

Approach to Understand Central Excise

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This paper provides the bird's eye view of the law and practice of central excise and is focused on the individual who wishes to understand the basics. The definitions, case laws, explanations, notifications that are important are available in the excise manual/commentaries by various authors.

Features of Indirect Taxes

Taxes can be broadly classified under two different categories one is the Direct tax and other is the Indirect tax. As the name suggests, direct taxes are those, which are paid directly by the person concerned. On the other hand Indirect taxes are those, which are paid by one person, and the same gets recovered by another person. Thus the person who actually bears the tax burden is the consumer and the person who pays the tax merely acts as a collecting agent. It is pertinent to know that **recovery from the buyer is not essential for levy of indirect taxes**

Indirect taxes are those, which the taxpayer pays indirectly i.e. while purchasing goods and commodities or paying for services taken etc. they are paid before the goods reach the taxpayer.

Some of the examples are

1. Central Excise governed by The Central Excise Act
2. Service Tax governed by the Finance Act
3. Sales Tax under The Central Sales Tax Act

Advantages and Disadvantages of Indirect Tax

Advantages	Disadvantages
<ul style="list-style-type: none">• Psychological advantage to the taxpayer• Easier to collect• Tax evasion comparatively less• Lower collection cost• Control over wasteful expenditure	<ul style="list-style-type: none">• Reduces Demand• Increases project cost• Safeguards inefficient industry• Modern technology costlier• Increases smuggling• Levy makes no distinction between

• High revenue inflow from these	income levels of the taxpayer
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Introduction to Central Excise

Excise is derived from the Latin word “ Excisum / Excidere” which means to cut out. An excise duty is a duty on the production/manufacture of goods and the taxable event is the manufacture of the excisable goods. It is applicable to whole of India.

Law relating to Central Excise

- **Central Excise Act:** This is the basic Act providing for charging of duty, valuation, powers of officers, provisions of arrests, penalty etc
- **Central Excise Rules:** Sec 37(1) of the Central Excise Act grants powers to government to frame rules to carry into effect the purposes of Central Excise Act. These rules provide for various procedures to be followed for clearance and storage of goods, accounting of goods, registration procedures, export procedures etc.
- **Central Excise Valuation (Determination of price of Excisable goods) rules 2000:** Valuation means determination of value for the purpose of charging excise duty. The basic provisions for determining value are contained in sec 4 of Central Excise Act.
- **Notifications:** Under sec 5A and 11C of CEA, Central government has been granted power to issue notification for granting partial or full exemptions from excise duty. Similarly central excise rules also provide for issue of notifications in respect of various matters. The notification issued under Central Excise Act have full legislative backing
- **Central Excise Tariff Act:** Classification of a product means determination of heading or sub heading of CETA under which the particular product is covered, in order to prescribe duty to be charged on that particular product.

Levy of Central Excise

Levy means imposition of tax. It includes both imposition and assessment (quantification) of tax

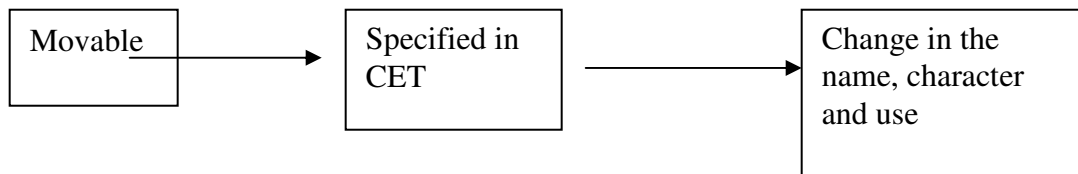
Taxable event

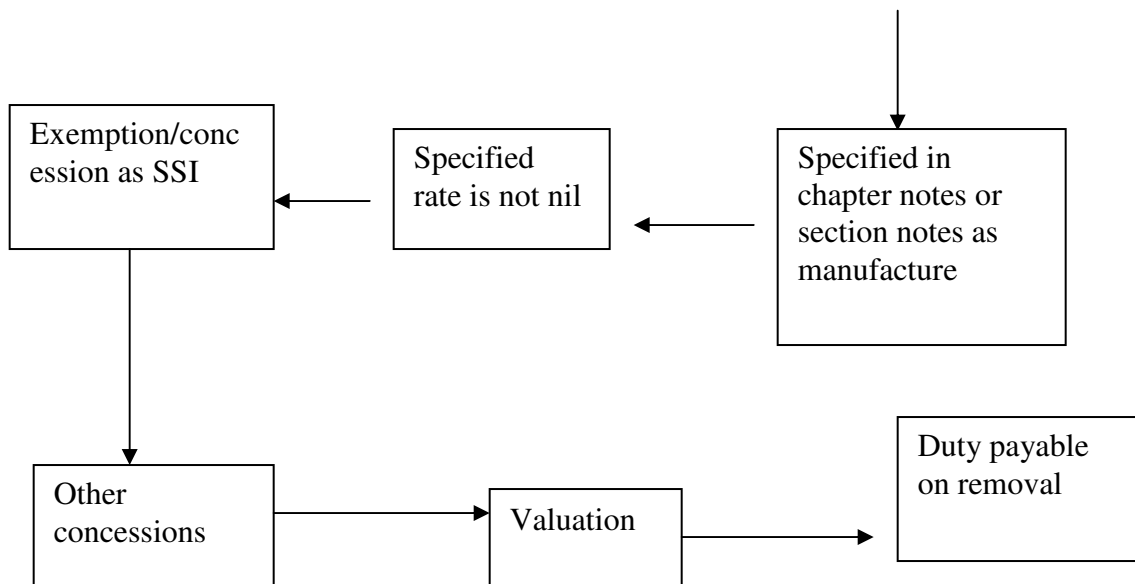
The taxable event for the levy of excise duty is on the manufacture of excisable goods but the collection is deferred to a later stage as a measure of convenience.

Chargeability

- Sec 3(1)(a) provides that the duty of excise will be levied and collected as and at the rates set forth in the first schedule to the central excise tariff act. Such duty of excise to be levied and collected is applicable for all excisable goods (excluding the goods manufactured in SEZ)
- Sec 3(1)(b) states that in addition to the duty of excise as specified in clause (a), special excise duty shall be levied on the goods specified in the second schedule to the central excise tariff act. (Excluding the goods manufactured in SEZ)
- Proviso to sec 3(1) provides for levy and collection of duties of excise on excisable goods produced or manufactured by a 100% EOU and brought to any other place in India.
- Sec 3(1A) provides that the provisions of sec 3(1) shall apply to all excisable goods other than salt, which are manufactured or produced in India.

Levy- flow chart





Concept of 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 attracting excise duty. Sec 2(d) of the Act defines excisable goods to be goods, which are specified in the Tariff as being subject to a duty of excise. Therefore first of all the items which are subject to tax must be goods, then they must be specified in the tariff and they must come into existence as a result of manufacture

The term goods have not been defined in the Act. Therefore we have to refer to the common understanding of the term and also in various authoritative statutes or dictionaries

Under sec 2(7) of the sale of Goods Act 1930, definition of goods means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land and which are agreed to be severed before sale or under the contract of sale. Thus the definition of goods in sale of Goods Act has a wide meaning to include all kind of movable property but would not include any immovable property

It was held in the case of UOI V/S Delhi Cloth Mills Co. Ltd wherein the Supreme court decided that in order to be goods the articles must be capable of coming to the market to

be bought and sold. Therefore the Apex court has introduced the important concept that the items must be movable and marketable

Determination of the Excisability of Product

Step 1: Whether Goods?: Examine whether “goods” exist. Under the Sale of Goods Act 1930 items that are movable are said to be goods. Movable property is anything that is not immovable. Immovable property has been defined as anything that is permanently embedded/ fastened to the earth, or anything permanently attached to such embedded item. Marketability is an equally important criterion. Most items, which are known are marketable with the exception of damaged machinery, transient chemicals, intermediate goods which are not known to be sold, garbage and few exceptional products. Practically only in process materials maybe said to be not marketable or those, which are in the process of Research and Development. However Section 2(d) of Central Excise Act, 1944 provides an explanation to the definition of “excisable goods” which states that ‘goods’ include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. It is important to note that there is no requirement of actual sale or actual market for the manufactured goods as long as the goods are capable of being brought to the market. Therefore by virtue of this explanation, even the above said exceptions would also be considered as goods and the requirement of marketability need not be established separately.

The transactions which are purely trading and which do not even fall into the deemed manufacture concept (explained in details later) and transactions of service would not be considered as covered under manufacture in normal circumstances. They are mutually exclusive.

The transactions which are in the nature of service would also not form part of the manufacture unless the service is merely incidental and not of much import/ value.

Step 2: Whether in State List or Central? : The Products under List II (State List) or List III(Concurrent List) of the VII schedule of the Constitution of India are not covered by Central Excise. The products like opium, narcotic drugs, alcoholic liquors for human consumption are outside the scope of Central Excise. The excise duty on medicinal and

toilet items which contain alcohol though covered by central excise would be collected by the State Government.

Step 3: What is the Classification?: Classify the product with reference to the broad category and then specific coverage within the broad entry of the Central Excise Tariff 1985. Where the entry is not clear or more than one classification appears to be correct then reference is to be made to the rules of interpretation of the First Schedule contained in the Central Excise Tariff Act 1985. Even when this is not helpful the recourse to the Harmonised System of Nomenclature maybe made. The confirmation of such classification could also be done by reference to the case laws with regard to the products if any, which could be a valuable indicator. Where an alternative with a lower rate is chosen, the justification of the choice should be clear and legally defensible including the fulfillment of the conditions.

Step 4: What is Manufacture?: In case the product is not covered by the deemed manufacture concept, the process should be examined whether amounting to manufacture. Since the definition is not very clear, the meaning is to be understood by referring to the judicial pronouncements. The tests which can be applied are that the incoming material and the final outgoing material are to be compared with respect to their name, character or use. If the final product is distinct and different with regard to the three criterion then manufacture has taken place as understood under central excise. The name refers to what is the product called in common parlance (generic) and does not refer to the brand name. The condition of use is to be applied in a broad manner as every change will bring about some restriction to the use. If the use has not altered, then it would be advisable to seek an opinion from experts in the field or err on the side of revenue. There have been a large number of decisions of the Tribunal and the courts with regard to manufacture of innumerable products, which may shed light. However it should be ensured that processes not amounting to manufacture are not described as manufacture as the department may at a later date take the view that there is no manufacture. This could result in denial of credit along with consequent demand for interest and penalty.

Step 5: Whether Process is Deemed Manufacture?: Section 2 (f) (ii)& (iii) set out the processes which are considered to be manufacture though the same may not be

understood in common parlance to be manufacture. The chapter notes to the chapter under which the product falls should be perused to ensure that deemed manufacture concept does not apply. In the case of such products even if process/ activity (like packing, labeling, repacking etc) NOT amounting to manufacture are undertaken, the activity is DEEMED to be manufacture and the central excise provisions would apply. Where for the product the processes carried out are not specifically set out, they will not be covered by the deeming fiction. This would require to know the list of activities chapter wise to which deemed manufacture concept applies.

Further in case of products in Third Schedule the process of packing, repacking, relabeling including the **declaration or alteration of retail sale price** would amount to manufacture.

This leads to a situation where the trader of certain goods may be liable for payment of central excise duty. Consequently they would also be eligible for the credit on the incoming products and input services and the exemptions provided under law for a manufacturer.

Step 6: Should Exemption be Availed?: We now have an excisable product manufactured in India. The next examination is whether the manufacturer wishes to avail the exemption if any, which is available. This should depend on the type of product/ customers orders. If the final product is being sent to the consumer then exemption should be claimed. If the item were an intermediate product then availing credit on the inputs and paying duty on the finished goods would be preferable as long as the customer is eligible for credit. The orders if generally received as basic + taxes as applicable would mean that the manufacturer would benefit by opting for duty payment. A comparative analysis of the two situations (opting for registration and opting for exemption) would highlight to the benefit to the client. The manufacturer doing very low value addition may also find opting for registration preferable. (for comparative table-I see end of article)

Step 7: Whether to claim the SSI Exemption?: The exemption notification if any is to be examined carefully as non following of any condition could lead to a denial of the benefit. The exemption based on the value of clearances for units who have had clearances not exceeding Rs. 400 Lakhs also called the SSI Exemption is available for specified products, which maybe confirmed by reference to the Notification 8/2003 dt.

1.3.2003. Here it has to be noted that this exemption is not available for Branded Goods of **another**. Therefore a manufacturer of branded goods of another would be required to register and pay duty from day one. However if such a manufacturer is situated in a rural area, manufactures for Khadi Board or is an Original Equipment Supplier then the exemption would still be available. The notification also sets out that the exemption is applicable to :-

A manufacturer from one or more factories

A factory of one or more manufacturers

Manufacturers who set up new concerns by splitting the company, setting up one more company with financial, managerial, production, marketing dependence would attract the clubbing provisions where the whole group would be considered as one entity. Generally the start of the litigation is due to proximity and the decision on clubbing due to establishment of financial flowback.

If the manufacturer is eligible for the exemption he can claim the exemption upto a clearance of Rs.150 Lakhs. Clearance has to be differentiated from turnover as the former is the value of removals whereas the latter is the sale/ transfer of property.

Step 8: Whether to examine Other Locational Exemptions?: The product maybe so competitive that it cannot bear any duty of excise. In such cases location at notified areas of Kutch in Gujrat or North East of India and more recently Himachal Pradesh, Uttaranachal are options, which can be examined. The specified products, which are set up in the specified location/ places are exempt/ reimbursement of duty paid is available. This could benefit entities having substantial exports. Income tax and CST benefits are also available in such areas, presently chosen on political clout. However over a period of time these may not be in vogue..

Step 9. Registration Decision: The decision for registering as a manufacturer maybe made at this point where no other economic or legal option exists. If the excise duty is payable, the manufacturer would have to register. The intermediate goods manufacturer, may find it beneficial to take the registration from the start of the enterprise to ensure competitiveness due to the concept of cenvat credit.

Step 10 : Dealers Registration Under Central Excise?: The trader who wishes to pass on the duty paid on goods traded by him to customers who can avail the credit for the

same could also be registered. Now that the service providers are also eligible for input credit the registration as dealer makes more economic sense.

Central Excise Procedures at a Glance

The practicing professional/ industry executive would know that points of law and interpretations are considerably less frequent than the day to day queries. Under Central Excise there have been hundreds of Circulars and Trade Notices, which could be used for specific purposes as long as they are not repugnant to the new rules. It is the experience of the author that almost all possible commercial transactions / requirements have a specified procedure available in Central Excise. The older the procedure the more cumbersome it would be. The manufacturer opting for registration and duty payment goes through some common procedures which are set out in sequence below:-

Stage (1): When to Intimate Department about activities?: The need for the department to track the likely assesseees may have led to this compliance requirement. Under Notification no. 36/2001 dt. 26.6.2001 as amended the manufacturers who reach a value of clearances of excisable goods of Rs. 90 lakhs is required to send a disclosure letter as specified in the notification.

It is important to know that where the clearances of goods, which are exempt exceeds Rs. 400 lakhs in preceding year then the exemption of Rs. 150 lakhs is not available.

Stage(2): When to Register?: The decision to register should be made a little prior to crossing Rs. 150 Lakhs which is the exemption or immediately if due to budget changes as the product has become excisable or manufacturer opting for the payment of duty. The application is to be submitted complete in all respects. Mandatorily only the attested copy of the PAN letter should suffice. But the proof of status, address proof as well as proof of premises maybe provided along with the authorisation (in case of company).The registration is generally issued on same day or if for any reason not possible, then within the next working day. The registration number is based on the PAN no. The format of application form is available on the web site cbec.gov.in.

Stage (3) : Disclosures/ Intimations: The manufacturer who has registered is to provide a declaration of the books of account, stocks, returns and documents maintained

for the recording and control of the stocks and of monetary transactions. The law enjoins on a manufacturer to keep record of quantity of goods manufactured , removed, value of removal and the inventory. The inputs similarly require the account of receipt, disposal, consumption and inventory. [especially important if the cenvat credit has been availed on the inputs] In case the accounts and registers are computerised the details of the software along with the sample reports maybe submitted to the department. All types of transaction/ activities proposed maybe indicated with the ones in doubt not to be missed out.

The disclosure requirement maybe a potent tool to ensure that the longer period of limitation of 5 years in not invoked.

Stage (4): Job work Removals: The inputs or semi finished goods could be sent for job work on payment of duty where the job worker could avail the credit and discharge the duty at the time of removal. Generally inputs are removed for job work without payment of duty as the facility is available under the Cenvat credit Rules 2004. This requires a quantitative account / record to be maintained. The control on the delivery documents used for this purpose would be wise(separate series)

The goods sent on job work should be received back within the notified period of 180 days failing which the principal should reverse the Cenvat on such materials. However Cenvat on the same can be availed once the same is received back.

Stage (5): Invoice / Declaration: The invoice has now become a vital document of control and therefore whenever invoices are brought into use a declaration of the numbers is to be made Pre-authentication of invoices by owner, working partner, Mananging Director or any other duly authorized person has been dispensed with by omitting Rule 11(5) of Central Excise Rules, 2002 w.e.f. 27.2.2010.

Stage (6): Valuation Methods/ Options: The valuation of goods under central excise is mainly under three main methods.

First the transaction value under Section 4 or the value at which the goods are sold to independent customer on principal to principal basis where no additional consideration accrues over a period in future. Here the clarity of the order and its independence with other orders to the same client could play a vital role. The place and time of delivery is

also important. In these cases the invoice value would be the proper value. Most of the goods fall into this category.

Secondly the MRP method of valuation under Section 4 A is applicable to the notified products which are covered under the Packaged Commodities Act or the Standard Weights and Measures Act. This is applicable only for those goods, which are proposed to be sold in retail and not to those, which are sold in bulk packs. The value is based on the MRP printed on the commodity/ container less the abatement allowed under the law. This figure could be more or less than the actual amount received for the sale of the product. MRP based valuation is applicable to specified goods. The FMCG as well as a few other products find a place in the list. It is to be noted that **excise duty is payable on removal**.

Thirdly a few products fall under Section 3(2) called the valuation under Tariff Values where the Government itself has kept close watch and control for various purposes like political expediency, public interest, high tax revenue etc. In this segment the method could be specific (per piece, based on length, per Kg, or based on Retail Sale price or even ad valorem). Example could be sugar, pan masala, garments, cigarettes.

Fourthly the residuary items which are not covered by the above three, the ones which are removals and not sale. This could also be the method applicable when the goods sold are tainted by the vice/ bias (consumed captively, sold to relatives, additional consideration exists, sold at the depots, job worker discharging the duty) and removals other than sale such as samples, warranty repairs, donations, captive consumption etc. In this case reference to the Valuation Rules 2000 would be required. The manufacturer who is unable to determine the value of the final products at the time of removal can also opt for provisional assessment and discharge the balance of duty / claim a refund on final assessment..

Note: There is a capacity based levy whereby the duty maybe computed based on the capacity of the machine rather than the value of the goods. The provisions for the same have been enabled but goods are yet to be notified. Pan masala could be covered under this levy.

Stage (7): Cenvat Credit on Capital Goods, Inputs and Input Services: The duty paid on almost all inputs which are used in the manufacture of final products leviable to duty is available as credit. This is called the cenvat credit (earlier Modvat). This amount can be used in lieu of cash to discharge the central excise duty or service tax. The credit

can be availed as soon as the inputs are received, which do not require to be owned by the manufacturer. The conditions in this regard are that the inputs must be used for final products on which duty is chargeable, received under a valid invoice or bill of entry and a known source. They can also be removed without payment of duty for job work under a delivery document and are to be returned in a period of 180 days. In case of delay the duty debit is required for which a re-credit is permissible on receipt.

Similarly the cenvat credit on specified capital goods is available. The credit could be taken @ 50 % in the year of receipt and the balance in any subsequent year in which the same are in possession of the manufacturer. It is to be remembered that no benefit under Income Tax i.e. Depreciation is availed on the Cenvat portion. The Finance Act 2010 has made changes to provide facilities to SSI units that are eligible for availing benefit under notification No.8/2003-CE so as to avail full cenvat credit on capital goods in one installment in year of receipt of such goods. This change will be w.e.f.1.4.2010. It will be applicable even if the eligible units opt not to avail SSI exemption.

The newest entrant into the credit portfolio is the “input service credits” which is also available to a manufacturer where used in or in relation to the manufacture or for clearance of final products upto place of removal.

Stage (8): Payment of Duty: The payment of duty may become necessary where the cenvat credits are not sufficient. The payment of duty can be made by way of a GAR-7(earlier called TR-6) challan into the designated Bank and proof of the same obtained. Alternatively there is a provision of payment of duty electronically through internet banking. This mode of payment is mandatory for the assessee who has paid the duty of Rs. 10 lakhs or more (including the utilization of credits) in the preceding financial year. The earlier concept of the assessee's account with Central Excise called the PLA(Personal Ledger Account) is no longer valid but can be optionally used if some balances are felt to be kept with the department. This account current would help the assessee to pay the duties in advance and keep the balance. This may also be preferable to cover some small errors being committed at a later point of time.

The requirement of payment is that for the removals for the month, the payment should be made by the 5th (6th where payments made electronically) of the subsequent month. In the month of March the due date has been fixed at 31st March as the Government Accounts cannot make a provision for the same! This payment is net of the cenvat credit for inputs received upto the relevant dates. The delay in any case in any financial year

beyond a period of more than 30 days by the manufacturer could result in an order suspending the duty payment by adjusting duty credit and require that the assessee clear every consignment after debiting the account current which is by paying duty in advance. This is a very harsh measure, which can actually cause a lot of damage to the assessee.

The date of payment would be the date of submitting to the bank provided that the cheque is honoured. The account of the payments and utilisation of the PLA could be maintained in the normal financial accounts of the concern.

Stage (9): Export of Manufactured Goods: The removal of goods for export can be done without payment of duty (except for Nepal & Bhutan) as duty is leviable only for home consumption. This can be done on the basis of a yearly undertaking to the jurisdictional Assistant/ Deputy Commissioner. The alternative routes to this are as under:-

To cash out the inputs credit by applying for a rebate on inputs used in manufacture of export product/exported service. (Consumption questions would have to be fended) The benefits of tax paid on the inputs is available for even exempted goods or nil rated goods , a benefit which few exporters utilize.

To pay the duty at the time of export after availing credit on the inputs by utilising the credit balances and claiming a refund of the duty paid also called the exports under rebate claim.

To claim the drawback under excise and customs as applicable to the product. (Generally opted for where the All Industry Rate is available)

The exporters could also opt for registration and receipt of inputs without payment of duty wherever advantageous. Exporters also require to have a close look at alternative import methods / benefits like advance licence , DEPB, EPCG, 100% EOU, STP, EHTP etc. The option of SEZ needs to be examined if the exports are substantial.

Stage (10): Rejections and Repairs: The rejected, goods for repair/ replacement or merely returned goods could be received under an invoice, delivery challan, original invoice set of supplier, letter of customer. Rule 16 prescribes that credit can be taken on the invoice of the customer or on own invoices (original manufacturers) similar to inputs at the option of the manufacturer. If the goods are sold without any further process amounting to manufacture the duty originally paid is to be reversed. In case goods are

re-manufactured the duty would be payable on the transaction value/ MRP and at the rate as applicable at the time of removal. The important point to be noted is that third party evidence for rejection and cross link to the invoice under which it was received by the supplier himself would ensure the credit is not interfered with.

Stage (11) : Returns - ER- 1: Excise returns for manufacturer provides the information on the manufactured products. The manufactured product opening balance, quantity manufactured, quantity removed either on payment of duty or otherwise, the value at which removed, duty payable and the closing balance is collated for the month. It also provides an abstract of the duty credits availed (on account of capital goods, input service tax as well as inputs) and utilized as well as the amount of payment in cash along with the proof of the same. In the absence of number of intimations and declarations this return is now one of the few documents, which is available for scrutiny with the department. Now in addition to ER 1, other returns such as ER 4, ER 5, ER 6 and ER 7 are also notified and these forms in it have their own relevance.

Stage (12): Self-Assessment: The onus of assessing the duty payable is on squarely on the manufacturer himself. In normal course the only verification of the returns is the audit exercise alternatives to which are also being examined.

The scrutiny powers of the Range Officers has been curtailed by the removal of the provisions relating to the same. However details required maybe asked for while verifying the ER-1 as per the Supplementary instructions. However the real check would be only by way of an audit conducted by the Internal audit party of the Division/ Commissionerate, preventive wing or the Accountant Generals Office. The EA-2000 has ushered in an era of more professional and in depth methods of verification. The records perused in an excise audit now cover the entire gamut of financial records as well as the stock records. Therefore the reconciliation between the returns and the finance becomes crucial. The Act also provides for Special audit by Cost Accountants where credit of duties or valuation adopted are suspect.

Stage (13): Internal Control/ Audit: The assessee may at the time of an internal audit (internally or by professionals) or while preparing the reconciliation observe that short payment/ no payment has taken place. In such cases it is advisable that the duty so short discharged be debited by way of a supplementary invoice indicating the errors as

well as the cross reference to the transaction where the same took place. The customer under excise would be admissible to duty credit on such supplementary invoice. However if the same were issued consequent to a show cause notice, invoking the extended period, then the duty credit may not be admissible to the customer. Considering the importance of this to the managers / executives in manufacturing companies some assesseees ask the professionals to conduct the audit prior to the audit by Government.

Stage (14): Demand of Duty: The demands for non-payment or short payment of duty could be within a period of 1 year or 5 years. The latter is where the allegation of fraud, collusion, suppression of fact, willful misstatement, or contravention of the provisions of the Act **with an intention to evade duty exists**. In this case the extended period of 5 years from the relevant date can be invoked. The demands by the department are to be preceded by a show cause notice and should quantify the amount payable and the basis for reaching the allegations. The assessee is advised to provide all the facts and grounds at the adjudication stage so as to avoid the appeal stage. In the event the demand is confirmed by the adjudicating officer the assessee can opt to pay up. At this point he could opt to pay 25 % of the penalty if the same is paid within a period of 30 days of communication of the order. Where the extended period of limitation has been invoked the interest would be reckoned from the first date of the month following the month in which duty was to be paid.

Stage (15): Adjudication/ Appeal: The adjudication order can be appealed against by the assessee or the department within a period of 60 days to the Commissioner (Appeals) (extendable by a further 30 days) where the orders are passed by an officer junior to Commissioner. In case of the manufacturer filing the appeal, it should also be accompanied by an application of waiver of pre deposit pending disposal of the appeal. The order of the Commissioner (Appeals) could be further appealed against to the Tribunal. The adjudication order of Commissioner(Appeals) also can be appealed against to the Tribunal within 3 months of receipt of order. The requirement of pre deposit exists here also. Most cases culminate at this stage. However where there is a question of law the high court and further appeal to the Supreme Court could be examined. There is also a settlement procedure envisaged under the Act.

Stage (16): Interest Liability: Once the duty payable has been determined either by the assessee himself or as consequent to adjudication resulting in a non levy, wrong levy, short levy, erroneous refund etc interest would be payable (at present 13% per annum). The interest would be payable from the due date till the date of payment of the said duty. The interest is to be computed based on number of days of delay.

Stage (17): Penalty: The penalty under Section 11AC of the CEA 1944 envisaged a maximum limit equal to amount of demand. This however is not mandatory and could be lower depending on the circumstances in each case. The requirement of mens rea (mala fide/ premeditation/ deliberation) prove that the intention to avoid payment of duty beyond a reasonable doubt would form the basis for penalty to be charged. In case of bona fide belief on part of assessee then there should be no penalty or nominal penalty.

Stage (18): Refund: Refunds are to be filed under Section 11B within a period of 1 year from the relevant date to the Assistant/ Deputy Commissioner of Central Excise. It should be ensured that the duty burden was not passed onto the customer as that would lead to the denial of the refund under the principles of unjust enrichment. (Double benefit by recovery from buyers as well as Government) Refunds under central excise except those related to exports are hard to come by. The applications are invariably delayed unduly. There is also a facility that the interest on delayed refunds is available for which the assessee may make one more 5 year effort.

Stage (19): Prosecution/ Arrest: The person who commits the offenses set out in Section 9 is liable to be prosecuted and imprisoned for upto 3 year and for repeated offense may be imprisoned for upto 7 years.

Any central excise officer may with the prior approval of the commissioner of central excise arrest any person whom he has reason to believe to be liable to punishment under this Act. There have been stray cases of arrest. However threats of arrest are routinely used to soften the uninformed or the unwary.

In this time and date there is an urgent need for bringing such officers to book by invoking the provisions of law contained in Section 22 in relation to vexatious search.

Stage (20): Advance Ruling: The non resident setting up a venture in India or a joint venture in collaboration with a non resident is allowed apply with his question on which

advance ruling is sought along with a fees of Rs.2,500/-. It has been observed that this has only limited utility as the ruling would be having a revenue bias.

Stage (21): Settlement Commission: The assesseees who are facing a litigation subsequent to a search and seizure after a lapse of 6 months or after issue of SCN or in the process of adjudication or appeal but not where any proceeding is pending before the Tribunal can follow an alternate route of the settlement commission. The appeal before the Tribunal can be withdrawn and application made to the settlement commission. Here the possibility of reduction in the interest and protection against the prosecution are the main advantages. It has been found that in cases of genuine error this route is faster and fairer at this point of time.

Stage 18: Compounding of Offenses: This provision was introduced in December 2005 to provide an alternative for litigation and encourage early dispute resolution. Certain type of serious offenses would not be eligible for this facility. This would be at the discretion of the chief commissioner. This would also apply to existing cases.

This article provides a helicopter view of the provisions of Central Excise.

Table – I : Comparative Analysis of availing and not availing exemption of a intermediate product

Particulars	Exemption	No Exemption
	Amount in Rs.	Amount in Rs.
Raw material cost including duty	54.00	55.00
Cenvat credit availed	—	6.00
Net Cost	54.00	49.00
Conversion Cost	40.00	40.00
Total Cost	94.00	89.00
Profit margin	10.00	10.00
Basic Selling Price	104.00	99.00
Excise Duty (Net of cenvat credit) (10%)	—	10.00
Total selling price	104.00	109.00
Benefit to the final mfr. by way of Cenvat credit	—	10.00

Net Cost to the mfr.	104.00	99.00
Percentage Benefit for Customer		5%
Loss to Supplier		NIL
Benefit For Customer for Rs.100 Lakhs of purchase	NIL	Rs. 6 Lakhs

Note : The benefit maybe shared between the customer and manufacturer. The major benefit is that large customer do not encourage units who are not registered under central excise.