

Q. 1 - State the procedure for registration of manufacture under the Central Excise Act. (May 2008, May 2005)

Registration (Central Excise):

A. Rule 9 of Central Excise Rules, 2002 gives procedure for Registration.-

(1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered:

Provided that a registration obtained under rule 174 of the Central Excise Rules, 1944 or rule 9 of the Central Excise (No.2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.

(2) The Board may by notification and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

(1) The registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

B. Procedure for Registration:

Enclosures with application for Registration under Central Excise

Application should be prepared in three sets minimum - two sets for Excise Department and one set as office copy for own records to be preserved for five years.

1. Covering letter addressed to Jurisdictional AC./D.C. containing

- (a) Full details of the applicant assessee
- (b) Full Factory address and addresses of Head Office plus addresses of Depots and Branches from where goods are sold.
- (c) Details of all final products manufactured with Brand names or trade names as shown in Excise invoices and in sales literature
- (d) Copies of sales literature (d) Details of inputs
- (e) Manufacturing process in brief in the form of a flow chart
- (f) Details of waste and scrap generated during the course of manufacture.
- (g) Ownership of the Brand name or Trade name used or logo affixed on the final products.
- (h) Working hours and weekly days.
- (i) Nature or system of Marketing
- (j) Whether any trading is done from factory premises or other premises and details of the items traded or marketed as a trader.
- (k) Job work done if any for others
- (l) Names of others from whom you get some inputs processed on job work basis and types of processing done by you.
- (m) Pricing Policy, Discount policy, nature of customers.
- (n) Details of Private records maintained related to procurement, storage, manufacturing, inspection, valuation of all excisable goods whether used as Inputs or capital goods or final products – in short inventories.
- (o) Values of clearances in the previous financial year and during the current financial year till the date of the application,

(p) details of all other manufacturing or trading units where the partners or directors or proprietors are holding key positions (h) details of all factories if the firm is having more than one factory premises (Remember Government wants each factory premises should have separate registration certificate).

(q) Names of authorized signatures for signing excise documents with specimen signatures.

2. Application for registration in triplicate in the form A-1 With following enclosures.

- (a) Ground plan of the factory premises
- (b) Copies of partnership deeds, memorandum of articles of association,
- (c) Registration certificates under local Sales Tax and Central Sales Tax,
- (d) Letter or card of Income Tax department giving your PAN No.,
- (e) Copies of sales literature.

3. Important instructions for new comers who are applying for registration for the first time:

- (a) Application should be filed at the inward section available in each Division.
- (b) If inward clerk or concerned Inspector or Superintendent try to refuse the application despite of your filling it properly in the above lines with all enclosures, then go to Asst. Commissioner
- (c) Receipt and Acknowledgement need not wait for the visit of the excise officer. Let him visit your factory any time.
- (d) There are no fees prescribed.
- (e) Application can not be refused as per promise given in the Citizens Charter. They must accept it under stamped and dated signature. It is an offense if any one tries to do so.
- (f) Registration certificate shall be issued in maximum one week. As per your instructions the certificate shall be posted to you or given by hand

4. P.L.A. (Personal Ledger Account Number – Immediately after getting Registration certificate, you should apply to the Chief Accounts officer of the Commissionerate or to the Divisional A.C./D.C. for allotment of Account Current Number which is separate. This has to be written in all excise invoices. You have keep track on it till you get this number.

5. Registration procedure after 1/10/2002
As per last amendment mentioned the Notification reads -

No. G.S.R (E). In exercise of powers conferred by rule 9 of the Central Excise (No.2) Rules, 2001, (hereinafter referred to as the said rules) the Central Board of Excise and Customs hereby specifies the conditions, safeguards and procedures for registration of a person under the said rules and exemptions from registration in specified cases: -

- (1) Application for registration: Application for registration: Every person specified under sub-rule (1) of rule 9, unless exempted from doing so by the Board under sub-rule (2) of rule 9, shall get himself registered with the jurisdictional Deputy or Assistant Commissioner of Central Excise by applying in the form specified in Annexure-1 or Annexure 1A or Annexure 1B as the case may be

2) Registration of different premises of the same registered person: If the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

(3) Registration Certificate and Number: Registration Certificate in the Form specified in Annexure-II containing registration number shall be granted within seven days of the receipt of the duly complete application.

(4) Transfer of Business: Where a registered person transfers his business to another person, the transferee shall get himself registered afresh.

(5) Change in the Constitution: Where a registered person is a firm or a company or association of persons, any change in the constitution of firm, company or association, shall be intimated to the jurisdictional Central Excise Officer within thirty days of such change.

(6) De-registration: Every registered person, who ceases to carry on the operation for which he is registered, shall de-register himself by making a declaration in the form specified in Annexure-III and depositing his registration certificate with the Superintendent of Central Excise.

(7) Revocation or suspension of registration: A registration certificate granted under this rule may be revoked or suspended by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, if the holder of such certificate or any person in his employment, is found to have committed breach of any of the provisions of the Act or the rules made thereunder or has been convicted of an offence under section 161, read with section 109 or with section 116 of the Indian Penal Code (45 of 1860).

Q. 2 – Define the term ‘excisable goods’ and discuss the provision relating to Valuation of excisable goods for purposes of charging of duty of excise under CEA, 1944. (May 2008, May 2005, April 2006, 2007)

Excisable goods:

1. Section 2(d) of the Act defines "**excisable goods**" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

Explanation: For the purposes of this clause, “Goods” includes any article, material or substance which is capable of being bought and sold for consideration and such goods shall be deemed to be marketable.

2. **Section 4. Valuation of Excisable goods for purposes of charging of duty of excise.**

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall.

(a). in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b). in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation: For the removal of doubts, it is hereby declared that the price-cum duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum - duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.

(d) "**transaction value**" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods;

3. Section 4A. Valuation of excisable goods with reference to retail sale price

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

(4) Where any goods are specified under sub-section (1) are excisable goods

and the manufacturer -

(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1) ; or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture ,

then such goods shall be liable to confiscation and the Central Government shall ascertain in the prescribed manner the retail sale price of such goods and the retail sale price so ascertained shall be deemed to be the retail sale price for the purpose of this section.

Explanation 1: - *for the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:*

Provided *that in case the provisions of the Act, rules or other law referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.*

Explanation 2 - *For the purposes of this section,-*

(a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;

(b) where the retail sale price , declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

(c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas , each such retail sales price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

[Once the Maximum retail sale price is declared / printed on package, no one can increase it and save the duty. If department detects that while the goods are removed with MRP Rs. X printed on it and in market it is sold at price more than X then the manufacturer can be in trouble. Therefore in case a manufacturer wants to increase the M.R.P. after removal from factory for any reasons, he will have to pay differential duty. If this is not done then the goods can be confiscated]

Q. 3 Discuss the powers and duties of Central Excise Officers under the Central Excise Act, 1944. (April 2006, 2007, March 2008)

Power of Central Excise officers:

1. Section 2(b) of the Act defines the term " **Central Excise Officer**" means the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, Joint Commissioner of Central Excise, Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act;
2. **Section 12E. Powers of Central Excise Officers.-** (1) A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.
(2) Notwithstanding anything contained in sub-section (1), the Commissioner of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.
3. **Section 13. Power to arrest.-** Any Central Excise officer not below the rank of Inspector of Central Excise may, **with the prior approval of the Commissioner of Central Excise, arrest any person** whom he has reason to believe to be liable to punishment under this Act or the rules made thereunder.
4. **Section 14. Power to summon persons to give evidence and produce documents in inquiries under this Act.-** (1) Any Central Excise Officer **duly empowered** by the Central Government in this behalf, shall have **power to summon any person** whose attendance he considers necessary either **to give evidence or to produce a document or any other thing in any inquiry which such officer is making** for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the persons summoned.
(2) All persons so summoned shall **be bound to attend, either in person or by an authorised agent**, as such officer may direct; and all persons so summoned **shall be bound to state the truth upon any subject** respecting which they are examined **or make statements** and to produce such documents and other things as may be required: Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.
(3) Every such inquiry as aforesaid shall be deemed to be a "**judicial proceeding**" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

[Comments: Unless there is a written summons no is supposed to visit the departmental officer. Normally statements are extracted from persons attending and mentioned in the summons. The written statements given by assesses are used as evidence to establish offenses and are reflected in the show cause notices. Therefore the assessee should be very careful while making any written statements out of imagination or memory or ignorance. If assessee realizes after the statement is signed and delivered, he can make

an affidavit - duly notarized - on judicial stamp paper - immediately - say within 24 hours and withdraw that statement entirely and show willingness to give fresh and correct statement or to make corrections in the already given statements.]

5. **Section 14A. Special audit in certain cases.-** (1) **If at any stage of enquiry,** investigation or **any other proceedings** before him, any Central Excise Officer **not below the rank of an Assistant Commissioner** of Central Excise or Deputy Commissioner of Central Excise, having regard to the **nature and complexity of the case** and the interest of revenue, **is of the opinion that the value has not been correctly declared or determined** by a manufacturer or any person, **he may,** with the previous **approval of the Chief Commissioner** of Central Excise, **direct such manufacturer or such person to get the accounts of his factory,** office, depots, distributors or any other place, as may be specified by the said Central Excise Officer, **audited by a cost accountant, nominated by the Chief Commissioner** of Central Excise in this behalf.
- (2) The cost accountant, so nominated shall, within the period specified by the Central Excise Officer, submit a report of such audit duly signed and certified by him to the said Central Excise Officer mentioning therein such other particulars as may be specified:

Provided that the Central Excise Officer may, on an application made to him in this behalf by the manufacturer or the person and for any material and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub-section (1) is received by the manufacturer or the person.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the manufacturer or person aforesaid have been audited under any other law for the time being in force or otherwise.

(5) The manufacturer or the person **shall be given an opportunity of being heard** in respect of any material gathered on the basis of audit under sub section (1) and proposed to be utilized **in any proceedings** under this Act or rules made thereunder.

Explanation.—For the purpose of this section, "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).]

6. **Section 14AA. Special audit in cases where credit of duty availed or utilized is not within the normal limits, etc.-** (1) If the Commissioner of Central Excise has reason to believe that the credit of duty availed of or utilized under the rules made under this Act by a manufacturer of any excisable goods—
- (a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;
- (b) has been availed of or utilized by reason of fraud, collusion or any willful misstatement or suppression of facts,
- he may direct such manufacturer to get the accounts of his factory, office, depot, distributor or any other place, as may be specified by him, audited by a cost accountant nominated by him.
- (2) The cost accountant so nominated shall, within the period specified by the Commissioner of Central Excise, submit a report of such audit duly signed and certified

by him to the said Commissioner mentioning therein such other particulars as may be specified.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the said manufacturer aforesaid have been audited under any other law for the time being in force or otherwise.

(5) the manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub section (1) and proposed to be utilized in any proceeding under this Act or Rules made thereunder.

Explanation.—For the purpose of this section, "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959).]

7. **Section 15. Officers required to assist Central Excise Officers.** All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.
8. **Section 18. Searches and arrests how to be made.-** All searches made under this Act or any rules made there under and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating respectively to searches and arrests made under that Code.
9. **Section 19. Disposal of persons arrested. -** Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance/ to the officer-in-charge of the nearest police station.
10. **Section 20. Procedure to be followed by officer-in-charge of police station.-** The officer-in-charge of a police station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.
11. **Section 21. Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under section 19.-** (1) When any person is forwarded under section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to enquire into the charge against him.
(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:
Provided that—
 - (a) if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;
 - (b) if it appears to the Central Excise Officer that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction,

and shall make a full report of all the particulars of the case to his official superior.

- 12. Section 22. Vexatious search, seizure, etc., by Central Excise Officer.-** Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who—
- (a) Without reasonable ground of suspicion searches or causes to be searched any house, boat or place;
 - (b) vexaciously and unnecessarily detains, searches or arrests any person;
 - (c) vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;
 - (d) Commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty, shall, for every such offence, be punishable with fine which may extend to two thousand rupees.
- Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

- 13. Section 23. Failure of Central Excise Officer in duty.-** Any Central Excise Officer who ceases or refuses to perform or withdraws himself from the duties of his office, unless he has obtained the express written permission of the Commissioner of Central Excise, or has given to his superior officer two month's notice in writing of his intention or has other lawful excuse, shall on conviction before a Magistrate be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

Q. 4 – Explain the following with reference to CEA, 1944 – Consumer Welfare Fund and utilization of the fund (April 2006, 2007, March 2008)

Consumer Welfare Fund

1. Section 12C. Consumer Welfare Fund.-

- (1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.
- (2) There shall be credited to the Fund, in such manner as may be prescribed,—
 - (a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;
 - (b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962 (52 of 1962);
 - (c) Any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.
 - (d) The surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1994 (32 of 1994).

2. Section 12D. Utilization of the Fund. –

(1) Any money credited to the Fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Q. 5 - Explain the following with reference to CEA, 1944 – Appeals (March 2008, April 2006, 2007)

Appeals

1. Section 35. Appeals to Commissioner (Appeals). -

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) **within sixty days** from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, **allow it to be presented within a further period of three months.**

Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

(1A) The Commissioner (Appeals) may, if sufficient cause is being shown at any stage of hearing of an appeal, grant time, from time to time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

Provided that no such adjournment shall be **granted more than three times** to a party during hearing of the appeal.

2. Section 35A. Procedure in appeal.- (1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard, if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(3) The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against,

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied

or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.

(4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(4A) The Commissioner (Appeals) shall, **where it is possible** to do so, hear and decide every appeal **within a period of six months** from the date on which it is filed.

(5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Central Excise.

3. Section 35B. Appeals to the Appellate Tribunal.- (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,—

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse, or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998;

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to subsection (1), which is pending immediately before the commencement of section 47 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of, or

connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(1B) (i) The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, by may be necessary for the purposes of this Act.

(ii) Every Committee constituted under clause (I) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Commissioners of Central Excise may, **if he is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf** (hereafter in this Chapter referred to as the authorised officer) **to appeal on his behalf to the Appellate Tribunal** against such order.

(3) Every appeal under this section shall be filed **within three months** from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, **file, within forty-five days** of the receipt of the notice, **a memorandum of cross-objections** verified in the prescribed manner **against any part of the order appealed against** and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, **irrespective of the date of demand** of duty and **interest** or levy of penalty in relation to which the appeal is made, **be accompanied by a fee of,-**

(a) where the amount of duty and **interest demanded** and penalty levied by any Central Excise Officer in the case to which the appeal **relates is five lakh rupees or less, One thousand rupees;**

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates **is more than five lakh rupees, but not exceeding fifty lakh Rupees, five thousand Rupees.**

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates **is more than fifty lakh rupees, ten thousand Rupees.**

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the appellate Tribunal, - (a) in an appeal for **grant of stay** or for **rectification of mistake** or **for any other purposes**, or (b) **for restoration of an appeal** or any application, **Shall be accompanied by a fee of five thousand rupees.**

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub section.

4. **Section 35C. Orders of Appellate Tribunal.-** (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(1A) The appellate Tribunal may, if sufficient cause is being shown, at any stage of hearing of an appeal, **grant time**, from time to time to the parties or any of them **and adjourn the hearing of the appeal for reasons to be recorded in writing;**

Provided that no such adjournment shall be granted **more than three times** to a party during hearing of the appeal.

(2) The Appellate Tribunal may, at any time within *six months* from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal: [Comments: the words four years are substituted by six months by clause 140 of the Finance act 2002 w.e.f. 11/5/2002]

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order;

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand as vacated.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Commissioner of Central Excise and the other party to the appeal.

(4) Save as provided in section 35G or section 35L, orders passed by the Appellate Tribunal on appeal shall be final.

5. **Section 35D. Procedure of Appellate Tribunal.-** (1) The provisions of subsections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962(52 of 1962), shall apply to the

Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.

(3) The President or any other member of the Appellate Tribunal authorized in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where—

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) The amount of fine or penalty involved does not exceed ten lakh rupees.

6. Section 35E. Powers of Committee of Chief Commissioners of Central Excise or Commissioner of Central Excise to pass certain orders.-

(1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Central Excise as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct “**such authority or any Central Excise Officer subordinate to him**” to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the - Commissioner of Central Excise in his order.

(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under sub-section (1) or subsection (2), the adjudicating authority or the authorized officer makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 35B shall, so far as may be, apply to such application.

7. Section 35EE. Revision by Central Government.- (1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order.

Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

Explanation.—For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such

commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of,—

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise Officer in the case to which the application relates is more than one lakh rupees:

Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,—

(a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled *or* modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 11A.

- 8. Section 35F. Deposit, pending appeal, of duty demanded or penalty levied.-** Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:

Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal **is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship** to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, **may dispense with** such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, **the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days** from the date of its filing

9. Section 35G. Appeal to High Court.- (This section is substituted w.e.f. 14/5/2003 by S. 144 of the F.A. 2003 (32 of 2003)

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July 2003(not being an order relating , among other things , to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purpose of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file and appeal to the High Court and such appeal under this sub-section shall be-

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) Has not been determined by the Appellate Tribunal: - or

(b) Has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1)

(7) When an appeal has been filed before the High Court it shall be heard by a bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(8) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more or the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this act, the provisions of the code of civil procedures, 1908, relating to appeals to the High Court shall as far as may be, apply in the case of appeals under this sections.

10. **Section 35H. Application to High Court.** - (1) The Commissioner of Central Excise or the other party may, **within one hundred and eighty days** of the date upon which he is served with notice of an order under section 35C passed *before the first day of July 2003* shall be substituted.(not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.

11. **Section 35 I. Power of High Court or Supreme Court to require statement to be amended.**- If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

Section 35J. Case before High Court to be heard by not less than two judges.- (1) When any case has been referred to the High Court under section 35G or section 35H, it shall be heard by a Bench of not less than two judges of the High Court and shall be

decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Section 35K. Decision of High Court or Supreme Court on the case stated.- (1) The High Court or the Supreme Court hearing any such case shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

(1A) Where the High Court delivers a judgement in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned central excise officer on the basis of a certified copy of the judgement.

(2) The costs of any reference to the High Court or an Appeal to the High Court or the Supreme Court, as the case may be, which shall not include the fee for making the reference, shall be in the discretion of the Court.

12. Section 35L. Appeal to the Supreme Court. An appeal shall lie to the Supreme Court from—

(a) any judgment of the High Court delivered

(i) in an appeal made under Section 35G: or

(ii) on a reference made under Section 35G by the Appellate Tribunal before the 1st day July 2003:

(iii) on a reference made under Section 35H,

in any case which, on a its own motion or on an oral application made by or on behalf of the party aggrieved immediately after passing of the judgement the High Court certifies to be a fit one for appeal to the Supreme Court: or so

(b) any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

14. Section 35M. Hearing before Supreme Court.- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

Section 35N. Sums due to be paid notwithstanding reference, etc.- Notwithstanding that a reference had been made to the High Court or the Supreme Court or an appeal has

been preferred to the Supreme Court, sums due to the Government as a result of an order passed under subsection (1) of section 35C shall be payable in accordance with the order so passed.

Section 35 O. Exclusion of time taken for copy.- In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

15. Section 35P. Transfer of certain pending proceedings and transitional provisions.-

(1) Every appeal which is pending immediately before the appointed day before the Board under section 35, as it stood immediately before that day, and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

(2) Every proceeding which is pending immediately before the appointed day before the Central Government under section 36, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were an appeal filed before it:

Provided that if any such proceeding or matter relates to an order where—

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 36 had not been substituted:

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Commissioner of Central Excise under section 35A, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Commissioner of Central Excise, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorised to appear in any appeal or proceeding transferred under subsection (1) or sub-section (2) shall, notwithstanding anything contained in section 35Q, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

16. Section 35Q. Appearance by authorised representative.- (1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practice in any civil court in India; or

(c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service -Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Central Excise or the competent authority under the Customs Act, 1962 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person,—

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practice as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

Q. 6 - Explain the following with reference to CEA, 1944 - Presumption as to Document. (March 2008)

Presumption as to Document

- 1. Section 36A. Presumption as to documents in certain cases.-** Where any document is produced by any person or has been seized from the custody or control of any person, in

either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall,—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

2. Section 36B. Admissibility of microfilms, facsimile copies of documents and computer print outs as documents and as evidence.- (1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the

computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

Q. 7 Explain the following with reference to CEA, 1944 - Claim for refund of duty and interest on delayed refunds (*March 2008, 2007*)

Claim for refund of duty and interest on delayed refunds

1. Section 11A - Recovery of erroneous refunds made.
Section 11AB - Interest on erroneous refunds
Section 11AC - penalty for erroneous refunds
2. **Section 11B - Claim for refund of Duty** - This is the most important section to be read and understood by all persons who want to file Refund claims. Full text of this section is available in file 4 of this C.D. book. As per this section (a) Assessee must file refund claim in writing with the Jurisdictional A.C. or D.C. enclosed with proper documents.

Automatic refunds shall not be made. (b) Refund claim must be filed within time limit of one year from relevant date. (c) Refund possible only if incidence of duty is not passed on by assessee to another person. (d) No time limit if the duty is paid under protest. (e) The A.C/ or D.C. must make an order sanctioning or rejecting refund claim. (e) If bar of unjust enrichment is not applicable then the refund shall be made to assessee otherwise it shall be credited to fund. (f) If the Refunds are related to Export under claim of rebate of duty, or unspent advance lying in balance in the applicants PLA, refund of credit of duty paid on excisable goods used as inputs in accordance with the rules/notifications made account, then the refunds can be made in cash. (g) if the duty of excise is borne by the buyer/purchaser and if he has not passed on the duty burden to another person. (h) Refund claim must be filed within time limit specified to be counted from relevant date. (i) A welcome amendment is made in Section 11B by Finance Bill 2008 to allow refund of not only duty but also interest paid with the duty.

3. **Section 11BB. Interest on delayed refunds.**

Full text of Section 11BB is available in file 4 of this C.D. book. It is necessary to read and understand this section (a) There must be an order of refund under subsection (2) of Section 11B. (b) If refund is not made within 3 months from refund order then assessee shall get interest.

4. **TRIBUNAL's inherent power to grant interest on delayed refund of pre deposit - Tribunal (Larger Bench) in the case Sachin Textiles Pvt. Ltd. v CCE Mumbai [2002(146) ELT 541 (Tri- LB)] is very interesting case law. Issue for reference made by CEGAT Mumbai to Larger Bench was whether the CEGAT has inherent jurisdiction to award interest. L.B. gave ruling that the CEGAT has such inherent jurisdiction and hence the case can be decided on merits**

5. **Who and when can file Refund claims ?**

- a: Manufacturers as well as buyers both can file refund claim provided he has not passed on the burden of duty paid to another person (bar of unjust enrichment)
- b If the manufacturer realizes that he has paid the duty in excess than payable he can file refund application within normal period of limitation of one year. **[Comments: In the case Hutchison Max Telecom Pvt. Ltd. V CCE Mumbai [2004(165) ELT 175 (Tri-Del)] has held that Filing of appeal itself amounts to protest - Refund not to be denied on grounds of limitation when disallowance of benefit of notification challenged by appellant and such benefit finally allowed by Tribunal.]**
- c. If the buyer has paid duty which is not legally leviable and not passed on the burden of duty so paid to another person then he can file refund claim within one year.
- d. If the manufacturer pays the duty under protest, mentions so in his excise invoices, returns, TR6 challans etc, writes letter to A.C./D.C. that he is paying duty under protest and prays for provisional assessment under Rule 7 of the CER 2002, then he can claim refund. However final order of assessment indicating there is an excess payment of duty must be issued either by the A.C./D.C. or by the higher Appellate authority. **[Case Law: refer excellent Ruling of Hon'ble Supreme Court given in the case CCE Kanpur V Flock (India) Pvt. Ltd. reported in 2000(120) ELT 285 (SC)]**
- e. If pre-deposit under S. 35F is made while filing appeal with Commissioner (Appeals) or Tribunal or Court and the appellant receives order in his favor (even as remand for de novo adjudication) then he must file refund claim forthwith along with the copy of the order. Bar of unjust enrichment is not applicable in such case because pre deposit is not duty.
- In the event of export under claim of rebate in terms of Rule 18 of C.E.(N0.2) Rules, 2001, the amount of duty paid after establishing proof of such export. (For details please refer to Chapter 27 of this book)

- Refund of credit (CE Rule 57AC) in case of Export under Bond in terms of the Notification No. 35/2000-CE (NT), DT. 28.4.2000:
- Refund of unutilized credit balance in PLA if it unlikely to be utilized in the events like closure etc.
- If any amount is forcibly recovered without authority of law. However assessee must have paid such duty under protest.

6. Procedure – filing Refund Claims.

As per Chapter 9 of the C.B.E.C. manual, The person claiming the refund of any duty of excise should make an application to the Jurisdictional Asst. Commissioner / Deputy Commissioner (as the case may be) in the old format R-1 prescribed under old Rule 173. (given at the end of this paragraph.).

This application must accompany documents as envisaged in Section 12A (Invoices/RT12 /ER1>Returns/Letters of Payment of duty under protest etc.)

The time limit for filing Refund application is 12 months from the relevant date. (This time limit is not applicable if the duty is paid under protest following procedure laid down in Rule 233 B)

The application should accompany documentary evidence or other evidences to establish that the amount of the duty of excise in relation to which such refund is claimed was paid by assessee and that he has not passed on the incidence of such duty to any other person.

7. **Refund Application (In form R)**

Refund application is to be made in duplicate in the proper form to the Jurisdictional Asst. Commissioner of C.E. as per Rule 173S and the format is given below **Form –R**

Refund of Pre-Deposit made under Section 35F

Sometimes Departmental Officers are reluctant to pass Refund Orders in the following events Matter Remanded for De Novo Adjudication. Matter decided in favor of Appellant in appeal. Amount of pre-deposit forcibly recovered during the pendency of stay application.

9. **Refund of deposit amount forcibly recovered from the applicant pending the disposal of Stay Application.**

It is a common experience that the Departmental officers compel the assessee to pay the amount of duty / penalty etc. confirmed in the Order in Original. Really speaking there is section 35F which empowers the Appellate Authority to grant partial or full waiver from the condition of pre-deposit during the pendency of the Appeal. The applicants file appeal with Commissioner Appeals or Tribunal as the case may be. Appellants also file simultaneously application for stay of the impugned order and waiver of pre-deposit (called as stay application for short).

For such applicants, there is a good relief given by the decision of CEGAT WZB Mumbai in the case Steelco Gujarat Ltd. vs. CCE, Vadodara. Reported in 2000(122)ELT 67(Tri). In this case, the amounts were forcibly recovered from the applicant when it's stay application was pending hearing before the Tribunal. Even the expiry period for filing an appeal was not over. It was argued that the refund can not be denied to the applicant by application of sub-section (2) of section 11(B) of the Act, since it was an amount deposited pending disposal of the appeal and cited the judgement of the Supreme Court in the case Mahaveer Aluminium Ltd. vs. CCE [1999(114)ELT 371].

The Tribunal in para 5 of its ruling observed “the position is all the more unfortunate on the fact that the amount has been recovered on 31/12/1997 (much before the applicant could file the appeal and stay application against that order). The stay applications were filed by the applicants on 21/1/98 before the Tribunal. There are instructions of the Board not to restrain the Commissioner to take coercive action, if the stay application is pending. Why it was considered necessary to recover this amount while the order was pending is not explained by the Departmental Representative. In fact, the Tribunal in its decision in Mohan Engg. Works vs. CCE – 1994(73)ELT161 had ordered return of an amount during the pendency of the appeal of the assessee.

At the end, the Tribunal directed the Commissioner to refund the amount in question within a month from receipt of the order.

10. Refund claim by Buyer/Purchaser

Purchaser also can file claim of refund of duty paid by the manufacturer under protest or otherwise as per section 11B. The relevant date for filing such claim is the date of purchase of goods from the manufacturer. Here is the decision of larger bench of Tribunal in the case National Winder vs. CCE Allahabad reported in 2000(91)ECR937(Tri).

“Purchaser is bound to file his claim for refund within a period of 6 months from the date of purchase of goods from the manufacturer and has to independently prove and satisfy the competent authority under section 11B that he has not only borne the burden of duty but also has not passed on that burden to any other person. If the purchaser was also intended to be given the benefit of the protest of the manufacturer, then the period for him for filing the claim would not have been stipulated from the date of purchase but from the date of the decision of the protest claim of the manufacturer.”

This decision is based on Tribunal’s own decision in the case National Winder vs. CCE by order no. 38/94-NRB and makes following points very clear –

- a. The procedure laid down in rule 233B of CER for payment of duty under protest is applicable for the manufacturer and not for the purchaser because he is not responsible to pay any duty.
- b. There is no period of limitation for refund claim for the manufacturer if he has paid the duty under protest.
- c. For the purchaser however, the date of limitation period is applicable is as the date of purchase even if manufacturer has paid the duty under protest.
- d. Purchaser also has to establish evidences that he has actually borne the burden of duty and he has not passed it on further to any other person.

11. Refund of CENVAT paid on Inputs used in Manufacture of Goods Exported under Bond.

Rule 5 of CENVAT Credit Rules 2002 permits Refund of CENVAT credit involved in the inputs if used in the manufacture of finished Excisable goods which are exported without payment of duty under Bond. However for this purpose, Refund Application needs to be made. The format of such application is given in Budget Notification No.11/2002-C.E. (N.T.) dated 1/3/2002.

12. Limitation under S.11B for filing Refund claim:

- Payment made under Stay Order of CEGAT is payment under protest. Refund claim of such amount is not barred by limitation under section 11B [Utkal Moulders vs. CCE, Bhubaneswar – 1999 (111)ELT 562(Tri)].
- Refund of **duty paid in excess allowed** even if claim for refund of entire duty paid rejected [Paam Pharmaceuticals (Delhi) Ltd. vs. Commissioner of Customs, New Delhi (Tribunal) reported in 1999(111) ELT 66.

13. Doctrine of Unjust Enrichment:

Section 12B of CEA 1944 reads “Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.”

In layman’s language if the assessee pays any amount of duty rightly or by mistake or by force, reflects the same or even may not reflect the same in duty paying excise document, or in invoice, it is assumed that he has passed on the burden of such duty paid to the buyer of the goods. Meaning thereby that he is not the sufferer on that count. **However if he can establish the fact with clinching and indisputable documentary evidences that he has not passed on such burden of duty to any other person or buyer and that he himself has borne the burden of that amount, then he can be called as the sufferer. Then he is eligible for the refund of excess payment.** This is the doctrine of unjust enrichment in the language of the author. **Naturally in order to get the claim of refund settled in favor of the assessee it is the responsibility of the assessee paying the duty, to establish that he has actually borne the burden of such duty payment himself and not passed on to any other person.**

it is clear from the wording of Section 12B mentioned supra and also by virtue of many Rulings of Hon’ble Supreme Court and High Courts and Tribunals. Some of them are cited below:

- “The doctrine of unjust enrichment is a principle in equity that can be invoked only by Court and not by the authorities under the Act(CESA)” Collector Vs Doaba Co-Operative Sugar Mills – 1988(37) ELT 478 (SC)
- There is no warrant under the provisions of the Act to deny the refund on the ground of unjust enrichment by including the notional cost of packing material supplied by the buyers in the assessable value. – Alembic Glass Industries Vs UOI 1990((48) ELT 232 (Kar)

14. Doctrine of Unjust Enrichment in case of Captive Consumption – Whether applicable or not?

The doctrine of unjust enrichment has no application in cases where the excise duty is wrongly paid on the product for captive consumption- Section 11B of CEA 1944. This is the decision of Appellate Commissioner Mumbai in the case Dr. Beck and Co. [1998(103) ELT 203 (Commr. Appls).] This decision was based on the order of Bombay H.C. in the case International Conveyors Vs UOI in Writ Application No.6026/94 which was upheld by Supreme Court rejecting the SLP of the Department [1996(82) ELTA165]. **Now the question whether the doctrine of Unjust Enrichment is applicable in case of captive consumption has been set to rest by Supreme Court in the case, U.O.I V Solar Pesticide Pvt. Ltd.**

Q. 8 - Explain the following with reference to CEA, 1944 - LEVY AND COLLECTION OF DUTY (April 2007)

LEVY AND COLLECTION OF DUTY

Section 3. Duties specified in (First Schedule and the Second Schedule) to the Central Excise Tariff Act, 1985 to be levied-

- (1) There shall be levied and collected in such manner as may be prescribed,—
- (a) a duty of excise to be called the **Central Value Added Tax (CENVAT)**, on all Excisable goods [excluding goods produced or manufactured in special economic zones] which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- (b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods [excluding goods produced or manufactured in special economic zones] specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule: [Provided that the duties of excise which shall be levied and collected on any [excisable goods which are produced or manufactured,—
- (i) in a **free trade zone** and brought to any other place in India; or
- (ii) (ii) by a hundred per cent export-oriented undertaking and **brought to any other place in India** shall be an amount equal to] the aggregate of the duties of customs which would be leviable [under the Customs Act, 1962 (52 of 1962), or any other law for the time being in force] on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value; the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962(52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

Explanation 1.—Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable under the said section 12 at the highest of those rates.]

Explanation 2.—In this proviso,—

- (i) "free trade zone" means a zone which the Central Government may, by notification in the Official Gazette, specify in this behalf.
- (ii) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act.
- (iii) "Special Economic Zone" means a zone, which the Central Government may, by notification in the Official Gazette, specify in this behalf].

(1A) The provisions of sub-section (1) shall apply in respect of all excisable goods other than salt 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.

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)] as chargeable with duty *ad valorem* and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed—

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description—

(i) produced or manufactured by different classes of producers or manufacturers;

or

(ii) sold to different classes of buyers:

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods].

109. Validation of Action taken under section 3 of Act 1 of 1944: Any action taken or anything done or purporting to have been done or done under sub section (1) of section 3 of the Central Excise Act, as amended by clause (ii) of section 88 at any time during the period commencing on and from the 11th day of May 1982 and ending with the day, the Finance Act, 2000 receives the assent of the President shall be deemed to be and to always have been, for all purposes, as validly and effectively taken or done as if the amendment made by clause (ii) of section 88 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any Court, tribunal or other authority,

all duties of excise levied, assessed or collected during the said period on any excisable goods under the Central Excise Act, shall be deemed to be and shall be deemed to always have been, as validly levied assessed or collected as if the amendment made by clause (ii) of section 88 had been in force at all material times;

no suit or other proceedings shall be maintained or continued in any Court, tribunal or other authority for the refund of duties of excise and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendment, made by clause (ii) of section 88 had been in force at all material times;

recovery shall be made of such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would have not been refunded, if the amendment made by clause (ii) of section 88 had been in force at all material times.

no suit or other proceedings shall be maintained or continued in any Court, tribunal or other authority for the refund of duties of excise and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the amendment, made by clause (ii) of section 88 had been in force at all material times;

recovery shall be made of such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would have not been refunded, if the amendment made by clause (ii) of section 88 had been in force at all material times.

Explanation: For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come in to force.]

Section 3A. Power of Central Government to charge Excise duty on the basis of capacity of production in respect of notified goods. –

- (1) Notwithstanding any thing contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified prescription, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the official gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.
- (2) where a Notification is issued under sub section (1), the Central Government may, by rules, -
 - (a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity shall be deemed to be annual production of such goods by such factory; or
 - (b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and
(ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on basis of such factor by an officer not below the rank of Assistant Commissioner of Central excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

Provided that where a factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Provided further that in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re determined on proportionate basis having regard to such alteration or modification.

- (3) the duty of excise on notified goods shall be levied, at such rate, on the unit of production or , as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the official gazette, specify, and collected in such manner as may be prescribed:

Provided that where a factory producing notified goods did not produce the notified goods during any continuous period of 15 days or more, the duty calculated on the proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfills such conditions as may be prescribed.

- (4) The provisions of this section shall not apply to the goods produced or manufactured, by a 100 % Export Oriented undertaking and brought to any other place in India.

Explanation 1 – for the removal of doubts, it is hereby clarified that for the purposes of section 3 of the Customs Tariff Act, 1975,(51 of 1975) the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the first

schedule and second schedule to the Central Excise Tariff Act, 1985 (5 of 1986), read with any notification for the time being in force.

Explanation 2- for the purposes of this section, the expression “100% Export Oriented Undertaking” shall have the meaning assigned to it in section 3.

Section 4. Valuation of Excisable goods for purposes of charging of duty of excise.

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall.

(a). in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b). in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

***Explanation:** For the removal of doubts, it is hereby declared that the price-cum duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum - duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods*

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of Section 3.

Section 4A. Valuation of excisable goods with reference to retail sale price

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

(4) where any goods are specified under sub-section (1) are excisable goods and the manufacturer -

(a) *removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1) ; or*

(b) *tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture ,*

then such goods shall be liable to confiscation and the Central Government shall ascertain in the prescribed manner the retail sale price of such goods and the retail sale price so ascertained shall be deemed to be the retail sale price for the purpose of this section.

Explanation 1: - *for the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:*

Provided that in case the provisions of the Act, rules or other law referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Explanation 2 - *For the purposes of this section , -*

(a) *where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;*

(b) *where the retail sale price , declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;*

(c) *where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas , each such retail sales price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.*

[Once the Maximum retail sale price is declared / printed on package, no one can increase it and save the duty. If department detects that while the goods are removed with MRP Rs. X printed on it and in market it is sold at price more than X then the manufacturer can be in trouble. Therefore in case a manufacturer wants to increase the M.R.P. after removal from factory for any reasons, he will have to pay differential duty. If this is not done then the goods can be confiscated]

Section 5. Remission of duty on goods found deficient in quantity.-

(1) The Central Government may, by rules made under this section, provide for remission of duty of excise leviable on any excisable goods, which due to any natural cause are found to be deficient in quantity.

(2) Any rules made under sub-section (1) may, having regard to the nature of the excisable goods or of processing or of curing thereof, the period of their storage or transit and other relevant considerations, fix the limit or limits of percentage beyond which no such remission shall be allowed:

Provided that different limit or limits of percentage may be fixed for different varieties of the same excisable goods or for different areas or for different seasons].

Section 5A. Power to grant exemption from duty of excise.-

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, **exempt generally** either **absolutely** or **subject to such conditions** (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured—

- (i) in a [free trade zone or a special economic zone] and brought to any other place in India; or
- (ii) by a hundred per cent export-oriented undertaking and [brought to any place in India].

Explanation.—In this proviso, ["free trade zone", "special economic zone"] and "hundred per cent export-oriented undertaking" shall have the same meanings as in *Explanation 2* to sub-section (1) of section 3.

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

(2) if the Central Government is satisfied that it is necessary in the public interest so to do, it may by special order in each case, exempt from payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable "

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the official gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation.—"Form or method", in relation to a rate of duty of excise means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1988 (29 of 1988) shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section].

(5) Every notification issued under sub-section (1) or sub-section 2A shall,—

- (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;
- (b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the

Central Boards of Revenue Act, 1963 (54 of 1963).

(6) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

Section 11D. Duties of excise collected from the buyer to be deposited with the Central Government. -

(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(1A) Every person, who has collected any amount in excess of duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to Nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is required to be paid to the credit of the Central Government under “sub-section (1) or sub-section (1A)” as the case may be” and which has not been so paid, the Central Excise Officer may serve on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(3) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under “Sub section (1) or sub section (1A) or sub section (3), as the case may be” shall be adjusted against the duty of excise payable by the person on finalization of assessment or any other proceeding for determination of the duty of excise relating to the excisable goods referred to in “Sub section (1) and sub section (1A)”

(5) Where any surplus is left after such adjustment under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B and such person may make an application under that Section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Central Excise for refund of such surplus amount.