

**BASIC PROPOSITIONS UNDER CENTRAL EXCISE  
FOR SMALL MANUFACTURERS AND PROCESSORS**



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Central Excise duty is one of the old central revenue which Central Government collects for its kitty to run the Government. The said Central Excise duty is levied on the activity of Manufacture of specified Goods in India.

There are few notions among the manufacturing and processing sector which includes to say -

- The Central Excise is draconian law;
- The powers of the officers are too strong and even they can close the factory any time;
- The documentation and procedures are too cumbersome;
- The cost of goods would go up by the rate of excise duty and the market may be lost;
- Upto 400/150 lakhs turnover there is no Central Excise duty';
- Job worker is not liable to pay duty;
- The exemption limit would be computed based on sales/labour charges turnover.

But none of the above propositions are fully true. It depends upon the facts and circumstances of each case and in most of the cases the above propositions are incorrect. Therefore it would be ideal for businessman undertaking a manufacturing or processing activity to know certain basic propositions under Central Excise Law for carrying on their business in positive manner and without facing surprise demands at a later point of time. This article is intending to bring out certain basic propositions under Central Excise law to be known by the manufacturer or processors.

**1. When does Central Excise Levy gets attracted?**

- a. The central excise duty would be levied on the goods manufactured in India. The goods should be the goods listed in First Schedule or Second Schedule to Central Excise Tariff Act.
- b. Therefore the essential conditions are
  - i. There should be process which is resulting in manufacture.
  - ii. The said process of manufacture should be in India.
  - iii. The manufacture should be of Goods (not immovable property).
  - iv. The goods should be excisable goods i.e. goods listed as mentioned above.
  - v. The goods must be manufactured (including deemed manufacture)
- c. It is relevant to note that in general terms the process would be considered as manufacture if there is change in name, character or use of the goods processed as is known in the market.
- d. In addition to this general understanding of manufacture there is a concept of deemed manufacture in following two ways:
  - i. For certain goods in the Section Notes or Chapter Notes to Central Excise Tariff Act, there will be a mention that certain processes would be deemed to be manufacture.
  - ii. For the goods listed in Third Schedule to Central Excise Act, 1944, the process of 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 would also be deemed to be manufacturer

Therefore it would be critical to examine whether goods in question are covered under any of the deemed manufacture list especially when only

some processing is undertaken to be clear that the activity is not manufacture or not.

**2. Whether job worker is liable to pay duty if he manufactures goods on behalf of others?**

- a. When the processes undertaken by the job worker amounts to manufacture including deemed manufacture, the job worker would be liable to pay duty.
- b. However if the supplier of goods gives a declaration to the jurisdictional Central Excise officer of the job worker in terms of Notification 214/86 CE (which exempts a job worker from duty when principal pays duty along with other conditions) from the principal manufacturer.

**3. Whether Service Tax is also payable by the job worker?**

- a. If the activity amounts to manufacture, there is no liability of duty on the job worker to pay any service tax.
- b. If the activity does not amount to manufacture, there would be liability to pay service tax. Even in such cases, if the principal manufacturer is paying duty on the final products, job worker is exempted from payment of duty.

**4. How to ascertain whether levy is applicable to the product manufactured?**

- a. Firstly it should be ascertained if different goods, with distinct name, character and use emerges out of the raw materials.
- b. In case there is such bringing into existence of a new substance manufacture can be said to have taken place.
- c. Examine if the goods are finding a place in any of entries of First Schedule or Second Schedule to Central Excise Tariff Act following the principles of classification (or taking expert view in case of difficulty).
- d. Ascertain whether the goods are covered under deemed manufacture or not when considered with the nature of activity undertaken on such goods.
- e. After ascertaining whether the activity is amounting to manufacture, then the duty rate mentioned in the said schedules should be checked. If the entry against the item is either 'Nil' or left blank, then no duty is payable on the same.

- f. Even if there is a duty rate mentioned, the next step would be check whether any exemption is available for the said goods. The exemption can be unconditional or conditional. Further it can be full exemption or partial exemption. In any case where the exemption is subject to conditions, it should be ensured that all the conditions set out therein are fulfilled.

**5. When registration has to be done?**

- a. The registration is compulsorily required for every person, who produces, manufactures excisable goods. However manufacture of wholly exempted goods would be exempted from registration.

**6. What is the general Rate of Central Excise Duty?**

- a. The general rate of Central Excise duty at present is 10%.
- b. There is a rate of 1% applicable for about 130 tariff items vide notification 01/2011-CE dated 01.03.2011. This is subject to condition that cenvat credit is not availed in relation to such goods.
- c. For the said goods if the credit is availed, the duty rate would be 5% instead of 1%.

**7. On what value the duty has to be computed? In case of Job work whether duty has to be paid on job work charges?**

- a. The excise duty has to be computed on the price charged at time of clearance of goods, at time of removal for delivery at factory gate, where buyer and seller are not related and price is sole consideration for transaction. This would be called as transaction value.
- b. If the above conditions are not fulfilled, then the valuation would be as per the valuation Rules which gives separate mechanism for valuations.
- c. However there are certain products notified by the Government, which are mostly consumer products, when the goods requiring declaration of RSP/MRP as per the provisions of Legal Metrology Act or any other law, the value would be MRP/RSP less certain percentage of abatement. Example the MRP is Rs. 100 and the abatement is 35% the Assessable value on which duty is payable would be Rs. 65/-.

- d. However even if the goods are notified if there is exemption from declaration of price on such goods, then the valuation would be transaction value or as per valuation rules discussed above.
- e. As regards to goods manufactured on job work basis the value on which the duty has to be paid is as follows:
  - i. Where the goods are further used by the principal then cost of goods supplied plus job work charges;
  - ii. Where the goods are sold by the principal as it is, then the selling price of the principal has to be adopted.

**8. When the invoice should be prepared and what it should contain?**

- a. The invoice is to be prepared at time of removal of goods, from factory or place of manufacture.
- b. The invoice is to be raised in triplicate, original for buyer, duplicate for transporter and triplicate for manufacturer/assessee.
- c. The invoice shall be serially numbered and shall contain
  - i. The registration number of assessee;
  - ii. Name & Address of Central Excise Division,
  - iii. Name of the consignee;
  - iv. Description of Goods;
  - v. Classification of Goods;
  - vi. Time and date of removal;
  - vii. Mode of Transport with Vehicle Regn. No.
  - viii. Rate of duty;
  - ix. Quantity and value of goods; and
  - x. The duty payable thereon.

**9. Whether the duty computed can be collected from the customers?**

- a. Since Central Excise duty being an indirect tax, the same can be shown as an item in invoice, and can be collected from the customers over and above

the price charged for the goods.

**10. Whatever amount collected as duty should be completely paid to the Government in Cash or any deduction or credit is available?**

- a. It is not necessary that the duty collected has to be paid in cash. It can be paid by using the Cenvat credits of excise duties paid on inputs/capital goods as well as credits of service tax paid on input services.
- b. In other words the total duty payable less Cenvat credits has to be paid in cash.

**11. What is the primary condition for claiming credit?**

- a. The primary condition for claiming credit is that the inputs are used in the factory by the manufacturer of final product; input services are used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services specifically enumerated thereunder.
- b. The inputs and input services that are specifically excluded vide definition cannot be availed.
- c. In addition, the credits cannot be claimed on the inputs that have no relation with manufacture of final product. The credits also cannot be claimed on input services used primarily for personal consumption/use of employee.
- d. Where common inputs and input services are used to provide taxable as well as exempted goods and services, the credits cannot be availed to extent of the inputs and input services used solely in relation to the manufacture of exempted goods and their clearance upto the place of removal or for the provision of exempted services.

**12. When the duty has to be paid?**

- a. The duty has to be paid in respect of clearances during a month by 5<sup>th</sup>/6<sup>th</sup> (where duty paid electronically) of succeeding month. For month of March, duty has to be paid within 31<sup>st</sup> of March.
- b. The credits on the inputs and input services invoices received during each month can be availed for set off to duty payable for the concerned month.

- c. It means duty cannot be set off against inputs/input services bills received upto 5<sup>th</sup>/6<sup>th</sup> of next month.

**13. What is small scale exemption? What are important points to be kept in mind?**

- a. The Small Scale Industry Exemption (SSI exemption) is issued under notification no.8/2003-CE dated 1.3.2003.
- b. The benefit of this notification is available to extent of Rs 150 Lakhs of domestic clearances of dutiable goods (excluding exempted goods) during the financial year.
- c. To be eligible for this exemption the value of total clearances including exempted goods in the previous financial year should not have crossed four crores (400 lakhs).
- d. Also to note that the benefit of the exemption is not available when the goods bear the brand name of other person/s.
- e. The inclusions and exclusions under this notification for computing the limits of Rs 150 Lakhs and Rs 400 lakhs of clearances are given in summary form as below.

**Summary of Exclusions:**

<b>For Rs 150 Lakhs turnover</b>	<b>For Rs 400 lakhs turnover</b>
All exempted clearances.	
Clearances bearing brand name/trade name of others.	Clearances bearing brand name/trade name of others.
Captive consumption	Captive consumption
Trading and non-manufacturing turnover	Trading and non-manufacturing turnover
Exports (Except to Nepal or Bhutan)	Exports (Except to Nepal or Bhutan)
Clearance to United nation or International organization, FTZ, SEZ, EOU, EHTP.	Clearance to United nation or International organization, FTZ, SEZ, EOU, EHTP.
Job work amounting to	Job work amounting to manufacture

manufacture working under Notification No. 214/86-CE as mentioned above.	working under Notification No. 214/86-CE as mentioned above.
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**14. Whether it is beneficial to avail SSI exemption at all the time?**

- a. It may not be beneficial to avail this exemption at all times.
- b. Where goods are cleared to industrial users who can avail credits on inputs it maybe better to charge excise duty on clearances.
- c. Where order is received as basic +duty, it is better to pay duty.
- d. Where there is less value addition it is preferable to register.
- e. Where there are exports, the credits on inputs used for exports can be availed to set off against duty payable on the local clearances.

**15. What are the records to be maintained? Is there a prescribed formats in which it has to be maintained?**

- a. The records has to be maintained for: accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods (whether capital goods or inputs or finished goods).
- b. Maintain the cenvat credits register with details of date and reference number of capital goods, inputs, input services invoices, name of vendor, their central excise/service tax registration number, value of invoice, excise duty/service tax as well as availment & utilisation of credits thereon.
- c. He shall maintain Daily Stock Account with details of finished goods manufactured on day to day basis, the removal entry in production register/DSA providing details of value, quantity and duty payable, besides reference as to the invoice

**16. When the returns has to be filed?**

- a. The returns has to be filed in ER-1 by manufacturers on monthly basis, within 10 days of end of each month.
- b. The return has to be filed in ER-2 by EOU units by 10<sup>th</sup> of succeeding month.

- c. ER-3 is to be filed within 10<sup>th</sup> of month succeeding the quarter by the units availing SSI exemption.

**17. Whether the departmental officers can visit any time they want without intimation and without authorization?**

- a. The departmental authorities have to give an intimation prior to visiting assessees. This is more so, where the department audit is to be undertaken.
- b. The audit team should intimate their visit sufficiently in advance and this should be taken in writing and the duration of audit also confirmed.
- c. Even where the officers drop in without intimation, the assessee can verify identity of officer and not let them enter unless same is produced.
- d. They should record reason of visit in visit register.
- e. SSI unit cannot be visited without permission of AC/DC.
- f. Any document can be given only on written request and duly acknowledged.

Where assessees are coming into excise, it would be better for them to familiarize their staff with compliance and record keeping requirements. The classification, duty rates applicable, exemptions, as well as amendments in law should be kept abreast of. This would ensure avoiding mistakes that arise due to ignorance.

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