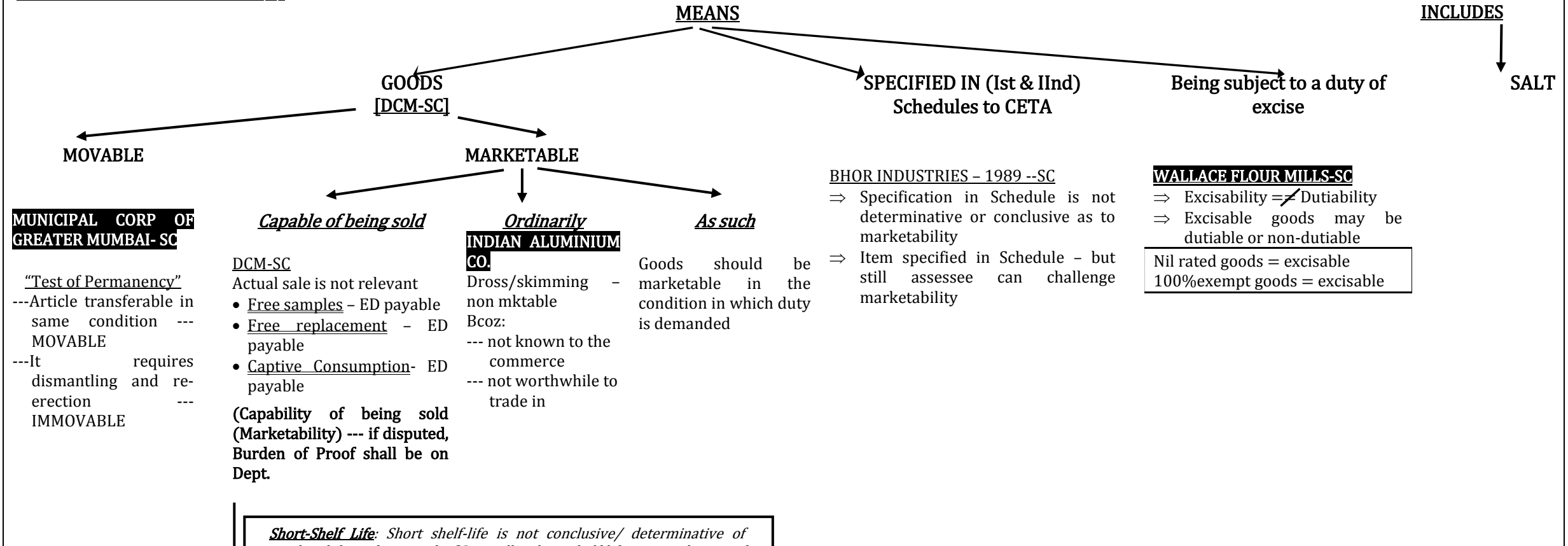


SEC 2: BASIC CONCEPTS & DEFINITIONS

EXCISABLE GOODS --- Sec 2(d)



Short-Shelf Life: Short shelf-life is not conclusive/ determinative of marketability of an article. [Generally, short shelf-life is an indicator of non-marketability. However, facts of each case shall be considered independently]

MOTI LAMINATES LTD.
Short shelf life - **no evidence of mktability by Dept** - ED not payable

T.N. STATE TRANSPORT CORP LTD. - 2004 Short shelf life - **evidence of mktability by Dept** - ED payable

MANUFACTURE --- Sec 2(f)

(natural meaning / Manufacture on first principle --- judicial Precedents)

DCM -1977 - SC "Bringing into existence A NEW SUBSTANCE"

EMPIRE INDUSTRIES LTD. - SC "A NEW SUBSTANCE = commercially known differently"
 (Grey Fabric -----Bleached Fabric)

DELHI CLOTH & GENERAL MILLS CO. LTD.- SC [commercially known differently = Name Test + Use Test]
 Raw Oil (Odour+Impurities)-----Raw Oil (Odour)]

- Every process can't be equated with manufacture.
- Manufacture implies a change, but every change is not manufacture.

BRAKES INDIA LTD.- SC [Base Test (Dominant Test) = Use Test]

SOME PROPOSITIONS

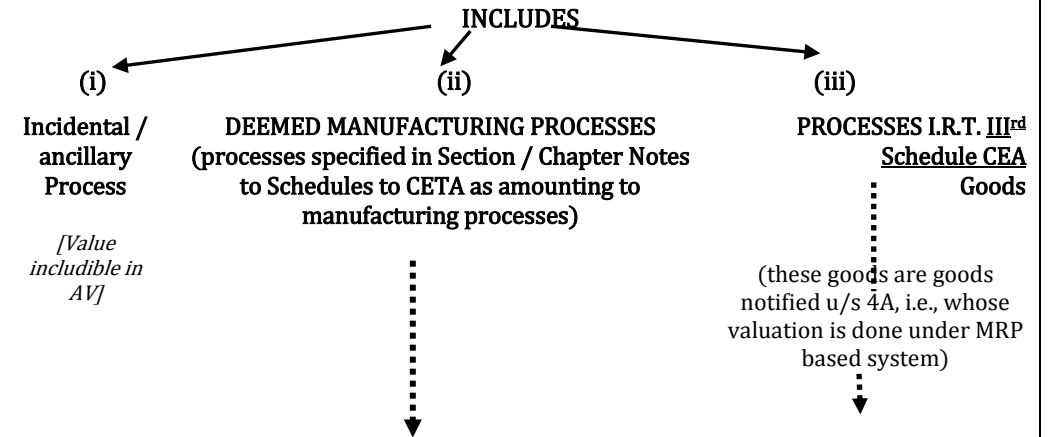
Fabric---Readymade Garments → [Usage of labour --- Not relevant] & [Usage of Machinery --- Not relevant] & [Scale of operation --- Not relevant]

CBEC Circular (Up-gradation of computer) → Magnitude of Value Addition --- Not relevant

KHANDELWAL METAL & ENGG WORKS - SC → Intention to produce --- Not relevant
 (waste/scrap) (But it must result from manufacturing activity - West Coast Industrial Cases Ltd. - 2003- SC)

LAMINATED PACKAGES PVT. LTD. - SC → Change in Tariff Heading - Not relevant
 Input & FP falling in Same Tariff Headings --- Still Manufacture
 (Input= Kraft-paper & FP = Laminated Kraft-paper)

S. R. TISSUE -2005 -SC → Input & FP falling in Different Tariff Headings --- still Not Manufacture
 (Input= Jumbo Roll of Tissue Paper & FP = Tissue paper of small size)



S.D. FINE CHEMICALS LTD.-SC

Constitutionally valid - deeming concept is not a new concept

Purpose - raising additional revenue by taxing activities which lead to substantial value addition

Examples:

1. Repacking from bulk to small packs (Pan masala)
2. Branding and labeling (Apparels & Clothing Accessories)
3. Bleaching, mercerizing etc. (Fabrics)
4. Recording of sounds (on blank cassettes)
5. Drawing of Wires from Wire Rods (**FA, 2004**)

- i) Packing or re-packing of goods into unit container;
- ii) Labeling or Re-labelling of containers (including Declaration / Alteration of RSP);
- iii) Adoption of other treatment to render the goods marketable;

MANUFACTURER --- Sec 2(f)

INCLUDES

..... and the term manufacturer shall be construed accordingly

A person who employs hired labour in production of excisable goods ;

A person who engages in production or manufacture on his own account

[Manufacturing Facility + labour/skill + Control//Supervision]
of same person

Hired Labour: He is a person who has no role to play except to receive wages, whose services can be terminated or re-instated at any point of time [M.M.KHAMBATWALA-SC]

Engage on his own account: A person who gets the goods manufactured from others under his direction, control, supervision, though not owing a factory nor himself doing the manufacturing process [ALLAHBAD HC]

Comment:

1. [Manufacturing Facility + labour/skill + Control//Supervision] of 'Ujjagar Print' --- but raw-material supplied by 'X' ----- Who is manufacturer - 'X' or "Ujjagar Print (the job-worker)?"

UJJAGAR PRINTS - SC

Excisability is on production or manufacture and production of goods is not dependent upon whether the manufacture is owner or not. Ujjagar print is the real manufacturer.

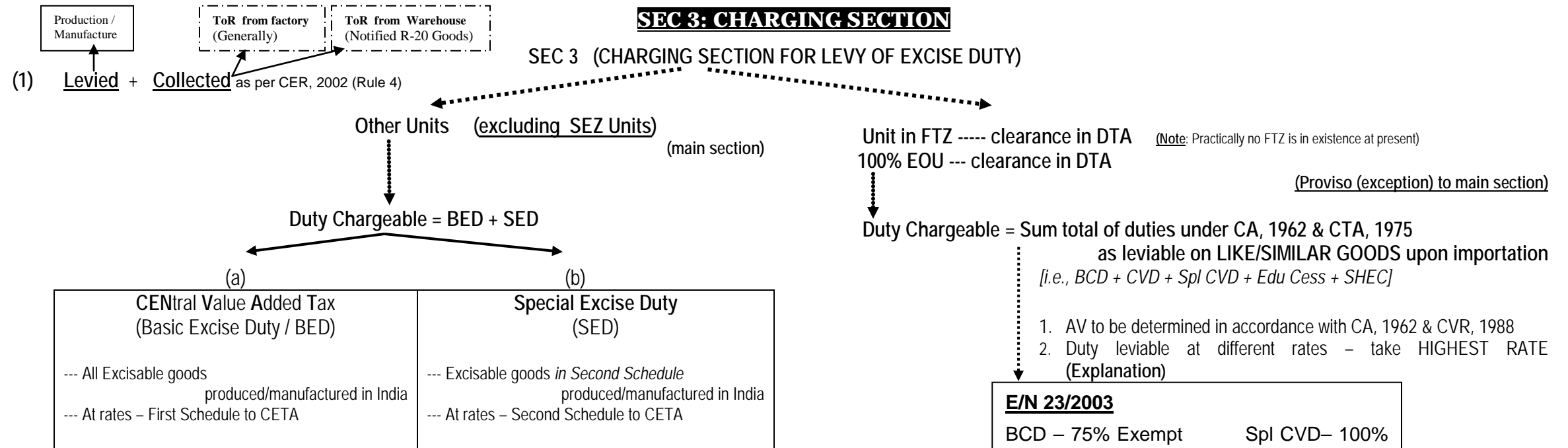
Mere supplying of raw material to job-workers and getting finished goods from them doesn't amount to supplier becoming the real manufacturer. [Ownership is not deciding factor]

FACTORY --- Sec 2(e)

Factory means any premises, including the precincts thereof:

--- wherein or in any part of which excisable goods are manufactured;

--- wherein or in any part of which any manufacturing process connected with the production of these goods is ordinarily carried on.



CASE LAWS:

1. BOMBAY TYRE INTERNATIONAL-SC

⇒ Excise duty is on production/manufacture (& not on their removal)

⇒ Collection is a matter of administrative convenience only Under excise, collection has been deferred till removal of goods from factory or warehouse.

2. WALLACE FLOUR MILLS-SC (on CENVAT , i.e.. BED only)

⇒ Goods excisable on date of production ---- whatever duty rate at time of removal shall be paid [Rule 5 of CER, 2002]

⇒ Goods not excisable on date of production --- no duty liability arise

3. VAZIR SULTAN TOBACCO (VST) -SC (on duty other than CENVAT)

⇒ A completely new levy – not applicable to stock of goods manufactured prior to the date of such levy

[The test pf taxable event shall be applied separately in respect of each & every duty.]

(1A) Excise duty – also payable by Govt Undertaking manufacturing excisable goods
(**Implication:** These also require registration under Excise --- May, 2003)

Some other special provisions of 100% EoU:

Rule 17 of CER, 2002

- ✓ Rule-8 “monthly payment facility is not available for 100% EoU. It is required to pay duty on Transaction basis (i.e., at the time of removal of goods itself)
- ✓ **Accounts Maintenance Form “AC-1”**
- ✓ **Excise Return: Form “E.R.-2”** [Monthly Basis (within 10 days)]

Rule 9 of CER, 2002 (Registration)

- ✓ 100% EoU – if has no inter-linkage with DTA – then, no separate excise registration is required.
- ✓ 100% EoU – if has inter-linkage with DTA (it sells into DTA // it purchases from DTA)– then, separate excise registration is required)

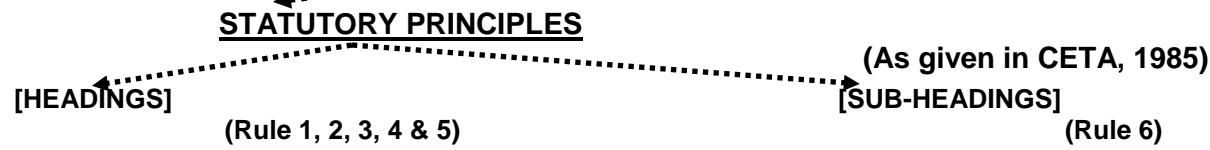
BASIC CONCEPTS & DEFINITIONS**Sec 2: Definitions**

- **INDIA – 2(27)** includes the territorial waters of India
- **INDIAN CUSTOMS WATER – 2(28)** means the waters extending into the sea up to the limit of Contiguous Zone Of India **(i.e., Upto 24 NM)**
- **IMPORT – 2(23)** means bringing into India from a place outside India.
(with its grammatical variations and cognate expressions.)
- KIRAN SPINNING MILLS -1999 - SC**
Taxable Event – When the goods reach the CUSTOMS BARRIER and the bill of entry for home consumption is filed.
[Warehoused Goods = When B/E for H/C is filed]
- **IMPORTED GOODS – 2(25)** Means → any goods brought into India from a place outside India
But doesn't include → goods which have been cleared for home consumption.
- **IMPORTER – 2(26)** Includes any owner **or** any person holding himself out to be the importer.
- **EXPORT – 2(18)** means Taking out of India to a place outside India.
(with its grammatical variations and cognate expressions.)
- SUN INDUSTRIES – 1988 - SC**
*For holding out completion of export, delivery at ultimate destination is not essential
[Goods once crossed TWI --- export shall be held to be complete --- DBK shall be admissible to the assessee]*
- RAJENDRRA DYEING & PRINTING MILLS LTD.- 2005 -SC**
[Goods loaded onto the ship --- goods destroyed – ship hadn't even crossed TWI - --Export can't be said to be complete --- DBK shalln't be admissible to the assessee]
- **EXPORT GOODS – 2(19)** Means → any goods which are to be taken out of India to a place outside India
- **EXPORTER – 2(20)** Includes any owner or any person holding himself out to be the exporter.
- **CONVEYANCE – 2(9)** means ---- A **Vessel**,
---- An **Aircraft** and
---- A **Vehicle**
- **PERSON IN CHARGE – 2(31)** means
- (a) *In relation to a vessel* ----- the master of the vessel;
(b) *In relation to an aircraft* ----- the commander or pilot-in-charge of the aircraft;
(c) *In relation to a railway train* -- the conductor, guard or other person having the chief direction of the train;
(d) *In relation to any other conveyance* -- the driver or other person-in-charge of the conveyance.
- **GOODS – 2(22)** includes –
- (a) Vessels, aircrafts and vehicles;
(b) Stores;
(c) Baggage;
(d) Currency and negotiable instruments; and
(e) Any other kind of movable property.
- **COASTAL GOODS – 2(7)** means goods, *other than imported goods*, transported in a vessel **from** one port in India **to** another.
- **PROHIBITED GOODS – 2(33)** Means any goods the **import or export** of which is subject to any prohibition ---- under this Act or ---- any other law for the time being in force
but does not include → any such goods in respect of which the **conditions** subject to which the goods are permitted to be imported or exported **have been complied with.**

-
- ❑ **CUSTOMS AREA – 2(11)** Means → *the area of **A Customs Station** [Customs Port (including ICD/CFS) / Airport / land Customs Station]*
& includes → *any area in which imported goods or export goods are **ordinarily kept before clearance by Customs Authorities** (e.g., Customs Warehouse)*
 - ❑ **RULES – 2(36)** Means → *the rules made **by the Central Government** under Customs Act.*
 - ❑ **REGULATIONS – 2(35)** means → *the regulations made **by the Board [CBEC]** Customs Act.*

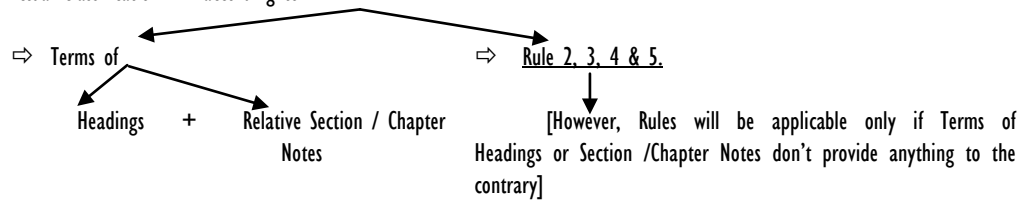
CLASSIFICATION OF GOODS

8-Digit Coding System (Based upon international Harmonized System of Nomenclature (HSN))



RULE 1:

- ▲ Titles of Sections & Chapters --- for ease of reference only
- ▲ Actual Classification ---- according to



RULE 2:

(a) **Incomplete / unfinished goods having essential characteristics of complete/finished goods**---- classifiable under same heading under which complete or finished goods fall

Goods presented in unassembled / disassembled form --- classifiable under same heading under goods in assembled form falls

	Heading No. XX.XX
[Complete + Assembled] Goods	Rule 1
[Incomplete/Unfinished + Assembled] goods	Rule 2(a)
[Complete + Unassembled/Disassembled] goods	Rule 2(a)
[Incomplete/Unfinished +Unassembled/Disassembled] goods	Rule 2(a) (applied twice)

(b) **Mixtures or combinations of a material/substance with other material/substance** -- classifiable under same heading under which that material/substance is classifiable.

RULE 3:

Goods prima facie classifiable under two or more headings (due to Rule 2(b) or other reason), do following consecutively:

- Prefer heading providing specific description** over heading giving general description;
- Mixtures // composite goods consisting of different materials or made up of different components // Goods Put up in set --- **classifiable as that material part which is provides essential character**
- Goods can't be classified as per (a) & (b) above -- prefer heading occurring last in the numerical order.

RULE 6

Goods under sub-headings -- classifiable according to
 ⇒ terms of those sub-headings and any related sub-headings notes,
 ⇒ Rules 1 to 5 (subject to necessary changes)

Condition: Only sub-headings of same headings shall be comparable.

NON-STATUTORY PRINCIPLES

'COMMON MAN' THEORY
 ['TRADE PARLANCE' /
 'TRADES MAN THEORY']

Words used in CETA but not defined separately ---- to be understood according to the **common commercial understanding** (i.e., as these are understood in the trade, by the dealer and the consumer --- basically, the persons who are dealing or using those goods)

- ⇒ **Shree Baidyanath Ayurved Bhawan—SC** [Dabur Lal Dant Manjan is only toilet preparation]
- ⇒ **Muller & Phipps Ltd – 2004-SC** [Prickly Heat Powder is a medicament (not a toilet preparation)]
- ⇒ **Sujanil Chemco Industries – 2005- SC** [Licel used for killing lice is medicament (& not insecticide)]

OTHER PRINCIPLES

- **DICTIONARY MEANINGS**
 + ve : Helpful
 - ve : Different meanings in different context
- **EXPERT OPINIONS & EVIDENCES**
 + ve : Helpful in Scientific & Technical matters
 -ve : Not reliable (as possibility of influence from assessee's side)
- **ISI SPECIFICATIONS**
 + ve : Helpful
 -ve : Consider only quality aspect
- **TRADE NOTICES & TARIFF ADVISES**
 + ve : Sec 37B empowers CBEC to issue Orders / Instructions / Directions for enduring uniformity on classification.
 -ve : Not binding on Assessee / CCE(A)
- **HSN Explanatory Notes**
 + ve : CETA modeled along lines of HSN and therefore, these are also useful.
 -ve : these can not override Chapter / Section Notes

Classification of Multi-Utility Machine
 Apply Rule 3(b)
 If essential function is not determinable, apply Rule 3(c).
 e.g.,
 [Printer + Fax + Scanner + Photostat] for Rs 15,999 == Printer
 [Keyboard + Telephone] for use in call centre == Keyboard
 [Mobile Telephone + Camera + MP-3 Player] for Rs 8,000/- == Telephone

RULE 4 :

Goods not classifiable as per above Rules --- classifiable under heading appropriate to the goods to which they are most akin / similar.

RULE 5 : [Classification of Packing Material & Container)

Type of Packing Material	Classification thereof
<p>a) Container /Packing Cases specifying the following conditions: →</p> <ul style="list-style-type: none">i) Specifically Shaped/Designed to contain an article or a set of articles;ii) Suitable for long-term use;iii) Presented alongwith the article for which they are intended;iv) Of a kind normally sold with the article for which they are intended (i.e., as a normal prevalent trade practice)	Classify such container under the same heading under which the itme cleared is classifiable
However, containers which as such give the whole of its essential characteristics (i.e., container as such is not mere secondary as compared to the article contained in the container) shall be classifiable independently.	
<p>b) Container /Packing Cases specifying the following conditions: →</p> <ul style="list-style-type: none">i) Not Specifically Shaped/Designed to contain an article or a set of articles;ii) Presented alongwith the article for which they are intended;	Classify such container under the same heading under which the itme cleared is classifiable

CHANGES IN RATES OF DUTIES (otherwise than by way of budget)

EXEMPTION FROM DUTY

(Sec 5A of CEA, 1944)

EMERGENCY INCREASE IN RATES OF DUTIES

(Sec 3 of CETA, 1985)

- (1) CG --- in public interest --- may 100% or partially exempt goods (any type)
 & (2) [exemption may be subject to some conditions]
- (1) CG --- in public interest --- may 100% exempt goods (any type)
 (2) [exemption shall be under circumstances of Exceptional Nature]
- Not. in OZ shall be issued Special Order shall be issued
- (2A) Any clarification as to SCOPE or APPLICABILITY --- needed in 5A(1) Notification or 5A(2) Special Order
 CG may insert an Explanation (by Not. In OZ) ---- within 1 year from Date of issuance of 5A(1) Notification or 5A(2) Special Order
 [Such explanation shall have retrospective effect (as it shall be deemed to be a part of the original notification/order from the very beginning)]

- (1) CG satisfied --- Duty shall be ^(increased) + Immediate action necessary
 It may amend Schedule Rates --- by Notification in OZ
- If Schedule Rate = Nil** ::: New Specified Rate may be upto 50% (maximum)
[However, the new rate may be expressed in any form /method]
- If Schedule Rate = Other than Nil** ::: New Specified Rate may be **upto twice of existing rate**
- (2) Such Notification --- to be placed before Parliament for approval
 If Parliament makes any modification ---- it shall have effect in modified form
 If Parliament directs cessation of its effect ---- it shall cease to be valid
 But previous action taken will remain valid (i.e., collection made at increased Rate before Parliament action can be retained and needn't be refunded)

*If once duty has been increased u/s 3 of CTA by issuing notification in OZ, then **another notification increasing the duty for the second time can be issued** only when the earlier notification has been placed before the Parliament and has been approved by the Parliament.*

Other Points"

1. Date of effectiveness of E/N: -- Date of its issuance
[But if provided otherwise in Not. Itself --- then that date shall be treated as date of effectiveness]
2. E/N are publicized by DPPR, CBEC. It shall be made available for sale to the public by DPPR.
3. E/N or Order --- to be Placed before Parliament for approval. [However, if Parliament disapproves or modifies then it will have prospective effect. [Sec 38]

Amendment by FA, 2005

Sec 5-A (1A):: Exemption Notification which is **[Unconditional + Full (100%)] --- Mandatory for the assessee
*The benefit of such exemption can't be ignored by the assessee --- He shall avail that benefit***

COMPUTATION OF EXCISE DUTY

SPECIFIC DUTY

Duty linked to the unit of measurement of goods

E.G.:

- i) Tea : Rs 1 per Kg.
- ii) Sugar (other than Khandsari Sugar) : Rs 34 per quintal
- iii) Cigarettes :
 - Filtered:
 - Upto 70 mm: 580/thousand
 - [70, 75 mm] : 945/thousand
 - [75, 80mm] : 1260/thousand
 - Others:
 - Upto 60 mm: 115/thousand
 - [60, 70 mm] : 390/thousand

+ve : No need of determination of Assessable Value (& hence, no Valuation Disputes)

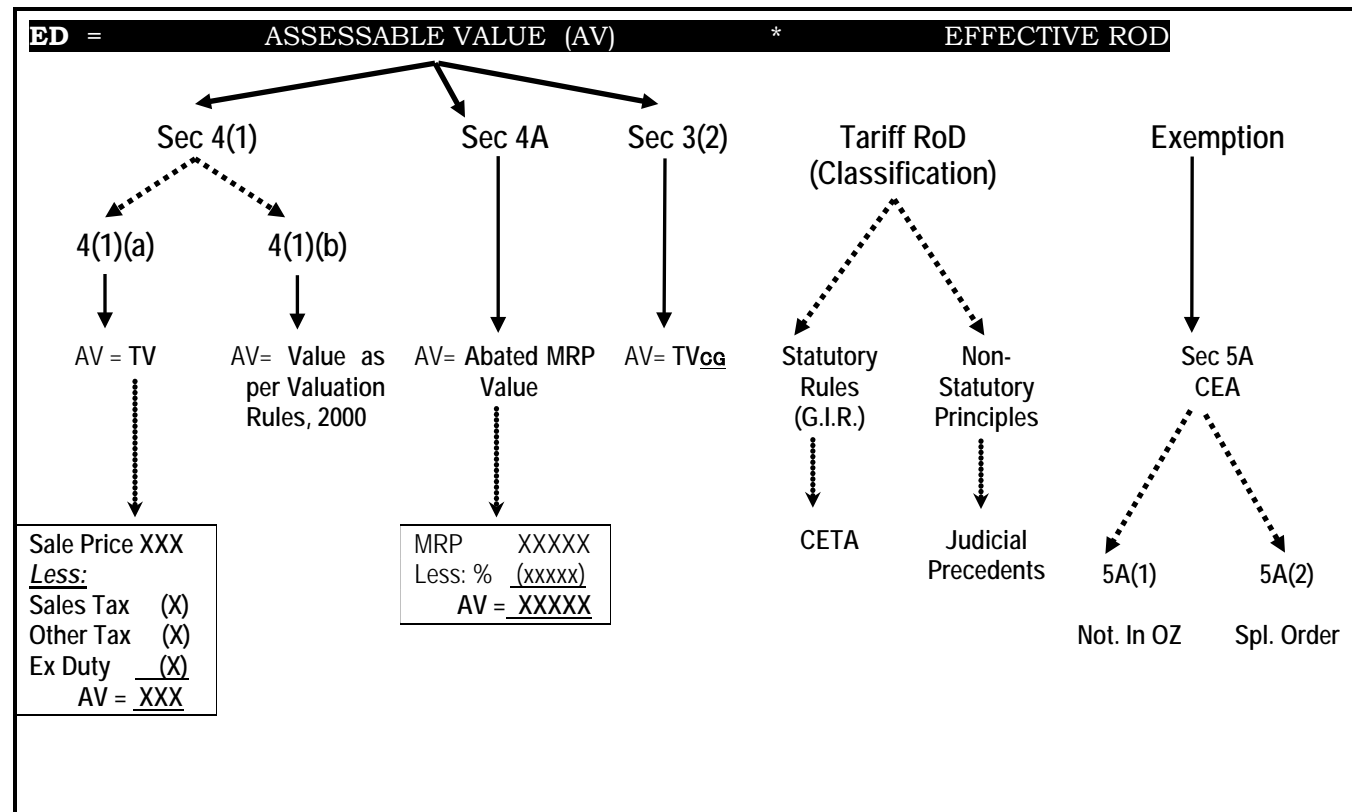
-ve : Static (& hence, demands continuous monitoring)

AD-VALOREM DUTY

Duty linked to some Value

+ve : Not Static (& hence, no need of continuous monitoring) -ve : Necessitates determination of Assessable Value (& hence, leads to Valuation Disputes)

COMPUTATION FORMULAE



Notes:

1. AV shall remain same for BED (First Sch Duty) & SED (Second Sch Duty).
2. At a time, a product may be valued under just one of the above sections [Sec 4(1) or Sec 4A or Sec 3(2)]

Exception: Product Notified u/s 4A --- Valuation u/s 4A

But when SWMA grants exemption from Printing of MRP --- then it shall be valued u/s 4(1)

ASSESSABLE VALUE u/s 4

When	AV	Special Points												
<p>Sec 4(1)(a)</p> <p>All the following conditions are satisfied:</p> <ul style="list-style-type: none"> ⇒ Goods are SOLD & ⇒ Sale provides for Delivery at "PLACE OF REMOVAL" & ⇒ Buyer and seller are <u>not</u> "RELATED PERSONS" & ⇒ Price is the <u>SOLE CONSIDERATION</u> for the sale. 	<p>TV[SEC 4(3)(d) of CEA]</p> <p>↓</p> <table border="1"> <tr> <td>Sale Price for goods</td> <td>XXX</td> </tr> <tr> <td>+ Addl. Recoveries</td> <td>XXX</td> </tr> <tr> <td>- Sales Tax</td> <td>(XX)</td> </tr> <tr> <td>- Other Taxes</td> <td>(XX)</td> </tr> <tr> <td>- Excise Duty</td> <td>(XX)</td> </tr> <tr> <td colspan="2">Transaction Value <u>XXXX</u></td> </tr> </table>	Sale Price for goods	XXX	+ Addl. Recoveries	XXX	- Sales Tax	(XX)	- Other Taxes	(XX)	- Excise Duty	(XX)	Transaction Value <u>XXXX</u>		<p>1. ELEMENTS INCLUDIBLE:</p> <p>a) Recoveries in connection with manufacturing, marketing, selling of EG (as they enrich marketability);</p> <p>b) Warranty expenses (Mandatory – in every case & Optional – whenever option exercised); [MARUTI UDYOG LTD. – 2007- SC:-- EXTENDED WARRANTY is not includible as charges for extended warranty can not be said to be charges by reason of, or in connection with, sale of goods under consideration.]</p> <p>c) Packing Charges (whether primary, secondary, special secondary/protective packing or any other packing); ⇒ Apportioned cost of durable & returnable packing inbuilt in Sale Price (so no need of any addition separately) ⇒ Even Rental Charges for DURABLE + RETURNABLE packing --- includible (But <u>their cost</u> as such or security deposits for that is not includible)</p> <p>d) Installation/Erection/Commissioning Expenses (whenever incurred to bring into existence any movable goods), BUT if Movable Goods cleared from factory – then not includible;</p> <p>e) Dharmada Charges collected Compulsorily from buyers (can't be said to be 'other taxes' as not collected under the force of an enactment);</p> <p>2. ELEMENTS NOT INCLUDIBLE:</p> <p>a) Interest for delayed payments/ Interest on Receivables (Financing Charges): C1: Clearly distinguished from price for the goods; C2: Written Financing arrangement C3: Whenever required – assessee can establish that declared sale price is the actual sale price for goods;</p> <p>b) Trade Discount; ⇒ Be it of any type or description (even cash discount is allowable) C1: Discount is from the normal price; C2: Actually passed on to the buyer; <i>[even QUANTITY DISC // DAMAGE DISCOUNT IS DEDUCTIBLE]</i></p> <p>⇒ Differential Discount to Different Customers – Allowable C1: Discount is as per commercial considerations; C2: Allowed to unrelated buyers;</p> <p>⇒ Year End Discount (TO Discount) --- known and understood at the time of removal but not quantifiable --- Resort to PA (Provisional Assessment)</p>
Sale Price for goods	XXX													
+ Addl. Recoveries	XXX													
- Sales Tax	(XX)													
- Other Taxes	(XX)													
- Excise Duty	(XX)													
Transaction Value <u>XXXX</u>														

c) Taxes and Duties (Actually paid or payable):

- ⇒ Excise Duty;
- ⇒ Sales Tax;
- ⇒ Other taxes (like Octroi/Entry Tax)

Note:

⇒ Nomenclature is not relevant

E.g.:

- i. Administrative Charges levied on molasses – under UP SHEERA NIYANTARAN ADHINIYAM, --- Deductible (Being compulsory exaction of money under force of an enactment) [KISAN SAHKARI CHINI MILLS - SC]
- ii. Steel Development Charges levied due to direction by Joint Plant Steel Committer --- Not Deductible (as don't Have the force of law) [TISCO-SC]

Sec 4(1)(b)

[Value as per **CE Valuation (Determination of Price of EG) Rules, 2000**]

Rule 4 Free samples valuation

AV = Value of Identical/ Similar goods (*such goods) sold by same assessee at the time of removal

[If there is no sale of Identical / Similar comparable goods (*such goods) at the time of removal of samples --- then, value of identical or similar goods sold on nearest date shall be used]

1. Rule 4 is applicable only for valuation of **free samples** (and not on nominally price samples—disputed issue)
2. **New sample** (Product developed for first time and its not being sold into the market commercially at present, but will be sold only later on): At time of removal TV of identical / similar goods is not available, but will become available subsequently – so at time of removal from factory, provisional assessment shall be resorted to by assessee. [CWA June 2007]
3. **Old Sample** (Product already being sold into the market commercially at present, but in commercially different form, e.g., bigger quantity, different packing): The form in which it is being sold commercially can not be treated as identical goods and thus their TV can not be used under Rule 4. – Assessment shall be made in Rule 11 (there TV of identical goods can be used after making adjustments)

Rule 5 All conditions of 4(1)(a) are satisfied

Except: Sale provides for delivery at a place other than the 'place of removal'

TV less: COT [POR – TO – PLACE OF DELIVERY]

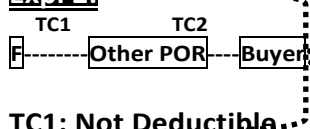
Return freight is not deductible

Expl 1:

CoT= Actual cost Or Average Cost

1. "Point of sale" should be the place of removal. And 'Point of Delivery' shall be a place other than the 'Place of Removal'.
2. **COT = Freight + Transit Insurance**
3. COT – deductible even if Not Charged separately in Invoice;
4. **Where transportation charges are recovered in transaction basis: Only Actual COT is deductible** --- i.e., profit on transportation activity is includible in AV. Similarly, loss on transportation activity is deductible from AV. [Also, charges collected but not expended --- no deduction allowable.]
5. **Where transportation charges are recovered on average freight** (to ensure uniformity in pricing of goods throughout India) --- Average Freight (Equalized freight) deductible.

Expl 2:



6. COT from factory to Warehouse/Depot ---- Not deductible
7. COT from Warehouse/Depot to Buyer's Premises --- Deductible

Rule 6 All conditions of 4(1)(a) are satisfied

Except: Sale price is not the sole consideration for sale'

TV
Add: Additional Consideration (buyer ---TO -- assessee)

Expl 1:
Goods/ Services supplied free of cost or at concessional rate

Expl 2:
Notional Interest on Advance Deposit -- Addition only when Dept can prove that it has influenced fixation of sale price (by way of reduction of SP or by offering a Special Discount)

- E.g.
- i. Advance deposit – saving in borrowing cost --- reflected in SP as it was lowered down --- Notional Int includible [METAL BOX INDIA-SC]
 - ii. Advance deposit – taken as security – to cover risk of credit sale--- SP to credit customer same as charged on cash sale – Notional Int not includible [VST INDUSTRIES – SC]
 - iii. Advance deposit – taken as security – to cover risk of failure to take tailor-made goods -- Notional Int not includible [ISPL INDUSTRIES – 2003 -- SC]

1. Additional Consideration: Anything flowing from buyer to assessee in addition to the declared Invoice Price because of which price otherwise paid/payable is reduced by seller
e.g.

MAZAGON DOCK LTD.- 2005-SC:

Ship manufactured & sold for a particular price --- Certain subsidy received from the Govt. and certain subsidy received from the buyer

Subsidy received from Govt: Not includible
Subsidy received from Buyer: Includible (as it will constitute additional consideration flowing from buyer to the assessee manufacturer)

IFGL Refractories – 2005-SC:

Advance license surrendered by buyer in favour of manufacturer

2. Monetary value of such consideration: the value by which price otherwise paid/payable is reduced by the manufacturer, shall be treated as monetary value of additional consideration.

3. initially if duty is paid on some value and additional consideration is found out later, then while demanding duty on such additional consideration , it shall be treated as cum-duty consideration --- Explanation to Sec 4(1)

Rule 7 Redundant

Rule 8 When EG are not sold – but are further used in manufacture of other EG (whether such use is by him or on his behalf)

110% of COP/M
Expl 1:
COP/M --- to be determined as per general principles of costing

↓
As per CAS-4 [CBEC Circular]

CAS-4

1. Material consumed
2. Direct wages/ salaries
3. Direct Expenses
4. Works OH
5. Quality control cost
6. R & D cost
7. Adm OHs
- Less: Recoveries from Waste/Scrap**
8. Packing cost

* Material shall be taken at net value (net of Cenvat credit)

1. Captive Consumption means

- ⇒ Production by one division and consumption by another division of same factory
 - ⇒ Production in one unit/factory and consumption in another related unit/factory
- Where such consumption is for further use in manufacture of excisable goods.

2. E/N 67/95: IG is fully exempt from duty if FP is dutiable. [i.e., IG is dutiable if FP is non-dutiable]

- ⇒ This is applicable only when consumption is within the same factory.
- ⇒ Date of issuance to next process --- Deemed Date of Removal [Explanation to Rule 4 + Rule 5 of CER, 2002]

3. COP/M : -- Cenvat credit on inputs is not includible (i.e., Inputs shall be taken as purchase price net of cenvat credit) [DAI ICHI KARKARIA-SC --- Now written in CAS-4]

4. AV = 110% of COP/M [Fixed notional profit margin of 10% is includible in the AV]

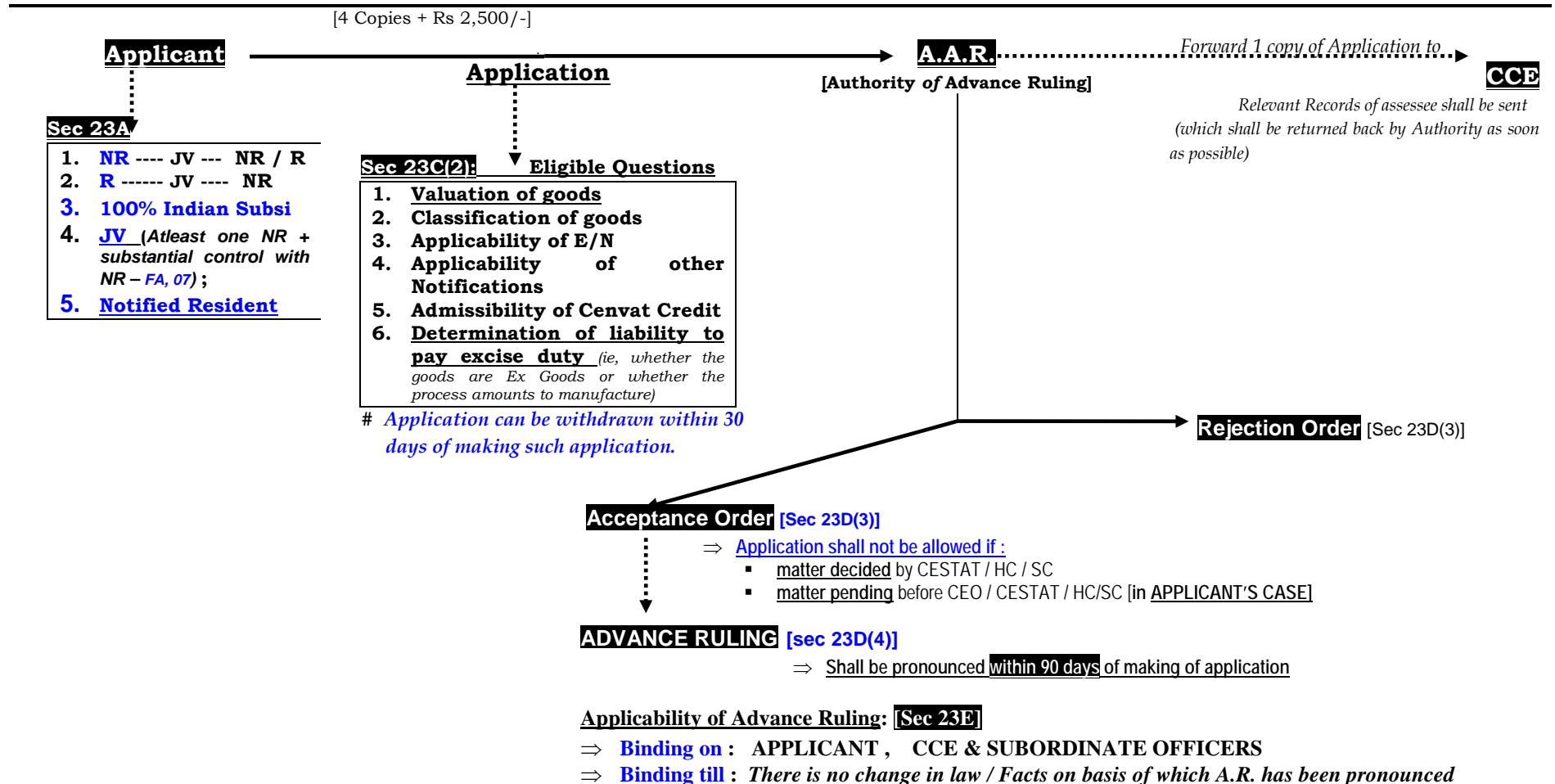
- Even if :**
- ⇒ Same goods are partly sold by assessee at a higher profit margin;

Thus, **ACTUAL PROFIT MARGIN IS NOT RELEVANT.**

<p>Rule 9</p>	<p>Sale to or only through 'Related Person' [not being an 'ICU']</p>	<p><u>Where such RP sells to URP</u> ■ AV = NTV(sale to URP)</p> <p><u>Where such RP sells to RP</u> ■ AV = NTV(sale to the RP who sells in retail)</p> <p><u>Where such RP captively consumes such goods</u> AV = 110% of COP/M</p>	<p>1. R 9 is applicable only when all the goods are sold to such related person. (In other words, if goods are partly sold to such related person and partly to unrelated person ---- AV of goods sold to related person shall be determined under Rule 11 & not under Rule 9)</p> <p>2. <u>Simple understanding of Rule 9</u></p> <p>M----(p-1)-→ RP ----(p-2)→ URP AV= (p-2)</p> <p>M----(p-1)-→ RP ----(p-2)→ RP----(p-3) retail sale AV= (p-2)</p> <p>M----(p-1)-→ RP ----captive consumption AV= 110% of CoP</p>
<p>Rule 10</p>	<p>Sale to or only through "ICU"</p>	<p><u>If ICU is :</u> -- Hol-Subs; or -- Otherwise ICU but also related in terms of Sec 4(3)(b) (ii)/ (iii)/ (iv) ■ AV = R 9 Value</p> <p><u>Otherwise:</u> ■ AV = TV(Sec 4(1)(a) Value</p>	<p>1. R-10 is applicable only when all the goods are sold to such related person. (In other words, if goods are partly sold to such related person and partly to unrelated person ---- AV of goods sold to ICU in such situation shall be determined under Rule 11 & not under Rule 10)</p>
<p>Rule 10-A</p>	<p>Job-Work Valuation [New system from Year 2007]</p>	<p><u>Rule 10-A(i)</u> Goods sold by PM + Delivery taken by buyer at JW premises + Unrelated buyer + Price sole consideration AV = TV</p> <p><u>Rule 10-A(ii)</u> Goods brought back by PM + Sold later on from his premises + Unrelated buyer + Price sole consideration AV = NTV</p> <p><u>Rule 10-A(iii)</u> Other cases AV → applying spirit of other rules mutatis mutandis</p>	<p>1. <u>Old Valuation System:</u> Prior to 2007, goods manufactured on job-work basis were valued under R-11 (residuary rule). The value used to be calculated in following manner: AV = Purchase Price of Material + CoT (Freight & Transit Insurance) upto Job-worker's place + Job-Worker's Charges + Job-Worker's Profit Margin Now, that system is no longer applicable.</p>
<p>Rule 11</p>	<p>When value can't be determined under other rules</p>	<p>Best Judgment Value (as determined in accordance with <u>spirit of</u> ■ Sec 4(1)(a) and ■ Preceding Rules)</p>	<p><u>Instances where Rule 11 is applicable:</u> ⇒ Goods sold partly to related person and partly to unrelated person (Sales to URP – AV as per Sec 4(1)(a) /// But in respect of sales to RP --- AV in terms of Rule 11 (Apply spirit of Rule 9 or 10, as the case may be)</p>

ADVANCE RULING:

[It means determination of a **QUESTION OF LAW / FACT**
i.r.t. an activity proposed to be undertaken by the applicant – Sec 23-A]



Sec 23F: AR pronounced --- subsequently found – obtained by way of **Fraud / Mis-representation of Facts** ---- A.A.R. may (by order) declare it **Void-Ab-initio**. - - - All provisions of CEA shall apply as if AR had never been made [Period—from Date of pronouncement of AR -- to the Date of such order - - - - shall be excluded for purposes of Sec 11-A]

Click Here to Get More Updates On CA & CS On WHATSAPP

Comparison Chart:

	<i>EXCISE</i>	<i>CUSTOMS</i>	<i>SERVICE TAX</i>
<u>Definitions</u>	<u>Sec 23-A</u> “Activity” means production or manufacture of goods.	<u>Sec 28-E</u> “Activity” means Import or Export.	<u>Sec 96-A</u> “Activity” means provisioning of service.
<u>Application For Advance Ruling</u>	<u>Sec 23-C</u> <i>Eligible Issues on which Advance Ruling can be sought:</i> (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) <u>Determination of liability to pay ED</u>	<u>Sec 28-H</u> <i>Eligible Issues on which Advance Ruling can be sought:</i> (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (e) <u>Determination of liability to pay Customs Duty</u> (f) <u>Determination of origin of the goods in terms of rules notified under CTA, 1975;</u>	<u>Sec 96-C</u> <i>Eligible Issues on which Advance Ruling can be sought:</i> (d) Valuation of services; (e) Classification of services; (f) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) <u>Determination of liability to pay Service Tax</u>
<u>Procedure On Receipt Of Application</u>	<u>Sec 23-D</u>	<u>Sec 28-I</u>	<u>Sec 96-D</u>
<u>Applicability Of Advance Ruling.</u>	<u>Sec 23-E</u>	<u>Sec 28-J</u>	<u>Sec 96-E</u>
<u>Advance Ruling To Be Void In Certain Circumstances</u>	<u>Sec 23-F</u>	<u>Sec 28-K</u>	<u>Sec 96-F</u>

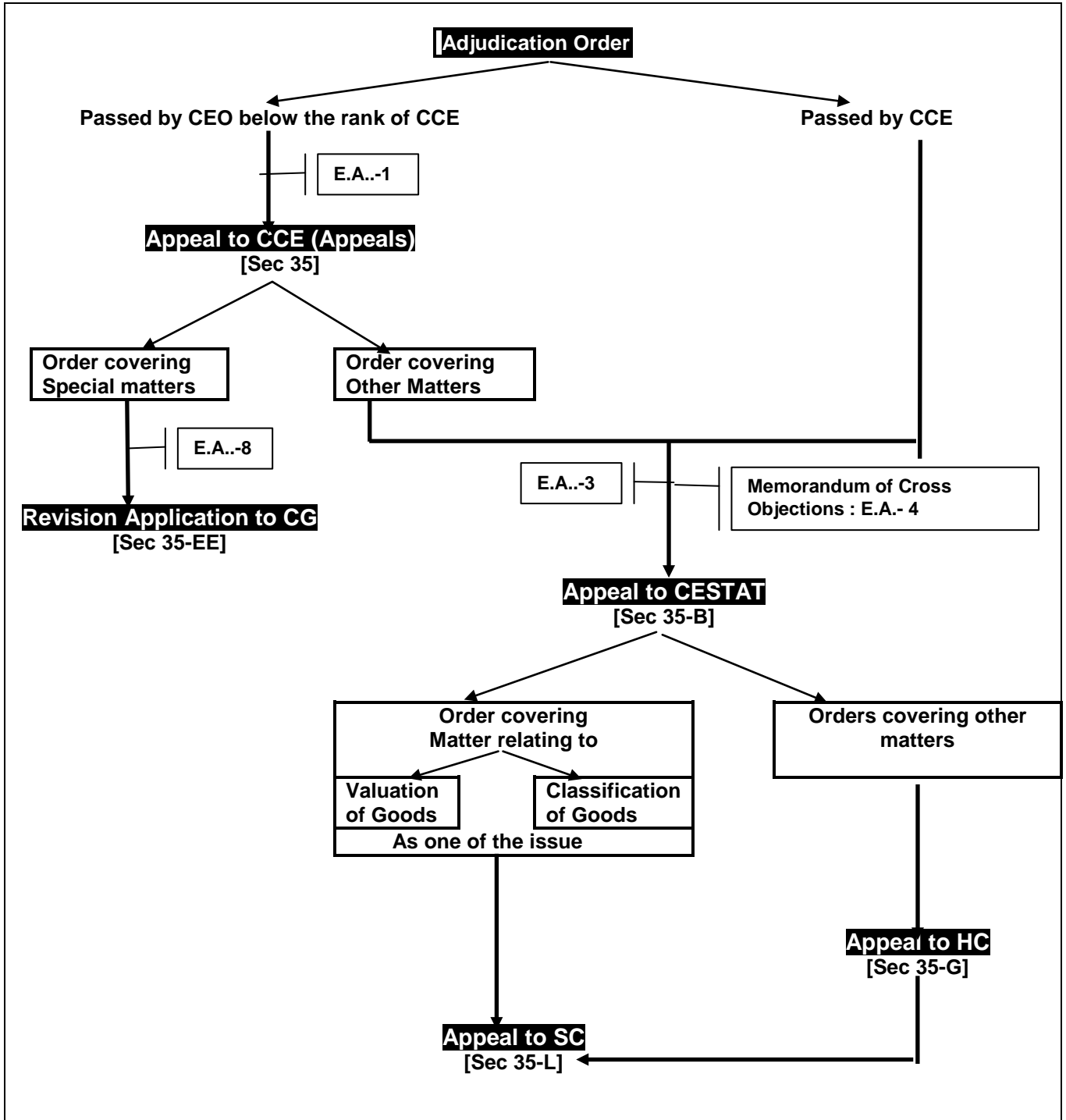
Click Here to Get More Updates On CA & CS On WHATSAPP

Comparison Chart:

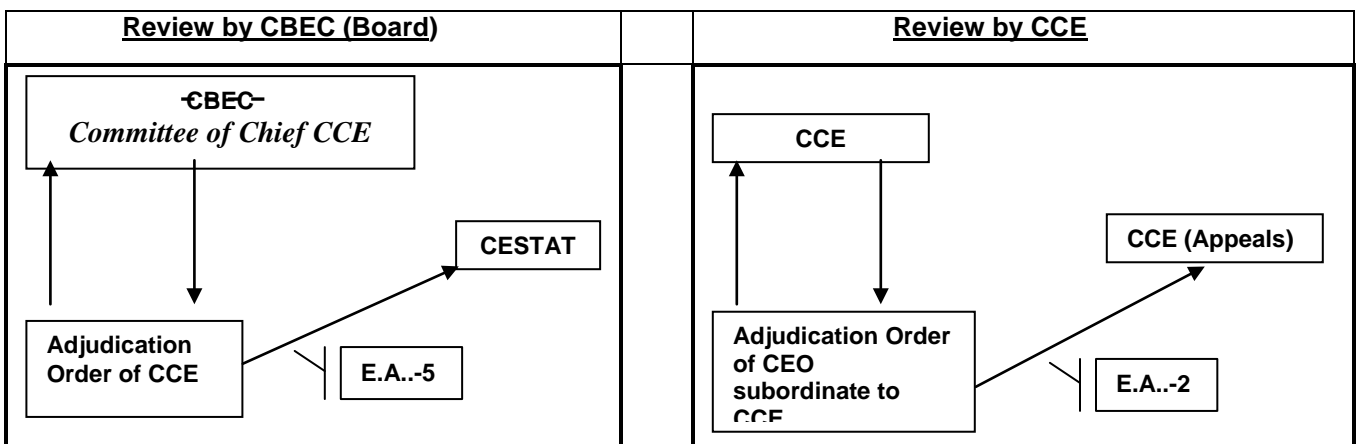
	EXCISE	CUSTOMS	SERVICE TAX
<u>Definitions:</u> <u>“Case”</u>	<u>Sec 31</u> “Case” means pending adjudication proceeding before CEO	<u>Sec 127-A</u> “Case” means pending adjudication proceeding before Proper Officer.	
<u>Conditions fro</u> <u>Admissibility of</u> <u>Settlement Application</u>	<p><u>Sec 32-E</u></p> <p>(a) Applicant has filed returns showing production, clearance and excise duty paid;</p> <p>(b) SCN for recovery of duty has been issued by CEO;</p> <p>(c) Additional ED accepted by the applicant in his application exceeds Rs 3,00,000/-.</p> <p>(d) Additional ED accepted has been deposited alongwith interest @ 13%;</p> <p>(e) Question involved shalln’t be related to “Classification of Goods”;</p> <p>Where seizure operation has been carried out & Excisable Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure</p>	<p><u>Sec 127-B</u></p> <p>(a) Applicant has filed Bill of Entry // Shipping Bill (i.r.o. import or export of goods);</p> <p>(b) A SCN has been issued by PO;</p> <p>(c) Additional customs duty accepted by the applicant in his application exceeds Rs 3,00,000/-.</p> <p>(d) Additional ED accepted has been deposited alongwith interest @ 13%;</p> <p>(e) Question involved shalln’t be related to “Classification of Goods”;</p> <p>Where seizure operation has been carried out & Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure</p> <p>No settlement is possible in relation to :</p> <p>⇒ Sec 123 Goods</p> <p>⇒ Goods in relation to which offence under NDPS (Narcotics Drugs & Psychotropic Substances) Act has been committed</p>	<p>Settlement facility is not available in Service Tax. (as in Service tax there are no provisions for prosecution)</p>
<u>Procedure On Receipt Of</u> <u>Application</u>	<u>Sec 32-F</u>	<u>Sec 127-C</u>	
<u>Powers of Settlement</u> <u>Commission</u>	<u>Sec 32-G to 32-L</u>	<u>Sec 127-D to 127-I</u>	
<u>Order of settlement</u> <u>(conclusive)</u>	<u>Sec 32-M</u>	<u>Sec 127-J</u>	

Click Here to Get More Updates On CA & CS On WHATSAPP

APPEAL



REVIEW



Appeal To CCE(APPEALS)

Adjudication Order passed by any CEO below the rank of CCE

(e.g.,]
 Demand Order u/s 11A(2)
 Confiscation Order u/s 33
 Penalty Order u/s 33
 Made by JC, AC/DC, SCE)

Assessee aggrieved [Form: EA-1] CCE (Appeals)
60 Days + 30 Days

[Sec 35]

Sec 35-F: Pre-Deposit of Duty and Penalty

Hearing is granted by CCE (Appeal) only pre-deposit made

Waiver of Pre-Deposit : if pre-deposit would cause **UNDUE HARDSHIP** (whether financially affecting or otherwise)

Hearing

Grant of Adjournments during hearing:

"Additional Grounds" may be heard

+ **"Additional Evidences"** may be admitted

"Additional Evidences" when admissible

[Rule 5 of Central Excise (Appeal) Rules]

Admission by CCE on his own: -- He can admit additional evidences whenever he deems necessary

When can assessee appeal for admission of additional evidences: Assessee is entitled under 4 situations:

- i) At the adjudicating stage, he was not given sufficient opportunity to produce it;
 - ii) He was given the sufficient opportunity to present it at adjudication stage, but he failed to submit it at the adjudication stage, but such failure was not intentional (i.e., he gave sufficient reasons for his failure);
 - iii) He submitted it at adjudication stage itself but adjudicating authority didn't accept it;
- a) Adjudicating authority has demand such evidence; or
 b) There was no demand of evidence by adjudicating authority but assessee wish to submit it on his own

[if Additional Evidences are admitted by CCE (Appeal), then the other party connected in appeal shall be given an opportunity to examine that evidence and to rebut/challenge that evidence]

Time-Limit

6 mths (recommendatory)

Order - [Sec 35-A]

Remand Back of case to CEO

[Disposal at his own end]

Confirming

Annuling

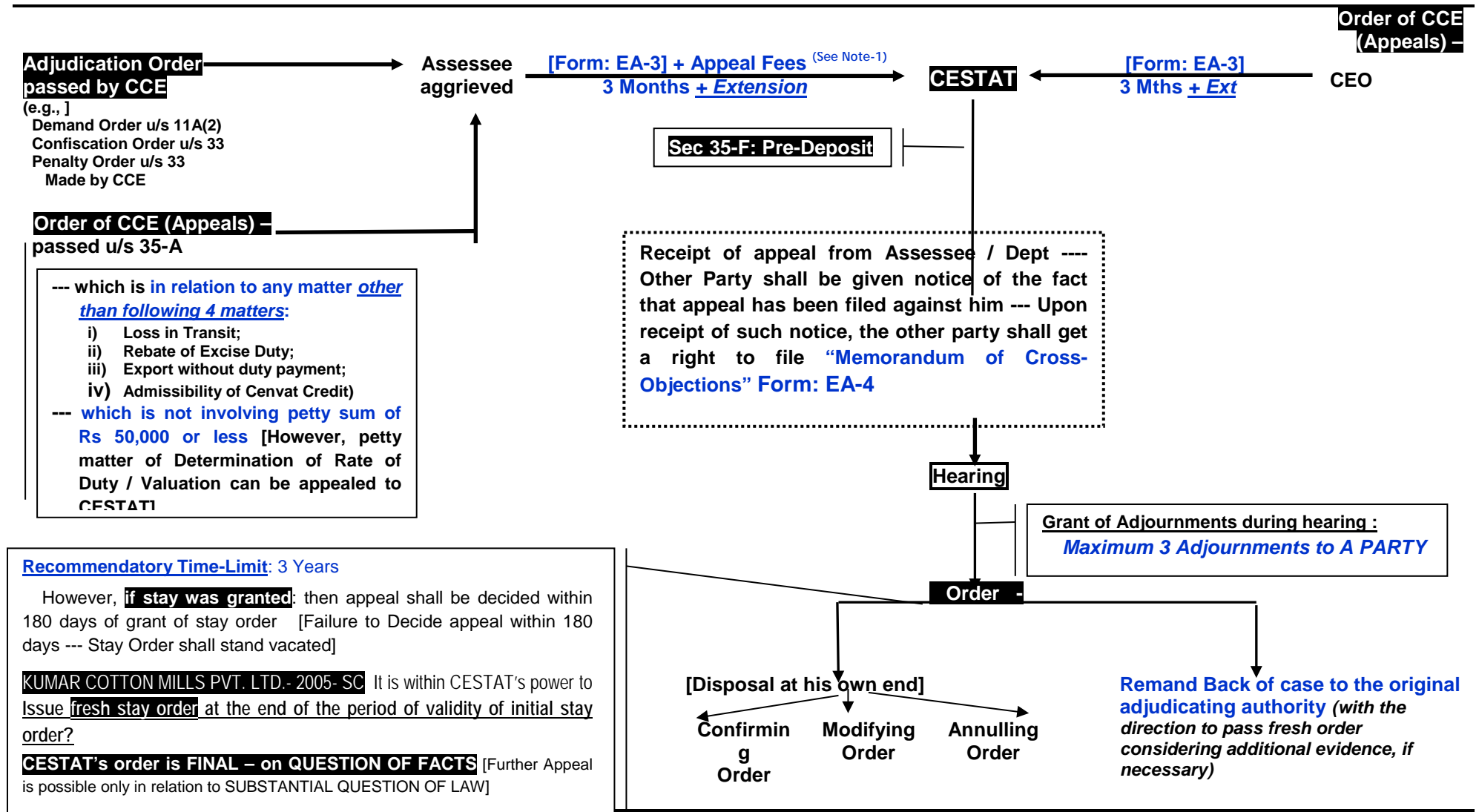
Modifying

(Increasing Liability of Assessee)

(Decreasing Liability of Assessee)

If Duty is increased ---- then SCN within time limits specified in Sec 11A is must

APPEAL TO CESTAT



Click Here to Get More Updates On CA & CS On WHATSAPP

Note 1: Appeal Fee is —

- (a) Where duty and interest demanded and penalty levied is upto Rs 5 lacs --- 1,000/-
- (b) Where duty and interest demanded and penalty levied is more than Rs 5 lacs but upto Rs 50 lacs --- 5,000/-
- (c) Where duty and interest demanded and penalty levied is more than Rs 50 lacs -- 10,000/-

Appeal Fee or Application Fee is not payable by Dept.

Note 2: Application Fee is — Rs 500

- a) Application I
 - ⇒ for grant of stay or
 - ⇒ for rectification of mistake
 - ⇒ for any other purpose; or
- b) Application For restoration of
 - ⇒ an appeal or
 - ⇒ application

Note 2: ROM Apparent from record

When:

- Suo Moto (notices mistake itself)
- ROM Application – CCE or Asseesee

Time Limit: 6 Months from **DATE OF ORDER**

If amendment in order will result into increase in liability of the other party --- opportunity must be afforded to such party before making amendment.

Sec 35G: Appeal To High Court [180 days]

An appeal shall lie to the High Court against any order passed by **CESTAT** if it satisfies **2 conditions**

- 1) Such order **does not involve any issue relating to rate of duty or valuation of goods**; and
- 2) **HC is satisfied that the case involves a substantial question of law.**

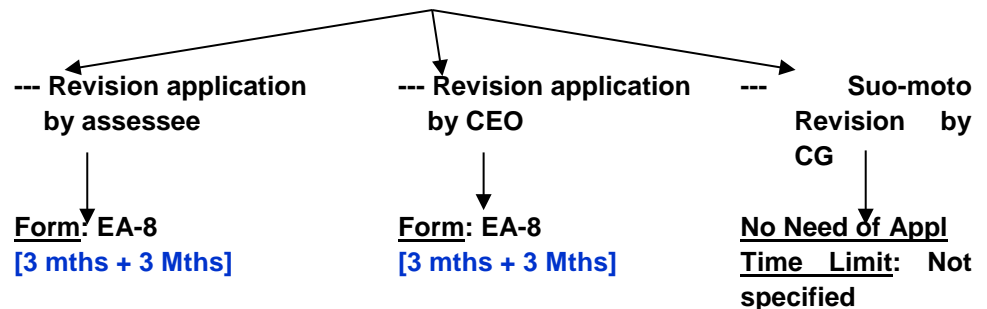
Sec 35I: Appeals to Supreme Court

An appeal shall lie to the Supreme Court against the following:

- 1) **CESTAT's order involve any issue relating to rate of duty or valuation of goods**;
- 2) **A judgment of the High Court, which the HC certifies as fit for appeal to SC.**

Revision by CG – Sec 35EE

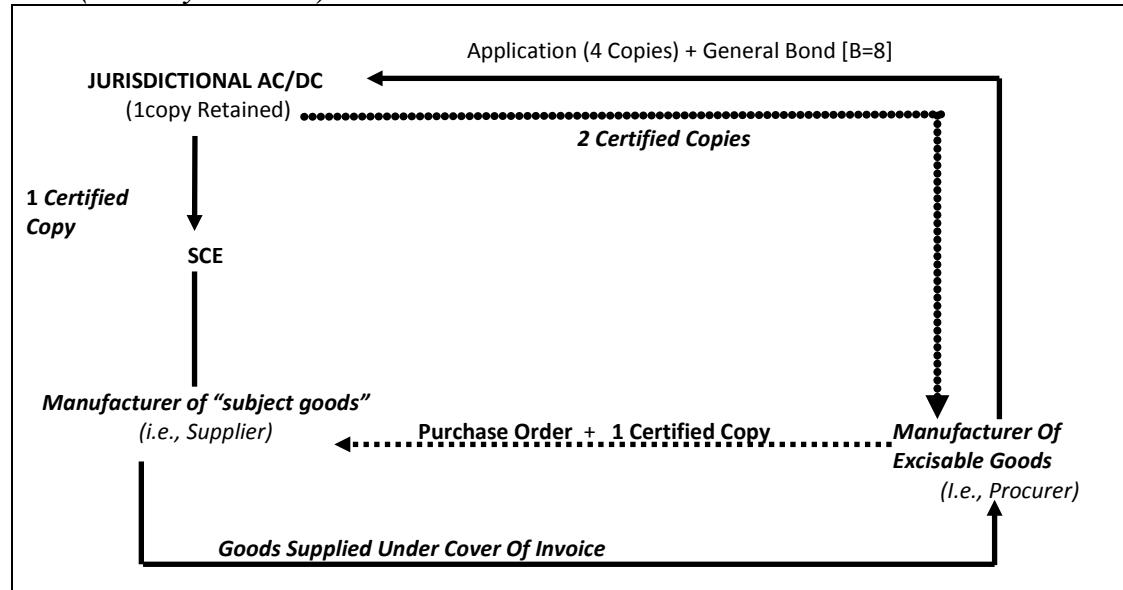
Orders of CCE (Appeal) ---- relating to 4 Matters (which are non-appealable before CESTAT) –



CENTRAL EXCISE (REMOVAL OF GOODS AT CONCESSIONAL RATE OF DUTY FOR USE IN MANUFACTURE OF EXCISABLE GOODS) RULES, 2001

"Procedure for availing end used based exemption notification"

Chart (Summary Procedure)



Note 1: Failure in Utilisation of Goods for Specified Purposes ---- Consequences [Rule 6]

Procurer shall be liable to pay :

- i) **Differential ED thereon** [i.e., Duty without applying the E/N less duty already paid thereon, if any]
- ii) **Interest thereon @ 13% p.a.**

It would be immaterial whether non-utilisation is due to loss/Destruction of goods – due to Natural Reason or --- Due to Unavoidable accident.

[Even on following losses – Differential duty is payable

- a) **Transit Loss:**
 - a. From Supplier's Place to Procurer's Place
 - b. From Procurer's Place to Supplier's Place
- b) **Storage Loss:**
 - a. In store of Procurer]

However, Procurer would be within his right to RETURN goods if not in a position to use them on account of any one of the following reasons:

- i) Goods received were **Defective or Damaged**
- ii) Goods received were **not suitable for intended use**
- iii) Goods received were **Surplus to the requirement**

On returned goods --- Differential Duty shall not be payable by the Procurer
Such returned goods shall be added by Supplier to the NON-DUTY PAID STOCK.

Obligations : (Rule 5)

- i) *Maintain Proper Accounts as to receipt, utilization & inventory of such goods; &*
- ii) *Submit MONTHLY RETURN to the AC/DC with whom Bond has been executed.*

POWERS OF CENTRAL EXCISE OFFICER

Powers under CEA, 1944

	<u>Nature of Power</u>	<u>Level of Officer who can exercise this Power</u>	<u>Any Prior Permission</u>	<u>Circumstances when power shall be exercised</u>
<u>Sec 13:</u>	<u>Power to Arrest</u>	Any CEO (not below Inspector Level)	Prior Approval of the CCE	When the CEO has reason to believe that the person to be arrested is liable to punishment under CEA
<u>Sec 14:</u>	<u>Power to issue summons</u>	Any CEO (as empowered by CG for this purpose)	-----	When the CEO considers necessary the attendance of person ---- either to give evidence or ---- to produce a document or any other thing in any inquiry which such officer is making.
<u>Sec 14-A:</u>	<u>Special Audit : --“Valuation Audit”</u>	Any CEO (not below AC/DC)	Chief CCE	<p>When the CEO considers doubts the AV as has been declared/determined by Assessee But he finds [Assessee’s A/c Complex] to understand--- then, considering Interest of Revenue he can issue AUDIT DIRECTION</p> <p><u>Audit can be ordered in respect of</u> : -Factory -Office -Depot -Distributor’s Premises -Any Other Place</p> <p><u>Audit direction can be issued to</u>: - Manufacturer or -Other Person</p> <p>The person to whom audit direction has been issued shall get his accounts audited by <u>CWA (Cost & Work Accountant)</u></p> <p><u>Obligation of CWA towards CEO</u>: He shall submit his report directly to the officer who has issued direction (and not to the person whose accounts he has audited)</p> <p><u>Time Limit allowed to him for submission of Report</u>: [As specified by the CEO (+ Extension)] Total Max: 180 Days</p> <p><u>Whether this Audit Direction can be issued even in cases where accounts of person already stands audited under any other law or even under the Excise u/s 14-AA? --- YES</u></p>
<u>Sec 14-AA:</u>	<u>Special Audit - --“Cenvat Credit Audit”</u>	CCE	-----	<p>When the CEO considers doubts that [CCR availed/booked by assessee in his book is not within the normal limits (considering the Qty shown to be manufactured in DSA and his input-output ratio)] --- Fraud/Collusion/Wilful misstatement or suppression of facts is likely</p> <p>then, considering Interest of Revenue he can issue AUDIT DIRECTION</p> <p><u>Audit can be ordered in respect of</u> : -Factory -Office -Depot -Distributor’s Premises -Any Other Place</p> <p><u>Audit direction can be issued to</u>: - Manufacturer or -Other Person</p> <p>The person to whom audit direction has been issued shall get his accounts audited by <u>CWA (Cost & Work Accountant)</u></p> <p><u>Obligation of CWA towards CEO</u>: He shall submit his report directly to the officer who has issued direction , i.e., CCE (and not to the person whose accounts he has audited)</p>

				<p><u>Time Limit allowed to him for submission of Report:</u> [As specified by the CCE] Total Max: No restriction placed</p> <p><u>Whether this Audit Direction can be issued even in cases where accounts of person already stands audited under any other law or even under the Excise u/s 14-A? --- YES</u></p>
--	--	--	--	--

Powers under Central Excise Rules, 2002

<u>Nature of Power</u>		<u>Level of Officer who can exercise this Power</u>	<u>Any Prior Permission</u>	<u>Circumstances when power shall be exercised</u>
<u>Rule 22:</u>	<u>Access to Registered Premises</u>	Any CEO (as empowered by CCE for this purpose))	-----	<p>When the CEO considers such access necessary for carrying out any Scrutiny / Check / Verification.</p> <p><u>Premises Accessible</u> : - Any Premise registered under Excise (Manufacturer’s Factory / R-20 Warehouse / FSD or SSD Premise)</p> <p><u>Obligations of person:</u> -Furnish to the CEO list of following: I) Records maintained and prepared for accounting of goods (FP / Input / Capital Goods) II) Records maintained and prepared for accounting of Input Services III) All Financial Records and Statements -Upon demand produce before the above records. [Officer can also demand <u>COST AUDIT REPORT + TAX AUDIT REPORT</u>]</p>
<u>Rule 23:</u>	<u>Power to stop and search conveyance</u>	Any CEO	-----	When the CEO has reason to believe that such conveyance is carrying the goods with the intention of evading duty
<u>Rule 24:</u>	<u>Power to detain goods or seize the goods</u>	Any CEO	-----	<p>When the CEO has reason to believe that</p> <p>--- Goods are liable to duty but no duty has been paid thereon</p> <p>--- Goods have been removed with the intention of payment of duty</p>

SSI NOTIFICATION ----- 8/2003

Note 1: 8/2003 has been issued u/s 5A of CEA, 1944.

It is a Conditional E/Ns --- i.e., benefit thereof is available to the manufacturing assessee (unit) only when it fulfills all the conditions.

8/2003 --- Full (100%) E/N ----- 7 Conditions

Note 2: Remember: 8/2003 is also called:

- ❑ **Value Based E/N** (Technical Name --- as exemption is based upon Value of Clearances effected by a unit in a FY)
- ❑ **SSI E/N** (Common Man Name --- as meant for assessee operating at a Small Scale of upto 400 lacs in PY)

Note 3: Eligible Unit :---- Any unit which fulfills all conditions

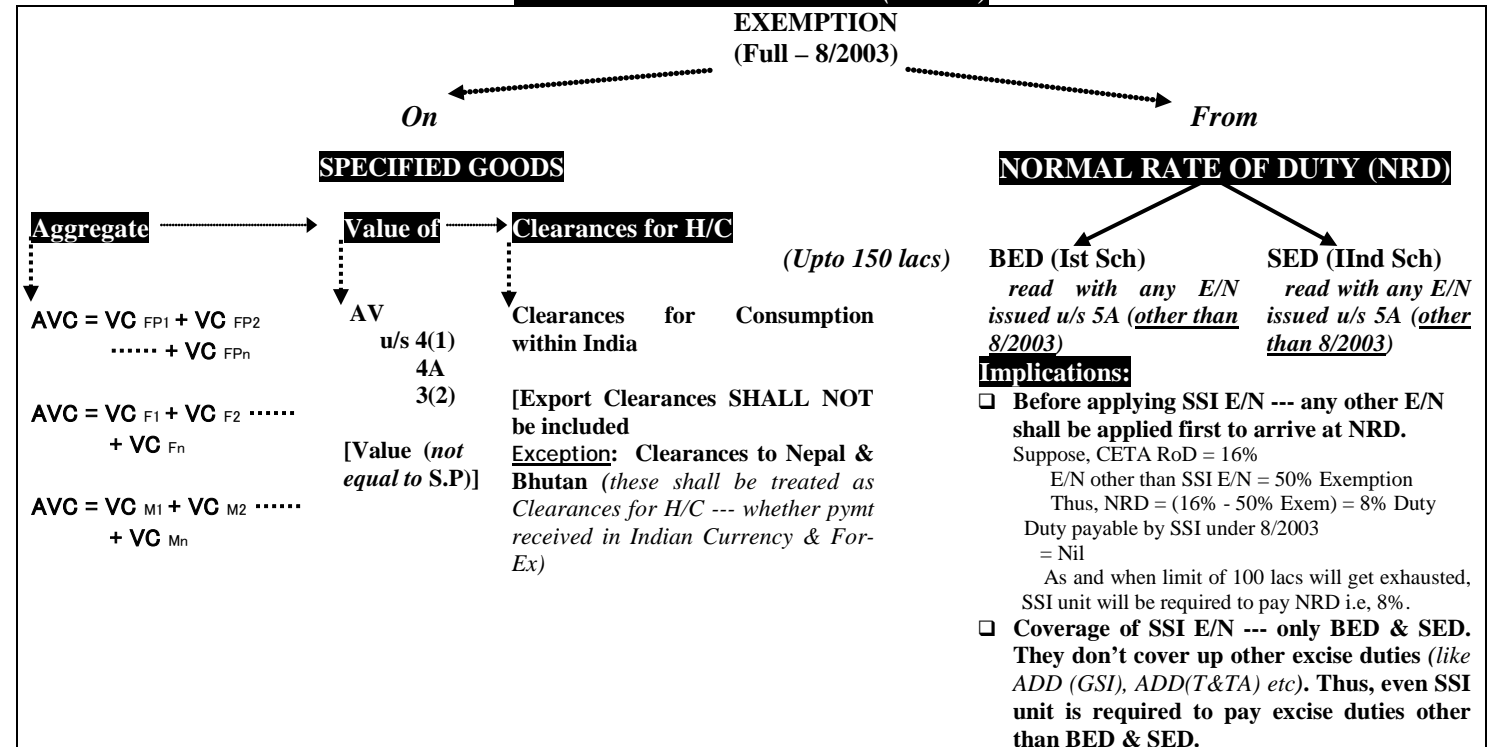
Relevant Factors: Fulfillment of Conditions specified in the E/N

- Irrelevant Factors:** i) Investment in Setting Up of Unit;
ii) Registration with any authority as SSI

Note 4: Eligible Clearances :---- Clearances for H/C (including Export Clearances to Nepal & Bhutan)

Note 5: Eligible Goods : “Specified Goods” --- i.e., Goods as specified in the E/N 8/2003 itself (almost everything has been specified except for a few goods)

BASIC EXEMPTION CHART (8/2003)



Summary Exemption Scheme:

	8/2003 (Without Cenvat Scheme)		
	Excise Duty Liability	Cenvat on Inputs	Cenvat on CG
❑ FINAL PRODUCT (Must be “Specified Goods”)			
⇒ Clearances upto 150 Lac	No ED	Not to be Availed	To be availed but to be utilized only after crossing the limit of 150 lacs
⇒ Clearances above 150 lacs	ED at Normal Rate	Allowable	Allowable (no restriction on utilization)
❑ INTERMEDIATE GOODS (Must themselves be “Specified Goods” & additionally, the ultimate final product shall also be “Specified Goods”)	No ED	Question Doesn't arise	
⇒ All Clearances (without any limit)			

Conditions for Availing Benefit of SSI E/N : 8/2003-

-- 7 conditions - -

- 1** Option to Assesee --- **Not to Avail 8/2003** & pay duty at NRD
Time for Exercising Option --- Before effecting any clearance at NRD
Once exercised --- Withdrawal during the year not possible
- 2** Manner of Exercising Option --- Information to AC/DC (alongwith a Copy to SCE)
- 3** Cenvat on INPUTS (*used in mfd of Goods of AVC upto 150 lacs*) --- not to be AVAILED
- 4** Cenvat on CAPITAL GOODS --- allowed but not to be UTILIZED till AVC crosses 150 lacs limit
- 5** One Factory, Multiple Manufacturer : Value of Clearances shall be aggregated before applying the exemption
 $AVC = VC_{M-1} + VC_{M-2} \dots + VC_{M-n}$
- 6** One Manufacturer, Multiple Factories : Value of Clearances shall be aggregated before applying the exemption
 $AVC = VC_{F-1} + VC_{F-2} \dots + VC_{F-n}$
- 7** AVC (Immediate PY) = < **400 lacs**
 $AVC = VC_{M-1} + VC_{M-2} \dots + VC_{M-n}$
 $AVC = VC_{F-1} + VC_{F-2} \dots + VC_{F-n}$

Additional Points Regarding SSI: (Benefits/Concessions available to SSI)

	SSI Unit [i.e., Unit availing 8/2003]	Non-SSI Unit
DUE DATES FOR PAYMENT OF EXCISE DUTY ---- Rule 8 of CER, 2002	MONTHLY BASIS (Next 15 Days)	MONTHLY BASIS (Next 5 Days)
DUE DATE FOR FILING OF EXCISE RETURN ---- Rule 12 of CER, 2002	QUARTERLY BASIS (Next 20 Days) [E.R.-3]	MONTHLY BASIS (Next 10 Days) [E.R.-1]
EXCISE REGISTRATION --- Rule 9 of CER, 2002	<u>Till limit of Rs 150 lacs is not crossed, FP remains non-dutiable</u> Registration not required – if Declaration filed Even that declaration needn't be filed if <u>AVC (H/C – Home Consumption) in PY = < 90 lacs</u>	Registration required (as FP remains dutiable)

Computation of 150 Lacs Limit**STATEMENT SHOWING COMPUTATION OF 150 LACS LIMIT**

		Eligible Clearances	In-eligible Clearances
1.	<u>NON-DUTIABLE CLEARANCES</u>		
	a) <u>Which are exempted u/s 5A (other than 8/2003)</u>	-----	√
	b) <u>Which are chargeable to Nil RoD</u> (i.e., on which excise duty is not payable for any other reason)	-----	√
2.	<u>CLEARANCES BEARING B/N or T/N</u>		
	a) Clearances bearing B/N or T/N of the manufacturing unit itself	√	-----
	b) Clearances bearing B/N or T/N of the Customer		
	i. Goods are cleared for use as OE (Original Equipment) for use in any Machinery/ Equipment or Appliances [- By following End-use based exemption procedure - By simply submitting declaration if AVC of OE in PY is upto 100 lacs in PY]	√	-----
	ii. The Customer is any one of the following: 1. Khadi and Village Industries Commission; 2. State Khadi and Village Industry Board; or 3. National Small Industries Corporation; or 4. State Small Industries Development Corp; 5. State Small Industries Corporation;	√	-----
	iii. Clearances from factory situated in RURAL AREA	√	-----
	iv. Clearances of Accounts Books, Register, Writing Pad and File Folders	√	-----
	v. <u>Any other case [Refer Next page for details]</u>	-----	√
3.	CLEARANCES OF "INTERMEDIATE GOODS --- (which are separately exempted under 8/2003)	-----	√
4.	CLEARANCES OF STRIPS OF PLASTIC	-----	√
5.	CLEARANCES DURING NORMAL COURSE	√	-----

		↓	↓
	TOTAL	XXXX	XXXX

CURRENT YEAR ED LIABILITY :---

Apply 8/2003 & Pay ED accordingly

Pay ED as applicable normally

STATEMENT SHOWING COMPUTATION OF 400 LACS LIMIT

Eligible Clearances (Computed as per previous Statement)	XXXX
Add: Certain Ineligible Clearances (Computed as per previous Statement)	
<ul style="list-style-type: none"> ■ NON-DUTIABLE CLEARANCES All non-dutiable clearances <i>[however, following shall not be included:</i> 1) <i>Clearances availing Job-work Exemption;</i> 2) <i>Clearances to SEZ,</i> 3) <i>Clearances to FTZ,</i> 4) <i>Clearances to 100% EoU,</i> 5) <i>Clearances to EHTP/STP Unit,</i> 6) <i>Clearances to UN or any International Organization</i> 	XXX
TOTAL	XXXX

ELIGIBILITY FOR EXEMPTION IN THE NEXT YEAR: *Eligible if less than or equal to 400 lacs*

Clearances bearing brand/trade name of another person -- SSI Exemption is not available on such clearances

Conditions to be fulfilled only when exemption can be denied:

√ **Brand Name / Trade Name can be Name /Mark (anything) – which indicates a connection between the branded goods and some person using such brand name.**

It would be irrelevant:

i) **Whether brand/trade name has been used on SIMILAR or DIS-SIMILAR KIND of goods [RUKMANI PAKKWELL - 2004 – SC];**

E.g.

⇒ **Footwear** mfd and cleared – bearing brand name “lotus” – “Lotus” brand name owned by **Another Person who is using them in relation to “Detergent Powder”** ----- “Brand Name will indicate connection between “goods manufactured by SSI Unit” and “Another Person” [it is not the condition that it shall indicate connection between “goods manufactured by SSI Unit” and “Goods mfd by such Another Person”] --- thus, Exemption will not be available

Exception:

However, if SSI unit gets registered the same “brand/trade name” in its own name in relation to “different category of goods [i.e., Footwear], then it can take the benefit of CBEC Circular and can claim the benefit of SSI Exemption.

ii) **Whether it has been used fully or partially** [Even a use of part of a brand name or trade name, so long as it indicates a connection in the course of trade would be sufficient to disentitle the person from getting exemption under the Notification --RUKMANI PAKKWELL – 2004- SC];

iii) **Whether it has been used along with the brand/trade name of the SSI Unit [JEMKAY INVESTMENT (P) LTD. - 2004– SC];**

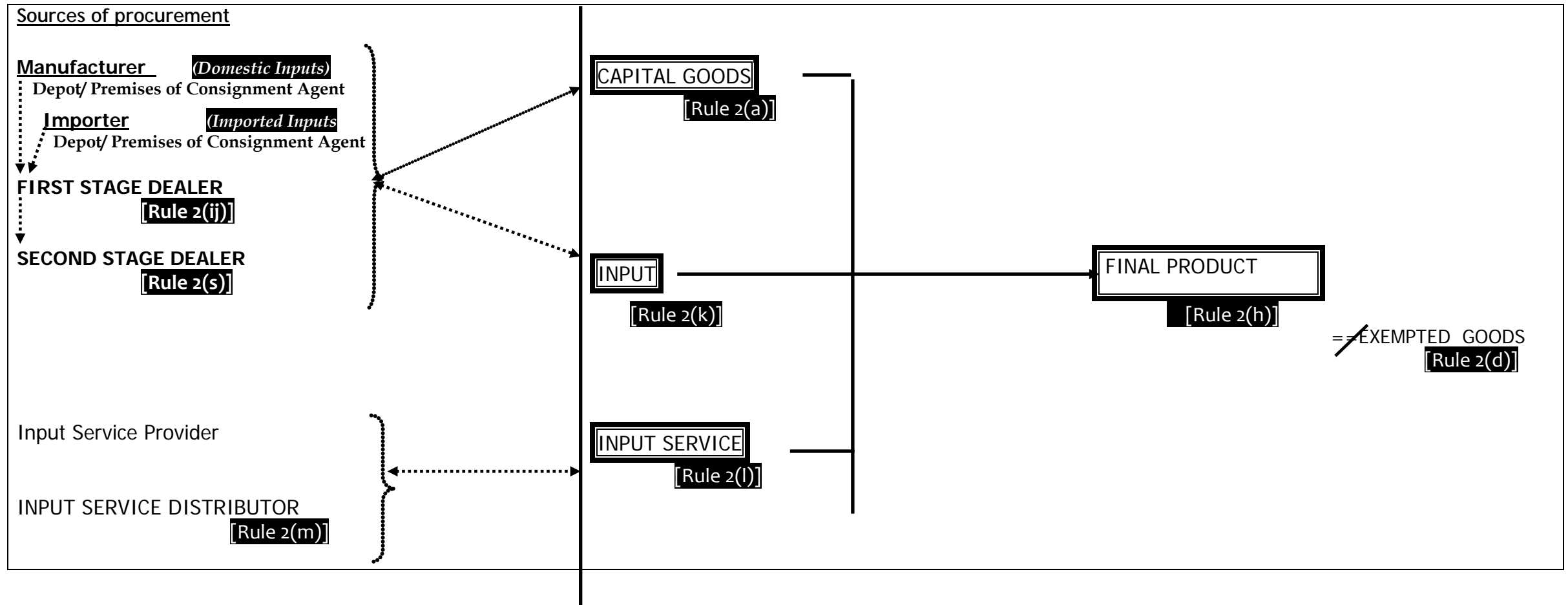
E.g.

⇒ **Plywood** mfd and cleared – bearing brand name (logo) “Pelican” belonging to the SSI Unit – Plywood also bearing brand/logo “Merino” belonging to **Another Person** ---- Admittably, use of “merino” is for indicating quality aspect (that quality is as that of “Merino” brand of plywood”) -- - thus, Exemption will not be available

CENVAT CREDIT RULES, 2004

(Rule 1 to 16)

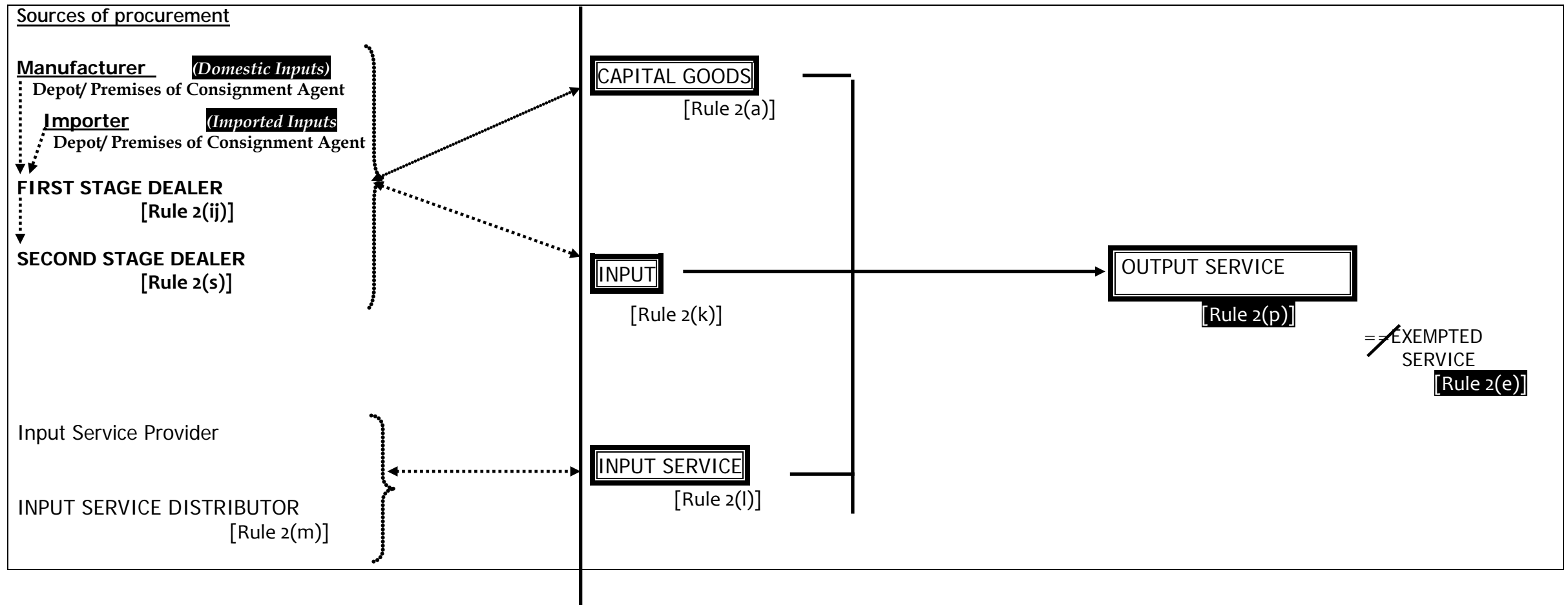
Scheme 1: Cenvat Credit Scheme for the Manufacturer of Final Product



CENVAT CREDIT RULES, 2004

(Rule 1 to 16)

Scheme 2: Cenvat Credit Scheme for "Output Service Provider"



CENTRAL EXCISE RULES, 2002**Rule 4**

- (1) No removal shall be made without payment of duty (i.e., Each removal shall be after paying duty)
 Manufacturer // Warehouse Keeper – shall pay duty as per Rule 8 (Monthly Basis)
- (2) Manufacturer (**Khandsari Sugar Factory**) ----- Molasses ----- **Procurer** (Deemed Manufacturer)
 ↓
 Shall pay duty (at time of receipt thereof in his factory)

Expl Intermediate Goods ----- Issued for use in next process -----
 ↓
 Deemed to be removed from Factory immediately before such Utilization

- (3) without duty payment
 Factory ↓ ----- Store-House (= Warehouse) ----- Duty payment
 ↓
 CCE permission necessary
 ----- exceptional circumstances ----- Due regard to [NATURE OF GOODS + SHORTAGE OF STORAGE SPACE]

Rule 5

- Relevant Date (Date of which ROD & AV shall be taken)
- (1) Any EG (other than Khandsari Molasses) ----- Date of removal from the Factory/Warehouse
 ↓
 IG (= Captively Consumed Goods) --- Date of Removal = Date of Issuance to Next Process
- (2) **Khandsari Molasses** ----- Date of receipt by Procurer

(Explanation)

Rule 6

ASSESSING AUTHORITY

EG (other than Cigarettes) ----- Assessee [System = Self-Assessment System == **SELF-REMOVAL PROCEDURE**]
Cigarettes : ----- SCE / INSPECTOR [System = **PHYSICAL CONTROL SYSTEM**]

Rule 7

- (1) Assessee unable – to determine --- AV or --- Applicable RoD - Then, He may request AC/DC for Provisional Assessment (PA)
 Request accepted --- PA Order shall be passed
- (2) PA allowed --- subject to Execution of Bond by the Assessee
Bond (PD Bond) = [Expected Duty on Final Assessment (FA) – Provisionally Assessed Duty]
(Prescribed Form: B-2)
- (3) PA shall be finalized – (i.e., Final Assessment Order shall be passed)
Time Limit: 6 Mths from Date of PA Order + 6 Mths (CCE) + Further Ext (Chief CCE)
- (4) **FA Duty > PA Duty**, then Assessee shall also pay **Interest @ 13% p.a.** on the differential duty (demand)
- (5) **FA Duty < PA Duty**, then Assessee shall be entitled to **interest @ 6% p.a.** on the differential duty (refund)
- (6) Any Refund resulting from Finalization --- Credited to CWF (i.e., *Doctrine of Unjust Enrichment shall be applicable to PA cases also*)
Exception: *Refund to Applicant if – Manufacturer Applicant has paid and borne ED burden himself*

– Buyer Applicant has paid and borne ED burden himself

Rule 8

(1) DUE DATES OF PAYMENT

	Periodicity	Mths (April to Feb)	Mth (March)
Non-SSI Unit	MONTHLY basis	Within 5 days [E-payment : 6 days]	By 31 st March Itself
SSI Unit	MONTHLY basis	Within 15 days [E-payment : 1 days]	By 31 st March itself

• **E-payment**

- **Mandatory for Cash-Rich Assessee [Cash Rich Assessee= PLA Payment >= 50 lakhs in PY]**
- **For others- e-payment is optional (discretionary)**

Explanation: Duty liability discharge : in case Duty is deposited by Cheque (TR-6 Challan + Cheque)

Date of Presentation of Cheque = Date of Payment, if cheque doesn't get dishonoured subsequently

(2) Manufacturer assessee (Removal of Goods – 1/1/2004) ----- Buyer (Receiving goods on 2/1/2004)

↓
 Due Date yet to come --- Payment not made at time of removal
 But goods shall be deemed to be duty paid at time of removal itself ----- But Cenvat Credit of duty payable thereon admissible to buyer

(3) Failure of pay Duty by due date :--- Consequences **Interest** : ---- @ 13% p.a.

(3A) Failure in Payment of duty by Due Date: if not made good within 30 days of due date, then till default continues

⇒ Assessee can not avail MONTHLY PAYMENT FACILITY (he shall make payment of individual clearances on its own)

⇒ Assessee can not utilize cenvat credit.

[i.e., During such period, not only the duty is payable “transaction wise” but also it is payable only in CASH (i.e., through PLA)]

If default not made good despite these: --- Goods shall be treated as cleared without payment of ED
 CEO entitled to proceed with related consequences & penalties.

[Latest Explanation: Rule 8 facility shall be available not only for payment of ED but also for payment of ANY AMOUNT PAYABLE UNDER CCR, 2004]

Spl provisions as to payment of excise duty:

RULE 15 : COMPOUNDED LEVY SCHEME (CLS) (for Unorganized Sector)

Applicability: Only on Goods Notified by CG (by Notification in OZ) --- e.g. – Stainless Steels Pattis & Pattas

Scheme: Duty liability is fixed based on certain factors of production --- that duty liability is notified

Assessee opting for CLS --- Pay duty at notified rate (irrespective of actual clearances --- which may be lower or higher)

Duty paid in Advance (on periodic basis) --- Rule 8 – N.A. to these units

[Some features ::

1. DSA need not be maintained by units availing CLS.
2. Payment on monthly/quarterly/half-yearly basis as notified in scheme.
3. Payment for related period shall be made in advance.
4. No CCR can be taken by the assessee.
5. Goods sold under CLS: Govt can fix amount of ED which shall be deemed to be paid on such goods. Buyer can take that credit in terms of Rule 13 of

CCR [DEEMED CREDIT SCHEME]—at present no such notification by CG

RULE 17 : REMOVAL BY 100% EOU [in Domestic Tariff Area (DTA)]

Remember: Proviso to Sec 3(1) of CEA: 100% EOU ----- Sale to DTA
ED payable = Aggregate of Customs Duties

- (1) ED liability on clearances in DTA ---- Duty is payable at the time of removal itself (& not on Monthly Basis)
Duty can be paid ---- By debiting PLA or By utilizing Cenvat Credit
- (2) Proper A/cs shall also be maintained [AC-1]
- (3) Prescribed Return: E.R.-2 -- shall be filed to SCE (Monthly Basis --- Within 10 Days)

Rule 9

- (1) Person requiring Registration: Manufacturer + Trader + Pvt. Store-room Keeper + Warehouse Keeper + User
- (2) CBEC may exempt any person from registration requirement (by issuing Notification for that)

N/N 36/2001:

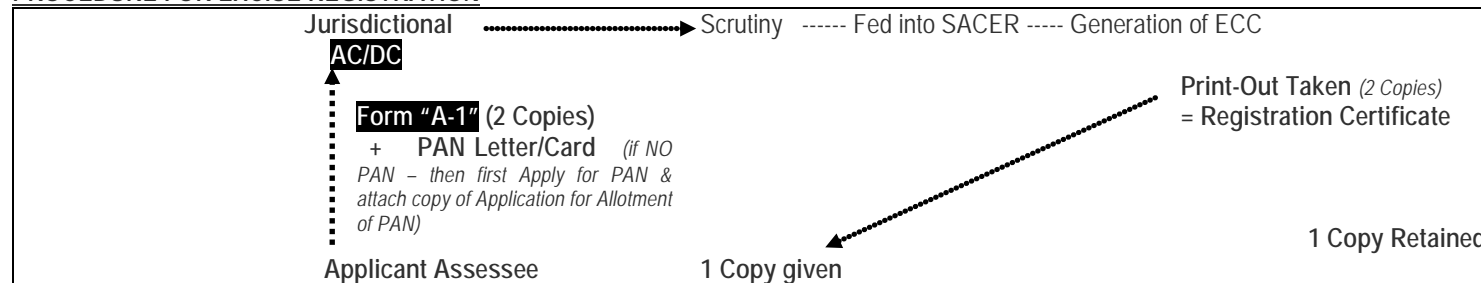
Exemption from Reg to	Subject to Following Conditions
<input type="checkbox"/> Manufacturer of - 100% Exempted goods or Nil Duty goods	⇒ Prescribed Declaration is filed ** If 100% Exemption is Under 8/2003 + AVC (Home Consumption) is upto 90 lacs in immediately PY: --- then, Even Declaration needn't be filed
<input type="checkbox"/> Person getting goods manufactured on Job-Work (R/M Supplier)	⇒ J/Wrker not availing 214/86 (i.e., paying ED himself)
<input type="checkbox"/> Manufacturer doing manufacturing process in Customs Warehouse (permissible in terms of Sec 65 of Customs Act, 1962)	⇒ EG so manufactures & all other goods – either destroyed or exported + Prescribed Declaration is filed + DBK/ REBATE of duty paid on Inputs not claimed
<input type="checkbox"/> Trader of Excisable Goods	⇒ He shall not be a FIRST STAGE DEALER or SECOND STAGE DEALER
<input type="checkbox"/> User of Excisable Goods	⇒ He shall not be a Manufacturer-User who is availing End-use based Exemption Notification.

100% EOU ---- Deemed to be registered (Needn't register themselves separately)

However, if it has linkage with the DTA (i.e., it sells to DTA Unit or purchases from DTA unit) --- then, these shall not be treated as deemed registered unit & shall require separate registration under Excise.

- (3)

PROCEDURE FOR EXCISE REGISTRATION



- ❑ SACER : System for Allocation of Central Excise Registration;
- ❑ ECC = Excise Control Code Alpha-Numeric Code (15-Digit Number)
PAN (10-Digits) + XM // XD // EU (as the case may be) + 001 (2-Digits – No. of Factories)
- ❑ Separate Factories – Separate Registration
- ❑ RC shall be granted within 7 days – if not so granted, on expiry of 7 days it is deemed to be granted
- ❑ Once RC granted – Permanent Status --- UNLESS -
 - i) Surrendered by Applicant (Closure of Factory)
 - ii) Cancelled/Revoked by Dept. (on Breach of Act/Rules or Conviction of offence of giving bribe)
 Death of Applicant – may also lead to cessation of RC

Rule 10

- (1) Maintain DSA (Daily Stock A/c) ---- Record of OPENING/STOCK + QTY MANUFACTURED -- QTY REMOVED = C/STOCK
- (2) Ist & Last Page of DSA --- Shall be Authenticated by Manufacturer or His Agent

Rule 11

- (3) Preserve DSA for 5 Years (after the Year to which it pertain ----
- (1) No removal of EG from Factory/Warehouse --- without Invoice
 ----- **In case of Cigarettes** – Invoice shall be signed by assessee & Counter-signed by the SCE/Inspector
 ---- **In case of all other EGs** --- Invoice needs only signature of Assessee (no counter-sign required)
- (2) Invoice --- shall be Serially Numbered
Shall Contain:-- Registration No + Consignee's Name + Description of goods + Classification Code + ToR & DoR + RoD
 + Qty & Value + Duty thereon + Mode of transport + Vehicle registration no.
- (3) Prepare in TRIPLICATE ---- 1st Copy for Buyer + 2nd Copy for Transporter + 3rd Copy for Assessee
[Assessee can prepare Additional Copies – but those shall be marked as “NOT FOR CENVAT”]
- (4) Only one copy of INVOICE BOOK shall be used at any point of time
Exception: When AC/DC allowed use of additional copies (e.g., in cases of Export)
- (5) Owner // Working Partner // M.D. // CS // Other Authorised Person : Shall authenticate Each Foil of Invoice Book
- (6) Before bringing into use any Invoice Book ---- Intimate Serial Nos of Invoice Book to the SCE
- (7) All above provisions --- shall equally be applicable to Invoice prepared by FSD // SSD
 - ❑ **Additional Requirement in case of FSD/SSD invoice:**

FSD/SSD selling imported goods (in relation to which importer invoice is stating that he will be claiming refund of Special CVD and thus not recovering that as a part of price of goods) – shall state the same in his invoice

Rule 12 (1) DUE DATES OF FILING RETURN

	Periodicity	Mths (April to March)	Form of Excise Return
Non-SSI Unit	MONTHLY basis (12 Returns per Year)	Within 10 days from the end of month	"E.R.- 1"
SSI Unit	QUARTERLY basis (4 Returns per Year)	Within 20 days from the end of month	"E.R.- 3"

- Accompanying Documents:
i) 2 Copies of PLA;
ii) Relevant TR-6 Challans;

Manufacturer of Pan Masala (whether containing tobacco or not):

Shall also submit a STATEMENT OF PURCHASE & SALE INVOICES (Year 2007)

(2) Annual Financial Information (AFI) Statement by CASH SUPER RICH ASSESSEE (PLA Duty of Rs 100 lacs or more)

Every assessee – shall submit to SCE --- "AFI Statement in Form: E.R.-4" [Yearly Statement Due Date: 30th Nov]

CG may exempt any assessee from filing this statement. Indian Ordnance Factories exempt in all cases..

(3) Scrutiny of Excise Return: Proper Officer may scrutinize the correctness of duty assessed by the assessee

(4) To enable proper officer in proper scrutiny of excise returns, assessee shall make available to him all the related documents and records as may be required by him for verification.

Rule 13, 14 Not Relevant at present

RULE 15 COMPOUNDED LEVY SCHEME (CLS) : Discussed earlier alongwith Rule 8

Rule 16 (1) Re-entry: Removal of goods from Factory ----- Duty paid at time of removal

Such duty-paid goods may be brought back into Any Factory [Purpose: Re-made // Re-fined , Re-conditioned // Any other purpose]

Condition: Maintain records of goods so returned;

Upon such return, Assessee shall be entitled to take Cenvat Credit of duty already paid thereon

(2) Re-removal Subsequent clearance of returned goods from the Factory:

- i) If the process to which they have been subjected does not amount to MANUFACTURE :--- Pay AN AMOUNT = Cenvat taken on their return
- **Payment of this amount shall be made at time of transaction itself** (Rule 8 monthly payment facility is only for payment of duty and those amounts which are payable under CCR, 2004)
 - **However, for payment of this amount CCR can be utilized** [Rule 3(4) of CCR permits this]
 - **The credit of amount so paid can be taken by the buyer of goods** [Explanation to Rule 16(2)]
- ii) Any other case (i.e., if the process to which they have been subjected amounts to manufacture, or no processing done on goods) :--- Pay DUTY thereon @ ROD & AV as applicable on their removal

- (3) Difficulty in following (1) // (2) --- Approach Jurisdictional CCE

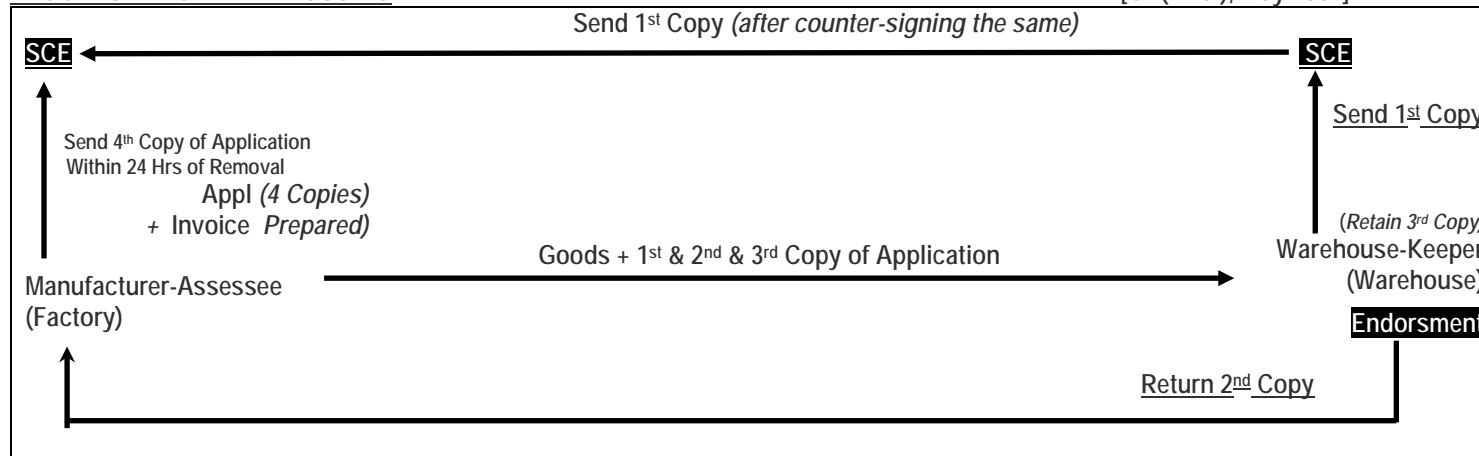
Rule 17 PAYMENT BY 100% EOU : *Discussed earlier alongwith Rule 8*

- Rule 18**
- (1) Export of EG --- under claim of Rebate of duty (First Pay Duty & then Claim Refund on Export)
 - ❑ Rebate of FP: Follow N/N 19/2004 (*Procedure for export to any country other than Nepal / Bhutan*)
 - ❑ Rebate of Inputs: Follow N/N 21/2004 (Declaration with AC/DC + Permission for Procurement + Rebate Claim after export)

- Rule 19**
- (1) Export of EG --- under BOND // LuT
 - ❑ Export of FP under Bond/LUT: Follow N/N 42/2001 (*Procedure for export to any country other than Nepal / Bhutan*)
 - (2) Export of EG --- under BOND // LuT
 - ❑ Procurement of Inputs without duty payment: Follow N/N 43/2001 (*Follow "End-Use based Exemption" Rules*)

- Rule 20**
- (1) CG --- may notify goods – then,
 - ❑ FACTORY ----- No Duty Payment ----- WAREHOUSE
 - ❑ WAREHOUSE ----- No Duty Payment ----- ANOTHER WAREHOUSE

(2) PROCEDURE FOR WAREHOUSING [CA(Final), May 2004]



- (3) Goods received in Warehouse ----- Consignee (*i.e., W/H Keeper*) shall be responsible for duty payment on such goods
- (4) Goods not received in Warehouse ----- Consignor (*i.e., Manufacturer Assessee*) shall be responsible for duty payment on such goods

Rule 21 Remission of Duty (on filing Remission Application):
 Admissible Grounds: i) Loss/Destruction of EG --- due to Natural Reasons or Unavoidable Accident (
 ii) EG --- claimed to be --- Unfit for Marketing or Unfit for Human Consumption

AT ANY TIME BEFORE THEIR REMOVAL FROM FACTORY

Submission of Application: (Limits stated are revised limit –revision done in Year 2007)

Duty Amount of which Remission sought	Relevant Authority to approach
Upto Rs, 10,000	SCE
> Rs 10,000, Upto Rs 1,00,000	AC/DC
> Rs 1,00,000, Upto Rs 5,00,000	JC/Addl. Commissioner
> Rs 5,00,000	CCE

Special Points

- 1) Loss on A/c of Theft: Tribunal: Remission granted (unavoidable accident)
- 2) Receipt of Insurance Claim: If receipt covers ED element also, No remission shall be granted (Trade Notice of CCEr)
- 1) FP Duty Remitted --- Cenvat credit of related input has to be reversed [Rule 6(5-C) of CCR, 2004 --- newly inserted in 2007]

Rule 22 to 24

Powers of CEO (Separate Chapter)

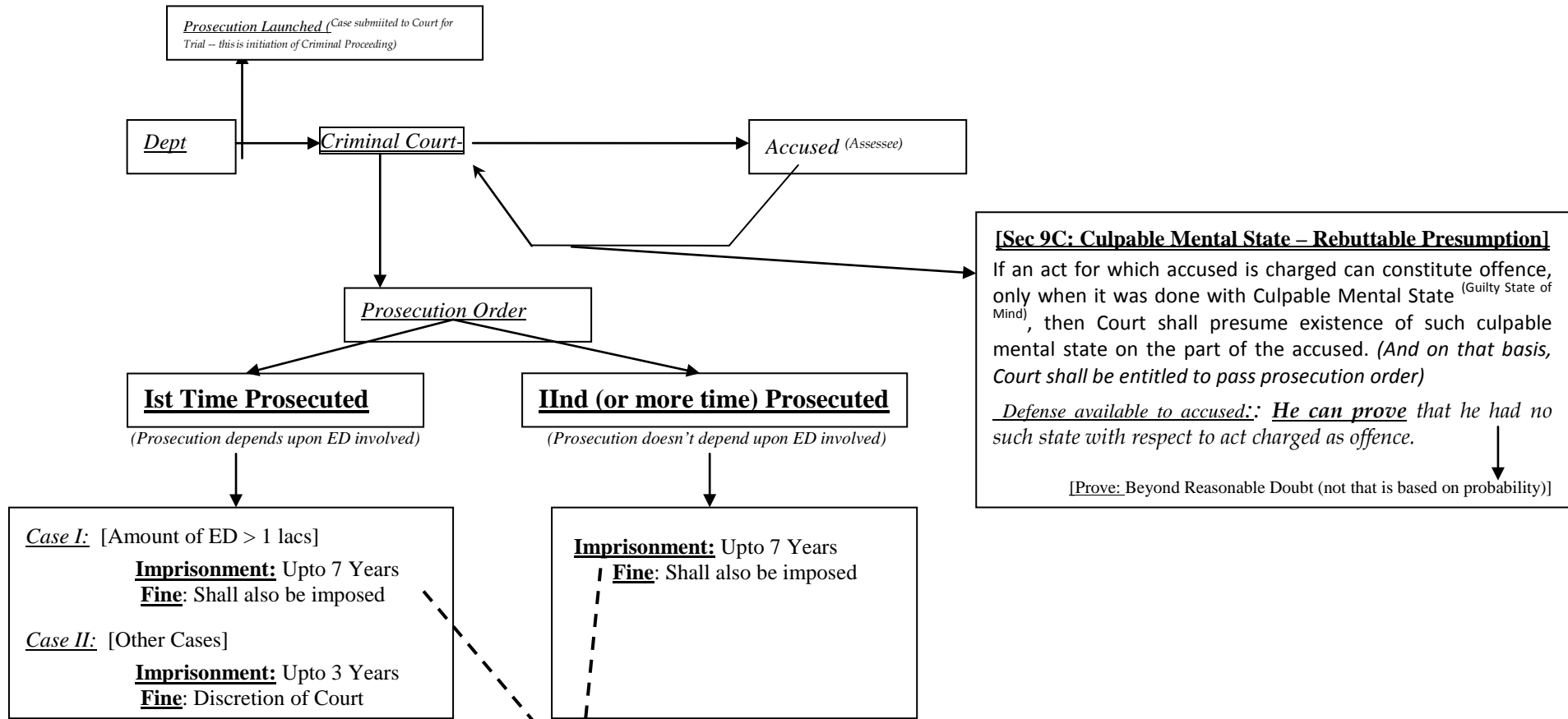
Rule 25 to 30

Civil Proceedings on assessee [CONFISCATION + PENALTY] (Separate Chapter)

Criminal Proceedings

	<u>Which act will constitute Offence (that will attract imprisonment)</u>		<u>Some Special Points</u>
<p><u>Sec 9</u></p> <p><u>Any Person</u> [Natural Person / Artificial Person (Company)] [Assessee / Dept.]</p>	<p><i>When</i></p> <p>1) Possession of "Tobacco" in excess of prescribed quantity;</p> <p>2) Evading payment of excise duty;</p> <p>3) Removal any excisable goods in contravention of any provisions of CEA / Rules <u>or</u> in anyway concern himself with such removal;</p> <p>4) -- Acquiring possession of, or -- In anyway concerning himself in Transporting/Depositing/ Keeping/Concealing, selling or purchasing, or -- In any other manner dealing with goods which he knows or has reason to believe are liable to confiscation;</p> <p>5) Contravention of any provisions of Cenvat Credit Rules, 2004;</p> <p>6) Failure to supply the information which he is required to supply under the act or supplying false information;</p> <p>7) Attempting to commit or abetting the commission of, first two categories of offences.</p>	<p><u>Sec 9A</u></p>	<p><u>Offence to be non-cognizable:</u> No arrest in respect of these Offences shall be made without obtaining arrest warrant.</p> <p><u>Offence can be Compounded:</u> For that request to be made to <u>Chief CCE</u> (such request can be made before launch of prosecution proceeding and even after launch of prosecution proceeding) --- <u>Any of the offence is compoundable</u> on payment of prescribed fee.</p>
<p>If offence is committed by Firm, then same principles (as stated above) shall apply - "Director" in relation to firm shall mean a "Partner in Firm". Same principles will also be applicable if offence is committed by Other Association of Individuals / Any Body Corporate.</p>		<p><u>Sec 9AA</u></p> <p>(1) ↓ (2) ↓</p>	<p><u>Offence by Companies</u> [Principle of <u>VICARIOUS LIABILITY</u>]</p> <p><u>Offence committed by a Company</u> – The person who, at the time of commissioning of offence, was in charge of / responsible for conduct of the business of the company</p> <ul style="list-style-type: none"> ■ shall be <u>deemed to be guilty</u> ■ shall be liable to be proceeded against & punished accordingly. <p><u>Defenses available to such person:</u></p> <p>i) He can prove that offence was committed without his knowledge or ii) He can prove that he exercised due diligence to prevent the commission of that offence</p> <p><u>Offence committed by a Company</u> – Dept prove that it was committed with the consent/involvement of or it is attributable to neglect on part of</p> <p>-Any Director -Manager -Secretary -Other Officer of Company then, such person/s</p> <ul style="list-style-type: none"> ■ shall be <u>deemed to be guilty</u> ■ shall be liable to be proceeded against & punished accordingly.
<p>[Explanation to Sec 9-AA (1)]</p>			

How Criminal Proceeding shall take place



[Term of imprisonment can be reduced to period below 6 Months] --- only when Court shall be satisfied that there exists "SPECIAL & ADEQUATE REASONS" justifying such reduction.
 Reasons not admissible as "Special & Adequate Reasons":

- i) Conviction for the first time
- ii) Penalty has already been imposed/ Goods have been confiscated/ Other action has been taken
- iii) Age of the accused
- iv) Accused merely secondary party, not the principal offender

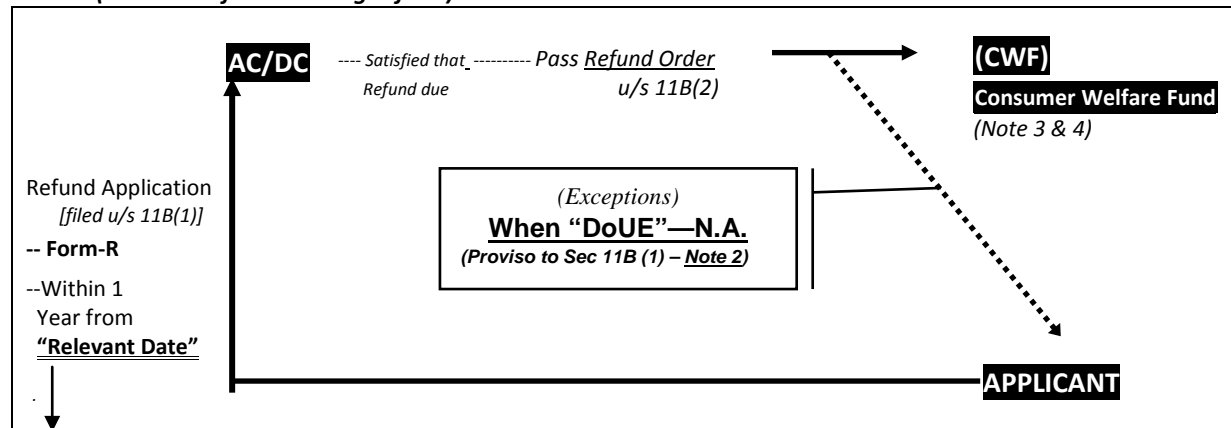
Civil Proceedings

	Confiscation of Goods		Imposition of Penalty
Rule	When	Rule 25	When
Producer/ Mfrer	(a) Removal of goods in contravention of CER, 2002; or	Producer/ Mfrer	(a) Removal of goods in contravention of CER, 2002; or
Registered Warehouse Owner	(b) Failure to account for goods; or	Registered Warehouse Owner	(b) Failure to account for goods; or
Reg Dealer [FSD/SSD]	(c) Manufacture/production/storage of goods without having applied for the excise registration; or	Reg Dealer [FSD/SSD]	(c) Manufacture/production/storage of goods without having applied for the excise registration; or
	(d) Contravention of CER, 2002 with intent to evade payment of duty.		(d) Contravention of CER, 2002 with intent to evade ED
	How confiscation proceedings shall take place		Max Penalty which the officer can impose
			Higher of the following 2: i) ED involved on goods involved; ii) Rs 2000/- [Reduced in Year 2007]
		Rule 26	When
		Any Person	(a) Possession of goods; or
			(b) Transportation/Removal/Deposit/Sale/ Purchase of goods; or
			(c) Dealing in goods in any other manner
			[Goods = Goods which the person knows or has reason to believe are liable to confiscation]
			Max Penalty which the officer can impose
			Higher of the following 2: iii) ED involved on goods involved; iv) Rs 2000/- [Reduced in Year 2007]
			New Penalty from Year 2007 onwards
			Person issuing Ex invoice to a person without delivery of goods – and thus, enabling him to take CCr/refund/other benefit---
			Max Penalty which the officer can impose
			Higher of the following 2: i) Amount of such benefit; ii) Rs 5000/-
		Rule 27	In respect of any contravention of CER, 2002 – for which no specific penalty has been provided
		Any Person	Max Penalty which the officer can impose Rs 5000/-
			[Confiscation action is also possible in this situation]

[Click Here to Get More Updates On CA & CS On WHATSAPP](#)

REFUND OF EXCISE DUTY

ec 11B: (Procedure for obtaining refund)



“RELEVANT DATE”

SITUATIONS

1. Refund arising on account of “Rebate Claim” by assessee on export of FP (Rule 18 Rebate --- Rebate of ED paid on FP and/or Rebate of ED paid on Inputs)
2. Assessee availing CLS –ED paid in advance at notified rate --- subsequent Reduction in rate by CG before expiry of the period for which it has been paid
3. Refund arising on account of issuance of Exemption Order (u/s 5A(2) – to individual assessee – who has already paid duty prior to issuance of such order)
4. Refund arising on account of Finalization of Provisional Assessment
5. Refund Claim by Buyer (person other than the manufacturer)
6. Any other Case

“RELEVANT DATE” SHALL MEAN:

Date of Export

- Export by sea/air --- Date on which ship/aircraft leave India
- Export by land --- Date on which goods pass through frontier
- Export by post --- Date of dispatch of such goods by post office

Date of such reduction by CG

Date of Issuance of such order

Date of Adj. of duty at the time of Final Assessment

Date of Purchase of goods

Date of Payment of duty

Sec 11BB: Interest on Delayed Refund

Refund order passed u/s 11-B(2) – after 3 Mths of Receipt of Refund Application: --- Interest @ 6% p.a. shall be paid [Period: (from: After expiry of **3 months from date of application**) (to: date of refund)]

Note 1:

“DoUE” (Doctrine Of Unjust Enrichment): no person can seek to collect duty from both ends ---that is he can't collect the duty from the purchaser on one hand and also collect it from the State by way of refund alleging that the duty had been collected by him contrary to the law. (Simple Words – Refund can't be given to assessee applicant if he had passed on duty incidence to other person) --- Sec 11B incorporates this doctrine in Excise

General Presumption (Sec 12B) --- It shall be presumed that payer of ED has passed on FULL incidence of ED to buyer of goods.

Note 2:

“DoUE:--- Where Inapplicable (Proviso to Sec11B(2))

- I. Unspent advance deposit lying in the balance in PLA;
- II. Refund of Cenvat Credit;
- III. Rebate of ED paid on Inputs / FP on export u/ Rule 18 of CER, 2002
- IV. ED paid & borne by the manufacturer;
- V. ED paid & borne by the buyer;
- VI. ED borne by other notified class of person.

Note 3:

CONSUMER WELFARE FUND

Sec 12C: CWF is established by CG under this section.

Sources of Income

Excise Refunds	Customs Refunds	ST Refunds
Investment income of fund		
Other monies received from CG		

Utilization of CWF (Sec 12D)

- ⇒ For welfare of Consumers (As per Rules made by CG)
- ⇒ **Accounts of utilization shall be maintained** (in such form as CG prescribe in consultation with CAG(Comptroller & Auditor General))

[Click Here to Get More Updates On CA & CS On WHATSAPP](#)

Some other Points:□ **Duty paid Under Protest** *(M.imp)*

Dispute regarding ED liability ---- assessee needing immediate clearances which are not allowable before duty payment --- He can pay duty “under protest” -
 -- For that, he has to lodge protest before the officer (i.e., file letter of protest) and obtain dated acknowledgment of the same + Mark all Invoices & Excise
 Returns indicating such payment ---- Later on, matter is finally settled by the Appellate Authority (*whose decision shall be binding on both --- Assessee & Dept*)
 ----- if Assessee wins --- Refund will arise

Issue 1: Whether Refund will be automatic or “Refund Application” required under this situation also? ----- Refund Application required

Issue 2: What shall be time limit of 1 year applicable for making such applicatioin”?-----

[Yes --- though 1 year shall be counted from date of Appeal Order --- [Sec 11-B amended in year 2007]

Issue 3: Whether “Doctrine of Unjust Enrichment” applicable to such refunds?----- Yes [ALLIED PHOTOGRAPHICS LTD. – 2004- SC]

□ **Some case-Studies** *(Imp)***Applicability of “DoUE”**

□ **Refund of ED relating to goods not sold to the buyer but consumed captively in production of excisable goods which were sold to the buyer**

Yes ---- burden is passed on INDIRECTLY

SOLAR PESTICIDES LTD – 2000-- SC

□ **Sec 35F of CEA, 1944 --- ED demand by CEO --- Assesee filing Appeal ---- Sec 35F requires deposit of demand before hearing granted for Appeal ---- Assessee winning the case ---- Refund arising**

No ---- Money Deposited = Amount (& not ED)]

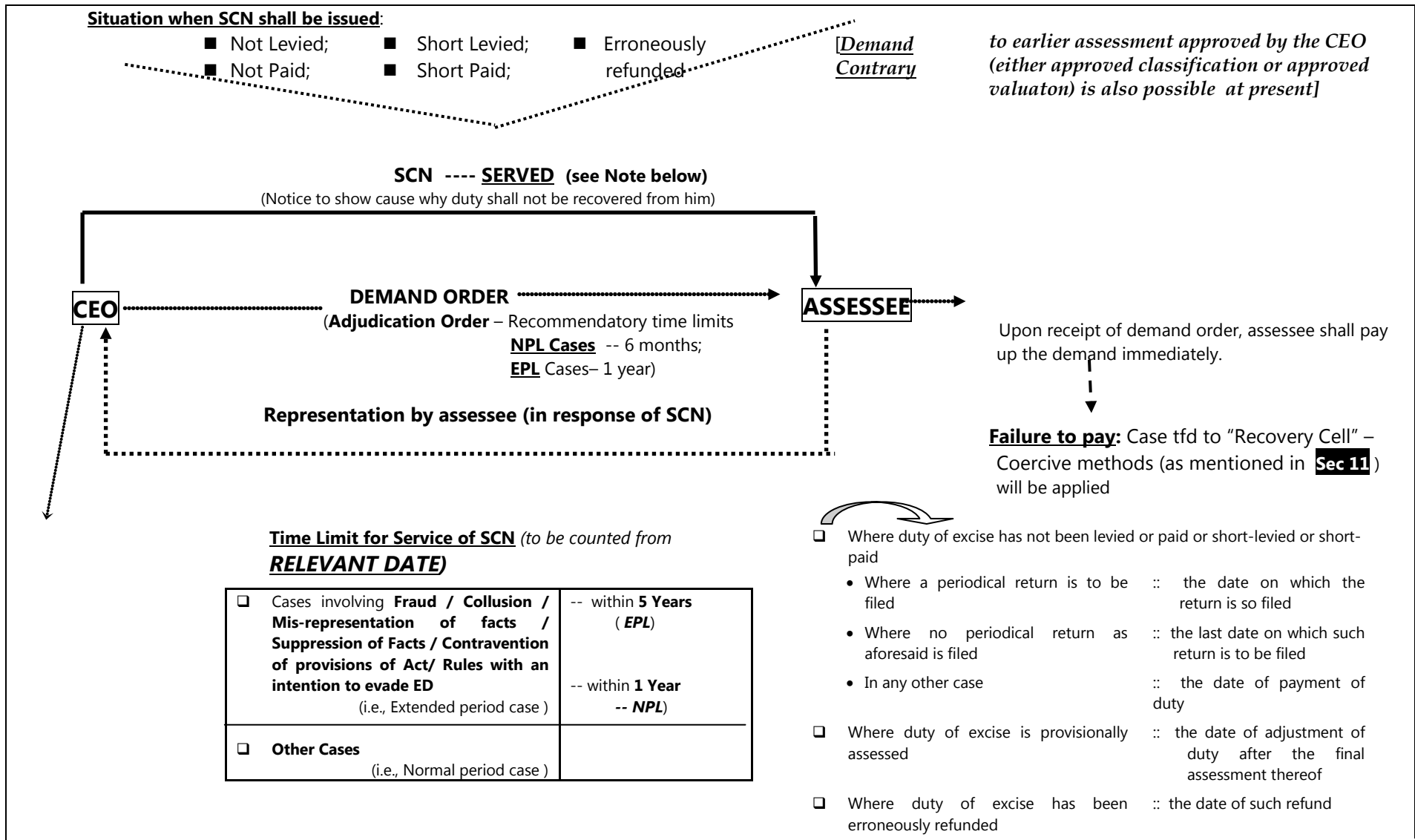
[MAHAVIR ALUMINIUM INDUSTRIES LTD. – 1999-SC]

□ **Bank Gurantee furnished ----wrongly encashed ---- now, assessee fulfilled obligations ---- claiming refund of bank gurantee encashed**

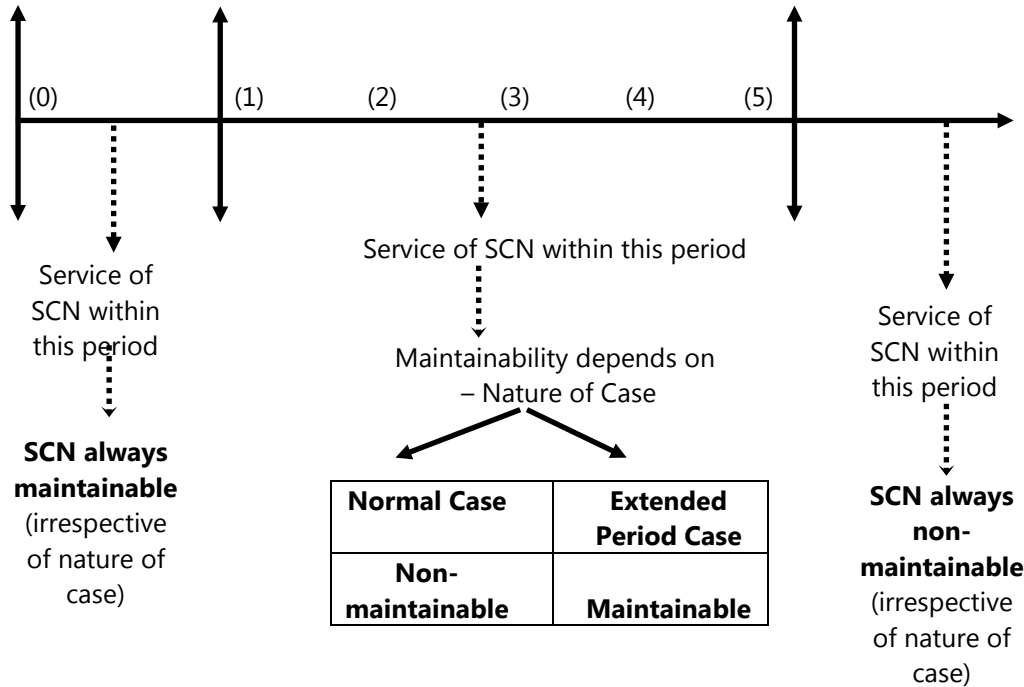
No ---- Bank Gurantee furnished can't be equated with payment -- so, return thereof can't be called repayment/refund – therefore, DoUE is not applicable [OSWAL AGRO MILLS LTD. – 1994- SC]

DEMAND & RECOVERY

Sec 11A(Recovery of ED) -- Recovery Mechanism under CEA, 1944



Special Point:



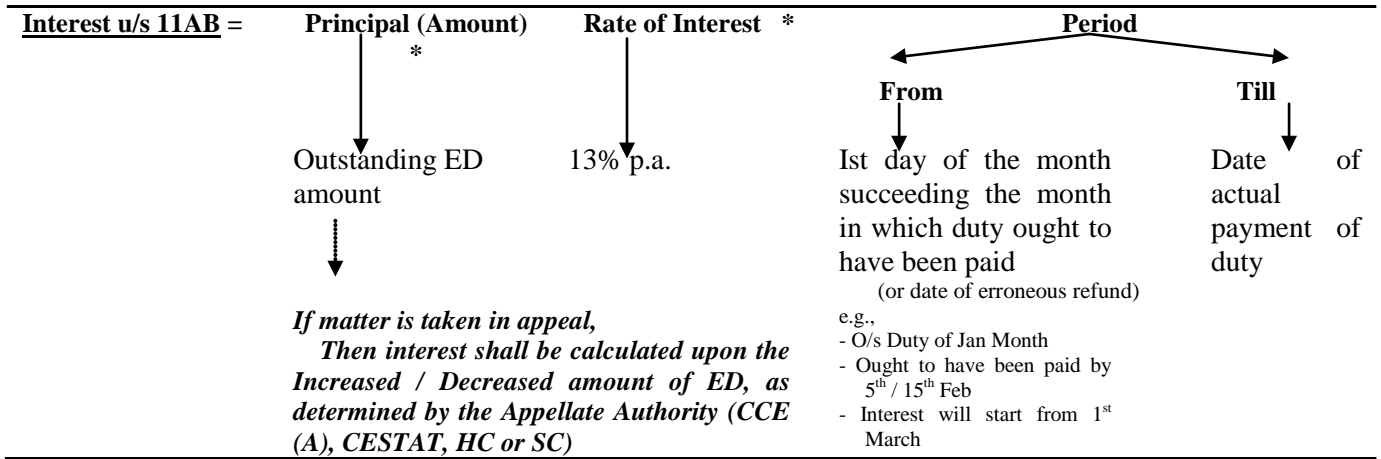
	"Normal Period Case"	"Extended Period Case"
Sec 11A		
--- Service of SCN	Within 1 year from relevant date	Within 5 years from relevant date
--- Adjudication of Demand	Within 6 months from date of service of SCN	Within 1 year from date of service of SCN
--- Voluntarily payment facility		
⇒ Old Facility (Payment before issuance of SCN)	Available	Not available
⇒ New Facility (Payment After issuance of SCN)	Not available	Available
Sec 11AB - Interest @ 13% p.a.	Payable	Payable
Sec 11AC -- Penalty equal to the duty involved	Not leviable	Leviable

VOLUNTARILY PAYMENT FACILITY

<p>❑ Old Facility --- Payment <u>before</u> issuance of SCN --- Sec 11A (2B)</p> <p>Before service of SCN ---- assessee can opt for voluntarily payment of ED which may either be ascertained from the CEO (and intimated to the assessee) or may be ascertained on his own by the assessee</p> <p>upon such payment, he shall inform the CEO of such payment then, CEO shall not serve SCN in relation to ED so paid.</p> <p>However, still CEO has every right to determine whether there is still any short-payment of duty. If he finds that, then in relation to such duty he can proceed with SCN which can be served within 1 year from date of receipt of voluntarily payment information from the assessee.</p> <p>Note 1: <i>Voluntarily payment facility is not available in Fraud / Collusion / Wilful mis-statement / Suppression / intentional contravention cases.</i></p> <p>Note 2: Alongwith ED, interest u/s 11AB @ 13% is always payable.</p>	<p>❑ New Facility --- Payment <u>after</u> issuance of SCN --- Sec 11A (1-A)</p> <p>Case of EPL (fraud etc) --SCN served u/s 11-A(1)</p> <p>⇒ Duty specified in SCN acceptable in full by assessee --- Pay Voluntarily [ED + Interest 13% p.a. + Penalty (= 25 % of ED)] within 30 days of receipt of SCN -→ CEO will not pass DO (Demand Order) – Adjudication proceedings shall stand concluded with the voluntarily payment of assessee [However, Criminal Proceedings shall remain unaffected by such payment –i.e., prosecution is still possible]</p> <p>⇒ Duty specified in SCN acceptable in part by assessee --- Pay Voluntarily [ED (as acceptable) + Interest 13% p.a. + Penalty (= 25 % of ED acceptable)] within 30 days of receipt of SCN -→ CEO will pass DO (Demand Order) for the balance amount</p>
--	--

	<u>Old Voluntarily Payment Facility</u>	<u>New Voluntarily Payment Facility</u>
1.	Sec 11-A(2B)	Sec 11-A(1A)
2.	This facility is applicable in respect of NPL Cases (Bona-fide cases).	This facility is applicable in respect of EPL Cases (Fraud cases).
3.	This facility provides for voluntarily payment before issuance of SCN by the CEO. <i>(i.e., this facility is available prior to initiation of adjudicating proceeding).</i>	This facility provides for voluntarily payment after issuance of SCN by the CEO. <i>(i.e., this facility is available subsequent to initiation of adjudicating proceeding).</i>
4.	Payment Involved: [Duty + Interest + Penalty]	Payment Involved: [Duty + Interest + Penalty]
5.	<p><u>Full Payment—Consequences</u></p> <p>_ SCN shall not be served upon the assessee. <i>[Question of Criminal proceeding doesn't arise at all –as there was simply non-payment of duty and not evasion of duty]</i></p>	<p><u>Full Payment—Consequences</u></p> <p>SCN already served --- Demand Order shall not be passed. <i>[However, Criminal Proceedings can still be conducted against the assessee]</i></p>
6.	<p><u>Part Payment—Consequences</u></p> <p>_ SCN can be served in respect of balance payment and in pursuance of such SCN, Demand Order can be issued. Payment Involved: [Duty + Interest + Penalty]</p>	<p><u>Part Payment—Consequences</u></p> <p>SCN already served --- For balance amount SCN already issued will remain valid and Demand Order can be passed in pursuance of such SCN. Payment Involved: [Duty + Interest + Penalty]</p>

Sec 11AB: Interest on delayed payment of duty



Proviso: (How to save Interest)

CBEC Order/ Instruction / Direction (*popularly called "Circular"*) issued u/s 37B of CEA, 1944 --- consequent to which duty is becoming payable

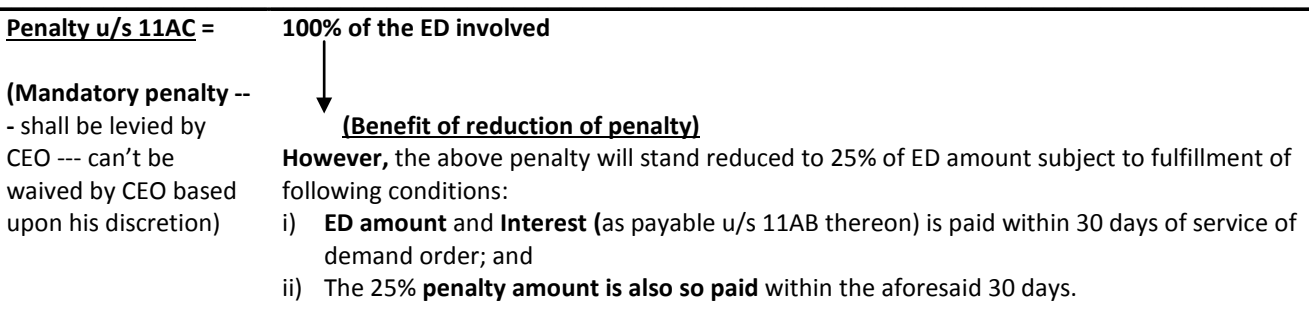
Assessee does following 2 things:

- i) He pays such duty voluntarily the **whole (100%)** amount of such duty --- within 45 days of issuance of such Order/ Instruction / Direction
- ii) He surrenders his right of appeal against any such payment

Then, upon such ED amount no interest is payable.

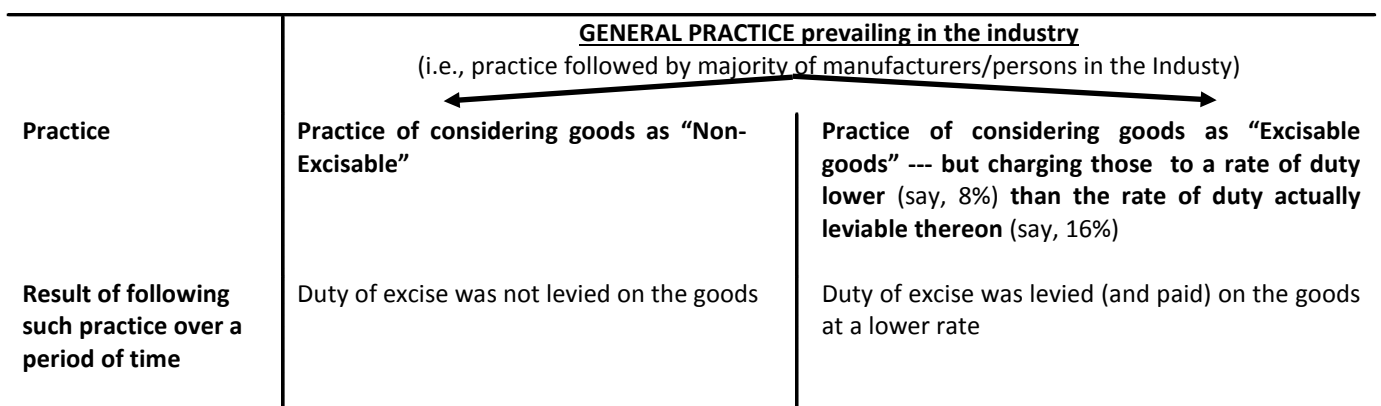
[Any other case --- Interest is payable (on whole of amount, including the amount already paid)]

Sec 11AC: Penalty in "Extended Period's Cases"



<p>If matter is taken in appeal, Then Penalty shall be calculated upon the Increased / Decreased amount of ED, as determined by the Appellate Authority (CCE (A), CESTAT, HC or SC)</p>	<p>However, if ED increased in appeal, then benefit of reduction of penalty on account of timely payment of dues (i.e., within 30 days of service Appellate Authority's Order) shall remain available to the assessee.</p>
---	--

Sec 11C: CG power --- Not to recover duties "Not-paid" or "Short- Paid" --- when such non-payment or short-payment is the result of "GENERAL PRACTICE prevailing in the industry"



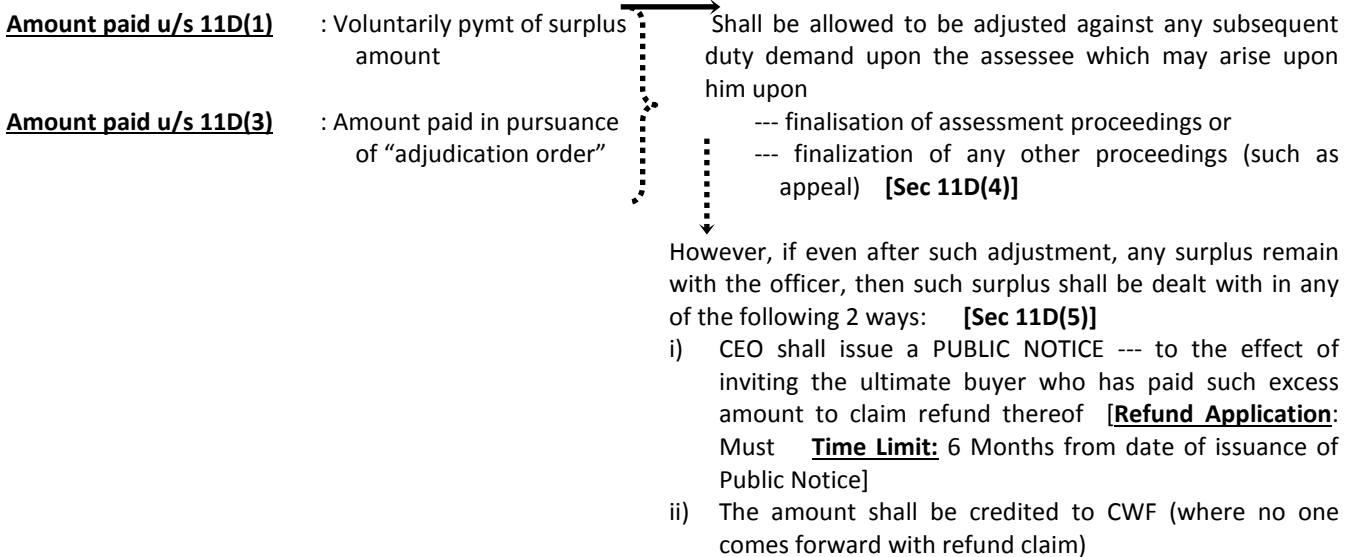
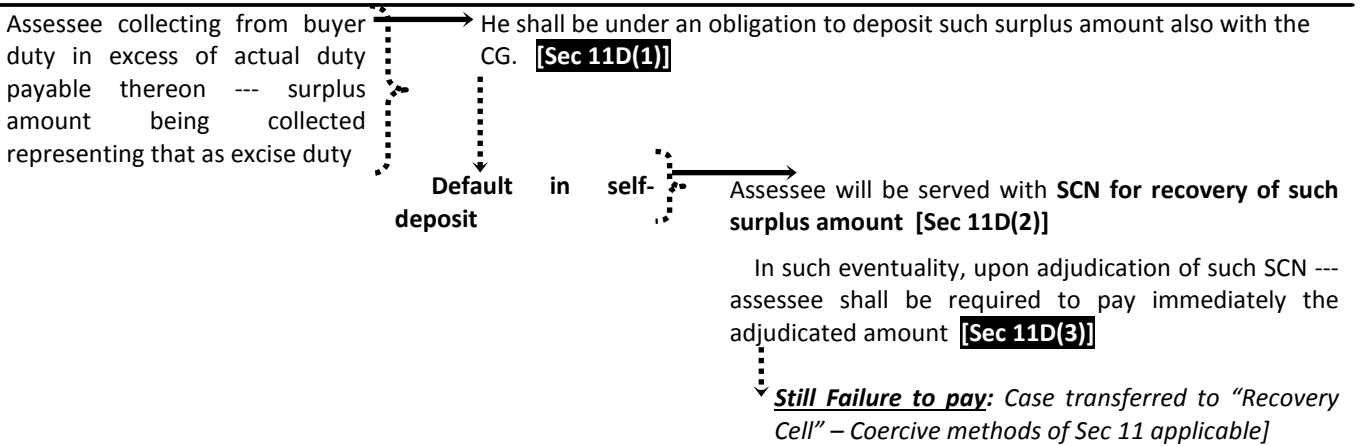
CG has got special power u/s 11C	To direct that whole of such amount needn't be paid	To direct that the differential amount (i.e, ED amount as per actual applicable rate --- ED amount paid as per general practice) needn't be paid
----------------------------------	---	--

If such a direction is issued --- then the **persons who have paid correct duty (not as per General Practice)** -- then such persons shall be entitled to the REFUND of duty paid in excess by them

Refund Application: -- Must **Time Limit:** 6 months from issuance of CG direction u/s 11C

(Refund will be subject to Doctrine of Unjust Enrichment)

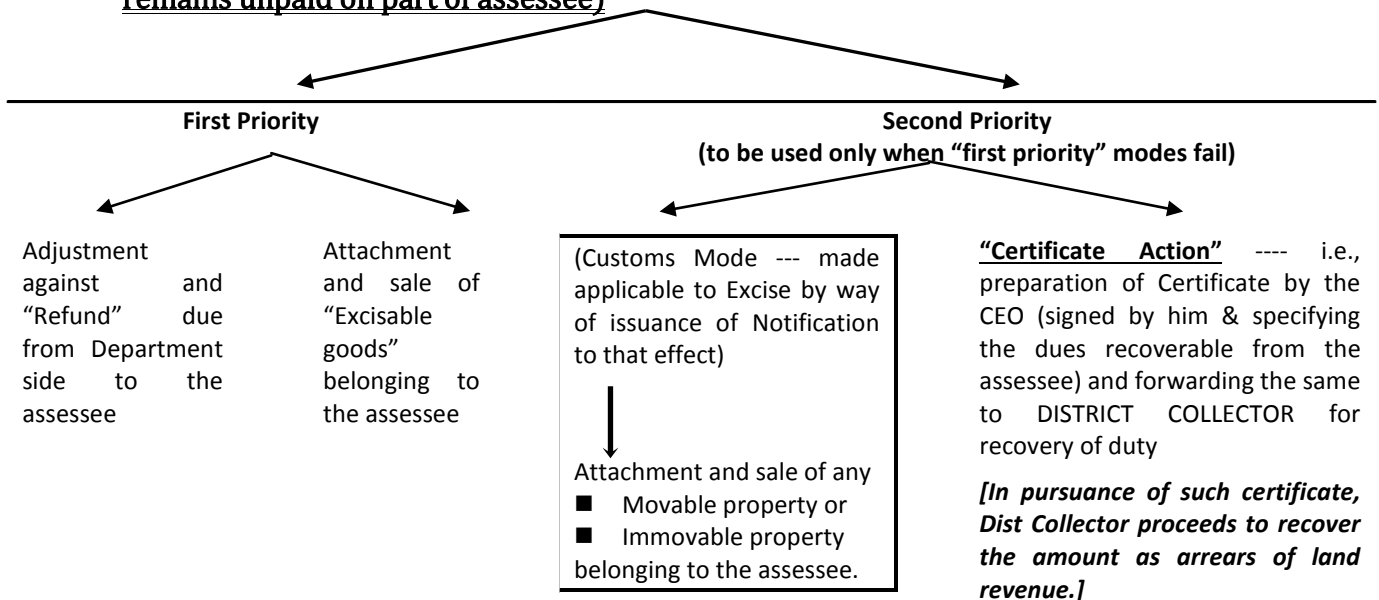
Sec 11D: Recovery from Buyer of Excisable Goods --- of amount in excess of "statutory duty - as actually payable thereon"



Sec 11DD: Interest on delayed payment of Amount as adjudicated u/s 11D(3)

Interest @ 15% p.a.

Sec 11: Modes of Recovery (Powers of CEO to give effect to recovery of adjudicated amount which remains unpaid on part of assessee)



Dues of predecessor – Recovery action against Successor

Recovery Action possible against successor

- **But prior approval of CCE is necessary for taking such action**
- Also, **only certain specified items can be attached and sold** in that recovery action

Sec 11: Provisional Attachment of Property (Movable/Immovable) for protection of Interest of Revenue

When: Proceedings initiated against assessee

- ❖ u/s 11-A (ED Demand Proceedings)
- ❖ u/s 11-D (Surplus Amount Recovery Proceedings)

How: PA Order shall be passed by CEO who has initiated the proceeding (*prior approval of CCE is necessary*)

Period of Validity of Order

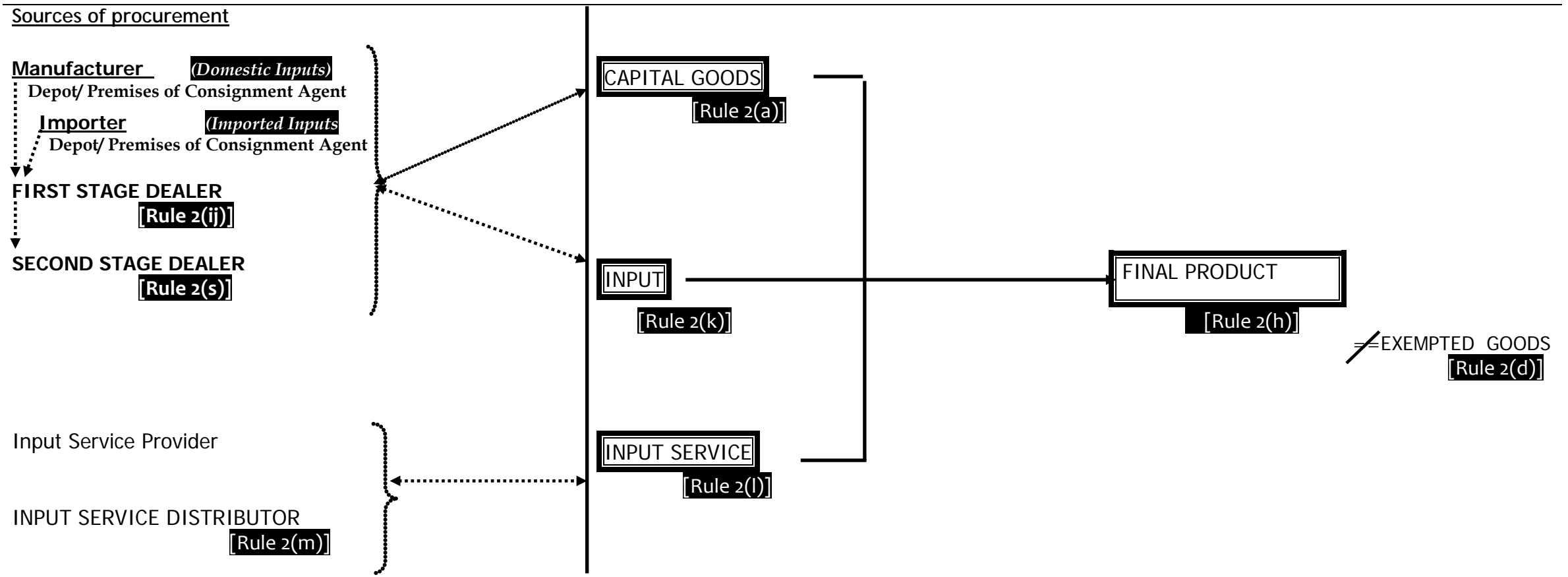
[Initial 6 months + Extension upto 2 years (by Chief CCE)]

	<u>Sec 11</u>	<u>Sec 11-DDA</u>
1.	It covers ANY AMOUNT payable under CEA, 1944.	It covers only the following 2: i) ED; ii) Sec 11-D Surplus Amount (which has been collected representing it as an ED)
2.	Sec 11 provides for various modes of recovery which can be applied for recovery of adjudicated (assessed/determined) dues. (<i>i.e., it is applied after related proceedings have been concluded</i>). In other words, it is curative by nature.	Sec 11 provides for provisional attachment of property during the pendency of proceedings. In other words, it is preventive by nature..
3.	It is used by RECOVERY CELL (of Central Excise Dept) [No prior permission]	It is used by CEO who has initiated the proceedings. [Prior permission of CCE is necessary]

CENVAT CREDIT RULES, 2004

(Rule 1 to 16)

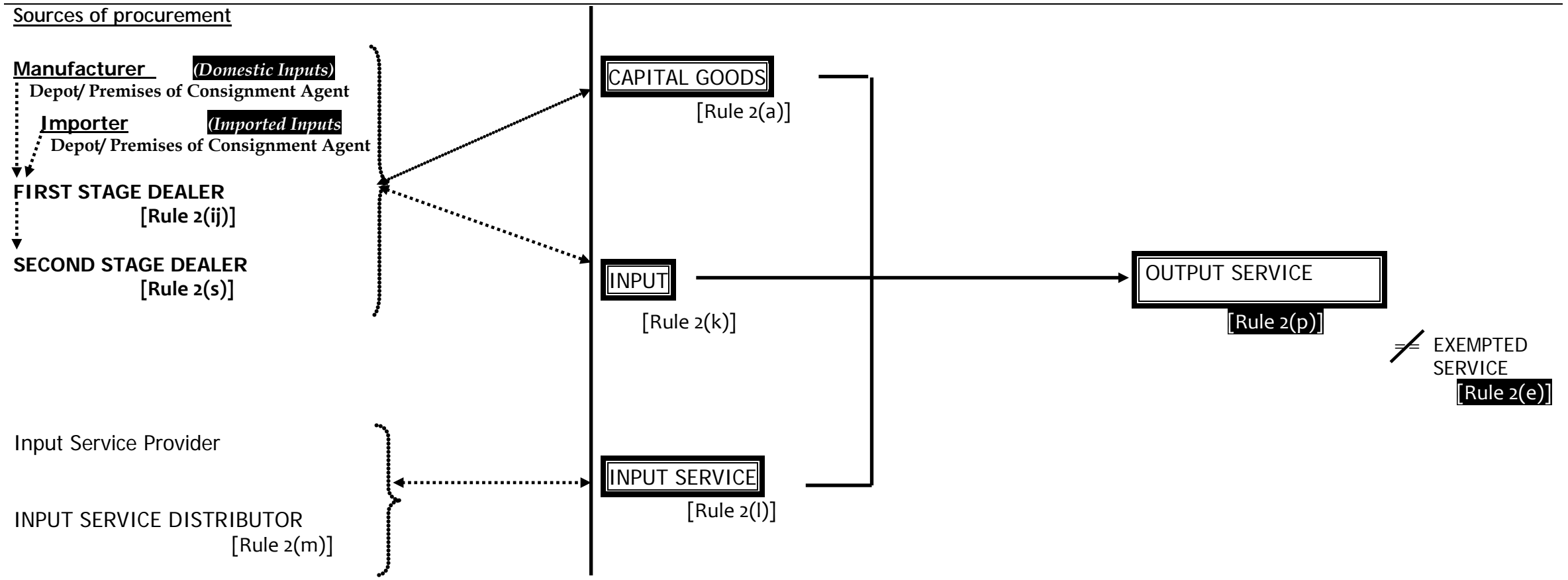
Scheme 1: Cenvat Credit Scheme for the Manufacturer of Final Product



CENVAT CREDIT RULES, 2004

(Rule 1 to 16)

Scheme 2: Cenvat Credit Scheme for "Output Service Provider"



CENVAT CREDIT RULES, 2004

Rule 2: Definitions

			Comments
<p>☐ Capital Goods [Rule 2(a)]</p>	<p>Means</p> <p style="text-align: right;"><i>but it doesn't include</i></p>	<p>(A) the following goods, namely:--</p> <p>(i) All goods falling under ---- Chapter 82 / 84 / 85 & 90 ---- Heading No. 68.04 68 05 of the First Schedule to CETA, 1985;</p> <p>(ii) Pollution control equipment</p> <p>(iii) Components, Spares and Accessories of the goods specified at (i) & (ii) above;</p> <p>(iv) Moulds and dies, jigs and fixtures;</p> <p>(v) Refractories and refractory materials;</p> <p>(vi) Tubes and pipes and fittings thereof; and</p> <p>(vii) Storage Tank,</p> <p style="text-align: center;"><u>used in the factory of the manufacturer of the final products;</u></p> <p>--- Any equipment or appliances used in an office</p>	<p>(1) CG must be received in factory [Rule 4(2)]. They must be used in factory (excluding office area).</p> <p>(2) CG shall be USED IN FACTORY --- use in manufacture of FP is not required.</p> <p>(3) CG for excise may be different from CG in Accounts / I.Tax. thus, cenvat records of CG shall be maintained separately [e.g, Motor Vehicle is not CG for cenvat purposes]</p>
<p>☐ Input [Rule 2(k)]</p>	<p>Means</p> <p style="text-align: right;">& Includes</p>	<p><u>All goods</u> {except -- LDO, HSD and Petrol) ---- used in or in relation to the manufacture of final products, ---- whether directly or indirectly and whether contained in the final product or not,</p> <ul style="list-style-type: none"> ▪ Lubricating oils, greases, cutting oils and coolants. ▪ <i>Accessories</i> of the final products cleared along with the final product, ▪ <i>Goods</i> used <ul style="list-style-type: none"> ---- as paint, or ---- as <i>packing material</i>, or ---- as fuel, or ---- for generation of electricity or steam <u>used for manufacture of final products or for any other purpose,</u> within the factory of production <p>Expl 1- LDO, HSD & PETROL shall not be treated as input for any purpose whatsoever.</p> <p>Explanation 2. - Input include goods used in the manufacture of</p>	<p>(1) Input must be received in factory [Rule 4(1)]. They must be used in or in relation to manufacture of FP. [except those mentioned in "includes part"]</p> <p>(2) Definition is wide --- any goods used in or in relation to manufacture of FP is INPUT [except—LDO, HSD and Petrol]</p> <p>(3) Input of Input of FP – shall also be input of FP Input of CG of FP – shall also be input of FP</p>

Click Here to Get More Updates On CA & CS On WHATSAPP

		CG which are further used in the factory of the manufacturer	
<input type="checkbox"/> Input Service [Rule 2(m)]	<p>Means</p> <p>Includes</p>	<p>any service, used by manufacturer, <i>whether directly or indirectly</i>, in or in relation to</p> <p>⇒ <i>the manufacture</i> of final products <i>and</i></p> <p>⇒ <i>clearance of</i> final products from the place of removal</p> <p>services used in relation to</p> <p>--- setting up, modernization, renovation or repairs of FACTORY or AN OFFICE relating to such factory/premise,</p> <p>--- advertisement or sales promotion, market research,</p> <p>--- storage upto the place of removal,</p> <p>--- procurement of inputs,</p> <p>--- activities relating to business, <i>such as</i> accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;</p>	<p>(1) Input Service need not received in factory [Rule 4(1)]. They need not be used in Factory.</p> <p>(2) Definition is widest --- any service used in relation to any BUSINESS ACTIVITY – is input service</p> <p>(3) Freight Service: From factory to other place of removal (like depot)—Eligible Input Service (includes part)</p> <p>From factory to customer premises —Eligible Input Service (means part – service relating to clearance of FP) --- However, in its latest circular CBEC has denied allowance of such credit [Year 2007]</p> <p>(4) Telephone service: Eligible (both landline and mobiles) [CBEC Circular 2007]</p>
<input type="checkbox"/> Final Products [Rule 2(h)]	<p>means</p>	<p><i>Excisable goods</i> manufactured or produced</p>	<p>(1) Even waste/scrap is a FP if it is excisable under excise.</p>
<input type="checkbox"/> Exempted Goods [Rule 2(d)]	<p>Means</p> <p>Includes</p>	<p>Goods, which are exempt from <i>whole</i> of the duty of excise &</p> <p>Goods, which are chargeable to nil rate of duty.</p>	<p>Generally, Credit is not admissible if FP is exempted goods [Rule 6(1)]</p> <p>[Exceptions: in 7 cases CCR is admissible even if FP is exempt- Rule 6(6)]</p>

[Click Here to Get More Updates On CA & CS On WHATSAPP](#)

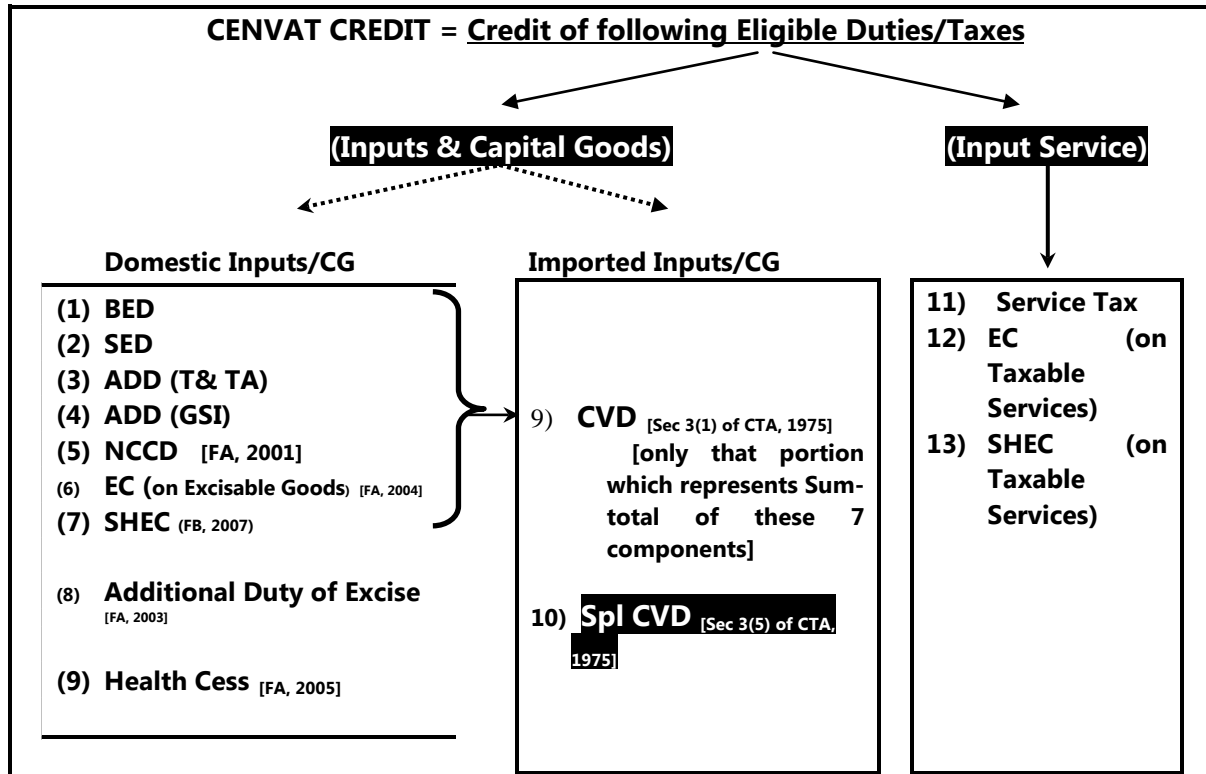
<p>❑ Input Service Distributor [Rule 2(m)]</p>	<p>Means</p>	<p>an office of the manufacturer or producer of final products which</p> <ul style="list-style-type: none"> --- receives invoices from input service provider towards purchases of input services and --- issues its own invoice/ challan for the purposes of distributing that credit of service tax paid 	<ul style="list-style-type: none"> (1) ISD shall be registered under Service Tax. (2) ISD shall mandatory issue ST invoice for distributing credit. ---[Rule 4-A of ST Rules, 1994] (3) ISD shall file Cenvat Returns (Half-Yearly Return – by end of following month) -- Rule 9 of CCR, 2004 (4) ISD shall maintain Cenvat Records.-- -- Rule 9 of CCR, 2004 (5) <u>Amount that can be distributed by ISD [Rule 7]: 2 conditions</u> <ul style="list-style-type: none"> (1) the amount of ST paid by it for input service; (2) the amount not related to input service used in factory where exclusively exempted goods are manufactured (6) <u>Ratio in which it can distribute the credit among various factories:</u> ANY RATION as per its own discretion [Ministry clarification]
<p>❑ First Stage Dealer [Rule 2 (ij)]</p>	<p>means</p>	<p>A dealer purchasing from</p> <ul style="list-style-type: none"> ▪ <u>Manufacturer</u> (His Factory / Depot / Agent’s premises) or ▪ <u>Importer</u> (His Premise / Depot / Agent’s premises) 	<ul style="list-style-type: none"> (1) FSD (and SSD) shall be registered under Excise. (2) FSD (and SSD) shall mandatory issue Excise invoice for passing on credit. (3) FSD (and SSD) shall file Cenvat Returns (Half-Yearly Return – within 15 days) – Rule 9 of CCR, 2004 (4) FSD (and SSD) shall maintain Cenvat Records.-- -- Rule 9 of CCR, 2004
<p>❑ Second Stage Dealer [Rule 2 (s)]</p>	<p>means</p>	<p>A dealer who purchases the goods from a first stage dealer.</p>	

[Click Here to Get More Updates On CA & CS On WHATSAPP](#)

Eligible Duties for Credit --- Rule 3(1)

$$\text{Cenvat Cr} = \text{Cr of [ED + CD + ST]}$$

9 types of ED 2 types of CD 3 types of ST



Special Provisions: Rule 3(7)(a)

Inputs/CG purchased from 100% EoU
[Rule 3(7)(a)]

$$\text{CCr} = [X * (1 + \text{BCD}/400) * \text{CVD}/100]$$

Conditions for availment of CCr --- Rule 3(1)

	<u>Basic Condition</u>	<u>Admissible Credit</u>		<u>Special Remarks</u>
Inputs	Receipt in premises	100% Credit		<p><u>Treatment of Input loss:</u></p> <ul style="list-style-type: none"> ■ Transit Loss: CCr not admissible (as input not received in factory) ■ Storage Loss: CCr availed but has to be reversed [LARSEN & TURBO – TRIBUNAL –since inputs not used in or in relation to mfd of FP] ■ Process Loss: CCr remains admissible (as these can be said to be used in or in relation to mfd of FP)
Capital Goods	Receipt in premises	<p><u>Generally:</u></p> <ol style="list-style-type: none"> 1. <u>Current Year:</u> 50% 2. <u>Next Year:</u> 50% (<u>subject to possession of CG</u>) <p style="text-align: center;">↓</p> <p>Exceptions :</p> <ol style="list-style-type: none"> i) Components, Spares & Accessories; ii) Refractories & Refractory Material; iii) Moulds & Dies; iv) Goods falling under 68.04 & 68.05 	<p>2 Exceptions:</p> <ol style="list-style-type: none"> 1. <u>Cr of ADD:</u> 100% at the time of receipt 2. <u>CG removed as such in the Year of Receipt itself:</u> 100% of Cr in that year itself 	<ul style="list-style-type: none"> ■ Ownership over CG not necessary for claiming CCr (CCR admissible even if CG acquired on lease, Hire Purchase or loan agreement or from financing company) ■ Depreciation shalln't be claimed of ED portion in the price of the machinery. [In respect of ED – either claim CCr or Depreciation]
Input Service	Payment of the bill of service	100% credit		<ul style="list-style-type: none"> ■ If “Bill of IS” is paid in part, then CCr of proportionate ST can be taken. ■ If “ADVANCE” IS PAID for the IS, then CCR shall be admissible at that point of time itself (and not on receipt of IS) --- Note: ISP is liable to issue invoice at the time of receipt of ADVANCE (within 14 days ISP shall issue invoice)

Utilization of CCr (of Input/ CG/IS) --- Rule 3(4)

<u>General Utilization</u>		<u>Special Utilization</u>
<p>Payment of ED</p>	<ul style="list-style-type: none"> ❖ <u>One to one correlation between Input (CG/IS) and FP is not required</u> <u>Exception: Unit availing area-based exemption</u> (this exemption is partial + on certain products + if factory is located in specified area) Shall maintain one to one correlation Between FP (covered by exemption) and relation INPUT / INPUT SERVICE. ❖ <u>For payment of Duty of a particular month, CCR as available upto last date of that month can only be used</u> 	<p>Payment of AMOUNT</p> <ul style="list-style-type: none"> ○ Amt payable on removal of CG as such ○ Amt payable on removal of Input as such ○ Amt payable at time of re-removal of returned FP

Manner of Utilization of Different Duties

<u>Cenvat Credit Element</u>	<u>Utilization for payment of following ED on FP</u>	
1. BED (Basic Excise Duty)> Any Duty (except Health Cess)	<p><u>[Some Other Purpose for which CCr can be used:</u></p> <ul style="list-style-type: none"> ■ <u>Amt payable u/ R 4(5) of CCR, 2004</u> [Input/CG removed to job-worker but not returned within 180 days] ■ <u>Amt payable u/ R 6(3) [Common Input – separate account not maintained – full CCr availed initially and then subsequently an amount paid at time of removal of Exempted FP]</u>
2. SED (Special Excise Duty)	.....> Any Duty (except Health Cess)
3. ADD (GSI)	.....> Any Duty (except Health Cess)
4. ADD (T & TA)	.....> Only ADD (T & TA) Duty
5. NCCD (FA, 2001)	.....> Only NCCD (Duty)
6. EC (Ex Goods)	.....> EC (Ex Goods)/ EC (Taxable Sr)
7. SHEC	.....> SHEC (Ex Goods)/ SHEC(Taxable Sr)
8. CVD [Sec 3(1) of CTA, 1975]>	
9. ADD [Sec 3(5) of CTA, 1975 – ST/Local Charges -- VAT]	.....> Any Duty (except Health Cess)
10. ADD (FA, 2003)	.....> Only ADD (FA, 2003)
11. Health Cess [Fa, 2005]	.....> Only Health Cess (Fa, 2005)
12. ST on Input Service	.....> Any Duty (except Health Cess)
13. EC (Taxable Sr)	.....> EC (Ex Goods)/ EC (Taxable Sr)
14. SHEC (Taxable Sr)	.....> SHEC (Ex Goods)/ SHEC(Taxable Sr)

Utilization of CVD:
 CVD = [Sum-total of these 7 components]

Each Component shall be segregated --- and shall be utilized in the manner as specified above

Manufacture of Exempted Goods → Effect on CCR --- Rule 6

GENERAL RULE: CCR not admissible if FP is exempted goods [5-A (100% Exemption) + CETA-Nil Rate]

7 Exceptions: (CCR shall be allowed as if these products are not exempted goods)

- | | | |
|---|--|--------------------------|
| i) FP sold to 100% EoU | ii) FP sold to EHTP/STP | iii) FP sold to SEZ Unit |
| iv) FP sold to UN/ International Organization | v) FP sold against International Competitive Bidding | |
| vi) Clearance of Gold/Silver | | |
| vii) FP Exported under Bond/Lut | | |

Single Input/Input Service/Capital Goods, Single FP

Rule 6(1)	Input ----- FP (Exempted)	CCR – Not available
Rule 6(1)	Input Service ----- FP (Exempted)	CCR – Not available
Rule 6(4)	Capital Goods ----- FP (Exempted)	CCR – Not available <i>Exception: SSI unit can avail CCR of CG</i>

Common Input / CG/IS

Rule 6(2) & 6(3)	Input →- FP-1 (Dutiable) → FP- 2 (Exempted)	Option-1: [Rule 6(2)] Maintain Separate A/cs and avail CCR related to inputs used in FP- 1 (Dutiable FP) Option-2: [Rule 6(3)] Don't Maintain Separate A/cs + avail CCR in full , but at the time of clearance of FP-2 (Exempted FP) a) If FP-2 is specified goods – then pay [An Amount = CCR availed on inputs gone in FP-2] b) If FP-2 is non-specified goods – then pay [An Amount = 10% of Sale Price of FP-2] BALLARPUR INDUSTRIES LTD. – 2007-SC: “10% of Sale Price” = “10% of AV”
Rule 6(2) & 6(3)	Input Sr →- FP-1 (Dutiable) →FP- 2 (Exempted)	IS is among 16 Specified Service [A-B-C-C-E-F-I-J-L-M-M-R-S-S-T-T] -- Avail CCR in full Any other IS -- Follow “Option-1” or “Option-2” as discussed above
Rule 6(4)	CG →- FP-1 (Dutiable) →FP- 2 (Exempted)	CCR available in full

Click Here to Get More Updates On CA & CS On WHATSAPP

General Rule:-- Admissibility of CCR is determined at the time of receipt in the Factory, *Unless otherwise provided within the Act/Rules.*

Scheme has specifically provided for following

	Status as on the date of Receipt of Input/	Subsequently	Effect on Cenvat
i)	FP is dutiable [CCR taken]	FP becomes exempt	Amount = CCR relating to inputs in stock (whether as such or as WIP or whether in form of FP) Shall be paid back [if still there is any surplus, then that shall also lapse] ----- Rule 11(2) of CCR, 2004 newly introduced in Year 2007
ii)	FP is exempt [CCR not taken]	FP becomes dutiable	Amount = CCR relating to inputs in stock (whether as such or as WIP or whether in form of FP) Shall be taken as credit ----- Rule 3(2) of CCR, 2004

CCr not utilization → Refund of CCr --- Rule 5 & 5-A

Refund of CCR – 2 circumstances

	Category of Assessee	Refund of		
		Input	Input Sr	CG
<u>Rule 5*</u>	Any exporter assessee	Yes	Yes	No
<u>Rule 5-A*</u>	Units In Specified Areas	Yes	No	No

* Refund shall be allowable in terms of such conditions as notified by CG. CG has notified for claiming refund of CCR, Sec 11-B of the CEA, 1944 (which deals with refund of ED on FP) shall be applicable mutatis mutandis.

Click Here to Get More Updates On CA & CS On WHATSAPP

Supporting Documents for taking CCr --- Rule 9

<u>Domestic I/ CG</u>	<u>Imported I/CG</u>	<u>Input Service</u>
i) <i>Manufacturer Invoice</i> ii) <i>FSD Invoice</i> iii) <i>SSD Invoice</i>	<u>Importer selling the goods:</u> i) <i>Importer Invoice</i> ii) <i>FSD Invoice</i> iii) <i>SSD Invoice</i>	i) <i>Invoice of IS Provider</i> ii) <i>Invoice of IS Distributor</i> iii) <i>TR-6 Challan (in "REVERSE CHARGE situations).</i>
	<u>Importer using the goods himself:</u> i) <i>Bill of Entry</i> ii) <i>Certificate issued by Customs Appraiser (when import is by post)</i>	

Defect in Invoice (supporting document)

Generally, CCR not admissible if supporting document is defective

However, if **certain defects** can be condoned by AC/DC and ccr may be allowed. *All defects other than following can be condoned:*

- i) *Details of ED/ST*
- ii) *Description of Goods/Services*
- iii) *AV* *[Rule 9(2) of CCR, 2004]*
- iv) *CE Reg No. / ST Reg No;*
- v) *Name and address of Seller / Service Provider*

In case additional ED/CD becomes payable by the supplier, he can issue SUPPLEMENTARY INVOICE to the buyer manufacturer – on basis of which CCr of such additional duty can be taken by the buyer. [However, the supplier can issue supplementary invoice only in bona-fide cases (and not in cases of fraud etc.)]

“Principal Input”, means any input which is used in the manufacture of final products where of the cost of such input constitutes not less than ^(= >) 10% the total cost of raw-materials for the manufacture of unit quantity of a given final product.

	<u>Cenvat Records</u>	<u>Cenvat Return</u>
<i>Manufacturer</i>	<p>CCR A/c of Inputs (both in terms of <u>Quantity & Amount</u>)</p> <p>CCR A/c of Capital Goods (both in terms of <u>Quantity & Amount</u>)</p> <p>CCR A/c of Inputs (Amount)</p>	<p>Excise Return as submitted in terms of Rule 12 of CER, 2002 shall incorporate all the particulars relating to Input/ Capital Goods / Input Service and it shall be treated as “Cenvat Return” also.</p> <p><i>[In simple words, cenvat return is not required to be filed in addition to the normal excise return]</i></p>
<i>FSD/SSD</i>	Such dealer shall maintain proper records indicating the fact that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital good.	<p>Quarterly return (within 15 days)</p> <p><i>[Format has been prescribed, though no name has been assigned to it]</i></p>
<i>ISD</i>	-----	<p>Half-yearly return (by end of following month)</p> <p><i>[Format has been prescribed, though no name has been assigned to it]</i></p> <p><i>[Note: ISD may submit a revised return to correct a mistake or omission within a period of 60 days from the date of submission of cenvat return. Rule 9(11) (newly inserted in Year 2007)]</i></p>

→ **Mfrer** (of Certain Specified goods – paying CASH /PLA Duty >= Rs 100 lacs) is also required to file a separate return of **“PRINCIPAL INPUT” [Rule 9-A]**

⇒ **Annual Financial Information Statement** : Form **“ER-5”** – Annually [in advance – by 30th April of FY]

⇒ **Monthly Return:** Form **“ER-6”** – Monthly –within 10 days

Special Concept: Removal of INPUT / CG “as such” Rule 3(5) / (5-A) + 3(6)

Removal as such of I/CG

❖ **3-(5): I/ CG removed as such by manufacturer**

○ **Amt Payable= CCR Availed**

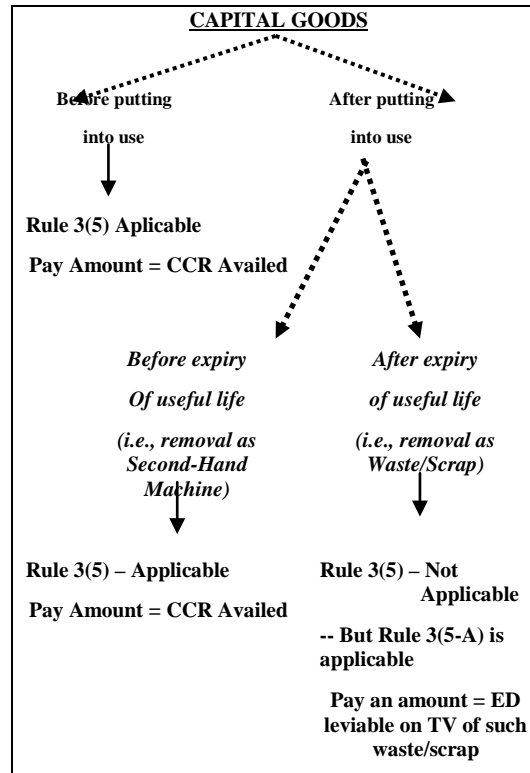
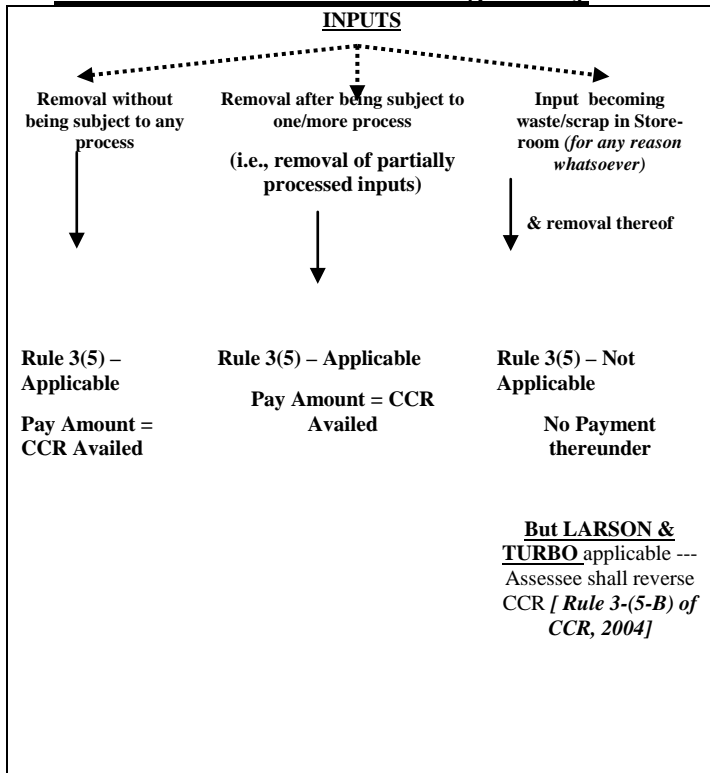
[Invoice shall also be prepared (Manufacturer Invoice)]

❖ **3-(5-A): CG removed as Waste/Scrap**

○ **Amt Payable= ED as leviable on TV of Waste/Scrap**

❖ **3-(6): Buyer can take credit of amount paid in 3(5) & 3(5-A)**

□ **Removal “as such” ---- Meaning thereof**



Statutory Exceptions: Where Rule 3(5) is inapplicable

2 Exceptions:

i) **Removal of I/CG to Job-Worker (subject to condition of return thereof within 180 days) – Rule 4(5) & (6)**

⇒ At time of Initial Clearance:--- No Payment at all
[When I/CG are so send - we call it that “I/CG are send under “Cenvat Challan”]

⇒ **If Input/CG received back within 180 days:** --- No further treatment

⇒ **But if not so received back:** -- then, on expiry of 180 days, Assessee shall pay [An Amount = CCR related to that portion of Input/CG not so received back]

But as and when they are received back, CCR would be admissible to the assessee again

**[The said time-limit of 180 days shall not be applicable to following CGs:
--- Jigs -- Fixtures --- Moulds & -- Dies]**

Job-Worker – Operations Performed resulting into FP -- FP can be directly cleared from the Job-Worker Premises

Condition: AC/DC permission obtained [Permission may be obtained on Yearly Basis (instead of each and every individual clearance

ii) **Storage of I outside the factory due to seasonal nature of FP and shortage of storage area in factory (subject to permission from AC/DC) – Rule 8**

When::

- (1) FP is seasonal in nature;
- (2) There is shortage of storage space – within the factory

Condition:: Permission of AC/DC [he basically impose conditions as to bringing back the inputs within the factory within specified time limit]

If inputs stored outside – not brought back in factory within specified time-limit – then [Amount = Related CCR] shall be paid

Other Miscellaneous Rules

<u>Rule 10</u>	<u>Transfer of CCR in certain cases</u>	Transfer of Factory / Premise: ⇒ Shifting to another site ⇒ Change in ownership	CCR lying unutilised can be transferred to the transferee: Conditions: (1) Related stock of Input / CG is also transferred along-with; (2) Input/ CG so transferred are duly accounted for to the satisfaction of jurisdictional AC/DC									
<u>Rule 12</u>	<u>I/CG purchased from "A Unit Availing Area-Based Exemption"</u>	Goods manufactured by these units partially exempted --- Procurer can avail full CCR as if no portion of duty was exempted										
<u>Rule 13</u>	<u>Deemed Credit – on Input/ IS</u>	CG has power to Notify Input / Input Service on which Allowable CCR = Notified Rate/Amount (& not the actual amount paid thereon) <i>[The notified rate/amount can be higher or lower than the actual amount paid]</i>										
<u>Rule 14</u>	<u>Recovery Action</u>	CCR – wrongly availed -- wrongly utilized or -- erroneously refunded CCr recoverable alongwith Interest @ 13% p.a. [Apply Sec -11-A & 11-AB (subject to necessary changes)] MARUTI UDYOG LTD. – 2007-SC: CCr availed but not utilized – reversed on its own Such credit shall not be treated as CCr Availed --- No action shall lie against assessee										
<u>Rule 15</u>	<u>Confiscation & Penalty</u>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:15%;"></th> <th style="width:40%; text-align: center;"><u>I/CG</u></th> <th style="width:45%; text-align: center;"><u>IS</u></th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"><u>Bona-fide mistake</u></td> <td style="vertical-align: top;"> Confiscation Penalty Not Exceeding higher of [2,000 or CCr involved – whichever is higher] </td> <td style="vertical-align: top;"> Penalty Not Exceeding higher of – Rs 2,000 </td> </tr> <tr> <td style="vertical-align: top;"><u>Fraud</u></td> <td style="vertical-align: top;"> Additional Penalty Sec 11-AC Penalty (= 100% of ED involved) </td> <td style="vertical-align: top;"> Additional Penalty Sec 78 Penalty (= 100% to 200% of ST involved) </td> </tr> </tbody> </table>			<u>I/CG</u>	<u>IS</u>	<u>Bona-fide mistake</u>	Confiscation Penalty Not Exceeding higher of [2,000 or CCr involved – whichever is higher]	Penalty Not Exceeding higher of – Rs 2,000	<u>Fraud</u>	Additional Penalty Sec 11-AC Penalty (= 100% of ED involved)	Additional Penalty Sec 78 Penalty (= 100% to 200% of ST involved)
	<u>I/CG</u>	<u>IS</u>										
<u>Bona-fide mistake</u>	Confiscation Penalty Not Exceeding higher of [2,000 or CCr involved – whichever is higher]	Penalty Not Exceeding higher of – Rs 2,000										
<u>Fraud</u>	Additional Penalty Sec 11-AC Penalty (= 100% of ED involved)	Additional Penalty Sec 78 Penalty (= 100% to 200% of ST involved)										

Latest Provisions

<u>Rule 3(5-C)</u>	<u>Inputs / Capital Goods Written off fully (or provision made for fully write off)</u>	
	<u>Inputs</u>	<u>Capital goods (new – before putting them into use)</u> <u>Amount – related CCR shall be paid</u>
<u>However:</u>	<u>If</u> Such Inputs/ Capital Goods are subsequently used in actual in manufacture of FP --- then assessee is entitled to take CCR again.	

[Click Here to Get More Updates On CA & CS On WHATSAPP](#)

IMPORTANT CASE-LAW

Excise

Municipal Corporation of Greater Mumbai-1996-SC	Goods liable to be dismantled (mandatory) = immovable Otherwise = Movable	
DCM-SC	Goods capable of being sold = Marketable [Actual sale is not relevant]	
Dharampal Satyapal- 2005-SC	"Kimam" not sold but capable of being sold (proved by Dept) -- Marketable	
Moti Laminates- 1995-SC	Goods with short shelf life – not proved to be capable of being sold in its short shelf life -- → Non-Marketable	
Indian Aluminum Co.- 1995-SC	ED only if goods are capable of being sold ordinarily Apply 2 Tests: 1) It should be known to the commerce 2) It should be worthwhile to trade in such article.	
Wallace Flour Mills- 1989-SC	Excisable Goods = Dutiable + Non-Dutiable [100% Exempted Goods + Goods chargeable to Nil rate of Duty]	
Empire Industries - 1985-SC	Process = Mfd if it results into emergence of a new different commercial product	
DCM-1977-SC	A product is a commercially different product if it satisfies 2 tests: 1) Name Test 2) Use Test [Predominant Test is "Use Test"]	
Khandelwal Metal & Engg Works -1985-SC	Waste/Scrap shall also be treated as "manufactured product" though not produced intentionally	
Laminated Packages (P) Ltd. – 1990-SC	Even if Input & FP fall into same heading – process can still be manufacture if FP satisfies "Name Test" and "Use Test"	
SR Tissues- 2005-SC	Even if Input & FP fall into different heading – process shall not be manufacture if FP does not satisfy "Name Test" and "Use Test"	
Ujjagar Prints – 1988-SC	Job Worker = Manufacturer [though he is not owner] as ownership is not determinative of "manufacturer"	
Vazir Sultan Tobacco – 1996-SC	New duty imposed for first time in budget Pre-Budget Stock (stock of FP manufactured prior to budget) shall not attract levy of Duty – and hence, such duty not to be paid thereon	
Maruti Udyog Ltd. – 2007-SC	Though definition of TV provides for addition of "Warrant Charges", EXTENDED WARRANTY CHARGES are not includible as <i>these can not be said to be payable by reason of or in connection with sale</i>	
Kisan Sahkari Chini Mills Ltd. – 2001-SC	Administrative Charges collected in pursuance of UP Sugar Control Act = Tax <i>And hence deductible while computing the TV (as other taxes are also deductible)</i>	
Mazagon Dock Ltd.- 2005-SC	Sale of goods and receipt of subsidy also Subsidy received from Buyer = Includible (as Additional Consideration for sale) Subsidy received from Govt = Not Includible (as not Additional Consideration from buyer)	
IFGL Refractories Ltd- 2005-SC	Advance License surrendered by buyer in favour of seller because of which seller gets input at lower price and therefore reduced sale price of FP ■ Surrender of A/L = Additional Consideration from buyer – shall be added	
Jayanti Food Processors – 2007-SC	<u>AV under Sec 4-A: only if all 3 conditions are satisfied</u> 1) Goods sold in packaged form; 2) MRP printing is mandatory under SWMA; 3) Goods notified u/s 4-A (1)	
Asia Brown Boveri- Tri	Credit of transit losses – not admissible	
Larsen & Turbo - Tri	Credit of storage losses – if availed shall be reversed [Rule 3(5-B) of CCR, 2004 has been inserted to provide for same --- it provides that when value of inputs is written off fully in books of account --- then an amount equal to CCR shall be paid by assessee]	
Ballarpur Industries Ltd. – 2007-SC	Common input used for manufacture of both dutiable and exempted product --- separate accounts not maintained – Amount payable in terms of Rule 6(3)(b) on clearance of Exempted FP Legal Wordings = 10% of Sale Price of Exempted FP Shall be read as = 10% of " Assessable Value " of Exempted FO	
Maruti Udyog Ltd. – 2007-	CCr availed though it was not admissible – not utilized --- reversed by assessee on its own	

SC	Whether it can be said that "CCr wrongly availed"? --- No [in such cases, it shall be treated as CCr not availed at all]	
Solar Pesticides Ltd- 2000-SC	ED paid in excess on Intermediate goods produced by assessee (as ultimate FP was not exempt) --- Refund of such excess ED claimed – Argued that Doctrine of unjust enrichment not applicable as goods have not been sold rather have been used <ul style="list-style-type: none"> ■ Held doctrine applicable to CAPTIVE CONSUMPTION also (ED paid has been added to price of FP sold – and hence passed on)--- Refund to be credited to CWF 	
Suvidhe Ltd.- 1996-SC	Refund of pre-deposit upon victory in appeal – Automatic (Doctrine of unjust enrichment shall not be checked as it is refund of security deposit and not duty)	

Customs

Kiran Spinning Mills – 1999-SC	Import Complete – When B/E for Home Consumption for goods is filed [All duties which are leviable on this date shall be payable]	
Sun Industries – 1989-SC	Export complete as soon as goods are taken outside TWI [Reaching of goods at destination is not mandatory]	
South India TV (P) Ltd. – 2007-SC	Price of imported goods rejected on ground that supplier has filed "Export Declaration" in his country at much higher price <ul style="list-style-type: none"> ■ Importer established that his declared price is close to price at which identical goods have been imported ■ Rejection of Declared Value is not proper in such cases 	
Tollin Rubber Company- SC	Second Hand Machinery imported – TV rejected without assigning any reasons -- AV determined directly under Rule 9 (best Judgment Assessment) – Such rejection not proper	
M S Shoes India (P) Ltd. – 2007-SC	Second Hand Car imported (3 years old) – clearances delayed for 6 years on account of any reason AV under Rule 9 (Best Judgment Assessment) --- Depreciation allowable for 3 years (upto date of importation only) Depreciation for post importation of 6 years is not allowable	
Pratibha Processor- 1996-SC	Warehoused goods cleared beyond 90 days – Warehoused goods has become exempted on date of clearance from warehouse -- Warehousing Interest not leviable [as interest is payable only when duty is payable]	

Service Tax

Gujrat Ambuja Cement Ltd – 2007-	Service of Transportation of goods from Factory to Customer Place – Not an "Input Service" – Cenvat Credit not admissible CBECE has taken same view in its Circular 2007	
India Cement Ltd. -2007-SC	Service of Transportation of goods from Factory to Customer Place – "Input Service" – Cenvat Credit admissible	
Students are advised to mention both in exam.		

IMPORTANT SECTIONS

Excise

Sec 2(d)	Excisable Goods	
Sec 2(f)	Manufacture [2(f)(i) + 2(f)(ii) + 2(f)(iii)]	
Sec 2(f)	Manufacturer	
Sec 2(e)	Factory	
Sec 3	Charging Section	
Proviso	100% EoU -> ED = Aggregate of Customs Duties (subject to E/N 23/2003)	
Sec 4	AV= TV Sec 4(1)(a)-> AV= TV [Sec 4(3)(d)] Sec 4(1)(a)-> AV= As per Rules [<u>Central Excise Valuation Rules, 2000</u>] Rule 4 = Free Samples AV= TV of identical or similar goods Rule 5= Delivery at Customer Premise AV = TV- CoT Rule 6= Price Not sole consideration AV = TV + Additional Consideration from buyer Rule 7= Redundant Rule 8= Delivery at Customer Premise AV = 110% of Cost of Production [CAS-4 to be used] Rule 9= Sale to Related Party (other than ICU) AV = NTV at which RP resells the goods Rule 10= Sale to ICU AV = Either use Rule 9 principles /// or Sec 4(1)(a) Principles Rule 10-A= Goods manufactured on J/W AV = NTV at which Principal Manufacturer sells Rule 11= Best Judgment Assessment	
Sec 4-A	MRP Based Assessment AV= [Declared MRP – Notified % of Abatement]	
Sec 3(2)	AV= Tariff Value [fixed by CG]	
Sec 5-A	Exemption from ED Sec 5-A(1A): E/N which is unconditional and 100% -- Mandatory	
Sec 5-B	ED paid though process actually is not manufacture Credit need not be reversed (ED paid shall not be claimed as refund)	
Sec 3 of CETA	Emergency Power to increase ED (to some limited extent)	
Sec 11-A	ED Demand by CEO 11-A(1): SCN [1yr / 5 Yr from "Relevant Date" – Date of filing Ex Return in general] 11-A(2): SCN [6 Mths / 1 Year from Date of service of SCN] [with Interest & Penalty] Voluntarily Payment by Assessee 11-A(2B): In genuine cases – prior to issuance of SCN [with Interest] 11-A(1A): in cases of fraud – After issuance of SCN but prior to passing off order [with Interest & Penalty]	
Sec 11-AB	Interest @ 13% p.a.	
Sec 11-AC	Penalty = ED determined Reduced to 25%, if within 30 days [ED + Interest + Reduced Penalty] paid	
Sec 11-C	ED short-paid / not-paid – as a result of general practice in industry → CG can exempt	
Sec 11-D	ED collected in excess from buyer – shall also be deposited → otherwise will become recoverable by CEO 11-DD Interest @15% p.a.	
Sec 11	Coercive Methods for recovery of ED not paid though demand order passed	
Sec		
Sec 11-DDA	Provisional Attachment of Property [Movable or Immovable] – with prior approval of CCE Max period : 6 mths + Ext of 2 years by Chief CCE	
Sec 11-B	Claim of refund of ED 11-B(1): SCN [1yr from "Relevant Date" – Date of Payment of ED in general] 11-B(2): Refund Order [implied within 3 Mths from date of application as otherwise interest is payable]	

		in terms of Sec 11-BB]	
Sec 11-BB	Interest @ 6% p.a.		
Sec 9	Offences [9 Acts]		
Sec 9-AA	Offences by Companies [Principle of Vicarious Liability]		

Customs

Sec 2(23)	Import [Bringing goods into india from a place outside India]		
Sec 2(26)	Importer [Owner + Person holding himself as importer]		
Sec 2(31)	Person In Charge		
Sec 2(21)	Foreign Going Vessel / Aircraft		
Sec 2(22)	Goods [Vessels etc + Stores + Baggage + Currency + Other goods]		
Sec 2(11)	Customs Area [CA = CS + Warehouse]		

Types of Customs Duties

Sec 12	BCD		
CTA			
Sec 3(1)	CVD [ED final product] -- All goods		
3(3)	CVD [ED final product] --- Certain goods as notified)		
3(5)	Spl CVD [VAT/ST] ----- All imported goods		
6	Protective Duty		
8-B	Safeguard Duty		
8-C	Safeguard Duty in case of imports from China		
9	CVD on subsidized Articles		
9-A	Anti-Dumping Duty		

Sec 14	<p>Sec 14(2)-> AV= Tariff Value as fixed by CBEC</p> <p>Sec 14(1)-> AV= TV</p> <p><u>Valuation of Imported Goods : Import Valuation Rules, 2007</u> AV= TV [9 conditions – 4 conditions + Rule 3(2) + Rule 12] [Invoice Price + Adjustments of Rule 10]</p> <p><u>Rule 3</u> = AV= TV of imported goods itself <u>Rule 4</u> = AV= TV of identical goods [same time + assessed under Rule 3 + finally assessed] <u>Rule 5</u> = AV= TV of similar goods [same time + assessed under Rule 3 + finally assessed] <u>Rule 7</u>= AV=Deductive value [Resale price in India – 3 deductions] <u>Rule 8</u>= AV = Computed Value [CoP + General Exp + Rule 10(2)] <u>Rule 9</u> = AV= Best Judgment Assessment</p> <p><u>Valuation of Export Goods: Export Valuation Rules, 2007</u> AV= TV [4 conditions + Rule 3(2) + Rule 8]</p> <p><u>Rule 3</u> = AV= TV of Export goods <u>Rule 4</u> = AV= TV of “goods of like kind or quality” [identical and similar goods] <u>Rule 5</u> = AV = Computed Value <u>Rule 6</u> = AV= Best Judgment Assessment</p>		
--------	---	--	--

Sec 15	Relevant date for determination of AV + RoD in case of Import		
16	Relevant date for determination of AV + RoD in case of Import		
Sec 17	Assessment [2 System – First Examination System & Second Examination System]		
Sec 18	Provisional Assessment		
19	Assessment of “SET OF ARTICLES”		
Heading 98.01	PROJECT IMPORTS		
Import Procedure			

Sec 29	Filing IGM/ IR	
30	Grant of ENTRY INWARD	
32 to36	Unloading of goods	
45	Goods in custody of custodian	
46	Filing B/E for Home Consumption	
47	Payment of ID within 5 days [otherwise Interest @ 13% p.a.]	
48	Port to be vacated within 30 days [otherwise custodian will sell goods]	
49	WAREHOUSING WITHOUT WAREHOUSING	
Export Procedure		
Sec 50	Filing of Shipping Bill (Air / Sea) or Bill of Export (Land)	
51	Let Export Order (LEO) / Let Ship Order (LSO)	
Transit & Transshipment		
Sec 53	Goods in transit– No ID payable at port of first arrival	
54	Goods in transshied – No ID payable at port of first arrival	
55	Goods transit or transshipped –ID payable at destination port if that port is in India	
Warehousing		
Sec 57	Public W/H [Appointed at Warehousing Station]	
58	Pvt W/H [Licensed at Warehousing Station]	
59	Warehousing Bond [= 2 * Tentative Assessed Duty]	
60	Warehousing Order	
61	Warehousing Period [1 year / 100% EoU= 5 years (CG) --- 3 year (other)]	
62	Warehoused goods subject to control of PO	
63	Rent and charges payable to W/H Keeper [if delay beyond 10 days – sale]	
64	Rights of Importer [inspect/ separate / sorting/ packing]	
65	Manufacturing under W/H	
66	Not relevant	
67	Removal to another W/H	
68	Clearance for H/C [Title can be surrendered]	
69	Direct export from W/H	
70	Loss in case of volatile goods	
71	No clearance other than in permitted ways	
72	Improper removal	
73	Cancellation and return of W/Hing Bond	
Duty Drawback		
Sec 74	Imported goods exported as such 74(1): Without being used in India 74(2): After having been used in India	
75	Imported goods used in manufacture of goods which are then exported Rules: Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 Rule 3: AIR [Rule 8-A: Outer limit of AIR] Rule 6: Brand Rate Rule 3: Special Brand Rate	
75-A	Interest on DBK 75-A(1): Delay in grant of DBK beyond 1 Mth – Int @ 6% p.a. payable to claimant 75-A(2): DBK granted erroneously – Int @ 6% p.a. payable by claimant	
76	Prohibition and regulation of DBK [3 situations]	
Baggage		
Sec 77	Declaration for clearance of baggage	
78	Date of Declaration = Relevant date for determination of AV & RoD	
79	Bona-fide baggage exempted from duty Used Articles: No Limit New Articles: Limit as specified in Baggage Rules, 1998 [called General Free Allowance GFA]	
80	Temporary Detention of Baggage on request of passenger	
Confiscation and Penalty		
Sec 110	Seizure of goods [start confiscation proceeding within 6 mths – otherwise goods shall be returned]	
123	Burden of proof that goods are smuggled --in relation to certain goods it has been shifted to importer	

124	SCN for confiscation	
125	Redemption Fine [Option to release goods upon payment of fine shall be given to consumer in case goods are not prohibited goods] Max Fine = [Mkt price of confiscated goods – ID amount]	
Remission & Abatement of ID		
Sec 13	Pilferage of goods (in custody of custodian)—Importer not liable to pay ID [Sec 45 makes custodian liable for payment of ID]	
22	Value of goods reduced on account of damage or deterioration --- ID shall be reduced proportionately	
23	23(1): ID remitted on lost/ destroyed goods 23(2): ID not payable if title is surrendered	
24	Imported goods if offered for denaturing /mutilation shall be liable to ID as if imported in denatured / mutilated form	

Service Tax

Sec 64	Extent : Not applicable to services provided in J& K	
65	Taxable Service [Sec 65(105)]	
65-A	Classification of Services	
66	Charging Section --- Rate 12% on all services Rule 6 of STR, 1994: ST payable on cash basis [whether received in advance or not]	
66-A	Taxation of Services provided from outside India but received in India ■ Service recipient shall be subject to ST as if he had himself provided such service.	
67	Valuation [Taxable Value] Service Tax Valuation Rules, 2006 Rule 3 = When part or whole of consideration is in Kind Rule 4 = CEO has power to cross check self-assessed value Rule 5 = Exp/cost incurred in capacity of pure agent shall be excludible Rule 6 = Clarification of certain items [+ as well as -] Rule 7 = Valuation of service from Non-Resident	
68	Person liable to pay ST 68(1): Service provider generally 68(2): Reverse charge o Non-resident o Insurance agent service o GTA service	
69	Registration 69(1): Person liable to pay ST 69(2): Person not liable to pay ST [ISD + SSP (who has crossed limit of 7 lakhs)]	
70	ST Return 69(1): Return of Person liable to pay ST 69(2): Return of Person not liable to pay ST [ISD + SSP (who has crossed limit of 7 lakhs)]	

We sincerely regret this omission in our module:

Rectify Sec 70 in Module:

Every person liable to pay the service tax

- » shall himself assess the tax due on the services provided by him and
- » shall furnish to the SCE,
a return
--- in such form, --- in such manner and ---at such frequency, and
--- with such late fees not exceeding Rs 2000,
as may be prescribed.

[Rule 7-C of STR, 1994]

Where the ST return is furnished after the due date, the person liable to furnish the said return shall pay to the credit of the CG, -

Period of delay	Late fee payable
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due date	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 <i>plus</i> Rs 100 for every day from the 31 st day till the date of furnishing the said return
Provided that the total amount of late fee shall not exceed the amount of ST self-assessed	
<p>Late fee of Rule 7-C is subject to Outer limit of Rs 2000 in Sec 70. First determine penalty in terms of Rule 7-C . the penalty amount so determined shall not exceed Rs 2000/- (as that limit has been set in Sec 70)</p>	

IMPORTANT EXEMPTION NOTIFICATIONS

Excise

	For whom:	Exemption:	Extent of exemption	
E/N 23/2003	100% EoU	Partial	75% of BCD & 100% of Special CVD	
67/95	Any assessee	Full	100% Exemption to Intermediate goods if -- FP is manufactured in same factory -- FP is dutiable.	
214/86	Job-Worker	Full	Principal Manufacturer gives an undertaking to jurisdictional officer of Job-Worker that he shall be discharging the ED liability on such goods	
8/2003	SSI Unit	Full	First Clearances of goods to value of Rs 150 lakhs shall be exempt for a FY [7 Conditions]	

Customs

	For whom:	Exemption:	Extent of exemption	
E/N 102/2007	Importer Trader	Full	100% of Special CVD [First importer shall pay and then shall obtain refund]	

Service Tax

	For whom:	Exemption:	Extent of exemption	
E/N 33/2007	Any service provider	Full	Any taxable service provided for official use of foreign diplomatic mission or consulate	
34/2007	Any service provider	Full	Any taxable service provided for use --- Personal use of foreign diplomat --- Use of his Family members	
12/2003	Any Sr Provider	Partial	It exempts that part of value of service which is equal to Value of materials sold during course of providing such service <u>2 Conditions:</u> 1) Value of service shall be separately shown in the Invoice 2) Cenvat Credit of Input, Capital Goods and Input Service is not taken	
1/2006	Certain specified Services	Partial	Certain % of "Gross Amount Charged" exempt <u>2 Conditions:</u> 1) 12/2003 is not availed 2) Cenvat Credit of Input, Capital Goods and Input Service is not taken	
6/2005	SSP	Full	First receipts of Rs 8 lakhs shall be exempt.	

OTHER IMPORTANT NOTIFICATIONS / CIRCULAR

Excise

		Subject Matter	
N/N	39/20013	Persons exempt from registration	
	42/2001	Procedure for export of goods under Bond / Lut without payment of ED	
	43/2001	Procedure for procurement of inputs under Bond / Lut without payment of ED for use in manufacture of goods to be exported without payment of duty	
	19/2004	Procedure for export of goods under Rebate Claim	
	21/2004	Procedure for procurement of inputs under rebate claim	
Circular	354/81/2000	Inclusions or Exclusions from TV	