LEVY OF EXCISE DUTY: SEC 3

1. What are the basic conditions for levy of duty u/s 3 of Central Excise Act? (3 marks)

As per Sec 3 of the Central Excise Act, 1944, the charging section for levy of excise duty, the levy stands attracted on fulfillment of the following conditions:

i) The subject matter shall be “excisable goods” as defined u/s 2(d) of the Act, i.e., they should be movable and marketable article specified in the Schedules to the Central Excise Tariff Act, 1985;

ii) The said excisable goods must have come into existence as a result of process of “manufacture” as defined u/s 2(f) of the Act; and

iii) The process of manufacture must be carried out in India.

2. Discuss briefly, whether excise duty is attracted on the excisable goods manufactured in the following cases:

(i) in the State of Jammu and Kashmir;
(ii) by or on behalf of the Government.

(i) Sec 3 is the charging section for levy of excise duty. It provides that excise duty shall be leviable on excisable goods produced or manufactured in India. And sec 1 of the Central Excise Act, 1944 specified that provisions of the Central Excise Act shall be applicable to whole of India, including J&K. Thus, even goods produced or manufactured in State of Jammu & Kashmir shall attract excise duty.

(ii) Sect 3(1A) of the Central Excise Act, 1944 provides that the excise duty shall be levied and collected on all excisable goods which are produced or manufactured in India by, or on behalf of, Government, as they apply in respect of goods which are not produced or manufactured by Government. Thus, excise duty will be payable on goods manufactured by, or on behalf of, the Government (both Central & State) also.

3. What types of duties are levied under section 3 of the Central Excise Act, 1944? (2 marks)

Sec 3 of the Central Excise Act, 1944 the charging provision for levy of excise duty provides for levy of following 2 duties:

i) Cenvat (Basic Excise Duty), which is levied on all excisable goods produced or manufactured in India at the rates set forth in the I" Schedule to CETA.

ii) Special Excise Duty, which is levied on excisable goods specified in the II" Schedule which are produced or manufactured in India at the rates set forth in the II" Schedule to CETA.

APPLICABLE RATE ON REMOVAL: RULE 5

4. Apply the above principles to the following fact/situations to justify your answer regarding chargeability of duty:

A. Goods were manufactured on 16.1.1995, but were removed from the factory on 3.3.95. These goods were brought within the purview of Central Excise Tariff for first time with effect from 1.3.95 with a rate of duty of 20% ad valorem.

B. Goods were manufactured on 18.1.96 and were removed from the factory on 2.3.96. Prior to 1.3.96, the goods were chargeable to “Nil” rate of duty as per Central Excise Tariff, but became chargeable to 15% with effect from 1.3.96.

Applying the above-stated principles to the situations posed before us, the chargeability of the product is given below:

A) In this situation, the manufacture has taken place on 16/1/95, on a date prior to the date when these have become “excisable”. Since the levy is not attracted as on date of their production, these are not liable to excise duty. The subsequent imposition of duty is not relevant.

B) In this situation, the manufacture has taken place on 18/1/96, and on that date the goods are non-dutiable being chargeable to “nil” rate of duty. As SC in WALLACE FLOUR MILL’S case has already held that “nil” rate of duty is also a rate of duty and such goods are also “excisable goods”, the levy stands attracted on such goods on date of their production/manufacture. That being so, Rule 5 of CER, 2002 becomes applicable and thus, the goods shall be chargeable to rate of duty as prevalent on date of their removal, i.e., 15%.

5. Snow White Ltd. manufacturers paper in the course of such manufacture.” Waste paper” is produced (paper being the main product and dutiable goods).

The Central Excise Tariff Act was amended w.e.f. 1.3.1995, so as to include” Waste paper “also in one of the tariff entries, as subject to duty@10%Ad-valorem.
Snow White Ltd. was issued a Show Cause Notice by the Excise officer, demanding duty of Rs.2 lakhs on waste paper produced during October, 1994 to February, 1995, but cleared during April-May,1995.

As Counsel of Snow White Ltd. you are required to advise the company about:

(i)  The legality and validity of the proposed levy and collection of waste paper for the period prior to 1.3.95; and
(ii) State (with the help of decided case) the reasons for your advice/opinion. (7 Marks)

Sec 3 of the Act which is the charging provision authorizes levy and collection of excise duty on all excisable goods which are produced or manufactured in India at the rates mentioned in the Schedule to the CETA. To attract excise duty, an article must satisfy twin conditions of being: (i) excisable goods; and (ii) produced or manufactured in India.

The expression “excisable goods” has been defined u/s 2(d) of the Central Excise Act, 1944 to mean goods specified in the Schedule to CET Act as being subject to a duty of excise including salt. As is evident from the definition, unless an article finds mention in the tariff it can’t be called “excisable goods” attracting charge of excise duty. On the facts presented to us, the “waste-paper” was specified in the Schedule only from 1/3/95 and thus, it can attract excise duty only on and from 1/3/96. In respect of stock of “waste-paper” lying in stock as on 1/3/95, no duty can be demanded in view of decision of the Apex Court (SC) in WALLACE FLOUR MILL’s case. In that case, the Apex Court held that goods which are non-excisable as on the date of their production/manufacture will not attract duty-liability on removal even if they are excisable on their date of removal since at the date of manufacture there existed no tax liability at all.

Accordingly, the assessee is advised to represent his case to the Department on the above lines.

6. Your advice as a consultant is sought by the taxpayer in the following situation. Kindly indicate, with reasons, your decision.

One of the manufacturing units of the taxpayer manufactured products on which no Special Excise Duty was payable till February, 1999. The products manufactured up to the end of February, 1999 were cleared on 5th March, 1999. On 28th February, the Government through its budget proposals introduced a special excise duty on these products. Central Excise Authorities demand that the special excise duty introduced effective 1st March, 1999 would be payable on the goods cleared on 5th March, though their manufacture was completed before 1st March, 1999. (5 Marks)

Sec 3 of the Act which is the charging provision authorizes levy and collection of excise duty on excisable goods produced or manufactured in India. The levy of excise duty is attracted at the time of their production or manufacture, though the collection has been deferred to the point of removal of goods from the factory.

As per the stated factual position, the goods were manufactured prior to 1/3/99, i.e. prior to the date on which the levy of special excise duty comes into force. However, the clearance of said goods took place only after 1/3/99 at what time the levy of special excise duty was in force (by virtue of provisions of Finance Act read with the provisions of Provisional Collection of Taxes Act, 1931). No doubt, the goods were liable to Basic Excise Duty even at the time of their production/manufacture. But so far as special excise duty is concerned, which is in addition to basic excise duty, it is an independent and separate levy. Also, SC in case of VAZIR SULTAN TOBACCO – 1996-SC has held that “in respect of a completely new levy, the pre-budget stock will not attract the new levy as there was no duty liability when the goods were manufactured, irrespective of their date of removal.” That ratio can be applied to the situation before us and thus, duty demand on pre-budget stock is not maintainable in law.

Accordingly, the assessee is advised to represent his case to the Department on the above lines.

LEVY OF ED ON GOODS MANUFACTURED BY 100% EOu: PROVISO TO SEC 3(1)

7. How are goods manufactured in a 100% EoU but sold in the DTA (Domestic Tariff Area, i.e., within India) subjected to levy of excise. (4 Marks)

EoU is liable to pay excise duty, but the quantum of ED shall be determined differently. In terms of proviso to Sec 3(1), a 100% EoU shall be liable to pay excise duty of an amount equivalent to aggregate of Customs Duties leviable on importation of like article into India. Thus, first like article shall be identified and then applicable customs duties shall be determined by reference to the provisions
of Customs Act, 1962 or any other law for the time being in force which provides for levy of customs duty of any sort. Explanation shall also be noted in this context. It seeks to provide that if like article attracts at different rates, then highest of those rates shall be considered.

Once rates are determined, then assessable value needs to be determined (as duty is leviable on some value). The valuation shall also be done with reference to the provisions of Customs laws (AV shall not be determined with reference to excise provisions).

MORARJEE BREMBANA LTD. - 2015 - SC
- Sale price charged to customer in India cannot be accepted as TV in terms of Sec 14 of Customs Act, 1962 (as this Sale price is not a price in course of international trade which is acceptable u/Sec 14 of Customs Act, 1962)
- AV shall be determined by application of Customs Valuation Rules, 2007.

EC & SHEC : Computation of EC / SHEC in case of 100% EoU [after considering E/N 23/2003] -- 2015 AMENDMENT:

[A] Where DTA sales are not subject to ‘sales tax’ [i.e., Element of ‘spl CVD’ is not exempt]

<table>
<thead>
<tr>
<th></th>
<th>Duty %</th>
<th>Amount</th>
<th>Total Duty</th>
</tr>
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<tr>
<td>(A)</td>
<td>Assessable Value Rs</td>
<td>10,000.00</td>
<td></td>
</tr>
<tr>
<td>(B)</td>
<td>Basic Customs Duty (if normal duty is 10%)</td>
<td>5%</td>
<td>500.00</td>
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<tr>
<td>(C)</td>
<td>CVD ['C' x ED rate]</td>
<td>12.5%</td>
<td>1,312.50</td>
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<tr>
<td>(D)</td>
<td>EC of Customs [Sec 94 of FA, 2004]</td>
<td>2%</td>
<td>36.25</td>
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<tr>
<td>(E)</td>
<td>SHEC of Customs [Sec 139 of FA, 2007]</td>
<td>1%</td>
<td>18.13</td>
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<tr>
<td>(G)</td>
<td>Sub-total for Spl CVD (A+B+D+E+F)</td>
<td>4%</td>
<td>474.68</td>
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<tr>
<td>(I)</td>
<td>Sub-total to calculate EC / SHEC (B+D+H)</td>
<td>2,341.56</td>
<td></td>
</tr>
<tr>
<td>(J)</td>
<td>EC [Sec 93 of FA, 2004] -- exempted [*E/N 14/2015-Expl]</td>
<td>Nil</td>
<td>0.00</td>
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<tr>
<td>(K)</td>
<td>SHEC [Sec 138 of FA, 2007] -- exempted [*E/N 15/2015-Expl]</td>
<td>Nil</td>
<td>0.00</td>
</tr>
<tr>
<td>(L)</td>
<td>Total ED payable</td>
<td>2,341.56</td>
<td></td>
</tr>
</tbody>
</table>

Note – Buyer who is manufacturer in DTA, is eligible to avail Cenvat Credit of D, H, J and K above. [Total 1,787.18]

A buyer, who is service provider, is eligible to avail Cenvat Credit of D, J & K. [Total 1,312.50]

[B] Where DTA sales are subject to ‘sales tax’ [i.e., Element of ‘spl CVD’ is exempt]

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<td>1%</td>
<td>18.13</td>
</tr>
<tr>
<td>(G)</td>
<td>Sub-total for Spl CVD (A+B+D+E+F)</td>
<td>11,866.88</td>
<td></td>
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<tr>
<td>(H)</td>
<td>Special CVD – 4% of ‘G’</td>
<td>4%</td>
<td>474.68</td>
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<tr>
<td>(I)</td>
<td>Sub-total to calculate EC / SHEC (B+D+H)</td>
<td>2,341.56</td>
<td></td>
</tr>
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Note – Buyer who is manufacturer in DTA, is eligible to avail Cenvat Credit of D, H, J and K above. [Total 1,787.18]

A buyer, who is service provider, is eligible to avail Cenvat Credit of D, J & K. [Total 1,312.50]

EXCISE -- EC & SHEC on Excisable Goods – exempted w.e.f. 1st March, 2015

E/N 14/2015 (Exemption from EC)
All goods falling within the First Schedule to CETA 1985 shall be exempt from the whole of the EC leviable thereon u/Sec 93 of FA, 2004.

Explanation.- The exemption contained in this notification shall apply to excisable goods which are produced or manufactured by a 100% EoU and brought to any other place in India in accordance with the provisions of Foreign Trade Policy.

E/N 15/2015 (Exemption from SHEC)
All goods falling within the First Schedule to CETA 1985 shall be exempt from the whole of the SHEC leviable thereon u/Sec 138 of FA, 2007.
SPECIAL MANNER OF CHARGING EXCISE DUTY: SEC 3-A

8. Explain the provisions of section 3-A of the Central Excise Act, 1944 regarding duty payable on the basis of capacity of production in respect of NOTIFIED GOODS. (May 2009- 5 Marks)

Sec 3-A of the Central Excise Act, 1944 provides for levy and collection of excise duty based on Annual Capacity of production rather than on basis of actual production. Following are salient features of this new Sec 3-A:

1) It is applicable only in relation to those commodities, which are specified by CG by notification in this regard. At present, it is applicable only on following commodities:
   (1) PAN MASALA, containing tobacco
   (2) PAN MASALA, not containing tobacco
   (3) Unmanufactured Tobacco (Branded)
   (4) Chewing Tobacco
   (5) Jarda Scented Tobacco

2) It provides for fixation of annual capacity of production of goods for the factory on the basis of requisite declarations given by AC/DC. **Assessee shall be liable** to pay excise duty on the capacity so fixed. Actual production will not be of any relevance in this regard.

3) Annual Capacity is determined on the basis of number of ‘relevant factor of production’ in the factory. The notified relevant factor of production is ‘packing machines in the factory and the maximum packing speed at which such packing machine can be operated’. (as amended in year 2015)

4) The excise duty liability so fixed shall be **payable on monthly basis but in ADVANCE**. It shall be paid by the 5th of the beginning of the month. Delay in payment will attract interest @18% p.a.

5) **The assessee shall not be entitled to avail any cenvat credit.**

6) **Annual capacity shall be re-determined whenever any relevant factor is altered** and consequently excise duty liability will also change.

7) **In case factory becomes non-operational for a continuous period of 15 days or more**, then excise duty liability of that period shall be abated proportionately.

8) **This system of payment of duty based on annual capacity of production shall not be applicable to 100% EoU.** It means that 100% EoU shall continue to pay duty in terms of Sec 3 of CEA, 1944, i.e., duty on actual production of goods.

Department can't raise demand on basis of actual production if duty is paid on basis of production capacity

LOK NATH PARSAD GUPTA –2015- TRIBUNAL

In case of duty based on capacity of production, it is deemed production rather than actual production, which is relevant for calculation of duty; hence, actual production, even if higher than capacity, cannot be used to raise demand.

**Amendment in 2015**

1. **ED rates have been revised:** With increase in general rate of ED (from 12.36% to 12.50%), the rates of duty as leviable under Sec 3-A have also been revised. [NN 5/2015, 6/2015 & 25/2015 have been issued for that purpose]

2. **Revised rates have linked ED payable to speed of packing machine:** Earlier (upto 28th Feb, 2015), ED liability was linked to packing machine and not to its speed. Thus, 2 manufacturers having 1 packing machine but of different speed were liable to pay the same amount of notified duty. But, w.e.f. 1st March, 2015, that scenario has changed. Now, manufacturer with packing machine of different speed will have different ED liability also.

   **Consequential other changes**

   - **Re-determination of “Annual Capacity of Production (ACP)” in accordance with revised criteria**
     Rules have been amended to provide that “the annual capacity of production for the period from the 1st day of March, 2015 shall be re-determined by the AC/DC within 3 working days of the coming into force of amended Rules.”

   - **Due date for payment of duty for month of March, 2015 extended from 5th March to 15th March**
     ED payable under Sec 3-A is payable in advance, by 5th of beginning of same month. Rules have been amended to provide payment of ED for

- **Penal Provisions as provided in Rule 17**
  - **Situation 1: Registered unit: Some machines not declared** [Rule 17(1)]
    “In case of contraventions involving non-declaration of number of packing machines available in the premises of a manufacturer, the duty leviable in respect of such undeclared packing machines shall be determined on the basis of
    ... total number of undeclared packing machines found available in the premises,
    ... the highest retail sale price of the pouches manufactured with the aid of undeclared packing machines and
    ... the rate of duty per packing machine corresponding to the highest maximum packing speed as specified in the notification”
  
  - **Situation 2: Unregistered unit: manufacturing not declared** [Rule 17(2)]
    “If it is found that goods have been manufactured or clered from a unit which is not registered with the jurisdictional CEO, then duty liability of such unit shall be determined on the basis of
    ... the number of packing machines found available in the premise,
    ... the retail sale price of the pouches manufactured with the aid of such packing machines and
    ... the rate of duty per packing machine corresponding to the highest maximum packing speed as specified in the notification”

3. **Revised Notified Rates do not have any portion of EC/SHEC:** Since EC & SHEC has been fully exempted on all goods, the revised notified rates will not have any portion of EC/SHEC therein.
**LATEST IN JUDICIARY**

**Rule 10: Abatement of Duty in case of non-production of goods**

In case a factory did not produce the notified goods during any continuous period of **15 days or more**,* the duty calculated on a proportionate basis shall be ABATED in respect of such period* provided the manufacturer of such goods files an **intimation** to this effect with AC/DC, with a copy to the SCE, at least 3 working days prior to the commencement of said period.

who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period under the physical supervision of SCE, in the manner that these cannot be operated during the said period.

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**DHARAMPAL SATYAPAL LTD - 2013 – ALLAHABAD HC**

**Facts**

- ED for Dec, 2011 month – Paid by 5th Dec
  - Subsequently, factory gets closed on 21st Dec, 2011 (11 days closure Dec) and it remained closed till 20th Feb, 2012
  - No of days for which factory remained closed in Dec Month = 11 days
  - No of days for which factory remained closed = 62 days (11 days + 31 days + 20 Days)
- Assessee claim for abatement of duty for Dec, 2011 month was rejected by CEO.

**Dept:**

- For Dec month, factory was not closed for continuous period of 15 days.

**Assessee:**

- 'Continuous closure of more than 15 days' shall not be confined to a particular month, it may fall within a month or more than 1 month provided it is continuous.

**Issue**

Whether so long as days of closure are continuous, even if falls in different calendar month, it will constitute one continuous period under Pan Masala Packing Machines Rules, 2008 (Rule 10) for allowing abatement of duty?

**Held**

YES

- A month may be a convenient method for assessment and deposit of excise duty. Assessee applied for abatement since it had deposited excise duty for the entire month of Dec, 2011.
- Since only 11 days were falling in the continuous period of closure beginning from 21st Dec, 2011 to 20th Feb, 2012 he claimed for abatement of 11 days for the month of December, 2011. This would not mean that closure was for less than 15 days.
- The period of 15 days may fall within a month or more than one month, provided it is continuous.

**Author:**

Rule 10 does not use the word 'month'. It does not say 'where the factory did not produce the notified goods during any continuous period of 15 days or more in a month'. Thus, period of 15 days may fall into more than one month.

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**ASWAD STEELS ALLOYS (P.) LTD. - 2014 – ALLAHABAD HC**

**Facts**

- Assessee was liable to duty based on capacity of production.
- Assessee claimed abatement of duty on ground of closure of its factory after filing necessary intimation.

**Dept:**

- Department denied abatement on ground that electricity meter reading was not intimated, as required by rules.

**Assessee:**

- 'Assessee argued that it was using DG sets for power and did not have electricity connection, and, therefore, abatement could not be denied on that ground.'

**Issue**

Whether ABATEMENT BENEFIT can be denied due to non-furnishing of meter reading when assessee was not using electricity meter at all?

**Held**

NO

- Assessee not having electric meter Benefit / Abatement not deniable on non-furnishing of impossible information
  - Law does not insist on impossibility for complying with provisions of Act for claiming any exemption or abatement.
  - Where it is established that the party did not have electric connection and was using only DG set, insistence of providing electricity meter reading for abatement was an absurd suggestion.
  - Since all other conditions (viz. actual closure and intimation) were satisfied, abatement could not be denied.