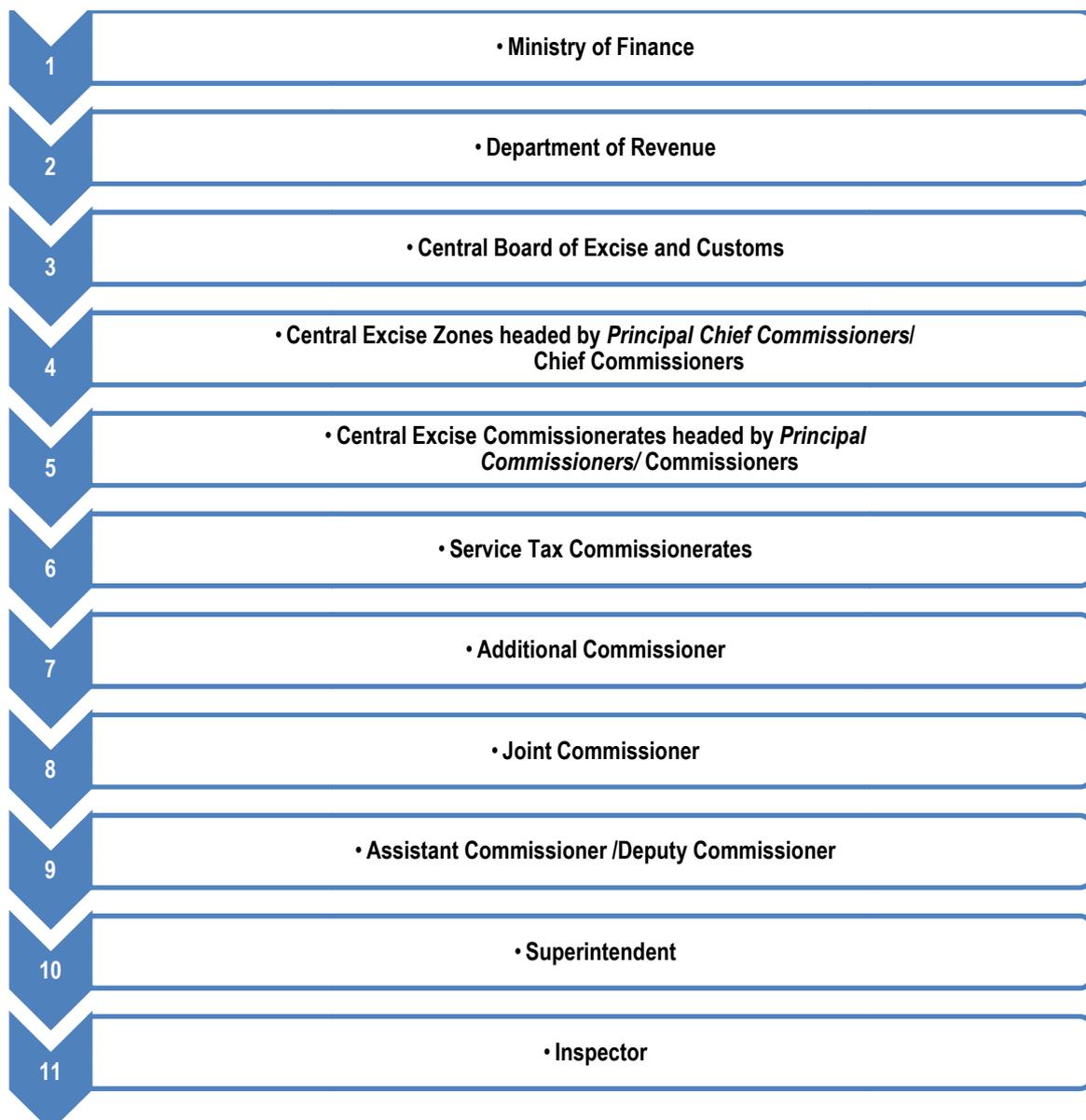


# Chapter 1 - Basic Concepts

## 1.1 Introduction

Prior to 1944 there were 16 individual Acts which levied excise duty. Each such act dealt with one or same type of commodities. All these acts were consolidated and a consolidating Act was passed in 1944 called as Central Excises and Salt Act, 1944 which came into effect from 28th Feb 1944. In 1996 the Act was renamed as Central Excise Act, 1944. The Central Excise Act, 1944 (originally Central Excises and Salt Act, 1944) and Rules framed there under came into force on 28<sup>th</sup> February, 1944.

## 1.2 Administration of Central Excise tax law



### 1.3 Body of Central excise law

Central excise law covers the following:

- Central Excise Act, 1944;
- Central Excise Rules, 2002;
- CENVAT Credit Rules, 2004;
- Central Excise (Appeal) Rules, 2001;
- Central Excise (Advance Rulings) Rules, 2002;
- Central Excise (Settlement of Cases) Rules, 2007;
- Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001;
- Central Excise valuation (Determination of price of Excisable Goods) Rules, 2000;
- Central Excise (Compounding of Offences) Rules, 2005;
- Central Excise (Determination of Retail Sale price of Excisable goods) Rules, 2008;
- Central Excise Tariff Act, 1985 CETA.

### 1.4 Important Definitions

**Adjudicating Authority:** It means any authority competent to pass any order or decision under this act, but does not include the Central Board of Excise or Customs constituted under Central Boards of Revenue Act, 1963. (Sec 2(a))

**Broker or Commission agent:** It means a person who in the ordinary course of business makes contracts for sale or purchase of excisable goods for others. (Sec 2(aaa))

**Central Excise Officer:** It means the Principal chief commissioner, Chief Commissioner, Principal commissioner, Commissioner, Joint Commissioner, Assistant Commissioner or Deputy Commissioner of Central Excise or any person (including an officer of the State Government) invested by the Central board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 with any of the powers of a Central Excise Officer under this act. (Sec 2(b))

**Curing:** It includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture. (Sec 2(c))

**Excisable goods:** It means goods specified in First Schedule and the Second Schedule to Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. (Sec 2(d))

**Explanation to Sec 2(d):** For the purpose of this clause goods includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

**Factory:** It means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process. (Sec 2(e))

**Fund:** It means the Consumer Welfare Fund established under section 12C. (Sec 2(ee))

**Manufacture:** It includes any process:

- (i) Incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the CETA, 1985 as amounting to manufacture; or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or

alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. (Sec 2(f))

**Note:** The word “**Manufacturer**” shall also be construed accordingly and shall also include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. For example: A Contractor.

**Prescribed:** It means prescribed by rules made under this act. (Sec 2(g))

**Sale and Purchase:** With their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration. (Sec 2(h))

**Wholesale dealer:** It means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale. (Sec 2(K))

## 1.5 Various duties under Central excise act, 1944

**Basic excise duty:** It is levied u/s 3(1)(a) of the Central Excise Act and is levied at the rates specified in First Schedule to CETA (Central Excise Tariff Act, 1985).

**Special excise duty:** It is levied u/s 3(1)(b) of Central Excise Act on some commodities like Pan masala, Cars etc. These items are covered in Second Schedule to CETA. However, w.e.f 01.03.2006, all goods are exempted from special excise duty.

**Additional excise duty:** It is levied as surcharge on pan masala and on certain tobacco products except biris to finance the National Rural Health Mission. It is charged at the prescribed specific rates on cigarettes and at the rate of 10% on other products.

**National Calamity Contingent Duty (NCCD):** It is imposed vide sec 136 of finance act, 2001 on pan masala, chewing tobacco and cigarettes.

**Duty on 100% EOUs & FTZ:** Generally, 100% Export Oriented Undertakings and units in Free Trade Zone export all their production. However, if they clear their final products in Domestic Tarriff Area (DTA) then excise duty has to be paid. The duty amount in this case is equal to the aggregate of customs duty that would have been payable on the like article as if it is been imported in India. Even though the rate of customs duty is considered for payment of duty, actually the duty paid by them is central excise duty. The rate of customs duty is taken only as a measure.

**Clean energy cess:** It is levied @ Rs.200 per tonne w.e.f 01.07.2010.

## 1.6 Levy of excise duty by Constitution of India

### 1) Constitution of India gives authority to levy tax

Article 246 of Constitution of India gives the respective authority to Union and State governments for levying tax. Seventh schedule to the Constitution of India contains three lists setting out matters under which the state and Union have the authority to make laws.

#### List I [Union List]

This list enumerates the matters in respect of which the parliament has an exclusive rights to make laws.

### **List II [State List]**

This list enumerates the matters in respect of which the legislature of any state has an exclusive rights to make laws.

### **List III [Concurrent List]**

This enumerates the matters in respect of which both parliament and subject to list I legislature of any state, have powers to make laws.

### **2) Excise duty is levied under Entry 84 of Union List**

Entry 84 of the union list of seventh schedule to the constitution of India empowers CG to levy excise duty on tobacco and other goods manufactured and produced in India except:

- i. Alcoholic liquors for human consumption
- ii. Opium, Indian hemp and other narcotic drugs and narcotics.

but including:

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

## **1.7 Charging section - [Sec 3(1)]**

Charging section gives out event on occurrence of which excise duty can be levied. What is event on occurrence of which excise duty can be levied is understood from this section.

### **1) Duty to be levied at rates specified in first /second schedule to CETA, 1985**

There shall be levied and collected in such manner as may be prescribed:

- a) A duty of excise on all excisable goods which are produced or manufactured in India as, and at the rates set forth in the First Schedule to Central Excise Tariff Act, 1985 (CETA, 1985);
- b) A special duty of excise on excisable goods specified in the Second Schedule to CETA, 1985 which are produced or manufactured in India as, and at the rates set forth in Second Schedule to Central Excise Tariff Act, 1985 (CETA, 1985).

### **2) Taxable event for levy of excise duty is manufacture or production**

Excise duty is levied upon manufacture or production of goods in India. Therefore the taxable event for levy of excise duty is manufacture or production of goods.

### **Note:**

1) No Excise duty shall be levied on excisable goods produced or manufactured in SEZ (Special Economic Zone).

## **1.8 Excisable goods produced or manufactured by a 100% EOU - [Proviso to Sec 3(1)]**

100% EOU are the units located in India which manufacture or produce goods with an intention to wholly export it. However, at times they may also remove goods within India. This provision specifies the treatment in case such goods are cleared within India (i.e. Domestic Tariff Area).

### **1) Duty to be equivalent to the aggregate of customs duty**

If a 100% EOU exports the excisable goods, then they are exempted from excise duty. However, if the excisable goods manufactured or produced by a 100% EOU are brought to any other place within India [i.e. Domestic Tariff Area (DTA)] then the duty in such a case shall be equal to the aggregate of customs duty that would have been payable on the like articles as if it were imported in India.

### **2) 50% of the Customs duty and 100% of Additional customs duty is exempted**

However, 100% EOU has been granted an exemption from clearances in DTA (Domestic Tariff Area) from the following:

- (a) 50% of the Basic customs duty leviable thereon;
- (b) Additional duty of customs u/s 3(5) of the Customs Tariff Act, 1975. However, exemption from additional duty is available only if the goods so removed are not exempt from payment of sales tax/VAT in India. [**Notification No. 23/2003-C.E., dated 31/3/2013**]

### **Conceptual Notes:**

1) Even though the rate of customs duty is considered for payment of duty, actually the duty paid is central excise duty. The rate of customs duty is taken only as a measure.

2) In case there are different rates for the like goods then the higher of such rate should be considered for levying the duty.

## **1.9 Geographical coverage of act and applicability of act on Government**

### **1) Act applies to whole of India including Jammu & Kashmir**

The act applies to whole of "India". India includes territorial waters of India and continental shelf and exclusive zone of India. Originally act did not apply to the state of Jammu & Kashmir but now its application is also extended to the State of Jammu & Kashmir.

### **2) Law applies to government as it applies to others**

Even if goods are produced or manufactured by Central government/State government, excise duty shall be levied.

## **1.10 Analysis of Charging section**

If the analyse the section 3(1) of the act i.e. charging section then it can be safely construed that in order to levy excise duty following four conditions must be satisfied:

- (a) There must be a '**manufacture**';
- (b) Manufacture must be in '**India**';
- (c) Manufacture must result in '**Goods**';
- (d) The resultant goods must be '**Excisable Goods**'.

## **1.11 Meaning of the term 'Goods'**

Excise duty is levied on excisable goods but before we understand the term 'Excisable goods', we must know what is 'Goods'.

### **1) To be called 'Goods' article must be capable of coming to market to be bought and sold**

Central excise act has not defined the term 'Goods'. However, in the landmark judgment of **UOI v/s Delhi Cloth and General Mills (1977)**, The apex court held that in order to be called '**Goods**' the article must be **capable of coming to the market to be bought and sold**. Therefore from the above decision two fundamental concepts i.e. to be called Excisable goods they must be:

- **Moveable**; and
- **Marketable**.

The term moveable and marketable both are not defined in Central excise act, 1944, Therefore the same has to be understood and interpreted based on various court judgments.

## **1.12 When can goods be called 'Moveable'**

In order to levy excise duty, goods need to be moveable and marketable but when can goods be called moveable is not defined anywhere in this act. Therefore, term has got its meaning from various landmark judgments as provided below:

<b>Article must be capable of coming to market to be bought and sold</b>	Based on these two landmark judgments the following principal are drawn: To be called ' <b>Goods</b> ' the article must be such that it is capable of being bought and sold in the market, they must be such that they can ordinarily come or can be brought to the market to be bought and sold. <b>[UOI v/s Delhi Cloth Mills (DCM) (1977)]</b> <b>[South Bihar Sugar Mills v/s UOI (1978)]</b>
What about Immovable goods?	No Excise duty can be levied on Immovable property.

### 1.13 When can goods be called 'Marketable'

In order to levy excise duty, goods need to be moveable and marketable but when can goods be called marketable is not defined anywhere in this act. Therefore, term has got its meaning from various landmark judgments as provided below:

	Article must be something which can ordinarily come to market to be bought or sold.
<b>Actual sale is not necessary; Even transient items can be goods;</b>	(a) To be marketable actual sale of goods is not necessary. (b) Usage in captive consumption is not determinative of whether the article is not capable of being sold in the market. (c) Even transient items can be goods provided they are capable of being marketed during the said short period of their life. <b>[Union Carbide India Ltd (1986) v/s UOI]</b> <b>[C.C.EX v/s Ambalal Sarabhai Enterprises (1989)]</b>
<b>Mere mention in tariff is not enough</b>	If goods are mentioned in tariff it means they are excisable goods but mere mention in tariff does not mean that they are also marketable. Marketability is an important condition for dutiability and the same has to be proved in each case based on the facts and circumstances. <b>[Bhor Industries v/s C.C.EX (1989)]</b>
<b>Onus is on department</b>	Onus is on the department to produce the evidence of marketability. <b>[Cipla Ltd v/s UOI (1990)]</b>
<b>Number of purchasers is not the criteria</b>	Marketability does not depend upon the number of purchasers; even one purchaser is sufficient to be called marketable nor is that the market must be confined to only territorial limits of India. <b>[A.P. State Electricity Board v/s CCE (1994)]</b>
<b>Capable to be bought and sold for a consideration</b>	Explanation to section 2(d) introduces the concept of deemed marketability by providing that "Goods includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable." <b>[Deemed Marketability – Explanation to Sec 2(d)]</b>

### 1.14 Certain important concepts

We will now understand the meaning of the certain important terms and understand how they are different from each other in terms of chargeability and treatment. Terms such as Excisable goods, Non-excisable goods, Exempted goods, 'Nil' rated goods, Non-dutiable goods.

#### 1) 'Excisable Goods' - Goods that are specified in First & Second schedule to CETA, 1985 and includes salt

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

**2) 'Non Excisable Goods' - Goods that are not listed in schedules to CETA or listed in schedules but with no rate of duty mentioned against them (not even 'Nil' rate)**

Goods are considered to be 'Non-excisable goods' if:

- (a) The goods in question are not listed in the Schedules to CETA; or
- (b) The goods are listed in Schedules to CETA but no rate of duty is being mentioned against them i.e. not even 'Nil' rate is mentioned i.e. the rate column is 'BLANK'.

**3) 'Nil Rated Goods' - They are also excisable goods**

It was held by the apex court that 'Nil' rate of duty is also a rate of duty and goods with nil rate of duty cannot be treated as non-excisable goods. To be non-excisable the rate column in the tariff must be BLANK. **[C.C.EX v/s Vazir Sultan Tobacco Co. Ltd (1996)]**

**4) 'Non-dutiable Goods' - They are also excisable goods but are not liable to duty**

'Non-dutiable goods' are though excisable goods but are not liable to duty on any of the following account:

- (a) That the rate of duty is 'Nil' in the tariff schedule; or
- (b) That exemption is granted by a notification on such goods; or
- (c) On account of any other reason i.e. not manufactured, not moveable, not marketable etc.

**5) 'Exempted Goods' - Goods that are excisable but not liable to duty due to exemption given**

'Exempted goods' are the goods which are not liable to duty of excise as they are exempted through a general or specific notification issued in this regard.

**6) 'Exempted goods' to be chargeable to duty, if excisable**

It was held by the apex court that, Goods exempted at the time manufacture shall still be chargeable to duty if the following conditions satisfy:

1. Goods were excisable at the time of manufacture; and
2. Exemption was withdrawn prior to the date of removal. **[Wallace Flour Mills Co. Ltd]**

**Conceptual Notes:**

From the above it can be understood that mere exemption granted by a notification does not mean that the goods become non-excisable because exciseability depends on listing of goods in schedules to CETA and exemption depends on the notifications issued by the department. It is important to note that the excise law have different treatment for non-excisable goods and exempted goods and both cannot be read and understood in the same context as the treatment for non-excisable goods and exempted goods differ as illustrated in the table below:

<b>At the time of manufacture, goods were</b>	<b>At the time of removal</b>	<b>Treatment</b>
Excisable but Exempted by notification	Exemption was withdrawn	Chargeable to duty as they were excisable at the time of manufacture.
Excisable and not Exempted by notification	Goods were exempted by notification	Not chargeable to duty as they were exempted at the time of removal.
Excisable	Goods were not Excisable	Chargeable to duty as they were excisable at the time of manufacture.
Not Excisable	Goods were excisable	Not chargeable to duty as they were not excisable at the time of manufacture.
'Nil' rate of duty	Goods liable @ 10% rate of duty	They are listed with 'Nil' rate in CETA and are considered as excisable goods. It should be charged @ 10% as rate prevalent at the time of removal of goods

		must be taken into consideration.
Goods were not liable to 'special levy'	Goods were made liable to 'special levy' by way of finance act.	Special levy shall not be charged as it was not applicable at the time of manufacture.

**Three Fundamental Principles arise as follows:****Taxability of Goods** – At the time of manufacture/production of goods;**Collectability of Duty** – At the time of removal of goods;**Rate of Duty** – Rate prevalent at the time of removal of goods must be taken.**1.15 Concept of 'Manufacture'**

As per charging section, Excise duty shall be levied when the goods are manufactured or produced. Therefore, it becomes important to understand when manufacture is said to have taken place. If there is no manufacture there cannot be a levy of excise duty. Although the term 'manufacture' is defined in the act, still a reference to court judgments is required in order to understand and interpret the same more clearly. 'Manufacture' is defined u/s Sec 2(f) of the act as follows:

**'Manufacture'** includes any process:

- i. Incidental or ancillary to the completion of a manufactured product; or
- ii. which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the CETA, 1985 as amounting to manufacture; or (**Deemed manufacture**)
- iii. which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer. (**Deemed manufacture**)

**Note:** Point (ii) & (iii) in the aforesaid definition means "**Deemed manufacture**".**Relevant judgments:**

<b>A new and different article must emerge having a distinctive name and character or use</b>	In a landmark judgment issued by apex court manufacture has been described as follows: <i>"Manufacture implies a change, but every change is not manufacture and yet change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name and character or use."</i> [UOI v/s Delhi Cloth Mills Co. Ltd. (1977)]
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**1.16 Concept of 'Manufacturer'**

The term "Manufacturer" shall be construed accordingly and shall also include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. For example: a Contractor, a job worker can also be termed as manufacturer.

**1.17 Special cases**

As the term 'Manufacture' has got its true meaning from various court judgments. It has always been a matter of dispute as to certain activities whether they can be termed manufacture or not. Provided below are certain special cases in this regard.

**1.17.1 Distinction between 'Manufacturing' & 'Processing'**

If the duty is to be levied on manufacture, then whether processing can also be termed as manufacture. We shall now understand what makes processing different from manufacture.

**1) Manufacture involves 'many' processes, manufacture brings into existence a new and distinct commodity; Process may not bring into existence a new and distinct commodity**

Manufacture involves series of processes but Process may not amount to manufacture i.e. if the identity of the commodity remains the same then it is termed as processed and not as manufactured. It is only when a process or series of processes has taken the input material into a new and distinct article commercially, than the manufacture of goods is said to have taken place.

At some point manufacturing and processing shall merge and that is called as the process which is incidental or ancillary to the completion of the manufactured product.

### **1.17.2 Whether 'Assembly' amounts to manufacture**

**1) 'Assembly' amounts to manufacture if commercially new commodity with different name and character or use emerges**

Assembly is a process of putting together a number of items or parts of an item to make a product or item. Not all cases of assembly amounts to manufacture. After assembling of various parts if a new commercial commodity with different name, character and use emerges then the same amounts to manufacture.

### **1.17.3 Whether 'Packing' amounts to manufacture**

**1) 'Packing' amounts to manufacture as it is an activity incidental or ancillary to manufacture**

As per sec 2(f)(i) "Manufacture includes activities incidental or ancillary to the completion of the manufactured product." Therefore, packing comes under this ambit of the said definition and is considered as an activity incidental to the completion of the manufactured product. Normally, the fully manufactured goods cannot be sold without being packed hence the activity of packing amounts to manufacture.

**2) 'Repacking' does not amounts to manufacture**

Repacking of already packed goods does not amount to manufacture.

**3) 'Packing' or 'repacking' amounts to deemed manufacture in certain cases**

As per sec 2(f)(ii) & 2(f)(iii) packing or repacking amounts to deemed manufacture in following cases:

- a) In relation to certain products as specified in the Section or Chapter Notes of the First Schedule to CETA, 1985; or
- b) Packing or repacking in a unit container, in relation to the goods specified in the Third Schedule.

### **1.17.4 Whether 'Labeling' and 'Branding' amounts to manufacture**

**1) 'Labeling' and 'branding' does not amount to manufacture as a new and distinct product does not emerge**

'Labeling' and 'branding' of the products does not amount to manufacture as a new and distinct product does not emerge merely by labeling or branding and a fully manufactured product exists even before labeling and branding.

**2) 'labeling' and 'branding' in relation to goods specified in third schedule to CETA amounts to Deemed manufacture**

However as per section 2(f)(iii), where the process of labeling or re-labeling of containers is in relation to goods specified in Third Schedule to CETA then such process of labeling or re-labeling shall amount to deemed manufacture.

### **1.17.5 Relevance of change in tariff heading/sub-heading**

The question here is that can a change in tariff heading itself be a parameter to determine whether a product is manufactured or not.

#### **1) Change in tariff heading does not determine manufacturability**

Merely because the output product and input product falls under the different tariff heading/sub-heading under the CETA, 1985 it cannot be assumed that the manufacture of the product has taken place. In other words, merely because the output product and input product falls under the same tariff heading/sub-heading under the CETA, 1985 it cannot be assumed that the manufacture of the product has not taken place.

### **1.17.6 Dutiability of intermediate products and captive consumption**

#### **1) Captive consumption means utilization of goods for further processing or self consumption**

Captive consumption means utilization of intermediate goods produced or manufactured in the same factory for further processing. Generally, in large factories with several departments this is quite common that the output of one department becomes an input of another department to be self consumed in making of a final product.

#### **2) Intermediate goods liable to duty, at each intermediate stage if qualify to be goods**

Intermediate product for self consumption shall be liable to excise duty at each stage if they qualify to be 'Goods' (i.e. moveable & marketable) at each such intermediate stage and therefore at every stage of manufacture excise duty is leviable. However, CENVAT credit can be claimed

#### **3) Intermediate product is exempted, if final product is dutiable**

Currently, several exemption notifications are issued by the department whereby levy of duty at the intermediate stage is exempted provided the final product is chargeable to duty. However, if the final product is exempted or chargeable to 'Nil' rate of duty then intermediate product shall not be exempted and duty shall be levied at each intermediate stage.

### **1.17.7 Dutiability of Site related activities and immovable property**

As it is learnt that excise duty cannot be levied on immovable property, therefore it is of paramount importance to understand when an immovable property is said to have arise.

#### **1) No levy of duty if output is an immovable property**

Generally, various parts, components are removed from the factory and are fabricated, erected etc at the project site. Therefore, if an immovable property comes into existence after such construction, erection, fabrication etc. then duty shall not be levied on such immovable structure. However, if the final product at the project site is an movable property then duty shall be chargeable.

#### **2) How to identify that the goods are Immoveable property**

Based on various courts judgments and departmental clarifications issued in this regard following broad principles can help in understanding and ascertain whether the property can be considered as immovable property:

##### **a) Attached by foundation to earth and cannot be easily dismantled without substantial damage**

Where various items that are assembled or erected at site are attached by foundation to earth in such a manner that the same cannot be again easily dismantled without substantial damage to its components and cannot be again reassembled then that item would be considered as Immoveable and will therefore not be excisable. The intention of the party is also a factor that must be taken into consideration to ascertain whether the embedment of machinery in the earth was to be temporary or permanent or was it done only with an intention to avoid duty.

**b) Compulsorily dismantling is required to transfer and not just for convenience of transport**

If any goods installed at the site is capable of being sold or shifted to other location in its as is condition and without dismantling the same then it cannot be termed as Immoveable property. In other words, if the goods installed at the site has to be dismantled in order to sell it or to transfer it to other location then it qualifies to be an immovable goods. However, If goods could be sold or shifted to other location in its as is condition without dismantling but the same is dismantled only for the transport convenience or ease of shifting then it cannot be argued that the goods are Immoveable property.

**Note:** Excise duty shall however be levied on all the individual components, parts, items that were removed from the factory and taken to site for manufacturing of an immovable property at the site.

**Examples:**

- a) **Turnkey projects** like steel plants, cement plants, power plants etc. involving supply of large number of components, machinery, equipments, pipes and tubes etc. for their assembly/installation/erection/etc at site will not be considered as excisable goods for imposition of central excise duty.
- b) **Huge tanks made of metal for storage of petroleum products in oil refineries or installations** though not embedded in earth but are erected at site, stage by stage, and after completion they cannot be physically moved. On sale/disposal they have necessarily to be dismantled and sold as metal sheets/scrap. It is not possible to assemble the tank all over again. Such tanks are, therefore, not moveable and cannot be considered as excisable goods.
- c) **Refrigeration/Air conditioning plants** are basically systems comprising compressors, ducting, pipings, insulators, and sometimes cooling towers etc. They are in the nature of systems and not machines as the whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods.
- d) **Lifts & escalators** which are installed in buildings and permanently fitted into a civil structure cannot be considered to be excisable goods.

**1.17.8 Dutiability of Waste & Scrap****1) Waste & Scrap are chargeable to duty if arising out of a manufacturing process and if they are moveable, marketable and excisable**

Waste & Scrap are the byproducts or intermediate products that arose out of the final products in the manufacturing process. It shall be chargeable to duty if they are moveable, marketable and listed in tariff. Further as, excise duty is leviable on **manufacture** and therefore waste & scrap is chargeable to duty only if they arise out of the **manufacturing process**, In other words if waste & scrap is generated not due to manufacturing process then they shall not be chargeable to duty.