# Basic Concepts of Indirect Taxes

## UNIT – 1: INTRODUCTION

### Learning objectives

After reading Unit- 1 of this Chapter, you will be able to understand:

- the concept of tax and the objective for its levy
- the concept of direct and indirect tax and the differences between the two
- the basic features of indirect taxes
- the Constitutional provisions pertaining to levy of taxes
- what are the principal indirect taxes
- as to how the indirect taxes are administered in the country.

## 1.1 Background

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India, being a developing economy, has been striving to fulfill the obligations of a Welfare State with its limited resources; the primary source of revenue being the levy of taxes. Though the collection of tax is to augment as much revenue as possible to the Government to provide public services, over the years it has been used as an instrument of fiscal policy to stimulate economic growth. Thus, taxes are collected to fulfill the socio-economic objectives of the Government.

**What is a tax?** A tax may be defined as a "pecuniary burden laid upon individuals or property owners to support the Government, a payment exacted by legislative authority. A tax "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority".

In simple words, tax is nothing but money that people have to pay to the Government, which is used to provide public services.

## 1.2 Direct and Indirect Taxes

Taxes are broadly classified into direct and indirect taxes.

**Direct Taxes:** A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons (juristic or natural) on whom it is imposed. A direct tax is one that cannot be shifted by the taxpayer to someone else. A significant direct tax imposed in India is income tax.
1.2 Indirect Taxes

**Indirect Taxes:** If the taxpayer is just a conduit and at every stage the tax-incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax. An indirect tax is one that can be shifted by the taxpayer to someone else. Its incidence is borne by the consumers who ultimately consume the product or the service, while the immediate liability to pay the tax may fall upon another person such as a manufacturer or provider of service or seller of goods. Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay. All the consumers, including the economically challenged bear the brunt of the indirect taxes equally.

Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property. The significant indirect taxes levied in India are excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), octroi, entry tax, purchase tax and the like.

Economists world over agree that direct and indirect taxes are complementary and therefore, a rational tax structure should incorporate in itself both types of taxes.
The different types of direct and indirect taxes are presented in figure 2 below:

![Diagram of Taxes]

1.3 Features of indirect taxes

(i) **An important source of revenue**: Indirect taxes are a major source of tax revenues for Governments worldwide and continue to grow as more countries move to consumption oriented tax regimes. In India, indirect taxes contribute more than 50% of the total tax revenues of Central and State Governments.

(ii) **Tax on commodities and services**: It is levied on commodities at the time of manufacture or purchase or sale or import/export thereof. Hence, it is also known as commodity taxation. It is also levied on provision of services.

(iii) **Shifting of burden**: There is a clear shifting of tax burden in respect of indirect taxes. For example, VAT which is paid by the seller of the goods is recovered from the buyer by including the tax in the cost of the commodity.

(iv) **No perception of direct pinch**: Since, value of indirect taxes is generally inbuilt in the price of the commodity, most of the time the tax payer pays the same without actually
1.4 Indirect Taxes

knowing that he is paying tax to the Government. Thus, tax payer does not perceive a direct pinch while paying indirect taxes.

(v) Inflationary: Tax imposed on commodities and services causes an all-round price spiral. In other words, indirect taxation directly affects the prices of commodities and services and leads to inflationary trend.

(vi) Wider tax base: Unlike direct taxes, the indirect taxes have a wide tax base. Majority of the products or services are subject to indirect taxes with low thresholds.

(vii) Promotes social welfare: High taxes are imposed on the consumption of harmful products (also known as ‘sin goods’) such as alcoholic products, tobacco products etc. This not only checks their consumption but also enables the State to collect substantial revenue.

(viii) Regressive in nature: Generally, the indirect taxes are regressive in nature. The rich and the poor have to pay the same rate of indirect taxes on certain commodities of mass consumption. This may further increase the income disparities between the rich and the poor.

1.4 Constitutional provisions

India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution of India is the supreme law of India. It consists of a Preamble, 22 parts containing 444 Articles and 12 Schedules.

Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called ultra vires the Constitution and is illegal and void.
Thus, a study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India. The significant provisions of the Constitution relating to taxation are:

(i) **Article 265**: Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “no tax shall be levied or collected except by authority of law”. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

(ii) **Article 245**: Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under:

(i) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

(ii) No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

(iii) **Article 246**: It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

(iv) **Seventh Schedule to Article 246**: It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

**LIST – I**
**UNION LIST**
It contains the matters in respect of which the Parliament (Central Government) has the exclusive right to make laws.

**LIST – II**
**STATE LIST**
It contains the matters in respect of which the State Government has the exclusive right to make laws.

**LIST – III**
**CONCURRENT LIST**
It contains the matters in respect of which both the Central & State Governments have power to make laws.

Entries 82 to 92C of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of
1.6 **Indirect Taxes**

India not comprised in a State even if such matter is included in the State List.

The table given below enlists the significant direct as well as indirect taxes being levied in India under the various Entries of the Union and State Lists. There is no head of taxation in the Concurrent List (Union and the States have no concurrent power of taxation).

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Union List (List I)</th>
<th>State List (List II)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Income tax</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Entry 82 - Taxes on income other than agricultural income</td>
<td>State Level VAT</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Entry 54 - Taxes on the sale or purchase of goods (excluding newspapers) except tax on inter-State sale or purchase</td>
</tr>
<tr>
<td>(ii)</td>
<td>Customs Duties</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Entry 83 - Duties of customs including export duties</td>
<td>State Excise Duties</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Entry 51 - Duties of excise on alcoholic liquors for human consumption; opium, Indian hemp and other narcotic drugs and narcotics. The entry does not include duties of excise on medicinal and toilet preparations containing alcohol or opium/Indian hemp/narcotic drugs/narcotics</td>
</tr>
<tr>
<td>(iii)</td>
<td>Central Excise Duties</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Entry 84 - Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption; opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or opium/Indian hemp/narcotic drugs/narcotics</td>
<td></td>
</tr>
<tr>
<td>(iv)</td>
<td>Central Sales Tax</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Entry 92A - Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce</td>
<td></td>
</tr>
<tr>
<td>(v)</td>
<td>Service Tax</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Entry 97 - Any other matter not enumerated in List II or List III including any tax not mentioned in</td>
<td></td>
</tr>
</tbody>
</table>
Union List (List I) | State List (List II)
---|---
either of those Lists |  
(vi) Entry 92C - Tax on services [Amendment passed by the Parliament on 15.1.2004, but yet not made effective] |  

### 1.5 Principal indirect taxes

The principal central and state level indirect taxes being levied in India along with the relevant statutes are tabulated below:

<table>
<thead>
<tr>
<th>Tax</th>
<th>Relevant Statute</th>
<th>Particulars</th>
</tr>
</thead>
</table>
| Excise Duty [Central Value Added Tax (CENVAT)] | • Central Excise Act, 1944  
• Central Excise Tariff Act, 1985 | A tax on the manufacture or production of goods in India imposed by the Central Government.  
**Basic General rate:** 12.5% |
| Customs Duty | • Customs Act, 1962  
• Customs Tariff Act, 1975 | A duty imposed by the Central Government on goods imported into/exported out of India.  
**Basic General Rate:** 10% + Additional duty of customs (CVD) equivalent to the excise duty levied on like goods produced in India (12.5%) + Special additional duty of customs @ 4%. |
| Service Tax | • Chapter V and VA of the Finance Act, 1994 | A tax imposed by the Central Government on the services (except the services covered in the negative list of services and exempted services)  
**Rate:** 14% |
| Central Sales Tax | • Central Sales Tax Act, 1956 | A tax on the inter-State sales of goods, imposed by the Central Government but appropriated by the originating State.  
**Rate:** 2% |
| Value Added Tax | • VAT Acts of | A tax on the intra-State sales of |
1.8 Indirect Taxes

| respective State Governments | goods, imposed by the State Governments.  
| Rate generally at 5% and 12.5% /13.5% |

Besides these, there are other indirect taxes like entry tax, luxury tax, entertainment tax etc. levied by the State Governments. Municipal or local authorities also impose taxes like octroi or local area taxes.

In this Chapter you will learn the basic concepts relating to levy, taxable event and other related provisions in respect of central excise duty, customs duty, service tax, central sales tax and value added tax.

1.6 Administration of indirect taxes

The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to all the direct and indirect taxes through two statutory Boards, namely, the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC) respectively. Matters relating to the levy and collection of all the direct taxes (income-tax) are looked after by CBDT, whereas those relating to levy and collection of central indirect taxes (customs duties, central excise duties, service tax) fall within the purview of CBEC. The two Boards have been constituted under the Central Board of Revenue Act, 1963.

CBEC deals with the tasks of formulation of policy concerning levy and collection of customs and central excise duties and service tax, prevention of smuggling and administration of matters relating to customs, central excise, narcotics to the extent under CBEC’s purview and service tax. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Service Tax Commissionerates.

The State level indirect taxes are administered by Commercial Tax Departments of the respective States.
UNIT – 2: CENTRAL EXCISE DUTY

Learning objectives
After reading Unit- 2 of this Chapter, you will be able to understand:

- the concept of excise duty
- the Constitutional provisions relating to levy of excise duty
- the different types of excise duties
- as to what are the different sources of central excise law
- the various provisions relating to levy of duty namely, application of excise law, taxable event and charge of excise duty
- the difference between goods and excisable goods
- concept of manufacture and deemed manufacture
- as to who is a manufacturer
- the provisions relating to collection of duty
- the concepts relating to classification of goods
- as to how the excisable goods are valued and what are the different modes of valuing the excisable goods under the central excise law.

Apart from the above, after you finish reading this Unit, you will also get a fair idea of some of the significant procedures under excise law, namely SSI exemption, registration, payment of duty and filing of returns.

2.1 What is excise duty?

Excise is derived from the Latin word “Excisum/Excidere which means to cut out”.

The duty of excise is levied on a manufacturer or producer in respect of the commodities produced or manufactured by him. It is a tax upon manufacture of goods and not upon sales or proceeds of sale of goods.

‘Duty of excise’ has been renamed as Central Value Added Tax (CENVAT). CENVAT includes ‘duty’, ‘duties’ ‘duty of excise’ or ‘duties of excise’.

Although excise started as a pure duty on manufacturing activity, over a period of time it has included deemed manufacture and became a value added tax. The changed nomenclature (CENVAT) indicates the same.

2.2 Constitutional provisions

Entry 84 of the Union List of the Seventh Schedule to Article 246 of Constitution of India provides as under:
Duties of excise on tobacco and other goods manufactured or produced in India **except:**

(a) alcoholic liquors for human consumption
(b) opium, Indian hemp and other narcotic drugs and narcotics; but

including

medicinal and toilet preparations containing alcohol, or any substance stated before.

**Example:** Medical syrups for cold and cough contain a small portion of alcohol. Even though it contains alcohol, it being a medicine will come under Entry 84 of Union List 1.

Excise duty on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics is a State subject i.e, State Government levies excise duty on such products.

### 2.3 Types of excise duties

The following types of duties are levied under the excise law and through provisions of other Acts from time to time:

(i) **Basic Excise Duty:** This duty, also known as CENVAT, is levied under section 3(1)(a) of Central Excise Act. It is levied at the rates specified in First Schedule to the Central Excise Tariff Act, read with exemption notifications, if any. Currently, the general rate of excise duty on non-petroleum products is **12.5%**. This duty is applicable to majority of the excisable goods.

(ii) **Special Excise Duty:** Special duty of excise is levied under 3(1)(b) of the Central Excise Act. It is levied on the commodities covered in second schedule (e.g. pan masala, cars) to the Central Excise Act, at the rates mentioned therein. However, w.e.f. 01.03.2006 all goods falling in the second schedule have been exempted from the special excise duty.

(iii) **Additional Duty of Excise (Textile and Textile Articles) [AED(TTA)]:** This duty is leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. This Act provides for the levy and collection of additional duties of excise on certain textile and textile articles. However, w.e.f. 09.07.2004, all goods which were liable to AED (TTA) have been exempted from such duty.

(iv) **Additional Duty of Excise (Goods of Special Importance) [AED (GSI)]:** It is levied under Additional Duties of Excise (Goods of Special Importance) Act, 1957 on the specified goods mentioned in its First Schedule. This duty is levied in lieu of sales tax and shared between Central and State Governments. However, w.e.f. 01.03.2006, all goods which were liable to AED (GSI) have been exempted from such duty.

(v) **National Calamity Contingent Duty (NCCD):** It is imposed vide section 136 of the Finance Act, 2001 on pan masala, branded chewing tobacco, cigarettes, domestic crude oil and mobile phones.

(vi) **Additional Duty of Excise:** It is imposed by way of surcharge on pan masala and certain specified tobacco products vide section 85 of the Finance Act, 2005.
(vii) **Education Cess:** It is levied on excisable goods manufactured in India @ 2% of the aggregate duties of excise levied on such goods. *However, with effect from 01.03.2015, the same has been fully exempted. Thus, from March 1, 2015, excise duty will be leviable @ 12.5% without any education cess.*

(viii) **Secondary and Higher Education cess:** It is levied on excisable goods manufactured in India @ 1% of the aggregate duties of excise (excluding education cess) leviable on such goods. *However, with effect from 01.03.2015, the same has been fully exempted. Thus, from March 1, 2015, excise duty will be leviable @ 12.5% without any secondary and higher education cess.*

Therefore, out of the above mentioned excise duties only Basic Excise Duty, NCCD and Additional Duty of Excise imposed under Finance Act, 2005 are leviable currently.

### 2.4 Sources of central excise law

Central Excise Law is a combined study of -

![Diagram of Sources of Central Excise Law](Fig. 5)

(i) **Central Excise Act, 1944:** The Central Excise Act, 1944 (hereinafter referred to as the ‘Act’ in this Unit) contains the basic provisions relating to the levy of excise duty. It comprises of Chapters I to VII.

(ii) **Central Excise Tariff Act, 1985:** The Central Excise Tariff which was originally a schedule to the Central Excise Act, 1944 was de-linked from it and the Central Excise Tariff, Act 1985 containing the Tariff Schedule was enacted, based on the international product coding system called Harmonised System of Nomenclature (H.S.N.). The Schedules to the
1.12 Indirect Taxes

Act enlist all the excisable goods and provide for the corresponding rates of excise duty chargeable on the same.

(iii) Annual Union Finance Acts: Every year, the Finance Minister of the Government of India presents the Union Budget to the Parliament. Part A of the Budget Speech contains the proposed policies of the Government in fiscal areas. Part B of the Budget Speech contains the detailed tax proposals. In order to implement the above proposals, the Finance Bill is introduced in the Parliament. Once the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act.

The annual Union Finance Acts are one of the most significant ways through which the Government makes amendments to the central tax acts like the Central Excise Act and Central Excise Tariff Act.

(iv) Rules: Rules are framed by the Central Government for carrying out the provisions of the Act. Rules cannot override the provisions contained in the Act. Rules should be read with the statutory provisions contained in the Act. The following significant rules have been issued under the Central Excise Act, 1944:

- **Central Excise Rules, 2002:** These Rules contain the procedure for the assessment and collection of duty including other procedures like manner of payment of duty, registration, maintenance of records, invoicing, rebate of duty, export without payment of duty etc.

- **Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000:** These rules have been framed to prescribe valuation methods when transaction value cannot be determined under Section 4 of the Central Excise Act, 1944.

- **CENVAT Credit Rules, 2004:** These rules extend the credit of excise duty and service tax across goods and services. They provide for the manner of availing the credit and the utilization thereof.


(v) Notifications: Notifications are issued by the Central Government or the Central Board of Excise and Customs (CBEC) in terms of the power given under the Act or the Rules. Notifications are issued to provide rules relating to excise duty, make amendments therein, provide or withdraw exemptions from excise duty or deal with any other matter which the Central Government may think would facilitate the governance of excise duty.

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1 All such rules will be discussed at the Final Level. However, CENVAT Credit Rules, 2004, to the extent covered in syllabus have been discussed in Chapter-7 CENVAT Credit.
(vi) Circulars/Instructions: The Central Board of Excise and Customs issues departmental circulars or instruction letters from time to time for the purpose of ensuring uniformity in the classification of excisable goods or with respect to levy of duty of excise on goods. These circulars/instructions should be in conformity with the Act, Rules and Notifications. The circulars are binding on the Department but not binding on the assessee and the Supreme Court, High Court or the Tribunal.

(vii) Trade Notices/Clarifications: Trade notices are issued by the Departmental authorities for trade facilitation and clarification purposes. They are binding on the departmental officers concerned. Authorities cannot take one stand in one State and another stand in another State. Trade notice disseminate the contents of the notifications and circulars/letters, define their jurisdiction; identify the banks in which excise duty can be deposited etc.

(viii) Case Laws: It is not possible for the Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence, the judiciary hears the disputes between the assessees and the Department and gives decisions on various issues. The Supreme Court is the Apex Court of the country and the law laid down by the Supreme Court is the law of the land. The decisions given by various High Courts apply in the respective States in which such High Courts have jurisdiction. The study of case laws is very essential as the case laws facilitate in interpreting the provisions of the Act and comprehending the real intention of the law makers. In fact, in India the tax laws are perceived to be of very complex nature and thus, role of the judiciary becomes all the more substantial as only the judiciary has the mandate of interpreting such intricate provisions of law.

2.5 Levy of duty

(1) Application of the central excise law: The Central Excise Act applies to the whole of India. Though originally the Act did not apply to the State of Jammu and Kashmir, its application was extended to the same vide the enactment of Taxation Laws (Extension to Jammu & Kashmir) Act, 1954.

It also extends to designated areas in the Continental Shelf and Exclusive Economic Zone of India (EEZ). The EEZ extends upto 200 nautical miles inside the sea from base line.

Therefore, goods manufactured in Indian landmass as also in the designated areas in EEZ will be liable to excise duty.

The Central Excise Tariff Act also applies to whole of India and extends to the designated areas in the Continental Shelf and Exclusive Economic Zone of India (EEZ).

(2) TAXABLE EVENT: Taxable event is a event or transaction that results in a tax consequence for the party who executes the event. For example, the taxable event for levy of state level VAT is sale of products i.e., whenever any sale transaction is occasioned, sales tax liability would arise. Taxable event is the event which triggers the levy of tax.

The taxable event for levy of excise duty is manufacture – only when manufacture takes place, excise duty liability arises. However, all manufacturing processes do not attract levy of excise duty unless some basic conditions are met.

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Excise duty is not concerned with ownership or sale. Liability under excise law is event based (based on manufacture) and does not depend upon whether the goods are sold or captively consumed.

**Note:** Though the levy of excise duty arises on manufacture but the same is collected on removal of goods from the factory [Collection of duty has been dealt in detail in the subsequent pages of this Unit].

(3) **Charge of excise duty:** Section 3 of the Act is the charging section which provides for levy of excise duty. The provisions of section 3 are discussed below:

(i) **Basic conditions for levy of duty:** Excise duty is leviable when the following four are satisfied cumulatively:

![Diagram showing the conditions for levy of excise duty](image)

*Fig. 6*

“A Special Economic Zone (SEZ) is a geographically bound zone where the economic laws relating to export and import are more liberal as compared to other parts of the country. Goods manufactured in Special Economic Zones are not leviable to excise duty. SEZ is considered to be a place outside India for all tax purpose.

(ii) **Government goods also liable to excise duty:** There is no distinction between excisable goods produced by the Government and those produced by others, with regard to payment of excise duty. Excise duty is payable on all excisable goods, other than salt, manufactured in India by or on behalf of the Government (both Central and State) also.
(iii) **Goods manufactured by 100% EOU and brought to DTA liable to excise duty equal to customs duty:** Hundred percent Export Oriented Undertakings are set up to promote exports. They generally export whole of the goods manufactured by them and such exports are exempt from duty. However, sometimes they may sell their goods in India also (known as Domestic Tariff Area). When EOU’s sell their goods in DTA, the goods become liable to excise duty.

Excise duty leviable in such a case is computed as follows:

\[
\text{Excise duty} = \text{Total customs duties leviable under the Customs Act/other applicable law on like goods produced/manufactured outside India, if imported into India.}
\]

**Valuation as per customs law:** The value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 if the duty to be levied is based on the value of such goods *(ad valorem)*.

**Highest rate to be taken in case of different rates:** Where in respect of any such like goods, customs duty is leviable at different rates, then, highest of those rates shall be taken.

Unless the four basic conditions as set out in section 3 for levy are satisfied [Refer point (i)], central excise duty cannot be levied. Thus, it is very important to understand / interpret each of the conditions in detail to appreciate the implications. Each of the conditions is discussed in subsequent pages of this Unit.

### 2.6 Goods and Excisable Goods

**1) Goods:** Explanation to section 2(d) of the Act provides that “goods includes any article, material or substance which is being capable of brought and sold for a consideration and such goods shall be deemed to be marketable”. Section 2(d) defines excisable goods. Though the explanation to section 2(d) of the Act sets out as to what are included within the meaning of goods, the concept of goods has been more elaborately defined/explained in other laws/case laws as under:

- **(i) Article 366(12) of the Constitution of India:** “Goods include all materials, commodities and articles”.

- **(ii) Sale of Goods Act, 1930:** Section 2(7) defines goods to mean “every kind of movable property other than actionable claims and money; and includes stocks and shares, growing crops, grass and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale”.

Thus, immovable property cannot be goods but any movable property whether visible, tangible, corporeal or not will constitute goods. Goods can be tangible like computer, machinery, pen, pencil etc. as also intangible like drawings, designs, software stored on a media. Similarly, electricity is also goods.

- **(iii) Judicial View:** The Supreme Court in the case of *U.O.I. v. DCM* 1997(1) *E.L.T.* J199 has held that in order to be goods the articles must be capable of coming to the market to be bought and sold. Therefore, to be called goods, the items must be moveable and marketable.
From the above, two fundamental aspects of the term “goods” arise that they should be (a) ‘moveable’ and (b) ‘marketable’.

(a) **Goods must be Moveable**: To be called goods, the articles must be something, which can ordinarily come or can be brought to the market to be bought and sold. As opposed to moveable goods, immovable property cannot be brought to the market to be sold. Immovable property includes land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. **Thus, excise duty cannot be levied on immovable property.**

Example: Construction of roads is not liable to excise duty as roads are not goods. However, manufacture of car, truck etc. will attract excise duty as they are goods.

(b) **Goods must be Marketable**: Unless the goods are capable of being marketed, they cannot be charged to duty. As per Explanation to section 2(d), goods includes any article, material or substance which is being capable of brought and sold for a consideration and such goods shall be deemed to be marketable. Thus, the only condition required for a product to be marketable is its capability of being put into the market for sale.

The following points merit consideration in this regard:

- **Actual sale is not necessary**: Actual sale is not necessary in determining excisability of a product; its capability of being brought and sold for a consideration is sufficient to render it marketable. The fact that goods are not actually marketed is of no relevance. It is also not necessary that goods in question should be generally available in the market.

- **Even one purchaser enough**: Marketability does not depend upon the number of purchasers nor is the market confined to territorial limits of India.

- **Burden of proof on Department**: Marketability is a question of fact to be decided on the basis of the facts of each case. It is the onus of the Department to produce evidence of marketability.

- **Goods of short-shelf life**: Goods of short-shelf life, say one or two days will be deemed to be marketable only if they are capable of being brought and sold during that period.

(2) **Excisable Goods**: Before we examine the question of what amounts to manufacture, it must be understood that unless the goods that are manufactured are excisable goods, there will be no question of levying excise duty.
Section 2(d) of the Act defines ‘excisable goods’. The definition can be divided into three parts:

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

**Explanation:** Goods includes any article, material or substance which is being capable of being brought and sold for a consideration and such goods shall be deemed to be marketable.

Thus, for becoming excisable goods, goods must not only be specified in the Tariff but must also be subject to a duty of excise.

The following points merit consideration in this regard:

- **Nil rate is a rate of duty:** Nil rate is also a rate of excise duty. Therefore, goods specified in the Tariff as being subject to Nil rate of duty are also excisable goods.

  **Example:** Bamboos, Common salt, Rock salt are excisable goods liable to ‘NIL’ rate of duty.

- **Exempted goods:** Exempted goods are goods which have been exempted from payment of duty by way of an exemption notification. Exempted goods are excisable goods but no duty is payable on them in view of 100% exemption granted by way of notification.

The excise duty liability in relation to goods and excisable goods has been explained with the help of a flow diagram given at page no. 1.19.

**2.7 Manufacture**

(1) **Concept of manufacture:** Manufacture or production of excisable goods in India is the taxable event for levy of central excise duty. Section 2(f) of the Act defines the term "manufacture" in an inclusive manner as follows:

**Manufacture** includes any process,

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture; or

(iii) which, in relation to goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to consumer

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

Since the definition of manufacture is an inclusive one and does not spell out or enumerate the activities covered therein, the understanding of the term has been arrived at on the basis of the numerous legal decisions rendered in this regard.

The most commonly used test for ascertaining as to whether "manufacture" for the purpose of attracting central excise duty has taken place was evolved by the Supreme Court in the case of Delhi Cloth and General Mills 1977 (1) ELT (J 199). The Court cited the following passage from an American judgement relating to manufacture:

"Manufacture implies a change, but every change is not manufacture and yet change of an article is the result of treatment, labour and manipulation. But something is necessary and there must be transformation; a new and different article must emerge having a distinctive name and character or use".

This famous paragraph is now the basis for determining whether or not an activity or process amounts to manufacture.

Therefore, the activity or process in order to amount to "manufacture" must lead to emergence of a new commercial product, different from the one with which the process started. In other words, it must be an article with different name, character or use.
Basic Concepts of Indirect Taxes – Central Excise Duty

1.19

Are the final products marketable?

YES

Manufacture results in goods

Are the goods specified in Central Excise Tariff as being subject to a duty of excise?

NO

Non-excisable goods

YES

Excise duty not payable

Whether goods are chargeable to 'NIL' rate of duty?

YES

Exempted goods

NO

Manufacture results in excisable goods

Are the goods exempt from payment of duty vide any exemption notification?

YES

Excise duty payable on the goods

NO

Manufacture does not result in goods

Excise duty not leviable

[Fig. 9]
Burden of proof on department: Burden to prove that an activity/process amounts to manufacture is on the department.

<table>
<thead>
<tr>
<th>Examples of processes amounting to manufacture:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Obtaining sugar from sugarcane</td>
</tr>
<tr>
<td>(2) Making furniture from wood</td>
</tr>
<tr>
<td>(3) Rolling of tobacco to make biris</td>
</tr>
<tr>
<td>(4) Conversion of fruit pulp to ready made fruit drink</td>
</tr>
<tr>
<td>(5) Cutting, hemming and stitching of running cloth to make bed sheets, bed spreads and table cloths</td>
</tr>
<tr>
<td>(6) Roasting, salting and spicing of peanuts/cashew-nuts/almonds</td>
</tr>
<tr>
<td>(7) Obtaining oil or oil cake from oil seeds (mustard oil or mustard cake from mustard seeds)</td>
</tr>
<tr>
<td>(8) Making of wheat flour from wheat</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Examples of processes not amounting to manufacture:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Burning in boiler of coal to obtain cinder</td>
</tr>
<tr>
<td>(2) Stirring of cream to obtain butter</td>
</tr>
<tr>
<td>(3) Upgradation of computer system by increasing the storage capacity</td>
</tr>
<tr>
<td>(4) Painting of goods</td>
</tr>
<tr>
<td>(5) Cutting of wood into small pieces</td>
</tr>
<tr>
<td>(6) Chilling of water</td>
</tr>
</tbody>
</table>

(2) DEEMED MANUFACTURE: Clauses (ii) and (iii) of the definition of manufacture as provided in section 2(f) of the Act are termed as ‘deemed manufacture’. The aforesaid definition gives a wider meaning to the expression "manufacture” as several processes which would not ordinarily be understood as amounting to manufacture are specifically included therein.

Thus, a process which simply changes the form or size of the same article or substance would not ordinarily amount to manufacture and no excise duty would be payable unless it is deemed to be manufacture in either of the two following ways:

- The process is specified in the Section or Chapter Notes of the Schedule to the Central Excise Tariff as amounting to manufacture; or
- The goods are specified in the Third Schedule to the Act and the process involves packing or repacking of such goods in a unit container, labelling or re-labelling of containers including declaration or alteration of retail sales price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

The Third Schedule to the Act covers the goods which are assessed on the basis of retail sale price. Valuation of excisable goods based on retail sale price has been discussed in subsequent pages of this Unit.
Examples of deemed manufacture:

1. In relation to iron and steel covered in Chapter 72, Chapter Note 5 provides that the process of galvanization shall amount to manufacture.
2. In relation to audio or video tapes/CDs etc. falling under heading 8523 of Chapter 85, Chapter Note 10 provides that recording of sound or other phenomenon shall amount to manufacture.
3. In relation to aluminium foils falling under heading 7607 of Chapter 76, Chapter Note 3 provides that process of cutting, slitting and printing of aluminium foils amount to manufacture.

Illustration 1: Indicate whether the following activities will be liable to central excise duty?

1. Manufacture of alcohol and wine.
2. Manufacture of medicinal and cosmetic products containing alcohol.
4. Production of excisable goods in notified designated areas at 210 nautical miles from the Indian landmass.
5. Production of excisable goods in a factory located in SEZ.
6. Manufacture of salt by the Central Government.
7. Repairing, reconditioning or remaking.
8. Manufacture of parts used for repair or replacement during warranty period.
9. Labeling or re-labeling of unit containers of chocolate. Chocolate is specified in Third Schedule to Central Excise Act, 1944.

Solution:

1. No. Entry 84 of the Union List of the Seventh Schedule specifically excludes alcoholic liquors for human consumption. Since, Entry 54 of the State List covers duties of excise on alcoholic liquors for human consumption, it may be liable to State excise duty.
2. Yes. Medicinal and cosmetic products containing alcohol are covered by Entry 84 of the Union List.
4. No. The central excise law extends to the notified designated areas in EEZ upto 200 nautical miles from the Indian landmass.
5. No. The central excise law does not apply to goods manufactured in SEZ.
6. No. Though there is no distinction between excisable goods produced by the Government and those produced by others, salt manufactured by Government is not leviable to excise duty.
7. No, since repairing, reconditioning or remaking does not result in to emergence of a new product.
1.22 Indirect Taxes

(8) Yes. Excise duty is a levy on manufacture. Therefore, it is of no importance as to whether the manufactured goods are sold, captively consumed, distributed as free sample or used for free repair / replacement during warranty period etc.

(9) Yes. Labeling or re-labeling of unit containers of the goods specified in Third Schedule to the Central Excise Act is deemed manufacture. Since chocolate is covered under Third Schedule, the labeling or re-labeling of its container will amount to manufacture.

(3) Some special aspects

(i) Captive consumption: Captive consumption in the context of excise law means utilisation of goods produced or manufactured within the factory of production. The goods internally consumed to manufacture the final product are termed as intermediate goods.

Example: Rubber is used in manufacturing of soles and such soles are further used in manufacture of chappals. Here, soles are intermediate goods and their consumption within the factory for manufacture of chappals is captive consumption.

Levy of excise duty: The intermediate goods will be chargeable to duty if they arise in the course of manufacture/production, are moveable and marketable in such intermediate stage, listed in the Tariff, and are subject to duty of excise in the Tariff.

However, since paying duty on all captive consumption will cause inconvenience to manufacturers, exemptions have been given in many cases. If duty is payable on final product, excise duty is not payable on intermediate product used in manufacture of such final products.

(ii) Assembly vis a vis manufacture: Assembly is a process of putting together a number of items or parts of an item to make a product or an item. From a general point of view, assembly would not amount to manufacture in as much as an already manufactured item may be put in a readily usable form. However, if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

Example: Assembly of computers from duty paid bought out parts amounts to manufacture.

(iii) Dutiability of site-related activities: The goods manufactured at site will be liable to duty if they have a new identity, character and use, distinct from the inputs / components that have gone into its production. Further, such resultant goods should be specified in the Central Excise Tariff as excisable goods besides being marketable i.e. they can be taken to the market and sold (even if they are not actually sold). The goods should not be immovable.

Examples:

1. Lifts and escalators installed in buildings and permanently fitted into the civil structure cannot be considered to be excisable goods and hence are not liable to duty.

2. Group of machines combined to constitute a new machine having own identity/marketability will be dutiable if assembled at site and fixed to earth only for purpose of ensuring vibration free movement.

(iv) Dutiability of waste and scrap: Waste/scrap can be 'excisable goods' if they are known in commercial parlance and are marketable. Further, the waste and scrap will not be
‘excisable goods’ unless they are specified in Central Excise Tariff. Thus, if a particular waste/scrap is not mentioned in Tariff, it may be ‘goods’ but not ‘excisable goods’.

It is important to note here that as the excise duty is leviable on manufacture, the waste and scrap actually generated in the course of manufacture alone is chargeable to duty and the waste and scrap generated without any process is not liable to excise duty.

**Waste of exempted goods:** Waste of exempted goods has been exempted from payment of excise duty.

**Examples:**

1. Aluminium/zinc dross which is termed as waste/residue/refuse is chargeable to excise duty as it is an excisable goods arising during the course of manufacture and is capable of being sold for consideration.
2. Waste or scrap arising from repair of machinery is not a manufactured product as it doesn’t arise during manufacture of final product. Therefore, it will not be liable to duty.

### 2.8 Manufacturer

The term ‘manufacturer’ has been defined in the definition of the term ‘manufacture’.

As per section 2(f) of the Act, manufacture includes any process, and the term **manufacturer** shall be construed accordingly:

-- and shall include not only a person who employs hired labour in the production or manufacture of excisable goods,

-- but also any person who engages in their production or manufacture on his own account.

**ANALYSIS:**

A person carrying out manufacture in terms of any of the three clauses of section 2(f) will be the manufacturer. The definition of manufacturer is an inclusive one and the scope thereof has been widened by including:

- manufacturers who manufacture through hired labour, and
- manufacturers who manufacture on their own account

It is very important to understand as to who would be the manufacturer as it is the manufacturer, who is required to discharge the duty liability on the excisable goods in most of the cases.

Manufacturer may be understood as any person who is the creator, initiator and architect of the activities and the processes, which bring into existence a new and identifiable
product/goods in the market. Thus, a manufacturer is the one who undertakes natural manufacturing activity or who undertakes the processes defined as ‘deemed manufacture’.

Some special aspects:

(i) Raw material supplier vis a vis manufacturer: The person carrying out the actual manufacturing process is the manufacturer even if the raw material is supplied by someone else and the goods have been manufactured as per his specifications. Merely by supplying the raw material, the supplier thereof cannot be construed as the manufacturer. Therefore, it is not relevant as to whether the raw material belongs to the manufacturer or not.

Example: M/s. Papadwala supplies raw material to several household ladies to make papads. These ladies make papads at their homes and supply the same to M/s. Papadwala. M/s. Papadwala does not supervise the ladies. M/s. Papadwala is only the raw material supplier and not the manufacturer as it does not exercise control and supervision over the ladies making papads. The ladies making papads are the manufacturers in this case.

(ii) Brand name owner vis a vis manufacturer: Many times, large manufacturers do not manufacture goods on their own but get their goods manufactured from others under their brand name. They usually exercise quality control and may also supply the design. In such cases, these large manufacturers will not be the manufacturer but the units actually manufacturing the product will be the manufacturer.

Example: If Usha Fans gets its fans made from other fan making units under its brand name ‘USHA’, Usha Fans will not be the manufacturer in this case. The other fan making units who actually make the fans will be the manufacturer under central excise.

Ownership of raw material is not relevant to determine who the manufacturer is. In both the above cases, the contracts are on a principal to principal basis. However, if the relationship between the raw material supplier/brand name owner and the job-worker is that of a principal and agent, the raw material supplier/brand name owner will be the manufacturer. It may be noted that a person supplying the raw material/brand name owner cannot be considered as hiring the job worker if he does not supervise and control the activities of the job worker. However, if the manufacturer is a dummy or fake unit, then the raw material supplier or the brand name owner will be deemed to be the actual manufacturer.

2.9 Collection of duty

(1) When is duty liable to be paid?: As learned before, the taxable event for the levy of excise duty is manufacture, but the collection thereof is postponed to the stage of removal. Therefore, excisable goods cannot leave the factory of production unless excise duty thereon has been paid. However, excisable goods can be removed from the factory and stored in a warehouse without payment of duty. Excise duty, in such a case, becomes payable when the excisable goods are removed from the warehouse.

(2) On which type of removals is the duty liable to be paid?: As per rule 4 of the Central Excise Rules, 2002, excisable goods cannot be removed from the place of manufacture or from warehouse - when the goods are stored in warehouse - without payment of duty whether for
Basic Concepts of Indirect Taxes – Central Excise Duty

✓ consumption, or
✓ export, or
✓ manufacture of any other commodity in or outside the place of manufacture until the excise duty leviable thereon has been paid in the prescribe manner.

(3) **Who is liable to pay duty?**: The liability to pay excise duty has been casted on every person-
- who produces or manufactures any excisable goods, or
- who stores such goods in a warehouse

**Exception**

**Procurer of molasses liable to pay excise duty on molasses**: Where molasses are produced in a Khandsari sugar factory, the person who procures such molasses (not the person who produces the same) for use in the manufacture of any commodity has to pay the duty leviable on such molasses as if the molasses had been produced by the procurer.

(4) **What is the relevant date for determining the rate of duty?**: Rule 5 of the Central Excise Rules, 2002 contains the provisions for determining the relevant date. The rate of duty and the tariff value prescribed under section 3(2) of the Act prevalent on the relevant date are used for the purpose of computing the amount of excise duty payable. Valuation of excisable goods based on tariff value is discussed in subsequent pages of this Unit. Provisions of rule 4 and 5 have been tabulated as under:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Person liable to pay excise duty</th>
<th>Event for duty payment</th>
<th>Relevant date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Excisable goods (other than khandsari molasses) produced and stored in the factory of the manufacturer</td>
<td>Manufacturer</td>
<td>Removal of goods from the factory</td>
<td>Date of removal of such goods from the factory</td>
</tr>
<tr>
<td>2. Khandsari molasses produced and stored in the factory of the</td>
<td>Procurer of the khandsari molasses</td>
<td>Receipt of such molasses by the</td>
<td>Date of receipt of such molasses in the factory of the</td>
</tr>
</tbody>
</table>
1.26 Indirect Taxes

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>manufacturer</td>
<td>procurer</td>
<td>procurer of such molasses</td>
</tr>
<tr>
<td>3. Excisable goods</td>
<td>Manufacturer</td>
<td>Issuance of goods for further</td>
<td>Date on which the goods are issued</td>
</tr>
<tr>
<td>produced and cleared</td>
<td>for captive consumption in the factory</td>
<td>production</td>
<td>for such use</td>
</tr>
<tr>
<td>for captive consumption</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>in the factory of</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>production</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Excisable goods</td>
<td>Person who stores such goods in the</td>
<td>Removal of goods from the warehouse</td>
<td>Date of removal of goods from the</td>
</tr>
<tr>
<td>produced in the factory</td>
<td>warehouse</td>
<td></td>
<td>warehouse</td>
</tr>
<tr>
<td>and stored in a warehouse</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>without payment of duty</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Some special aspects:

(i) Change in rate of duty between the date of manufacture and the date of removal:
Sometimes it may happen that the rate of duty which was prevalent when the goods were manufactured undergoes a change when the goods are removed from the factory. This generally happens when the rate of duty is increased / decreased in the annual Union Budget.

Example: Excise duty rate has been increased from 12% to 12.5% with effect from 01.03.2015. Thus, in case of excisable goods manufactured during the month of February and cleared on 20.03.2015, the rate of duty was 12% when the same were manufactured but was increased to 12.5% when the same were removed from the factory.

It needs to be remembered that where the goods were excisable at the time of manufacture, duty will be leviable at the rate prevalent on the date of removal.

Thus, in the above example, excise duty will be paid @ 12.5%.

(ii) Goods becoming excisable/dutiable post manufacture but before removal: There can be situations when goods which are manufactured at the period in time when they were either not chargeable to duty or were exempted from duty get included in Tariff or become dutiable on account of withdrawal of the exemption subsequent to manufacture but before removal of such goods.

The following points need to be considered in this regard:

- Non-excisable goods (goods not covered in the Central Excise Tariff) will not be chargeable to duty even though subsequent to manufacture but before removal such goods are bought within the purview of the Tariff or are made chargeable to a specified rate of duty under the Tariff.

The rationale behind such a treatment is that since the goods were not excisable goods as per the provisions of section 2(d) at the time of manufacture, they would not be liable to duty even though they are brought within the purview of the aforesaid section prior to removal from the factory.

- Exempted goods (excisable goods exempted from payment of duty vide an exemption
notification) will be chargeable to duty at the time of removal if, subsequent to manufacture but before removal, the exemption from duty is withdrawn. In this case, since the goods were excisable at the time of manufacture, the rate of duty prevalent on the date of removal will be applicable.

The following table summarizes the above position:

<table>
<thead>
<tr>
<th>On the date of manufacture</th>
<th>On the date of removal</th>
<th>Leviability of excise duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods not listed in the Tariff</td>
<td>Goods listed in Tariff and chargeable to duty @ 12.5%</td>
<td>Duty not leviable since goods were not excisable at the time of manufacture.</td>
</tr>
<tr>
<td>Goods liable to duty @ 12% in Tariff</td>
<td>Duty rate increased to 12.5%</td>
<td>Duty payable @ 12.5% since goods were excisable goods at the time of manufacture.</td>
</tr>
<tr>
<td>Nil rate in Tariff/Exempt</td>
<td>Duty imposed @ 12.5%</td>
<td>Duty chargeable @ 12.5% as goods were excisable goods at the time of manufacture (NIL rate is also considered to be a rate of duty)</td>
</tr>
</tbody>
</table>

**Illustration 2:** Compute the excise duty payable in the following cases:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Value of goods (₹)</th>
<th>Date of manufacture</th>
<th>Rate of duty on date of manufacture</th>
<th>Date of removal</th>
<th>Rate of duty on date of removal</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>10,000</td>
<td>28th February</td>
<td>12%</td>
<td>20th March</td>
<td>12.5%</td>
</tr>
<tr>
<td>(ii)</td>
<td>25,000</td>
<td>20th June</td>
<td>12.5%</td>
<td>25th August</td>
<td>12.5% + Additional duty @ 6% imposed w.e.f. 1st July</td>
</tr>
<tr>
<td>(iii)</td>
<td>30,000</td>
<td>23rd June</td>
<td>Goods exempt from duty vide an exemption notification</td>
<td>25th August</td>
<td>Exemption withdrawn – Goods liable to duty @ 12.5%</td>
</tr>
<tr>
<td>(iv)</td>
<td>60,000</td>
<td>25th February</td>
<td>12%</td>
<td>20th April</td>
<td>15%</td>
</tr>
</tbody>
</table>

Also, compute the duty payable in case the goods in point (i) above are to valued on the basis of tariff value and such tariff value changes from ₹ 10,000 (applicable on the date of manufacture) to ₹ 15,000 (applicable on the date of removal). The other particulars remain the same as in point (i) above.

Further, in case of point (iv), goods have been removed from the factory and stored in a warehouse without payment of duty on 25th March. On 25th March, the applicable rate of duty was 12.5%. Who is liable to pay duty in this case?
1.28 Indirect Taxes

Solution: As per Rule 5 of the Central Excise Rules, 2002, the rate of duty or tariff value applicable to any excisable goods (other than khandsari molasses) is the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be. Therefore, the duty payable will be computed as follows:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Value of goods (₹)</th>
<th>Applicable rate of duty</th>
<th>Excise duty payable (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>10,000</td>
<td>12.5%</td>
<td>1,250</td>
</tr>
<tr>
<td>(ii)</td>
<td>25,000</td>
<td>12.5% [Since, excise duty is a levy on manufacture of excisable goods, the additional duty which was not in force on the date of manufacture cannot be imposed on goods removed after its levy.]</td>
<td>3,125</td>
</tr>
<tr>
<td>(iii)</td>
<td>30,000</td>
<td>12.5% [Since, on the date of manufacture, the goods were excisable, the rate of duty on date of removal will be applied.]</td>
<td>3,750</td>
</tr>
<tr>
<td>(iv)</td>
<td>60,000</td>
<td>15% [The applicable rate of duty is the rate prevalent on the date when goods are removed from the warehouse.]</td>
<td>9,000</td>
</tr>
</tbody>
</table>

Since, the tariff value applicable to any excisable goods is the value in force on the date when such goods are removed from a factory, the applicable tariff value in this case will be ₹15,000 (value applicable on the date of removal). The excise duty payable will be ₹1875 (12.5% of ₹15,000).

In case of point (iv), where goods have been first stored in the warehouse without payment of duty and finally removed from the warehouse, the person liable to pay duty is the person who stores such goods in the warehouse and not the manufacturer.

Illustration 3: Madhavpur Sugar Ltd. produces khandsari molasses and supplies the same to TP Ltd. which, in turn uses it in the manufacture of a non-excisable commodity. Khandsari molasses worth ₹2,00,000 have been supplied by Madhavpur Sugar Ltd. to TP Ltd. Compute the duty payable from the following information:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Date</th>
<th>Applicable rate of duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of production</td>
<td>26th February</td>
<td>12%</td>
</tr>
<tr>
<td>Date of removal from the factory of Madhavpur Sugar Ltd.</td>
<td>28th February</td>
<td>12%</td>
</tr>
<tr>
<td>Date of receipt of molasses by TP Ltd.</td>
<td>18th March</td>
<td>12.5%</td>
</tr>
<tr>
<td>Date of manufacture of non-excisable product in which molasses have been used</td>
<td>12th April</td>
<td>Molasses have been exempted vide an exemption notification</td>
</tr>
</tbody>
</table>

Who is liable to pay duty in the above case?
Solution: In case of molasses, the person who procures such molasses for use in the manufacture of any commodity, whether or not excisable, has to pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

The rate of duty applicable in the case of molasses is the rate in force on the date of receipt of such molasses in the factory of the procurer of such molasses.

Therefore, the relevant rate of duty will be 12.5% (rate applicable on the date of receipt of molasses in the factory of the procurer) and excise duty payable will be ₹25,000 (₹2,00,000 x 12.5%). Duty is payable by TP Ltd., the procurer of molasses, as if the molasses had been produced by it whether such molasses are used in manufacture of excisable or non-excisable commodity.

2.10 Classification of excisable goods

(1) What is classification?: There are thousands of varieties of manufactured goods. Since all goods do not carry the same rate or amount of duty, it is practically impossible to identify all the goods individually. Therefore, it is necessary to identify the goods through groups and sub-groups and then to determine the rate of duty on each group or sub-groups of goods. The exercise of placing the various excisable goods under the various groups or sub-groups is known as ‘Classification’ of a product.

In other words, the classification of excisable goods consists of determining the headings or sub-headings of the Central Excise Tariff Act, 1985 (CETA) under which the said goods would be covered.

(2) Why is classification necessary?: Classification of excisable goods is essential for determining the applicable rate of duty as different rates of duty are chargeable on different types of goods. It is also required for the purpose of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub headings.

(3) What is the scheme of classification?: CETA is based on the Harmonised System of Nomenclature (popularly known as HSN).

Harmonised System of Nomenclature: HSN is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs & Trade (GATT). The Central Excise Tariff Act is modelled along with international practices. The international practice of adopting a uniform classification internationally facilitates a common understanding of products across countries. In other words, the classification of a product under this code would be the same across the countries.

The two Schedules to CETA: The classification of goods in the CETA is comprised in two Schedules; the First Schedule specifies the rate of basic excise duty (CENVAT) and the Second Schedule specifies the rate of special excise duty.
Sections and Chapters: The First Schedule has Sections and Chapters. Each Section has various Chapters. A Section represents a broad class of goods. For example, Section I relates to Live animals and Animal products while Section V relates to Mineral products.

A Chapter contains goods of one class e.g., Section – V of Mineral Products has Chapter 25 relating to Salt; sulphur; earths and stone; plastering materials; lime and cement and Chapter 26 relating to Ores, slag and ash. The Chapter is further divided into headings and sub-headings depending on different types of goods belonging to same class of products.

Section Notes and Chapter Notes are given at the beginning of each Section and Chapter which govern the entries in that Section and Chapter respectively.

The First Schedule to the CETA contains 96 Chapters grouped into 20 sections and specific code is assigned to each item. All of the items listed in the second schedule have been exempted from special excise duty with effect from 01.03.2006.

Eight digit classification system: The excisable goods are classified by using 8-digit system. Description with eight digits is termed as ‘tariff item’. A tariff item under eight digit system would be interpreted as follows:-

Example: Tariff Entry 3305 90 40 covers ‘Hair dyes (natural, herbal or synthetic)’. The classification can be understood as-

33 refer to Chapter 33 ‘Cosmetic or toilet preparations, essential oil etc.’
05 refer to Heading ‘Preparations for use on the hair’
90 refer to Sub-heading ‘Other’
40 refer to the item ‘Hair dyes (natural, herbal or synthetic)’
**Interpretative Rules for classification**: The Central Excise Tariff Act, 1985 incorporates six general rules of interpretation, which together provide necessary guidelines for classification of various products. By and large, these rules for interpretation are identical to those contained in the HSN.2

(4) **What is trade parlance theory?**: According to the trade parlance theory, if a product is not adequately classified in the Central Excise Tariff Act, 1985, it should be classified according to its popular meaning or meaning attached to it by those dealing with it, i.e., in commercial sense. However, where the tariff heading itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense.

(5) **Rate of duty**: CETA specifies the rate of duty in respect of each tariff entry given in the Chapters there under. The rate of duty may either be a specific rate, i.e., quantified in terms of money or may be *ad valorem*, i.e., a percentage of the value of the goods. If the rate of duty is specific (a certain quantum of money), the assessee is required to pay that amount. However, if the rate of duty is *ad valorem*, the assessee has to determine the assessable value of the particular product and thereafter, apply the rate of duty to such derived assessable value. The process of determining the assessable value of a product is known as 'valuation'.

**Significance of exemption notifications**: The effective rate of duty must be ascertained by considering the various exemption notifications issued from time to time. The rate of duty read with the rate prescribed in the notification, if any, will ultimately determine the effective rate of duty payable on clearance of goods.

**2.11 Valuation of excisable goods**

After establishing the excisability of the goods, classifying them correctly and finding the applicable rate of duty, the next step is to pay the duty.

---

2 The Interpretative Rules will be discussed at the Final Level.
However, it is important to know that duty is payable on more than one basis:

### Basis of computing duty payable

- **Specific duty**
- **Compounded Levy scheme**
- **Duty based on capacity of production**
- **Duty based on value (ad valorem duty)**

#### (a) Specific duty
In the case of some goods, duty is payable on the basis of certain unit, length, weight, volume, etc. Duty is calculated quite easily by following this method. However, specific duties do not keep pace with inflation i.e., even if selling price of product rises, revenue earned by Government does not increase correspondingly. Hence, more and more tariff entries are designed based on ad valorem duty structure.

**Example:** Duty payable on cigarettes is on the basis of length.

#### (b) Compounded levy scheme
In sectors where there are large numbers of small manufacturers, it is not practically feasible for the Department to exercise normal excise controls and procedures. At the same time, small manufacturers find it difficult to comply with the complicated excise procedures.

Under this scheme, the assessee has the option to pay the duty of excise on the basis of specified factors relevant to production of the goods covered under the scheme (size of equipment employed, number and the types of machines used for manufacture etc.) at the specified rates. The prescribed duty has to be paid by the assessee for the specified period. The advantage of this scheme is that it frees the manufacturer from observing day to day central excise formalities and maintenance of detailed accounts after making the lump sum periodic payment.

**Example:** Stainless steel pattas/pattis and aluminium circles are covered under this scheme. The rate of duty is ₹ 40,000 and ₹ 12,000 pm per cold rolling machine for stainless steel pattas/pattis and aluminium circles respectively.

#### (c) Duty based on capacity of production
This duty is payable on the basis of production capacity, without any reference to the actual production. The production capacity is determined as per the rules made in this regard. The Government may notify the goods which will be assessed to such duty having regard to the nature of the process of manufacture or
Basic Concepts of Indirect Taxes – Central Excise Duty

production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant. This duty is mandatory i.e., duty cannot be paid in any other manner in respect of the goods notified under this scheme.

**Example:** Pan masala, gutkha, tobacco etc. are notified under this scheme.

(d) **Duty based on value:** In (a), (b) and (c) above, valuation of excisable goods is not required as duty is not based on the value of the goods. However, if the rate of duty is *ad valorem*, i.e., duty is expressed as a percentage of the value of goods; valuation of the excisable goods becomes essential. Significance of valuation increases as majority of the excisable goods are charged to *ad valorem* duty. Thus, in case of goods chargeable to *ad valorem* duty, for calculating the amount of duty payable, first the assessable value of the goods has to be determined.

**Illustration 4:** Determine the excise duty payable in the following cases:-

<table>
<thead>
<tr>
<th>Goods</th>
<th>Qty. (kg)</th>
<th>Value of goods (₹)</th>
<th>Rate of duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1,000</td>
<td>20,00,000</td>
<td>₹ 20 per kg</td>
</tr>
<tr>
<td>B</td>
<td>100</td>
<td>10,00,000</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

**Solution:**

**Computation of excise duty payable**

**Goods A:** Since rate of duty is per kg, value of such goods is not relevant. Excise duty payable will be computed on the basis of the quantity of the goods produced. Therefore, excise duty payable will be:

\[
1,000 \text{ kg} \times ₹ \text{ 20 per kg} = ₹ 20,000
\]

**Goods B:** Since, in this case the rate of duty is a percentage of the value of excisable goods, the quantity of the goods produced is not relevant. Excise duty payable will be computed on the basis of the value of the goods. Therefore, excise duty payable will be:

\[
₹ 10,00,000 \times 12.5\% = ₹ 1,25,000
\]

*Ad valorem* duty is payable on the basis of the values prescribed under the Act namely, tariff value fixed by the Government in respect of certain goods; transaction value and value based on retail sale price printed on a package of goods.

(i) **Tariff value:** The Central Government is empowered to notify the values of goods which will be chargeable to *ad valorem* duty. In such a case, the task is easy since the value is already fixed. The Central Government has also got the power to alter the tariff value once fixed. However, in recent years tariff values have rarely been fixed by the Government. The duty in such cases is the percentage of such tariff value and not the assessable value.

**Example:** The Central Government has fixed tariff value for jewellery (other than silver jewellery) under heading 7113 and branded readymade garments under Chapter 61 and 62 as 30% of the transaction value declared in the invoice and 30% of the retail sale price of the ready garments respectively.

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1.34 Indirect Taxes

The Central Government may fix different tariff values for different classes or descriptions of the same excisable goods. The Central Government can also fix different tariff values for the same class or description of the goods but produced or manufactured by different classes of producers or manufacturers or sold to different classes of buyers. Such tariff values may be fixed on the basis of wholesale price or average price of various manufacturers as the Government may consider appropriate.

Illustration 5: X Ltd. manufactured readymade garments for ₹ 10 lakh (exclusive of all taxes). The retail sale price of such garments is ₹ 30 lakh. The rate of duty is 12.5%. The tariff value is notified at 30% of retail sale price. Compute the excise duty payable.

Solution: Since the goods are such for which tariff value has been fixed by the Central Government, the excise duty will be payable on the basis of tariff value.

Tariff Value = ₹ 9,00,000 [30% of ₹ 30 lakh (RSP)]

Excise duty payable = 12.5% of ₹ 9,00,000 = ₹ 1,12,500.

(ii) Valuation with reference to retail sale price (RSP): Section 4A of the Act provides for valuation of excisable goods based on the retail sale price.

Excisable goods need to be valued in terms of provision of section 4A if the following two conditions are satisfied cumulatively:

The excisable goods to be valued are covered under the Legal Metrology Act, 2009 or related rules or under any other law and such law requires declaration of the retail sale price on the package of such goods

The Central Government has notified the said goods as goods in relation to which the payment of excise duty will be on the basis of the RSP less such deductions/abatements as it may allow in the notification. The abatement is given as a percentage of the retail sale price.

<table>
<thead>
<tr>
<th>Goods notified under section 4A</th>
<th>Rate of Abatement (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biscuits</td>
<td>30%</td>
</tr>
<tr>
<td>Toothbrush</td>
<td>30%</td>
</tr>
<tr>
<td>Photographic cameras</td>
<td>30%</td>
</tr>
<tr>
<td>Pressure cooker</td>
<td>25%</td>
</tr>
</tbody>
</table>
Meaning of Retail Sale Price

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

However, if the provisions of the Act, rules or Legal Metrology Act, 2009 require the retail sale price to exclude any taxes, local or otherwise, the retail sale price shall be construed accordingly.

The following points merit consideration in this regard:

- **All goods bearing RSP not covered under section 4A:** It is important to note that all goods on which RSP has been declared will not be covered under the provisions of section 4A. Only when the declaration of RSP on the goods is mandatory under the Legal Metrology Act, 2009 or under any other law and such goods have been notified by the Central Government for the purpose of section 4A, will the goods be valued under section 4A. The provisions do not apply in cases where manufacturers voluntarily affix RSP on the products.

- **Value = RSP printed on the package – Abatement, if any, notified by the Government**

  **Illustration 6:** RSP printed on the package of a pressure cooker is ₹ 5,000 (inclusive of all taxes). Declaration of RSP on package of pressure cooker is required under the provisions of Legal Metrology Act, 2009 and has also been notified by the Central Government for the purpose of section 4A. The prescribed rate of abatement is 25%. The applicable rate of duty is 12.5%. Compute the duty payable.

  **Solution:** The value under section 4A will be (₹ 5000 – 25% of ₹ 5000) = ₹ 3750. Excise duty payable will be ₹ 469 (12.5% of ₹ 3,750) rounded off.

- **Maximum RSP deemed to be the RSP, if more than one RSP declared:** Where more than one RSP is declared on the package of excisable goods, the maximum of such price will be deemed to be the RSP.

- **Each RSP deemed to be the RSP, if different RSPs on different packages meant for different areas:** Where RSPs are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such RSP will be RSP for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

- **Increased RSP deemed to be the RSP, if RSP increased after removal from factory:** If the RSP declared on the package of excisable goods at the time of its clearance from the place of manufacture, is increased, such increased RSP will be deemed to be the retail sale price.

- **RSP declaration not mandatory on wholesale packages:** RSP declaration is compulsory in case of retail packages meant for sale to ultimate consumer. However,
1.36 Indirect Taxes

RSP declaration is not mandatory on wholesale packages, packaged commodities for institutional/industrial consumers, agricultural farm produce etc.

(iii) Transaction value:

(1) Concept: In case where any of the above-mentioned methods of excise valuation are not applicable, assessable value of the goods is to be computed in terms of 'transaction value' of the goods as provided under section 4 of the Act. In other words, where a product is not covered under specific duty scheme, compounded levy scheme, production capacity based duty, tariff value provisions, RSP based valuation, the last method i.e., residual method based on transaction value is applicable. The scheme of ad valorem valuation in general is summarized below:

![Flowchart](image)

The concept of 'transaction value' has been introduced under section 4 from July 1, 2000. Prior to 1st July 2000, the valuation under this section was based on the principle of 'normal price' which was based on the wholesale prices at which manufacturer ordinarily sold the goods.

**Assessable value to be the transaction value:** As per section 4, assessable value of the excisable goods shall be the 'transaction value' if the following conditions are satisfied:-

(a) The price is the sole consideration for the sale. In other words, the assessee must not receive any other sum either by way of money or by way of any other assistance for the manufacture of goods.
Basic Concepts of Indirect Taxes – Central Excise Duty

(b) The assessee and the buyer of the goods are not related persons.
(c) Goods have been sold by the assessee for delivery at the time and place of removal.

In all other cases, which do not fulfill the aforesaid conditions, value is to be determined as per the provisions of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

Valuation under section 4 can be better understood with the help of the following diagram:

---

3 The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 will be discussed at the Final Level.
(2) Relevant definitions:

(a) **Transaction value** means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.

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

(c) Persons shall be deemed to be “related”, if

(i) they are inter-connected undertakings;
   (In a general sense, inter-connected undertakings have 25% common control through ownership, or management.)

(ii) they are relatives;
   (Only natural relationships can be covered under this like husband, wife, members of HUF etc.)

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

(d) **Place of removal** means –

(i) a factory or any other place or premises of production or manufacture of the excisable goods.

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty.

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

(e) **Time of removal** in respect of the excisable goods removed from the place of removal referred to above shall be deemed to be the time at which such goods are cleared from the factory.

(3) **ANALYSIS of the definition of transaction value:** The definition of transaction value is an all inclusive definition. It is important to bear in mind that the concept of transaction value is quite different from the concept of price and such value can include many items which may classically have not been understood to be part of the sale price.
Let us analyze the definition of transaction value through the use of flow charts.

The definition also gives an illustration of the kind of amounts that are included as additions to price which the buyer may be liable to pay to or on behalf of the assessee. It is important to note that the definition specifically states as “including but not limited to” which clearly means that the items included in the definition are only illustrative and more may be includible.

It is clear that the above are includible only if the buyer is liable to pay the same or if he pays the same on behalf of the assessee.
1.40 Indirect Taxes

The above are not includible, if actually paid or payable.

Includibility or otherwise of a few significant items of cost in the transaction value (apart from the ones already provided in the definition) is given hereunder:

(4) Inclusions/Exclusions in/from transaction value:

<table>
<thead>
<tr>
<th>Items of cost</th>
<th>Includibility in transaction value or otherwise</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Outward handling</td>
<td>Includible only upto place of removal and if incurred by buyer as a condition of sale of goods.</td>
</tr>
<tr>
<td>2. Packing</td>
<td>Cost of all forms of packing (special, general, protective, etc.) are includible. However, cost of durable/reusable packing is not included as it is amortized and included in the cost of product itself. Therefore, separate addition is not necessary unless audit of accounts reveal that such cost has not been amortized and included in the value of the product.</td>
</tr>
<tr>
<td>3. Dharmada charged in the invoices and recovered from customers</td>
<td>Includible.</td>
</tr>
<tr>
<td>4. Design, development and engineering charges</td>
<td>Includible if they are specific to goods produced as goods cannot be produced without them.</td>
</tr>
<tr>
<td>5. Bought out items and accessories</td>
<td><strong>Essential Items</strong>- Includible as product cannot function without the same. However, the item should be fitted to the main article at the time of removal. <strong>Optional bought out items and accessories</strong>- Not includible. (Accessory means an object or device not essential in itself but adding to beauty, convenience or effectiveness of something else.).</td>
</tr>
<tr>
<td>6. Consultancy charges</td>
<td>Includible if it relates to design, layout, etc. of final product; and such activity is done upto place of removal.</td>
</tr>
<tr>
<td>7. Testing &amp; inspection charges</td>
<td>Includible but independent testing done by the buyer himself or through a third party is not includible.</td>
</tr>
<tr>
<td>8. Erection, installation and commissioning charges</td>
<td>Not includible if it results in immovable property.</td>
</tr>
<tr>
<td>9. Pre-delivery inspection charges and after sales</td>
<td>Includible only if it is collected by the manufacturer.</td>
</tr>
</tbody>
</table>
## Discounts (Trade and Cash)

All forms of discount (trade discount, cash discount, quantity discount, turnover discount, differential discounts to different buyers, damage discount) are excludible as the same are already factored into the definition of transaction value. However, the discount should be actually passed on to the buyers.

## Notional interest on deposits, advances

Not includible unless it can be proved that price has been lowered on account of receipt of such advance from the buyer.

## Interest on delayed payment of receivables

Not includible as interest is nothing but finance charges and cannot be considered as payment by reason of sale.

## Bank charges for collection of sale proceeds

Not includible as the same cannot be considered as payment by reason of sale.

## Delayed payment charges

Not includible as "transaction value" relates to the price paid or payable for the goods and delayed payment charge is nothing but the interest on the price of the goods which is not paid during the normal credit period. However, to be admissible as deduction it should be separately shown or indicated in the invoice and should be charged over and above the sale price of the goods.

## Freight

Not includible. However, if, sale is from depot, freight from factory to depot will be includible.

## Transit insurance

Not includible as it is a part of transportation cost. However, it should be shown separately in the invoice.

### Price-cum-duty

Price-cum duty of the excisable goods sold by the assessee can be understood with the help of the following diagram:

1. **Price actually paid for the goods sold**
2. **Money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods**
3. **Sales tax and other taxes actually paid**
4. **Price-cum-duty deemed to be inclusive of the duty payable on such goods**

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The following points merit consideration in this regard:

- **Situations when the price charged will be taken as price-cum-duty:**
  - If the assessee has collected less duty from buyer than what is due; or
  - If the assessee has not collected any duty from the buyer even though the product is liable to duty; or
  - If the assessee has paid duty on lesser value due to receipt of additional consideration.

In the above situations, the price charged (exclusive of sale-tax/local taxes) shall be regarded as price-cum-duty.

- The assessable value and the duty payable in such a case will be:

  \[
  \text{Assessable Value} = \frac{\text{Price-cum-duty} \times 100}{(100 + \text{Rate of excise duty})} \\
  \text{Duty payable} = \frac{\text{Price-cum-duty} \times \text{Rate of duty}}{(100 + \text{Rate of excise duty})}
  \]

- **Duty to be separately indicated in invoice:** Every person liable to pay duty of excise should prominently indicate in all the documents/invoice, etc., the amount of such duty which will form part of the price at which such goods are to be sold. It is also the responsibility of such person to deposit any sum collected from the buyer in name of excise duty with the Government.

**Illustration 7:** What will be the assessable value of the excisable goods in the following cases?

(i) The price-cum-duty of excisable goods sold by ‘A’ is ₹ 200 per unit. Excise duty @ 8% has been charged by ‘A’ on such goods. However, ‘A’ comes to know that the actual rate of duty chargeable on the goods sold by him is 12.5% and not 8%. ‘A’ has collected only ₹ 200 per unit from the customers.

(ii) ‘B’ sells his excisable goods @ ₹ 200 per unit (inclusive of excise duty @ 12.5%). However, it has been found that ‘B’ has collected ₹ 50 per piece separately.

(iii) The price of the excisable goods sold by ‘C’ is ₹ 500 per unit. ‘C’ does not charge any duty of excise in his invoice on the belief that the goods sold by him are exempt from payment of duty vide an exemption notification. However, he comes to know that the goods are not exempt from excise duty but are liable to duty @ 12.5%.
Solution:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Price-cum-duty charged (per unit) [₹]</th>
<th>Additional consideration [₹]</th>
<th>Actual price-cum-duty (including additional consideration) [₹]</th>
<th>Correct rate [%]</th>
<th>Value (₹)</th>
<th>Duty payable (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods sold by ‘A’</td>
<td>200</td>
<td>-</td>
<td>200</td>
<td>12.5</td>
<td>178</td>
<td>22</td>
</tr>
<tr>
<td>Goods sold ‘B’</td>
<td>200</td>
<td>50</td>
<td>250</td>
<td>12.5</td>
<td>222</td>
<td>28</td>
</tr>
<tr>
<td>Goods sold by ‘C’</td>
<td>500</td>
<td>-</td>
<td>500</td>
<td>12.5</td>
<td>444</td>
<td>56</td>
</tr>
</tbody>
</table>

Note: All the amounts have been rounded off to nearest rupee.

Illustration 8: Calculate the assessable value and the excise duty payable from the following particulars:

- List price of the product (inclusive of taxes): ₹ 5,960
- Trade discount: 10%
- VAT: 12.5%
- Excise duty: 12.5%
- Education cesses as applicable

An exemption notification grants exemption of 50% of the duty payable on this product.

Solution:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>(₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>List price of the product</td>
<td>5,960</td>
</tr>
<tr>
<td>Less: Trade discount</td>
<td>596</td>
</tr>
<tr>
<td>Price net of discounts but including taxes</td>
<td>5,364</td>
</tr>
<tr>
<td>Less: VAT [(₹ 5,364 x 12.5)/112.5]</td>
<td>596</td>
</tr>
<tr>
<td>Price-cum-duty (a)</td>
<td>4,768</td>
</tr>
<tr>
<td>Less: Excise duty @ 6.25% (on account of 50% exemption) [(₹ 4,768 x 6.25)/106.25] (rounded off to nearest rupee)</td>
<td>280</td>
</tr>
<tr>
<td>Education cess and Secondary and higher education cess [Fully exempt]</td>
<td>NIL</td>
</tr>
<tr>
<td>Total excise duty (b)</td>
<td>280</td>
</tr>
<tr>
<td>Assessable value (a) – (b)</td>
<td>4488</td>
</tr>
</tbody>
</table>
Illustration 9: Determine the transaction value and the duty payable from the following particulars:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Price of machinery excluding taxes and duties</td>
<td>5,50,000</td>
</tr>
<tr>
<td>(ii) Installation and erection expenses [Machinery has been fixed to the earth]</td>
<td>21,000</td>
</tr>
<tr>
<td>(iii) Packing charges (primary and secondary)</td>
<td>11,500</td>
</tr>
<tr>
<td>(iv) Design and engineering charges</td>
<td>2,000</td>
</tr>
<tr>
<td>(v) Dharmada</td>
<td>500</td>
</tr>
</tbody>
</table>

Other information:
(a) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received within 15 days of the dispatch of machinery.
(b) Bought out accessories valued at ₹ 6,000. The accessories are optional and provide ease of use of the machinery.
(c) Central excise duty @ 12.5%.

Make suitable assumptions as are required and provide brief reasons.

Solution:

**Determination of excise duty payable**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price of machinery</td>
<td>5,50,000</td>
</tr>
<tr>
<td>Add: Packing charges (Note 1)</td>
<td>11,500</td>
</tr>
<tr>
<td>Design and engineering charges (Note 1)</td>
<td>2,000</td>
</tr>
<tr>
<td>Dharmada (Note 1)</td>
<td>500</td>
</tr>
<tr>
<td>Total</td>
<td>5,64,000</td>
</tr>
<tr>
<td>Less : 2% cash discount on price of machinery [₹ 5,50,000 x 2 %] (Note 4)</td>
<td>11,000</td>
</tr>
<tr>
<td>Assessable value</td>
<td>5,53,000</td>
</tr>
<tr>
<td><strong>Excise duty @ 12.5%</strong></td>
<td>69,125</td>
</tr>
</tbody>
</table>

Notes:-

While computing the assessable value:-
1. packing charges, design and engineering charges and dharmada have been included as such payments are ‘in connection with sale’.
2. installation and erection expenses have not been included as they result in immovable property which is not goods.
3. value of bought out accessories has not been included as they are optional and do not
provide any value addition.

4. cash discount has been allowed as deduction as it has been passed on to the buyer.

2.12 Small scale industry (SSI) exemption

Considering the significant contribution of small scale sector towards the industrial growth of the Indian economy and to the Gross Domestic Product, excise duty concessions have been granted under the central excise law to small scale units so as to make them competitive in the domestic and global market. The excise duty concessions have been extended to the SSI units by way of exemption notifications. Currently, Notification No. 8/2003 CE dated 01.03.2003 grants SSI exemption.

(1) Meaning of SSI unit: Small Scale Units are not defined in the Act or the rules made thereunder. It is important to note here that the definition of a SSI unit adopted commonly for trade purposes is not applicable under central excise. Under central excise, the basis for ascertaining whether a unit is a SSI, is the value of clearances of the unit in the previous financial year.

(2) Eligible goods: SSI exemption is restricted to the products listed in the SSI exemption notification. Though the notification covers most of the products, few products like tobacco products, pan masala, watches, matches and some textile products are specifically excluded from SSI exemption.

(3) Eligible SSI units: The units whose value of clearances of excisable goods for home consumption computed in accordance with the notification (mentioned above) does not exceed ₹ 400 lakh (4 crore) in the previous financial year are eligible for SSI exemption. The turnover limit is calculated by taking into account the clearances in respect of one manufacturer from one or more factories or from a factory by one or more manufacturers.

Example: If ABC Ltd. wants to claim SSI exemption in the year 2015-2016, then the value of its clearances for the year 2014-2015 should not exceed ₹ 4 crore. Further, if ABC Ltd. has started its business only in the year 2015-2016, then it is entitled for SSI exemption in the year 2015-2016 as its previous year clearances are nil.

(4) SSI exemption: The excisable goods covered by the notification are exempt from the whole of the duty up to the aggregate value of clearance of ₹ 1.5 crore in any financial year if the turnover of the unit does not exceed ₹ 4 crores in previous year4. In simple words, a unit whose turnover does not exceed ₹ 4 crores in the previous year is entitled to full exemption from payment of duty on its first clearances of up to ₹ 150 lakh in the current financial year.

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4 The manner of calculating the limits of ₹ 400 lakh and ₹ 150 lakh and other provisions of SSI exemption will be discussed in detail at the Final Level.
(5) **Availability of CENVAT credit:** A SSI unit can avail CENVAT credit on inputs only after it starts paying duty. However, CENVAT credit of capital goods can be availed (but can be utilized only after the turnover crosses ₹ 150 lakh) even if the same have been received during period of exemption.

(6) **Goods bearing brand name of others:** SSI exemption is not available in respect of clearances bearing a brand name of another person. This means that such clearances attract normal rate of duty. Brand name or trade name is any mark, symbol, monogram, label, signature or inventor word or writing which may or may not be registered. Brand or trade name must indicate a connection in the trade between the goods and the person using such mark or name.

**Exception:** There are certain types of goods which are entitled to SSI exemption even though they bear the brand name of other person e.g. goods manufactured in rural area, packing material, account books, registers, writing pads.

**Illustration 10:**

(i) ABC Ltd. wants to claim SSI exemption in the year 2015-2016. Its clearances for the year 2014-2015 are ₹ 3 crore. ABC Ltd. manufactures goods bearing brand name of XYZ Ltd. Is ABC Ltd. eligible for SSI exemption?

(ii) ABC Ltd. wants to claim SSI exemption in the year 2015-2016. Its clearances for the year 2014-2015 are ₹ 3 crore. ABC Ltd. manufactures goods bearing brand name of XYZ Ltd. in rural area. Is ABC Ltd. eligible for SSI exemption?

**Solution:**

(i) ABC Ltd. is not eligible for SSI exemption as it manufactures goods bearing brand name of others.

(ii) ABC Ltd. is eligible for SSI exemption even though the goods manufactured by it bears the brand name of others as it manufactures goods in rural area.
2.13 General procedures

(1) Registration: Every manufacturer of excisable goods other than the ones specifically exempted is required to get his premises registered under the central excise law. Registration is also required for every prescribed person who carries on trade or holds private store-room or warehouse or otherwise uses excisable goods or an importer who issues an invoice on which CENVAT credit can be taken.

A manufacturer is exempt from the requirement of getting his premises registered so long as the goods manufactured by him attract Nil rate of duty or remain exempt from the whole of the duty of excise leviable thereon. Small scale units availing the benefit of SSI exemption notification are also exempt from obtaining registration. However, such units are required to give a declaration in a specified form once the value of their clearances touches ₹ 90 lakhs.

With effect from 01.03.2015, only an online application can be made for obtaining central excise registration. After the assessee applies online for the registration in the prescribed manner, a 15 digit PAN based alphanumeric registration number and a registration certificate will be granted within two days of the receipt of a duly completed online application form. Verification of documents and premises, as the case may be, can be carried out after the grant of the registration. The registration certificate is valid till the relevant unit is engaged in manufacture of excisable goods. It is not required to be renewed.

(2) Payment of excise duty: The due dates and other provisions relating to payment of duty have been tabulated below:

<table>
<thead>
<tr>
<th>Type of Assessee</th>
<th>Periodicity</th>
<th>Due date for payment of duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessee eligible for SSI exemption (An eligible unit is one whose aggregate value of clearances does not exceed ₹ 400 lakh in the preceding financial year)</td>
<td>Quarterly payment of duty</td>
<td>6th day of the month following the relevant quarter.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5th day of the month following the relevant quarter.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For goods removed during the quarter ending in March, 31st day of March.</td>
</tr>
<tr>
<td>Other assessees</td>
<td>Monthly payment of duty</td>
<td>6th day of the month following the relevant month.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5th day of the month following the relevant month.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For goods removed during the month of March, 31st day of March.</td>
</tr>
</tbody>
</table>

The procedures under central excise will be discussed in detail at the Final level. In this unit, a bird’s eye view of the significant procedures under central excise has been given to familiarize the students with the basic aspects of such procedures.
The following points merit consideration in this regard:

- **E-payment of duty:** All assessees are mandatorily required to pay the excise duty electronically through internet banking. However, the Assistant/Deputy Commissioner of Central Excise may for reasons to be recorded in writing, allow the assessee to deposit excise duty by any mode other than internet banking.

- **EASIEST:** For e-payment, assessees should open a net banking account with one of the authorized banks. For effecting payment, assessees can access the ACES website and click on the e-payment link that will take them to the EASIEST portal or they can directly visit the EASIEST portal.

- **Interest @ 18% on delayed payment of duty:** Failure to pay the amount of duty by due date attracts interest at the rate @ 18% per annum on the outstanding amount.

- **Duty may be paid in cash or by utilizing CENVAT credit:** Duty may be paid in cash through account current, popularly known as PLA (Personal Ledger Account). Duty can also be paid by utilizing the CENVAT credit balance available at the end of the month, even though duty is payable by 5th/6th of following month.

(3) **Invoice:** An invoice is the document under cover of which the excisable goods are to be cleared by the manufacturer. Therefore, excisable goods cannot be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorized agent.

**Serially numbered:** The invoice should be serially numbered. The serial number shall commence from 1st April every year (beginning of a financial year). Such serial numbers need to be intimated to the Superintendent of Central Excise having jurisdiction over the factory of the assessee, before issuing the invoices.

**Contents:** The invoice should contain the registration number, address of the jurisdictional Central Excise Division, name of consignee, description, classification, time and date of removal, rate of duty, quantity, mode of transport, vehicle registration number and value of goods and the duty payable thereon.

**Number of copies:** The invoice has to be prepared in triplicate in the following manner, namely:-

i. the original copy being marked as ORIGINAL FOR BUYER;
ii. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER;
iii. the triplicate copy being marked as TRIPLICATE FOR ASSESSEE.

**Digital authentication:** An invoice issued under central excise law by a manufacturer may be authenticated by means of a digital signature. However, where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter and self attested by the manufacturer would be used for transport of goods.

(4) **Returns under central excise:** A central excise assessee is required to file certain periodic returns, which relate to his tax liability and other transactions. Some significant returns to be filed by different categories of central excise assessees and their respective due dates are given in the following table:
## Basic Concepts of Indirect Taxes – Central Excise Duty

### Form of Return | Category of assessee | Periodicity | Due date
--- | --- | --- | ---
**ER-1** | All assessees except SSI | Monthly | By 10th day of the month following the relevant month
**ER-3** | Assessees eligible for SSI concession (even if he does not avail the concession) | Quarterly | By 10th day of the month following the relevant quarter
**ER-4** | Assessees paying duty of ₹ 1 crore or more per annum either through PLA or CENVAT or both together | Annually | By 30th November of the succeeding year

**Note:** All the above returns have to be filed electronically.

**Note:** The rates of duties, wherever mentioned in the illustrations may not always be the actual rate prevalent during the period in question. They may be hypothetical rates assumed to explain the provisions of law with more clarity.