CHAPTER - TWO

CHAPTER - TWO

TYPES OF TAXES

2.1 Direct and Indirect Taxes : Distinctions:

Introduction :

The Government of India Mobilises revenue from taxes which are divided into two categories namely Direct and Indirect Taxes. Taxes are one of the source of the revenue to the Government which have been used as expenditure for the welfare of the people in the economic development of the country. Both the taxes (Direct and Indirect) are useful to the Government of India. Some of the eminient economists have given their view about the distinctions between direct and Indirect taxes. They are as follows :

Distinctions between Direct and Indirect Taxes :

1) According to J. S. Mill,

A direct tax (which) is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another.

Thus in short, shifting of tax burden from one person to another is possible in case of indirect taxes but it will not be available in case of direct taxes.

2) Bestable defined Direct Taxes as those "Which are levied on permanent and recurring occasions and indirect taxes as" "charges on occasional and particular events".

Bestables distinction was vague and ambiguous and could lead to rather confusing conclusions. For instance, death duty would be regarded as an indirect tax according to Bestable's definition since it would be a charge on an occasional event, but generally death duty regarded as direct taxes.

3) De Marco distinguished the two taxes on the method of appraising or measuring income. If an individual's income is directly appraised or ascertained so as to determine the amount he should pay, it will be a direct tax, on the otherhand, those incomes which evade direct appraisal may be appraised indirectly at the times when the person spends his income- such a tax will be an indirect tax. De Marco regards this as economic classification of taxes but actually it is an administrative classification. De Marco's classification is weak because it is based on a negative concept of evasion of taxes.

In modern times, taxes are classified into Direct and Indirect Taxes on the basis of assessment, rather than on the point of assessment. Taxes, for instance, can be on income received or on expenditure encurred. Those taxes which are imposed on the receipt of income are called direct, while those which are imposed on expenditure are regarded as indirect taxes. On this basis income tax, profits tax, and capital gains tax will be examples of direct taxes. Excise duties, customs duties and Sales Taxes (or commodity taxes as they are generally called) are indirect taxes.

4) According to Dalton,

"A direct tax is really paid by the person on whom it is legally imposed, while an indirect tax is imposed on one person but paid partly or wholly by another, owing to consequential change in the terms of some contract or bargain between them". Therefore income and property taxes are direct taxes while customs and excise duties are indirect taxes.

In the case of Direct Taxes, the impact or immediate money burden and the incidence or the ultimate money burden are on one and the same persons. The person upon whom the tax is imposed bears the impact; while the incidence is upon the person who ultimately pays it. If, on the other hand, the impact and the incidence are on different persons, the tax is an indirect tax.

Direct and Indirect taxes as may also be compared from their different angles - allocation of resources, administrative point of view and distributional effects.

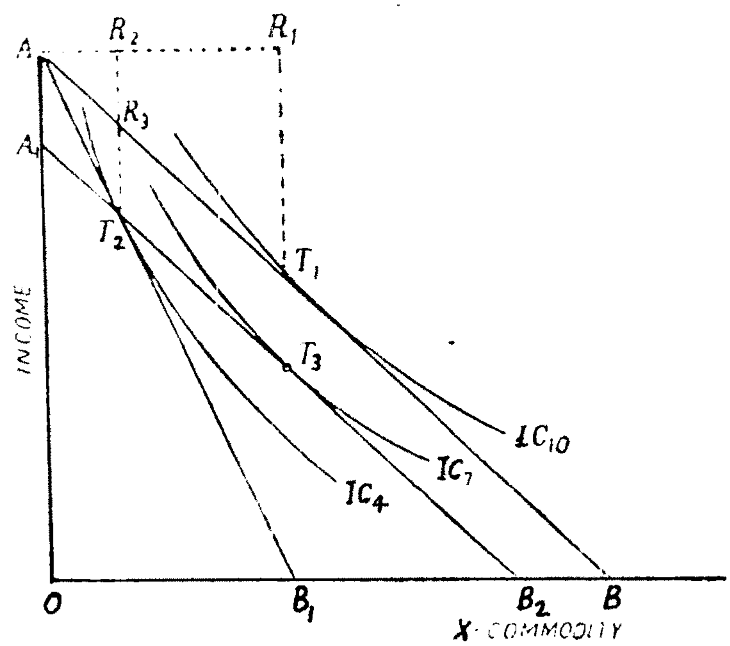
1) <u>Allocative Aspect</u> :

Traditionally, economists have maintained that the allocative effects of indirect taxes are inferior to those of direct taxes. That is, if a certain amount of money is collected from the community by way of indirect taxes (Say on excise duty) the burden will be greater than if the same amount were to be collected by way of a direct tax. (Say, personal income tax).

The following figure makes use of the indifferences techniques to illustrate this point :

DIAGRAM NO. 1

DISTINCTION BETWEEN DIRECT AND INDIRECT TAXES ON THE BASIS OF ALLOCATIVE ASPECT



In above figure, the horizontal axis represents a commodity, while the vertical axis represents the income of an individual. O A is his income and AB is the price line. Before any tax is levied, the equillibrium position is indicated by point T_1, at which price line AB is tangent to an indifference curve, IC 10, suppose an excise duty is levied on the commodity, making it costlier by the full amount of the tax. As a result of the higher price, OA income can buy only OB_1 quantity of the commodity and therefore, the new price line after excise duty is AB_1. The consumer has to go to a lower equilibrium position indicated by T_2. The individual can now buy only AR_2 quantity instead of AR_1 and spend $R_2 T_2$ amount of money to buy it. Of the total amount R_2 T_2 is spent by the person R_3 T_2 goes to the government by way of the excise duty.

Suppose, this amount R_3 T_2 is taken by the Government by way of a personal income tax. The consumer's income will be reduced by the amount to O A_1 ($AA_1 = R_3T_2$). Since the price of the commodity remains the same the new price line A_1 B_2 will be parellel to the original price line AB (that it slopes of AB and A_1 B_2 will be the same, since the price of the commodity will remain the same, when income-tax is levied). The consumer will reach a new equilibrium position at point T_3 , which is on a higher indifference curve (IC_7) than the one that the excise tax enabled him to attain i.e., IC_4. This means that an income-tax of equal amount is preferable to a commodities tax from the consumer's point of view. In other words a direct tax has less harmful effect on the allocation of resources than indirect one.

2) Administrative Aspect :

Direct and Indirect taxes may be compared from the point of view of administrative cost and efficiency. From the administrative point of view, direct taxes are not levied on low incomes and suitable exemption limits are provided for income tax. In India, for example the vast majority of people are exempted from income tax because of extremely low levels of income. Before the first world war, it was thought even in advanced countries that income tax could not be levied on wage earners. In otherwords from the administrative point of view, indirect taxes were considered superior to direct taxes. They are easy to collect, they are convenient and are difficult to evade.

However, such a comparision between direct and indirect taxes does not hold goods because of many factors.

i) Those income groups which are exempted from the operation of direct taxes on the ground of equity and justice are not exempted from the payment of indirect taxes.

ii) The modern administrative machinery for tax assessment and tax collection has been revolutionised so much that income taxes and other direct taxes can be levied even on the lowest income groups. We can cite the example of England where the income tax assessees have increased from 4 million before the second world war to 19 million now, the vast majority of whom are wage earners. It is, therefore, clear that a proper comparision between direct and indirect taxes cannot be made on the ground of administrative cost and efficiency.

Professor Prest mentions certain circumstances when the administrative argument in favour of indirect taxation becomes strong. For instance, there may be a very large number of small, independent producers; or many may be illiterate and incapable of keeping accounts; and barter and subsistance sections of the economy may be quite significant. These factors are specially applicable to under-developed countries and they are responsible for the predominance of indirect taxation in these countries.

Thus, comparision between direct and indirect taxes on the basis of administration in such a way that the former are inferior to the latter is defective.

3) Distributional Aspect :

A comparision may be made of the two types of tax on the basis of their distributional aspects. It used to be held that direct taxes were pre-eminently suited to bring about reduction in the inequality of income in the capitalist system. Hence, direct taxes were considered very progressive. At the same time indirect taxes fall on all incomes and, therefore, they have been regarded as generally regressive.

It is further pointed out that any scheme of redistribution of income which may be considered desirable can be achieved by either type of taxation. But the process of achieving such distribution will be different. In the case of direct taxes, the adjustment takes place through the factors market, for there is a systamatic relationship between the size of income and the amount of tax payment. In the case of indirect taxes, the process of adjustment will be through the commodity market. On this basis, it is difficult to speak of direct taxes as progressive and indirect taxes as regressive. In fact, if a direct tax is passed on to the consumer, it will be regressive. Likewise, an indirect tax on luxury goods may shift factors of production from these industries to those lines of production which meet the demands of the common masses and thus an indirect tax can be as progressive as any direct tax.

Taxes are one of the ways through which the revenues are collected. Both direct and Indirect taxes are important from revenue contributions to the country for resource mobilisation and to avoid inequalities of income and wealth among rich and poor, Direct Taxes includes Income Tax, Wealth Tax, Gift Tax and while Indirect taxes includes customs duties, excise Duties, Sales Tax and others.

2.2 Revenue from direct and indirect Taxes

Following table shows revenue of Direct, Indirect and Total Taxes (Centre, States and Local Bodies)

TABLE - A **Revenue From Direct, Indirect and Total Taxes**

(Centre, States and Local Bodies) to the Total Tax Revenue.

Year	Tax Revenue (Rs. in Crores)		Total	% Share in total Tax Revenue		Tax Revenue as % to Govt.		
	Direct	Indirect		Direct	Indirect	Direct	In Direct	Total
1950-51	231	428	659	35	65	2.5	4.6	7.1
1960-61	420	1040	1460	29	71	2.6	6.4	9.0
1970-71	1091	3864	4955	22	78	2.5	9.0	11.5
1980-81	3575	16746	20321	18	82	2.6	12.3	14.9
1981-82	4461	20089	24550	18	82	2.8	12.6	15.4
1982-83	4835	22985	27820	17	83	2.7	12.9	15.6
1983-84	5355	26471	31826	17	83	2.6	12.8	15.4
1984-85	5806	30640	36446	16	84	2.5	13.3	15.8
1985-86	6574	36987	43561	15	85	2.5	14.2	16.7
1986-87	7328	42714	50042	15	85	2.5	14.7	17.2
1987-88	8001	49847	57848	14	86	2.4	15.1	17.5
1988-89	10396	57430	67826	15	85	2.7	14.7	17.4
1989-90	11351	66875	78226	14	86	2.5	15.0	17.5
1990-91	14378	75925	90303	14	86	2.7	14.5	17.2

(Source : Basic Statistics relating to the Indian Economy, Centre for Monitoring Indian Economy Vol.1, August, 1992.)

It is clear from the above table that the revenue contributed by the Indirect tax is more than Direct Tax. It has been seen from the table that since 1950 to up till now, the revenue of Indirect tax shares to the total tax revenue has been increasing i.e., In 1950-51, tax revenue from Indirect Tax was 428 Crores has been increased to Rs. 75,925 Crores in 1990-91. Both the taxes Direct and Indirect should be important for the Government of India from the Revenue Contributions.

2.3 INDIRECT TAXES-MEANING AND IMPORTANCE :

I) Meaning of Indirect Taxes :

Indirect taxes comprise mainly taxes on commodities and transactions. They are levied both by the Union and the State Governments. The Union Government levies customs duties Viz. duties on import and export of commodities. These duties, besides being a source of revenue to the central Government. Supplement import and export control as instruments of Foreign trade policy. Commodities manufactured within the country are subject to excise duties under the Indian constitution, all excise duties except those on alcoholic liquors and narcotics drugs are allocated to the Union Government.

So far as State Governments are concerned, Sales

Tax has, by far, become the most important source of revenue to them. The State Governments in India levy a general sales tax on the sale of goods within their jurisdiction. Inter-state sales of goods are, however, within the jurisdiction of the union Government. Goods may be subject to both excise and sales taxes, but goods which are subject to the Union excise duty are either exempted from State sales tax or are taxed, at concessional rates.

Other indirect taxes levied by States in India includes stamp duties and registration taxes (Fees), taxes on motor vehicles, entertainment or betting tax, electricity duties and a few other miscellaneous levies. Stamp duties on non-judicial documents are levied both by the Central and the State Governments in India. As provided for in the concurrent list of the constitution a tax on Railways passenger fares was levied in september, 1957 but was later marged with Railway fares in April, 1961. The tax on Railway passenger fares was levied and collected by Union Government but it proceeds were distributed amongst the State Governments as per the recommendations of the Finance Commission.

COMMODITY TAXATION OF THE UNION GOVERNMENT :

The Union Government levies essentially two important commodity taxes, Vis., customs duties and excise duties. Before independence, customs duties used to be the largest source of revenue for the Union Government. After Independence, however the excise duties have assumed the place of customs duties as the most important source of revenue to the Government. 40% of the proceeds from excise duties have to be made over to the State Governments as per the recommendations of the seventh Finance Commission. The revenues obtained by the Government of India from commodities taxes is laid in table below.

TABLE - B

Revenue from Commodity Taxation

(Rupees in Crores)

	Source of REvenue	1950-51	70-71	80-81	83-84	91-92	92-93	93
I	Customs Duties	157	524	3409	5486	22895	25212	27727
II	Union Excise Duties	68	1759	6500	9725	27696	32211	33600
III	Others	2	47	263	401	1709	1947	
	Total Revenue from Coddodity Taxation	227	2330	10172	15612	52300	59370	

It is clear from the above table that; commodity taxation is playing a dominant role inrespect of tax revenue raised by the Union Government. The basic causes for this dominance of commodity taxes in Union finances could be summarised as follows :

i) The general poverty of the mass of population in India.

ii) The necessarily limited scope for direct taxation.

iii) The necessity to translate into practice the political principle of making every one pay for the general expenses of the Government.

The Government always finds it easier and convenient to mobilise additional resources through commodities taxation i.e., Indirect taxation.

II) <u>Importance of Indirect Taxation</u> :

Indirect taxes are significant for the type of diversion of resources and purchasing power which they achieve in practice. This is important because their main objective is to raise resourses for public investment, raise the rate of investment and finally raise the incremental saving ratio.

1) <u>Effects on Economic Development</u> :

Commodity taxes help to divert resources from private to public sector. Such a transfer implies two stages acquisition of purchasing power by the state through taxation and purchase of factors of production by the state. It is necessary to emphasis that the State should transfer resources to itself without causing such undesirable effects as inflation. A second type of diversion which commodity taxation hopes to achieve is the diversion of resources from consumption goods industries to investment goods industries within the private sector. Such a diversion is achieved through differential taxation. Taxation of luxury and non essential goods and tax exemption of capital goods will cause such a diversion. A third type of diversion which indirect taxation helps to achieve is the diversion of demand from imports to domestically produced goods. Such a diversion takes place through the system of import duties by which the demand for foreign goods is curtailed and the demand for home produced goods increased. All these three types of diversion are meant to promote economic development.

2) Price Effect :

The imposition of a tax on a commodity will naturally raise its price leading to a curtailment of demand for it. There will be a transference of factors from the taxed commodity to others. As a result both demand and supply will be affected and what will be the new price, whether it will be the same as the old price or whether the price will go up by the same amount or by more or less amount, will depend upon the elasticity of demand and of supply for the taxed commodity. As a result of change in demand and supply because of taxation, it is a possible that there will be changes and disturbances in the entire economy. On the other hand, the price effects of a general sales tax have been a matter of some controversy and uncertainty among economists.

3) Distribution Effects :

If benefit from Government expenditure is ignored, a general sales-tax can be shown to be regressive unless differential rates are introduced on different types of goods but general sales tax may be used as an instrument of economic development and the incidence of benefits from economic progress can be progressive. In what way the benefits will be distributed will depend upon the nature of Government investments. The distributive effects of indirect taxation can be best analysed only by a careful study of the problem of incidence of taxation.

2.4 PERCENTAGE SHARE OF INDIRECT TAXES TO THE TOTAL TAX REVENUE

Introduction :

Among taxes, Indirect-taxes contributed more of the revenue to the Government of India, which have been very essential for the Government.

From the following table it is clear that % age share of Indirect taxes of States and Centres has been increasing since from 1950-51 to 1992-93.

TABLE - C

PERCENTAGE SHARE OF INDIRECT TAXES TO THE TOTAL TAX REVENUE

Period	Centre's Sate		State's Share		Centre Plus States Combi-ned.
	Gross	Net*	Own Taxes	Totals	
1950-51	56.54	64.15	75.23	61.85	63.16
First Plan	62.28	69.94	71.19	59.85	65.42
Second Plan	66.51	71.53	73.37	65.85	68.89
Third Plan	68.07	71.07	80.26	72.74	71.75
Annual Plans	71.97	74.75	88.60	80.38	77.21
Fourth Plan	72.53	78.69	92.21	78.70	78.69
Fifth Plan	73.28	76.62	93.34	83.48	79.77
1979-80	76.47	77.33	95.13	87.34	82.49
Sixth Plan	77.76	78.30	95.99	89.43	84.03
1985-86	80.04	82.27	95.67	88.69	85.55
1986-87	81.01	83.31	96.09	88.79	86.09
1988-89	80.15	82.01	95.87	88.90	85.42
1989-90	80.63	84.17	95.54	87.06	85.63
Seventh Plan	80.83	83.45	95.86	88.28	85.89
1990-91	80.85	83.96	95.90	88.03	086.03
1991-92	77.71	80.25	95.16	86.77	83.54
1992-93	77.59	80.04	N.A.	N.A.	N.A.

*Net of States Share but inclusive of UT taxes.

& Inclusive of Tax transfer form the Centre

Source : Ministry of Finance, GOI, Basic Statics (Public Finance) and GOI Budgets.

From the above table it is clear that the % age share on Indirect taxes of States and Centres has been increasing since from 1950-51 to 1992-93.

2.5 EXCISE DUTY-MEANING AND DISTINCTIONS :

I) EXCISE DUTY - MEANING :

Excise is the name given to duties or taxes levied certain articles produced and consumed at home, amongst which spirits have always been the most important, but exclusive of these, the duties on the license of actionners, brewers etc., and on the licenses to keep dogs, kill game, etc., are included in excise duties (Wharton).

The term "Excise Duty" has not been precisely not authoritatively defined any where. So Excise Duties are levied on home made goods or goods made in the taxing country. Its primary and fundamental meaning in English is still that of a tax on articles produced or manufactured in the country and intended for home consumption.

The words manufactured or produced in India are an integral part of Entry 84 and are not without signifinance and the scheme of the Indian constitution appears clearly to be that excise duties, though on goods, are connected with the manufacture or production.

According to the present constitution of the Government of India Act, 1935, duties of excise are to be charged from the manufacturer or producer, of course inrespect of goods produced.

The duty under the act of 1953 is an excise duty **in as** much as at is imposed on a manufacture inrespect of **the duties** produced by it over the permissible quota and is connected with the manufacture thereof :

In order to be an excise duty -

a) The levy must be upon goods and
b) The taxable event must be the manufacture or production of goods.

Further levy need not be imposed at the stage of production or manufacture but may be imposed later.

Principles of Excise Duties

1) Duty is uniformities of incidence.
2) Duty must be closely related to production or manufacture of goods.
3) The taxable event is not the manufacture of production of goods but the acceptance of the license to sell.

Excise duty is a tax on the producer or manufacturer inrespect of goods produced or manufactured in the taxing authority. No doubt excise duty is an indirect tax, which is ultimately intended to fall on the consumer. But it is recoverable from the manufacturer even if the manufacturer is unable to recover it from the consumer.

Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is ultimate incidence will always be on the consumer.

A duty of excise is a tax or levy on home produced goods of specified class of description. The duty being calculated according to the quantity or value of the goods and which is levied because of the mere fact of the goods having been produced or manufactured and unrelated and not dependent on commercial transaction in them.

A duty of excise is primarily a duty levied upon a manufacturer or producer inrespect of the commodity produced or manufactured. It is a tax upon goods and not upon sales or proceeds of sale of goods.

(Ref. Governor General in council V. Province of Madras, the Judicial Committee observed)

The duty of excise is more or less connected with home manufacture or production, even though its collection may be delayed till a later stage.

(Ref. Province of Madras V. M/s Boddu Paidana & Sons).

The primary meaning of excise duty has come to be that of a tax on certain articles of luxury (such as spirits, beer or tabacco) produced or manufactured in the United Kingdom, and it is used in contradiction to customs duties on articles imported into the country from elesewhere at a later date the license fees imposed for revenue administrative or regulative purpose on persons engaged in a number of other trades or callingue. Even the duty payable on a payment for admission to places of entertainment in the united kingdom is called a excise duty.

The power to make laws with respect to duties of excise given by the constitution Act to the federal Legislature is to be construed as a power to impose duties of excise upon the manufacturer or producer of the excisable articles or at the stage of or inconnection with, manufacture or production, and that is extends to further that this is an interpretation reasonable in itself more consonant than any other with the context and general scheme of the Act and supported by other consideration.

Excise is a tax on production and manufacture.

The duty of excise is on the manufacture or production of goods. Manufacture implies a change but every change in the raw material is not manufacture eligible to duty. To be manufacture eligibility to duty, there must be such transformation that a new and different article which can ordinarily come to the market to be bought and sold and known to the market having a distinctive name, character, and use must emerge,. Further more, inorder to be dutibable as one of the items mentioned in the first schedule to the Act the transformation must result in making the article as one as mentioned in the First Schedule.

The duty is on the process of manufacture. If there are seperate and different processes of manufacture, and each process results in such transformation that a new and distinct article known in the market as such comes into being then each process would be subject to duty.

When certain exempted items have been used in further process then if duty is imposed again that may be an occasion for repetitive duty.

The Sources of Power :

Legislative competence to levy excise duty on production and manufacture is traceable to entry 84, How the duty should be levied or collected are all matters within the exercise of the power. They relate to machinery of and do not affect the legislative competence.

The relevant legislative entries under which the parliment may legislate for the levy of duties of Excise are as follows :

"84" Duties of excise on tobacco and other goods manufacture or produced in India Except :

a) Alcoholic liquors for human consumption.

b) Opium, Indian hemp and other narocotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol on any substance included in sub-para(b) of this entry.

93 Offences against Laws with respect to any of the matters in this list.

94 Inquiries, surveys and statistics for the purpose of any of the matters in this list.

95 Jurisdiction and powers of all courts, except the supreme court, with respect to any of the matters in this list; admirally jurisdiction.

96 Fees in respect of any of the matters in this list, but not including fees taken in any court.

97 Any other matter not enumerated in list II or list III including any tax not - mentioned in either of those lists (This corresponds to Article 248 of the constitution which confers residuary powers on parliment.)

The State Legislatures have exclusive competence to legislate in respect of certain excise duties. List II of Schedule VII contains the following entries :-

51. Duties of excise on the following goods manufactured or

produced in the state and countervailing duties- at the same or lower rates on similar goods manufactutred or produced elsewhere in India -

a) Alcoholic liquors for human consumption

b) Opium, Indian hemp and other rarcotics drugs and narcotics, but not including medicinal and toilet preparation containing alcohol on any substance included in sub-para(b) of this entry.

In Dabur India Ltd. and another V. State of U.P., and Other (S.C.)- Establishment of Council to adjust against the dues between the central and the state Governments. In peculiar facts, it appears that the dispute is under two different central legislation and under one the state authorities will realise and impose the taxes on finding on certain basis and under the other the same transaction may be open to imposition by central Government, authorities on a particular view of the matter. In such a situation, how and wherein the refund should be made of any duty paid inrespect of part of a transaction to one of the authorities the state or centre to be adjusted should be subject matter of a settlement by the council to be under Article 263.

II) DISTINCTION BETWEEN EXCISE DUTY AND OTHER INDIRECT TAXES

The following are the some of the distinction between :

A) <u>Distinction between Excise Duty and Sales Tax</u> :

Excise Duty is in respect of manufacture of goods where as Sales-Tax is upon the sale of the goods.

According to Panjab Central Sales Tax Act the purchase tax is whether imposed on the the sale of goods or in connection with the manufacture of goods. The decisions establish that inorder to be an excise duty.

a) The levy must be upon 'goods' and
b) The taxable event must be the manufacture or production of goods.

The said Sales-Tax has no nexus with the manufacture of goods.

Duties of excise partake of the nature of indirect taxes as known to standard works on economics and are to be distinguished from direct taxes like taxes on property and income. If the tax payer who pays a sales tax is also a manufacturer or producer of commodities subjected to central duty, there may no doubt be an overlapping in one sense, but there is no overlapping in law. The two taxes which he is called on to pay are economically two seperate and distinct imposts.

The duty of excise is essence is a duty on manufacture or production of goods though as a matter of a convenience, it may be levied at the time when the goods leave the place of production. It is totally distinct from a sales tax which is attracted only when there is a sale though both taxes are ultimately passed to the consumer.

B) Excise Duty and Octroy Difference :

Excise Duty is a tax on manufactured goods. Tabacco becomes subject to excise duty when it reaches the stage of manufacture mentioned in item 9 of the schedule to the Excise Act. Even before it is converted into bidis or any other article mentioned in the entry it has becomes excisable goods and liable to pay excise duty.

Octroy Duty is a tax levied on the entry of goods within a particular area. The levy of excise duty is therefore not in conflict with the levy of an impost on the entry of the goods within a certain area.

C) Excise and Customs Duty - Difference :

The duty of excise is levied on the production or manufacture of goods produced in India, but the taxable event in the case of customs is the import of goods into India.

D) Excise Duty distinction from Cess :

U/S 3(i) of the Excise Act, excise tax is leviable on the goods manufactured. This Excise Act falls within Item No. 84 of list I of the seventh schedule of the constitution. Item No. 84 mentions "Duties of excise on tobacco and other goods manufactured or produced in India.

2.6 <u>DEFINITIONS UNDER CENTRAL EXCISE AND SALT ACT, 1944</u> :

INTRODUCTION :

Section 2 of the Act deals with various material difinitions which must be necessarilly be understoods. They are as follows :

1) "Adjudicating Authority" means any authority competent to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), collector of Central Excise (Appeals) or Appellate Tribunal;

2) "Appellate Tribunal" means the customs, Excise and Gold (control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);

3) "Broker" or "Commission agent" means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

4) "Central Excise Officer" means any officer of the Central Excise Department, or any person (including an

officer of the State Government) invested by the (Central Board of Excise and Customs) constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act;

5) "Curing" includes wilting, drying, farmenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

6) "Excisable goods" means goods specified in the (Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

7) "Factory" means any Premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;

"Fund" means the Consumer Welfare Fund established under section 12 c.

8) "Manufacture" includes any process, -

(i) incidentals 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 Schedule to the

Central Excise Tariff Act, 1985 as amounting to manufacture, and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

9) "prescribed" means prescribed by rules made under this Act;

10) "sale" and "purchase", with their grammatical variation and cognate expressions, mean any transfer of the possession of goods by one person to another, in the ordinary course of trade or business for cash or deferred payment under valuable consideration;

11) "Saltpetre" includes rasi, sajji, and all other substance from saline earth, and kharinum and every form of sulphate or corbonate soda.

12) "Salt Factory" includes;

(i) a place used or intended to be used in the manufacture of salt and all embankments, reservoirs, condending and evaparting pans, buildings and waste places situated within the limits of such place as defined from time to time by the collector of Central Excise;

(ii) all drying grounds and storage platforms and storehouses appertaining to any such place;

(iii) land on which salt is spontaneously produced and a "private salt factory" is one not solely owned or not solely owned by the Central Government;

13) "Wholesale Dealer" means a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

It may be clear that, the above definitions are very important from the view point of Excise Law Study.

2.7 EXCISE TAXATION : IMPORTANCE AND CRITICISM :

INTRODUCTION :

Excise taxes are imposed upon the production and sale of particular goods or groups of goods. The difference between excise taxes and sales taxes is essentially one of degree rather than of kind while the actual excise taxes are confined to a small number of goods with varying rates, sales taxes are generally and apply to a very large number of goods and the rate of taxation will be generally the same. For instance, the excise on tabacco may at one rate, while on matches or petrol may at a different rate on the otherhand, sales tax may be the same, say 5% for all the commodities which come under the scope of sales taxation. Again excise taxes are imposed upon activity, while sales taxes are imposed on sales. In a sense, an extensive system of excises will resemble a sales tax which exempts some commodities and services.

<u>Purposes of Excise Taxation</u> :

Excise taxes may be levied on certain luxury commodities. The principle behind such'; luxury excise' is that consumption expenditures for particular articles may be regarded as a better measure of tax paying ability than total consumption expenditures and that luxury items constitute a good source of distributing the burden of taxation. Sometimes, the purpose may be to penalise those persons who continue to use the commodities despite the tax. Liquor, tabacco, etc., come under this groups and excise duties on these goods are known as 'sumptuary excises'. In certain cases, excises duties may be levied in order to allocate tax burden in relation to benefits received. The petrol tax is taken as a good example of this type. The proceeds of the petrol tax can be earmarked for road construction. If there is a close relation between the benefits from a Government activity and the consumption of a certain commodity, the levying of an excise tax on the sales of the commodity will provide an effective means of distributing the burden in realtion to benefit and will facilitate the determination of optimum levels of the service to be provided. Sometimes excise duties may also be levied during war and other inflationary periods to curtail the use of particularly scarce commodities without the necessity of direct control measures. In such periods the Government may determine maximum prices of certain goods but may impose excise duties, so as to absorb part of the profits going to the owners. In India, the principle behind excise taxation has been that local industries which have developed under a protective tariff may be called upon to replace the loss of customs revenue on imports finally, excises may be imposed only for the purpose of securing, revenue, without any other principles being involved.

Merits and Demerits of Excise Taxation :

The Merits of excise taxation have been already explained under the previous section where we described the various purposes for which excise taxation can be imposed. In a general sense, excise taxes will reduce the dependence of public authorities on income taxes and to that extent the possible adverse effects of the latter on the incentive to work, save and invest will be reduced. This is obviously in the interest of the community, let us take different types of excise taxes and evaluate their merits and demerits.

In case of excise duties on Luxury goods, the payment is made by the higher income groups who have the ability to pay taxes. In this sense, excise taxes which fall on the rich may be justified from the point of view of equity. If the luxury goods to be taxed are carefully selected; it should be possible to avoid the heavy burden on the poor and the regressiveness of the usual sales taxes. It is also argued that luxury goods are those which are not really necessary for a reasonable living standard and, therefore, expenditure on such unnecessary goods may be deemed as more suitable basis taxation than total expenditures. But luxury excises are subject to many limitations.

a) Luxury excises discriminate between people on the basis of perference. Those who have higher preferences for certain goods are taxed more while other who may be equally rich but who do not have perference for them, will go scot-free.

(b) It is difficult to choose really luxury goods. What is necessary for one group may be a luxury for another group. If highly costly and pestige goods are taken into consideration, the revenue yield may not amount to much.

In the case of sumptuary excises, the main justification is that they prevent the excessive use of certain harmful goods, like liquor, tabacco, etc. The effects of excessive use of liquor upon a persons health or his work or his dependents are well known. Hence, it is easy to justify sumptuary excises. But these excise duties are criticised mainly on two grounds. First, they have the defects of placing a heavy burden on the great majority of persons who use the commodities only moderately. Besides, in considering a commodity really harmfully or unnecessary. A moral judgement is involved. The use of morality basis of taxation can never be justified in economic theory and is generally regarded as flimsy Finally, the burden on the lower income groups is very high and hence sumptuary excise taxation is regressive,. Professor Henry Simons has condemned such taxation as follows :

"many liberal person defend levies like the tobacco tax on the curious ground that tobacco is not a necessity that poor people may or can avoid the taxation by not consuming the commodity. This position invites two comments. First, it is hardly accurate to say that no burden is involved in getting along without the commodity. Second, it seems a little absurd to go around arguing that people could or ought to do without tobacco, especially if it is taxed, in the face of the facts that they simply do not do anything of the kind, that the commodity was selected for taxation because they are not expected so and that the Government would not get much revenue if they did".

Apart from the usual cirticism against sumptuary excise taxation, one criticism which is normally forgotten and hence not properly emphasised but which is equally important is evasion of these taxes. Whenever excise taxes become excessive and oppressive, they lead to illicit production of liquor boot legging and smuggling.

The benefit based excise taxes are the least disputed though sometimes, they too are criticised, The provision of roads is essentially a commercial service which the government provides, and to finance the construction and maintenance of which they charge the users of roads through an excise duty on petrol. Petrol consumption varies directly with the mileage driven, it is typically greater with more expensive cars than with lighter ones and with heavier vehicles than with lighter ones. Besides, the tax can be collected without any evasion and avoidance.

General Criticism of Excise Taxation :

The primary criticism against excise taxes is on the ground that they have a tendancy to bring about a reallocation of resources away from the optimum. For instance, when the prices of particular goods are raised because of imposition of excise duties, the demand may decline and consequently the production may decline too. The sumptuary excises are actually designed to check production of goods which are not conducive to the welfare of the community. But it is not possible to argue in the same manner for other excises what actually can happen is that when an excise duty is imposed upon the sale of a particular commodity. Some of the marginal buyers will cease to buy the commodity or will buy less of it and buy other commodities instead. Accordingly, they have failed to obtained optimum satisfaction from their incomes; not only that the government will not have gained any revenue. Thus as a result of the excise duty, the production of other goods will increase and it previously the ecomomy has achieved optimum allocation of resources, a poorer allocation will result because of the imposition of the excise duty. Further, in most cases excises levied on goods produced under diminishing cost. In such cases, there should be encouragement to increased production and not contraction of output through the imposition of excise duties.

Thus, the standard criticism against excise taxation is its adverse effect on production and distortion of resource allocation between different industries. There is considerable merit in this argument. However, such a criticism is based on the doubtful assumption that before the levy of the particular excise tax, there was optimum allocation of resources. This is not necessary. Besides restriction of goods consumed by the rich (through luxury excises) and expansion of goods consumed largely by the lower income groups will be in the interests of the community and will also achieve a better distribution of resources. In any case, it is impossible to conclude our say or the other on the basis of the distortion of resource allocation argument.

Among other objections against the use of excise taxes of different types are the use of specific rates in certain cases which may not vary with the value of the product, (so that there is a disproportionate burden on the users of the cheaper types), direct pyramiding since excise tax is levied on the manufacturing level generally, concealment of tax burden from the tax payers, and so on.

To conclude, excise taxes may be justified on the ground that they serve as a means of distributing tax burden on the basis of benefits received, restrict output which may not be conductive to the welfare of the community and may attempt to impose larger burdens on the rich than on the poor if the item to be taxed are carefully chosen. But Professor Henry C. Simons, who has been a vigorous Critic of excise taxation writers : "These taxes, to my mind, are the worst elements in our revenue system. They are much more regressive than sales taxes. They are almost wholly concealed, precluding real awareness by individuals of their actual burden. They pander to misguided demands for sumptuary legislation, deriving strong support from alleged purposes which they are carefully designed not to serve. They pose as levies upon 'luxuries' while serving to divert expenditures not from the objects taxed but from 'Necessities'. Like corporation taxes, they are the revenue devices of political towards who live in terror of voter-tax payers and of government by intelligent discussion".

2.8 SHARE OF EXCISE REVENUE TO THE TOTAL TAX REVENUE :

INTRODUCTION :

The financial structure of the total revenues and the total expenditure is reflected from the Budgets of the Government of India. The revenues of the Government assumes a significant place. The tax revenue of the Government of India and the major sources are reflected from the following chart :

TABLE - D

Trends in structure of Central Government Revenue

		Rupees in Crores				% Share in Total Revenue		
		1970 -71	1980 -81	1991 -92	1992 -93	1970 -71	1980 -81	1992 -93
1.	Corporation Tax	371	1311	7300	8125	6.5	5.4	6.1
2.	Income Tax	473	1506	6788	7870	8.3	6.2	5.9
3.	Wealth Tax	15	68	255	300	0.3	0.3	0.2
4.	Estate Duty	8	16	3	3	0.1	0.1	-
5.	Others	10	107	654	855	0.2	0.4	0.6
	Direct Taxes (1 to 5)	877	3008	15000	17153	15.5	12.4	12.9

		Rupees in Crores				% Share in Total Revenue		
		1970-71	1980-81	1991-92	1992-93	1970-71	1980-81	1992-93
6.	Customs	524	3409	22895	25212	9.2	14.1	19.0
7.	Union Excise Duty	1759	6500	27696	32211	31.0	26.9	24.3
8.	Others	47	263	1709	1947	0.8	1.1	1.5
B.	INDIRECT TAXES	2330	10172	52300	59370	41.0	42.1	44.8
C.	Gross Tax Revenue (A + B)	3207	13180	67300	76523	56.5	54.5	44.8
D.	Transfer of States Share	755	3792	17199	19992	13.3	15.7	15.1
E.	Net Tax Revenue (C - D)	2452	9388	50101	56531	43.2	38.8	42.7
9.	Fiscal services	26	143	787	820	0.5	0.6	0.6
10.	Interest Receipt	589	1795	11297	13464	10.4	7.4	10.2
11.	Dividends and Profits	121	292	1049	2622	2.1	1.2	2.0
12.	Others Receipts	154	1211	6975	6287	2.7	5.0	4.7

	Rupees in Crores				% Share in Total Revenue		
	1970 -71	1980 -81	1991 -92	1992 -93	1970 -71	1980 -81	1992 -93
F. REVENUE ACCOUNT (Receipt (1to 12)	3342	12829	70209	79724	58.9	53.1	60.2
13. Capital Account	2046	8771	43253	47394	36.1	36.1	36.3
14. Bedgetory Deficit (Financing)	285	2577	7032	5389	5.0	10.7	4.1
TOTAL RECEIPTS	5673	24177	120494	132507	100.0	100.0	100.0

(Source : Basic statistics relating to the Indian Economy Centre for monitoring Indian Economy, Vol 1, 1992)

(The Chartered Accountant, May 1993)

The above information would shows that the percentage of tax revenue to the total tax revenue is ever increasing. But there is a same distortal between Direct and Indirect taxes. The contribution of Indirect taxes is assuming major importance in the total tax revenue particularly as Union Excise Duties. Excise Revenue increased from Rs. 1759 Crores in the year 1970-71 to

Rs. 32211 Crores in year 1992-93.

2.9 REVENUE FROM UNION EXCISE DUTIES :

Direct and Indirect taxes are very useful by imposing taxes to collect the revenue from the point of view of the Government in India. Among taxes, Indirect taxes contributed more portion of revenue to the centre. Indirect taxes includes Customs duties, Excise duties, Sales Taxes. Among these, the revenue of Centre Excise duties is more than any of the taxes such as customs duties, sales taxes.

It is clear from the following table that the Government of India collects the Central Excise revenue through different means. The duties like Basic and special Excise duties, Additional duties on Textiles and Textile Articles, Additional duties in lieu of sales tax, cess on commodities. The net receipts from Central Excise Duties increases from Rs. 86 Crores in 1950-51 to Rs. 15239 Crores in 1991-92. The Government of India used these revenue for the economic development of the country but the development shall not be fully achieved to the fullest extent as compared to the developed countries of the world.

TABLE - E

TABLE SHOWING REVENUE FROM UNION EXCISE DUTIES

(Rs. in Crores)

Sr. No.	Description	1950 -51	1960 -61	1970 -71	1980 -81	1985 -86	1991 -92
1.	Basic and special Duties of Excise	70	379	1694	5880	11794	21087
2.	Additional Duties on Textiles and Textile Articles	--	--	--	67	197	383
3.	Additional Duties in lieu of sales Tax	--	33	75	395	1046	1815
4.	Cess on Commodities	2	7	30	105	1155	3019
5.	TOTAL GROSS REVENUE	72	419	1799	6587	14193	27075
6.	LESS: REFUNDS AND DRAWBACKS	4	3	8	108	126	661
7.	TOTAL NET REVENUE	68	416	1791	6479	14067	26414
8.	LESS : STATES SHARES	--	75	390	2777	6191	11175
	NET RECEIPTS	68	341	1401	3702	7876	15239

Source: RBI, Report on currency & Finance, 1983-84, 1986-87.
Explanatory Memorandum on the Budget, 1991-92.