Condition for Levy of Excise duty

1) There must be goods.
2) The goods must be excisable.
3) Excisable goods must be manufactured or produced in India.

Goods

The Central Excise Act 1944 does not define goods. Sale of Goods Act and Constitutions of India indicate that goods must be movable. Courts have added one more condition and that is marketability. If something has to be considered as goods it must be marketable.

The following points are derived from cases in Supreme Court.
1) Articles in a crude or elementary form are not goods at there are no marketability for the products. The burden to establish marketability is on the department.

**Cases**

- Union carbide India limited us UOI
- Cadilla laboratories.

2) Mere selling does not mean that goods are marketable even if sold for a price.

**Cases**

- Tata Iron & Steel
- Bansal industrial gases Bihar ltd.

3) If there is no difference between items produced by the assessee and item Available in the market the product or goods is said to be marketable and dutiable, if it is specified in the First Schedule or Second Schedule to the central excise Tariff Act 1985. 

**Cases**: Tamil Nadu state Transport Corporation (2004)

4) Even though the goods are manufacture or product in the process of manufacture that by itself does not make it a manufacture product. It may have a saleable value but it would not make it a manufacture product.

**Cases**: Indian Aluminum Co. Ltd.

5) When goods are manufactured or produced on an order as per specification. If there is no evidence to show that the same goods is used for any other purpose and is not marketable, the same is not to be considered as goods.

**Excisable Goods**
Sec 2(d) of Central Excise Act 1944 provides that excisable goods means goods specified in the First schedule or Second schedule to the central excise Tariff Act 1985, as being subject to a duty of excise and includes Salt.

**The following points are emerged from Supreme Court case**

Mere mention in the central excise Tariff Act would not create liability. Test of marketability also be established. Unless the product is capable of being marketed and know to those who are in the market having an identify as a distinct identifiable commodity, actual sale in the market is not necessary but the articles must be capable of being sold in the market or known the market as goods.

**Cases:**
1) Bhor Industries (1989)
3) Gujarat Narmada Valley fertilizer Co. Ltd.(2005)
4) Hindustan Zinc Ltd. (2005).

Section 2(6) of the Central Excise Act 1944 defines manufacture as under.
Manufacture includes any process
(i) incidental or ancillary to the completion of a manufactured products; and
(ii) which is specified in relation to any goods in the Section or Chapter Notes of the First schedule to the Central Excise Act 1985 as amounting to manufacture; or
(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or relabelling of contains including the declaration or adoption of any other treatment on the goods to render the product marketable to the consumer.

**Manufacture**

The following points are worth noting to determine the condition of manufacture

1) **Manufacture implies change but every change is not manufacture.** Change of an article is a result of treatment, labour and manipulation. But something more is necessary and there must be a transformation. A new different article must emerge having distinct name, character or use.
2) **Deemed manufacture**:

In terms of Sec 2(f) (ii) of the central excise act 1944, if any process is specified as amounting to manufacture through section notes or chapter note in the Central Excise Tariff Act 1985. There the said process is considered as manufacture and the test of transformation become irrelevant. This concept is known as deemed manufacture.

**Cutting activities**

- If article before and after cutting remains the same, there is no manufacture.

**Case**: - Kiran is spinning Mils. (1988)

- If article cutting from running length in no a small pieces and giving them definite required shape to from new articles. Then as activity is considered as manufacture.

**Case**: - Kapri International pvt.ltd. (2002).

- Due to cutting activity the product emerging from such activity must be distinct, identifiable and having a different name, function and use.

**Case**: - korcs India ltd. (2004).

**Assembling**

- If assembling of items resulted in a totally different commodity, then such activity amounts to manufacture.

**Case**: - Narne Tulama manufactures Pvt. Ltd. (1988).

- Generally assembling will not amount to manufacture unless transformation test is satisfied. For e.g. mere packing of two or more items in contains does not bring about transformation.

- Assembling activity amounts to manufacture. If a new commodity is emerged, having a distinctive name, character and use.

**Case**: - Aditya Mills (1988).
Recording

Recording of sound or other phenomena shall amount to manufacture, because it is specified in the section note or chapter note as amounting to manufacture, it is considered as deemed manufacture in terms of see 2(f) (ii).

Printing, Decoration and Labeling Activities

In terms of chapter Note to chapter 70 in respect of glass mirrors, bottles, glass envelope, glassware, glass beads and other articles of glass, the process of printing, decoration or ornamenting. Shall amount to manufacture

Deemed manufacture in terms of see 2(f) (ii).

è An article is considered as manufacture if is did not change there basic character after decoration drilling, trimming, drawing, welding etc.

è Due drilling, trimming activity if is change is effected and the change facilitates. The utility of the produce for which it is meant, then the process is not a simple process, but a process of incidental or ancillary to the completion of manufacture product, and therefore activity amounts to manufacture.


è Deemed manufacture :

A section note providing that the process of drawing or redrawing a rod, wire or any other similar article, in to wire shall amount to manufacture.

Miscellaneous

If any product was emerged during the process of manufacture from the use of any item not as raw material the activity is not a manufacturing activate.

[Ax: - coal used as a fed to produce steam, during the proves as item is emerged at cinders, the same is not a manufacturing]

Note -c to chapter 34

In terms of this note, packing or repacking including packing or repacking of bulk packs to retail pack or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture.

Change in Tariff heading

Case law: packaging pvt ltd. V. collector of central excise

Supreme Court observed that the fact whether the goods face under the same chapter or different chapter is irrelevant for the levy of excise duty. Once there is transformation resetting in new commodity, duty is available.

Packing:

Generally when repacking takes place or multiple products are packed to gather there is no Manufacture since there is no transformation.

Repacking amount to manufacture, if specifically mentioned.

a) The relevant section notes or chapter notes in the central excise tariff act 1985.

b) The third schedule to the central excise act 1944.

That repacking would amount to manufacture

Ex: - page-No-24.
**Branding Labelling etc.**

These activates by themselves cannot be considered as manufacture activities.

There would be manufacture anode duty can be imposed, if specifically mention in.

è The third schedule to the central excise tariff act 1985
è The relevant section note or chapter notes

**Waste and scrap**

è Waste and scrap are generally generated without efforts.
è The supreme court in the case of khandelwal metal & engineering works (1985) has held that scrap will be liable to duty if it is know as such is the commercial parlance and has a market.
è The court observed that was and scraps are day produce of the process of manufacture and are inevitably incidental to the manufacturing process.
è The central excise tariff act 1985 has inserted some product under applicable chapter headings. Once as item is mention in the above act, it is excisable goods. Provided marketability is satisfied.

**Captive Consumption**

Rule 4 of central excises rule 2002 provides that excisable goods on which duty is payable cannot be removed with payment of duty unless otherwise provided.

è Where excisable goods is produced and consumed in production, there is no physical removal.
è Rule 5 provides that the date of removal of sale goods shale wean the date on which the goods are removed for such use.
Exemption

Where the goods are captivity consumed to generate a taxable product, the value of the ultimate product would in any event capture the value of the item captively consumed.

The Govt. Has issued exemption notification in respect of:

a) Goods manufacture in a factory and used within the factory of production or in relation to manufacture of final products, which are subjected to the excess duty.

b) Capital goods eligible for canvas credit manufacture in the factory and used within the factory of production.

If the ultimate product is fully exempt from duty, the item used as capital consumption in the production of ultimate product, for is not exempted from excises duty under the notification of 67/95 dated 16-03-1995.

Case Law

Dabur India (2005)

Thelarges branch on tribunal has held that, no duty can be charged on samples which are preserved by the manufacture for same period in order to investigate complaints provided proper accounts in the prescribed from are maintained. However, if the items are removed at any point of time, duty is payable.

Site related activity / concept of immovable property/turnkey projects.
Where a huge plant or structure is to be put up, the material, components etc. are taken to customer's site and activity such as machining, fabrication, assembling etc. takes place at the site. The first test to be satisfied is whether the item can be considered as goods. Since goods mean movable property if a structure /machinery can be considered as immovable then excise duty cannot be imposed.

In the following cases the Supreme Court considered the article as immovable.
1) Quality steels Tubes (p) Ltd. Vs Collector of Central Excise (1995)
2) Mittal Engineering Works (p) Ltd. Vs Collector of Central Excise (1996)

* Equipment embedded to the ground for operation efficiency cannot be considered as immovable property, if machine is capable of being sold, after being dismantled.

* Installation of equipment on a specially constructed platform cannot be considered as common base and therefore it is immovable property.

As board circulars

* Integrated plant/machinery as a whole. Such as handling plants are basically a system or a network of machine and therefore are no manufacture of goods.
* Items assembled at site or erected at site or attached to the earth, which cannot be dismantled without causing substantial damage to its components, are not excisable.
* Turnkey projects such as steel plants, cement plant, power plants etc. are not considered excisable goods.
* Hugh tank made of metal for storage of petroleum products in oil refineries refrigeration plant, air conditioning plant, are not movable.
* Lifts and escalators are installed in building are not movable.
* Lifts which are movable in nature as a whole and which can be temporarily installed at construction sites or exhibitions for carrying men and material are movable.

Furniture and fixture
Supreme Courts in the case of Craft interiors pvt. ltd.(2006) has held that items which are ordinarily immovable or which ordinarily cannot be removed without cannibalizing, are not furniture. Ex:- storage units , running counters , wall units , kitchen units etc.
Items like table, desks, chairs are furniture and excisable. Even if chairs, tables, beds, desks etc. are affixed to the ground they would still be called furniture.

Recommended Read

- Refund procedure for Duty Paid Exports
- All about the Composition Levy of Scheme under GST
Refund of ITC in Inverted Duty Structure with High Court Judgement

Bombay HC issues notice in writ challenging Rule 89(5) denying refund of 'input services' under inverted duty structure

Taxes eating away your Hard-Earned income? ULIPs are there for rescue

All about the new section 269SU of the Income Tax Act, 1961