

BASIC CONCEPTS

LET US HAVE A REVIEW

Section /Rule	General Contents
Union List Entry No. 84	<i>Duties of excise on tobacco and other goods manufactured or produced in India</i> <ul style="list-style-type: none"> ➤ <i>except alcoholic liquors for human consumption, opium, narcotics,</i> ➤ <i>but including medical and toilet preparations containing alcohol, opium or narcotics.</i>
Section 2A	Duty, Duty of excise, Duties of excise = CENVAT
Section 3	Charging Section- Excisable, Goods, Manufactured or Produced in India
Section 3(l)(a)	BED(CENVAT) - rates specified in First Schedule, on all excisable goods excluding goods produced in SEZ but including goods produced in 100 % EOU Special provision for goods produced in 100% EOU & sold in DTA ED= Aggregate of all custom duties Valuation as per Customs Act and CTA, 50% duty exempt.
Section 3(l)(b)	Special duty of excise, in addition to the duty of excise on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985
Section 3(1A)	Same provisions applicable for govt. as are for non- govt.
Section 3A	Compounded Levy Scheme based on Annual Production
Section 2(d)	means goods 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 to Sec 2(d)	Deemed Marketability in case of any article, material or substance which is capable of being bought and sold for a consideration.
Section 2(f)	“manufacture” includes any process, - <ul style="list-style-type: none"> (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 First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture; or (iii) which, in relation to the goods specified in the Third Schedule, <ul style="list-style-type: none"> ➤ 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 the consumer, and the word “manufacturer” shall be construed accordingly and <ul style="list-style-type: none"> ➤ 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.

LANDMARK DECISIONS

MARKETABILITY

1.	Vazir sultan tobacco co. Ltd.	Words “in such manner as may be prescribed” appearing in section 3(1) qualify the word “collected” and not the word “levied” .thus levy is created by section 3 itself and “collection” of duty is left to be regulated by the rules.
2.	DCM	Something which can be brought to the market to be bought and sold i.e. Movable and marketable
3.	DCM	Actual sale is not necessary

4.	Ambalal sarabhai	Goods in question were having a very short self-life and there was no evidence to prove that such goods were either marketed or were marketable and hence not excisable.
5.	Triveni engineering & indus. Ltd.	Fixing of steam turbine in concrete platform, alternator and coupling and aligning them in a specified manner to form a turbo alternator. The marketability test requires that the goods as such should be in a position to be taken to the market and sold and from the above findings it follows that to take it to the market the turbo alternator has to be separated into its components, turbine and the other alternator - but then it would not remain turbo alternator, therefore, the test is incorrectly applied.

EXCISABLE GOODS

6.	Bhor industries	Mere mention in tariff is not enough
7.	Moti laminates	Goods mentioned in tariff dutiable only if marketable also. Intermediate goods not liable to duty if not marketable.
8.	Wallace flour mills Ltd.	Even if exempted still excisable. Exempted goods chargeable to duty if before removal exemption is withdrawn
9.	Vazir sultan tobacco co. Ltd.	Nil rate of duty is also a rate of duty.

MANUFACTURE

10	DCM	New and different article emerge having a distinctive name or use & character
11	Empire industries Ltd.	Whether the goods is transformed to that degree where it have different commercial commodity Having its distinct character, use and name and Commercially known different as such
12	Brakes india Ltd.	If after processing, the product have a use of its own, which it did not bear earlier, it would be manufacture
13	J.G.Glass	Printing on glass bottle does not amount to manufacture
14	Empire industries	Provisions of deemed manufacture constitutionally valid, may be covered by item no.97
15	Kapari international pvt.	Input and output covered by same tariff entry is immaterial
16	Technoweld indus.	If input and output are covered by different headings, it does not amount to manufactures unless a new product emerges.
17	Khandelwal metal & engg. Works	Waste and scrap can be dutiable if marketable. Covered by word produced

Manufacturer

18	Ujgar prints Ltd	Raw material supplier is not manufacturer (if no supervision& control)
19	Cibatul Ltd.	Brand owner is not manufacturer

CENTRAL EXCISE RULES, 2002

Let us have review

Rules	Title	Provisions of Central Excise Rules, 2002												
4	Duty payable on removal	<ul style="list-style-type: none"> • Manufacturer or person who store the goods in warehouse shall be liable for payment of duty is payable at the time of removal from factory or warehouse. • But in case of molasses of khandasari sugar, procurer who is using the molasses for manufacture of final product shall be liable for payment of duty • In exceptional circumstances (non availability of storage place) commissioner may allow the storage goods at other place without payment of duty. 												
5	Date for determination of duty and tariff valuation	<ul style="list-style-type: none"> • If good cleared from factory- Date of removal from factory • If good cleared from warehouse- Date of removal from warehouse. • If goods captively consumed- Date when it is put into used fot its intended purpose • In case of molasses of khndsari sugar factory- Date when received in the factory of procurer 												
6	Assessment of duty	<p>Describe the procedure for removal of excisable goods on payment of duty under the "Self Removal Procedure" (May 2002)(Nov. 1999)(Nov 2003)(5 marks)</p> <p>Ans. Self Removal Procedure</p> <p>The assessment under Central Excise is basically an invoice based self assessment i.e. an assessee has to himself assess his duty liability.</p> <p>The assessee has to submit monthly return in ER-1 along with 'self assessment memorandum' where assessee declares that</p> <p>(a) particulars in ER-1 return are correctly stated</p> <p>(b) value has been determined as per provisions of Sec 4 or 4A of CEA.</p> <p>Presently, all goods other than cigarettes are covered under self-removal procedure. So as per above Rule it can be said that duty is paid by assessee on his own while clearing goods from the factory/warehouse. The assessee himself has to determine classification and valuation of goods & pay duty accordingly. The Excise Officer doesn't assess each and every return. More trust is shown on the assessee.</p>												
7	Provisional assessment	<p>Where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto,</p> <p>he may request the AC or DC, as the case may be, in writing giving reasons for payment of duty on provisional basis and the AC or DC, as the case may be, may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him.</p> <p>BOND: Assessee has to execute the bond along with surety or security for differential amount.</p> <p>TIME LIMIT OF FINAL ASSESSMENT- As soon as information received but nor more than 6 months.</p> <p>Extension : Commissioner- further 6 months Chief Commissioner- For such period as he deemed fit</p> <p>FINAL ASSESSMENT: If FAD>PAD= differential amount payable with interest 13 % p.a. from 1st of month succeeding month in which final assessment is made.</p> <p style="text-align: center;">If FAD<PAD= refund will be granted with interest 6% p.a.(subject unjust enrichment)</p>												
8	Manner of payment	<p>Due Dates:</p> <p>The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 5th day of the following month:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 5px;"> <thead> <tr> <th style="width: 30%;">ASSEESSEE</th> <th style="width: 20%;">PERIOD</th> <th style="width: 25%;">OTHER THAN E-PAYMENT</th> <th style="width: 25%;">E-PAYMENT</th> </tr> </thead> <tbody> <tr> <td>OTHER THAN SSI</td> <td>MONTHLY</td> <td>5th of next month</td> <td>6th of next month</td> </tr> <tr> <td>SSI</td> <td>MONTHLY</td> <td>15th of next month</td> <td>16th of next month</td> </tr> </tbody> </table> <p>Duty for the month of march is payable by 31st of march.</p> <p>Payment through PLA after utilizing Cenvat Credit</p> <p>Mandatory E-Payment: "Provided also that an assessee, who has paid DUTY (other than the amount of duty paid by utilization of Cenvat credit) of Rs 50 lacs or more, in current or the preceding financial year, shall thereafter, deposit the duty electronically through internet banking."</p> <p>Consequences for Nonpayment of duty due dates:</p> <p>1) Interest</p> <p>If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate 13% p.a.(calculated on day basis) for the period starting with the first day after due date till the date of actual payment of the outstanding amount.</p> <p>2) Forfeiture of Monthly Facility and non utilization of Cenvat Credit</p> <p>If the assessee defaults in payment of duty beyond 30 days from the due date,</p> <ul style="list-style-type: none"> • the assessee shall, pay excise duty for each consignment at the time of removal, • without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon; and • in the event of any failure(to pay duty on each consignment), it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow . <p style="text-align: center;">Note: During the period of restriction, Assessee can avail credit in respect of duty paid on inputs, Capital goods and Input service which can utilized later.</p>	ASSEESSEE	PERIOD	OTHER THAN E-PAYMENT	E-PAYMENT	OTHER THAN SSI	MONTHLY	5 th of next month	6 th of next month	SSI	MONTHLY	15 th of next month	16 th of next month
ASSEESSEE	PERIOD	OTHER THAN E-PAYMENT	E-PAYMENT											
OTHER THAN SSI	MONTHLY	5 th of next month	6 th of next month											
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9	Registration	<p>Registration is factory wise.</p> <p>PERSON REQUIRE TO TAKE REGISTRATION</p> <ul style="list-style-type: none"> • Every manufacturer of excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations) on which excise duty is leviable • Persons who desire to issue CENVATABLE invoices under the provisions of the CCR-2004. • Persons holding private warehouses. • Persons who obtain excisable goods for availing end-use based exemption notification • Exporters manufacturing or processing export goods by using duty paid inputs and intending to claim rebate of such duty or by using inputs received without payment of duty and exporting the finished export goods. 												

		<p>PERSON EXEMPTED FROM REGISTRATION</p> <ul style="list-style-type: none"> Persons who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by a notification. Small scale units availing the slab exemption based on value of clearances under a notification. In respect of ready-made garments, the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability. Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962. The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2001). A Hundred per cent Export Oriented Undertaking or a unit in Free Trade Zone or Special Economic Zone licensed or appointed, as the case may be, under the provisions of the Customs Act, 1962. BUT 100% EOU obtain the registration if procure excisable goods from DTA or remove excisable goods to DTA.
10	Daily stock account	<p>Daily Stock Account (May 2006)(Nov. 1997)(4 Marks)</p> <ul style="list-style-type: none"> Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid. The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent. All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.
11	Goods to be removed on invoice	<ol style="list-style-type: none"> Excisable goods shall be removed from factory or warehouse under the cover of invoice signed by authorized person and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory. Content of invoice: Central Excise registration number, name of the consignee, description of goods, Classification of goods, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value of goods and the duty payable thereon, Address of Jurisdictional Central Excise Division. Copies of Invoice -The invoice shall be prepared in triplicate in the following manner, namely:- <ul style="list-style-type: none"> the original copy being marked as ORIGINAL FOR BUYER. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER. the triplicate copy being marked as TRIPLICATE FOR ASSESSEE. Only invoice book in use at time unless allowed by AC/DC Each foil of the invoice book, before being brought into use authenticated by Authorised person Invoice shall be serially numbered & to be intimated to supt. Of Central Excise.
12	Filing of return	Discuss separately
12BB	Facility for large tax payer unit	See from notes
12CC	Restrictions in case of evasion	<p>Notwithstanding anything contained in these rules, where the Central Government, having regard to the</p> <ul style="list-style-type: none"> extent of evasion of duty, nature and type of offences or such other factors as may be relevant, <p>is of the opinion that in order to prevent evasion of, and default in payment of, excise duty, it is necessary in the public interest to provide for certain measures including restrictions on a</p> <ul style="list-style-type: none"> manufacturer, first stage and second stage dealer or an exporter, <p>may by a notification in the Official Gazette, specify nature of restrictions including suspension of registration in case of a dealer, types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board.</p>
15	Special procedure for payment of duty [Compounded levy Scheme]	<ul style="list-style-type: none"> Under compounded levy scheme duty is payable at fixed rate on the basis of the certain factors that are relevant for the production of goods such as scale of operation, capacity of the machines size of the machines etc. Central government had specified the goods through notification, upon which duty can be paid on the basis of the Compounded Levy Scheme e.g. Stainless steel pattas/ patties – Rs.30,000 per cold rolling machine per month/ Aluminium circles –Rs.12,000 per cold rolling machine per month. It is an optional scheme <p>{This levy is Similar to levy Under Sec 3A}</p>
16	Credit of duty on goods returned to the factory	<p align="center">RETURN OF GOODS</p> <p>Where any goods on which duty had been paid at the time of removal thereof</p> <ul style="list-style-type: none"> are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CCR- 2004 and utilise this credit according to the said rules. <p align="center">RE-REMOVAL OF GOODS</p> <p align="center">If the process to which the goods are subjected before being removed</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p align="center">Does not amount to manufacture</p> <p align="center">↓</p> <p align="center">the manufacturer shall pay an amount equal to the CENVAT credit taken</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p align="center">amount to manufacture</p> <p align="center">↓</p> <p align="center">manufacturer shall pay duty on goods received at the rate applicable on the date of removal and on the value determined under sec 4/4A/3(2)</p> </div> </div> <p>If there is any difficulty in following the above provisions, the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner.</p>
16A	Removal of goods for job work, etc.	Any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfilment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.

16B	Special procedure for removal of semi-finished goods for certain purposes	The Commissioner of Central Excise may by special order and subject to conditions as may be specified by the Commissioner of Central Excise, permit a manufacturer to remove excisable goods which are in the nature of semi-finished goods, for carrying out certain manufacturing processes, to some other premises and to bring back such goods to his factory, without payment of duty, or to some other registered premises and allow these goods to be removed on payment of duty or without payment of duty for export from such other registered premises.
16C	Special procedure for removal of excisable goods for carrying out tests	The Commissioner of Central Excise may, by special order and subject to such conditions as may be specified by the Commissioner of Central Excise, permit a manufacturer to remove excisable goods manufactured in his factory for carrying out tests to some other premises and to bring back such goods to his factory, without payment of duty, or to some other registered premises and allow these goods to be removed on payment of duty, or without payment of duty for export from such other registered premises : Provided that this rule shall not apply to the goods known as "prototypes" which are sent out for trial or development test.
17	Removal of goods by 100% EOU TO DTA	Discuss separately
18	Rebate of duty	Where any goods are exported, the Central Government may, by notification, grant rebate of <ul style="list-style-type: none"> ➤ duty paid on such excisable goods or ➤ duty paid on materials used in the manufacture or processing of such goods and ➤ the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. <p><i>Explanation.</i> - "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.</p>
19	Export without payment of duty	(1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner. (2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.
21	Remission of duty	Discuss separately
22	Access to a registered premises	(1) An officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. (2) Every assessee, and first stage and second stage dealer shall furnish to the Authorised officer a list in duplicate, of - <ol style="list-style-type: none"> (I) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be; (II) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and (III) all the financial records and statements including trial balance or its equivalent. (3) Every assessee, and first stage and second stage dealer shall, on demand make available to the officer empowered or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, <ol style="list-style-type: none"> A) the records maintained or prepared by him. B) the cost audit reports, if any, under section 233B of the Companies Act, 1956 and C) the Income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 for the scrutiny of the officer or audit party, as the case may be. <i>Explanation</i> - For the purposes of this rule, "first stage dealer" and "second stage dealer" shall have the meanings assigned to them in CENVAT Credit Rules, 2004.
25	Confiscation and penalty	} Discuss separately under civil proceeding
26	Penalty for certain offences	
27	General penalty	

Rule 21 Remission of duty [NOV-07]

Where it is shown to the satisfaction of the Commissioner that goods have been

➤ lost or destroyed by natural causes or by unavoidable accident or

➤ are claimed by the manufacturer as unfit for consumption or for marketing,

at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:

Central Excise Officer	Amount of duty empowered to be remitted
Commissioner	Without limit, but normally any amount exceeding Rs. 500000
Additional/Joint Commissioner	Rs. 100000 to Rs. 500000
Deputy/Assistant Commissioner	Rs. 10000 to Rs. 100000
Superintendent	Below Rs. 10000
Inspector	none

Returns under Central Excise Rules, 2002 for removal of goods. [MAY-00, 06]

Rule	Assessee	Period	Form	Due date	Contents [NOV-04, NOV-05]
12(1)	Assessee	Monthly Return	ER-1	10 th of the following month	(A) Period (B) Assessee's Name (C) Registration No. (D) Quantity Manufactured (E) Quantity Cleared (F) Duty Payable (G) Duty paid through Cenvat Credit (H) Duty paid through PLA (I) Details of each type of Cenvat Credit availed (J) Interest paid (K) Arrears paid (L) Self Assessment memorandum
12(1)	SSIs	Quarterly Return	ER-3	20 th of the month	Same as above
17(3)	100 % EOU for removals made in DTA	Monthly Return	ER-2	10 th of the following month	Details regarding inputs and capital goods received without payment of duty • Central Excise Tariff Sub-heading • Customs Tariff Sub-heading • Quantity Code • Total Quantity • Value of the Goods (Other details as same in ER - 1)
Returns under Cenvat Credit Rules, 2004					
9(2)	All assessee (submission of information on Principal Inputs)	Monthly	ER-6	10 th of the following month	(A) Manufacturer's Name (B) Registration No. (C) Month to which the Return relates (D) Details of receipt and consumption of principal inputs and finished excisable goods. (E) Details of waste and scrap arising during manufacture (F) Details of quantity of waste and scrap cleared / destroyed.
Annual statements					
12(2) CER	All assessee (who have paid Excise duty of Rs 1 Crore or more)	Annual Financial Information Statement	ER-4	30 th November of the succeeding year	(A) Assessee's Name (B) Registration No. (C) Value of Inputs (D) Details of major Raw material independently accounting for 10% or more of total value of raw material. (E) Details of expenditure under specified Heads (F) Goods manufactured by assessee through Job Worker (G) Details of sales of major Finished Goods independently accounting for 10% or more of total Value of Finished Goods (H) Details of other income (I) Job work undertaken for others (J) CENVAT Credit details.
9A(1) CCR	All assessee (who have paid Excise duty of Rs. 1 Crore or more)	Annual Information on principal inputs	ER-5	30 April of the succeeding year	(A) Manufacturer's Name (B) Registration No. (C) Description of Principal inputs (D) Description of Final product in which the principal input is used (E) Quantity of principal input required for use in the manufacture of unit quantity of manufacture of Final product.
Annual installed capacity statement [INSERTED BY FINANCE ACT 2008]					
12 (2A) CCR	Every assessee shall submit to the Superintendent	Annual Installed Capacity Statement	ER-7	30 th April of the succeeding F/Y.	declaring the annual production capacity of the factory for the F/Y to which the statement relates

SPECIAL PROVISIONS FOR 100 % EOU

SEC 3 OF CENTRAL EXCISE ACT, 1944 (Proviso)

Provided that the duties of excise which shall be levied and collected

- on any excisable goods which are produced or manufactured, by a hundred per cent export-oriented undertaking and brought to any other place in India,
- shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 on like goods produced or manufactured outside India if imported into India.

Exemption (Inserted by F.A. 2008)

- Goods manufactured or produced by a 100% EOU/STP/EHTP and sold in Domestic Tariff Area
- are exempt from **50% of Basic Custom Duty**.

RULE 17 OF CENTRAL EXCISE RULES, 2002

- (1) If any goods are removed from 100% EOU to domestic tariff area,
 → then such removal shall be made under an **invoice** by following procedure of **rule 11** and
 → ~~on payment of appropriate duty before removal of goods by debiting the account current required to be maintained for this purpose or by utilizing the CENVAT credit.~~
 → **(Inserted by F.A. 2008) on payment of appropriate duty** before removal of goods by debiting the account current or utilizing the CENVAT credit *in the manner specified in Rule 8.* (Monthly facilities made available to 100% EOU)
- (2) **RECORD OF AC-1**
 The unit shall **maintain in** proper form [*form: AC-1*] appropriate **account relating to production**, description of goods, quantity removed, duty paid.
- (3) **RETURN OF EOU - MONTHLY RETURN**
 The unit shall **submit a monthly return** [*form: ER-2*] to the SCE, **within 10 days** of following month.
- (4) **SCRUTINY OF RETURN OF EOU [INSERTED IN YEAR 2008]**
the proper officer may on the basis of information contained in the return filed by 100% EOU, and after such further inquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner prescribed by the board.
- (5) *Every assessee shall available to the proper officer all the documents and records for verification as and when required by such officer.*

RULE 3(7) OF CENVAT CREDIT RULES, 2004 (IMP)**INPUTS & CAPITAL GOODS CLEARED BEFORE 7th SEP 2009**

If Inputs capital goods manufactured by 100% EOU, EHTP/STP and such goods purchased by Manufacturer or OSP for manufacturing the goods or for providing Output service then amount of credit available to Manufacturer or OSP is as follows

$$\text{Cenvat Credit} = \text{Assessable value} \times \left\{ 1 + \frac{\text{BCD}}{200} \right\} \times \frac{\text{CVD}}{100}$$

INPUTS & CAPITAL GOODS CLEARED ON OR AFTER 7th SEP 2009 (Following proviso inserted by N/N 22/2009- dated 7th Sep 2009)

Provided further that the CENVAT credit in respect of **inputs and capital goods** cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

- (A) excise duty leviable under section 3 of the Excise Act read with the notification no. 23/2003-Central Excise, dated 31st March, 2003 and
- (B) the Education Cess leviable under section 91 read with section 93 of the Finance Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A),

Shall be aggregate of

- (I) that portion of excise duty referred to in (A), as is equivalent to -
- (i) the additional duty leviable under section 3(1) of the Customs Tariff Act(CVD), which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act.
- (ii) the additional duty leviable section 3(5) of the Customs Tariff Act and
- (II) the Education Cess and the Secondary and Higher Education Cess referred to in (B)'' .

OLD PROVISION (before 7th Sep-2009)		NEW PROVISION (on or after 7th sep 2009)	
Assessable value	Rs 1000	Assessable value	Rs 1000
BCD @10% (50% EXEMPT)	Rs 50	BCD @10% (50% EXEMPT)	Rs 50
CVD @ 20% (AV + BCD)	Rs. 210	CVD @ 20% (AV + BCD)	Rs. 210
ACD 3(5) (exempt)	NIL	ACD 3(5) (exempt)	NIL
Ed. Cess of Customs 2%(BCD+CVD)	Rs. 5.2	Ed. Cess of Customs 2%(BCD+CVD)	Rs. 5.2
SHEC Cess of Customs 1%(BCD+CVD)	Rs. 2.6	SHEC Cess of Customs 1%(BCD+CVD)	Rs. 2.6
TOTAL DUTY PAYABLE	Rs. 267.8	TOTAL DUTY PAYABLE	Rs. 267.8
Therefore Excise duty for 100% EOU is	Rs. 267.8	Therefore Excise duty for 100% EOU is	Rs. 267.8
CENVAT CREDIT AVAILABLE TO BUYER WHO PURCHASES GOODS FROM 100% EOU $\text{Cenvat Credit} = \text{AV} \times \left\{ 1 + \frac{\text{BCD}}{200} \right\} \times \frac{\text{CVD}}{100}$ $\text{Cenvat Credit} = \text{AV} \times \left\{ 1 + \frac{10}{200} \right\} \times \frac{210}{100}$ <p style="text-align: center;">= Rs 210</p>		CENVAT CREDIT AVAILABLE TO BUYER WHO PURCHASES GOODS FROM 100% EOU $\text{Cenvat Credit} = [\text{CVD} + \text{ACD}3(5) + \text{Ed. Cess of Excise} + \text{SHEC Cess of Excise}]$ $= [210 + \text{NIL} + 5.36 + 2.68]$ <p style="text-align: center;">= Rs. 218.04</p>	
		Ed. Cess of Excise	Rs. 5.36
		SHEC Cess of Excise	Rs. 2.68

SEC 14A (VALUATION AUDIT)	SEC 14AA (CENVAT AUDIT)
(1) It is Special Audit in relation to Valuation of Goods	(1) It is Special Audit in relation to Availment and utilization of Cenvat credit.
(2) It is conducted when value of excisable goods has not been correctly declared or determined by manufacturer.	(2) It is conducted when availed or utilized by manufacturer (a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate; (b) has been availed of or utilized by reason of fraud, collusion or any wilful mis-statement or suppression of facts,
(3) Special Audit Under this section ordered by AC or DC	(3) Special Audit Under this section ordered by Commissioner of Central Excise.
(4) Previous approval of the Chief Commissioner of Central Excise is required.	(4) No such approval is required.
(5) The Chartered Accountant/Cost Accountant is nominated by Chief Commissioner of Central Excise.	(5) The Chartered Accountant/Cost Accountant is nominated by Commissioner of Central Excise.
(6) The Chartered Accountant /Cost Accountant shall submit the report within maximum period of 180 days.	(6) The Chartered Accountant /Cost Accountant shall submit the report within the time as specified by Commissioner of Central Excise

EXCISE AUDIT

LATEST AMENDMENTS

F. A. 2009

Section 14A and Section 14AA of the Central Excise Act, 1944

Valuation Audit and Cenvat Credit Audit can now be done by a Chartered Accountant also.

EXCISE VALUATION

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Section/rule	General content
Section 4(1)(a)	Value on each removal = Transaction value subject to following conditions <ul style="list-style-type: none"> • the goods are sold by the assessee, • for delivery at the time and place of the removal, • the assessee and the buyer of the goods are not related and • the price is the sole consideration for the sale,
Section 4(1)(b)	If goods not sold or any other condition of sec.4(1)(a) not satisfied, AV shall be determined as per rules.
Section 2(h)	“sale” and “purchase”, with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration.
Section 4(3) (a)	“assessee” means the person who is liable to pay the duty of excise under this Act and includes his agen
Section 4(3)(b)	persons shall be deemed to be “related” if - <ol style="list-style-type: none"> (i) they are inter-connected undertakings(as per section 2(g) of MRTP Act, 1969) (ii) they are relatives (as per section 6 of the companies act, 1956) (iii) amongst them the buyer is <ol style="list-style-type: none"> i. a relative and a distributor of the assessee, or ii. a sub-distributor of such distributor; or they are so associated that they have interest, directly or indirectly, in the business of each other.
Section 4(3)(c)	<i>Place of removal</i> - Factory, warehouse or depot
Section 4(3)(cc)	<i>Time of removal</i> - in case of depot, value at the time when cleared from the factory
Section 4(3)(d)	“transaction value” means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, <ul style="list-style-type: none"> • 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.
Explanation to Sec. 4(1)	Total amount recovered from buyer & additional consideration shall be cum duty even if excise duty was not charged from buyer
Section 4A	<div style="display: flex;"> <div style="flex: 1;"> <ul style="list-style-type: none"> ☛ Required under SW&MA to declare RSP on the package. ☛ notified by CG </div> <div style="flex: 2; padding-left: 10px;"> <p>Value = RSP -Abatement as notified by C.G. If more than one RSP on same package = take highest RSP If different RSP on different package = take individual RSP</p> <p>Offence & punishment Goods covered under this section removed without declaring the retail sale price on the packages or where the MRP is tampered, altered or obliterated after their removal,</p> <ul style="list-style-type: none"> ➤ then all such goods will be liable to confiscation & ➤ retail sale price of such goods shall be ascertained <i>in the prescribed manner(as per central excise (determination of retail sale price of excisable goods) rules, 2008)</i> </div> </div>
Section 3(2)	<i>Tariff Value</i> - AV fixed by central government , sec. 4 not applicable

CHARGES TO BE INCLUDIBLE AND EXCLUDIBLE FROM TRANSACTION VALUE

Charges	Includible or Excludible from T.V.
All optional charges E.g. • warranty • After sale service • Pre-inspection charges	Includible
Packing	Includible
Installation and commissioning	Includible
Dharmada charges	Includible
Parts and accessories (bought out items)	Includible(if essential)
Trade Discount	Excludible
Interest	Excludible
Drawing & designing charges	Includible

Central Excise valuation (Determination of price of excisable goods) Rules 2000

	Cases where condition of section 4(1)(a) not satisfied	Applicable rule
1.	When the goods are not sold by the assessee e.g. a) Good distributed as free sample b) Donation of good as free of cost c) Goods supplied free under warranty replacement d) Captive consumption e) Goods are transferred to job work	} Rule-4 → Rule-8 → Rule-10A
2.	When delivery is given at a place other than place of removal	→ Rule-5
3.	When buyer and seller are related person	→ Rule-9 &10
4.	When price is not sole consideration for sale	→ Rule-6

**Central Excise valuation (Determination of price of excisable goods)
Rules 2008**

Rules	Provisions
Rule 4	Value = Nearest T.V. +/- adjustment
Rule 5	Value= T.V. - Cost of transportation from place of removal to place of delivery
Rule 6	Value= T.V. + Money value of additional consideration flowing directly or indirectly from buyer to seller Explanation: <ul style="list-style-type: none"> • add apportioned value of assistance by buyer free or at reduced cost • Notional interest added if nexus between low price & advance proved.
Rule 7	<i>Depot/ branch/Consignment agent transfer (read with section 4(3)(c) & 4(3)(cc)</i> Value=NTV of the <i>Depot/ branch/Consignment agent</i> , at the time of removal from factory. Note: If value not available at depot at the time of removal from factory- take nearest NTV.
Rule 8	Value= 110% of cost of production (as per CAS-4)
Rule 9	Applicable to - related person other than ICU Condition - all sales transaction ONLY through related person Valuation as follows If related person sold to unrelated- Normal transaction value(NTV) at which sold to unrelated If related person consume the goods- value as per rule 8 If related person sold to another related person - NTV of such related person to another related person who sales in retail.
Rule 10	Applicable to - Inter Connected Undertaking (ICU) only Condition - all sales transaction ONLY through ICU <i>ICU-</i> also related under 4(3)(b)(ii)/ (iii)/ (iv)/H/S- Value as per Rule-9 Otherwise- non-related value u/s 4(1)(a) (i.e. Transaction value)
Rule 10A	Valuation in case of job worker If goods are sold for delivery from job worker factory - price charged by Principle manufacturer to its buyer If goods are sold for delivery not from job worker factory but from other places- NTV at which goods are sold from other places at the time of removal from job workers,s factory
Rule 11	using reasonable means consistent with general provisions of these rules and sec 4(1)

IMPORTANT CASE LAWS

Bombay international ltd.	tyres	whatever elements which enrich the value of the goods before their marketing and which are not included in price actually paid or payable are includible in the value of goods.
MRF		Fluctuations subsequent to removal can have no relevance
BTI		To become related person the distributor should also be relative
Atic Industries		Mutuality of interest, degree of interest irrelevant, interest of financial nature
Alembic Glass Industries Ltd.		Common directors do not mean that one company has an interest in the business of the other company.
Kisan Sahkari Mills Ltd.	Chinni	In the absence of a definition of taxes in the CEA, expression "tax" to be given a broad meaning and it would cover any levy.

SSI EXEMPTION

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<i>Also called</i>	It is also called value based exemption or exemption under notification 8/2003
<i>Applicability</i>	This exemption notification is applicable to specified eligible goods only (which is specified in the notification). Most of goods manufactured by SSI are specified goods. However, some items are not eligible for e.g. Tobacco products (except unbranded), Tea including tea bags and tea waste, Extract and essence of tea or coffee, Pan Masala and etc.
<i>Relevant factor for SSI</i>	Investment in the business or no. of labours or registration as SSI industry -irrelevant Aggregate value of clearance(AVC) of preceding F.Y. - relevant
<i>Eligibility</i>	Eligibility of SSI exemption- AVC of preceding F.Y. does not exceeds 400 lacs
<i>Clubbing</i>	While determining AVC One Factory, Multiple Manufacturer : Value of Clearances shall be aggregated One Manufacturer, Multiple Factories : Value of Clearances shall be aggregated
<i>Exemption</i>	Exemption in current F.Y.- AVC upto 150 lakhs(no BED & SED)
<i>If SSI exemption not availed</i>	Assessee have option Not to Avail 8/2003 <ul style="list-style-type: none"> • Inform to AC/DC • pay duty at NRD & • Cenvat credit of Inputs & Capital goods He should exercise the option before effecting any clearance but Once exercised cannot Withdrawal during the year not possible
<i>CENVAT CREDIT If ssi exemption availed</i>	Cenvat on INPUTS (AVC upto 150 lakhs) --- not to be availed Cenvat on CAPITAL GOODS --- allowed but not to be UTILIZED till AVC exceeds 150 lakhs limit
<i>Declaration</i>	When AVC exceed 90 lacs
<i>Registration</i>	Within 30 days When AVC exceed 150 lacs
<i>Due date for payment of duty</i>	Period- monthly Due date- 15 th of next month
<i>Return</i>	Period- quaterly Due date- 20 th of next month
<i>Clubbing in case of common directors or partners</i>	Department Clarification: Where there are some common partners/directors in different partnership firms/corporate bodies, each will be regarded as a separate unit, provided they are managed separately and funded separately. A person who is a director in a company and also having his own sole proprietorship firm clubbing of clearances of the company and firm is not permissible.

STATEMENT SHOWING COMPUTATION OF AVC 150 LAKHS LIMIT

CLEARANCES	For determination of AVC 400 LAKHS		For determination of AVC 150 LAKHS	
	Include /exclude		Include /exclude	Reason
Normal clearance of specified goods	Include		Include	
Clearance of non dutiable goods <ul style="list-style-type: none"> ☛ Clearance for export (Except Nepal & Bhutan) ☛ Clearance to 100% EOU/SEZ/EHTP/STP/UN ☛ Clearance under 214/86 	exclude		exclude	
Clearance to Nepal or Bhutan	Include		Include	
Clearance of non excisable goods	exclude		exclude	
Clearance of inputs removed as such	exclude		exclude	
Clearances of "intermediate goods (which are separately exempted under 8/2003)	exclude		exclude	
CLEARANCES BEARING B/N or T/N				
a. Clearances under own B/N or T/N of the manufacturing unit itself	Include		Include	
b) Clearances bearing B/N or T/N of the another person	exclude		exclude	
c) Exception <ul style="list-style-type: none"> ☛ Part or equipment are cleared for use as OE (Original Equipment) for use in any Machinery/ Equipment or Appliances By following End-use based exemption procedure ☛ The Customer is any one of the following: <ol style="list-style-type: none"> 1. Khadi and Village Industries Commission; 2. State Khadi and Village Industry Board; or 3. National Small Industries Corporation; or 4. State Small Industries Development Corp; 5. State Small Industries Corporation; ☛ Clearances from factory situated in RURAL AREA ☛ Clearances of Accounts Books, Register, Writing Pad and File Folders ☛ Packing material 	Include		Include	
Clearance under nil rate	Include		exclude	
Clearance under exemption other than above	Include		exclude	
TOTAL				

