e) Minimum custom values.

f) Arbitrary or fictitious values.

But the following values can be considered and other similar values can be considered provided they are consistent with the rules.

1. Value of goods manufactured in some other country, if value of goods manufactured as similar goods or identical goods manufactured in the country of origin is not available.

2. Value of goods adjusted for their commercial level and quantity as discussed u/s 5.

4.3 INCLUSIONS IN CUSTOM VALUE – [RULE 9]

We know that Custom Value concept has several dimensions. Normally the value as determined u/s 14(1) is the customs value. But there are some costs, services and expenses which are to be added to the price paid or payable if they are not included in the price already to arrive at customs value. These inclusions are discussed below :-

1. **Commission and Brokerage except buying commission:** Rule 9(1) (a) provides that the Commission and Brokerage except buying commission is includible in price for custom valuation. Such a commission is payable by buyers to the agents appointed by the sellers or the exporters for creating demand in India of their goods. Since the

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buyer pays the amount of commission to the agents seller the amount of commission is includible in the price paid by buyer for imported goods.

2. **Cost of Containers and Cost of Packing:** Cost of containers in which the goods are supplied to the buyer has to be included in the price of the goods. But one thing has to be kept in mind that the cost of durable and reusable containers is not to be added for custom valuation.

Similarly cost of packing, both material and labour has to be added to price of goods.

3. **Value of goods and services supplied by buyer free of charge/reduced cost:** The value of goods supplied by buyer, directly or indirectly, free of charge or at reduced cost to seller for use in connection with the production and sale of imported goods, to the extent that such value has not been included in the price actually paid or payable should be included in the value of goods imported.

These goods may be:

(a) Materials, components, parts and similar terms incorporated in imported goods.

(b) Tools, dies, moulds and similar items used in the production of imported goods.

(c) Materials consumed in the production of imported goods.

(d) Cost of development work, art work, design work and plans and sketches undertaken by buyer which is necessary for production of imported goods is includible.

Cost of development work, art work, design work and plans is includible in the transaction value only if such work is undertaken outside India. The methods adopted for apportionment of cost of tools shall be applied to apportion cost of services supplied by buyer. If the elements are purchased by buyer the addition would be at cost of purchase but if the elements are leased then the cost of lease has to be added.

4. **Royalties and Licence fee. (Rule 9(1)(C)** Buyer may have to make payments to seller on account of royalty and licence/foreign collaboration fee (now reduced to 1% of value of goods). Such expenses shall be added to transaction value unless these are already included in selling price. Apart from licence fees the buyer may have to pay for patents, trademarks or rights. Cost of these also will be included in the custom transactions value. However, charges for the right to reproduce the goods in India shall not be added.

Also, in **UOI vs Mahindra and Mahindra Ltd.** (1995), it was held that where royal payable by buyer on the sale of goods in India is unconnected with imported goods, then the royalty payment/cost shall not be included in transaction value.

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5. **Proceeds of Subsequent Re-sale.** If the proceeds of subsequent re-sale or the part of the proceeds accrues directly or indirectly to the seller then that should also be includible.

Example: Mr. Priya imports goods worth Rs.60,00. On selling these goods for Rs.80,000/- in India he pays Rs.5,500 to an employee of the exporter. In these case there is an indirect accrual of part of proceeds to the seller. Because such payment if not made by buyer would have been made by seller. So Rs.5500 is includible.

6. **Other Payments made to Exporter.** It buyer has made any payment to the exporter/seller or by the buyer to the third party as a condition of sale, such payment should be included. This is because the reason that the buyer is again meeting an obligation of seller which otherwise would have been the liability of seller.

7. **Cost of Transport to the place of Importation.** Under Rule 9(2) the cost of transport from the country of exportation to the place of importation i.e. India is to be added to "Transaction value". If the cost of transport is not ascertainable then such cost shall be 20% of the FOB. In such cases also the freight will be restricted to 20% of FOB value for valuation purposes.

In ORWO Films vs CC [1991] the Tribunal held that if sea freight of goods is available then actual air freight should be ignored. This sea freight should be added for FOB value.

8. **Insurance Cost.** Insurance cost on goods imported shall be included. If such cost is not ascertainable then such cost shall be 1.125% of FOB value of goods.

Insurance cost only upto the place of importation are includible. If any insurance charges are paid post-importation then these charges are not includible in "Assessable Value".

9. **Landing Charges/Loading and Un-loading Charges.** All the costs related with unloading or loading of imported goods shall be included in value of goods (on actual basis) for custom valuation. In the absence of proof of actual, at the prescribed flat rate of 1% of C.I.F.

10. **Some Other Additions.** it was held that if any inspection charges are paid by buyer abroad then such charges small form part of Assessable value.

Rule 9(3) provides that the additions made to the price paid or payable shall be made only on the basis of objective and quantifiable data. Such additions shall not be made on the whims and fancies of a particular person. They should be supported by relevant information.

Also in Rule 9(4) it is provided that no other addition shall be made to the price in determining the value of imported goods except as provided in this rule.

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Exclusions from Custom Value

Rule 7(1) provides for exclusions from custom value. It provides that when deductive value has to be used for custom valuation, the following costs must be deducted from Invoice price in order to arrive at deductive value. These are :

1. **Commission, General Expenses and Profit.** The commission paid or payable for sales effected in India should be reduced from Invoice value to arrive at customs value. Since such commission relates to the process after importation it has no relation with imported goods.

Similarly general expenses related to imported goods after their importation should be reduced from invoice value.

2. **Cost of Transport and Insurance after Importation.** Cost of transport and insurance after importation does not form a part of total custom value. They are exclusively deducted since they are a part of invoice value. They are excluded to arrive at customs value.

The process of importation has nothing to do with cost of transport after importation so it is excluded from invoice price.

3. **Duties and Taxes in India.** Local taxes and duties paid or payable by reason of the sale of goods in India shall be deducted from Invoice value to arrive at custom value. Duties and taxes of India have no nexus with import price, so they are excluded.

4. **Demurrage Charges payable to Port Trust.** The importer due to some reasons may get delayed in clearing his goods from Port authorities. For this he may have to bear demurrage charges. These demurrage do not form a part of custom value. If they are included in the invoice value they are to be deducted.

5. **Interest** charged for delayed payment made after the permitted credit period is not includible. Interest charged by foreign suppliers under deferred payment scheme is not added.

4.4 CLEARANCE PROCEDURE OF GOODS

Keeping in view the provision in the Customs Act to deal with any deliberate evasion of prohibition/restrictions on import or export of specified goods, it is advisable for the traders to be well conversant with the provisions of clearance rules as given under EXIM Policy, the Customs Act, as also other allied Acts.

Import/Export-Restrictions/Prohibitions

Under section 111(d) and section 113(d) any goods which are imported or attempted to be imported and exported or attempted to be exported, contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force shall be liable to confiscation.

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Section 112 of the Customers Act provides for penalty for improper importation and Section 114 of the Customs Act provides for penalty for attempt to export goods improperly. In respect of prohibited goods the Adjudicating Officer may impose penalty upto five times the value of the goods. It is, therefore, absolutely necessary for the trader to know what are the prohibitions or restrictions in force before they contemplate to import or export any goods.

Prohibited Goods

The terms "Prohibited Goods" have been in Section 2(33) of the Customs Act as meaning "any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force".

a) Absolute or Conditional Prohibition

Under Section 11 of the Customs Act, the Central Government has the power to issue Notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. The specified purpose for which a notification under section 11 can be issued are maintenance of the security of India, prevention and shortage of goods in the country, conservation of Foreign exchange, safeguarding balance of payments etc. The Central Govt. has issued many notifications to prohibit import of sensitive goods such as coins, obscence books, printed waste paper containing pages of any holy books, armored guard, fictitious stamps, explosive, narcotic drugs, rock salt, saccharine, etc.

b) Restricted category Goods

Under Export and Import Policy, laid down by the DGFT, in the Ministry of Commerce, certain goods are placed under restricted categories for import and export. Under section 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government can make provisions for prohibiting restricting or otherwise regulating the import or export of the goods.

As for example, import of second hand goods and second hand capital goods is restricted.

c) Import or export against a licence

Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence. For example export of human skeleton is absolutely prohibited whereas export of cattle is allowed against an export licence. Another example is all packaged products that are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1997, when produced/packed/sold in domestic market, shall be subject to compliance of all the provisions of the said Rules, when imported into India. All packaged commodities imported into India shall carry the name

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and address of the importer, net quantity in terms of standard unit of weights measures, month and year of packing and maximum retail sale price including other taxes, local or otherwise. In case any of the conditions is not fulfilled, the import of packaged products shall be held as prohibited, rendering such goods liable to confiscation.

(d) Quality Certification

Another restriction under the aforesaid Notification issued by the Ministry of Commerce is that the import of a large number of products, presently numbering 133, are required to comply with the mandatory Indian Quality Standards (IQS) and for this purpose exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS). Non-fulfillment of the above requirements shall render such goods prohibited for import.

(e) Prohibited Goods under other laws

Import and export of some specified goods may be restricted/ prohibited under other laws such as Environment Protection Act, Wild Life Act, Indian trade and Merchandise Marks Act, Arms Act, etc. Prohibition under those acts will also apply to the penal provisions of the Customs Act, rendering such goods liable to confiscation under section 111(d) of the Customs Act (for import) and 113(d) of the Customs Act (for export).

(f) Canalised items

Earlier, some items were imported only through canalized agency like:

(a) Petroleum Production were imported only through Indian Oil Corporation.

(b) Fertilisers were imported through Minerals and Metals Trading Corporation of India Ltd.

(c) Coconut oil, palm oil etc. were imported through State Trading Corporation of India Ltd., and Hindustan Vegetable Oil Corporation Ltd.

Clearance procedure can be discussed as under :

1. Clearance of warehoused goods for home consumption (Discussed in Warehousing)
2. Clearance of warehoused goods for exportation
3. Clearance of imported and exported goods.
4. Clearance procedure for transshipment of cargo (including export of cargo by land, sea, and air routes.)
5. Clearance by post
6. Clearance procedure for export of baggage

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1. CLEARANCE OF IMPORTED AND EXPORTED GOODS

IMPORT

Good imported in a vessel/aircraft attract customs duty and detailed customs clearance formalities of the landed goods have to be followed by the importers except in the following

1. In regard to the transit goods, so long as these are mentioned in import report/IGM for transit to any place outside India, Customs allow transit without payment of duty.
2. Goods brought in by particular vessel/aircraft for transshipment to another customs station detailed customs clearance formalities at the port/airport of landing are not prescribed and simple transshipment procedure has to be followed by the carrier and the concerned agencies. The customs clearance formalities have to be complied with by the importer after arrival of the goods at the other customs station.
3. There could also be cases of transshipment of the goods after unloading to a port outside India. Here also simpler procedure for transshipment has been prescribed by regulations, and no duty is required to be paid.
4. For other goods, which are offloaded importers have the option to clear the goods for home consumption after payment of the duties leviable or to clear them for warehousing without immediate discharge of the duties leaviable in terms of the warehousing provisions built in the Customs Act. Every importer is required to fill in terms of the Section 46 and entry (which is called Bill of entry) for home consumption or warehousing in the Form as prescribed by regulations.

Bill of Entry-Cargo Declaration

The Bill of entry can be filled by either following non-EDI system EDI system. Both non-EDI system and EDI system are discussed elow:

) Non-EDI System

The Bill of entry, where field, is to be submitted in a set different opies meant for different purpose and also given different colour cheme, and on the body of the bill of entry the purpose for which it will e used is generally mentioned in the non-EDI declaration.

The importer clearing the goods for domestic consumption has fill bill of entry in four copies; original and duplicate are meant for ustoms, third copy for the importer and the fourth copy is meant for the ank for making remittances.

In the non-EDI system along with the bill of entry by the importer his representative the following documents are also generally required:

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In the non-EDI system along with the bill of entry by the importer or his representative the following documents are also generally required:

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- Signed invoice
- Packing list
- Bill of Lading or Delivery Order/Airway Bill
- GAIT declaration form duly filled in
- Importers/CHA's declaration
- License wherever necessary
- Letter of Credit/Bank Draft/wherever necessary
- Insurance document
- Import license
- Industrial License, if required
- Test report in case of chemicals
- Adhoc exemption order

DEEC Book/DEPB in original

Catalogue, Technical write up, Literature in case of machine spares or chemicals as may be applicable

- Separately split up value of spares, components machineries
- Certificate of Origin, if preferential rate of duty is claimed
- No Commission declaration

Under the EDI system, the importer does not submit documents as such for assessment but submits declarations in electronic format containing all the relevant information to the Service Centre. The service center operator for non-reputability of the declaration takes a signed paper copy of the declaration. A checklist is generated for verification of data by the importer/CHA. After verification, the Service Centre Operator submits the data to the system and system then generates a B/E Number, which is endorsed on the printed checklist and returned to the importer/CHA. No original documents are taken at this stage. Original documents are taken at the time of examination. The importer/CHA also need to sign on the final document after Customs clearance.

(b) EDI System

If the goods are cleared through the EDI system no formal Bill of Entry is filed as it is generated in the computer system, but the importer is required to file a cargo declaration having prescribed particulars required for processing of the entry for customs clearance.

The first stage for processing a bill of entry is what is termed the noting of the bill of entry, vis-à-vis, the IGM filed by the carrier. In the non-EDI system the importer has to get the bill of entry noted in the concerned unit which checks the consignment sought to be cleared having been manifested in the particular vessel and a bill of entry number is generated

and indicated on all copies. After noting the bill of entry gets sent to the appraising section of the Custom House for assessment functions, payment of duty etc. In the EDI system, the Steamer Agents get the manifest filed through EDI or by using the service center of the Custom House and the noting aspect is checked by the system itself-which also generates bill of entry number.

After noting/registration of the Bill of entry, it is forwarded manually or electronically to the concerned Appraising Group in the Custom House dealing with the commodity sought to be cleared. Appraising Wing of the Custom House has number of Groups dealing with earmarked commodities falling under different Chapter Headings of the Headings of the Customs tariff and they take up further scrutiny for assessment, import permissibility etc. angle.

2. Assessment

(a) Non-EDI Assessment

The basic function of the assessing officer in the appraising groups is as under :

1. To determine the duty liability-taking due note of any exemptions or benefits claimed under different export promotion schemes.
2. To check whether there are any restrictions or prohibitions on the goods imported and if they require any permission/license/permit etc., and if so whether these are forthcoming.
3. To properly classify the goods imported in the customs tariff having due regard to the rules of interpretations, chapter and sections notes etc., and determining the duty liability.
4. To determine value where the goods are assessable on ad valorem basis.

Detailed examination

Where the appraising officer is not very clear about the description of the goods from the document or as some doubts about the proper classification which may be possible only to determine after detailed examination of the nature of the goods or testing of its samples, he may give an examination order in advance of finalisation of assessment including order for drawing of representative sample. This is done generally on the reverse of the original copy of the bill of entry, which is presented by the authorized agent of the importer to the appraising staff posted in the Docks/Air Cargo Complexes where the goods are get examined in the presence of the importer's representative.

4.5 LEVY OF DUTY

On receipt of the examination report the appraising officers in the group assesses the bill of entry. He indicates the final classification

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and valuation in the bill of entry indicating separately the various duties such as basic, countervailing, anti-dumping, safeguard duties etc. that may be leviable. Thereafter the bill of entry goes to Assistant Commissioner/Deputy Commissioner for confirmation depending upon certain value limits and sent to computist who calculates the duty among taking into account the rate of exchange at the relevant date as provided under Section 14 of the Customs Act.

After the assessment and calculation of the duty liability the importer's representative has to deposit the duty calculated with the treasury of the nominated banks, where after he can go and seek delivery of the goods from the custodians.

(a) EDI Assessment

(i) Electronic Transfer

In the EDI system of handling of the documents/declarations for taking import clearances as mentioned earlier the cargo declaration is transferred to the assessing officer in the group electronically.

(ii) Electronic Transaction Processing

The assessing officer processes the cargo declaration on screen with regard to all the parameters as given above for manual process. However in EDI system, all the calculations are done by the system itself. In addition, the system also supplies useful information for calculation of duty, for example, when a particular exemption notification is accepted, the system itself gives the extent of exemption under that notification and calculates the duty accordingly. Similarly, it automatically applies relevant rate of exchange in force while calculating. Thus no comptist is required in EDI system. If assessing officer needs any clarification from the importer, he may raise a query. The query is printed at the service center and the party replies to the query through the service center.

(iii) Examination of Goods

After assessment, a copy of the assessed bill of entry is printed in the service center. Under EDI, documents are normally examined at the time of examination of the goods. Final bill of entry is printed after the Custom Officer gives 'out of charge'.

(iv) Screen appraisal

In EDI system, in certain cases, the facility of system appraisal is available.

Under the process, the declaration of importer is taken as correct and the system itself calculates duty which is paid by the importer. In such case, no assessing officer is involved.

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(v) **Tele-inquiry**

Also, a facility of Tele-inquiry is provided in certain major Customs stations through which the status of documents field through EDI systems could be ascertained through the telephone. If any query is raised, the same may be got printed through fax in the officer is importer/exporter/ CHA.

(vi) **Random sampling**

All imported goods are required to be examined for verification of correctness of description given in the bill of entry. However, a part of the consignment is selected on random selection basis and is examined. In case the importer does not have complete information with him at the time of import, he may request for examination of the goods before assessing the duty liability or, if the Customs Appraiser/Assistant Commissioner feels the goods are required to be examined before assessment, the goods are examined prior to assessment. This is called **First Appraisement**. The importer has to request for first check examination at the time of filing the bill of entry or at data entry stage. The reason for seeking First Appraisement is also required to be given. In original copy of the bill of entry, the Customs Appraiser records the examination order and returns the bill of entry to the importer/CHA with the direction for examination, who is to take it to the import shed for examination of the goods in the shed. Shed Appraiser/Dock examiner examines the goods as per examination order and records his findings. case group has called for samples, he forwards sealed samples to e group. The importer is to bring back the said bill of entry to the sessing officer for assessing the duty. Appraiser assesses the bill of try. Assistant/Deputy Commissioner countersigns it if the value is more an Rs. 1 lakh.

The goods can also be examined subsequent to assessment d payment of duty. This is called Second Appraisement. Most of the nsignments are cleared on **second appraisement** basis. It is to be ed that whole of the consignment is not examined. Only those ckages that are selected on random selection basis are examined in shed.

) **Out of Charge**

Under the EDI system, the bill of entry, after assessment by the up or first appraisement, as the case may be, need to be presented he counter for registration for examination in the import shed. A laration for correctness of entries and genuineness of the original uments needs to be made at this stage. After registration, the B/E is sed on to the shed Appraiser for examination of the goods, Along the B/E the CHA is to present all the necessary documents. After pleting examination of the goods, the Shed Appraiser enters the ort in System and transfers first appraisement B/E to the group and

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gives 'out of charge' in case of already assessed Bs/E. Thereupon, the system prints Bill of Entry and other of clearance (in triplicate). All these copies carry the examination report, order of clearance number and name of Shed Appraiser. The two copies each of B/E and the order are to be returned to the CHA/Importer, after the Appraiser signs them. One copy of the order is attached to the Customs copy of B/E and retained by thus Shed Appraiser.

3. Green Channel facility

Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisement is done as per normal procedure except that there would be no physical examination of the goods. Only marks and number are to be checked in such cases. However, in rare cases, if there are specific doubts regarding description of quantity of the goods, the senior officers/investigation wing like SIIB may order physical examination.

4. Execution of Bonds

Wherever necessary, for availing duty free assessment or confessional assessment under different schemes and notifications, execution of end use bonds with Bank Guarantee or other surety is required to be furnished. These have to be executed in prescribed forms before the assessing Appraiser.

5. Payment of Duty

The duty can be paid in, the designated banks or through TR-6 challans. Different Custom Houses have authorized different banks for payment of duty. It is necessary to check the name of the bank and the branch before depositing the duty. Bank endorses the payment particulars in challan, which is submitted to the Customers.

6. Amendment of Bill of entry

Whenever mistakes are noticed after submission of documents, amendments to the Bill of entry is carried out with the approval of Deputy/Assistant Commissioner. The request for amendment may be submitted with the supporting documents. For example, if the amendment of container number is required, a letter from shipping agent is required. Amendment in document may be permitted after the goods have been given out of charge i.e. goods have been cleared on sufficient proof being shown to the Deputy/Assistant Commissioner.

7. Prior Entry for Bill of Entry

For faster clearance of the goods, provision has been made in section 46 of the Act, to allow filing of bill of entry prior to arrival of goods. This bill of entry is valid if vessel/aircraft carrying the goods arrive within 30 days from the date of presentation of bill of entry.

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The importer is to file 5 copies of the bill of entry and the fifth copy is called Advance Noting copy. The importer has to declare that the vessel/aircraft is due within 30 days and they have to present the bill of entry for final noting as soon as the IGM is filed. Advance noting is available to all imports except for into bond bill of entry and also during the special period.

8. Mother Vessel/Feeder vessel

Often in case of goods coming by container ships they are transferred at an intermediate ports (like Ceylon) from mother vessel to smaller vessels called feeder vessels. At the time of filing of advance noting B/E the importer does not know as to which vessel will finally bring the goods to Indian port. In such cases, the name of mother vessel may be filled in on the basis of the bill of lading. On arrival of the feeder vessel, the bill of entry may be amended to mention names of both mother vessel and feeder vessel.

9. Specialised Schemes

The import of goods is made under specialized schemes like DEEC or EOU etc. The importer in such cases is required to execute bonds with the Customs authorities for fulfillment of conditions of respective notifications. If the importer fails to fulfill the conditions, he has to pay the duty leviable on those goods. The amount of bond would be equal to the amount of duty leviable on the imported goods. The bank guarantee is also required along with the bond. However, the amount of bank guarantee depends upon the status of the importer like Super Star Trading House/Trading House etc.

10. Bill of Entry for Bond/Warehousing

A separate form of bill of entry is used for clearance of goods for warehousing. All documents are required to be attached with a Bill of Entry for home consumption are also required to be filed with bill of entry for warehousing. The bill of entry is assessed in the same manner and duty payable is determined. However, since duty is not required to be paid at the time of warehousing of the goods, the purpose of assessing the goods at this stage is to secure the duty in case the goods do not reach the warehouse. The duty is paid at the time of ex-bond clearance of goods for which an ex-bond bill of entry is filed. The rate of duty applicable to imported goods cleared from a warehouse is the rate in-force on the date on which the goods are actually removed from the warehouse.

11. Export

For clearance of export goods, the export or his agents have to undertake the following formalities:

a) Registration

The exporters have to obtain PAN based Business Identification Number (BIN) from the Directorate General of Foreign Trade prior to

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filing of shipping bill for clearance of export goods. Under the EDI System, PAN based BIN is received by the Customs System from the DGFT online. The exporters are also required to register authorized foreign exchange dealer code (through which export proceeds are expected to be realized) and open a current account in the designed bank for credit of any drawback incentive.

Whenever a new Airline, Shipping Line, steamer Agent, port or airport comes into operation, they are required to be registered into the Customs system. Whenever, electronic processing of shipping bill etc. is held up on account of non registration of these entities, the same is to be brought to the notice of Assistant/Deputy Commissioner in-charge of EDI System for registering the new entity in the system.

(b) Registration in the case of export under export promotion schemes

All the exporters intending to export under the export promotion scheme need to get their licenses/DEEC book etc. registered at the Customs Station. For such registration, original documents are required.

(c) Processing of Shipping Bill-Non-EDI

(i) Bills of Export

Under manual system, shipping bills or, as the case may be, bills of export are required to be tiled in formal as prescribed in the Shipping Bill and Bill of Export (Form) Regulation, 1991. The bills of export are being used if clearance of export goods is taken at the Land Customs Stations. Different forms of shipping bill/bill of export have been prescribed for export of duty free goods, export of dutiable goods and export under drawback etc.

(ii) Processing of Bills of Export

Shipping Bills are required to be filed along with all original documents such as invoice, AR-4, packing list etc. The assessing officer in the Export Department checks the value of the goods, classification under Drawback schedule in case of Drawback Shipping Bills, rate of duty/cess where applicable, exportability to goods under EXIM policy and other laws in force. The DEEC/DEPB Shipping bills are processed in the DEEC group. In case of DEEC Shipping bills, the assessing officer verifies that the description of the goods declared in the shipping bill and invoice match with the description of the resultant product as given in the EDDC book. If the assessing officer has any doubts regarding value, description of goods, he may call for samples of the goods from the docks. He may also call for any other information required by him for processing of shipping bill. He may assess the shipping bill after visual inspection of the sample or may send it for test and pass the shipping bill provisionally.

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(iii) Physical Examination

Once shipping bill is passed by the Export Department, the exporter or his agent presents the goods to the shed appraiser (export) in docks for examination. The shed appraiser may mark the document to a Custom officer (usually an examiner) for examining the goods. The examination is carried out under the supervision of the shed appraiser (export). If the description and other particulars of the goods are found to be a declared, the shed appraiser gives a 'let export' order, after which the exporter may contact the preventive superintendent for supervising the loading of goods on to the vessel.

(iv) Discrepancy

In case the examining staff in the docks finds some discrepancy in the goods, they may mark the shipping bill back to export department/EDDC group with their observations as well as sample of goods, if needed. The export department reconsiders the case and decide whether export can be allowed, or amendment in description, value etc. is required before export and whether any other action is required to be taken under the Customs Act, 1962 for mis-declaration of description of value etc.

(d) Processing of Shipping Bill-EDI

Under EDI System, declarations in prescribed format are to be filed through the Service Centers of Customs. A checklist is generated for verification of data by the exporter/CHA. After verification, the data is submitted to the System by the Service Center operator and the System generates a Shipping Bill Number, which is endorsed on the printed checklist and returned to the exporter/CHA. For export items which are subject to export cess, the TR-6 challans for cess is printed and given by the Service Center to the exporter/CHA immediately after submission of shipping bill. The cess can be paid on the strength of the challan at the designated bank. No copy of shipping bill is made available to exporter/CHA at this stage.

(e) Octroi procedure, Quota Allocation and other certification for Export Goods

The quota allocation label is required to be pasted on the export invoice. The allocation number of AEPC is to be entered in the system at the time of shipping bill entry. The quota certification of export invoice needs to be submitted to Customs along-with other original documents at the time of examination of the export cargo. For determining the validity date of the quota, the relevant date needs to be the date on which the full consignment is presented to the Customs for examination and duty recorded in the Computer System. In EDI System at Delhi Air Cargo, the quota information is automatically verified from the AEPC/EXPROCIL system.

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Since the shipping bill is generated only after the 'let export order' is given by Customs, the exporter may make use of export invoice or such other document as required by the Octroi authorities for the purpose of Octroi exemption.

(f) Arrival of Goods at Docks

The goods brought for the purpose of examination and subsequent 'let export' is allow entry to the Dock on the strength of the checklist and other declarations filed by the exporter in the Service Center. The Port authorities have to endorse the quantity of goods actually received on the reverse of the check list.

(g) System Appraisal of Shipping Bills

In many cases the Shipping Bills is processed by the system on the basis of declarations made by the exporters without any human intervention. In other cases where the Customs Officer processes the Shipping Bill on screen, he may call for the samples, if required for confirming the declared value, or for checking classification under the Drawback Schedule. He may also give any special instructions for examination of goods, if felt necessary.

(h) Status of Shipping Bill

Te exporter/CHA can check up with the query counter at Service Centre

Where the Shipping Bill submitted by them in the system been cleared or not, before the goods are brought into the Docks for examination and export. In case any query is raised, the same is required to be replied through the service center or in case of CHAs having EDI connectivity through their respective terminals. The Customs officer may pass the Shipping Bill after all the queries have been satisfactorily replied to.

(i) Customs Examination of Export Cargo

After the receipt of the goods in the dock, the exporter/CHA may contact the Customs Officer designated for the purpose present the check list with the endorsement of Port Authority and other declarations as aforesaid along with all original documents such as, Invoice and Packing list AR-4, etc. Customs Officer may verify the quantity of the goods actually received and enter into the system and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Dock Appraiser of the Dock who may assign a Customs Officer for the examination and intimate the officers name and the packages to be examined, if any, on the check list and return into the exporter of his agent.

The Customs Officers may inspect/examine the shipment along with the Dock Appraiser. The Customs Officer enters the examination report in the system. He then makes the Electronic Bill along with all original documents and, check list to the Dock Appraiser. If the Dock

Appraiser is satisfied that the particulars entered in the system conform to the description given in the original documents and as seen in the physical examination, he may proceed to allow "let export" for the shipment and inform the exporter or his agent.

(j) Variation Between the Declaration & Physical Examination

The checklist and the declaration along with all original document is retained by the Appraiser concerned. In case of any variation between the declaration in the Shipping Bill and physical documents/examination report the Appraiser may mark the Electronic Shipping Bill to the Assistant Commissioner/Deputy Commissioner of Customs (Exports). He may also forward the physical documents to Assistant Commissioner/Deputy Commissioner of Customs (Exports) and instruct the exporter or his agent to meet the Assistant Commissioner/Deputy Commissioner of Customs (Exports) for settlement of dispute. In case the exporter agrees with the views of the Department, the Shipping Bill needs to be processed accordingly. Where, however, the exporter disputes the view of the Department principles of natural justice is required to be followed before finalisation of the issue.

(k) Stuffing/loading of Goods in Containers

The exporter or his agent should hand over the exporter copy of the shipping bill duly signed by the Appraiser permitting 'Let Export" to the steamer agent who may then approach the proper officer (Preventive Officer) for allowing the shipment. In case of : container cargo the stuffing of container of Dock is done under Preventive Supervision. Loading of both containerized and bulk cargo is done under Preventive Supervision. The Customs Preventive Superintendent (Docks) may enter it the particulars of packages actually stuffed in to the container, the bottle seal Number particulars of loading of cargo container on board into the system and endorse these details on the exporter copy of the shipping bill presented to him by the steamer agent. If there is a difference in the quantity/number of packages stuffed in the container/goods loaded on vessel the Superintendent (Docks) may put a remark on the shipping bill in the system and that shipping bill requires amendment or changed quantity. Such shipping, bill also may not be taken up for the purpose of sanction of Drawback/DEEC logging, till the shipping bill is suitable amended for the changed quantity. The Customs Preventive Officer supervising the loading of container and general cargo in to the vessel may give "Shipped on Board" endorsement on exporter copy of the shipping bill.

(l) Drawal of Samples

Where the Appraiser Dock (export) orders for samples to be drawn; and tested, the Customs Officer may proceed to draw two samples from the I consignment and enter the particulars thereof along

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with details of the testing agency in the ICSE/E system. There is no separate register for recording dates of samples drawn. There copies of the test memo are prepared by the Customs Officer and are signed by the Customs Officer and Appraising Officer on behalf of Customs and the exporter or his agent. The disposal of the three copies of the test memo is as follows:

(i) Original to be sent along with the sample to the test agency

(ii) Duplicate Customs copy to be retained with the 2nd sample

(iii) Triplicate Exporter's copy.

The Assistant Commissioner/Deputy Commissioner if he considers necessary, may also order for sample to be drawn for purpose other than testing such as visual inspection and verification of description, market value inquiry, etc.

(m) Amendments

Any correction/amendments in the check list generated after filling, of declaration can be made at the service center, provided, the documents have not yet been subki9tted in the system and the shipping bill number has not been generated. Where corrections are required to be made after the generation of the shipping bill No. of after the goods have been brought into the Export Dock, the amendments is carried out in the following manners :

(i) If the goods, have not yet been allowed "let export" amendments may be permitted by the Assistant Commissioner (Exports).

(ii) Where the "Let Export" order has already been given, amendments may be permitted only by the Additional/Joint Commissioner, Custom House, in charge of sections after the permission for amendments has been granted, the Assistant Commissioner/Deputy Commissioner (Export) may approve the amendment on the system on behalf of the Additional/Joint Commissioner. Where the print out of the Shipping Bills has already been generated, the exporter may first surrender all copies of the shipping bill to the Dock Appraiser for cancellation before amendment is approved on the system.

(n) Export of goods Under Claim for Drawback

After actual export of the goods, the officers of Drawback Branch on first come first served basis process the Drawback claim through EDI system. There is no need for filing separate drawback claims. The status of the shipping bills and sanction of DBK claim can be ascertained from the query counter set up at the center. Agent/Shopping Line may transfer electronically the EGM to the Customs EDI system so that the physical export of the goods is confirmed, to enable the Customs to sanction the drawback claims.

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(o) **Generation of Shipping Bills**

After the "let export" order is given on the system by the appraiser: the Shipping Bill is generated by the system in two copies i.e. one Customs copy, one exporter's copy (E.P. copy is generated after submission of EGM). After obtaining the print out the appraiser obtains the signatures of the Customs Officer on the examination report and the representative of the CHA on both copies of the shipping bill and examination report.

The Appraiser thereafter signs & stamps both the copies of the shipping bill at the specified place.

The Appraiser also signs and stamps the original & duplicate copy 1 of SDF. Customs copy of shipping bill and original copy of the SDF is retained along with the original declarations by the Appraiser and forwarded to Export Department of the Custom House. He may returns the exporter copy and the second copy of the ADF to the exporter or his agent.

As regards the AEPC quota and other certifications, these are retained along with the shipping bill in the dock after the shipping bill is generated by the system At the time of examination, apart from checking that the goods are covered by the quota certifications, the details of the quota entered into the system needs to be checked.

p) **Export General Manifest**

All the shipping lines/agents need to furnish the Export General Manifests, Shipping Bull wise, to the Customs electronically within 7 days from the date of sailing of the vessel. Apart from leading the EGM electronically the shipping lines need to continue to file manual EGMs along with the exporter copy of the shipping bills as per the present practice in the Export Department. The manual EGMs need to be entered the register at the Export Department and the Shipping lines may obtain acknowledgements indicating the date and time at which the EGMs were received by the Export Department.

The above is the general procedure for export under Systems. However special procedures exist for specified schemes, details of which may be obtained from the Public Notice/Standing Orders issued by the respective Commission rates.

6. CLEARANCE PROCEDURE FOR CARGO

In India a number of ports, airports Inland Container Depots (ICD), Container Freight Stations (CFS) having Customs clearance facilities have been developed to reduce congestion at the gateway ports/airports and to allow importers and exporters to take Customs clearance of imported and export goods at their doorsteps. Sometimes, cargo meant for third country lands at an Indian port or airport. It has to be carried to

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its actual destination. The objectives of bringing the Customs facility to door step of importing community & decongesting the gateway ports/ airports, can be achieved only if movement of imported cargo or export cargo is allowed between a port/airport and other ports/airports. ICD/ DFSs in India or a port-airport abroad.

As per the Customs Act, duty becomes payable immediately after imported goods are landed at a port or airport. To avoid payment of duty at the port of landing in cases where goods are to be carried to another port/airport or ICD/CFS or to a port/airport abroad, the Customs Act provides a facility of transshipment of cargo without payment of duty. The goods can be transshipped from one port/airport to another port/ airport/ICD/CFS either by vessel, air, rail or road or by combination of more than one such mode of transport.

The procedure for transshipment provided in section 54 of the Act is applicable for imported cargo only. In regard to export cargo cleared from a port/ACC or ICD/CFS and exported through some gateway port/airport, a similar procedure is being followed to allow carriage of Customs cleared export cargo from a port/airport/ICD/CFSs to another port/airport.

Procedure for transshipment of containerized imported cargo

A. From gateway port to another port/ICD/CFS in India.

The imported cargo unloaded at a port is allowed to be transshipped to another port/ICD/CFS or a port abroad, if the cargo is mentioned in the import manifest for such transshipment. The transshipment procedure of imported cargo is governed by the provisions of section 54 of the Customs Act and the Goods Imported (Conditions of Transshipment) Regulations, 1995. Broadly, the transshipment procedure is as follows:

(i) Transshipment Permit

A 'transshipment' is the permission granted by the Customs, at the port/airport of unloading of imported goods, to shipping agents for carriage of goods to another port/airport/ICD/CFS in India. The shipping agent submits an application along with transshipment forms (5 copies), sub-manifest and a copy of IGM to the Customs. The Customs scrutinizes the details furnished by the shipping agents in the application for transshipment. I case, the documents are in order and there is no alert notice against the shipping agent, permission for transshipment is granted by the Customs.

(ii) Execution of Bond and Bank Guarantee

To ensure that imported cargo, on which duty has not been paid are not pilfered en-route to another port/airport/ICD/CFS and reach there safely, a bond with bank guarantee (@ 15% of bond value) is executed by the carrier engaged for the transshipment of the goods.

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The carriers in public sector i.e. CON COR and CWC are exempted from the requirement of bank guarantee for transshipment of goods. The terms of the bond is that if the carrier produces a certificate from Customs of the destination port/airport/ICD/CFS for safe arrival of goods there, the bond stands discharged. In case such certificate is not produced within 30 days or within such extended period as the proper officer of Customs may allow, an amount equal to the value, or as the case may be, the market price of the imported goods is forfeited.

Bond Value

The bond value should be equal to the value of the goods. However, considering the difficulties of shipping agents in producing documents for determination value of the goods sought to be transshipped, the bond value is determined on the basis of national value of the goods, which is an average value of cargo per container transshipped in the past.

Mother Bonds

To avoid multiplicity of bonds, the carriers are allowed to execute mother bonds instead of individual bonds. The mother bonds are like running bonds. The value of mother bond cab be arrived on the basis of the average number of containers carried per trip, the average time taken for submission of proof of safe landing of containers at the destination ICDs/CFSs, frequency of such transshipment as well as notional value of cargo per container. As mother bond is running bond, its amount may be high. If a running bank guarantee @ 15% of total bond amount is taken, it may block huge sum of money. To avoid blockage of money of carriers, an option has been given to them to furnish either a running bank guarantee or individual bank guarantees for each transshipment. Individual bank guarantee for each transshipment is released as soon as the landing certificates from destination Customs are produced.

The bond or, as the case may be, mother bond and bank guarantee are debited at the time of transshipment of import/export containers at the port of origin, and the same is credited on receipt of proof of safe landing of containers at the port/ICD/CFS of destination.

iii) Execution of Bond for Re-export of Containers.

As the containers themselves are liable to duty, Customs duty exemption is provided which, inter-alia, facilities its being taken out of the port without duty payment subject to execution of bond. The shipping agents are required to file this bond with the container cell of the Custom house, binding themselves to re-export containers within six months of their import into India. The Deputy/Assistant Commissioner of Customs may extend the period of six months.

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(iv) Sealing of Containers

After issuance of transshipment permit and execution of bonds as mentioned above, containers are sealed with 'one time bottle seal' by the Customs. In cae, containers are already sealed with 'one time bottle seal' by the shipping agents, containers are not required to be sealed again by the Customs. In such cases, shipping agents are required to inform the serial number of seals to Customs, which is just verified by the Customs.

(v) Carriage of Containers

After sealing and/or checking of seals by Customs, containers are moved from the gateway port and carried by the shipping agents to destination port/ICD/CTS by vessels, rail or toad.

(a) Carriage by Rail

Presently, only CONCER, a Public Sector Undertaking (PSU) under the Ministry of Railways, undertakes rail movement. The CONCOR, being a PSU, is exempt from execution of bank guarantee for transshipment. Forever, a bond is required to be executed by them. After completing all the above said formalities, containers are allowed to be loaded on wagons under the supervision of Customs. The preventive officer on all copies of 'transshipment permit' endorses the fact of such loading of the containers and one copy of the permit is given to the steamer agent. One copy is retained for record, one copy accompanies the container and the fourth copy is handed over in a sealed cover to the carrier i.e. CONCOR. The carrier has to hand over the sealed cover to the Customs authorities at the destination.

(b) Carriage by Vessels

The CBSC allows carriage of imported container from gateway port to another port by vessels. For transshipment through a vessel, procedure as explained above, i.e. issue of transshipment permit, execution of bond, sealing of containers etc., needs to be followed. The formalities required to be followed for transshipment through vessels are similar to those followed for transshipment by rail.

To optimize the capacity utilization of vessels, carriers have been allowed to carry domestic cargo along with the transshipment containers. However, to guard against the possibility of replacement of transshipment goods with domestic containerized cargo, some safeguards have been prescribed. All the transshipment containers as well as domestic containers are required to be sealed by 'one time bottle seal' at the port of loading. The domestic containers are required to be suitably painted with bold letters 'for costal carriage only' for their identification. Further, carriers are required to file a manifest of domestic containers.

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(c) **Carriage by Road**

The containers are also allowed to be carried from the gateway ports to ICDs/CFSs by road. Many custodians of ICDs/CFSs, particularly those, which are not connected by rail, carry the container by road. The formalities to be followed are similar to those followed for transshipment by rail.

vi) **Formalities at the Destination**

At the destination, carrier is required to present the sealed cover container a copy of transshipment permit to Customs. The Customs checks the particular of containers, seals etc. with reference to transshipment permit. The carrier is required to obtain a certificate regarding landing of container from the Customers.

In case, the seals are found to be broken at the time of examination of containers by the Customers, a survey of contents of the containers is conducted in presence of Customs officer, carrier, importer or his representative and representative of insurance company. Shortage if any, noticed is recorded and is signed by all those present. The carriers are required to pay the duty for pilferage in terms of the condition of bond executed by them with the Customs at the port of loading. This is apart from other action, which can be taken under section 16 of the Customs Act, 1962.

(vii) Submission of Leading Certificate to Customs at the Originating Port

The carriers have to obtain the landing certificates of containers from the Customs at the destination port/ICD/CFS and submit the same to the Customs at the originating port. The customs reconciles its record and closes IGMs on the basis of the goods.

After safe landing of containers at the destination port/ICD/CSF, the importers or their authorised agents are required to follow all Customs formalities such as filling of bill of entry, assessment, examination of goods etc., for clearance of the goods.

B. **From Gateway Port to a Port Abroad**

For transshipment of containers from a port in India to a port abroad, shipping agents have to file transshipment application along with relevant documents to Customs. The Customs scrutinizes the application and if these are found to be in order, permission to transship the cargo is granted. In such cases, execution of bond or bank guarantee is not required. After issuance of transshipment permit, goods are allowed to be loaded on to the ship under the Customs supervision. The preventive officer supervising the loading is to Acknowledge Loading of such cargo. The record is reconciled on the basis of endorsement of the preventive officer and copy of EGM showing details of such transshipment.

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C. From Gateway Port to EPZ and SEZ

The procedure for transshipment of cargo from gateway port to Export Processing Zones (EPZs) and Special Economic Zones (SEZs) is similar to what has been stated above for transshipment of cargo from port to another port/ICD/CFS above. For transshipment to EPZs and SEZs, a bond with bank gurantee is required to be furnished. The Customs in EPZ/SEZ give suitable landing certificate after checking, which is to be submitted to Customs at the originating port.

Movement of export cargo from port/ICD/CFS to gateway port

The export cargo, after its clearance at a port/ICD/CFS, may be carried in sealed containers to the gateway port for export. Boardly, the procedure in this regard is as follows:

4.7 WAREHOUSING

Section 2(43) defines a 'warehouse as a Public (Bonded warehouse appointed under section 57 or private (Bonded warehouse licensed under section 58 of Customs Act. These warehouse are meant for storage of dutiable goods without payment of duty.

The Customs Act makes a clear distinction below public warehouse and private warehouse. The public warehouse is managed by Central Govt. of a Government body which is normally the Central Warehousing Corporation. Normally such warehouses are kept under double lock one that of Warehouse keeper and one that of customs department. In case of a private warehouse, the warehouse keeper will have to pay for and acquire the Service of a Custom officer to be posted and stationed in the private warehouse.

Removal Of Goods From Warehouse

Warehoused Good can be Normally Removed for

(a) transfer to another warehouse (Section 67)

(b) for home consumption (Section 68)

(c) for export (Section 69)

Section 67, 68 and 69 are explained as follows :

Removal of goods from one warehouse to another (section 67): The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Warehoused Goods (Removal) Regulations, 1963 : The Central Board of Revenue has made regulations for ensuring the conditions envisaged in the main provision. The regulations are :

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1. **Conditions for transport of warehoused goods in the same town:** When goods are to be removed from one warehouse to another in the same town the proper officer may require that the transport of the goods between the two warehouses to be under the supervision of an officer of customs, the owner meeting the cost of supervision.

2. **Conditions for transport of warehoused goods to another town :** Where the goods are to be removed from the warehouse to another in a different town, the proper officer may require the person requesting removal to execute bond in a sum equal to the amount of import duty leviable on such goods and in such form and manner as the proper officer deems fit.

3. **Terms of bond:** The terms of the bond shall be that if the person executing the bond produces to the proper officer, within three months or within such extended period as the officer may allow a certificate issued by the proper officer at the place of destination the goods have arrived at the place, the bond shall stand discharged otherwise amount equal to the import duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited.

4. **Surety or Security:** The proper officer may require that the bond shall be with surety or security of both.

CLEARANCE OF WAREHOUSED GOODS FOR HOME CONSUMPTION [SECTION 68]

The importer of any warehoused goods may clear them for home consumption if :

(a) a bill of entry for home consumption in respect of such goods has been presented in prescribed form.

(b) The import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) The officer has made an order for clearance of such goods for home consumption.

Provide that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made relinquish has title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment he shall not be liable to pay duty.

Procedure for clearance of Warehoused Goods for the Consumption : The process of clearance of warehoused goods for home consumption involves the following steps :

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(1) The document of clearance of such warehoused goods is called ex-bond bill of entry.

(2) It is filed in triplicate with the customs authorities at the place where the warehouse is situated.

(3) The particulars of ex-bond bill of entry, like bill of entry number, quantity and description of warehouse goods sought to be cleared, its quantity and copy of into bond bill of entry.

(1) The bill of entry is then assessed having regard to the provisions of Section 15(1)b i.e. the rate of duty and tariff valuation in force on the date of actual removal of the goods from the warehouse.

(2) In case any abatement is claimed under section 22(1)©, the same is also examined.

(3) In the case of import licence regulations and other prohibitions on imports, the common sense law is that they are relevant to the date of actual importation into India. Subsequent changes in the import policy would not NORMALLY affect the warehoused goods. However the details of such changes if any would be applicable to the subject goods as a matter of abundant precaution.

(4) After assessment of the bill of entry namely; determination of the amount of duty, the duty and interest if any payable thereon, would be paid to the customs.

(5) The goods would then be subjected to physical examination under section 17 to ensure that the goods proposed to be removed are in conformity with the declaration made in the ex-bond bill of entry particularly in respect of description of goods tariff classification quantity and value.

(6) The owner of the goods would be required to get the amount of warehouse rent and other charges determined by the warehouse keeper and make necessary payment.

(7) The proper officer of customs would thereupon make the permitted clearance for home consumption order. The bill of entry copy with this order will be presented to the warehouse keeper.

(8) The warehouse keeper would make suitable entries in the stock card, warehouse register into bond bill of entry wise file.

(9) The fact of actual removal of the warehoused goods will be communicated to the customs authorities concerned.

Clearance of Warehoused Goods for Exportation [Section 69] :

(1) Any warehoused goods may be exported to a place outside India without payment of import duty if.

(a) a shipping bill or bill of export has been presented in respect of such goods in the prescribed form;

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(b) the export duties, panalities, rent and other charges payable in respect of such goods have been paid; and

(c) an order of clearance of such goods for exportation has been made by the proper officer

(2) Not withstanding anything contained in sub-section (1), if the Central Government is of the opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification, in the Official Gazette direct that such goods shall not be exported to any place outside without payment of duty or may be allowed to be so exported to such restrictions and conditions as may be specified in the notification.

The method of disposal of the warehoused goods is normally adopted in the case of ship stores, which are meant to be exported only, goods meant for re-export and goods supplied to duty free shops and the like.

The provisions for removal under section 69 are :

(1) Warehoused goods may be exported out of India

(2) No Import duty will be levied on them if the procedure prescribed is followed.

(3) A shipping bill of export in the prescribed form should be presented in respect of the warehoused goods sought to be cleared for export.

(4) The appropriate export duty including cess leviable on such goods on export should be assessed and paid.

(5) The import dues on the goods, namely penalties, warehouse rent, interest and other warehousing charges should be paid, only payment of import duty otherwise leviable on such warehoused goods is waived.

(6) The proper officer of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled. After satisfying himself about this aspect as well as payment of all duties and other charges payable he will permit removal of the goods from the bonded warehouse for export.

(7) In case Government of India is of the opinion that goods of any specified description are likely to be smuggled back into India, it may

(a) demand payment of import duty payable otherwise, on the warehoused goods :

(b) Prescribe conditions to be fulfilled including execution of an Indemnity bond undertaking to produce proof of export or pay the import duty otherwise leviable.

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(8) The Govt. of India, by notification prescribes the circumstances under which such conditions can be imposed.

Where the imported goods are only to be cleared on payment of duty for some consumption and cannot be exported.

Goods not to be taken out of warehouse except as provided by the Act (Section 71) : No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation, or for removal to another warehouse, or as otherwise provided by the Act.

Goods improperly removed from warehouse etc. (Section 72) :

(1) In any of the following cases, that is to say –

(b) where any warehoused goods are removed from a warehouse in contravention of section 71;

(c) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in the warehouse;

(d) where any warehoused goods have been taken under section 64 as samples without payment of duty;

(e) where any goods in respect of which a bond has been executed under section 59, and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer, the proper officer may demand and the owner of such goods shall forthwith pay, the full amount duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under sub-section (1) the proper officer, may without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may select.

4.8 PROHIBITION ON IMPROPER REMOVAL AND PENALITY

Three methods of disposal have been prescribed for warehoused goods under section 67, 68 and 69. The owner of the goods can take samples with or without payment of import duty (Section 64). These are removals authorized by law and are termed as proper removals. It follows that warehoused goods cannot be removed otherwise. Section 71 provides for such a prohibition or restriction.

Wherever warehoused goods are removed in contravention of this prohibition, action is liable to be taken against the goods and the

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persons concerned. The action against the goods would naturally consist of levy of the import duty leviable on the goods and warehouse rent, warehouse charges and interest leviable in respect of such goods. These amounts will have to be collected from the owner of the goods. The owner of the goods would be also liable for a personal penally for such an illicit action of improper removal. The same penal consequences will apply mutates mutants in respect of

(a) warehoused goods not removed from the warehouse at the expiry of the warehousing period prescribed under section 61, and

(b) warehoused good secured under section 59 warehousing bond, not duly accounted for by removal either for home consumption or exportation or transfer to another warehouse or otherwise.

Section 72(1) provides for such a penal action. Provision has been made under section 72(2) to collect such penal amounts coercively, if the owner of the warehoused goods does not pay up the amount voluntarily. In such a situation the proper officer may cause, such portion of the warehoused goods belonging to the defaulter, to be detained and sold to realize the amounts due after giving a notice.

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UNIT V CENTRAL SALES TAX ACT IMPORTANT TERMS AND DEFINITIONS

Structure

5.0 Objectives
5.1 Introduction
5.2 Central Sales Tax (CST)
5.3. Inter State Sales
5.4 Computation & Levy of Liability to Tax
5.5 Important Points Regarding Liability to Tax
5.6 Levy and Computation of Tax
5.7 Rate of Tax
5.8 Computation of Sales Tax

5.0 OBJECTIVES

After going through this lession you will be able:

- Understand the Central Sales Tax
- Understand the Inter State Sales
- Know the important points regarding Liability to tax

5.1 INTRODUCTION

Sales Tax has a major role in the economic environment of the States. It can also be said that Sales tax is directly connected with the spending by the State on social development and security. In India, when Provincial Autonomy was introduced in the year 1937, the State Governments had to think of new avenues to supplement their deficit budgets. The situation came when Prohibition was introduced in Madras in the year 1939. In order to save the Government from the adverse fiscal effects of Prohibitions, Sales Tax was introduced.

Under the Constitution, taxation of sale and purchase of goods is a State subject except sale or purchase of goods in the course of inter-state trade. In respect of inter-state sale or purchase of goods the Sale Tax is levied under provisions of CST, 1956 and the entire proceeds are retained by the State.

Sales Tax

It is simply stated that "a sales-tax is a tax upon goods which operates by choosing the act of sale as the criterion for attracting liability

to pay the tax, sale being a central part of the concept." The sales-tax is levied at the time when sale or purchase of goods takes place. It is an indirect tax. Direct taxes are those where the 'formal' and 'effective' incidence is generally on the person who pays the tax e.g., Income-tax, Wealth tax, Estate Duty, etc. Indirect taxes are those in which 'formal' incidence is on one person and 'effective' incidence on the other. In Sales-Tax the formal incidence is on the dealer and effective incidence is on the consumer.

Kinds of Sales Tax

Sales tax is of following types:

1. Selective sale tax. This type of sales-tax is levied on some selective goods clearly described in a separate schedule.
2. General sales tax. This type of tax is levied on all the goods. The goods on which tax is no be levied are clearly described in a separate schedule.
3. Single point tax. Under this, tax is charged only once-either when the producer sells these goods or when the buyer purchases these goods. Tax is charged at the time when the goods are sold by the producer for the first time.
4. Multiple point tax. In this type tax is charged every time the goods are sold. It means when a commodity reaches the consumer from producer, tax has been levied many a times on the same commodity. For example: Value Added Tax (VAT). Generally the rate of this type of tax is lower as compared to single point tax.

Merits and Demerits of Single point Tax

When producers are less in number and are scattered, it will be suitable to charge single point tax. The utility of this is that the consumer has to suffer less burden in spite of the fact that the rate of tax is higher whereas the multiple point tax creates more impact for a consumer as the tax is levied many a times though at lower rate.

Single point Tax and Mulitple Point Tax Distinguished

i) On the basis of charge. The tax is charged only once in case of single point tax whereas it is levied many times during the period goods take to reach final consumer in the multiple point tax.

ii) On the basis of rate of tax. The rate of tax is higher in case of single point tax as compared to lower rate in multiple point tax.

iii) On the basis of incidence of tax. In spite of the higher rate of tax the incidence of tax is lower in single point tax as against the incidence of tax in case of multiple point tax where the rate of tax is very low.

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(iv) On the basis of tax evasion. Single point tax gives more encouragement to evade tax as rate of tax is higher whereas the low rate of tax does not provide such encouragement as in multiple point system.

(v) On the basis of psychological effect. Single point tax has a psychological effect on consumer due to high rate of tax whereas there is no such bad impact of multiple point tax.

5.2 CENTRAL SALES TAX (CST)

The Central Sales Tax Act, 1956 was enacted by Parliament in exercise of authority conferred upon in under Article 286 and Article 269(3) of the Constitution.

CST is a tax levied by Union Government but administered and collected by State Governments. The tax is collected in the State from which movement of goods starts.

State Governments has been authorized to collect tax revenue from sales tax in the basic scheme of taxation in India. Though States were expected to collect and retain sales tax, it was provided in our Constitution that tax on inter-state sales will be levied only by law of Parliament. Levy of tax on sale within a state (Intra State Sale) is within the authority of State Government, while levy of tax on sale outside the state (Inter-State Sale) is within the authority of Central Government.

Preamble and Objectives

The preamble to the central Sales Tax Act reads :

An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance of inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

The main objectives of Central Sales Tax Act, 1956 are as under

(1) To formulate basis for determining when a sale or purchase of goods takes place in the course of inter-State trade or outside State or in the course of import into and export from India.

(2) To formulate rules for levy of tax, exemptions, collection of tax, penal provisions, offences and penalities etc.

(3) To specify the restrictions and conditions subject to which State laws impose taxes on the sale or purchase of goods of special importance.

(4) To fix liabilities of persons for payment of Sales tax.

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Scheme of Act

The whole Act is divided into five chapters :

Chapter First-gives definitions for the purpose of the Act.

Chapter Second-Indicates the circumstances as to when a sale is inside the state, in course of inter-State trade or in course of export or import.

Chapter Third-deals with liability to tax, rates of tax, determination of turnover, levy & collection of tax and penalties, collection of tax and other related matters.

Chapter Four-talks about goods of special importance in inter-state trade or commerce.

Chapter Five-explains the rules regarding liability of companies in liquidation and the liabilities of directors etc.

Chapter Six-(inserted w.e.f.11.9.2001)-Sections 19 to 26 contain provisions regarding constitution of Central Sales Tax Appellate Authority working and powers conferred on it.

Features of Central Sales Tax

The salient features of the CST Act are as under :-

(1) **Scope :** The CST extends to the whole of India.

(2) **Levied by Central Government:** The CST is levied by the Central Government but it is collected by the State Government from where the goods have been sold. In case of Union Territories, the tax collected is deposited in the Consolidate Fund of India.

(3) **No exemption Limit :** Central Sales Tax is levied on the turnover made in course of inter- state sale. There is no exemption limit of turnover, as it is normally available in case of State Sales tax.

(4) **Administered by State Government :** The Sales Tax authorities of State Government are authorities for the purposes of CST. Although the Central Sales tax rules have been framed by the Central Government but State governments are allowed to adopt such rules as they deem fit. The rules regarding return, payment of tax, appeal etc. are not given CST and as such the rules followed by States in respect to their Sales Tax Laws, are followed for purpose of CST Act.

(5) **Concessional Rates:** Concessional rate of CST is applicable if (a) declaration in form C is issued by purchaser who is a registered dealer; or (b) Certificate in from D is issued by Government if buyer is Government.

(6) **Sales are Exempt :** Certain sales are exempt under CST Act if (a) Sale is within the State as it subject matter of General Sales Tax of State. (b) Subsequent Sale during Inter State movement

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by transfer of documents to registered dealer/Government. (c) Sales or purchase of goods in the course of import into or export out of territory of India.

(7) **Categories of Goods :** CST Act has divided Goods into two categories: (a) Declared Goods or goods of special importance: States cannot levy tax on these 'declared goods' more than 4% and not more than once. (b) Other goods : These goods are subject to CST @ 10% or at the rate applicable to such goods inside the appropriate state, whichever is higher.

5.3 CONSTITUTIONAL BACKGROUND

Article 286 of the Constitution provides that no State law could tax a sale taking place outside the State or a sale in the course of import of goods into or export of goods out of the territory of India. A similar ban was put on taxation of inter-State sale or purchase, except as authorized by Law of Parliament. Further, no law of a State Legislature could validly impose a tax on sale or purchase of goods declared by Law of Parliament to be essential for the life of the community without the assent by the President of India.

The Sixth Amendment to the Constitution in 1956 radically amended Article 286, separating the power to tax inter-State sales from the State List and putting it in the Union List. Article 269(1) was also amended to assign to the State the powers to collect taxes on the sale or purchase of goods other than newspapers where such sale or purchase took place in the course of inter-State trade or commerce.

Before the Constitutional provision, each State subjected the same transactions to tax on the doctrine of nexus. As per doctrine of nexus, there must be territorial connection between the person and the State charging the tax. A sale of goods consists of various elements : goods, agreement to sell, transfer of property in the goods, the consideration for the sale and delivery of goods. Each of the above elements is essential for a sale transaction, though sale is completed when the buyer becomes the owner of the goods. These elements in a concluded sale may be distributed over more than one State. Each State relying on one or more such elements as having a territorial nexus brought the sale to tax, with the result that the same transaction suffers tax in different States with the concomitant hardship to trade and consumers in the same or different States.

5.4 APPLICABILITY OF CST ACT

CST, 1956 is an enactment by parliament though its implementation is left to state government. Central Sales Tax is applicable only when following conditions are satisfied :

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(1) There must be a dealer who is registered under CST Act.

(2) There must be a sale which should be in the course of inter state trade or commerce.

(3) Sale must be of goods as defined under CST Act.

If the above stated conditions are satisfied, then,

(a) CST is levied at the specified rate on the turnover of goods.

(b) Turnover will be determined on the basis of sales price.

(c) CST will be deposited by the registered dealer to the appropriate State in which he is registered.

(d) The registered dealer will subit CST return to notified authority of appropriate state with in specified time and in the prescribed form.

(e) The specified authority will assess the liability of registered dealer and order refund, interest or penalty accordingly.

Definitions

1. Appropriate State [Sec. 2(a)] "appropriate state" means :

(i) in relation to a dealer who has none or more places of business situated in the same State, that State;

(ii) in relation to a dealer who has places of business situated in different State, every such State with respect to the place or places of business situated within its territory;

In respect of dealer having one or more places of business in the same state the appropriate state would be that state only e.g. Mr. X has seven places of business in Punjab, then appropriate state would be Punjab. In respect of a dealer with places of business spread over in several State the registering authority will be the one of the state in which such Principal place of business is situated.

2. Business [Sec.2 (aa)] "business" includes :

(i) any trade, commerce or manufacture, or any adventurer concern in the nature of trade, commerce or manufacture, whether or not the same is carried on with a motive to make gain or profit and whether or not any gain or profit accrues ; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

The meaning of technical words used in the definition are given below :

1. Trade primarily means continuous exchange of goods for goods or exchange of goods for money; carried on with a profit motive.

2. Commerce includes not only the purchase, sale and exchange of commodities, but also instrumentalities and agencies by which it

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is carried on, and the transportation of persons as well as goods, both by land and sea.

3. Adventure is a business enterprise usually one attended by speculation. Whether a business is adventure or not depends upon the facts of each case.

4. Concern in nature of trade The business may be running with profit motive or service motive. It may or may not have incurred any profit.If any activity or work is not directly associated with business i.e. incidental or ancillary to business is even included within definition of business.

3. Dealer [Sec 2 (b)]

"Dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

(i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(ii) a factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal whether disclosed or not; and

(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

The definition of dealer is significant as he is the person who is liable to collect the tax in respect of interstate sales. A person who is not a dealer within the meaning can escape his liability to tax except in special circumstances.

The definition states :

(a) a person

(b) who carries on business

(c) whether regularly or otherwise

(d) of buying, selling, supplying or distributing goods

(e) directly or indirectly,

(f) for cash or for deferred payment or for commission, remuneration or other valuable consideration

(g) whether having profit motive or not is a dealer

The definition of dealer is very brad. It includes traders, agents and auctioneers. They may be selling goods on cash or credit. They may have any form of organisatio9n i.e. Sole trader, Firm, Hindu undivided family, Company, Co-operative society, Association of persons or otherwise.

The following are not considered as dealer under the definition :

(i) Agent securing orders only

(ii) Kachha Adatiya (an agent who holds himself ready and willing to contract for his Principal but without responsibility for non-performance).

(iii) Students Hostels

(iv) Advertising agents

(v) Educational Societies

(vi) Doctors dispensing medicines.

Deemed Dealer

The term "dealer" includes deemed dealer also. Every person who buys or sells goods on behalf of a dealer residing outside the State is termed as a deemed dealer. A Government buying or selling goods whether in the course of business or not is also termed as a deemed dealer.

Registered Dealer

Every dealer liable to pay tax has to register itself in the appropriate State. Section 2(f) defines 'Registered Dealer' as a dealer who is registered under section 7 for the purpose of inter-State sales.

Scope of Dealer

Following have been held as Dealers :

i) A physician running a clinic and pharmacy – Chora Pharmacy & Clinic v. the State Bihar (1973), Patna.

ii) A Co-operative Society selling refreshment etc. to its members and non members – Income Tax Co-operative Supply Ltd. V. the Commissioner of Sales Tax, Delhi (1980) Delhi.

iii) Food Corporation of India having profit motive and hence a dealer.

Following have been held not to be Dealer :

i) A doctor selling medicines on his own prescription

(ii) State Government selling forest produce annually does not carry on business so is not a dealer.

(iii) An educational institution supplying goods to its students.

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4. Declared Good [(Sec. 2(c)] :

Declared goods means goods declared under section 14 to be of special importance in inter-State trade or commerce.

The Parliament has powers to enlarge this list of goods and has also power to put restrictions and control in regard to tax on sale or purchase of declared goods within a State.

5. Goods [Sec 2 (d)]

"Goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;

Goods is defined as inclusive of "all materials, commodities and articles" but it excluded newspapers, actionable claims, stocks, shares and securities. The definition of 'Goods' in almost all state laws are similar though not identical.

Goods include

Goods include intangible or incorporeal movables. It has been held goods include lottery tickets which is only a right to participate in draw.

Air and water may be free goods but once these are made available to the customer for a cost, they will be treated as goods.

Standing trees are not 'goods' and not taxable. However, standing timber will be taxable under CST.

Sale of illegal goods like hashish, ganja are also liable to CST like income from illegal business is taxable under Income Tax Act.

It includes Computer, Software also.

It includes electricity but electricity is exempt under section 6 of CST.

6. Place of Business [Sec 2 (dd)] "place of business" includes:

(i) in any case where a dealer carries on business through an agent by (whatever name called) the place of business of such agent;

(ii) a warehouse, godown or other place where a dealer stores his goods; and

(iii) a place where a dealer keeps his books of account;

7. Sale [Sec. 2 (g)]

"Sale" with its grammatical variations and congnate expression means any transfer or property in goods by one person to another for cash or deferred payment or for any valuable consideration, and includes:

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a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract ;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments ;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable considerations ;

(v) a supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or other valuable consideration.

(vi) a supply by way or as a part of any service or in any manner whatsoever, of goods, being food or any other article of human consumption or any drink (whether or not intoxicating), where such supply or service, for cash, deferred payment or other valuable consideration,

Sale does not include a mortgage or hypothecation or a charge or pledge on goods

Section 2(g) amended by Finance Act, 2002

Finance Act, 2002 has widened the scope of term 'Sale'. It has unambiguously included transfer other than by a contract (e.g. compulsory transfer), or under a works contract, or under hire purchase or under any lease service agreement or transfer among members of an incorporated association or supply of food articles with in the meaning of sale.

Definition of "Sales" specifically excludes the term mortgage, hypothercation, pledge and charge.

Essentials of Valid Sale

The essentials of valid sales are :

(a) existence of two parties-buyer and seller who are competent to contract

(b) mutual assent between two parties

(c) general property in the goods should be transferred from seller to buyer;

(d) consideration is discharges

Transactions which are not included under Sale

The following transactions do not fall within scope of Sec 2(g) :

(1) Hypothecation, pledge charge and mortgage of property

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(2) Consignment or branch transfer.

(3) Goods given purely on bailment.

8. Sale Price [sec. 2 (h)]

"sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charges for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charges;

Calculation of Sales Price		
Invoice Price		xxx
Add Warranty charges	x	
Packing charges	x	
Fright & Insurance	x	
Dharmada	x	xx
Less cash discount	x	xxx
Excise duty	x	
Fright & insurance (optional)	x	
Indemnity/Guarantee Charges (optional)	x	xx
Sales price		xxx

Illustration

Mr. Senapati, of Bhubaneswar, purchased a Television of a particular brand and the details of purchase as shown in invoice are as under:

		Amount	
(1)	Invoice price	Rs.12,000/-	
	Less cash discount	Rs. 1,000/-	
			Rs.11,000/-
2)	Warranty charges for next 7 years		Rs. 1,000/-
(3)	Packing charges		Rs. 500/-
(4)	Freight & Insurance (part of sales price)		Rs. 1,200/-
(5)	Excise Duty @1%on Rs. 12,000 (invoice price)		Rs. 500/-

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(7)	Indemnity/Guarantee charges to indemnify any loss in transit from shop to him residence(optional)	Rs. 300/-
		Rs.14,500/-
	(+) Sales Tax @10%	Rs. 1,450/-
	Sales price	Rs.15,950/-

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Solution

	Amount (Rs)
Invoice Price	12,000
Add Warranty charges	1,000
Packing charges	500
Freight and Insurance	1,200
	14,700
Less Cash discount	
Sales Price	1,000
	========
	13,700
	========

Note :

(1) *Packing changes are charged for service rendered in packing the goods and are different from charges for packing materials. The packing charges realised by the dealer is treated as an integral part of the sales price.*

(2) *Cost of freight or delivery or the cost of installation is added, as it is not separately charged.*

(3) *Cash Discount allowed to the buyer according to the prevailing trade practice is allowed as deduction u/s 2(h).*

(4) *Excise duty paid by a dealer in respect of the goods which he sells will not be liable to the deducted from turnover.*

(5) *Indemnity/Guarantee charges. Indemnity/Guarantee charges recovered from the same buyers to incur loss during transit at buyers request do not form part of the sales price.*

9. Year [Sec. 2 (k)]

"year", in relation to a dealer, means the year applicable in relation to him under the general sales tax law of the appropriate State, and where there is no such year applicable, the financial year.

Where the dealer has maintained the books of accounts according to any particular year, say Samvat year, calender year, co-operative year, July to June etc. then in such cases the year relevant to that dealer would be the same year for the purpose of the Central Sales Tax Act also.

10. Turnover [Sec. 2 (i)]

"Turnover" used in relation to any dealer liable to tax under this Act means the aggregate of sale prices received and receivable by him

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in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the rules made there under.

Turnover means Sales expressed in rupees. In other words, it means :

Turnover = No. of units sold X Sales price per unit

11. Crossing the Customs Frontiers of India [Sec. 2 (ab)]

"crossing the customs frontier of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities

Explanation : For the purposes of this clause, "customs station" and "customs authorities", shall have the same meanings as in the Customs Act, 1962.

5.3 INTER STATE SALES

Introduction

The Central Sales Tax Act, 1956 was enacted to formulate principles for determining when as sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a state or in the course of import into or export from India. To determine when a sale or purchase of goods takes place in the course of inter-State trade or commerce is important because the central sales tax is levied only if the goods are traded between two states. Sections 3, 4 and 5 of the Act define when a sale or purchase of goods is said to take place in the course of inter-State trade or commerce, when it take place outside a State and when it takes place in the course of import. In other words the chapter states formulation of principles for determining the nature of sale under three situations :

1. When a sale or purchase of goods is said to take place in the course of inter-State trade or commerce-Section 3.
2. When a sale or purchase of goods is said to take place outside a State-Section 4.
3. When a sale or purchase is said to take place in the course of import or export-Section 5. (discussed in Third Chapter)

The powers to levy tax in case of intra-State trade or commerce are given to State government. The power to make rules and regulation regarding tax on goods outside the State and sale or purchase in course of import or export are with the Central government. A sale is inter-State sale when sale occasions movement of goods from one State to another or is by transfer of document of title during inter State movement.

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INTER-STATE SALE AND INTRA-STATE SALE

Inter-State Sale

The definition of Inter-State sale is given by different authors as under :

(1) Constitutional Laws defines, "The activities of buying and selling constitute Inter-State commerce if the contract thereof contemplate or necessarily involve the movement of goods in inter-State commerce." The decisive factor that renders making a contract an act of Inter-State commerce is that it contemplates or necessarily involves the movement of goods in inter-State commerce, and this test applies whether it buy a contract to buy or to sell."

(2) Willoughly in 'Constitution of the United States' explains the test whether agreement to purchase or to sell are to be deemed constituent part of inter-State commercial transactions is as to whether inter-State transaction of goods is necessarily involved in their execution. A mere making of contracts between two persons in different State does not constitute inter-State trade or commerce.

(3) Meaning as per Judicial pronouncements :- Venkataraman, J. in his dissenting Judgement in the case of Bengal Immunity Co. Ltd., 1955 (6) STC 446 at 583 (SC) enunciated as to what is inter-State sale. In their Lordships' opinion :

A sale could be said to be in the course of inter-State trade only f two conditions concur :

a) a sale of goods, and

b) a transport of those goods from one State to another under the contract of sale

Inless both these conditions are satisfied, there can be no sale in the ourse of inter-State trade. It is true that there is a sale, and there is also movement of goods from one state to another. But that movement has ot been under the contract of sale, there having been no sale at the me of transportation.

When is a sale or purchase of goods said to take place in the ourse of inter-State trade or commerce. (Sec. 3)

A sale or purchase of goods shall be deemed to take place in e course of inter-State trade or commerce if the sale or purchase-

) occasions the movement of goods from one State to another, or

) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Where the movement of goods commences and terminates in e same State it shall not be deemed to be a movement of goods from

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one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.Sale/Purchase which occasions the movement of goods from one state to another [Section 3 (a)]. It occurs when either of the two events takes place.

(a) There is completed sale of goods and the relevant terms and conditions of contract provide that, goods will be moved by reason of such sale e.g. If Srimant of Rourkela sells Airconditioners to Suman of Delhi and in terms of contract of sale, delivers ACs to the transport company for transporting to Delhi, such a sale would be said to have occasioned the movement of goods from the State of Orissa to another state i.e. Delhi. It will be Inter-State Sale.

(b) There is an agreement to sell between the parties in pursuance of which the goods move and on their acceptance, the price is paid and thus the sale takes place. For example Bikash is a dealer in Cuttack and enters into an agreement to jagdish in Chandigarh. In pursuance of the agreement, Bikash sends the goods from Cuttack to Chandigarh by booking the goods in name of jagdish. In such a case it is obvious that sale is preceded by the movement of the goods and the movement of the goods being in pursuance of contract which eventually merges into sale.

Sale by transfer of documents [Section 3 (b)]

Sale may be by transfer of the documents of title. A document of title has not been defined under the CST Act. However, it generally included the following :

(a) Railway recupets (RR)

(b) Lorry receipts (LR)

(c) Air way Bill (AB)

(d) Bill of Lading (BL)

Sale or purchase that is eff4ected by transfer of documents of title to goods during their movement from one state to another state is a sale in the course of inter-state trade and commerce eg. If Niranjan of Delhi sends a consignment of Tele phone sets to his Angul Branch and while these are in transit, Mr. Rao from Hyderabad approaches Niranjan's Delhi Office and buys the lorry Receipt, the sale by Niranjan to Mr. Rao is an inter state sale.

Ingredients of Inter-State Sales

The essential tests of a sale or purchase in the course or inter-State trade or commerce are :

(a) The transaction is a completed sale.

(b) There is a movement of goods from one State to another.

(c) Such movement is occasioned by the terms of the contract for sale or purchase.

(d) The sale or purchase is effected by transfer of documents of title to the goods, during the movement of such goods, i.e., before such goods reached their destination.Transaction to be a completed sale

When there is concurrence of the four elements the transaction becomes sale :

i) there must be parties competent to contract,

ii) mutual assent;

iii) a thing, the absolute or general property in which it is transferred from the seller to the buyer; and

iv) a price-consideration in money paid or payable. Having now ascertained what constitutes sale we have to apply the test to it to find out whether it is an inter state sale.

However, Supreme Court held that the sale in question where sales in the course of inter-state trade that any state Government had no jurisdiction to tax the sales under the Sales tax Law of the State. It explained as to what constitutes inter-State sale as follows :

i) a sale which occasions movement of goods from one State to another is sale in the course of inter-State trade.

ii) it is not necessary that sale must precede the inter-State movement in order that sale may be deemed to have occasioned such movement,

iii) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce. That the covenant regarding inter-State movement must be specified in the contract itself.

v) no matter in which State the property in goods passes.

Again the Supreme pointed out that certain conditions must be satisfied before a sale can be said to take place in the course of inter-state trade or commece.

) That there is an agreement to sell. Such agreement contains a stipulation, express or implied, regarding the movement of the goods from one State to another.

i) That in pursuance of the sale contract, the goods, in fact, moved from one State to another, and

ii) That ultimately a concluded sale takes place in the State where the goods are sent which must be different from the state from which the goods move.

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Important Points regarding Inter-State Trade :

1. ***Goods to Sent by Value Payable Post***

Sale by VPP to a dealer in another State is considered to be covered by Section 3 of the Act, as the goods move from one State to another as result of sale .

2. ***Sale to consumer in other State***

The sale by a dealer in one State to a consumer in another State does not change the nature of transaction. It still remains to be inter-State sale.

State of Bombay vs United Motors (India) Ltd. 1953 (4) STC 133C

3 **Mode of transport – Not material**

Supreme Court has pointed out that there is no restriction can be put on the modes of transport. Thus mode of transport is not material, the movement of goods may be by Aircraft, Railways, Motor Transport, Post, Angadia, Ships and hand carts.

4. **Sales by auction and subsequent movement of goods to other state.**

Sale by auction and subsequent movement of goods to another State may be included in inter-State trade. There was sale of scrap by auction. The goods were not ascertained and were also not in a deliverable state at the time of auction. In auction, bidders from outside the State and inside the State participated. A dealer was successful in bidding. At the time of auction only the rate was fixed and not the actual price for the goods. The goods were lying in Yard there. The successful bidder instructed the Authority to weigh the goods and then despatched the said goods. The Authority after separating the goods weighed them and despatched the goods .Transport charges were paid by the assesses. It was held that the contract of sale did not provide for the movement of goods now was the movement shows to have been occasioned in accordance with the specific terms of contract. But the facts of the case cumulatively indicated that there was a conceivable link between the contract of the sale and the movement of goods and the nexus was not otherwise explained.

5. **Distinction between movement caused by terms of contract and movement caused by necessary incident.**

There is a slight distinction between the movement of goods caused by a contract in the contract itself and the movement of goods caused as a necessary incident of the contract of sale. When the terms of contract provide such condition for transport of goods from one State to another then the matter becomes

simple, but when the contract of sale does not provide such stipulation then one has to find whether the movement of goods is caused as a necessary incident of the contract of sale. If it is so found then such transaction would be a transaction is the course of inter State Trade and commerce.

6. **Occasions the movement of goods-Meaning**

The Supreme Court explains the meaning of the words 'sale occasions the movement'. It is apparent from Section 2 (a) that they mean 'moved by reason of the sale'. The question then comes, when does a sale occasion the movement of goods sold. It seems clear to us that the sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sales so provides.

7. **Situs of Sale-Not Material**

It is immaterial where the property in goods passes to the buyer. It may pass in the exporting State or importing State. For the purpose of levy of tax, the situs of sale is not a material factor. The character of the sale, whether it is an inter-State sale or intra-State sale does not depend upon the facts as to in which State the property in goods passes. What is necessary to decide the nature of transaction is to see whether the goods have moved from one State to another as a result of or in pursuance of contract of sale.

Transactions not amounting to Inter-State Sales under Section 3

It is not all dispatches of goods from one state to another, ipso facto, result in inter-State sales under Sec. 3 of the CST Act. It is essential to establish that the seller had an obligation for delivering the goods to the buyer, outside the State or it can be inferred from the terms of the contract and facts of the case that the purchaser took delivery of the goods with intention to remove outside the State of consumption, Contrary to that now instances wherein the goods moved out of selling state and yet not constitute an inter-State sales are as under :-

(a) **Intra-State Sales :** Though the goods may move out of the selling State, yet it may not be an inter-State sales, unless the seller has responsibility to deliver goods outside the State or the movement was as a result of covenant or incident of contract of sale.

(b) **Branch and Consignment Transfer :** Inter-State sale involves one obvious and basic condition-there should be a sale. If a manufacturer in Punjab sends his good to his Brach office in Andhra Pradesh or.a Sales Depot in Karnataka, it is not a sale because no one can sell to oneself. Such movement of goods is known as stock transfer or branch transfer. Similarly a dealer may

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transfer goods from one State by Consignor to his agent (Consignee) on consignment basis. Here, the principal retains the ownership and consignee stocks goods on behalf of the consignment-it is merely a stock transfer and not 'sale'. Even stock transfer for works contract in another state is permissible and no sales tax can be levied.

Goods sent to 'C & F Agent' i.e. clearing and Forwarding Agent are only 'stock transfer and not 'sale' since his duty is to stock the goods and dispatching these to persons and places as per instructions of the principal.

However, if goods are dispatched to branch/sales depot after the buyer is known and identified this will amount to inter-state sale and not stock transfer.

Burden of Proof. Section 6A provides that if a dealer claims movement of goods from one state to another state as stock transfer and not sale, the onus of proving this is on the dealer. He can prove it by producing a declaration from the agent/branch/depot in prescribed Form F.

(c) **Import or Export of Sales or Purchases** : Sale or purchase in the course or import or export or purchase in the course of import of export does not attract sales tax levy. This has been specifically exempted under Sec. 5 of Central Sales Tax Act, 1956.

(d) **Sale through Commission Agent/On Account Sales :** In such transaction the agent acts on behalf of the seller and does not acquire ownership of the goods under his custody. The agent is entitled to receive commission for sales effected by him and also get reimbursement of the expenses.

(e) **Delivery of Goods for executing works contract :** Goods supplied for the execution of works contract has been held as not amounting to sale earlier. However, this concept has undergone changes recently after Constitution Forty Sixth Amendment, which become effective from 3.2.1983. By this amendment 'works contract' has been deemed as sale.

When is a sale or purchase of goods said to take place outside a State (Section 4).

(1) When a sale or purchase of goods is determined to take place inside a State such sale or purchase shall be deemed to have taken place outside all other State.

(2) A sale or purchase of goods shall be deemed to take place inside a state, if the goods are within the state.

(a) in the case of specific or ascertained goods, at the time of the contract of sale is made; and

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(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

When a sale is said to take place outside a state, the state shall have no power to tax in respect of such sales.

In case of specific goods, it is that State where the goods are lying at the time of making the contract of sale. In case of unascertained goods, it is the State where the appropriation of the goods to the contract of sale takes place either by the buyer or by the seller, the consent of the other party may be prior or subsequent to such appropriations. If the goods in respect of which there has been sale or purchase under a single contract, happen to be at several places in different States then the situs of the sale or purchase will be determined as there were separate contracts of sale or purchase in respect of the goods at each one of such places.

Sec. 4- Subject to the provisions of Sec.3

This means that in case any conflict appears between the two Sections, Section 3 would prevail.

The Supreme Court while dealing with the scope of Section 3 in the case of Tata Iron and Steel Co. Ltd. Vs. S.R. Sarkar, (1960) 11 STC 655 (SC) dealt with express provision in Sec. 4 of the Act. It observed, "Sec. 4 is expressly made subject to Sec. 3

Sale Or Purchase In The Course of Export Or import

Constitution of India prohibits imposition of sale tax (CST as well as state sales Tax) on imports and exports and authorizes Parliament to formulate principles for determining when sale is 'in the course of import/ export'. Imports are subject to customs duty and hence they should not be subject to sales tax. Similarly, export sales have to be tax free so that Indian export become competitive in world market.

Section 5 lays down the principles for determining when a sale or purchase can be said to have taken place in the course of import of goods into or export of goods out of India. Sec. 5 simply defines what is within the Constitutional restriction of Article 286 (1) (b). Article 286 (1) (b) is as under-No law of a state shall impose, or authorize the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place in the course of the import of the goods into, or export of the goods out of the territory of India.

When is a sale or purchase of goods said to take place in the course of import or export. (Sec. 5)

(1) A sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected

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by a transfer of documents of title to the goods after the goods have crossed the custom frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) The last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deeded to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

The Meaning of Section 5 can be explained as under :

Section 5 of the Central Sales Tax Act has been enacted in pursuance of the powers conferred on the Parliament, by clause (2) of Article 286 of the Constitution.

1. Sale in the course of export :

Export of Goods out of India

When a sale or purchase of goods shall be deemed to take place in the course of exports has two parts :

(a) A direct export (b) A sale in course of export

Both can be explained by suitable illustrations given below:

(a) A of Jalandhar enters into contract with Y of Russia to export sports goods and send the goods out of the territory of India. Such sale by A to Y will be deemed to have occasioned the export of such goods out of the territory of India.

(b) Amit of Jharsugudar sends goods by ship to his branch in USA. After the goods have crossed the customs frontiers of India, A sells these goods to Sibu of USA by transfer of documents. Such sale shall be sale in course of export.

Allahabad High Court had enumerated the following principles for earning exemption under Article 286 (1) (b) of the Constitution (i.e. exemption from levy of any kind of Sales Tax):

(i) The sale must occasion the export. In other words, the exportation of the goods must be a part of the contract of sale or must be a necessary incidence thereof.

(ii) A sale can be said to occasion an export duly :

(a) if there is a common intention of both the seller and the buyer to export,

(b) there is an obligation to export, and

(c) there is an actual export.

(iii) The obligation to export may arise from contract or from the nature of the transaction. *In other words, the obligation may be implicit or explicit.*

(iv) The bond between the sale and the export should be such as cannot be broken without a breach of obligation. (National Carbon Co. vs. Commissioner of Sales Tax, (1969) 23 STC 388 (AH)]

Sec. 5 (1) provides for two types of situations in which and subject to the existence of which alone a sale may be regarded as taking place in the course of export. (i) Where the sale occasions the movement of goods from India to a place abroad. (ii) There is a transfer of documents of title after the goods had crossed Indian Customs Frontiers. [Seshasayee Paper & Board Ltd. Vs. Dy. Commercial Tax Officer, 1984 (56) STC 8 (Mad)]

2. Meaning of "in the course of import of the goods into territory of India" :

The sale or purchase of goods shall be deemed to take place in the course of import of goods into the territory of India only if :-

(a) It is a direct import

(b) It is effected by transfer of documents of title to the goods before they have crossed the customs frontiers of India.

5.4 COMPUTATION & LEVY OF LIABILITY TO TAX

Introduction

Every dealer engaged in inter-State sales is liable for tax even if no tax is leviable under State laws. However, a dealer is not liable for tax is sale amounts to exports from India. Electric energy, though 'goods' is excluded from the liability. Liability of tax is on the dealer, levy of tax is by Government of India and tax is collected by the registered dealer in the State Government on behalf of Central Government. Section 6, 8 and 9 contain provisions in this regard.

Liability to tax on inter-state sales [Sec. 6]

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified :

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[Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of goods out of the territory of India.]

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce not withstanding that no tax would have been leviable (whether on the seller or the purchaser) under the Sales Tax law of the appropriate State if that sale had taken place inside the State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State or another, any subsequent sale during such movement effected by a transfer of documents of title to such goods:

(a) to the Govemement, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act :

This is a charging section and accordingly tax is levied on all inter-State in this section. Under the scheme of the Central Sales Tax Act, 1956, tax is to be levied once on the transaction of sale i.e. it is a single point tax. This sub-section.

(2) ensures that the tax will be levied only once at the first point, during such movement. It may be noted that despite this provision, tax can be levied more than once on the same transaction. At this stage it should be noted that such benefit available under sub-section (2) is available only when sales are effected to the registered dealers and that too, only on fulfillment of the specified conditions. That is, all second sales in the course of inter-State trade or commerce, during the movement of the same goods by a transfer of documents of title to such goods will be exempt from tax, provided necessary forms are produced from the selling dealer and purchasing dealer. This sub-section now provides for similar exemption from tax in respect of such subsequent sales to Governments also. Second proviso to sub-section (2) provides that if the goods are exempt from sales tax or purchase tax in the appropriate State or are subject to at a rate lower than 4% then it shall not be necessary for the dealer effecting the subsequent sale to produce the declaration or certificate. The rate of Central Sales Tax is a 4% with effect from 1st. July, 1975.

Section 6(1) being the main charging section has specifically been made subject to all other provisions of the Act. The provisions of the Act. Which prevail upon those of this section are :

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(1) The transaction must be an inter-State sale within the meaning of Section 3.

(2) The tax is to be levied at the rates prescribed under Sections 8(1)and 8(2) and to be calculated accordingly.

(3) Such tax must be levied and collected by the Government referred to in Section 9(1) in the manner provided in Section 9(2).

(4) The tax so collected shall be appropriated by the State in the manner specified in section 9(3).

(5) If commodity is exempt from tax generally under the Local Sales Tax Act, then it shall also be exempt under the Central Sales Tax, and sales of such commodities will not be subjected to tax.

(6) If the local rate of tax on a commodity is less than 4% then the tax on the inter-State shall also be the same.

(7) The assessment of tax will be subject to appeal, revision etc. in the same manner as an assessment under the State-Law.

If there is an irreconcilable conflict between this section and any other provision in the Act, the latter shall prevail to the extent of that inconsistency, [South India Corporation vs. Secretary, Board of Revenue (1964) 15 STC 74 (SC)].

Requirements for exemption from CST [Section 6(2)] are :

(1) A movement of goods in pursuance to a prior sale is the first pre-requisite to 'subsequent sale' for exemption. That is the first sale must have been a sale in the course of inter-State trade or commerce as contemplated by Section 3(a) of the Act.

(2) Subsequent sale must have taken place during the movement under the first sale. That is the second sale must have been effected before the journey of goods ends or before the goods reach their destination.

(3) Subsequent sale must be one that comes within Clause (b) of Section 3.

(4) The sale is of goods specified in Section 8(3).

(5) Subsequent sale must be either to (a) Government or (b) to a registered dealer, under section 7 of the Central Sales Tax Act, 1956.

(6) The subsequent sale is effected by a transfer of documents of title to the goods.

(7) The proviso to sub-secton 2 casts on obligation on the dealer making subsequent sale to furnish the following certificates. The dealer effecting subsequent sale has to produce before assessing authority Form E-I or E-II, as the case may be, obtained

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from the dealer from whom he purposed the goods and also produce Form 'C' or 'D' as the case may be, obtained from the dealer or a person to whom the subsequent sale is effected. However, it may be noted that furnishing of a declaration or certificate as aforesaid has been dispensed within circumstances specialized in the second proviso to sub section (2)

5.5 IMPORTANT POINTS REGARDING LIABILITY TO TAX

1. **Categories of inter State transactions.** The Supreme Court in State of Madras vs. N.K.Natraja Mudaliar (1968) 22 STC 376(SC), classified transactions into three broad categories : (1) all sales to Government, and sales to a registered dealer other than the Government; (2) sales in respect of declared goods (3) Residual sales.

2. **Three stages in imposition of tax.** These are :

(i) **Declaration of Liability :** Declaration of liability that is determining which persons in respect of what property are liable.

(ii) **Assessment :** Assessment particularizes the exact sum which a person has to pay to discharge his liability.

(iii) **Method of Recovery** If the person taxed does not voluntarily pay. It is recovered by sales tax authorities under the applicable provisions. It is thus clear that the obligation to pay tax flows from the charging section and is not dependent upon assessment [Khader Mohiddin vs. State of Andhra Pradesh, (1968) 21 STC 45(AP)]

3. **Liability to pay Tax when accrues.** Liability to pay tax accrues as and when the conditions laid sown in the Stature are satisfied. The High Court observed in Commissioner of Commercial Taxes, Bihar vs. Sharda Automobiles of Bhagalpur, the libility of the dealer to pay tax under Section 4 of the Act undoubtedly commenced from the date on which that liability accrued, and if the dealer was an unregistered dealer on the date of assessment, then his assessment for the period from the date of his application for registeration till the date of the actual grant of certificate will be subject to the conditions laid down in subsection (5) of Section 13. Further it was held, that payment of tax by a dealer ordinarily will not be dependent on his having realized the tax."

4. **Liability is annual.** As per Section 6 of the Central Sales Tax Act,1956, the liability or charge in respect of inter-State sales tax is yearly liability for it provides in terms that every dealer shall be liable to pay tax on all sales "during any year". Even the assessment of tax shall be yearly, though in view of the provisions of the State-Law, returns are required to be field, payment of tax to be made, monthly or quarterly. [Commissioner of Sales Tax vs. Copper & Co., (1968) 22 STC 111 (Bom) and Mathura Prasad and Sons vs. State of Punjab, (1962) 13 STC 180 (SC)].

5. **Liability to tax is distinct from quantification of tax.** Liability to pay tax is founded on the charging section of the Act. I.e. Section 6. However the quantification of the amount of tax is made in the assessment proceeding in accordance with the machinery provided in the Act. It may noted that the liability to pay tax under the Central Sales Tax Act, arises the moment the transaction of sale or purchase is completed, and at the rate or rates specified under the charging provisions of the respective Act. The Supreme Court has held that the moment a dealer made either purchases or sales which were subject to sales tax, the obligation to pay the tax arises. Although that liability could not be enforced till quantification was effected by assessment proceedings, the liability for payment of tax was independent of the assessment. [Kedarnath Jute Mfg. Co. Ltd. Vs. Commissioner of Income Tax, (1971) 28 STC 672 (SC).]

6. **Onus on the authorities.** The onus of proof always lies upon the taxing authority to show that a particular sale or purchase is liable to tax under the Act. Before the assessee could be assessed to tax under the Central Sales Tax, Act, 1956, and the Punjab General Sales Tax Act, he had to be proved a 'dealer' within the meaning of Section 2 (d) and Section 2 (b) of the two Acts respectively. The burden lies on the department to show that the assessee was dealer. [Atul Glass Industries vs. State of Haryana, (1971) 28 STC 148 (P&H).]

7. **relevant rule.** The relevant rule for the purpose of Section 6 is Rule 12 of Central Sales Tax (Registration and Turnover) Rules, 1957. This Rule is very important in as much as it explains the conditions and circumstances under which the transaction of sale would not be taxable or chargeable under the Act. It speaks regarding the declarations to be produced by the assessee for getting deductions from the gross turnover.

8. **Pre-Conditions for application of first proviso to Section 6 (2).** The exemption from tax on subsequent sale is available only when (a) the dealer effecting subsequent sale furnishes to the prescribed authority, (b) a certificate duly filled and signed by the registered dealer from whom the goods were purchased by him, in the prescribed Form i.e. Form E-I or E-II, as the case may be, and (c) such Form must contain the prescribed particulars, (d) Further a declaration in Form "C" duly filled-in obtained from the dealer to whom the subsequent sale is effected. It must contain all the particulars, the Form must be duly signed and sealed. Unless these two Forms i.e. Form "C" and Form E-I or E-II as sthe case may be are produced the exemption shall not be available. [K.A. Ramuda Chettiar and Co. vs. State of Madras, (1968) 22 STC 283 (Mad); Galiakotwala and Co. vs. State of Madras, (1967) 37 STC 536 (SC)].

9. **Filling of forms and returns.** Though the liability is yearly the dealers are required to file monthly or quarterly return and also make payments of tax as per the provisions of the Local State Sales Tax Act. All procedural matters applicable in respect of local sales tax are applicable to the proceedings under CST in respect of assessment,

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appeal, revision etc. as the Central Sales Act contains no machinery for the levy, assessment and collection of taxes. [Commissioner of Sales Tax vs. Cooper and Co (1968) 22 STC 111 (Bom)].

10. Furnishing false certificate is an offence. If any person furnishes a certificate or declaration which he knows, or has reason to believe, to be falise; he shall be punishable with simple imprisonment which may extend to six months or with fine or with both. Thus, for issue of false declaration a person can be prosecuted.

Single-point tax and multi-point tax also. Under the Central Sales Tax Act, 1956, the tax is single point only. Section 6 (1) which is a charging section imposes Central Sales-tax on all inter-State sales, except electrical energy, effected by a dealer in the course of inter-State trade or commerce. In this view of the matter tax seems to be multi-point tax. However this provision is made subject to other provisions of the Act and that is why it is "single point" tax. Sub-section (2) of Section 6 makes provision to exempt from tax al subsequent sales effected in the course of inter-State trade or commerce provided certain conditions are satisfied. Let us try to understand as to how we say that though primarily Central Sales Tax is single point tax still it is a multi-point tax also.

Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale. [See 6A].

This section provides that where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned, shall be on that dealer; and for this purpose, he may furnish Form F as prescribed under Rule 12 of the Central Sales Tax (Registration and Turnover) Rules 1957. Section 6A provides that if the assessing authority is satisfied after making such inquiry as it may deem necessary, that the particulars contained in Form F are true, it may make an order to that effect.

Along with the evidence of dispatch of such goods if the dealer fails to furnish such declaration, then movement of such goods shall be deemed to have been occasioned as a result of sale. [As Amended in Finance Act, 2002]

Note : *Before this amendment, dealer could prove stock transfer by evidence other than production of Form F.*

Section 3(a) of the Central Sales tax Act defines what is a sale in the course of inter-State trade or commerce. Section 6 is the charging section and the Central Sales tax is leviable only on such inter-State transaction which are covered by Section 3 of the Act. It may be noted that the Central Sales Tax is not leviable in respect of transactions of

transfer of goods effected otherwise than sale, such as transfer of goods from Head-Office to branch office and vice-versa. Dealers took advantage of such situation to evade the tax lawfully, by giving colour to the actual transaction of sales as consignment transactions. With a view to plugging this loophole, new section 6A was inserted in the Act.

Production of Form 'F' is Compulsory

The Finance Act 2002 has amended Section 6A so as to make compulsory the furnishing of form F by the dealer where movement of goods effected by him from one state to another was not on account of sales, but on account of transfer by him to any other place of his business or to his agent or principal. In case he fails to submit form F, the movement of goods shall be deemed to have been occasioned as a result of sale.

5.6 LEVY AND COMPUTATION OF TAX

Levy and collection to tax [Sec.9]

(1) **Levied by Central Government and collected by State government.** The tax payable by any dealer on sales effected by him in the course of inter-State trade or commerce, shall be levied by the Government of India and the tax so levied shall be collected by State Government in the State from which the movement of the goods commenced.

(2) **Subsequent Sale :** In the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods the tax shall be levied and collected-

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained the form prescribed in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer in the state from which such subsequent sale has been effeced.

(3) **Administative Authorities :** The authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, under this Act.

(4) **General sales tax Rules Applicable :** All the provisions relating to offences, interest and penalties of the general sales tax law of each state shall, apply in relation to assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State.

(5) **Proceeds collected are retained by the State Government :** The proceeds in any financial year of any tax, including

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any interest or penalty, levied and collected under this Act in any State (other than a Union Territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union Territories shall from part of the consolidated Fund of India.

5.7 RATE OF TAX

Central Sales Tax (CST) rate is a derived rate and depends upon local tax rate chargeable within the state. If local tax rate is less than 4% same rate is applicable on inter-State sale. If it is between 4% and 10%, CST is 4% to registered dealer and 10% to unregistered dealers. If local sale tax rate is more than 10%, rate against 'C' From and 'D' Form is 4%. Otherwise, rate applicable in local sales tax rates also applies to sale to unregistered dealer. The provisions regarding rate of taxes are described in the chapter.

Concessional rate of CST is applicable if

(a) DECLARATION IN form 'C' is issued by purchaser who is a registered dealer.

(b) certificate in Form 'D' is issued by Government, if buyer is Government.

In case of transfer during movement of goods Forms E-I and E-II are to be used.

Rates to Tax on Sales in Inter-State Trade or Commerce

Section 8 states every dealer, who in the course of inter-State trade or commerce,

(a) sells to the government or

(b) sells to registered dealer specified goods, shall be liable to pay tax under the Act @ 4% of his turnover or the rate applicable to the sale or purchase of such goods in side the appropriate state under the sales tax law of the state. [as amended by Finance Act 2002]

The specified goods are :

(a) the goods of the class or classes specified in the certificate or registration ;

(b) the containers or other materials Intended for being used for the packing of goods for sale

Further if goods do not fall under specified goods as mentioned above, the rules are :

(I) in case of declared goods, the tax payable shall be calculated at twice the rate applicable to the sale or purchase of such goods

inside the appropriate state.

(ii) in the case of goods other than declared goods, shall be calculated at the rate of 10% or at the rate applicable to the sale or purchase of such goods inside the appropriate state, whichever is higher

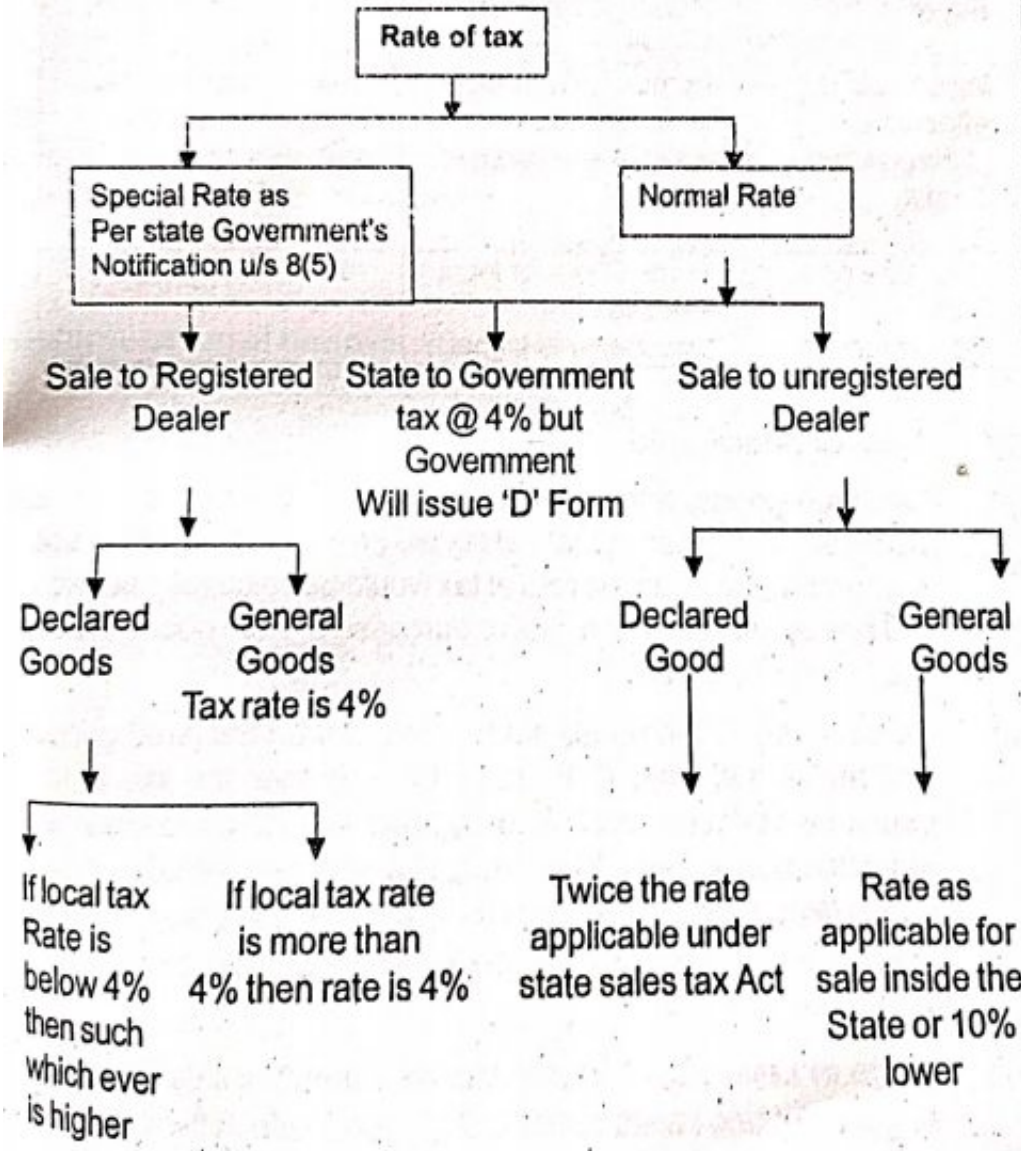
The State government may by, notification in the Official Gazette, direct:

(a) that no tax or tax at lower rate under this Act shall be payable by any dealer having his place of business in the State, if it is in public interest;

(b) that in respect of all sales of goods or sale of such classes of goods, in the course of inter-State trade or commerce, no tax under the Act shall be payable or tax shall be calculated at such lower rates than those specified.

The rate of tax can be explained with help of chart given below:

Note : *Registered Dealer can issue Form C/D whereas, an unregistered Dealer cannot issue such form.*



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FEATURES OF RATE OF TAX

The salient features of Rate of tax u/s. 8 of CST Act, 1956 are as under:

(1) Subjective Rate of Tax : Rate of tax depends upon a number of factors. Rates of tax depends upon whether the sale is effected (a) to a registered dealer under the Central Sales Tax Act or (b) to the Government-State or Central or (c) to any other dealer i.e. unregistered dealer or (d) to consumer.

(ii) Rate of tax depends upon the nature of goods sold i.e. whether they are declared goods as covered by Section 14 of the Central Sales. Tax Act or non-declared goods, and

(iii) It also depends upon the rate of tax levied under the Local Sales Tax Act or any concession made by the State by issue of Notification under Section 8(5).

(2) Tax Rates

Buyer	Rate against Form	Rate against no Form submitted
When sale is effected to : (1)Registered Dealer	Form 'C' 4% or local sales tax rate whichever is higher	10% or local tax rate, which ever is higher
(2)Centre or State Government	Form 'D'-4% or local sales tax rate ,whichever is higher	-do-

(3) Type of goods sold

(a) Declared goods. If the goods sold against 'C' or 'D' form are declared goods then the rate of tax will be 4% only but if they are sold against no Form the rate of tax would be calculated at twice the rate applicable to the sale or purchase of such goods inside the approprite State.

(b) Other goods. If the goods sold are other than declared goods and are sold against 'C' Form or 'D' Form then the rate of tax would be at 4% or local sales tax rate whichever is lower as indicated above, but if they are sold against no forms then the rate of tax on such sale would be at 10% or the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher.

(4) Stage of Levy : Tax levied under the Central Sales Tax Act is single point tax, levied at the first stage of sale in the course of inter-state trade or commerce and all subsequent transactions

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which are covered by section 3(b) of the Central Sales Tax Act are exempt from tax.

(5) **Branch and consignment transfer :.** If the goods transferred to the branch offices and consignees situated in other States then they are not taxable because such transfers are not sales.

(6) **Period of turnover [Rule 11]:** The period of turnover in relation to any dealer liable to pay tax under this Act shall be the same as the period in respect of which he is liable to submit returns under the general sales tax law of the appropriate State:

(7) **Declaration [Rule 12] (1) :** The declaration and the certificate referred to in Sec. 8 (4) shall be in Form 'C' and 'D' respectively. No single declaration or certificate shall cover more than one transaction of sale, except in cases wshere the total amount of sales made in a financial year covered by one declaration or certificates is equal to or less than Rs. 25,000 or such other amount as the Central Government may, by a general order, notify in the Official Gazestte.

(8) **Purchase of goods for certain purposes [Rule 13]:** The goods referred to in Sec. 8(3) (b) which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power.

Determination of turnover. [Sec. 8A]

Turnover is aggregate amount of goods sold by the dealter during a year.

(1) In determining the turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale prices, namely:

(a) the amount arrived at by applying the following formula-

$$\frac{\text{rate of tax X aggregate of sale prices}}{\text{100 plus rate of tax}}$$

(i) No deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

(ii) Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax;

(b) the sale price of all goods returned to the dealer by the purchasers of such goods within a period of six months from the date of delivery of the goods.

(c) such jother deductions as the Central Government may, having regard to the prevalent market conditions for facility of trade and interests of consumers, prescribe.

(2) No other deduction shall be made from the aggregate of the sale prices.

5.8 COMPUTATION OF SALES TAX

The following tables will be helpful in Calculating taxable turnover

CALCULATION OF TAXALE TURNOVER (CST)

GROSS TURNOVER		
Less Turnover outside the scope of CST 1. Turnover sold outside the State 2. Turnover of goods sold in the course of export outside India 3. Turnover of goods sold within the state 4. Branch Transfer and consignment Transfer		
Less Turnover within scope of SCT but exempt or under special category (like Declared Goods) 1. Exempted Goods 2. Exempted Goods sold to registered dealer under Special Economic zone Taxable Turnover		

Formula :

$$\frac{\text{Rate of Central tax} \times \text{Aggregate of Sales Price}}{100 + \text{Rate of tax}} =$$

Example 2 : M/s Gayatree sales have an effective sales of Rs. 1,20,000 in inter-State trade or commerce. The local rate of tax on such goods is 10% Out of the total turnover, sales worth Rs. 1,00,000 are against 'C' Forms and sales worth Rs. 60,000 are against no Forms. Sale Price is inclusive of tax.

Since the sales are taxable at different rates the deduction of tax would be available as per explanation.

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Therefore the total deduction available to the firm of M/s. gayatree under Sec. 8A would be available at Rs. 10,000.

Example 3: The Gross turnover of a registered dealer is Rs. 20,00,000. From the following information cmpute his taxable turnover under C.S.T. Act.

(i)	Sales price of exempted goods	4,00,000
(ii)	Export from India	3,00,000
(iii)	Sale in State	4,00,000
(iv)	Goods returned under inter-state trade	50,000
	Rs. 4,00,000 @ 10%	
	Rs. 3,50,000 @ 4%	
(III)	Sale to a registered dealer on 'C' form of goods Mentioned in certificate of registration	2,00,000
(iv)	Sale of undeclared goods to a registered dealer, which is not covered by his certificate of registration (on such goods the tax is charged in state @ 8%)	50,000

Solution

Computation of Tax Payable under CST Act		Rs.
(1)	Sale to Government @ 4%	4,000
(2)	Sale of declared goods to unregistered dealer at double the rate leviable in the sale i.e. @ 12%	24,000
(3)	Sale to registered dealer @ 4%	8,000
(4)	Sale of undeclared goods not mentioned in the certificate at the rate leviable to the state or 10%, whichever is hither	5,000
		41,000

Example 5: from the following information compute the table turnover of Srimant (a dealer), under the C.S.T Act..

(i)	Gross amount received or receivable by the dealer during the quarter (excluding the sales Tax)	16,00,000
(ii)	Sale of goods outside the state	1,00,000
(iii)	Sale of goods in course of export outside India	3,00,000
(iv)	Cost of freight and installation charged separately but including in the turnover (in case of inter-state sale)	10,000
(v)	Subsequent sale in the course of inter-state trade	3,90,000

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Solution :

COMPUTATION OF TAXABLE TURNOVER

			Rs.
Gross turnover			16,00,000
Less: (i)	Sale outside the state		1,00,000
(ii)	Sale export outside India	3,00,000	4,00,000
			12,00,000
Less: (i)	Cost of freight and instillation charges		10,000
(ii)	Subsequent sale in course of inter-state trade	3,90,000	4,00,000
			8,00,000

Example 6, Compute sales tax from the following information under C.S.T. Act.

		Rs.
(a)	Sale of goods on form D to government	16,00,000
(b)	Sale of goods to a registered dealer of a commodity Which is mentioned in his registration certificate of Form C for sale	6,50,000
(c)	Sale of declared goods to an unregistered dealer (the rate of tax in the state on the goods is 3%	3,25,000
(d)	Sale of undeclared goods to a registered dealer (these Goods are not mentioned in his registration certificate. The rate of tax on these goods in the state is 8%	1,50,000

Solution

	Rs.
Sale to Go0vernment @ 4%	13,000
Sale to registered dealer on 'C' form	26,000
Sale of declared goods to unregistered dealer at the double the rate leviable in the state i.e. @ %	19,500
Sale of undeclared goods not mentioned in the certificate at the rate leviable in state or 10%, whichever is, higher	15,000
	73,000

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Sale – **goods returned**

When the goods sold are returned within a period of six months from the date of sale then the deduction of the amount of such goods is deductible from the Gross Turnover. Further the claim of such goods returned is to be made in the assessment year in which goods are sold. Suppose the dealer is maintaining accounts according to financial year. He is to be assessed for the year 1999-2000. Now in March 2000, the goods were sold to a party, who returned the goods on 31st March 2000. In such case even through goods are returned in the year 2000-2001, the claim has to be made of such goods returned in 1999-2000.

- Rule 44 of the U.P. Sales Tax Rules states that if the goods are returned by the purchaser to the dealer within six months of the date of deliver of goods, the price of the said goods is liable to be deducted from the amount of turnover of sales. In the case the Tribunal has found on the facts and the materials on record that the goods had been returned within a period of six months and therefore necessary deductions must be allowed from the turnover. [Comms of Sales Tax av Modi Industries, (1990) 32 STL 160]

Sales – Goods rejected

Return of goods and rejection of goods stand on different footings. In the former case the sale is completed however for one or other reason the goods are returned whereas in the case of rejection of goods of sale is not complete, because the goods are not accepted by the purchaser on the ground.

Example 7

How would you arrive at taxable turnover under the Central Sales Tax Act, 1956 from the following particulars :

(i) Gross sale : Rs. 10,00,000

(ii) Gross sales include :

(a) Rs. 50,000 being trade discount to wholesale dealers in terms of agreement.

(b) Rs. 20,000 being quantity discount allowed to buyers on the basis of off take in specified period

(c) Rs. 70,000 being excise duty paid on goods but recovered from customers by charging the same in invoices.

(iii) No sales tax is included in gross sales.

(iv) Gross sales figures are net of sales returns detailed below:

(a) Goods worth Rs. 25,000 received back after the expiry of six months from the date of sale as the customer rejected the goods not found in accordance with the order.

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(b) Goods worth Rs. 40,000 returned by the buyers after six months

(iii) A sum of Rs. 75,000 has been recovered from the customers towards freight which has been separately charged in the invoices.

The amount of freight is not included in gross sales.

Solution

Taxable turnover

= Gross sale - trade discount - quantity discount + goods returned after 6 months = Rs.10,00,000 – 50,000 – 20,000 + Rs.40,000 = Rs.9,70,000.

Notes :

(a) Trade discount and quantity discount is allowed as deduction.

(b) Excise duty is not allowed as deduction.

(c) Rejection is allowable as deduction even if received after six months. Hence, that amount is not addible.

(d) Goods returned after six months are not allowable as deduction.

Example 8

Inter State sales of Alpha Co.Ltd, Rajasthan was Rs. 12 Lakhs during April 2005-March 2006 of their product 'Alpha'. The sales are inclusive of sales tax charged in Invoice at appropriate rates. The goods were liable to tax @ 4% if sold within State of Rajasthan. Out of the goods sold, goods of Rs. 80,000 were returned. These were sold by Alpha Co. Ltd. In January 2006 and returned by buyer in May 2006 as the buyer could not pay for the same. Some goods of Rs. 20,000 despatched in October 2005 were rejected by buyer and sent back in November 2006. The aggregate sale price of Rs. 12 lakhs is without considering these returns and rejections. Find the CST payable if (a) all buyers registered dealers giving declaration in form C. (b) All dealers are unregistered, not giving any declaration.

Solution

Here sales return is within 6 months, hence deduction of Rs. 80,000 will be allowable. Similarly, a deduction of Rs. 20,000 will also be allowable as limit of Rs. 6 months is not applicable in case of rejections.

Therefore, the 'aggregate sale price' will be Rs. 11,00,000.

(a) If Buyers have issued 'C' form-Turnover will be 11,00,000 X 900/104 =Rs. 10,57,692.31 and CST will be Rs. 42,307.69

(b) If buyers have not issued 'C' forms-Turnover will be 11,00,000 X 10/110 = Rs. 10,00,000 and CST will be Rs. 1,00,000.

NOTES

(B) PROCEDURES TO BE FOOLOWED BY THE PERSON-IN-CHARGE

The procedures to be followed by the person-in-charge of conveyance carrying export goods are as under :

(1) export goods shall be loaded at approved places only [Section 33]

Loading of export goods is allowed at approved places only. For loading at any other place, permission of proper officer is essential.

(2) Loading under supervision [Section 34]

Loading export goods must be carried under supervision of proper officer.

(3) Rstriction of goods being water-borne [Section 35]

No exported goods shall be water-borne for being loaded from any vessel unless the goods are accompanied by a boat note in prescribed form.

(4) Restrictions on Loading of goods on holidays [Section 36]

No exported goods shall be loaded on nay conveyance on Sunday or any holiday observed by the customs department or any other day after working hours except on payment of prescribed fees.

(5) Export goods not to be loaded on vessel until entry-outwards granted (Section 39)

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granted entry-outwards to such vessel.

(6) Export goods not to be loaded unless duly passed by proper officer (Sec. 40)

The person-in-charge of a conveyance shall not permit the loading at a customs station

(a)	of export goods (other than baggage and mail bags)	Unless a Shipping Bill/Bill of export/ A Bill of Transshipment duly passed by the proper officer, has been handed over to him by the exporter
(b)	of baggage and mail bags	Unless their export has been duly permitted by the proper officer.

(7) Delivery of Export Manifest or Export Report (Sec. 41)

(1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer :

NOTES

- in the case of a vessel or aircraft-an Export Manifest, and
- in the case of a vehicle-and Export Report

If the agent of the person-in-charge of the conveyance furnishes such security as the proper officer deems sufficient for duly delivering within 7 days from the date of departure of the conveyance the Export Manifest/The Export Report, the proper officer may accept such manifest or report within the aforesaid period.

(2) The person delivering the Export Manifest/Export Report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(8) No Conveyance to Leave without Written Order (Sec. 42)

The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order (known as "Let Ship"order) to that effect has been given by the proper officer.

Rounding of Tax

The amount of tax , interest, penalty, fine or any other sum payable and the amount refund due, shall be rounded off to the nearest rupee and for this purpose , where such amount contains a aprt of a rupee consisting of paisa then, if such part is fifty paisa or more, it shall be increased to one rupee and if such part is less than fifty paisa , it shall be ignored.