

CHAPTER - FOUR

EVALUATION OF CENTRAL EXCISE LAW IN INDIA 173 - 243
WITH SPECIAL REFERENCE TO SELECTED PRODUCTS

- 4.1 Rules under Central Excise Rules, 1944
on Sugar, Tobacco and Cotton.
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CHAPTER - FOUR

**EVALUATION OF CENTRAL EXCISE LEGISLATION IN INDIA WITH
SPECIAL REFERENCE TO SELECTED PRODUCTS.**

INTRODUCTION :

In Central Excise Act, 1944 the acts and rules form a central Excise code. Excise duty is levied on the goods produced or manufactured in India. There are number of acts under Central Excise and Salt Act, 1944 regarding to sugar, Tobacco, and Cotton are made from time to time by improving rate structure through which more revenue has been collected.

In Central Excise Rules, 1944, certain rules are important from the point of view of My study i.e., "AN EVALUATION OF CENTRAL EXCISE LEGISLATION IN INDIA WITH SPECIAL REFERENCE TO SUGAR, TOBACCO, AND COTTON". The following rules are important.

4.1 RULES UNDER CENTRAL EXCISE RULES, 1944 ON SUGAR,
TOBACCO AND COTTON :

I) CENTRAL EXCISE RULES REGARDING TO MANUFACTURED SUGAR
RULE - 83 :

Maintenance of Accounts of Factories producing, whether exclusively or not, sugar other than Khandasari and Palmyra Sugar.

- 1) Every owner of a factory producing, whether exclusively or not, sugar other than Khandsari and Palmyra Sugar shall maintain the following accounts :
 - a)(i) Daily account of cane received and crushed, in the case of a factory crushing cane.;
 - (ii) Daily account of gur received and Melted in the case of a factory melting gur,
 - (iii) Daily account of beetroot received and crushed, in the case of a factory crushing beetroot,;
 - b) Register of Daily manufacture.
 - c) Periodical and Manufacturing Reports.
 - d) Daily drier house account.
 - e) Sugar store account.
 - f) Final manufacturing report.
 - g) Gunny bags account.

If the proper forms, or in such other forms as the collector may in any particular case allow.

- 2) He shall also maintain a Sugar issue and bill register showing amongst other particulars the following details of issue from the Factory, viz....
 - i) Name and address of consignee,
 - ii) Destination of consignment.

- iii) Name of booking and receiving stations.
- iii)a) Number and date of gate pass.
 - iv) Number and date of railway or steamer receipts.
 - v) Quantity.
 - vi) Number of bags,
 - vii) Number and date of invoice,
- viii) Amount of freight paid or to pay, and the following details of the bills issued in respect of each transaction namely ...
 - a) Number and date of the bill.
 - b) Ledger folio number and sales journal folio number.
- 3) Where consignments are despatched by Motor lorries, carts, pack animals or boats, the following further details shall be shown in the said register, namely
 - i) Registered number of lorries.
 - ii) Number of carts, pack animals or boats.
 - iii) The name of the owner or headman of the carts, pack animals or boats.
- 4) An inward railway receipt register giving all the necessary details in respect of (cane, gur or beetroot) by rail shall also be maintained.
- 5) All daily accounts shall be written as daily in a

clear and legible manner, even if no transaction takes place and Manufacturer shall initial all the entries made in the accounts.

The periodical / Monthly manufacturing report shall be written up and copy thereof submitted to the proper officer within 7 days of the close of each manufacturing period or months as the case may be, and a copy of the final manufacturing report shall be submitted to such officer within 25 days of the close of the manufacturing season.

Factories producing exclusively Khandsari or Palmyra Sugar or both shall maintain a daily account in the proper form showing the quantity of sugar manufactured and sold each day, and the quantity of raw materials used.

RULE 84 :

Seperate Accounts and Returns to be Maintained for each kind of sugar Manufactured.

Where more than one kind of sugar is manufactured seperate accounts and returns shall be maintained and submitted in respect of each kind of sugar.

RULE 85 :

Departmentation of Dispute as to sucrose content of sugar.

Any dispute as to the sucrose content of sugar shall be determined by reference to such officer as the collector may empower in this behalf.

RULE 86 :

Damaged sugar may be returned to factory for refining.

Sugar which has been damaged after depositing in the store-room on the approved premises, or after its delivery on payment of duty, may be returned to the factory to be again refined, and where duty has been paid on such sugar its equivalent in refined sugar based on the actual weight and polarisation of the damaged sugar may be delivered without payment of duty.

RULE 87 :

Notice of removal of receipt of sugar for refining to be given :

If a manufacturer desires to remove or receive from outside, any sugar for further refinement or reprocessing (except for crushing) he shall give intimation to the officer at the factory, who shall draw representative samples of the sugar, and may then permit the sugar to be refined or reprocessed.

RULE 88 :Receipt of Sugar for crushing :

- 1) During the period in which sugar is being manufactured in a factory, no outside sugar shall be received therein for the purpose of crushing only, and no sugar not produced in the factory shall be crushed therein during such period.
- 2) Any sugar received in a factory for crushing only, shall both, prior and subsequent to crushing, be stored separately from sugar which is produced in the factory.
- 3) Where sugar is received for crushing only, the manufacturer shall maintain correct and separate daily accounts in the proper form in respect of all sugar to which sub-rule (2) applies. He shall submit a monthly abstract in the proper form to the collector within five days of the close of each month.
- 4) If any sugar, to which sub-rule (2) applies is mixed, before or after crushing with sugar produced in a factory the entire quantity shall be assessable to duty on issue as if it had been produced in the factory.

RULE 89 :

Manufacturer to Declare Analytical particulars of intermediate or residual products :

Every manufacturer (other than manufacturer of Khandasari sugar) who issues or therewise disposes of any (cane or betroot juice) syrup light or heavy molasses, massecuite or any other sugar-house product containing 90% sucrose or less (excepting baggasse, pressmud and final Molasses), shall furnish the following information to the proper officer within 24 hours of the issue, namely, the kind and quantity of such issue, to whom issued, its, analytical particulars and sugar value calculated according to the standard formula set out below and the destination and purpose for which issued. Any manufacturer contravening this rule shall be liable to a penalty which may extend to 2000 rupees.

Standard formula

Recoverable sugar in any sugar-house product per unit,
weight of dry substance in the Material.

$$= \frac{S (J - N)}{(S - M)}$$

Where S = Purity of Sugar Produced.

J = Purity of Material used.

M = Purity of the Final or Waste Molasses

RULE 90 :

Manufacturer to Notify intention to manufacture

Sugar from Palmyra Products :

A manufacturer shall not manufacture or cause or permit any other person to manufacture sugar from any material, which, has been mixed with palmyra sugar or any firm of concentrated palmyra juice or syrup or any product of the palmyra palm unless he gives to the proper officer notice of this intension so to do and agrees either to pay on the sugar so manufactured duty at the current rate when it is issued from the factory for consumption, or for the manufacture of any other commodity in or outside the factory or for export, or to remove the sugar so manufactured under such other conditions as the collector may impose.

RULE 91 :

Stock Taking of material in process at factories, making both cane sugar and palmyra sugar.

Where a factory manufactures both cane sugar and palmyra sugar, an accurate stock-taking of the material in process, in the factory before the beginning of a new season shall be carried out. The standard formula set out in rule 89 shall be applied in computing the amount of recoverable sugar, which shall be calculated from the residual products as follows:

i) At beginning of refining season. At the end of the cane season the beginning of the refining season the value of J will be obtained by analysis of the residual cane products before these are mixed with molten palmyra jaggery. For S and M the average figures of the Palmyra season shall be taken.

ii) At the end of refining season, where residual palmyra products remain at the end of the refining season, J shall be obtained by analysis of the products before they are mixed cane juice of syrup and the average figures for the last cane season will be taken as S and M.

2) Where sugar is produced by mixing residue containing cane sugar with palmyra juice, the duty shall be leviable on the actual sugar content of the said residue as ascertained by the method described in sub-rule (1).

3) Where sugar is produced by mixing residue containing palmyra sugar with cane juice, rebate of duty proportionate to the palmyra sugar content as ascertained by the same method, shall be allowed from the duty assessed on the mixed sugar.

RULE 92 :

Samples taken for excise purposes to be deemed representative of whole contents of vessel from which taken:

The degree of polarisation or the percentage of sucrose content contained in any sample taken under rule 56 from any vessel or utensil shall be deemed to be the degree of polarisation or the percentage of sucrose content in the whole contents of the vessel or utensil from which it is taken.

(C-2 Khandasari Sugar)

RULE 92 A :

Application to avail of special procedure.

- 1) Where a manufacturer who produces Khandasari sugar makes in the proper form an application to the collector in this behalf, the special provisions contained in this section shall, on such application being granted by the collector, apply to such manufacturer in substitution of the provisions contained elsewhere in these rules, other than in this section, for the period in respect of which the application has been so granted.
- 2) Such application shall be made each year so as to cover a period of at least one manufacturing season.
- 3) If, any time during such period, the manufacturer fails to avail himself of the special provisions contained in this section, he shall, unless the collector is satisfied that such failure is for justifiable reasons, be

produced from availing himself of such provisions for a period not exceeding 12 months from the date on such failure.

4) If the manufacturer desires to avail himself of the special provisions contained in this section on the expiry of the period for which his application to the collector under sub-rule (1), and on his failure to do so, he shall, unless the collector is satisfied that such failure is for justifiable reasons, be precluded from availing himself of such provisions for a period not exceeding 12 months from the date of such expiry.

COMMENTS

Jai Hanuman Khandsari Sugar Mills Vs. Union of India, 1977 ELT 49, J 52 (AP)

If there is no production of sugar, the assessee need not pay :- if the centrifugal does not work, there would be no production duty need not be paid for centrifugal that was removed.

Chandrapal Singh Govind Singh Khandsari Factory Vs. CCE., 1987 (32) ELT 179, 180(T-NRB).

Show cause not vitiated-wrong rule cited : it was not the case of the assessee that the wrong mention of the

rule had caused them prejudice no was such plea taken before the lower authorities.

RULE 92 B. :

Discharge of liability for duty on payment of certain sum :

1) Having regard to the average production in India of Khandsari sugar, falling under sub item (2) of item 1 of the first schedule to the act per week for different sizes a centrifugals installed for the manufacture of Khandsari sugar and any other relevant factor, the Central Government may, by notification in the official Gazette, fix from time to time a rate of duty per week or per month, per each such equipment, subject to such condition and limitations as it may think fit, and if a manufacturer whose application, has been granted under rule 92 A pays a sum calculated according to such rate of duty in the manner and subject to the conditions and limitations herein after laid down, such payment shall be a full discharge of his liability for the duty leviabale on his production of such Khandsari Sugar during the period for which the said sum has been paid :

Provided that if there is an alteration in the rate of duty or in the limit of exemption, or both, the sum payable shall be recalculated on the basis of the revised rates or exemption limit, or both, from the date of

alteration and liability for duty leviable on the production of Khandsari sugar from that date shall not be discharged unless the differential duty is paid; should however, the amount of duty so recalculated to less than the sum paid, the balance shall be refunded to the manufacturer :-

Provided also that for the period beginning with the 1st day of July and ending with the 31st day of October, the two thirds of the rate fixed for that type.

2) The sum payable under sub-rule (1) shall be calculated by applying the appropriate rate to the number and size of centrifugals, declared by the manufacturer in the application made by him under rule 92 C and installed by him for the manufacture of Khandsari sugar, and the sum aforesaid shall be payable from the date on which the centrifugals, declared and installed commence, "Manufacturing operation during the season to the date on which the centrifugals close down in that season.

Explanation :

For the purposes of this sub-rule :-

a) 'Season' shall be reckoned from the 1st day of November to the 30th day of June of the next following and from the 1st day of July next following to the 31st day of October of that Year :

b) In computing the liability of unit producing Khandsari sugar for duty, the period for which the collector is satisfied that any declared and installed centrifugals had remained closed or dismantled, shall be excluded.

3) Before commencing or closing its manufacturing operations (Fully or Partially), every manufacturer shall give a notice in writing to the proper officer and the notice shall be so despatched as to ensure that it reaches the proper officer not less than 7 days before (such commencement or closing, as the case may be)

Provided that the collector may, in exceptional circumstances, accept a notice shorter, than 7 days.

4) The sum referred to in sub-rule (2) shall be tendered by the manufacturer at the time of submission of the application under rule 92C, initially for a period of two weeks and thereafter weekly payment shall be made by such manufacturer two days in advance of the week next following, so that at the beginning of every week such manufacturers deposit shall be equal to the amount of duty payable by him for two weeks, and the balance out of the duty so deposited if any, shall be adjusted at the end of the season, if so desired by the manufacturer who had made the deposit.

RULE 92 C :

Manufacturer's Declaration, Accounts and Returns :

1) The manufacturer referred to in rule 92 A shall, at any time, during the calendar month immediately preceding the season in respect of which he has been permitted to avail himself of the provisions of this sections make an application to the proper officer in the proper form for leave to remove Khandsari Sugar from his licensed premises during the ensuring season, declaring therein the number and size of centrifugals installed or proposed to be installed., together with their height and diameter. The permission so granted for a whole season shall be subject to the fulfillment of the condition of weekly payment of duty under rule 92 B (4) and such other conditions as may be prescribed. Failure to comply with these conditions will render the permission null and avoid.

2) If such application is not made to the proper officer in accordance with sub-rule (1), or the weekly deposits are not made as required under sub-rule (4) of rule 92 B, the manufacturer shall, unless otherwise directed by the collector, and in exceptional circumstances, be liable to pay duty on his entire production of Khandsari sugar during the season in respect of which the application was to be made at the full rate set forth in the first schedule to the Act.

- 3) Such manufacturer shall also
- a) Maintain a true account in the proper form so as to enable the accurate calculation of the sums due,
- b) Append to his monthly return in form R.T. 3 made under rule 54, a duly signed statement showing the number of days worked and the number and sizes of the centrifugals installed as well as employed on such day during the month to which such return relates.

RULE 92 D :

Exemption from certain provisions :

During the period in respect of which any manufacturer has been permitted to avail himself of the provisions of this section, he shall be exempt from the operation of all the provisions of rule 9 (except the third provisions the sub-rule (1) thereof (45, 47. (XX), 49,50, 51A, 52,53,55,83,223,(223A, 223B), 224, 224A, and 229.

RULE 92 E :

Penalty for misdeclaration :

A manufacturer who is found to have made an incorrect declaration under sub-rule (1) of rule 92C or to have in correctly maintained the account prescribed in sub-rule (3) (a) or sub rule 3 (b) of that rule or to have

committed a breach of any of the conditions specified in any notification issued under rule 92 B shall be liable :

i) to pay the difference, if any between the sum actually tendered by him and the sum property payable, within 10 days of a demand for such difference being served upon by the proper officer :

ii) To confiscation of a part or the whole of the stock of Khandsari sugar lying in the premises of his licensed factory at the time the incorrectness of the declaration or of the accounts is discovered.

iii) To be debarred from availing of the special procedure prescribed in this section for such period as the collector may deem fit; and

iv) To a penalty not exceeding 2000 rupees.

RULE 92 F :

Power to condone failure to apply for special procedure :

Notwithstanding anything contained in this section the collector may, at his discretion, and subject to such conditions as he may lay down, apply the provisions contained in this section to a manufacturer who has failed to avail himself of the special procedure or to comply with any

condition laid down, in this section within the prescribed time limit.

RULE 100 :

Refund of duty on sugar Received for refining :

Any manufacturer, who receives into his factory for the purpose of further refinement or manufacture of sugar on which duty has been paid, shall, on production of satisfactory evidence before the collector that the duty has been paid in respect of such sugar, receive a refund of that duty :

(Provided that the provisions of this rule shall not apply to sugar manufactured :-

- i) In a free Trade zone and received by a factory in any other place in India, or
- ii) By a hundred percent Export oriented undertaking and returned to another factory in any place in India).

II) A) CENTRAL EXCISE RULES REGARDING TO UNMANUFACTURED
TOBACCO

RULE 15 DECLARATION OF PREMISES FOR GROWING :

- 1) Scope and validity of the rule

Rule 15 requires the furnishing of particulars of cultivation. This has been enacted with a view to ensure that as far as possible tobacco grown and cured escapes the duty payable under the central excise and salt act. It may be stated that at this stage, no duty is levied and no liability is imposed on the farmer beyond making it obligatory upon him to furnish the required products. The particulars required are also limited in scope. If the grower intends, to cultivate less than 5 hectares of such products, he is only required to inform the officer orally, if the grower intends to cultivate more than 5 hectares he has to give the information in writing. The furnishing of particulars in the form of writing or orally does not, in any way, hamper the growth or curing of tobacco. The fact that owing to the non furnishing of certain particulars or committing the breach of the rules, the offender would be subjected to penalty does not go to show that his trade has been, hampered with or is growing the tobacco has been affected. Hence this rule does not offend the provisions of Article 19(1)(g) of the constitution. T. Ramasesham Raju Vs. Union of India AIR 1960 AP 498 at 498.

2) Rule 15,18,21,23, and 34 do not offend Act 19(1) (g) of the constitution :

Rules 15,18,21,23 and 34 of the central excise

rules have been framed to control the evasion of the payment of tax. Tax is only levied as soon as the tobacco has been cured. The declaration by the grower under rule 15, the provision for the maintenance of entry book., by the grower and curer under Rule 21, the declaration by the grower and the curer under Rule 23, of the receipt of manufactured products are all meant for the purpose of preventing evasion of excise duty. If it is not known as to how much the grower had grown it may be that the grower may grow large quantities and send only small quantities for curing knowing that only tax is leviable on the tobacco cured. That would give the grower an opportunity to evade the payment of taxes. The contention that unless tobacco is cured, tax is leviable and, therefore, that is no necessity to make the grower maintain an account showing the extent of the land on which tobacco has grown, the quantity of tobacco grown etc., is of no help, for the object is assessment of excise duty on the tobacco cured and this assessment can not be made unless it is known as to how much quantity was grown and cured and an account is kept of that. Further there is the other aspect that the grower may grow more quantities and send to the curer only a small portion thereof and fraudulently dispose of the uncured material or secretly send the undeclared stock for curing to the curer, for the purpose of preventing all these, it is necessary that there should be some check both on the grower and the curer and

without that the object can not obviously be achieved. The obligations imposed on the grower by the central Excise Rules are designed solely to secure statistical data, namely, to ascertain, at the beginning of the crop year and in respect of each clearly defined region, the area to be planted with the tobacco and the yield expected and at the end of the year the area actually planted and the yield realised. These rules only confer powers, which are necessary for the ascertainment of the tobacco product, cured and disposed of, so that the excise duty under the central excise and salt Act may be levied and collected. That do not, in any way hamper the production of trade in tobacco or cause any loss to the object in view and they do not in any way offend Art. 19(1)(g) of the constitution. T.Ramasesham Raju Vs. Union of India 1960 (AP) 498 at 500.

3) Object of the rules :

These rules are necessary for carrying into effect the intention of the legislation of levy excise duty-Chaturbhai M. Patel V. Union of India AIR 1960 A.P. 498.

RULE 19 LIABILITY TO DUTY :

- 1) Excise duty liability to pay is upon dealer that is curer of tobacco :

It appears from the order of sales tax officer in the present case that the central excise duty was deposited in the Treasury by the customers in the name of the petitioner himself showing the names of the customers as the persons tendering the money. It is clear therefore, that the excise duty was deposited into the Treasury by the purchasers of the tobacco as the agents of the petitioner. The legal liability to pay the excise duty was upon the petitioner under the rules framed under the central excise and salt Act, 1944. The liability to pay the excise duty is upon the petitioner. If the customers agree contractually to pay the excise duty which is payable by the petitioner under Excise Rules, then the payment of excise duty is manifestly a valuable consideration for the purchase of the goods. The payment of the excise duty constituted as a matter or a part of the sale price for the tobacco within the meaning of section 2 (h) of the Bihar sales Tax Act, Dayabai Gokilbai V. State of Bihar AIR 1959 PAT 389.

2) Benefit of sub-rule (2) claimable only by licensed curer

Unless a curer is licensed he cannot claim loss of weight during curing, Vrajlal Manilal & Co. V. Union of India, AIR 1959 Punj. 359.

RULE 20 :

Unmanufactured products Grown for personal consumption of Grower and his household exempt from duty :

Unmanufactured products grown (and whether cured or not) for the personal consumption of the grower or members of his household shall be exempt from the payment of duty if the proper officer is satisfied that they are intended for such consumption.

RULE 26 :

Despatch of products to a (XX) warehouse :

Where the products are to be deposited in a warehouse they may be conveyed thereto under cover of transport certificate prepared as described in Rule 31 and the curer shall keep strict accounts of the weights of products so disposed of the shall truthfully declare them to any officer when so required.

RULE 29 :

Continuance of curer's liability for payment of duty :

- 1) Tobacco-Liability of curer and to transferee
Extent of Jurisdiction to level Excise Duty.

Where the curer had sold tobacco in unmanufacture

state without payment of duty as provided in section 24 his liability for payment of excise duty will continue until the transfer of ownership in the tobacco has been reported to and acknowledged by the proper officer. So far as the curer is concerned, the officer, in whose jurisdiction he had carried on the curing operation will be the proper officer. Therefore, the Central Excise Officer, Dharapuram within whose jurisdiction the petitioner had cured the tobacco is the proper officer so far as he is concerned, and the petitioners duty is only to report to him about the transfer of the ownership of the tobacco and get his acknowledgement for the same. Even otherwise, having regard to the object of the rules, the Petitioner is liable to account for the tobacco in his possession only to the central excise officer at Dharapuram. Therefore by way of rendering an account of the stocks held by him, he had to report the ownership of the tobacco to the officer of Dharapuram. It is tried, ponnuswami, the alleged purchaser from the petitioner, in view of his having a licensed warehouse at Bavani, is accountable for his stocks to the central excise officer at Bavani who is the proper officer so far as he is concerned. But that does not mean that the Petitioner has become accountable for the stocks to the Excise officer, Bavani. The fact that the transport of crude tobacco is required to be done under a permit issued in accordance with rule 31 indicates that once the movement of the goods is shown to be

in pursuance of transport certificate given by a warehouse licensed, the local officer within whose jurisdiction the vendor carries on business will have to be satisfied, and the officer from whom the transfer form has been obtained by the transferer has to take up, follow up action for the recovery of the excise duty from the transferee. Having regard to the object and the purpose of Rule 31 requiring a transport permit in the prescribed form issued by the prescribed authority the curer is not liable to satisfy the proper officer in whose jurisdiction the licensed warehouse of the transferee is located. The curer's obligation is only to satisfy the proper officer within whose jurisdiction the curing operations have been performed and to whom he is accountable for the stocks in his possession. Thus once the petitioner has satisfied the Excise Officer at Dharapuram about the transfer of ownerships of the tobacco and the same has been acknowledged by that officer, his liability should be taken to have ceased under Rule 29. The order of the Superintendent of Central Excise, Integrated Divisional Officer, Erode, demanding a sum of Rs. 2388.96 and affirmed by respondents' land 2 has to be set aside. E.M. Karappannam. V. Union of India, 1980, ELT 171.

2) Tobacco curer duty and liability, Extent of proper officer defined:

It has been conceded that the petitioner has

complied with the requirements of Rules 24, 26, and 31. But the complied appears to be that the petitioner has not complied with Rule 29 in that he has not reported the transfer of the ownership of the goods to and acknowledged by the excise officer, Thus the controversy between the parties is to be scope on the words proper officer. So far as the curer is concerned, the officer in whose jurisdiction he had carried of the curing operation will be the proper officer. The fact that the transport of cured tobacco is required to be done a permit issued in accordance with Rule 31 indicates that once the movement of the goods is shown to be in pursuance of the transport certificate given by a warehouse licensee, the local officer within whose jurisdiction the vendor carries on business will have to be satisfied, and the officer from whom the transfer form has been obtained by the transferee has to take up follow up action for the recovery of the excise duty for the transferee. Having regard to the object and the purpose of rule 31. Requiring a transport permit in the prescribed form issued by the prescribed authority the curer is not satisfy the proper officer in whose jurisdiction the licensed warehouse of the transferee is located. The curers obligation is only to satisfy the proper officer within whose jurisdiction the curing operations have been performed and to whom he is accountable for the stocks in his possession. Once the petitioner has satisfied the excise

officer at Dharampuram, about the transfer of ownership of Tobacco and the same has been acknowledged, by that officer, his liability should be taken to have ceased under Rule, 29., E.M. Earupannam V. Union of India and others, 1978, ELT 481, see also following :

1) Collector, V. A.S. Bana 1966, Ker L.T. 232.

The Bench doubted the correctness of another decisions of the same high court in which the view was expressed that the liability for confiscation under Rule No. 32 (2).

2) I.C.E.V.S.T. Venkataramanappa, 1986 (24) ELT 484, 490, (Kart) "transfer of ownership has been reported to and acknowledged by the proper officer".

3) Dayabai Gokulbhai Patel Vs. State of Bihar AIR 1959 Pat- 389.392.

The payment of excise duty could constitute as a matter of law, a part of the sale price for the tobacco.

RULE 34 :

Period of validity of Transport Document :

Every transport permit granted under these rules shall be in force only for the period specified thereon by the officer by whom it is granted. Every Transport

certificate shall be valid in case the transport is by means of a mechanised vehicle for two days, and in other cases, until sunset of the fourth day following that on which the certificate is prepared or for such shorter period as the central Board of Revenue may, by order in writing direct in any particular area or in respect of any particular commodity, and every sale note shall for the purpose of Rule 32 be valid, in case transport is by means of mechanised vehicle, for the day of issue or in other cases, for (the day of issue and the day following or for such shorter period as central Board of Excise and Customs may, by order in writing direct in any particular area or in respect of any particular commodity.

Notification Under Rule No. 34

- 1) 80/77, CE dated 4-5-1977.

In pursuance of rule 34 of the central excise Rules 1944 and in supersession of the notification of the central Board of excise and customs No. 27/77 Central Excise, dated the 25th February, 1977, the central Board of Excise and customs hereby directs that in the case of unmanufactured tobacco, the validity of a sale note shall if the transport is by means of a mechanised vehicle, for the whole, or part of distance by up to the midnight of the date of issue, and in other cases till sunset of the day

following the date of issues.

2) 81/77 CE, Dated 4-5-1977.

In pursuance of Rule 34 of the Central Excise Rules, 1944, and in supersession of the notification of the central Board of Excise and Customs No. 60/77 CE date 12th April, 1977, the central board of excise and customs hereby directs that in the case of unmanufactured tobacco, specified in column (1) of the table hereto, annexed and transported in the manner specified in the corresponding entry in column (2) thereof, the transport certificate shall be valid for the period specified in the corresponding entry in column (3) and shall be subject to the conditions, if any specified in the corresponding entry in column (4) of the said table.

TABLE - I

THE TABLE

RULES REGARDING TO UNMANUFACTURED TOBACCO

Description of unmanufactured tobacco (1)	Mode of Transport (2)	Period of validity (3)	Conditions if any (4)
1) Virginia or Indian Air cured storing tobacco	a) Wholly or partly by mechanised Vehicle	i) 12 hours from time of issue,	If the distance to be covered is 250 Kms or less.
		ii) 24 hours from time of issue	If the distance to be covered is more than 250 Kms.
	b) Wholly by non mechanised Vehicle	i) upto 6 AM of the day following the date of issue	If the distance to be covered is 30 Kms. or less.

(1)	(2)	(3)	(4)
		ii) Upto 6 AM of second day following the date of issue	If the distance to be covered is more than 30 Kms.
2) All Others	a) Wholly of partly by mechanised vehicle.	i) 12 hours from the time of issue excluding the night-hours during which ferries, if any on the way do not operate.	If the distance is to be covered 250 Kms. or less.
		ii) 24 Hours from the time of issue excluding the night-hours during which ferries if any, on the way do not operate.	If the distance to be covered is more than 250 Kms.
	b) Wholly by non machanised vehicle.	i) Upto sunset of the day following the date of issue.	

RULE 36 :Annual Returns of unmanufactured products Grown :

Every grower who is required to make a declaration under Rule 15 shall declare to the proper officer who visits him at the end of the harvesting seasons the area and the situation of the land planted by him with unmanufactured products, the variety or varieties grown, the area of the land used for each variety and the net weight of the products of each variety produced and also the weight of such products removed to other curers and such officer shall record of the particulars in his survey Book in the proper form and the grower shall attest the relative entry in the Book in Token of his having given a true declaration.

Provided that where such officer does not visit the village or area within 7 days of the final weighting of the products, of any years growing, the grower shall make a written return of these particulars in the proper form which he shall date and sign and deliver to the proper officer either personally or by registered posts.

RULE 37 :Annual Returns of unmanufactured products cured :

Every curer who is required to make a declaration under Rule 16 declare to the proper officer who visits him

at the end of the curing season, the quantities and the varieties of the unmanufactured products received by him from each grower and cures by him or if he cured his own products, the quantities removed to his curing premises and cured by him and such officer shall record the particulars in his survey Books in the proper form and the curer shall attest the relative entry in token of his having given a true declaration :

Provided that were such officer does not visit the village or area within 7 days of the final weighing of the cured products of any years growing the curer, (who in any year cures not less than 40 quintals of unmanufactured products grown by himself or cures any quantity of such products grown by persons other than himself) shall make a written return of these particulars in the proper form which he shall date and sign and deliver to proper officer either personally or by registered post).

RULE 37 A :

Unmanufactured Products : Powers to make summary assessments in certain cases :

1) If, in an area in respect of which the collector has, under the second provision to Rule 15 or Rule 16, notified that no declaration is necessary provided that the area cultivated with unmanufactured products or the

quantity of such products produced or cured does not exceed the specified limit a person cultivates an area or as the case may be, produces or cures a quantity in excess of the specified limit, then the proper officer may assess the produce summarily on the basis of the (area), the average yield and such other factors as may be indicated by the collector.

2) Such summary assessment may also be made by the proper officer in an area other than an area referred to in sub-rule (1) if the grower of curer disposes of the unmanufactured products before assessment or does not render account thereof to the satisfaction of the proper officer).

RULE 39 :

Declaration of premises by persons purchasing And Storing Unmanufactured Tobacco.

Every persons who purchases or intends to purchase or stores or intends to store,...

a) For the purpose of trade, a total quantity in any area of unmanufactured tobacco exceeding two hundred quintals; or

b) Unmanufactured tobacco for the purposes of manufacture of any tobacco products on which duty of excise is leviabale whether in whole or in part, shall at the time

of applying for a license or for renewal there of, make a true declaration in respect of every store house, work house, room and place used or intended to be used by him, for the storing, keeping, sorting, grading, manufacturing, and selling of unmanufactured tobacco or products manufactured there from giving the particulars specified in the form and deliversuch declaration to the proper officer: and every such store house, workhouse, room, and place shall be keptmarked and a numbered with the like distinguishing number of letter, or numbers and letters, corresponding to the description thereof in the declaration: and in default thereof such person shall, for every such store house work-house, room, or place not declared or not marked or numbered, be liable to a penalty which may extent to one thousand rupees.

EXPLANATION :

In this rule "year" means the period of 12 months commencing on the 1st day of October and ending with the 30th day of September next following.

RULE 40 :

Wholesale purchaser may not receive unmanufactured products (other than unmanufactured Tobacco) except under permit showing payment of duty.

1) COMMENTS - Scope Duty Paid - tobacco mixed with non duty paid - tobacco unlawfully whether the entire mixture can be confiscated.

In dealing with a provision relating to forfeiture, the dealing is with a penal provision. It would not be proper to extend the scope of that provisions by reading into it words which are not there and thereby widen the scope of the provision relating to confiscation. Rule 40 permits the central Excise Authorities to confiscate only those goods on which duty is not been paid. It does not permit them either specifically or by necessary implication to confiscate other goods. Therefore, it was not permissible for the collector to confiscate the entire tobacco mixture. At the same time no person can be permitted to benefit by his wrongful Act. No rule of law should be so interpreted as to permit of encourage its circumvention. If by the wrongful act of a party he renders it impossible for the authorities to confiscate under Rule 40 the non-duty paid goods, it is open to those authorities to confiscate from out of the goods seized, goods of the value reasonably representing the value of the non duty paid goods mixed in the goods seized. It follows that the collector, central Excise could have confiscated out of the tobacco seized, so much of it as can be held to reasonably represent the value of the tobacco on which the duty had not been paid. Mothibhai Fulabhai Patel &

Co. Vs. R. Prasad, Collector of Central Excise Baroda, AIR. 1970 SC 829; 1978 E.L.T. 370 (8) 1970 (1) S.C.J. 559.

2) Offending stock mixed up with non offending stock do not permit confiscation of whole lot.

RULE 40 :

The penalty can be levied and confiscation can be made only in respect of unmanufactured tobacco, which is received into any part of the premises or into the custody or possession of the whole sale purchaser for the purpose of trade or manufacture otherwise than under a valid permit granted by an officer showing that the proper duty has been paid. Thus, there can be no doubt that only such tobacco, as is received in contravention of the rules can be confiscated under this rule also. The mere fact of the offending stock being mixed up with the non offending goods would not permit confiscation of the whole lot under either of the said rules. However, no person can be permitted to benefit by himself by his wrongful act and no rule of law should be so interpreted as to permit or encourage its circumvention. If by the wrongful act of a party he renders it impossible for the authority to confiscate under Rule 40, the non duty paid goods, it is open to those authorities to confiscate, from out of the goods seized, goods of the value reasonably representing the value of the non-paid goods mixed in the

goods seized. *Ambalal Khodabai & Co. Vs. R. Prasad*, 1970, Gujarat, L.R. 765 at 771.

3) Valid permit with proper entries would not cease to be such because of discrepancies with the parent documents :

Where, on a comparison of the permit with the parent documents under which it was applied for, it was found that there was discrepancy in regard to the quality of the tobacco and the rate of duty payable thereon, it was held that the wholesale purchaser was not bound to check up permit with parent documents. There is no provision, by which a permit, *ex facie* valid and proper on its entries, would cease to be such by reason of discrepancies on scrutiny with the parent documents. There is also no provision either in the Act, which requires a wholesale purchaser, contemplated by Rule 40 to check up the permit with the parent documents of the consignor or transporter. *Collector of Customs and Central Excise Vs. A.S. Bana* 1966, Ker. L.T. 232.

Also refer the following :

Abdul Rahman Vs. Collr., 1988 (33) E.L.T. 615 (Tr. also see *UOI Charater Tobacco Co.*, 1981 ELT. 426 (Guj)).

Consequence of contravention of the rule the receiver of such goods liable to pay the duty leviable

therin irrespective of whether the goods had suffered duty earlier or not :

Also see, prvas Kumar Dev. Vs. Inspector, 1987 (31) E.L.T. 13 (cal) sale of seized tobacco after it was released in favour of assessee of executing bond.

RULE 42 :

Certain persons to keep Entry Boods :

Every person who purchases or intends to purchase, or stores or intends to store ---

a) For the purpose of trade, a total quantity in any year of unmanufactured tobacco exceeding 200 quintals ; or

b) Unmanufactured tobacco for the purpose of manufacture of any tobacco products on which excise duty is leviable whether in whole or part, shall maintain a book, in the proper form, or in such other form as the collector may, in any particular case, allow in which he shall, on the same day on which he receives or despatches any such goods, write and enter in the proper column the date of such receipt or despatch and the weight and value of such goods and the full name and address of the person from or whom he has received or despatch them.

EXPLANATION :

In this rule "year" means the period of 12 months

commencing on the 1st day of October and ending with the 30th day of September next following.

II) B) CENTRAL EXCISE RULES REGARDING TO MANUFACTURED TOBACCO

MANUFACTURED TOBACCO :

RULE 93 :

Manufacture and Disposal of Excise Tobacco Products:

No excisable tobacco products shall be delivered from any factory except under the following conditions :

- a) Such Products shall be made into separate packets,
- b) Each such packet, whether retail or wholesale, shall be enclosed by and at the expense of the Manufacturer, in a wrapper or other outer covering, and, unless exempted by the central Board of Excise and customs, by general or special order, each such packet, or the manufacturer's label affixed thereto, shall bear in clearly discernible characters, the following particulars :

- i) the name and address of the factory
- ii) the number of his license in form L.4. and
- iii) the trade brand of the product, specimens of all such wrappers, outer covering or labels shall be submitted to the collector for this approval before they are brought into use.

c) An application for clearance in the proper form shall be delivered to the officer-in-charge of the factory at least 12 hours (or such other period as the collector may be in any particular case require or allow) before it is intended to remove the goods);

(Provided that there were removals from a factory are frequent and the manufacturer maintains a sufficient credit balance in his account current maintained under rule 9 for payment of duty, the Assistant Collector may, on a request by the manufacturer permit, by an order in writing, removal of goods on presentation of a gate pass as prescribed under Rule 52 A subject to the observance of such procedure as may be prescribed in this regard by the collector.)

d) No cigars and cheroots mentioned in (Heading No. 24.02 of the schedule to the central excise Tariff Act., 1985 (5 of 1986) shall be delivered from any factory unless:

1) They are put into packets containing 5,10, 25, 50, or 100 cigars or cheroots, as the case may be :

2) Each such packet consists of a wooden, tin, or cartboard-box opening only at the top or of a paper wrapper top completely closed on all sides and with all outer-edges gummed down.

RULE 94 :Daily Account of Tobacco Products Manufactured :

(1) Every Manufacturer of excisable tobacco products shall enter in a register in the proper form or in such other forms as the collector may in any particular case allow, the following and such other particulars as the (Central Board of excise and customs) or the collector may be general or special order require namely :

- (i) the weights, quantities and particulars of all tobacco and other materials and ingredients received by him for the purpose of being manufactured.
- (ii) the weight, quantities thereof consumed in such manufacture.
- (iii) the weight, quantities and particulars of Tobacco, materials ingredients, stalks, waste, and other refuse remaining after or caused by such manufacture.
- (iv) the quantities of each products so produced.
- (v) the quantity thereof made up into packets, wrapped, labelled and cleared from the factory with the number of packets of each size or weight respectively.

(2) Every Manufacturer shall file with the proper officer a list in duplicate of all accounts maintained and returns prepared by him (Whether the same are maintained or prepared in pursuance of these rules or not) in regard to the production manufacture, storage, delivery or disposal of the products referred to in sub rule (1).

(3) Every manufacturer shall, on demand produce to the Central Excise Officer, or the audit parties deputed by the Collector or the comptroller and Auditor-General of India, the accounts and returns (Whether the same are maintained or prepared in pursuance of these rules or not) for the scrutiny of the office of the Audit parties, as the case may be).

RULE 95 :

Credit of duty in respect of cigarettes

Manufactured from duty paid unmanufactured tobacco

(1) The collector may, on application made in this behalf by a manufacturer of cigarettes and subject to the provisions of sub-rule (2) and to such conditions as may be prescribed by the collector, allow a credit of duty equivalent to the amount calculated at such rate as may be fixed by the central Government by notification in the official Gazette, in respect of cigarettes cleared by such manufacturer for home consumption, if such cigarettes have been manufactured

wholly from unmanufactured tobacco, falling under sub-item (1) or sub-item I(4) of item No. 4 of the First Schedule to the Act o which the appropriate amount of duty of excise leviabale thereon or before the 28th day of February, 1979 both under the Act and the additional duties of Excise (Goods Special Importance) Act 1957 (58 of 1957) has already been paid.

(2) The credit of duty allowed under sub-rule (1) shall be utilised by the manufacturer referred to in sub-rule (1) only towards payment of duty of excise cigarettes manufactured by him and no part of such credit shall be refunded in cash or by cheque.

(3) This rule shall remain in force upto and inclusive of the 30th day of June, 1979.

Notifications under Rule 95

139/79-CE, dated 30-3-1979 :

In pursuance of sub-rule (1) of rule 95 of the central excise Rules, 1944, the central Government hereby fixed ruppees five and fifty paise as the rate per one thousand.

RULE 95 A :

Special Procedure for Removal In Bond of Biris To
Other Premises :

The collector may, by special or general order and subject to such conditions as may be specified by him. Permit a manufacturer to remove biris manufactured by him to his another licensed premises or to the premises of another assessee. For completion of certain manufacturing processes and allow the Finished biris to be removed on payment of duty or without payment of duty for export from such other premises :

Provided that such permission shall be granted only subject to the execution of a bond either by the manufacturer or by the assessee.

III) CENTRAL EXCISE RULES REGARDING TO MANUFACTURED COTTON

RULE 49 A :

Collection of duty leviabale on cotton yarn along with the duty on cotton Fabrics.

WHERE A MANUFACTURER :

i) Who manufactures cotton-yarn; falling under heading No. 52.03 of the schedule to the Central Excise Tariff Act, 1985 (5 of 1986) or both, and use the whole or part of the yarn so manufactured in the manufacture of cotton Fabrics in his own factory, or

ii) Who being a composite mill, brings such yarn under rule 96 E or Rule 96 EE, as the case may be, from outside for the purpose of manufacture of cotton fabrics in his own factory.

Makes an application to the collection in this behalf, shall, on such application being granted by the collector, pay the duty leviable on such cotton yarn along with the duty on such cotton fabrics in the manner prescribed in rule 52, subject to the following conditions namely:

i) When the cotton fabrics are cleared grey (unprocessed) the yarn duty payable shall be --

a) The appropriate duty payable on such yarn or cotton yarn plus.

b) one and a half percent of the duty payable on such cotton yarn by way of interest on the amount of yarn duty.

2) When the cotton fabrics are cleared after processing the yarn duty payable shall be --

a) The appropriate duty payable on such cotton yarn plus.

b) 3% of the duty payable on such cotton yarn by way of interest on the amount of yarn duty.

(Provided that where the cotton-fabrics are

cleared without payment of duty leviable thereon for processing under rule 96 D, the duty payable on such cotton yarn plus the interest at the rate of 3% thereof may be paid at the time of clearance of such fabrics after processing from the composite mill or the factory which processes such fabrics as the case may be)

EXPLANATION :

For the purposes of this rule, "composite mill" means a manufacturer who is engaged in spinning of cotton yarn or weaving or processing of cotton fabrics with the aid of power and has a proprietary interest in at least two of such manufacturing activities.

RULE 96 D :

Procedure for removal of cotton fabrics from one
Factory to another without payment of duty for
processing :

1) Cotton Fabrics may be removed without payment of duty (from one factory to another factory (including a processing factory) for the purpose of processing subject to observance of the procedure herein after prescribed.

2) For the purposes of this rule, "Processing Factory" shall be deemed to be a factory working with the aid of power in which cotton fabrics are processed but in which such fabrics or manufacturers are not woven.

3) When cotton fabrics are removed from the factory where they are manufactured (to another factory including a processing factory), the consignor shall (xx) follow the procedure as required by rules (xx), 156A and 156B as modified by Rule 173.

4) If cotton fabrics, after being processed, are cleared (for home consumption from the factory including a processing factory), the duty payable at the time of such clearance and such other dues that may be payable in respect of such goods may be paid either by the owner of the processing factory or by the owner of the originating factory.

5) If cotton fabrics, after being processed, are removed without payment of duty to one or more factories for the purposes of further processing or to the originating factory, such removals, shall be subject to and in accordance with the provision of sub-rule (3).

6) Notwithstanding anything contained in these rules, the duty referred to in this rule shall, in case of cotton fabrics where manufacturers are availing of procedure prescribed in Rule 49A, include the duty payable on cotton yarn falling under heading No. 52.03 of the schedule to the central excise tariff Act, 1985, (5 of 1986) plus the interest at the rate of 3% thereof.

RULE 96 DD :

Procedure for Removal of cotton fabrics from one factory to another factory. Without payment of duty for embroidery :

1) Cotton fabrics may be removed without payment of duties from one factory to another factory for the purpose of embroidery, subject to the observance of the procedure herein after prescribed.

2) When cotton fabrics removed from the factory where they are manufactured to another factory for embroidery the consignor shall (XX) follow the procedure as required by rule (XX) follow the procedure as required by rules (XX) 156A and 156B, as modified by rule 173N.

3) If cotton fabrics after being embroidered, are cleared for home consumption from the embroidery factory, the duty payable at the time of such clearance and such other dues that may be payable in respect of such goods may be paid either by the owner of the embroidered factory by the owner of the originating factory.

4) If cotton fabrics, after being embroidered are removed without payment of duty to one or more factories for the purpose of further embroidery or to the originating factory, such removal shall be subject to and in accordance with, the provision of sub rule (2).

RULE 96 E :

Procedure for removal of cotton yarn from one factory to another without payment of duty.

1) Cotton yarn, may be removed without payment of duty from one factory to another for the purpose of processing or packing or for the purpose of manufacture of cotton fabrics subject to the observance of the procedure herein after prescribed.

2) For the purpose of this rule, "Factory" means a factory working with the aid of power in which :

a) Cotton yarn is spun and cotton fabrics are woven or

b) Only cotton fabrics are woven and the duty thereon is paid on square metre advalorem or weight basis, as the case may be or.

c) Only cotton yarn is spun, or otherwise manufactured.

3) When cotton yarn is removed from one factory to another the consignor shall (XX) follow the procedure as required by rules (XX) 156A and 156B, as modified by rule 173N.

4) If cotton yarn, after being processed is removed without payment of duty to one or more factories for the purpose of further processing, or to the originating

factory, such removal shall be subject to and inaccordance with the provision of sub-rule (3).

RULE 96 I :

Application to avail of special procedure :

1) Where a manufacturer who produces cotton fabrics, (falling under chapter 52 of the schedule to the central Excise Tariff Act, 1985 (5 of 1986) in factories commonly known as power looms (without spinning or processing plants) for the installation and working of which the written permission of the Textile Commissioner has not been obtained makes in the proper form an application to the collector in this behalf, the special provision contained, in this section shall, on such application, being granted by the collector, apply to such manufacturer in substitution of the provisions contained elsewhere than in this section for the period in respect of which the application has been so granted.

2) Such application shall be made so as to cover a period of not less than 12 consecutive calendar months, but may be granted for a shorter period in the discretion of the collector.

3) If at any time during such period the manufacturer fails to avail himself of the special

provisions contained in this section, he shall, unless otherwise ordered by the collector, be precluded from availing himself of such provisions for a period of 6 months from the date of such failure.

4) If the manufacturer desires to avail himself of the special provisions contained in this section on the expiry of the period for which his application was granted, he shall before such expiry, make an application to the collector under sub-rule (1) and on his failure to do so, he shall, unless otherwise ordered by the collector, be precluded from availing himself of such provisions for a period of 6 months from the date of such expiry.

RULE 96 J :

Discharge of liability for duty on payment of certain sum :

1) Having regard to the average production of cotton fabrics (falling under chapter 52 of the CETA, 1985 (5 of 1986), in India per day per powerloom in factories commonly known as powerlooms (without spinning or processing plants for the installations and working of which the written permission of the Textile commissioner has not been obtained and any other relevant factor, the central Government, may by notification in the official Gazette, fix, from time to time, the rate per powerloom per quarter

or part thereof and if a manufacturer whose application has been granted under rule 96-I pays, in any month a sum calculated according to such rate, in the manner and subject to the conditions and limitations here in after laid down, such payment shall be a full discharge of his liability for the duty leviable on his production of unprocessed cotton, fabrics, during the quarter or part thereof next following, as the case may be,

Provided that nothing in this rule shall apply to

a) Cotton Fabrics containing more than one sixth by weight of fibre or yarn or both of non cellulose origin, and

b) Coating, suiting trousers, corduroy, garberdine, bedford, satin, denin, lapper, butta fabrics, round mesh mosquito netting, lace, knitted fabric, tapestry furnishing fabric including jacquard certain cloth gadlapet mattress fabric, Terry towel, including, turkish towel, terry towelling cloth including turkish towelling cloth, blanket canvas, duck filter cloth, tracing cloth and bukram cloth.

Provided further that if there is alteration in the rate of duty the sum payable shall be recalculated on the basis of the revised rate from the date of alteration and liability for duty leviable on the production of fabrics from that date shall not be discharged unless the different duties is paid; should however, the amount of duty so

recalculated be less than the sum paid, the balance be refunded to the manufacturer.

EXPLANATION :

1) In this section "Quarter" mans the first, second, third, or Fourth quarter of a calander year:

2) The sum payable under sub rule (1) shall be calculated by applicaiton of such rate to the maximum number of power looms installed by or on behalf of such manufacturer in one or more premises at any time during the 3 calender months immediately proceding the calender month in which the application under rule 96 K is made.

3) Such sum shall be tendered by such manufacturer alongwith such application.

RULE 96 K :

Manufacturer's Declaration and Account :

1) Such manufacturer shall, at any time during the calender month immediately preceding any quarter or part thereof, as the case may be, inrespect of which he has been permitted to avail himself of the provisions of this section, make an application, to the proper officer in the proper form for leave to remove cotton fabrics declaring therein the maximum number of powerlooms installed by him or

on his behalf in one or more premises at any time during the 3 calender months immediately preceeding the said calender month.

2) If such application is not made to the proper officer within the time limit laid down in sub-rule (1), the manufacturer, shall, unless otherwise directed by the collector, and in exceptional circumstances, be liable to pay duty on his entire production of cotton fabrics during the quarter or part thereof inrespect of which the application was to be made, at the rate prescribed in the (schedule to the CETA, 1985) (5 of 1986) read with any relevant notification or notifications issued under sub-rule (1) of rule 8 or sub section (1) of section 5A of the Act).

3) Such manufacturer shall also intimate the proper officer in writing of any proposed change in the number of powerloom installed by him or on his behalf, and obtain the written approval of such officer before making any such change.

RULE 96 L :

Exemption from Certain Provisions : No Rebate of
Excise Duty on Export :

1) During the period inrespect of which any manufacturer has been permitted to avail himself of the

provisions of this section, he shall be exempt from the operation of all the provisions of rule 9 (except the Third provision to sub-rule (1) thereof), 47(xx) 49, 50, 51A, 52, 52A, 53, 54, 55, 223, 223A, (223B), 224, 224A, and 229.

2) Except in accordance with such special terms, conditions and limitations as the central Board of Excise and customs may hereafter by notification specify in this behalf, No rebate of excise duty shall be paid under rule 12 in respect of any fabrics exported out of India, out of stock produced by such manufacturer during such period.

RULE 96 M :

PENALTY OF MISDECLARATION

A manufacturer who is found to have made incorrect declaration under sub-rule (1) of rule 96K, or to have omitted to furnish or incorrectly furnished the information required by sub-rule (3) of that rule shall be --

i) To pay the difference, if any, between the sum properly payable and the sum actually tendered by him, within 10 days of a demand for such difference being served upon him by the proper officer.

ii) To confiscation of part of the whole of the stock of cotton fabrics lying in the premises of his licensed factory at the time of the incorrectness of the declaration

or the information or the omission to furnish the information is discovered; and

iii) To a factory not exceeding two thousand rupees.

RULE 96 MM :

Provisions regarding new factories and closed factories resuming production :

In the case of a manufacturer who commences production for the first time or who recommences production after having ceased production for a continuous period of not less-than 3 months and who has been permitted by the collector under sub-rule (1) of rule 96 I to avail of the special provisions contained in this section the amount payable by him for the first quarter or part thereof, as the case may, he shall be provisionally calculated on the basis of his declaration of the maximum number of powerlooms that are or are likely to be installed by him or on his behalf during such period. At the expiry of the period, the amount payable shall be recalculated on the basis on the maximum number of power looms actually installed and if the initial payment falls short of the total liability so determined the diffiency shall be reccovered from the manufacturer. If, however, the total liability is less than the initial deposit, the balance shall be refunded to the manufacturer.

RULE 96 MMM :Reckoning of Roller locker Machines :

Where roller locker Machines are installed, either exclusively or in addition to any other type of powerlooms, every metre of the width of such machine shall be reckoned as one powerloom and where the total width in excess of whole metres, any fraction less than half a metre shall be ignored and any fraction of half a metre or more shall be increased to one whole metre.

RULE 96 MMMM :Power to condone failure to apply for special procedure :

Not withstanding anything contained in this section, the collector, may, at his descretion (for reason to be recorded in writing) and subject to such conditions as he may lay down, apply the provisions contained in this section to a manufacturer who has failed to avail himself of the special procedure, or to comply with any condition laid down in this section within the prescribed time limit.

RULE 96 MMMMM :Provision regarding factories ceasing to work or reverting to the normal procedure.

Not withstanding anything contained in rules 96 I

to 96 MMMMM, where a manufacturer who has availed himself of the special provisions contained in this section ceases to work or reverts to the normal procedure the duty payable by him for the last 3 months during which he has availed himself of the special provisions shall be calculated on the basis of the maximum number of powerlooms installed during the last 3 months in the manner prescribed in rule 96 MM and the amount already paid for such months in accordance with rule 96 J shall be adjusted towards the duty so calculated and on such adjustment if there is any excess payment. It shall be refunded to the manufacturer and any deficiency in duty shall be recovered from the Manufacturer.

EXPLANATION :

A manufacturer, who ceases to work his factory for one or two shifts only, shall not be deemed to cease to work within the meaning of this rule.

4.2 RATE OF DUTY CHARGEABLE ON SUGAR, TOBACCO AND COTTON

UNDER CENTRAL EXCISE TARIFF ACT, 1985.

The rate of duty chargeable on these products under Central Excise Tariff Act, 1985 has been explained through various chapters :

I) SUGAR

Chapter - 17

I) SUGAR AND SUGAR CONFECTIONERY :

Notes :

1. This Chapter does not cover :
 - a) Sugar confectionery containing cocoa of Chapter 18;
 - b) Chemically pure sugars (other than sucrose, lactose, maltose, glucose and fructose) and other products of Chapter 29; or
 - c) Medicaments and other products of Chapter 30
2. For the purposes of sub-heading Nos. 1701.10, 1701.20, 1701.31 and 1701.39, 'sugar' means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 100°C would be more than 90.
3. For the purposes of this chapter,
 - (a) "Khandsari Sugar" means sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed;
 - (b) "Palmyra Sugar" means sugar manufactured from the juice of the Palmyra palm or from jaggery obtained by boiling the juice of the palmyra palm.

TABLE NO. J

RATE OF DUTY CHARGEABLE ON SUGAR AND SUGAR CONFECTIONERY

UNDER CENTRAL EXCISE TARIFF ACT, 1985.

Heading No.	Sub-heading No.	Description of goods	Rate of Duty	
			Basic	Additional
1	2	3	4	5
17.01	1701.10	Cane or beet sugar and chemically pure sucrose; in solid form		
		Sugar in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power.	Nil	Nil
	1701.20	Khandsari Sugar	Nil	
		Sugar, other than Khandsari sugar		
	1701.31	Required by the Central Government to be sold under clause (f) of sub-section (2) of section 3 of the Essential Commodities Act, 1955 (10 of 1955)	Rs. 25 per quintal	Rs.25 per quintal
	1701.39	-- other	Rs.45 per quintal	Rs.45 per quintal
	1701.90	-- other	10%	
17.02		Other sugars, including chemically pure lactose, maltose, glucose and fructose in any form and preparations thereof; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel.		
		Other sugars, including chemically pure lactose, maltose, glucose and fructose in any form:		
	1702.11	Palmyra sugar	Nil	Nil
	1702.19	Other Preparations of other sugars:	15%	

1	2	3	4	5
	1702.21	In which the reducing sugars expressed as anhydrous dextrose amount to more than 80% by weight.	20%	
	1702.29	Other	10%	
	1702.30	Sugar syrups not containing added flavouring or colouring matter, artificial honey, whether or not mixed with natural honey; caramel	10%	
17.03		Molasses, resulting from the extraction or refining of sugar		
	1703.10	Molasses produced in the manufacture of sugar by the vacuum pan process	Rs. 500 per tonne	
	1703.90	Other	Nil	
17.04		Sugar confectionery (including white chocolate), not containing cocoa		
	1704.10	Chewing gum, whether or not sugar coated	10%	
		Other	10%	

II) TOBACCO

Chapter - 24

TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

Notes :

1. In this chapter, 'brand name' means a brand name,

whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

2. In relation to products of heading Nos. 24.02, 24.03, and 24.04, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'.

3. In this Chapter, "Tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.

4. In this Chapter, the expression "cut-tobacco" means the prepared or processed cut-to-size tobacco which is generally blended or moisturised to a desired extent for use in the manufacture of machine-rolled cigarettes.

TABLE NO. K

**RATE OF DUTY CHARGEABLE ON TOBACCO AND TOBACCO SUBSTITUTES
UNDER CENTRA EXCISE TARIFF ACT, 1985.**

Heading No.	Sub- heading No.	Description of goods	Rate of duty	
			Basic	Additional
1	2	3	4	5
24.01	2401.00	Unmanufactured tobacco: tobacco refuse	Nil	Nil
24.02		Cigars and cheroots of tobacco or of tobacco substitutes:		
	2402.10	-Not bearing a brand name	Nil	Nil
		-Bearing a brand name of which the value per hundred:		
	2402.21	-Does not exceed rupees five	Nil	Nil
	2402.22	-Exceeds rupees five but does not exceed rupees fifteen	37.5%	12.5%
	2402.23	Exceeds rupees fifteen	75%	25%
24.03		Cigarettes and cigarillos of tobacco or of tobacco substitutes		
		Cigarettes :		
	2403.11	of tobacco	Rs. 600 per thousand or 300% plus Rs. 20 per thousand, whichever is higher	Rs.300 per thousand or 175% plus Rs.12 per thousands, whichever is higher
	2403.12	-- Of tobacco substitutes	Rs. 600 per thousand or 300% plus Rs.20 per thousand, whichever is higher	
		-Cigarillos:		

1	2	3	4	5
	2403.21	-of tobacco	Rs.600 per thousand or 300% plus Rs.20 per thousand whichever is higher	Rs.300 per thousand or 175% plus Rs.12 per thousand whichever is higher
	2403.22	-- Of tobacco substitutes	Rs.600 per thousand or 300% plus Rs.20 per thousand, whichever is higher.	
24.04		Other manufactured tobacco and manufactured tobacco substitutes; homogenised or 'Reconstituted' tobacco; tobacco extracts and essences		
		-Smoking mixtures for popes and cigarettes; cut tobacco:		
	2404.11	-- 'Gudaku' bearing a brand name	20%	5%
	2404.12	-- 'Gudaku' not bearing a brand name	Nil	Nil
	2404.13	-- Cut tobacco	225%	Nil
	2404.19	-- Other	225%	75%
		Hookah tobacco whether or not containing tobacco substitutes in any proportion:		
	2404.21	--Bearing a brand name	15%	5%
	2404.29	--Other --Biris	Nil	Nil

1	2	3	4	5
2404.31	In the manufacture of which any process has been conducted with the aid of machines operation with or without the aid of power		Rs.8.60 per thousand	Rs. 2.50 per thousand
2404.39	Other		Rs.7.50 per thousand	Rs.2.50 per thousand
	Chewing tobacco, including preparations commonly known as "Khara Masala", "Kimam", "Dokta", "Zarda", "Sukha", and "Surti":			
2404.41	Bearing a brand name		25%	10%
	Other		Nil	Nil
	Snuff:			
2404.50	Snuff of tobacco		25%	10%
2404.60	Preparations containing of tobacco in any proportion		15%	Nil
2404.90	Other		15%	

RATES OF CREDIT FOR CIGARETTES

Rates of credit for cigarettes under Rule 95. In pursuance of sub-rule (1) of rule 95 of the Central Excise Rules, 1944, the Central Government hereby fixes rupees five paise as the rate per one thousand cigarettes.

(Notification No. 139/79 C.E., dated 30.3.1979).

III) COTTON

Chapter 52

COTTONNotes :

1. In relation to products of heading Nos. 52.03 and 52.04 and 52.04, sizing, beaming warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said products into another form of each products shall amount to "manufacture". The duty on sized yarn shall be charged on the basis of its weight before sizing.

2. In relation to products of heading Nos. 52.06 to 52.12, bleaching, mercerising, dyeing, printing, water-proofing, organdie processing or any other process or any one or more of these processes shall amount to 'manufacture'.

3. In this Chapter, the expression 'independent processor' means a manufacturer who is engaged exclusively in the processing of fabrics with the aid of power and who has no proprietary interest in any factory engaged in the spinning of yarn or weaving of cotton fabrics.

4. Heading No. 52.01 applies only to such waste yarn (hard waste) as may arise prior to the removal of yarn for weaving.

TABLE NO. L

RATE OF DUTY CHARGEABLE ON COTTON UNDER CENTRAL EXCISE

TARIFF ACT, 1985.

Heading No.	Sub-heading No.	Description of goods	Rate of duty Basic	duty Additional
1	2	3	4	5
52.01	5201.00	Waste yarn (hard waste) (Including garnetted stock)	Nil	
52.02	5202.00	Cotton, carded or combed	Nil	
52.03	5203.00	Cotton yarn includings sewing thread, not containging synthetic staple fibres	Rs. 15 per Kilogram.	
52.04		Cotton yarn including sewing thread, containing synthetic staple fibres.		
	5204.10	In or in relation to the manufacture of which no process is ordinarily carried on with the aid of power	Nil	
		In or in relation to the manufacture of which any process is ordinarily carried on with the aid of power:		
	5204.21	Containing cotton and polyester staple fibre (not containing any other textile material), in which the proportion of polyester staple fibre is more than 40% by weight of the total fibre content.	Rs. 15 per Kilogram.	
	5204.29	Other	Rs. 15 per Kilogram.	
52.05	5205.00	Cotton Fabrics (a) Woven, and (b) not subjected to any process	Nil	Nil

1	2	3	4	5
52.06	5206.00	Cotton fabrics (excluding fabrics covered under Heading Nos. 52.09 52.10 and 52.11).	20%	20% plus Rs.5 per Square metre
		(a) Woven on looms other than handlooms, and		
		(b) Subject to the process of bleaching, mercerising, dyeing, printing, water-proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes with the aid of power or steam		
52.07	5207.00	Cotton fabrics (excluding fabrics covered under heading Nos. 52.09, 52.10, and 52.11)--	20%	20% plus Rs.5 per square Metre
		(a) Woven on looms other than handlooms, and		
		(b) subject to the process of bleaching, mercerising, dyeing, printing, water-proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes without the aid of power or steam.		
52.08	5208.00	Cotton fabrics (excluding fabrics covered under Heading Nos. 52.09, 52.10, 52.11 and 52.12)--	20%	20% plus Rs. 5 per square metre
		(a) Woven on handlooms, and subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing shrink-proofing, organdie processing or any other process or any two or more of these processes.		

1	2	3	4	5
52.09	5209.00	Cotton fabrics,	20%	20% plus Rs.5 per square metre
		<p>(a) Woven,</p> <p>(b) subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes.</p> <p>(c) Containing (i) cotton, and (ii) polyester staple fibre or polyester filament yarn, or both that not containing any other textile material), and</p> <p>(d) In which the proportion of polyester staple fibre or filament yarn or both is more than 40% by weight of the total fibre content.</p>		
52.10	5210.00	Cotton Fabrics,	20%	20% plus Rs.5 per square metre
		<p>(a) Woven,</p> <p>(b) subjected to the process of bleaching, mercerising, dyeing printing, water-proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes.</p> <p>(c) Containing (i) cotton (ii) Polyester staple fibre, and (iii) ramie or any one or more artificial staple fibres (not containing any other textile material), and</p>		

1	2	3	4	5
		(d) In which the proportion of polyester staple fibre is more than 40% by weight of the total fibre content		
52.11	5211.00	Cotton fabrics,	20%	20% plus Rs.5 per square metre
		(a) Woven,		
		(b) subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes.		
		(c) containing (i) cotton, and (ii) polyester staple fibre, and of value exceeding rupees twenty-five per square metre		
52.12	5212.00	Cotton fabrics, covered in heading Nos. 52.09, 52.10 and 51.11	Nil	Nil
		(a) Woven on handlooms and		
		(b) subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, shrink-proofing, organdie processing or any other process or any two or more of these processes, by a factory owned by a registered handloom cooperative society or any organisation set up or approved by the Government for the purpose of development of handlooms.		



TABLE

Sr.No.	Description of base fabrics on which embroidery is made	Rate of duty in rupees per mtr. length of machines per shift
I.	Cotton Fabrics	13.80
II.	Man made fabrics	
	i) Non-cellulosic	15.35
	ii) Cellulosic	15.35
III.	Silk Fabric	11.70
IV.	Woolen Fabric	13.35

Provided that

- (1) the aforesaid rate of duty per meter length of such machines per shift shall be addition to the duty leviable if not already paid under chapter 50,51,52,54 and 55, as the case may be, of the schedule to the CETA, 1985 (5 of 1986) on the base Fabrics used in the manufacture of embroidery in the piece, in strips or in motifs.
- (2) in respect of every such machine made prior to the 1st Jan 1970, the rate of duty per meter length of the machine per shift as specified in the table shall be reduced by twenty five percent.
- (3) When different variables of base Fabrics are embroidered on a machine per shift shall be highest rate applicable to the base fabrics embroidered during the said shift.
(Notfn. No. 211/82-CE, dt. 31/8/82 as amended by Noftn. No. 20/86 CE, dt. 16.2.1986, No. 38/89-CE (N.I.) dated 21/8/1989 and No. 56/89 CE, dated 1.3.1989).

COMPOUNDED LEVY RATES

Compound levy rates for embroidery machines. In pursuance of rule 96ZI of the Central Excise Rules, 1944, and in superession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 85/71- Central Excise dated 29th May, 1971, the Central Government hereby fixes embroidery machines utilised for manufacturing from each variety of fabrics specified in column(2) of the table below, embroidery in the piece, in strips, or in motifs, the rate of duty specified in the corresponding entry in column (3) thereof. ☆

From the above illustrations, it will be clear that the rate of duty of Excise should be charged according to the Central Excise Tariff Act, 1985. The rate of duty chargeable on the above commodities namely as I) Sugar and Sugar confectionery II) Tobacco and Manufactured Tobacco substitutes and III) Cotton on the basis of Central Excise Tariff, 1985 (5 of 1986) as basic excise duty and Additional Excise Duty. Both the duties were important from the point of revenue contributions to the Government of India.