

**A
GUIDE
ON
CENTRAL EXCISE**

**CENTRAL EXCISE & SERVICE TAX COMMISSIONERATE
PATNA**

Foreword

Success of a taxation Act depends on a large measure upon its voluntary compliance. This can be achieved only when there is a general awareness of related Laws & Rules and there is a willingness to observe them. Needless to say, effective implementation of the tax policy plays crucial role in nation building. This publication is actuated by these twin objectives.

Part-A of this booklet provides general awareness for the beginners in trade & industry about the steps to be followed to observe the requirements under C.Ex Act & Rules and for availing the benefits of exemption or concessions. Part-B is aimed at motivating willingness in trade & industry to attain voluntary compliance and discourage non-compliance, particularly the deliberate ones. For this, it is aimed to apprise the trade & industry that a deliberate non-compliance may entail not only withdrawal of the facility usually they are entitled to, but may also lead to search of factory & any other premises, seizure of goods, documents or things, confiscation of goods, prosecution of the person involved and penalty for the act & commission for infringement of law. The Central Excise officers may also refresh their awareness in respect of their duties & obligations to ensure voluntary compliance.

This booklet presents the provisions of Law and Procedures in a simple language. However, for detailed information on any issue, whether for legal purpose or otherwise, it is advisable to refer to the authentic text of the relevant law, rule or procedure.

I convey my sincere thanks to Shri Shashi Ranjan & Shri Ashwani Kumar both Inspectors posted in the office of the Chief Commissioner, C.Ex. & S.Tax, Patna, who, despite their own responsibilities, spared time to type, arrange, edit and verify the contents of this Guide. I also thank Shri H.G.Lasker, Superintendent (Confidential), C.Ex., Commissionerate, Patna, who enriched this Guide with his valuable suggestions. I particularly thank Shri K.K.Pandey, Supdt., CCO, Patna who has worked very hard in preparing this simple, easy-to-understand Guide on Central Excise. I am confident that this will be very useful to trade and industry.

Despite every attempt at accuracy, the Guide may still have some inadvertent errors. I welcome feedback from readers for any improvement to the Guide.

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DISCLAIMER

This Central Excise Guide is purely a measure of public facilitation based on a broad understanding of law and Rules relating to Central Excise provisions. It is neither a “Departmental Circular” nor a Manual of instructions issued by the Central Board of Excise and Customs or the Commissionerate of Central Excise & Service Tax, Patna. To that extent it does not command the required legal backing to be binding on the prospective Central Excise assesseees or upon the departmental authorities in any manner. The booklet is purely a measure of facilitation so that all stakeholders obtain basic understanding of the Central Excise law & procedures.

The provisions of the Central Excise Act, 1944 and Rules made there under, notifications and circulars or instructions of the Board shall prevail over the contents provided in this booklet in case of any contradiction. While every effort has been made to ensure that the information contained in this booklet is up-to-date, the Central Excise and Service Tax Commissionerate, Patna is not liable for any consequences, legal or otherwise, arising out of the use of any such information.

For detailed information, readers may refer to the Central Excise Act, 1944 and the Rules made thereunder along with relevant notifications and circulars.

Abbreviations

A.C.	Assistant Commissioner
ACES	Automated Central Excise & Service Tax
BIFR	Board for Industrial & Financial Reconstruction
CBEC	Central Board of Excise & Customs
CCR' 04	Cenvat Credit Rules, 2004
CEA' 44	Central Excise Act, 1944
CER, 02	Central Excise Rules, 2002
CETA, 85	Central Excise Tariff Act, 1985
CESTAT	Customs, Excise & Service Tax Appellate Tribunal
DTA	Domestic Tariff Area
DRT	Debt Recovery Tribunal
D.C.	Deputy Commissioner
EOU	Export Oriented Unit
HUF	Hindu Undivided Family
O-I-A	Order in Appeal
ROA	Restoration of Appeal
ROM	Rectification of mistake
R.O.	Range Officer
SEZ	Special Economic Zone
SSI	Small Scale Industry

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Brief Outline of Central Excise Law and Procedure

1. Authority & Ambit

1.1 The Central Excise Act 1944 deals with taxation on goods manufactured or produced in India.

1.2 This Act was a consolidation of not less than 10 separate Excise Acts, 11 sets of statutory Rules as well as 5 Acts relating to Salt only, which were effective before the Finance Act, 1944 received the assent of the Governor General of India on 24.02.1944.

1.3 Later on, when India became independent, it was adopted by Indian Independence (Adaptation of Central Acts and Ordinances) Order 1948 Article 246 of Constitution of India granted authority to the Central Government to levy and collect Duty of Excise on Tobacco & other Goods manufactured or produced in India except potable alcohol, opium, Indian hemp and other narcotic substances. Any medicinal or toilet preparation containing alcohol or narcotic substance also comes under the purview of this Act.

1.4 Initially this Act was known by the name- Central Excise and Salt Act but in the Year 1996, the word "Salt" was omitted.

1.5 Goods which are dealt under this Act are known as excisable goods.

1.6 All excisable goods, their derivatives, residues and even wastes etc., classified according to their composition; property and usage find their place in 96 different Chapters of another Act known as Central Excise Tariff Act'1985 which was reorganized in the year 1985 to align with the Customs

Tariff based on Harmonized System of Nomenclature (HSN) acceptable in international trade.

1.7 These excisable goods are identifiable by the respective chapter number followed by heading & sub- heading numbers assigned to them.

1.8 The Central Excise Tariff Act, 1985 also contains the rate of duty chargeable on excisable goods. However, these rates may be modified by a Notification issued by Central Government. Such modified rate is known as Effective Rate and is applicable from the date specified in the notification. If made effective from a back date it is said to have retrospective effect.

1.9 For smooth administration of this Act, various other Rules have also been formulated. Some of them like Central Excise Rules 2002, Cenvat Credit Rules 2004, Valuation Rules, 2000 etc., are commonly known rules. Many other Rules and Regulations have also been formulated for facilitation of Trade & Commerce.

P A R T - A

2. Requirement and obligations :

2.1 Registration :- Section 6 of Central Excise Act, 1944 and Rule 9 of Central Excise Rules, 2002 require that every person (including Central / State Govt. undertaking or undertakings owned or controlled by autonomous corporation) who, in respect of any excisable goods, is engaged in

(I) manufacture, production or any related process

(II) trading or

(III) warehousing or storage

is required to get a Central Excise Registration. However, a person who manufactures / produces excisable goods which attracts nil rate of duty or which is exempt from duty by a notification, or an SSI manufacturer who opts to avail the value based exemption is not required to take registration. Many other class of manufacturers are also not required to take C.Ex Registration as exempted by Notifications 36/2001 dated 26.06.2001 last amended by 9/2013-CE (N.T) dated 23.05.2013, 13/2011-CE dated 01.03.2011, 10/2011-CE(N.T) dated 24.03.2011 and 14/2011-CE(N.T) dated 03.06.2011).

2.2 Except the exempted category every manufacturer/producer of excisable goods, its depot, its Ist/ IInd stage dealer, a warehouse license holder storing non duty paid goods, a person who intends to avail end use exemption on goods,) Export Oriented Unit (EOU) / Special Economic Zone (SEZ) units having Domestic Tariff Area (DTA) sales or a person who procures duty free inputs is required to get registration under the said provision. Separate

registration is required, in case, more than one premises are used for above said purposes by a manufacturer. However, if such premises are part of the same factory separated only by a public road, railway line, canal etc., separate registration may not be required if the commissioner C.Ex is satisfied with the grounds for exemption.

2.3 For the purpose of registration, an application in Form A-1 is to be filed to the AC/DC of the Division of C.Ex in whose jurisdiction the factory lies. The application is now filed on an assessee friendly web-based software known as ACES (Automation of Central Excise And Service- Tax). A hard copy of the application is also required to be submitted simultaneously for verification. However, old Registration Certificate issued under erstwhile C.Ex Rules, 1944 is still valid provided it is based on PAN (Permanent Account Number issued by Income-Tax Deptt). The registration certificate is to be granted within next 7 days if relevant information is submitted in time. No fee or cost is payable for registration. The Registration Certificate is non-transferable. Such registered person is also known as Assessee. The procedure for filing registration on ACES is provided on department's web-site (<http://www.cbec.gov.in>).

2.4 Transfer of business: - Where the business is transferred to any other person, the transferee is required to get registered afresh.

2.5 Change in constitution: - Where a registered person is a firm, company or association of persons, any change in the constitution of the said firm, company or association is required to be intimated to the jurisdictional central excise officer within 30 days. If any new item is intended to be manufactured relevant information may be appended in the same registration certificate and got endorsed by the jurisdictional Range Officer.

2.6 Deregistration: Every person who ceases to carry on the operation for which he is registered under the said provision shall surrender the registration certificate to the Range Officer. A declaration in prescribed format, at the time of surrendering the registration certificate, is required to be submitted affirming that no duty is outstanding against him nor any demand notice is pending against him for adjudication.

2.7 “Person” as defined in General Clauses Act 1897:- The term “Person” used at different places in the Central Excise Act includes “any company or association or body of individuals whether incorporated or not” as defined in Section 3(42) of General Clauses Act 1897.

3. Manufacture and marketability which make goods liable to duty:-

3.1 Goods in terms of Central Excise Act: After registration such person can start manufacturing or other activity mentioned above. The Hon’ble Supreme Court in the matter of M/s. Hindustan Zinc limited Vs. CCE [2005(181) E.L.T.170 (SC)] held that Central Excise duty is chargeable only when the article produced by the Assessee *is a goods in terms of Central Excise Act and Rules* and it should have come into existence as a result of manufacture defined under the said Act and Rules.

3.2 *Excisable Goods* is explained in the Explanation to section 2 (d) of Central Excise Act as such goods which find place in the First and second Schedule to the Central Excise Tariff for the purpose of rate of duty applicable to them even if it is nil. In another land-mark judgement, the Constitution Bench of the Supreme court held in the case of Delhi Cloth and General Mills Co. Ltd vrs U.O.I [1977(I) E.L.T (J99) (SC)] that an article can be called goods if it is known to the market as such and is ordinarily bought and sold in market. The above

said explanation appended to Section 2 (d) of CEA, 44 also clarifies that Goods which are capable of being bought and sold for a consideration are excisable goods. Such goods even if not actually bought or sold may be excisable goods if it satisfies other conditions.

3.3 Manufacture: - Manufacture is defined under section 2 (f) of the CEA, 1944. There is a well developed jurisprudence regarding the processes that may or may not amount to manufacture. As commonly understood, a process amounts to manufacture when a substance different in shape and character from the inputs or raw materials emerges.

3.3.1 For Central Excise purposes, manufacture also includes any process (I) incidental or ancillary to the completion to manufacture of final product (ii) which is specified under any chapter or section note of a particular chapter of the First Schedule of the Tariff (like the goods of Ch.35 or 38 etc, of Tariff) and (III) packing or repacking of the goods specified in the Third Schedule to the C.Ex Act in a unit container and labeling of such container to make the product marketable.

3.3.2 However, articles embedded to earth and permanently fitted into civil structures like structural erection, lift, escalators and tanks installed for storage of petroleum products etc. are not excisable goods as held by the Hon'ble Supreme Court in the case of Steel Tubes (P) Ltd. Vs. Collector, [1995 (75) ELT-17(SC)], Triveni Engg. Inds. Ltd. Vs. Commissioner- [2000 (120) ELT 293 (SC)], CCE Vs. Viridi Brothers- [2007 (207) ELT 321 (SC)] and also as clarified by the Board vide its order No. 58/1/2002- CX dated 15.01.2002 issued under the authority of section 37 B of CEA' 44.

3.4 Manufacture under job work: -A manufacturer himself and in his own manufacturing unit can manufacture an excisable goods or may get it manufactured or processed by another manufacturer on his behalf. The latter is said to be engaged in job-work if he undertakes manufacturing on behalf of another person known as the Principal manufacturer. Principal manufacturer can send the raw material/inputs as such or after some processing to the Job-Worker's unit for further processing, repair, testing, reconditioning or any other purpose (Rule 16 A of CER' 02).

3.4.1 A job worker may be a registered or unregistered manufacturing unit depending upon the condition whether he does only such job work on behalf of principal manufacturer(s) or manufactures some excisable goods on his account also. If he manufactures his own goods also, he is required to get Central Excise Registration, when the value of clearances made from one or more units of the job-worker exceeds Rs. 1.5 Crore which is the present exemption limit prescribed for SSI unit.

3.4.2 By the permission of the jurisdictional Commissioner of Central Excise, semi-finished goods can be dispatched by a principal manufacturer to a job worker without payment of duty and the said goods after reprocessing or testing as required, shall be allowed to be returned to the principal manufacturer or to any other registered premises without payment of duty for subsequent clearance for home consumption or export (Rule 16 A & 16 C of CER'02). If the goods are to be cleared from the premises of job worker after payment of duty or for export, such job worker is required to get Central Excise Registration. Previous Notification 214/86- C.E. dated 25.03.1986 followed by Notifications 83/94- CE & 84/94- CE both dated 11.04.1994 are still effective which

prescribe the procedure to be followed and grant exemption to a job worker in certain conditions.

4. Maintenance of records:- After several stages of liberalization, the erstwhile provisions which required an assessee to maintain various records as prescribed by the Department have been relaxed. Now, he is required to maintain the Daily Stock Account as per Rule 10 of CER' 02 on daily basis indicating the particulars regarding (a) description of manufactured/produced goods (b) opening balance thereof (c) quantity of manufactured goods (d) inventory of goods (e) quantity removed (f) assessable value (g) amount of duty payable and (h) particulars of duty actually paid for proper accounting of production and clearance of goods. Other records maintained by him for his own purposes are acceptable to the department.

4.1 These records are required to be preserved for five years' period subsequent to the financial year, which they pertain to. The assessee is required to furnish a list of all such records prepared and maintained by him in respect of the raw materials, capital goods, finished goods and their removal as well as his financial records to the officers authorized by the jurisdictional Commissioner of C.Ex for carrying out scrutiny, verification or investigation of any matter or for conducting audit of the unit (Rule 22 of CER' 02).

5. Valuation and assessment for payment of duty:- Goods which have been manufactured/ produced and have been properly accounted in the records can be removed after duty liability is determined and the same is discharged by the successive steps described herein below.

5.1 C.Ex.Duty is chargeable on excisable goods under the provisions of section 3 or 3A of the C.Ex Act and it is either:

- (a) Quantity/ Number based known as specific duty or
- (b) Value based, which is popularly known as *ad valorem* rate of duty or
- (c) Capacity of production based [Sec 3(A)] or is
- (d) Compounded levy (Rule 15 of CER '02)

5.2 Valuation: - Valuation is required only for the goods which are subject to *ad valorem* duty. There are three provisions for determination of the value of goods for charging duty. These are (i) Transaction Value under Sec. 4 of the Act (ii) MRP value for certain commodities under Section 4A and (iii) Tariff value fixed by the Govt. in rare cases under Section 3 of CEA'44.

5.2.1 Transaction Value (Section 4 of CEA'44): Transaction value of goods is that value which includes all ingredients like the price of the goods, the cost incurred on account of advertisement, publicity, marketing, selling, storage, outward handling commission, servicing, warehousing, packaging (on account of material as well as labour cost) or any other amount which the buyer is liable to pay or is required to pay on behalf of the manufacturer by reason or in connection with sale. If the goods are sold for delivery at the time and place of removal and the buyer and seller are not related persons as defined in the Act and the price, which represents the above said transaction value, is the sole consideration for such sale the transaction value, so determined, shall be treated as assessable value of the goods for the purpose of charging central excise duty.

5.2.2 If any of the condition viz. (1) Sale of goods for delivery at the time and place of removal (2) Price to be the sole consideration and (3) seller and buyer should not be related persons, is not fulfilled or if the goods are not sold (i.e. captively consumed), value of such goods is determinable by application of

Central Excise Valuation (Determination Of Price of Excisable goods) Rules, 2000 commonly known as Valuation Rules, 2000. (Section 4 (1) (b) of CEA 1944).Such situation may arise when the goods are sold for delivery at a time other than the *Time Of Removal*, for delivery at a place other than the *Place Of Removal*, sold through a Depot or a consignment agent's premises, sold only through a Related Person, the goods are captively consumed, or cleared from the premises of a job worker, and the price requires addition of value on account of some elements which have been used for manufacture but the cost of which is not included in the declared value (Valuation Rules, 2000).

5.2.3 MRP Valuation (Sec 4A of CEA '44): In respect of some excisable goods, in packaged form, on which maximum retail price inclusive of all taxes are to be affixed under the provisions of Legal Metrology Act 2009 (in place of erstwhile Weights and Measure Act, 1976) and which are also notified vide C.Ex. notification- 49/2008-CE (N.T) dated 24.12.2008 [last amended by 1/2013-CE (NT) dated 01.03.2013], the assessable value of such goods for the purpose of levy of duty is deemed to be the retail sale price declared on its package less the abatement allowed at the rate prescribed by the said notification.

5.2.4 Tariff Value (Sec 3{2} ofCEA'44). For certain items, the Government may fix a tariff value for levy of duty. Such goods are notified in the official Gazette for the said purpose.

6. Classification:-

6.1 Before duty is calculated, the goods so manufactured are required to have correct classification for the purpose of application of appropriate rate of duty to the particular goods.

6.2 First Schedule to the Central Excise Tariff Act 1985 aligned with the Customs Tariff based on the Harmonized System of Nomenclature HSN (at 6 digit level), enlists all excisable goods with unique 8 digit codes. Normally, there is no difficulty in classifying any goods which are being manufactured/ produced by many assesseees of the same Range or Division of the Commissionerate. However, for new items, classification is to be done on the basis of the following:

- Section notes and chapter notes of the CETA, 85 (Tariff Act);
- Interpretative Rules of the said Tariff Act;
- HSN explanatory notes;
- Composition, properties, usage of goods etc and
- Judicial pronouncement, if any, related to the item.

7. Assessment:-

7.1 Physical control, self removal procedure and self assessment: Till 1969, there was physical control of Central Excise Officers on the factories. Goods were allowed to be removed from the factory or warehouse only under the supervision of a central excise officer. After the phase out of the physical control, self removal procedure was introduced wherein an assessee was required to pay duty on the basis of price list and classification list approved by the competent central excise officer. In 1994, the Gate Pass system gave way to the invoice based system and clearance was permitted on the assessee's own invoice. Another major change was in the form of introduction of Self Assessment Procedure in 1996 under which the manufacturer/ producer of any goods, except cigarette, is himself required to assess the quantum of duty on

the basis of the value determined by him and to determine the rate of duty as per classification of the goods under proper chapter and its suitable head/sub-head.

7.2 Cigarettes: Manufacture, storage and clearance of cigarettes is still under physical control system. C.Ex. duty on cigarettes is to be assessed by the Central Excise officer. All other activities like manufacture, storage and clearance of cigarettes are also required to be carried out under the supervision of C.Excise Officer (Inspector/Superintendent). Although the special provisions related to tobacco products contained in erstwhile CER 1944 have gone with it, the laws related to the said commodity are, at present, administered under various Board's Circulars and instructions and the provisions of Cigarette Manual.

7.3 Provisional Assessment:-In case, the assessee finds himself unable to determine either the value of the goods or the rate of duty applicable thereon, he may request, in writing to the jurisdictional Assistant Commissioner or the Deputy Commissioner of Central Excise explaining therein the reasons therefor and the said officer if convinced, may allow payment of duty on provisional basis on a value or at a rate specified by him.

7.3.1 However, in order to safeguard the government revenue, the assessee is required to execute a bond in proper form with surety or security for such amount as considered appropriate by the Assistant Commissioner/Deputy Commissioner.

7.3.2 As soon as the relevant information is furnished by the assessee, the Provisional Assessment is to be finalized by the AC/DC but in any case not beyond a period of 6 months which may be extended on reasonable ground by the jurisdictional Commissioner of C.Ex for another 6 months. The Chief Commissioner

may extend for a further period as deemed proper (Rule 7 of the CER' 02). After finalization of the order, if any differential amount of duty is payable by the assessee, he shall pay the same with interest (at the rate prescribed by a notification issued under Section 11AA) from the first day of the month succeeding the month for which such amount is determined till the full payment of the same. In case of excess payment made by the assessee, he may file a Refund Claim.

8. Removal of goods: After completing the above said formalities required by the Act and the Rules, excisable goods can be removed from a factory or warehouse, as the case may be, for home consumption or export.

8.1 Home consumption: Home Consumption means the utilization and consumption of goods within the territory of a country. As per the provisions of Rule 4 of C.Ex. Rules' 02, no excisable goods on which duty is payable shall be removed from a place of manufacture/production/warehousing without payment of such duty. The liability to pay duty lies upon the manufacturer/producer/warehouse owner except in case of clearance of molasses where the said liability is imposed on its procurer as if it were produced by him.

8.1.1 Date and manner of payment of Duty: At present Central Excise duty leviable on the goods removed in any month for home consumption or export is required to be paid on monthly basis i.e by 5th day of the following month in which clearance of goods was made when such duty is paid on GAR-7(in place of TR-6) or by 6th day, if paid electronically through internet banking. For the month of March, however, duty is to be paid by 31st day of the same month i.e March itself [Rule 4 and Rule 8(1) of CER' 02]. Payment of duty through internet banking popularly known as e-payment is mandatory in cases where the assessee has paid Rs. 10 lakhs or more (including payment by utilization of Cenvat Credit) in the previous

financial year. However, the assessee, if he so desires, may make e-payment even of lesser amount of duty.

8.1.2 For S.S.I units, availing value based exemption, the duty is payable, as the case may be, by 5th or 6th day of the month immediately succeeding the quarter in which clearances have been made except for the quarter-ending in the month of March when it is to be discharged by 31st day of March as mentioned above [Proviso to Rule 8(1)].

8.1.3 Documents to accompany with the goods:-

8.1.3.1 :Central Excise Invoice: Excisable goods whether dutiable or not , at the time of its removal, shall be accompanied with a pre-printed serially numbered Central Excise Invoice (prescribed under Rule 11 of Central Excise Rules, 2002) prepared in triplicate (prominently showing ORIGINAL,DUPLCATE and TRIPLICATE on respective copies) and containing all the relevant particulars viz. the Registration number, name of the Central Excise Division, Consignee's name, description, quantity/number, value and Tariff heading of excisable goods along with rate and amount of duty payable, date & time of removal of goods and the registration number of the vehicle used for transportation. It should be signed by the owner or his authorized agent. However, the invoices issued in respect of removal of cigarettes shall necessarily contain the counter signature of the Superintendent/Inspector of the Range. The said provision is *mutatis mutandis* applicable to 1st stage/2nd stage dealer also.

8.1.3.2 Only one Invoice book shall be kept in use (unless specifically allowed otherwise by AC/DC) and the serial numbers of the Invoice Book intended to be brought in use must be intimated in writing to the respective Range officer prior to putting it in use.

8.1.3.3 Other requirements:-

- (i) In case of proprietary concern or a business owned by HUF, name of proprietor or HUF should be on the invoice.
- (ii) If any invoice is cancelled and the goods are therefore not removed, an immediate intimation to the Range Officer is required.
- (iii) In case of transshipment of goods en route, suitable endorsement (on the invoice accompanying the goods) by the person in charge of the vehicle is required .

8.1.4 Duty on Pan Masala and Gutkha, branded unmanufactured tobacco & chewing tobacco and Jarda scented tobacco on the basis of production capacity:

If the excisable goods happen to be Pan Masala and gutkha, branded unmanufactured tobacco and chewing tobacco and Jarda scented tobacco and the same are manufactured with the aid of packing machine for their packing in pouches, duty per month is chargeable on the basis of the retail sale price of such goods and the number of packing machine used for the purpose [Notification 42/2008-CE dated 01.07.2008 as amended and 16/2010-CE dated 27.02.2010 as amended read with Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination And Collection of Duty) Rules 2010 [issued under Section 3A of CEA'44].

8.1.5 Duty on steel Pattis/Pattas & Aluminum Circle under Compounded

Levy Scheme:- It is an optional provision. If any assessee engaged in manufacture of steel pattis/pattas falling under chapter 72 or Aluminium circles under chapter 76 of Tariff, opts to pay duty under compounded levy scheme, he will have to:

- (i) opt for the scheme for a specified period through an application to the jurisdictional Range Officer. Permission is grantable for a normal period of 12 consecutive months but the permission for a shorter period may be granted by AC/DC on convincing ground. Such permission may be renewed for subsequent period by A.C/D.C,
- (ii) manufacture/produce only through cold rolling process with the help of cold rolling machine;
- (iii) intimate the Range Officer in case of Change in number of rolling machines. and
- (iv) discharge duty liability calculated @ Rs. 40000 or Rs.12000 per month per machine for S. S. Patta or Aluminum Circle, as the case may be, and is tendered along with the application.

The amount so paid shall be the full discharge of duty during the period for which the said sum has been paid. He shall be, thereafter, exempted from the provisions of Rule 8 of Central Excise Rules'02.

However, he shall not be entitled for credit of duty paid on any raw materials, component part or machinery or finished products used for such cold rolling nor for rebate of excise duty so paid when the goods are exported. [Rule 15 of Central Excise Rules' 02 and Notification 17/2007-CE dated 01.07.2007 as amended by [Notification 5/2013-CE dated 01.03.2013].

8.2 Removal for export: - Removal of goods for export of excisable goods can be made either on payment of Central Excise Duty or without such payment. (Rule18 & 19 of Central Excise Rules'02).

9. Modes of Payment of Duty: C.Ex duty leviable on goods cleared for home consumption or export can be paid from only account current or account current as well as Cenvat Credit or only from Cenvat credit earned on the raw materials/inputs or capital goods or input services used in or in relation to manufacture. But in case of export of goods, duty paid on the final goods or the inputs/raw material (if no credit thereon has been taken) is to be refunded to the exporter under following procedures.

10. Rebate of Duty on exported goods: - If the goods are exported on payment of Central Excise Duty, rebate of such duty shall be granted as per provisions contained in Notification 19/2004-CE (N.T.) dated 06/09/2004 (as amended) in case of export to countries other than Nepal and Bhutan.

10.1 Condition: - For claiming rebate of duty on export goods following general conditions are to be fulfilled -

- (i) The excisable goods are exported after payment of duty directly from a factory or warehouse except otherwise permitted by the Board, within the period of 06 months from the date of clearance. The amount of rebate of duty claimed should be more than Rs 500 and in no case the market price of the export goods should be less than the said rebate amount.
- (ii) the exporter shall make claim of the rebate of duty to the AC/DC of Central Excise Division having jurisdiction over the factory of manufacture or the Maritime Commissioner along with the original copy of ARE-I issued for Export.

10.2. Rebate of duty paid on excisable goods used in manufacture of export goods:- Rebate of duty paid on excisable goods used in manufacture of export goods is also available as per the notification 21/2004-CE (N.T) dated 06.09.2004

as amended (for countries other than Bhutan). In such case the manufacturer, prior to manufacture of export goods, is required to file a declaration to the Jurisdictional AC/DC about his intent to produce any goods for export in respect of which he intends to claim rebate of duty on goods which are to be used in manufacture of such export goods along with the description, tariff classification, the rate of duty and the quality as well as quantity of such goods required for manufacture of export goods as per the manufacturing/processing formula submitted by him. The condition is that the goods to be used in manufacture of final products be received directly from a registered company or the 1st/2nd Stage dealer under the cover of the C.Ex invoice issued as per the provisions of Rule 11 of CER, 2002 and the AC/DC is satisfied after inspection of the manufacturing process or by verification of samples of goods that the goods have been used in the same input- output ratio as declared by the manufacturer. The claim is to be lodged with the above said A.C/D.C after export.

10.2.1 Export under Bond – Export under bond does not require payment of C.Ex. duty. The duty is safeguarded by a bond executed by the manufacturer before the jurisdictional AC/DC. The exporter has to furnish the Proof of Export within a period of six months from the date of clearance of goods for export. Failure to furnish Proof of Export within the said time may make the exporter liable for C.Ex. duty presuming that the said goods have been diverted for home consumption. Therefore, in case of export under bond, no claim of rebate of duty paid on the export goods can be made. However, the exporter may still claim the rebate of duty under Rule 18 of CER, 2002 on the goods which have been used for manufacture of such export goods.

11: Other procedures as set-off for duty paid on inputs etc: Central Excise duty paid on the inputs/materials used in manufacture of export goods can be availed

as Cenvat credit under CCR'04 or can be taken as drawback of central excise duty as mentioned below.

11.1: Cenvat Credit- When the goods are removed after payment of duty, a part or full amount thereof can be paid from the credit of duties earned on goods used in or in relation to manufacture of such goods. It was known as Modvat Credit when it was introduced. The basic purpose was to avoid taxation on tax already paid as in the case of finished excisable goods liable to duty but which have been manufactured from the goods which have already suffered levy of duty. Thus the general principle behind this scheme is that a manufacturer or producer can take the credit of duty paid on the inputs, capital goods etc. and can utilize the said credit for payment of duty on finished goods etc .

11.1.1 Availment and Utilization of Cenvat Credit: - The Cenvat Credit Rules, 2004 defines the capital goods, inputs etc. which are eligible for availing credit of specified C.Ex. duties or Customs duty (with Education Cess and Secondary and Higher Education Cess) paid thereon. For Capital Goods, credit of duty can be taken only to the extent of 50% of the total duty in the first financial year when it is received in the factory of manufacture and remaining 50% in the subsequent financial year. For inputs, full credit can be taken as soon as the inputs are received in the factory of manufacture. An SSI unit is permitted to avail of the Cenvat Credit on capital goods to the extent of 100% in the first financial year itself (Rule 4 of CCR'04).

11.1.2 However no credit of duty on Motor Spirit, High Speed Diesel and Light Diesel Oil as inputs can be taken (Rule 2k of CCR,2004).

11.1.3 Credit of C.Ex. duty on inputs, if used in manufacture of dutiable as well as exempted goods, can be taken to the extent it is used in or in relation to

manufacture of a dutiable goods but the credit of duty paid on capital goods can be taken even if such capital goods is used in manufacture of dutiable as well as exempted goods simultaneously. Various procedures for reversal of credit or payment of an amount equal to the amount taken as credit have been laid down in the said Rules to address the situations when the assessee does not maintain a separate account of inputs used exclusively in the manufacture of dutiable goods, clears the inputs or the capital goods as such or capital goods after its use or becoming waste or scrap or where the value of inputs or capital goods (before the latter is put to use) is written off in the books of account of the assessee or where remission of duty has been granted on goods lost or destroyed or claimed unfit for consumption or for marketing before clearance etc [Rule 6 and 3 of CCR'04 read with Rule 21 of CER'02].

11.1.4: Documents required for taking Credit: - Credit can be taken on the basis of an invoice issued by a manufacturer, importer or 1st/2nd stage dealer or a supplementary invoice issued by them in particular conditions. It is simultaneously required that the manufacturer submits Form ER-5, wherein the description of the principal inputs and the ratio of its use in manufacture of final product is mentioned.

11.1.5: Common pool of Credit on inputs/capital goods and input services: - Under the provisions of CCR'04 the credit of C.Ex. duty and the credit of service tax can be taken by the assessee in a common account and such credit can be utilized for payment of duty or the tax ,as the case may be [Rule 3(4) CCR,04].Cenvat Credit can also be transferred in the account of the transferee unit if a manufacturer of final goods shifts his factory to another site or the factory is transferred on account of its sale, merger with another company or is leased out etc. provided the

liabilities of the said company are also transferred to the transferee under a written provision.

11.2: Refund of C.Ex.duty and interest, if any, paid thereon: - Refund includes Rebate of duty in case of export. Any person claiming refund of duty with interest, if any paid, thereon may, within a period of one year from the relevant date, file a refund claim in prescribed Form-R along with documents evidencing duty payment with copy of the ER-1, original copies of invoices and other relevant documents, if any, before the AC or DC of the Central Excise Division with a copy to the jurisdictional RO provided the amount of claim is not less than Rs.100/-. The assessee should also submit sufficient proof that the burden of duty has not been passed on to the buyer of such goods (Sec. 11B of CEA'44)

11.2.1 Burden of proof that the duty incidence has not been passed on: - The burden to prove that the duty and interest, if any paid thereon, which have been claimed for refund have not been passed on the buyer, lies on the claimant. Where duty and interest have been transferred to a buyer, the amount of refund, if it is otherwise permissible, be granted by the AC/DC but shall be credited to the Consumer Welfare Fund (Sec.12C of CEA'44).

11.2.2:- Interest on delayed payment of refund: - The claimant is entitled for interest at a rate prescribed by a notification under Sec 11BB of CEA'44, if any amount of duty ordered to be refunded is not refunded within a period of three months from the date of receipt of such claim by the office of AC or DC.

11.2.3 Status of all refund claims on Government web site: - The refund claims pending as on the first day of a month are reflected on the Government website with explanation, if any claim is pending for a period of more than three months. The assessee may keep a track of such claims by visiting the said site.

11.2.4 Refund of pre-deposit: - The pre-deposits, if any, made in compliance of an Order under Sec. 35F of CEA'44 is required to be refunded consequent upon the final order of the Appellate Authority, within 3 months from the date of communication of the said order to the Adjudicating Authority unless the said order is stayed by a superior appellate authority. In such cases also interest at the rate mentioned above shall be payable if the deposits are not refunded within a period of three months (Sec. 35 FF of CEA, 44). In such cases no refund application is required under sec 11B of CEA'44 . A simple application of the party along with an attested xerox copy of the order of CESTAT and duty-paying document is sufficient. No unjust enrichment clause is applicable in such cases.

11.2.5 Refund of Cenvat Credit:- Normally, the Cenvat Credit of duty or S.Tax is not refunded but in a situation when a manufacturer or exporter clears a final or intermediate product without payment of duty or under a bond or a manufacturer clears the final product in terms of Notification 20/2007- CEx dated 25.04.2007 and is unable to utilize the Cenvat credit earned on inputs or S.Tax, the refund of such credit may be allowed by the Central Government as per the formula, procedure, conditions and safeguards prescribed under a notification in this regard (Rule 5 & 5 A of CCR,2004).

11.2.6: Other related provisions: Various departmental instructions and circulars have been laid down which *interalia* require that an Order in Original must be passed by the A.C/D.C, who is the proper officer for the purpose, (i) if any refund is sanctioned involving more than fifty thousand rupees, (ii) if the amount is less than fifty thousand but refund is not granted for full amount ; and also that (iii) all sanction orders involving refund of Rs 5 lakh or more are subject to pre-audit and refund orders below the said amount to post audit (iv) in respect of cases of refund where SLP has been filed in the Hon'ble Supreme Court by the

Department against an order of CESTAT or a High court which has allowed refund to the party but no stay is forthcoming, the Board should be consulted before making refund.

11.3. Drawback of Central Excise Duty paid on inputs: -If the Credit of C.Ex. duty paid on the inputs has not been utilized as per the provisions of CCR, 2004 or rebate has not been claimed under Rule 18 of CER, 2002 the manufacturer or exporter may claim drawback of the C.Ex. duty (*interalia* Customs duty and Service Tax paid on input services) under Customs, C.Ex Duties and Service Tax Drawback Rules, 1995. There are three different situations as following for determination of the amount under draw back.

11.3.1 All Industry Rate: - Government of India prescribes, through a notification, rates of drawback at a percentage of FOB value of exports for certain commodities and revises it annually. If the export goods fall in the list of such notified items, the exporter may claim the amount of drawback calculated on the basis of the prescribed rate of FOB value after furnishing documents like the invoices, packing list, Letter of Undertaking etc (Rule 3, 4 and 5 of Drawback Rules, 1995). The amount of drawback shall be sanctioned if the A.C/D.C of port of export is satisfied that no credit of duty has been availed on the inputs by the manufacturer or no rebate of duty has been claimed.

11.3.2 Brand Rate: - If the export item is not in the above said list of notified goods, the manufacturer/exporter may apply for fixation of Brand Rate to the Commissioner of C.Ex. under whose jurisdiction the manufacturing unit falls along with all the relevant facts to determine the duty suffered by the inputs in manufacture of per unit export goods. The Commissioner of C.Ex., after causing such inquiry as may be felt necessary for determination of duty involvement, shall fix the rate of draw back in respect of such goods, whereupon the manufacturer

can claim drawback at the said rate. Such rate is called Brand Rate for particular export goods. However, the assessee, in this case, may be required to furnish an indemnity bond for the said amount of claim (Rule 6 of Drawback Rules)

11.3.3 Special Brand Rates: - If export goods fall in the list of the goods to which All Industry Rate is applicable but the manufacturer finds that the rate so prescribed for the class of goods, he has exported, is not sufficient to cover the duty suffered on inputs and the amount of drawback so calculated is less than $4/5^{\text{th}}$ of the duty and taxes paid on material or components, he may apply to the jurisdictional Commissioner of C.Ex with all the relevant facts showing how the amount determinable under All Industry Rate is less than $4/5^{\text{th}}$ of total duty paid on material and components used in manufacture of export goods. Similar to above process the Commissioner of C.Ex., after due verification, may fix a Brand Rate for the said class of goods. Such rate is commonly known as Special Brand Rate (Rule 7 of the Duty Drawback Rules).

11.3.4 Interest on Drawback: If the amount sanctioned as draw back of duty is not paid within a period of one month from the date of receipt of the claim, interest at the rate prescribed by a notification under Section 27A of Custom Act (as the draw back of duty whether it is customs duty, central excise duty or is Service Tax is to be sanctioned and paid by the AC/DC of port of export) is payable.

11.3.5 Pre and Post Audit: In case of drawback also pre audit of drawback amount of Rs. 5 lakhs or more and post audit for amount less than Rs. 5 lakhs are applicable as in case of refund.

12. Clearance of Samples

12.1 Duty on samples: - Many a time a manufacturer is required and some times obliged to draw a sample of manufactured goods and remove for (i) free samples

distributed to public or consumers for creating a market or trade samples for getting an order for supply, (ii) for display in any fair, exhibition etc. from where it is returnable, (iii) for in-house or outside testing and (iv) at the instance of excise officials for an enquiry/investigation etc. In case the subject goods from which samples have been drawn are not exempted goods, every procedure regarding maintenance of Daily Accounts, its clearance under a cover of invoice after payment of duty is required to be accordingly followed.

12.1.1 Payment of duty at the time of removal of samples and credit thereof when returned back:- If the samples are removed for sending it for exhibition or other purposes, duty is to be charged on the corresponding value of samples. When such samples are returned to the factory, credit of duty paid on it may be taken as if an input has been received (Rule 16 of CER' 02).

12.1.2 Cost of samples to be borne by department: - If samples are drawn by C.Ex. Officer for test purpose, the cost including the duty shall be borne by the contingency fund of the Division concerned in case the assessee insists on payment thereof.

12.1.3 Destruction of samples: - If the sample is preserved in custody of manufacturer inside the factory during investigation of a case, no duty is payable but if after completion of the inquiry or the investigation, the manufacturer wants to get it destroyed he may claim remission of duty to the extent it is attributable to such samples (Rule 21 of CER, 02)

13: When goods are lost before clearance:-

13.1 Remission of Duty: In some cases it may happen that the goods before clearance for home consumption or export, are lost, destroyed (partially or in full) by natural causes or unavoidable accidents or are claimed by the manufacturer as

unfit for consumption or for marketing (as in above case). The duty leviable on such goods- lost/destroyed/unfit for consumption/marketing- may be remitted by the competent authority of Central Excise according to the limit fixed by Rule 21 of CER' 02 on an application of the assessee explaining the reasons for such claim supported with evidences therefor. If the remission is granted on the goods which are found unfit for consumption/marketing, it is to be got destroyed in a way that it becomes unretrievable. Such destruction is to be done under the supervision of the competent officer as defined in the Rule. However, in such case the assessee will have to reverse the Cenvat credit on inputs used in its manufacture.

14. Returns

14.1 Periodicity: - Transparency is a vital requirement for self assessment procedure with regard to its use as well as monitoring. CBEC has prescribed various periodical returns on monthly, quarterly and annual basis namely ER-1 to ER-8. Such returns are required to be filed with the Superintendent of the concerned Range. At present all such returns are required to be filed only on ACES.

14.1.1 While all the monthly returns are to be filed by the assessee except the SSI unit availing value based exemption within ten days of the succeeding month to which it relates, the SSI units mentioned above is required to file the said return, as applicable to him, within ten days of the month succeeding the quarter to which it relates (proviso to Rule 12 of CER' 02)

14.1.2 However, the assessees manufacturing Pan Masala and Pan Masala containing tobacco are required to submit a statement with the monthly returns. The said statements should indicate the quantity of betel nuts, tobacco, packaging material etc purchased and used by them along with the names and address of their suppliers besides the quantity, value and description of the goods sold by the

assesseees to their buyers with the latter's name and address (Proviso to Rule 12 of CER' 02).

14.1.3 The Annual Returns are required to be submitted by 30th day of November of the succeeding year subject to exemption granted to the assesseees who paid duty of less than Rs.1 crore in the respective financial year or to some other class of manufacturers (Notification 26/2009- CE(NT) dated 18.11.2009).

PART-B

15. Compliance and Enforcement

15.1 Under self assessment procedure a central excise assessee has been given every liberty to classify and assess his manufactured/produced goods in the manner as explained in Part- A of the Guide and to honestly declare the quantity and value of goods cleared by him along with the duty payable on such quantity/value in the central excise invoice *interalia* other information as prescribed therefor. Any deviation from the prescribed procedure defeats the purpose of such liberty particularly when it is deliberate.

Therefore, this part is aimed at apprising the trade of its mandatory obligations to make the taxation law a success and also to inform about the powers of the central excise officers to enforce compliance in cases of violations. The officers of central excise exercise such supervision through audit of the records of the assessee, by carrying out or causing an investigation under anti-evasion activity and through scrutiny of reports, returns and records of the assessee by local officers posted in a Range or a Sector.

16. C.Ex Audit (EA 2000) amended as EA 2008: Present audit system has replaced the earlier one which randomly selected a unit for audit. For systematic and comprehensive audit, C.Ex units have been categorized in 4 grades according to the quantum of payment of duty through account current as well as Cenvat Credit viz. (i) Rs 3 crore or more (ii) Rs.1 to Rs.3 crore (iii) Rs 50 lakh to Rs.1 crore & (iv) upto Rs 50 lakh. In present scheme an audit plan is to be first of all prepared selecting the areas of audit on the basis of examination by Central Excise and financial records and profile of the assessee along with the risk factor attached to the nature of goods manufactured by him. The units in the first category known as Mandatory Units are to be audited once every year. For better utilization of man

power and skill, the above scheme requires some analysis and evaluation of the records and internal control mechanism of the assessee to find out the extent to which the records and their maintenance by the assessee can be relied upon for actual verification. The assessee is required to produce a list of all records and returns whether private or statutory to the officers authorized to conduct audit and, on demand, to produce them to such officer. Such records also include financial records. In order to create a more assessee friendly environment, it is desirable that if any discrepancy is detected by audit, it should be discussed with the assessee to know his view and if it is found that no plausible reply from his end is coming forth, he may be advised to deposit the amount of duty not paid or short paid, whether due to unawareness or otherwise, along with interest and also be informed that by doing so before a show cause notice is issued, he shall get immunity from any penalty or fine as per the provisions of Sec 11 A (2&6) of CEA'44. The objections not so settled become an audit para after approval by the Monitoring Committee, where after further action for determination and recovery of the same is taken.

17. Anti –Evasion activities. The other way to exercise circumspection is through anti-evasion activities initiated by the departmental officers. As per the provisions of Rule 22 of the CER' 02 officers may be empowered by the Commissioner of C.Ex. to have access to any premises of assessee registered under CER' 02 for carrying out any scrutiny, verification or check as may be necessary to safeguard the interest of revenue.

18. Deterrent action against *prima facie* evasion of tax/duty. In course of investigation conducted by the departmental officers, if *prima facie*, it is detected that a manufacturer, exporter or a registered dealer **i.** has removed the excisable goods without any invoice or **ii.** by declaring an incorrect value of goods on it in

order to avoid payment of duty leviable as per law or **iii.** issues a central excise invoice without clearance of the quantity of goods shown there on or **iv.** takes credit of duty without receipt of the goods or on the basis of invoices one has reason to believe that they are not genuine or **v.** claims refund/rebate on the basis of such invoices or **vi.** clears inputs as such without payment of an amount equal to the Cenvat Credit availed on such goods, the jurisdictional Commissioner may forward a proposal, if possible, within a period of one month of detection of the case to the Chief Commissioner for withdrawal of the facility of monthly payment of duty or to impose certain restrictions. The assessee will then be required to pay duty on each clearance, that too, without utilizing Cenvat Credit. However, the amount of duty evaded or amount of wrong availment of credit should not be less than Rs. ten lakhs.

18.1 After giving an opportunity of hearing to the party, the Chief Commissioner may forward the said proposal with his comments to the Member (Central Excise), CBEC, who after examination of facts, may issue an order for withdrawal of the facility (ies) or the restrictions to be imposed to the extent mentioned therein. The period, for which such withdrawal of facility or the restriction may continue, shall also be specified in such order. [Rule 12CCC of CER 2002 read with notification no. 5/12-CE (NT) dated 12.03.2012]

19. Action against delayed payment of duty: - As a mandatory requirement, the assessee is required to pay the amount of duty as assessed by him on the quantity removed for home consumption or export under claim of rebate of duty on prescribed dates. If he fails to pay the total amount of duty by the due date, he will have to pay interest at the rate prescribed by a notification under section 11AA of CEA' 44, from the first day after the due date (i.e. the 5th/6th of a month or 31st of March, as the case may be) till the date of full payment.

19.1: Failure to pay duty beyond 30 days from due date: - If the assessee fails to pay duty in 30 days from its due date, he will lose the facility of monthly payment of duty. In that case he will have to pay duty on each and every removal, that too, without utilizing Cenvat Credit lying in balance till the payment of the total dues along with interest [Rule 8 (3A) of CER' 02]. If the duty is not paid on subsequent removals as above, it shall be treated as removal of goods without payment of duty for which such goods shall be liable to seizure and confiscation and penalty may also be imposed upon him [Rule 8 (3A) and Rule 25(a) of CER' 02]. On the other hand, after 30 days from the due date, such outstanding duty along with interest shall also be treated as "Recoverable Arrears" for recovery of which provisions of Section 11 of CEA, 44 may be invoked (Circular No. 766/62/2003 – CX dated 15.12.2003 read with Rule 8(4) of CER' 02). The Range officer immediately, after the receipt of ER-1, should identify such cases and inform the assessee through a notice in prescribed form to pay such outstanding duty along with interest. If the assessee fails to pay the outstanding Government dues, the AC/DC of the C.Ex. Division may issue notice under Section 11 of CEA'44 requiring the assessee to pay the same within 30 days from receipt of the notice. If the assessee fails to pay the dues within the said period, the A.C/D.C may proceed to recover the same under the provisions of section 11 or may resort to Section 142 of the Customs Act, 1962 applicable to C.Ex. Act, in case the amount is not so realizable.

20. Recovery of duties not levied/paid, short levied/paid or erroneously refunded: - The above said situation of non-levy or non-payment, short levy or short payment or erroneous refund of any amount of duty may arise due to the following reasons –

- (i) When on the part of assessee there is no fraud or collusion or mis-statement or suppression of facts or contravention of any of the provisions of this Act or the Rules made thereunder with intent to evade payment of such duty; and
- (ii) When the non payment is deliberate and due to one or more of the above said reasons.

20.1 Service of Notice in such cases: - In order to observe the principles of natural justice, the C.Ex. Act requires that before deciding the issue whether any duty of excise has been evaded or not and whether such evasion of duty is due to any of the reasons mentioned at para 20 above, a Show Cause Notice to the assessee must be served by the Department under Section 11 A of CEA' 44 within a period of one year where there is no deliberate act for non-payment and within a period of five years in other case, asking him *interalia* why he should not pay the amount mentioned in the notice with interest and why penalty should not be imposed for the alleged commissions or deliberate omissions. The above said period is counted from a 'relevant date' which may be different for different situations. Such SCN should be approved and signed by the officer competent to adjudicate the case as per norms laid down by the Board. Besides above, protective demands cum Show Cause Notice is required to be issued in respect of CERA objections in all cases even if the objection is contrary to Instruction or Circular of the Board and these need to be continued to be raised till the time a written instruction from the Board for not raising the demand is received .All such cases are to be immediately referred to the PAC section of the Board. In other cases also where a refund claim on the ground of non submission of relevant documents or unjust enrichment is to be rejected or where Cenvat credit is to be disallowed or where any amount with interest, if any, is demanded under Section 11D of CEA' 44

or where an EOU has, in contravention of the provisions of a notification, failed to discharge export obligation as determined by the Board of Approvals or the Development Commissioner, a notice is required to be served upon the party.

20.2 Provisions of Sec 11A are also applicable for recovery of wrongly taken or erroneously refunded Cenvat Credit. However, the demand/recovery of duty under compounded levy scheme does not come under the purview of Sec11A for application of time-limit (Circular No. 677/68/202/CX-III dated 03.12.2002).

20.3: Relevant date: - In general the relevant date for counting period of one year or 5 years, as the case may be, is taken as the date of filing of monthly Return. If no Return is filed by the party then it is to be taken from the date when such Return is due as per law. Relevant date for other situations is mentioned in explanation appended to Sec. 11 A.

20.4: General requirement of SCN: - General requirement of an SCN is that

- (a) It clearly and accurately reflects the provisions of law which are being alleged to have been contravened and the penal provisions which are attracted by such contravention,
- (b) It quantifies the amount for which the SCN is issued and period of offence involved,
- (c) It explains how the executive of the assessee, if any, is involved in such evasion,
- (d) It spells in clear terms the statement of facts along with the modus operandi relating to fraud, mis-statement, suppression of facts, collusion or contravention of any provision with intent to evade duty,
- (e) It mentions the name and designation of the officer to whom it is answerable along with the time period within which the reply may be submitted and

- (f) It encloses all the documents relied upon and briefly narrates the provisions of law which have been relied upon to prove the guilt.

20.4.1: Return of documents: The documents which are not relied upon in the case are required to be returned to the noticee on a date fixed for the purpose but not later than 30 days from the date of issue of SCN or the due date of issuing such SCN, whichever is earlier. The assessee should also be allowed to take photo copy of any document which has been seized.

20.5 Mode of service of the SCN: An SCN shall be treated to have been served if it is tendered or sent through a registered post or speed post or a courier approved by CBEC. If it cannot be served by above ways, a copy of it may be affixed on a conspicuous part of the factory or the warehouse or the residence of a person (also made a noticee). If the service of the notice is still not possible by the above said ways, it should be affixed on the notice board of the office who issued the notice.

20.6 Waiver of SCN: - If the assessee (a) on his own or on ascertainment by a C.Ex. officer pays the duty with interest before the service of notice where there is no element of fraud or collusion etc, or (b) where it is found by audit, investigation or verification that any amount of duty has been evaded by resorting to fraud, collusion etc but the details related to the transaction are available in specified records of the assessee maintained by him in accordance with any law, for the time being in force, pays the total amount of duty so detected with interest at the prescribed rate and penalty calculated at the rate of 1% of such duty per month, however limited to 25% of the total duty, before the service of SCN and informs the C.Ex.officer about such payments made in respect of (a) and (b) above with evidence thereof, no notice will be served by the proper officer for the amount which stands paid. But a notice for an amount, which in view of the officer is still un-

paid, must be issued within a period as applicable for the two situations mentioned above [Section 11 A (2,3,6&7) of CEA'44].

21: Application to Settlement Commission: - If the Show Cause Notice under Sec 11A of CEA' 44 has been issued, the assessee has two options to proceed further. He may refer the case to the Settlement Commission constituted under Central Excise Act or may proceed to submit reply to the SCN within the prescribed time limit.

21.1 The case pending for adjudication may be referred to the Settlement Commission by the assessee himself provided he has filed the Central Excise Returns regarding production and clearance of goods and duty payable thereon etc., and the SCN asking him to pay duty has already been received by him.

21.2 In the application to the Settlement Commission, the assessee is required to honestly declare the amount of duty actually payable by him on account of alleged mis-classification, under valuation or misuse of any exemption notification or contravention of any provision of CCR' 04. The additional amount so admitted by the assessee should be paid along with interest before an application is made to the Commission. However, if such amount is less than Rs. 3 lakhs, no application to the Commission can be filed. Any application for interpretation of tariff classification is also not entertainable by the Commission.

21.3 In case of seizure of any goods, documents or books of accounts, no such application can be filed before expiry of 180 days from the date of seizure.

21.4 If the Commission is convinced that the assessee has co-operated and has made a true disclosure of the additional amount of duty and has paid the same with interest, it may pass an order after proper enquiry in deserving cases, where by exemption from penalty/fine under C.Ex. Act as well as immunity from

prosecution may be granted to the assessee. On the other hand, if the Commission finds that the assessee has not co-operated in true disclosure of the duty to be additionally paid or in any other matter, it may send back the case to the Adjudicating Authority with all the documents of enquiry, if any, for adjudication of the case.

21.5 The time period involved between the date of receipt of the application of the assessee in the Commission and the date of receipt of the order of the Commission by the Adjudicating Officer shall be excluded from the time prescribed for adjudication and computation of interest as if there was no application filed for settlement of the case (Sec. 32 E, F & K of CEA'44)

22. Provisional attachment of property of the assessee to protect revenue: -

This provision is applicable during the period an SCN has been issued and is pending for adjudication. If proper officer, who happens to be AC/DC of the Division in this case, has a reasonable belief on the basis of an information with him (to be recorded) that the assessee may dispose off or remove the property before the payment of the Government dues, he may send a proposal to the Commissioner of C.Ex. for provisional attachment of the property of the assessee to compel him to pay the Government dues. The Commissioner, after consideration of the proposal and hearing the party, may grant approval for such attachment whereupon the officer before whom the case is pending for adjudication may, by an order in writing, attach the property under the proposal. If the Commissioner is the adjudicating authority, he will himself issue such order.

22.1: It is an extra-ordinary provision to be exercised with utmost caution and care. This provision is applicable only in cases where the offence of evasion of duty or wrong availment of credit has been committed by the ways (i to v) mentioned in para 18 above and the amount involved therein is not less than Rs.25 lakhs.

22.2 Circular No. 874/12/2008- CX dated 30.06.2008 of the Board issued in this regard also directs that the personal property of the sole proprietor or the partners of a firm which is in their use should not be attached and movable property shall be attached only when the immovable property is not sufficient to cover the Government dues. It is also directed that by such attachment, normal activity of manufacture should not hamper and so raw materials, inputs or finished goods should not be attached.

22.3: Normal period for such attachment is six months. However, the Chief Commissioner can extend this period upto a maximum of two years. During such period, the assessee cannot sell, transfer, lease, charge or mortgage the attached property until the amount is paid during the said period.

22.4: If the assessee had made an application to the Settlement Commission during the said period of attachment and the case is returned by the Commission to the adjudicating officer under Sec. 32 F of CEA'44, the time from the date of application to the Commission and the date of receipt of the order of the Commission by adjudicating officer under Section 32 F shall be excluded from the period extended by the Chief Commissioner (Sec. 11 DDA of CEA' 44 and Circular dated 30.06.2008)

23. Search & Seizure: - If a Central Excise Officer (in the rank of Inspector and above) has reason to believe that a vehicle is carrying any goods on which duty is not paid with intent to evade it or has reason to believe that such goods has been removed without payment of duty with the said intent, he may stop and search the vehicle and detain or seize the goods (Rule 23 & 24 of CER' 02).

23.1: Seizure under Section 110 of Customs Act'62: Sec 110 of Customs Act, 1962 (applicable to C.Ex. Act vide Notification 68/63-CE dated 04.05.1963 as

amended from time to time) read with Section 12F of CEA' 44 (in lieu of Sec 105 of Customs Act' 62 also applicable to C.Ex) provides a wider scope of seizure of goods, documents or things, from any place or premises whether registered under CER or not if the proper officer has reason to believe that such goods are liable to confiscation under the provisions of C.Ex. Act and the documents or things will be useful, in his opinion, for any proceeding under the said Act.

23.2: Search of premises not registered under CER'02: Normally, search of registered premises or a moving vehicle do not require any Authorization for Search (Magistrates are empowered to issue search-warrant for such purpose). But for search of other premises, the Joint/Additional Commissioner of the respective Commissionerate should have reason to believe on the basis of his information that any goods liable to confiscation or any documents or things useful for any proceeding is secreted in a building or enclosed space. In that case he may authorize an officer subordinate to him to cause search or he may himself do so. The officer so authorized is required to offer search of his person before the witnesses and the occupant of the premises before starting the operation. Such search should be conducted normally between sunrise to sunset. Search of a premise, building or precincts is required to be conducted as per the provisions of CrPC, 1973 (Sec.12 F & 18 of CEA'44).

23.3 Provisions of CrPC in respect of entry into a premises and its search: -

Section 100 read with Sec. 47 of CrPC 1973 provides the procedure of search, in brief as following –

- Before making a search, the officer should call two or more independent and respectable inhabitants of the locality. If no such person is available then from other locality also the witnesses can be taken.

- If such person is unwilling, the officer may issue an order in writing to such person (s) to witness the search.
- Search is made in presence of such witnesses and the occupant of the house or any other person on his behalf shall be allowed to attend the search.
- An inventory of goods seized during search and of the places in which they were respectively found shall be prepared (known as Panchanama) by the officer or any other person and is signed by the witnesses. A copy of it should be delivered to the owner or occupant of the house.
- After completion of search, a report is required to be forwarded to the Commissioner of C.Ex. [Sec. 12 F (2) of CEA' 44].
- If no free ingress is allowed, the gates and lock may be broken to enter into the premises.

23.4: After seizure too, a notice under Section 11 A to the assessee is required to be issued but in case of seizure under Sec. 110 of Customs Act 1962, applicable to CEA' 44, such notice should be issued within 6 months from the date of seizure (subject to extension of another six months by Commissioner, Central Excise) otherwise the goods will have to be returned to the person from whom it is seized.

24. Adjudication: - According to the monetary limit fixed and other conditions prescribed under the Act (as amended from time to time) such SCNs are required to be decided by a Superintendent of C.Ex or AC/DC or JC/ADC or the Commissioner of C.Ex. as the case may be.

After examination of the reply to the SCN and the submissions made by the assessee during personal hearing, if any, the adjudicating officer is required to determine the amount of duty which has been actually evaded or erroneously refunded for recovery of the same and also whether such non-payment or short

payment was attributable to fraud/collusion/mis-statement etc. or not. Besides, penalty as following may also be imposed as provided under the Act and the Rules made there under-

- a. Penalty which is equivalent to the amount of duty evaded under fraud, collusion, mis-statement etc.[Sec 11AC(1a) of CEA,44].
- b. Penalty equivalent to 50% of the amount of duty determined by the adjudicating officer, if the details of the transaction are reflected in other specified records but limited to 25% of the determined duty, in case the determined amount of duty along with interest and the reduced amount of penalty (25% of duty) is paid within 30 days from the date of communication of the adjudication order. [Sec. 11 AC (1b &c)].
- c. Penalty not exceeding the amount of duty or Rs. 2000, whichever is greater with or without confiscation of goods.[Rule25 of CER,02]
- d. Penalty not exceeding the amount of illegal benefit taken on the basis of any improper document or Rs.5000, whichever is greater [Rule26(2ii) Of CER' 02; and
- e. Penalty not exceeding Rs. 5000/- with the confiscation of goods, if no penalty is provided for any breach of CER' 02 (Rule 27of CER, 02)

25. Arrest and prosecution: - Section 13 of CEA' 44 provides that if a C.Ex. Officer of the rank of Inspector or above has reason to believe that a person is liable for punishment under Section 9 of the Act, he may, after approval of the Commissioner, arrest such person. Section 18 of the Act, however lays down that any arrest should be in accordance with the provisions of CrPC, 1973.

25.1: Provisions of CRPC 1973 as applicable: Section 46, 50, 50A and 57 of CrPC, 1973 are relevant for arrest of a person and his forwarding to a Magistrate. Section 46 states that a person to be arrested should be touched or his body be confined unless there is a submission to the custody by word or action. If he forcibly resists or attempts to evade arrest, then the Act permits to use all necessary measures for his arrest except causing death. However no woman shall be arrested after sun-set and before sunrise except by a prior permission of first class Judicial Magistrate. Section 50 of CRPC enjoins that an arrested person should be informed immediately about the grounds on which he has been arrested and Sec 50A directs that any friend or relative of arrested person as disclosed or nominated by him should be, immediately after arrest, informed about his arrest and the place where he has been kept. Arrested person should also be informed of his right as mentioned above. In order to ensure that the said provisions are strictly complied with, sec 50A directs that the Magistrate before whom such person is produced should get himself satisfied that the said provisions have been complied with and an entry to that effect has been made in a book opened and maintained for the said purpose. Similarly, Sections **56 & 57** of CrPC lay down that no person shall be kept in custody beyond 24 hours of arrest and that he should be produced before the Magistrate within a period of 24 hours, excluding the time taken for journey.

25.2: After arrest of a person and production before the Magistrate, a complaint is required to be filed to prosecute him. The said complaint should *interalia* mention the grounds on which the person has been arrested *vis-à-vis* the provisions of C.Ex. Act & Rules which render him punishable for a cognizable or non-cognizable offence, as the case may be. In Central Excise cases prosecution is sanctioned by the jurisdictional Chief Commissioner. After sanction of prosecution, the complaint should be immediately filed, if not done so earlier.

25.3 When prosecution has been sanctioned but the complaint is yet to be filed and in the meantime it is decided not to pursue the prosecution any more, permission from the Board is required for not launching prosecution. The Chief Commissioner should recommend the proposal of withdrawal of the sanction of prosecution on the grounds mentioned therein. But if a complaint has been filed in the Court and prosecution has been sanctioned the same can be withdrawn only by the permission of the Court. However a formal approval by the Chief Commissioner to withdraw the prosecution is required.

26. Appeal against the order and decision of C.Ex. Officers as well as other Appellate fora: - Sec. 35 of CEA, 44 provides that any person aggrieved by an order or decision whether it relates to confirmation of demand of duty, rejection of refund etc. may prefer an appeal before competent Appellate forum. It bifurcates orders or decisions in two categories – (i) when such order or decision has been passed by an officer below the rank of Commissioner of C.Ex. and (ii) when it has been passed by the Commissioner himself. In former case, while the appeal shall lie to the Commissioner (Appeals), it will lie to the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) in the latter case. Such appeals are called first stage appeal.

26.1 The appeals should be filed in prescribed form of appeal and it should be accompanied with the grounds of appeal and statement of facts. The appellant should himself sign the form of appeal and verify the same in prescribed manner. The appellant may also file a stay application along with the appeal petition. The appellate authority may grant or reject such stay petition before finalization of the appeal. However, the second proviso to Section 35 C (2A) of CEA'44 lays down that if a stay has been granted by the CESTAT but such appeal petition is not decided within six months, the stay will stand vacated.

26.2 The present provisions although do not explicitly empower the Commissioner (Appeals) to remand a case back to the adjudicating officer yet the said power is being exercised by the Commissioner (Appeals) in the light of decision of the Hon'ble High Court of Gujarat in the matter of CCE vs Medico Labs -2004 and by the Hon'ble Supreme Court in the matter of UOI vs Umesh Dhaimode -1998.

26.3 A chart showing the competent forum of appeal against a particular order along with pre-requisites for such appeal is given on the next page. However, a limitation has been imposed by the Board vide instruction F.No. 390/Misc./163/2010- JC dated 17.08.2011 subject to the exceptions laid therein (* marked portion of the following chart). According to the said instruction, cases involving duty of Rs. 5 lakhs or less are not required to be appealed in CESTAT against any order of Commissioner (A) or the Commissioner (C.Ex.), as the case may be. Similarly cases involving duty not exceeding Rs. 10 lakhs or Rs. 25 lakhs are not required to be appealed in the High Court & Supreme Court respectively.

If only the amount of penalty or interest is the matter of dispute, the said limit shall still be applicable for filing appeal against imposition of penalty or charging of interest.

Exceptions : Such limitations are not applicable in cases where the concerned adjudication or decision is based on adverse interpretation of any provisions of the Act or the Rules or any Notification/Circular has been thereby held ultra vires.

Sl No	Order or decision appealed against	Authority to whom Appeal shall lie	Time within which appeal to be filed by		Form of Appeal to be submitted by		Lower limit for appeal		Fee to accompany with appeal on the basis of amount duty + penalty+ interest
			Party	Deptt.	Party	Deptt.	Party	Deptt.	
1	Order or decision by officers below Commr.cx	Commr (A)	60 days from the date of communication of order	Within one month after review by Commissioner in max. period of three months	E.A-1	E.A-2	No limit	No limit	Nil
2	Adjudication order of Commissioner C.Ex	Zonal Bench of CESTAT	03 months	Within one month after review by committee of Chief Commrs in max. period of three months	E.A-3	E.A-2	No limit	05 lakh of duty or penalty of Rs 5 lakh alone if no duty is involved *	i. Rs.1000/ if the amount involved is less than 5 lakh. ii. Rs.5,000 if amount involved is in between 5 lakh to 50 lakh. iii. Rs.10,000- if amount is more than 50 lakh. iv. Rs 500 if ROM /ROA filed.
3.	Order of Commr (A) under Sec. 35A except cases of loss of goods in transit, rebate of duty on export & export without payment of duty	---do--	03 months	Within 3 months inclusive of the period taken for review by committee of commissioners	E.A-3	E.A-5	--do--	05 lakh of duty or penalty of Rs 5 lakh alone if no duty is involved *	i. Rs.1000/ if the amount involved is less than 5 lakh. ii. Rs.5,000 if amount involved is in between 5 lakh to 50 lakh. iii. Rs.10,000- if amount is more than 50 lakh. iv. Rs 500 if ROM /ROA filed.
4.	Commr (A)- All issues under exception clause of Sl.no 3 above	Central Govt. for Revision u/s 35EE	03 months	03 months	E.A-8	E.A-8	No limit	No limit	i. Rs.200/- if amount involved is Rs.1 lakh or less ii. Rs.1000/- if it is more than Rs.1 lakh Sec 35EE(3)
5.	CESTAT	High Court (Except Classification & Valuation)	180 days	180 days	E.A-6	E.A-6	No Limit	10 lakh *	Rs.200/
6.	CESTAT	Supreme Court (classification & Valuation)	60 days	60 days from the date of the order or communication of order	Appeal with SLP	Appeal with SLP	No Limit	Rs.25 lakh *	Rs. 250/- for value upto 20,000 & Rs.5/thousand for additional amount. However such fee is limited to Rs.2000/-.

27. Recovery of sums due to government : A demand confirmed by adjudicating authority becomes an arrear of government dues after passage of the period allowed for filing appeal as per the respective provisions of Sec. 35 of the CEA'44. According to the above mentioned chart a confirmed demand becomes arrear after

two or three months, as the case may be. In cases where no appeal has been filed, such arrears are recoverable immediately after lapse of the statutory appeal period but in cases where no stay petition has been filed, such arrears become recoverable from the date of filing appeal without waiting for the statutory period of 60 or 90 days .

27.1: When stay petition has been filed: If in an appeal stay petition has also been filed then two situations may arise-(i) stay petition has not been heard (ii) it has been heard and stay granted. In the second situation, recovery of arrears cannot be initiated till the vacation of the stay or finalization of the appeal whichever is earlier. However for the cases of first category, the circular No 967/010213-CX dated 01.01.2013 issued by the Board stipulates that recovery should be initiated 30 days after the filing of appeal if no stay is granted or after the disposal of stay petition in accordance with the condition of stay, if any specified, whichever is earlier. In such a situation the arrears become recoverable after 30 days of filing appeal with stay petition if stay is not granted within the said period for whatsoever reason. The validity of the said circular has been challenged in the Hon'ble High court of Jharkhand by various assesses against whom recovery proceeding has been initiated under the provisions of the said circular. The court has stayed the recovery of arrears till finalization of the Writ Petitions.

27.2 When Commissioner (A) confirms the demand : In such case recovery is to be initiated after the O-I- A (Order In Appeal) has been issued.

27.3 When Tribunal or High Court confirms the demand: In such cases recovery is to be initiated immediately after the issue of the order by Tribunal or the High Court if no stay is in effect (Circular mentioned above).

27.4 When stay has been granted by CESTAT: In terms of the first and second proviso to Sec 35 C (2A) of CEA' 44, if in a case of appeal, stay has been granted by the Tribunal, such appeal is required to be disposed of within a period of 180 days from the date of order of stay. Otherwise such stay would stand vacated after the said period. The arrear will thus become recoverable. However, the decisions of the Tribunal in the case of IPCL vs CCE Vadodara 2004(169) ELT.267 (Tri) and Kumar Cotton Mills (P) Ltd vs CCE Ahmedabad -2002(146) ELT 438 wherein it was held that the CESTAT has the power to grant extension of stay beyond 180 days were, subsequently, upheld by the Apex Court [2005(180) ELT 434 (SC)]. In view of the said position the Board vide Circular No-925/15/2010/CX dated 26.05.2010 has advised that in such cases when the period of 180 days is over but the final decision in appeal has not yet come, only a simple letter asking the party to pay the dues may be written and no coercive measure for recovery of arrears should be initiated without giving an opportunity to the party to seek extension of stay. However, the Department may contest in the Tribunal against the said move.

27.5 Matters pending in BIFR, DRT or before Official Liquidator: Arrears of revenue pending in above said fora are not recoverable arrears .

28. Proceedings of recovery: Recovery of arrears free from above said restraints can be made by invoking the provisions of Sec.11 of CEA'44 or Section 142(1) (b) & 142 (1)(c)(ii) of Customs Act, 1962 made applicable to Central Excise. Customs (Attachment Of Property Of Defaulters For Recovery Of Government Dues) Rules, 1995 framed under the provisions of 142 (1)(c)(ii) of the Act is thus automatically applicable to C.Ex. cases.

28.1 The proceeding for recovery *interalia* includes four stages

- (i) Appropriation of the dues from any amount owing to the party which may be in hands or control of the proper officer i.e. AC/DC.

- (ii) Notice to the party to pay the sum if not recoverable as per clause (i) above.
- (iii) Attachment of property if amount is not paid in full within the prescribed period of 30 days and
- (iv) Sale of property.

28.2 However, under the provisions of Sec. 11 of CEA 1944 only excisable goods can be attached and sold for recovery of the dues except in cases where the business is transferred or disposed off but under the provisions of Sec.142 of Customs Act, 1962 and the Rule made thereunder which are applicable to Central Excise, any property whether movable or immovable may be attached. If the said amount is not recoverable by the above said measures, the proper officer may prepare a certificate signed by him specifying the name of person against whom an amount, as mentioned in the certificate, is due and send it to the District Collector under whose jurisdiction such person resides or conducts his business for realization of the same. The procedure for attachment of any property, its valuation by taking help of valuation wing of the Income-Tax Department or a Government approved valuer, if required, and public auction through a renowned auctioneer are mentioned in Customs (Attachment Of Property Of Defaulters For Recovery Of Government Dues) Rules, 1995 and various circulars/ Instructions of the Board.

28.3 Irrecoverable Arrears and write-off: - If the arrears are not recoverable by any of the above mentioned procedures or the party is not traceable despite concerted efforts, such arrears become irrecoverable. In that case AC/DC of the Division is required to make a proposal for writing off such arrears by a Committee of Chief Commissioners constituted by the Board, where the amount of duty involved is more than Rs. 10 lakhs but does not exceed Rs. 15 lakhs or by Committee of Commissioners constituted by the Zonal Chief Commissioner where

the amount of duty involved is upto Rs. 10 lakhs and to forward the same through proper channel. After due consideration, the Committee so constituted may write off arrears of duty, penalty/ fine or the interest and shall forward a report to the Board or to the Zonal Chief Commissioner, as the case may be.

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Frequently Asked Questions

1. What is Excise Duty? Is it collected by the State Government or the Central Government? How is it different from Sales Tax?

A.1 Excise duty is a tax on manufacture or production of goods. Excise duty on alcohol, alcoholic preparations, and narcotic substances is collected by the State Government and is called "State Excise" duty. The Excise duty on rest of goods is called "Central Excise" duty and is collected in terms of Section 3 of the Central Excise Act, 1944. Sales Tax is different from the Excise duty as former is a tax on the act of sale while the latter is a tax on the act of manufacture or production of goods.

2. Whether any excisable goods can be obtained without payment of duty for manufacture of goods?

A.2 The procedure for end-use exemption has been notified in C.Ex. (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable goods) Rules, 2001. The Rules stipulate that procurement of goods for end-use under concessional (including fully exempted) rate of duty would be on the basis of a certificate issued by the jurisdictional Asstt./Dy. Commr. Separate certificates would be necessary for each supplier. It may be noted that the end-user is responsible for discharging the duty liability on the entire quantity of goods originally despatched to him and no allowance shall be made for loss / destruction of goods in transit.

3. What categories of persons are required to obtain registration with the Central Excise department?

A.3: Subject to specified conditions, generally the following categories of persons are required to get themselves registered with the Central Excise department: (i) Every manufacturer of dutiable excisable goods; (ii) First and second stage dealers or importers desiring to issue Cenvatable invoices; (iii) Depot, (iv) Persons holding bonded warehouses for storing non-duty paid goods; (v) persons who obtain excisable goods for availing end-use based exemption .

4. Whether trading activity can be undertaken by a manufacturing unit?

A.4: The present Rules do not debar storage of duty paid goods for the purpose of trading in the premises registered for manufacture. However, if similar goods are intended to be brought inside such registered premises, permission by the Commissioner is required.

5. What is the procedure for obtaining registration?

A.5: At present, Registration is to be filed in Form-‘A’ electronically on ACES. Hard copies of the documents along with self attested copies of PAN, address proof & ground plan are also required to be submitted for verification. Registration is to be granted free of cost within 7 days if relevant documents are submitted in time.

6. What are the items on which Central Excise duty is leviable?

A.6: All goods listed in the Central Excise Tariff Act, 1985 attract Central Excise duty. It may be Nil if specified so in the above said Act or may be partially or fully exempted by any notification issued under the Central Excise Act, 1944. If any excisable goods is imported into India then also Additional

duty of Customs equivalent to Central Excise duty chargeable on similar or like goods produced or manufactured in India, shall be charged with other duties of Customs

7. Is there any exemption from payment of duty for Small Scale Industries?

A.7: A Small Scale Unit is not required to pay Central Excise Duty for the clearances upto an aggregate value of Rs. 150 lakhs in a financial year vide Notification No. 08/03- CE dated 01.03.2003 as amended, if he desires to opt for such exemption. If an SSI unit desires to avail Cenvat Credit on inputs/ Capital goods, it will have to file an option for one complete financial year to the AC/DC and thereafter duty at normal rate is required to be paid without availing the above said exemption.

8. What is the period for filing returns by the assessee?

A.8: An SSI unit is required to file returns on quarterly basis within 10 days from the date of completion of the quarter, but non-SSI units are required to file returns on monthly basis within 10 days from the date of completion of month.

9. What action department takes for non-filing of returns?

A.9: A penal action is envisaged in Rule 27 of CER' 2002 for breach of any provision of the Rules for which no penalty is specifically provided. Non filing or late filing of returns except where specific permission is granted comes under such breach. For such failures, penalty extending up to Rs.5000/- may be imposed.

10. How and when Central Excise duty is to be paid?

A.10: A unit has to pay duty on monthly basis by 5th of the succeeding month if paid through GAR-7 and by 6th if through internet banking (e-payment). However, for the month of March, the duty has to be paid by 31st March, both for SSI and Non SSI units. Further, in case of default in payment of duty, interest is leviable at the rate prescribed by Notification issued under section 11AA of CEA'1944, starting from the first day after the date on which the duty was required to be paid till the date of payment. If the default continues for a period of more than 30 days from the due date, the assessee is required to pay duty only through account current and on daily basis. No cenvat credit in such cases can be utilized for duty payment.

11. What is the facility for mitigating the cascading effect of duty?

What is CENVAT?

A.11: Subject to prescribed conditions, the assessee after receipt of the inputs or the capital goods can take credit of duty amount in the account maintained for this purpose and the same can be utilized by him for the payment of duty on the goods cleared from his factory. An SSI unit can take full credit of duty paid on capital goods in the financial year when it was received but others can take credit of only 50% of the total duty in the 1st financial year and the rest in subsequent financial year.

12. What formality of Customs is to be fulfilled at the time of export from the factory or what is the procedure for export of goods?

A.12: The assessee is required to inform to the Superintendent/Inspector in the Range Office 24 hours in advance about the proposed consignment of export. The Central Excise officer shall remain present while stuffing the goods in the container/ conveyance. After completion of the stuffing, the container/

conveyance shall be sealed with the Central Excise seal in the presence of the said officer. ARE-1, invoice etc. are also required to be signed by the said officer. Self-sealing facility is also available under which the assessee himself stuffs the container and takes clearance thereof. For more details, the nearest Central Excise Range Office may be contacted.

13. How the duty paid on goods at the time of removal can be managed if the goods are returned by the purchaser as defective?

A.13: When such goods are received back in the factory, credit of the duty paid on such goods can be taken by the assessee as per Rule 16 of CER' 02 after mentioning in its records about the reason of such return.

14. If a manufacturer has no weighing machine inside the registered premises, how can he remove the goods for weighment at an unregistered place without payment of duty?

A.14: In such cases as well as where testing etc. is also required, removal of goods without payment of duty to an unregistered place or premises can be made only after permission of the Commissioner [Rule 16C].

15. What is Assessee Code and is it different from Registration number, "ECC" code and "STC"?

A.15: They are all one and the same. The assessee code is a 15-character identification number allotted by the system to the assessee based on the PAN or temporary number (if PAN is not submitted) when the registration details are entered in the Central Server. The 15-character assessee code will be available in the registration certificate issued to the assessee by the Assistant

Commissioner/Deputy Commissioner of the Division. Assessee code is same as Registration Number, “ECC” code, and “STC”.

16. What is Location Code? How does one get it? What are Commissionerate code, Division code and Range Code?

A.16: Location Code is a six digit code, the first two of which represents the Commissionerate, the second two represents the Division of that Commissionerate and the last two digits represents the Range in the Division. It is very important to fill up the location code properly for correct accounting of the taxes paid. The location code can be obtained from the jurisdictional Range Officer or by using the facility “Know Your Location Code” provided on website <http://exciseandservicetax.nic.in>.

17. If the PAN based registration number is not available in the Banker’s database, What should be done? Who should be contacted?

A.17: The Banks are required to download the Master Directories of the Registered Assesseees from NSDL. NSDL is responsible for downloading the database from CBEC at regular intervals and making it available to banks. Presently NSDL updates their database once in 15 days. The Banks should update their directories from the NSDL site, which will solve the problem. To verify the availability of the Registration Number in CBEC database, the utility ‘Print GAR7 challan’ provided @ <http://sermon.nic.in> or <https://exciseandservicetax.nic.in/gar7.jsp> can be used. This utility serves the dual purpose of confirming the availability of the Registration details in department’s database and generation of an error-free GAR-7 challan for the taxpayer.

18. I don’t have a PAN based registration, but I want to make a payment towards my old arrears. Can I make the payment without registration?

A.18: It is necessary to get a registered code number from the Central Excise/Service Tax Department for making any payment. Jurisdictional Assistant Commissioner/Deputy Commissioner may be contacted for issue of such code number.

19. If the details shown in the electronically generated GAR-7 challan from department's website are found to be incorrect, whom should I contact to correct the data?

A.19: If any error is noticed in the electronically generated GAR-7 challan from "print GAR7 Challan" utility, the jurisdictional Divisional Office be informed for necessary rectification in the registration details in the Registration Database. Further an E-mail can be sent to ereturn@excise.nic.in or easiest-cbec@nic.in with the copy of challan as attachment.

20. I have transferred my unit from one location to another resulting in change of Commissionerate/Division/Range. But my E-Payment cyber receipt shows the name of old Commissionerate/Division/Range. What should I do?

A.20: The error might be due to non-updation of Master Directories by the concerned banks or M/s.NSDL. It should be ensured that the Division has made the necessary changes in the Registration database. The bank concerned should be informed about the transfer from one location code to another.

21. What is the difference between E-Filing, EASIEST and E-Payment?

A.21: E-Filing is the facility given by CBEC to file returns online. The user-id and password are to be obtained from the Systems Manager of the jurisdictional Commissionerate's Computer Section to avail this facility.

EASIEST (Electronic Accounting System in Excise and Service Tax) is the procedure for payment of Central Excise duties and Service Tax. In EASIEST, the taxpayer has to submit only one copy of the GAR-7 challan as against the old procedure of giving 4 copies of TR-6 challans in the bank. The counterfoil of the challan will be kept by the bank and a computerized printout of the data entered by the bank will be given to the taxpayer as a receipt / acknowledgement. The CIN (Challan Identification Number) has to be quoted in the Excise/Service Tax return in the space provided for it. CIN is the combination of:

- a.** BSR Code which is 7 digits (unique for each Bank Branch),
- b.** Date of tender/deposit which is 8 digits (DDMMYYYY) and
- c.** Challan Serial Number (5 digits) given by the Branch for each transaction.

There is no need for the taxpayer to attach a copy of the challan with the return. E-Payment is a facility extended by various banks for making Central Excise/Service Tax payments through online banking. The taxpayer need not personally go to the Bank to make the payment. The taxpayer has to get a user-id and Password from one of the banks providing the facility for making E-Payment.