



Customs Act

Valuation of Imported Goods under Customs Act, 1962

Valuation of imported goods [section 14(1)]: For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods shall be the transaction value of such goods, that is to say –

- the price actually paid or payable for the goods;
- when sold for export to India for delivery at the time and place of importation;
- where the buyer and seller of the goods are not related;
- price is the sole consideration for the sale; and
- subject to such other conditions as may be specified in the rules made in this behalf.

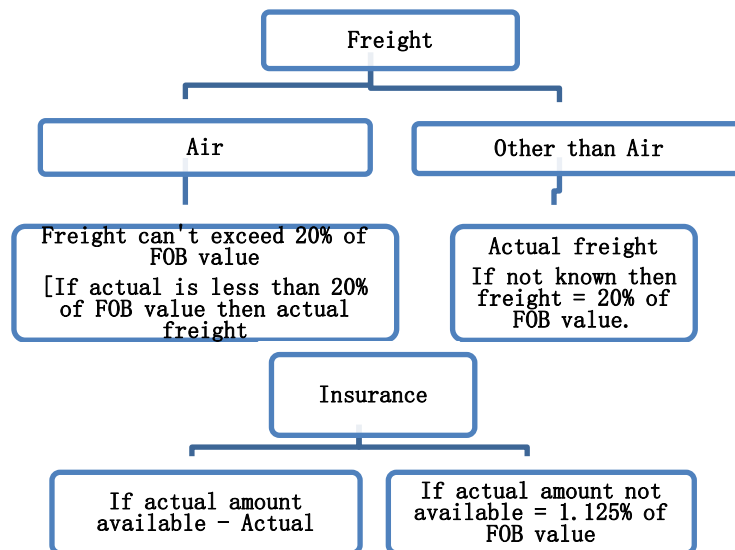
Inclusions of cost and services in transaction value: The transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

Value = Transaction value + Cost and services as listed in Rule 10

Value under all Rules to include: Cost of Transport, Insurance & Handling, etc. [rule 10(2)]:

For the purposes of section 14(1) of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include -

Rule	Particulars	Sum
3(1) & 10(1)	Transaction Value	xx
10(2)(a)	<p>Add: the cost of transport of the imported goods to the place of importation</p> <p>Notes:</p> <p>(1) Inclusions - Demurrage, lighterage and barge : Cost of transport includes the -</p> <ul style="list-style-type: none"> ◆ ship demurrage charges on chartered vessels, ◆ lighterage or barge charges. <p>(2) Exclusions - Movement from port to ICD/CFS: In case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot (ICD) or Container Freight Station (CFS), the cost of freight incurred in the movement of container from the port of entry to the ICD/CFS shall not be included in the cost of transport.</p> <p>(3) Import by air - Cost in excess of 20% of FOB - Ignored: if goods were imported by air, cost of transport such cost shall not exceed 20% of FOB value of the goods.</p> <p>(4) Cost not ascertainable - Cost is 20% of FOB: if cost of transport is not ascertainable, it shall be 20% of the FOB Value.</p>	+
10(2)(c)	<p>Add: the cost of insurance</p> <p>However, if it is not ascertainable, it shall be 1.125% of FOB value of the goods.</p>	+
	Cost, Insurance and Freight (CIF)	xx
10(2)(b)	<p>Add: loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation @ 1 % of CIF</p> <p><i>(fixed addition; actual sum incurred is irrelevant)</i></p>	+
	Value under section 14(1) for levy of customs duty [often called "Assessable Value"]	xxx



Example C1:

FOB value not ascertainable: Where the free on board value of the goods is not ascertainable (and obviously cost of transport and insurance are also not available), i.e., only CIF value is available, then, CIF is assumed inclusive of cost of transport @20% of FOB and cost of insurance @ 1.125% of FOB and the computations are made backward as follows (assumed figures)-

CIF Price	121.125%	1,21,125
Less: Cost of Transport @20% of FOB viz. CIF × 20 ÷ 121.125	20.000%	20,000
Less: Cost of insurance @1.125% of FOB viz. CIF × 1.125 ÷ 121.125	1.125%	1,125
FOB	100.000%	1,00,000

Example C2:

Tanupriya Ltd. imported some goods from LMT Inc. of United States by air freight. You are required to compute the value for purposes of customs duty under the Customs act, 1962 from the following particulars:

CIF Value	US \$ 6,000
Freight paid	US \$ 2,000
Insurance cost	US \$ 700

The bank had received payment from the importer at the exchange rate of US \$ 1 = ₹62 while the CBEC notified exchange rate on the relevant date was US \$ 1 = ₹61.5

Solution:

The answer is as follows –

FOB Price [CIF \$ 6,000 – Freight \$ 2,000 – Insurance \$ 700]	\$ 3,300.00
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	₹61.50
FOB price in Indian ₹	₹
Add: Cost of transport under Rule 10(2)(a) @20% of FOB	2,02,950.00
[Actual is 2,000 \$; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 3,300 = 660\$ × ₹61.5]	40,590.00



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Add: Insurance under Rule 10(2)(c) [Actual viz. 700 \$ × ₹61.5]	43,050.00
CIF	2,86,590.00
Add: Loading, unloading and handling charges under Rule 10(2)(b)@ 1% of CIF	2,865.90
Assessable Value	2,89,455.90

Inclusions/exclusions of certain items:

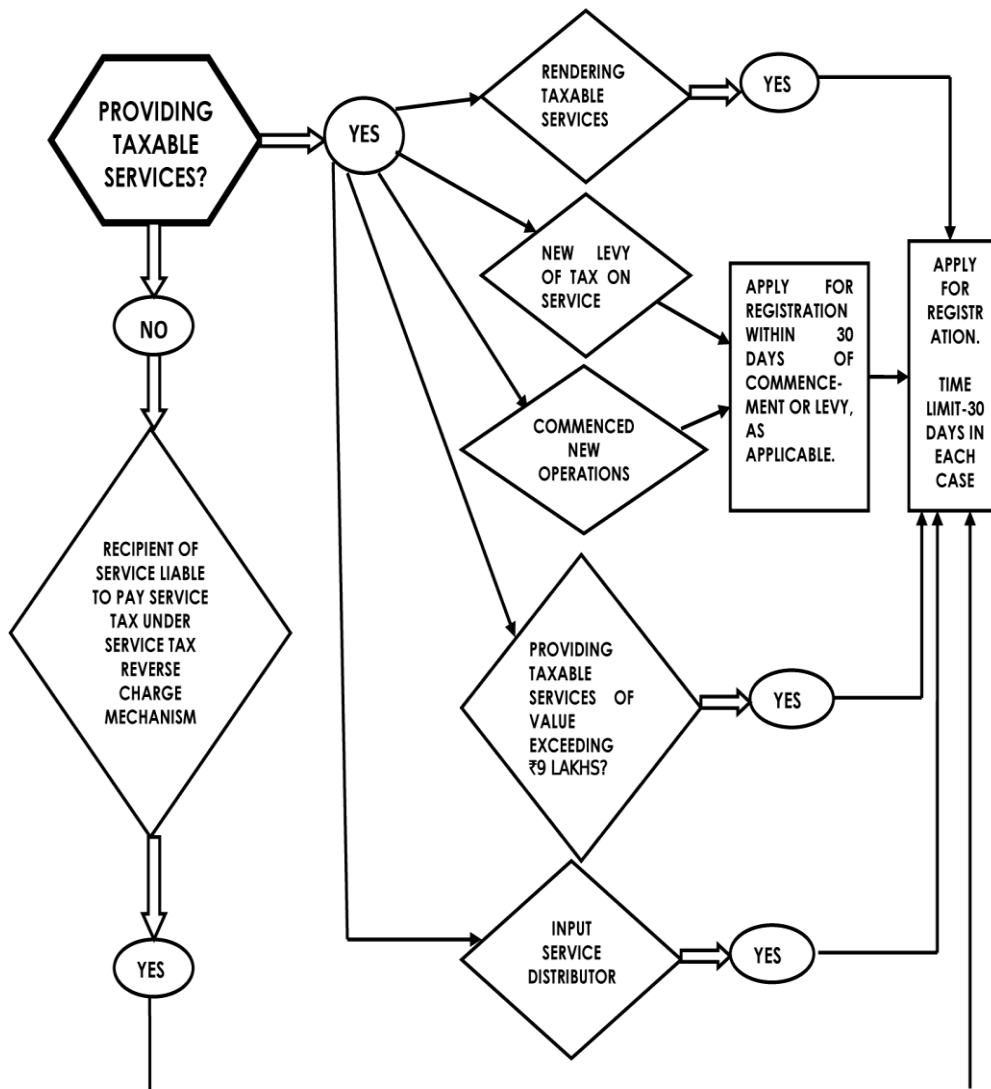
No.	Name of charge	Treatment
(A)	Dismantling charges for removing the second hand plant at the foreign supplier's place and shipping to the Indian importer	INCLUDIBLE , because without dismantling at foreign supplier's place, it is not possible to import the machine in India. It is a part of FOB price, in fact.
(B)	Fees charged by foreign supplier for supervision of erection and commissioning of imported plant in India Training charges paid to supplier, for imparting training to the Indian company's personnel, on how to use the equipment	NOT INCLUDIBLE , because it relates to an activity carried out after import of goods. But, if such fees is charged as a condition of sale of imported goods, then, it will be included in value of plant/equipment under Rule 10(1)(c) or 10(1)(e).
(C)	Payments for tools, dies and moulds (imported along with the plant) for use in connection with the manufacture of excisable goods on successful commissioning of the imported plant	INCLUDIBLE . Tools, dies and moulds are also imported goods. The payment is made along with import of plant and is a condition of sale, because without such tools, dies, etc. plant cannot be used. Hence, it will be included in value of plant under Rule 10(1)(c) or 10(1)(e).
(D)	Lump sum payment and annual royalty for transfer of technical know-how for manufacturing goods using imported plant	NOT INCLUDIBLE . Since the royalty is not related to imported plant and since it is also not related to any post-importation process on such imported plant, hence, it is not includible in value of the imported plant under Rule 10(1)(c). However, if know-how is a separate goods, its import may be assessed separately.
(E)	Due to congestion in the ports or non-availability of deep draught all ports are not navigable upto the jetty. Goods have to be discharged or transhipped at the outer anchorage with the help of barges. The charges associated with the delivery of cargo at outer anchorage are called "barging/lighterage charges".	INCLUDIBLE . Barging and lighterage are "cost of transport" under Rule 10(2)(a) and are, therefore, includible in value of goods.
(F)	Service charges paid to canalizing agent	INCLUDIBLE . All commission paid by importer except buying commission are includible in value under Rule 10(1)(a). It is not buying commission, as it is not paid for representing the importer abroad.
(G)	Design and engineering charges	INCLUDIBLE under Rule 10(1)(e), if such sum is related to imported goods and paid as a condition of sale even if it may related to designing, etc. done on imported goods after importation.



(H)	Inspection charges of imported goods where contract does not specify for certification by an independent agency	NOT INCLUDIBLE. Any inspection of imported goods prior to import is includible in assessable value, if done at request of buyer or under the contract. But, inspection done by supplier at his will is not includible.
(I)	Stevedoring charges or unloading charges (based on unloading labour charges, customs staff overtime, post-hire charges for dining hall, fuel, electricity, depreciation, maintenance cost, administrative overheads and notional interest on capital)	NOT INCLUDIBLE SEPARATELY. All such charges are already covered by "loading, unloading and handling charges", which is assessed at 1 % of CIF Value.

Service Tax Procedures

REGISTRATION REQUIREMENTS UNDER SERVICE TAX LAW



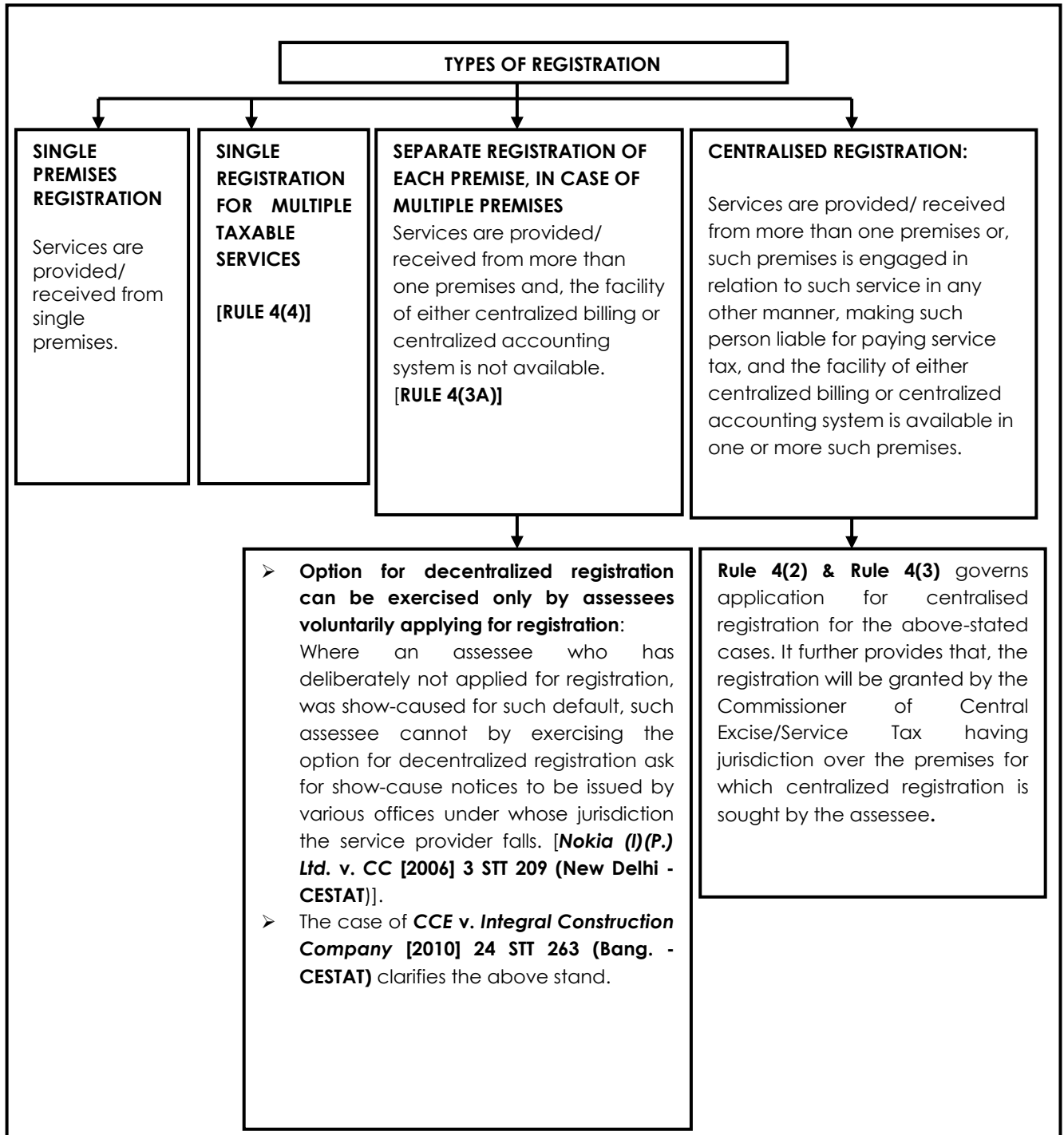


1. The Statutory Provisions relating to Registration requirement

SECTION 69 READ WITH RULE 4 OF THE SERVICE TAX RULES 1994	<ol style="list-style-type: none"> 1. Every person liable to pay service tax must mandatorily make an application for registration to the designated Superintendent of Central Excise, within such time and in such manner and in such form as may be prescribed. 2. The Central Government has been empowered to specify other persons or class of persons (other than service provider) who shall make application for registration within such time as may be specified. 3. The Central Government has powers to exempt persons or group of persons or services from registration requirements, by way of notification in the Gazette. 4. The persons who are mandatorily required to obtain registration under the service tax laws are as follows: <ol style="list-style-type: none"> (i) an input service distributor, and (ii) any provider of taxable service whose aggregate value of taxable service in a financial year exceeds ₹9 lakhs for purposes of obtaining mandatory registration - Service Tax (Registration of Special Category of Persons) Rules, 2005 vide <i>Notification No. 26/2005-ST, dated 7-6-2005</i>. (iii) Service Receiver liable to pay service tax under the Reverse Charge Mechanism. (iv) Importer of service being person liable u/s 68(2). (v) When a person commences business of rendering taxable service, he shall seek registration within 30 days of such commencement of business. (vi) Where service tax is levied on a service for the first time, an existing service provider must register him-self, within 30 days of the new levy on service. <ul style="list-style-type: none"> ➤ In case of partial reverse charge i.e. where both the service provider and service recipient are liable for payment of service tax at prescribed percentage, both the service provider and service recipient are liable to obtain registration by making an application in form ST-1 within a period of 30 days from the date of commencement of business. ➤ The liability of service recipient to register under the service tax is absolute and starts from first transaction irrespective of the fact that the service provider may not be liable to register and pay service tax his revenue from taxable services being less than ₹9 lakh.
REGISTRATION PROCEDURE	<ul style="list-style-type: none"> ➤ Every person required to obtain statutory registration, shall make application for registration before the jurisdictional superintendent of Central Excise in form ST-1 within a period of 30 days. ➤ The Certificate of Registration shall be granted in Form ST- 2, within 7 days from the receipt of application. However, if the Certificate of Registration is not granted within the specified time limit, registration shall be deemed to have been granted. ➤ In <i>Karamchand Thapar & Bros. (Coal Sales) Ltd. v. UOI [2011] 30 STT 442/9 taxmann.com 160 (Cal)</i>, it was held that this deeming provision does not apply to Centralised Registration to be issued by Commissioner of Central Excise. ➤ The jurisdictional Superintendent of the Central Excise: <ol style="list-style-type: none"> a) Cannot refuse to register an assessee under a category, for which the assessee has applied. b) Cannot refuse to register on the ground of alleged misstatement of the particulars furnished in the application.



2. Types of Registration



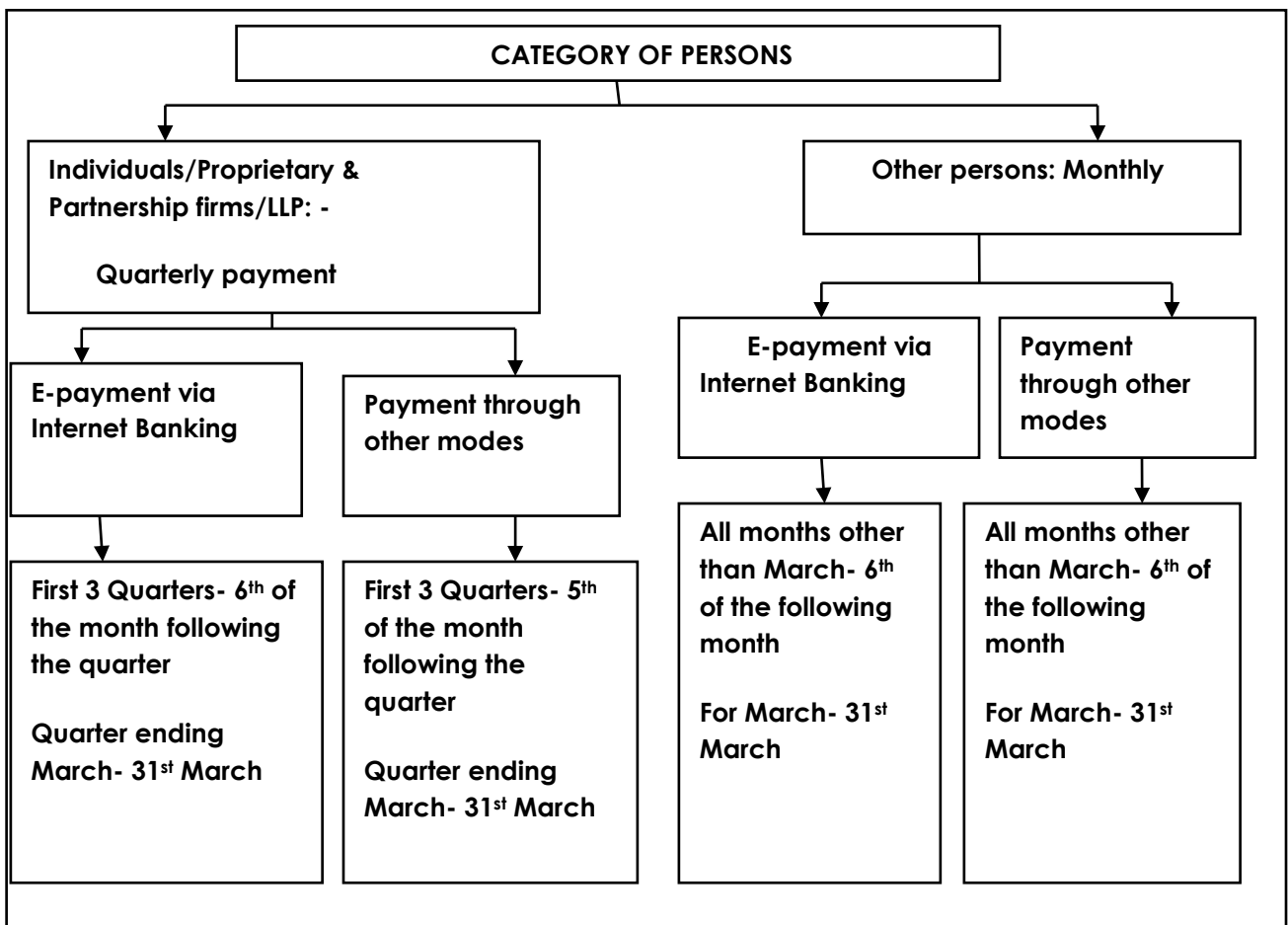


3. Time Limit for filing application for registration by different category of persons

Sl. no	Category of persons	Time limit for applying for registration
1.	Input Service Distributor	30 days from the date of commencement of business.
2.	Persons with aggregate value of taxable services exceeding threshold limit	30 days of exceeding the aggregate value of taxable service of ₹9 lakh rupees.
3.	100% exporter of services	There is no requirement to obtain registration under the service tax law to claim refund/rebate of service tax paid on eligible input services used in exported services.
4.	Service Recipient liable under the Reverse Charge Mechanism	30 days from the date of commencement of business.
5.	Service tax is levied on a service for the first time	30 days from the new levy on service

4. Payment of Service Tax

Rule 6 of the Rules read with section 68 of the Act provide for the time limit for payment of service tax





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5. Filing/ Revision of return by an assessee [Rule 7 and Rule 7B]:

Every assessee shall submit return as follows –

Return	Return is to be filed -	Form	Due date
Half-yearly return [Rule 7]	Electronically	Form 'ST - 3' or 'ST - 3A'	25th of month following the particular half-year [i.e. 25th October for April-September & 25th April for October to March.] [Rule 2(1)(ca)] CBEC may extend time-limit: CBEC may, by an order extend said period by such period as deemed necessary under circumstances of special nature to be specified in such order.
REVISED RETURN to correct a mistake or omission [Rule 7B]	Though not specifically stated in rules, it is also filed electronically.	Form ST – 3	Within 90 days from date of submission of original return. Relevant date for recovery to start from date of submission of revised return: Where an assess submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, u/s 73 shall be the date of submission of such revised return.

6. Interest on delayed payment of service tax –

As per section 75, every person who fails to pay service tax or any part thereof, which he is liable to pay under section 68 of the act or rules made thereunder, within the stipulated time, is required to pay interest on such amount for the period of delay. As per Section 73B, every person who is liable to pay service tax under Section 73A(1), (2) and whose service tax liability has been determined by the Central Excise Officer under sub-section (4) of Section 73A, is required to pay interest on the amount of service tax so determined barring the cases where the amount becomes payable under Section 37B of the Central Excise Act, 1944 and such amount is voluntarily paid within the stipulated time without reserving a right of appeal.

Rate of Interest: 18% per annum

In case of small service providers having value of taxable service less than or equal to ₹60 lakh during any of the financial years covered by the notice or during the last financial year, as the case may be, the rate of interest shall be reduced by 3% per annum.

Example S1:

Mr. Singleton, an output service provider, deposited the service tax amounting to ₹20 lakh on 09-02-2014 for the quarter ending June, 2013. Compute the amount of interest payable by Mr. Singleton and his value of taxable service in 2012-13 was ₹80 lakhs.

Solution:

In this case, the service tax for the quarter ending June 2013 (financial year 2013-14), should have been deposited by 6th July, 2013 (due date in case of electronic payment).

Since there was delay in payment of service tax, hence, Mr. Singleton is liable to pay interest u/s 75.

The rate of interest shall be 18%. The amount of interest shall be:

Tax (₹)	Relevant dates			Interest u/s 75	
	Due date [A1]	Date of payment [A2]	Delay (Days) [A2 – A1]	Rate p.a.	Interest ₹ (Tax × Rate × Days ÷ 365)
20,00,000	06-07-2013	09-02-2014	218	18%	2,15,013.70



7. Penalties and Prosecution under Service Tax Law

Relevant Statutory Provision	Offence/Default	Penal Provisions	
		TIME LIMIT	AMOUNT OF PENALTY (₹)
Section 70 read with Rule 7C	Delay in furnishing of service tax returns	Up to 15 days	500
		Beyond 15 days but up to 30 days	1000
		Beyond 30 days	(i) ₹1000 + ₹100 per day from 31 st day or, (ii) Amount not exceeding ₹20,000 (section 70)
Section 76	Failure to pay service tax	In addition to service tax and interest, the penalty leviable is a sum not less than ₹100 per day during which the failure continues or 1% of such tax per month, whichever is higher. However, in no case the penalty shall exceed 50% of the amount of service tax which the assessee has failed to pay.	
Section 77(1)(a)	Failure to obtain registration under section 69 of the Act or rules made thereunder	A penalty which may extend to ₹10000.	
Section 77(1)(b)	Failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of Chapter V of the Act or rules made thereunder	A penalty which may extend to ₹ 10000.	
Section 77(1)(c)	Failure to: (a) furnish information called by an officer in accordance with the provisions of Chapter V of the Act or rules made there under; or (b) produce documents called by an officer in accordance with the provisions of Chapter V of the Act or rules made there under; or (c) appear before the officer when summon have been issued to give evidence or produce documents in an inquiry.	The penalty shall be higher of following two amounts: (a) ₹10000 or (b) ₹200 per day for the period in default. The period in default shall be computed from the next day till the date of actual compliances.	



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Section 77(1)(d)	Failure to pay tax electronically through internet banking when such mode of payment is mandatory	A penalty which may extend to ₹ 10000.
Section 77(1)(e)	Issuance of invoice with incorrect or incomplete details; or failure to account for an invoice in the books of account	A penalty which may extend to ₹ 10000.
Section 77(2)	Any contravention of any provision of Chapter V of the Act or rules made thereunder for which no specific penalty has been separately provided (residuary penalty)	A penalty which may extend to ₹ 10000.
Section 78	Service tax not levied or paid or short levied or short paid or Erroneously refunded by reason of fraud, collusion, willful misstatement, suppression of facts, contravention of any provisions or rules with intent to evade service tax	<ul style="list-style-type: none"> ➤ In addition to service tax and interest, penalty leviable is a sum which shall be equal to the tax amount. ➤ Where the taxpayer has captured the true and complete information in the specified records, penalty will be 50% of the tax amount. ➤ Further Penalty shall be reduced to 25% of the service tax determined where service tax is paid along with interest payable and reduced penalty within 30 days of the communication of the order. For assessee whose turnover is up to ₹60 lakh the period of one month extended to ninety days.
Section 78A	Offences by Directors, manager, secretary or other officer-in-charge of the company	Where the Director/Manager/Secretary or other officer of the Company is knowingly concerned with specified contravention, he shall be liable to a penalty which may extend to ₹ 1,00,000.
Section 87	Non-payment of dues to Central Government	Recovery of amount from third parties, provisional attachment and sale of property as land revenue
Section 88	Non-payment of any amount of duty, penalty, interest or any other sum payable Under Service Tax Law.	Any amount of duty, penalty, interest, or any other sum payable under this Chapter be the first charge on the property of the assessee or the person as the case may be, subject to charge under section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.



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Section 89	<ul style="list-style-type: none"> ➤ Provision of service without issue of invoice; ➤ Availment and utilization of CENVAT credit without actual receipt of inputs or input services; ➤ Maintenance of false books of accounts or ➤ failure to supply any information or submitting false information; ➤ Nonpayment of amount collected as service tax for a period of more than six months. 	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Amount/ Nature of offence(₹)</th> <th style="text-align: center;">Imprisonment Term</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Exceeds Fifty Lakhs</td> <td style="text-align: center;">3 years (6 months in absence of recording of adequate reasons)</td> </tr> <tr> <td style="text-align: center;">Does not exceed fifty lakhs</td> <td style="text-align: center;">up to one year</td> </tr> <tr> <td style="text-align: center;">Non payment of amount collected as tax for more than 6 months</td> <td style="text-align: center;">7 years</td> </tr> </tbody> </table>	Amount/ Nature of offence(₹)	Imprisonment Term	Exceeds Fifty Lakhs	3 years (6 months in absence of recording of adequate reasons)	Does not exceed fifty lakhs	up to one year	Non payment of amount collected as tax for more than 6 months	7 years
Amount/ Nature of offence(₹)	Imprisonment Term									
Exceeds Fifty Lakhs	3 years (6 months in absence of recording of adequate reasons)									
Does not exceed fifty lakhs	up to one year									
Non payment of amount collected as tax for more than 6 months	7 years									
Rule 14 of the CENVAT Rules, 2004	CENVAT credit wrongly Utilized or erroneously refunded	As per Sections 11A and 11B of the Central Excise Act, 1944 or Sections 73 and 75 of the Finance Act, 1994.								
Rule 15 of the CENVAT Rules, 2004	CENVAT credit Wrongly taken in respect of input or capital goods or contravention of any of the provisions of rules	<ul style="list-style-type: none"> ➤ Confiscation of goods, and ₹2,000 or duty involved, whichever is greater, ➤ ₹ 2,000 or service tax involved, whichever is greater, and penalty under Section 78 of the Finance Act, 1994 in case of willful contravention 								
Rule 15A of the CENVAT Rules, 2004	Contravention of the provisions of these rules for which no penalty has been provided in the rules	Maximum ₹ 5,000								

Notes:

- (a) In terms of Section 80 of the Act, penalty for failure under Sections 76, 77 and first proviso to sub-section (1) of section 78 shall not be imposed where the assessee proves that there was reasonable cause for such failure.
- (b) No penalty shall be levied until and unless a show-cause notice is issued except for the letter issued under Section 73(1A).

Example S2:

Determine interest and penalty under sections 75 and 76 respectively in the following cases -

- (1) Service Tax of ₹ 5 lakhs (e-payment mandatory) for Feb., 2013 was paid on 16-3-2013.
- (2) Service Tax ₹ 2,000 for Feb., 2013 paid on 15th April, 2013. The value of services provided by him during the



preceding financial year was ₹ 14 lakhs.

- (3) Service Tax ₹ 20,000 for July, 2012 paid on 30th September, 2012. The value of services provided by him during the preceding financial year was ₹ 60 lakhs.
- (4) M, an assessee fails to pay service tax of ₹ 15 lakhs payable by 6th January, 2013. He pays the amount on 17th January. What is the penalty payable by M?
- (5) S Ltd. provides management consultancy services that are subject to service tax under the Finance Act, 1994. In respect of the services rendered during the month of December 2012 the service tax of ₹ 15 lakhs was remitted to Government treasury on January 21, 2013. Arrive at the penalty under Section 76 of the Finance Act, 1994 which is leviable in this case.

Solution:

The interest and penalty payable is computed in the Table below –

	Tax(₹)	Relevant dates			Interest u/s 75		Penalty u/s 76				
		Due date [A1]	Date of payment [A2]	Delay (Days) [A2 - A1]	Rate p.a.	Interest ₹ (Tax X Rate X Days ÷ 365)	Limit 1 : ₹100 per day for delay [B1]	Limit 2: 1% p.m. ** [B2]	Higher of Limit 1 or 2 [B3]	50% of service tax [B4]	Lower of B3 or B4
1	5,00,000	06-03-2013	16-03-2013	10	18%	2,465.75	1,000	1,612.90	1,613	2,50,000	1,613
2	2,000	05-03-	15-04-	41	15%	33.70	4,100	26.67	4,100	1,000	1,000
3	20,000	05-08-	30-09-	56	15%	460.27	5,600	366.67	5,600	10,000	5,600
4	15,00,00	06-01-	17-01-	11	18%	8,136.99	1,100	5,322.58	5,323	7,50,000	5,323
5	15,00,00	06-01-	21-01-	15	18%	11,095.89	1,500	7,258.06	7,258	7,50,000	7,258

**In case 2, limit 2 = ₹2,000 X 1% X (1 month + 10 days ÷ 30 days) = ₹ 26.67.

**In case 3, limit 2 = ₹20,000 X 1% X (1 month + 25 days ÷ 30 days) = ₹ 366.67

Central Excise

1. Valuation of goods manufactured on job-work basis [Rule 10A of central excise valuation rules, 2000] :

(1) Job-worker and Principal Manufacturer - Meaning of:

(a) Job-worker means a person -

- engaged in the manufacture or production of goods,
- on behalf of another person (hereinafter called as "principal manufacturer"),
- from any inputs or goods supplied -
 - by the said principal manufacturer, or
 - by any other person authorised by him.

(b) Principal Manufacturer means the person on whose behalf job-worker manufactures.

Valuation: The valuation of excisable goods shall be done as follows -



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Case	Valuation
<p>(i) Direct sale from job-worker's factory ; If -</p> <ul style="list-style-type: none"> ➤ goods are sold by principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, and ➤ principal manufacturer and buyer of goods are not related, and ➤ the price is the sole consideration for the sale. 	<p>Value = Transaction value of said goods sold by principal manufacturer.</p>
<p>(ii) Transfer from job-worker's factory to depot of principal: If -</p> <ul style="list-style-type: none"> ➤ goods are not sold by principal manufacturer at the time of removal of goods from the factory of the job-worker, ➤ but are transferred to some other place from where such goods are to be sold after their clearance from factory of job-worker, ➤ principal manufacturer and buyer of goods are not related and ➤ price is the sole consideration for the sale 	<p>Value = Normal Transaction Value (NTV) of such goods sold from such other place -</p> <ul style="list-style-type: none"> ➤ at or about the same time, or ➤ at the time nearest to the time of removal of said goods from the factory of job-worker.
<p>(iii) Any other case : If case doesn't fall under any of the aforesaid (i) or (ii)</p>	<p>Provisions of foregoing rules, wherever applicable, shall <i>mutatis mutandis</i> apply for determination of the value of the excisable goods.**</p>

Cost of transport from place of removal to place of delivery - Not includible: The cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Example E1:

Consider the following data -

- Ganesh is doing job work for Mohan by charging ₹120 per product (including ₹ 35 as his profit);
- The cost of materials supplied to him for the job work is ₹100 per product (inclusive of excise duty ₹10 of which credit has been availed);
- The cost of transport of materials upto Ganesh's factory is ₹12.

Calculate the assessable value and excise duty payable @ 12% in the following cases -

- (i) goods are sold by Mohan from factory of Ganesh to unrelated party M/s. Shyam at transaction value of ₹350 per unit ;
- (ii) goods are removed from the factory of Ganesh and transferred to depot of Mohan on 1st May, on which date price (exclusive of taxes) prevalent at depot is ₹275, but, such goods are sold on 2nd May ₹280 per unit ;
- (iii) goods are sold by Mohan from factory of Ganesh to related party Pyare at transaction value of ₹250 p.u. and Pyare normally sells to unrelated buyer Girdhar at transaction value of ₹260 p.u.;
- (iv) goods are not sold by Mohan from Ganesh's factory but are received by him at his factory for use manufacture of excisable goods. Transport from Ganesh's factory to Mohan's factory is ₹25.

Solution:

The valuation in case of independent job-worker (here, Ganesh) is governed by the provisions of Rule 10A, which provides for the following (Mohan is the principal manufacturer)-

Particulars	Treatment	Value	Duty @ 12.36%
(i) Direct Sale by principal manufacturer	Value = Transaction Value charged by	350	30.9



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Mohan from factory of Job-worker Ganesh [Rule 10A(i)]	Mohan		
(ii) Transfer from Job-worker Ganesh's factory to depot of principal manufacturer Mohan [Rule 10A(ii)]	Value = Normal Transaction Value prevalent at depot at time of removal from factory of Ganesh (Job-worker) i.e., 1st May	275	33.99
(iii) Direct Sale by principal manufacturer Mohan from factory of Job-worker Ganesh to a related person (<i>Rule 10A(i) not applies, as sale is made to related person</i>) [Rule 10A(iii) read with 9]	Value = NTV at which related person sells to unrelated buyer	260	32.14
(iv) Captive consumption by principal manufacturer Mohan (<i>In this case, rule 10A(iii) read with Rule 8 will not apply, as Rule 8 applies if goods are consumed captively by ASSESSEE viz, job-worker or on his behalf. Since Rules 4 to 10 don't apply, hence, principal of Ujagar Prints' case will apply.</i> CBEC Instruction F. No. 6/15/2009-CX.I dated 31-3-2010 providing that valuation in case of captive consumption by principal shall be done at 110% of cost of production as per Rule 8 was held void.) [Rule 10A(iii) read with section 4]	Value (taking job-worker's factory as place of removal) = Cost of materials used ₹90 (net of CENVAT Credit ₹10) + Transportation of such materials to job-worker's place ₹12 + Processing charges charged by job-worker (inclusive of profit) ₹120 = ₹222 Transportation from job-worker's factory ₹25 are not included.	222	27.44

2. Basic Procedures in Central Excise

Registration of Factory/Warehouse

As per section 6 of CEA, registration is required to be obtained by any prescribed person who is engaged in:

- (a) every manufacturer or producer of excisable goods i.e. goods specified in First or Second Schedule to Central Excise Tariff Act and
- (b) wholesale purchase or sale (whether on his own account or as broker or commission agent) or storage of any specified goods included in First or Second Schedule to Central Excise Tariff Act.

As per Rule 9 of Central Excise Rules, every person who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods shall get registered.

[Registration is compulsory as both section 6 of CEA and rule 9(1) use the word shall'.]

Application for registration should be made in prescribed form. Application should be accompanied by self-attested copy of PAN issued by Income Tax department.

The requirements for registration are -

- **Separate registration is required for each separate premises**, if person has more than one premises.
- If business is transferred, fresh registration has to be obtained by the transferee. Thus, **registration is not transferable.**
- **Registration certificate shall be granted within seven days** of receipt of duly completed application. If not granted, it will be deemed to have been granted.
- Registration Certificate will be issued in prescribed **form 'RC'**.
- **Change in constitution of partnership firm or Company** should be **intimated within 30 days** of change. In case of such change, fresh registration is not required.
- If the manufacturer ceases to carry on operations for which he is registered, he should apply for de-registration.
- **Registration can be revoked or suspended** if the holder of registration or any person in his employment **commits breach of any of the provisions of Central Excise Act or Rules** or has been convicted under section



161 of Indian Penal Code.

- If there is any change in information given in the form, the change should be informed in the form itself.
- Manufacturers of CNG (Compressed Natural Gas) having more than one factories within jurisdiction of one Chief Commissioner can obtain single registration.

Procedure for Registration

This procedure has been considerably changed on introduction of ACES (**Automation of Central Excise and Service Tax**).

Assessee has to **file application for registration electronically**. He gets his registration number instantly through system. However, he cannot make payment of duty and file return unless he obtains registration certificate, though technically, there is provision that registration is deemed to have been granted within seven days.

After e-submission of application form for registration, assessee should submit supporting papers in office of jurisdictional Assistant/Deputy Commissioner. **In case of EOU located in port towns**, application should be submitted to DC /AC Customs, who is administrative in-charge of the EOU.

Penalty for non-registration –

Manufacture without applying for registration is an offence under Rule 25(l)(c) of Central Excise Rules and penalty can be imposed. In addition, contravening goods can be confiscated. It is also an offence under section 9 of CEA and imprisonment can be imposed.

Excise Registration Number - The **excise registration number is a 15 digit code**, given on following basis.

First 10 characters are **Permanent Account Number (PAN)** allotted by income tax department. **Next two characters** would be 'XM' if the assessee is manufacturer or registered warehouse and 'XD' if he is registered dealer. This will be followed by **3 character numeric code - 001,002, 003** etc.

Assessee should mention the registration number in his Invoice, GAR-7 challans etc.

Centralised Registration of different factories –

So far, there was no provision for centralised registration in Central Excise. For the first time, Centralised Registration has been permitted to coal mines if they have different manufacturing units but centralised billing or accounting, vide Notification No. 10/2011 - CE(NT) dated 24-3-2011. Similarly, manufacturers of recorded smart cards (falling under heading 8523), if they have different manufacturing units but centralised billing or accounting - Notification No. 14/2011 -CE(NT) dated 3-6-2011.

Registration of different portions of same factory

Often a factory has different portions located in adjoining premises, or premises separated by road, railway line or canal. In such case, Commissioner can allow single registration, subject to proper account of movement of goods from one premise to other and other conditions and limitations as he may specify. Common registration makes different premises as belonging to same factory.

Exemption from registration

As per Rule 9 of Central Excise Rules, every person who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods shall get registered.

Each manufacturer, unless exempted from provisions of registration, has to obtain registration, even if he is exempt from duty. Exemption from excise duty does not mean automatic exemption from registration.

Following are exempt from registration under Central Excise -

- (i) Persons who manufacture excisable goods which are unconditionally exempt from excise duty.
- (ii) SSI units availing exemption based on value of clearance, whose turnover is less than the SSI exemption limit.
- (iii) Person getting goods manufactured from others on his own account, if he authorises actual manufacturer to pay excise duty.
- (iv) Persons manufacturing Excisable goods under Customs Warehousing Procedures, if all their products are exported.
- (v) Person who carries on wholesale trade or deals in excisable goods who does not issue Cenvatable Invoice i.e. who is not a registered dealer.
- (vi) Job workers in textile sector
- (vii) Users of excisable goods
- (viii) A unit in SEZ.



When manufacturer is completely exempt from duty - If products of a manufacturer are completely and unconditionally exempt from duty, he is required to file a declaration in prescribed form to CE authorities.

Exemption from registration if goods conditionally exempt - Some goods are exempt on basis of value of clearances e.g. goods manufactured by small scale units are exempt upto turnover of ₹150 lakhs. Such units are also exempt from registration. An SSI unit has to submit a declaration in prescribed form, only in cases where its turnover is more than 'specified turnover' of ₹90 lakhs. If clearances are more than 'specified turnover' (₹90 lakhs), a declaration has to be submitted. However, they do not have to register with excise authorities. While calculating turnover of ₹150 lakhs for exemption from registration, export turnover is not to be considered.

Exemption if goods got manufactured from others - If a person gets goods manufactured on his account from others, he is the 'manufacturer' and has to obtain registration. However, he can be exempted from registration if (a) He authorises actual manufacturer to comply with all excise procedural formalities (b) Agrees to furnish information regarding selling price for determination of Assessable Value.

It may be noted that this provision is applicable only if the manufacturer gets the goods manufactured on his account. Mere supply of raw material by him will not make him 'manufacturer', if the relations between him and the actual manufacturer are on 'principal to principal' basis.

Exemption to job workers manufacturing textile products under chapter 61, 62 or 63 under job work basis - In respect of textile products falling under chapter 61, 62 or 63, person who is getting the goods manufactured on job work basis will be liable to pay excise duty under rule 4(1A) of Central Excise Rules, inserted w.e.f. 1-3-2011. If he undertakes to pay the excise duty, the job worker (who is actually manufacturing the goods) is exempt from provisions of registration.

Presently the excise duty is only on readymade branded garments.

Manufacturers manufacturing goods in customs bonded warehouse - Manufacturers in customs bonded warehouse (EOU/STP etc.) are exempt from Excise registration if all their final products including scrap is either exported or destroyed and they do not claim any duty drawback or rebate on duty of Excise duty paid on raw materials. They have to file declaration in triplicate in prescribed form.

If manufacturer partly sales his final product or scrap even partly within India, he will have to register under Central Excise.

Wholesale and retail traders and dealers - Persons carrying on wholesale trade or dealers in Excise require registration only if they intend to issue Cenvatable Invoice. Otherwise, they are exempt from registration.

Users of excisable goods - Users of excisable goods are exempt from registration.

Unit in SEZ - Unit in SEZ is not required to be registered under Central Excise.

Surrender, suspension or revocation of registration certificate - Registered person is required to apply for de-registration if he ceases to carry on operation for which he is registered. He has to apply in prescribed form.

Revocation or suspension of registration - Registration certificate can be revoked or suspended by AC/DC for breach of any of conditions of the Act and Rules, or if the holder or person in his employment has been convicted of an offence under section 161 of IPC, read with section 109 or with section 116 of the Indian Penal Code.

3. Penal Provision for not taking Registration [Section 9 and Rule 25]

(a) Confiscation and Penalty [Rule 25]: If -

- any producer, manufacturer, registered person of a warehouse or a registered dealer,
- engages in the manufacture, production or storage of any excisable goods
- without having applied for the registration certificate required under the Act

then, -

- all such goods shall be liable to confiscation and
- such person shall be liable to a penalty not exceeding -
 - (i) duty on the excisable goods in respect of contravention has been committed, or
 - (ii) ₹ 2,000, whichever is greater ; and
- any such order shall be issued by the Central Excise Officer, following the principles of natural justice.

(b) Fine and Imprisonment [Section 9]: Whoever contravenes any of the provisions requiring registration and manner thereof shall be punishable,—

- (a) if duty leviable on any excisable goods exceeds ₹50 lakhs, with imprisonment for a term which may extend to 7 years and with fine. But, in absence of special and adequate reasons to the contrary to be



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recorded in the judgment of the Court such imprisonment shall not be for a term of less than 6 months.

(b) in any other case, with imprisonment for a term which may extend to 3 years or with fine or with both.

4. Filing of Return [Rule 12]

All the returns/statements, etc. mentioned below shall be submitted to SUPERINTENDENT of Central Excise. The other provisions are -

Rule 12	Particulars	Form	Due Date
(1)	Every assessee shall submit a return of production and removal of goods and other relevant particulars. [In case of assessee manufacturing pan masala or tobacco, shall also file a statement summarizing purchase and sales bills with name and address of suppliers/buyers.]	Monthly (ER-1)	10 days after close of relevant month E-filing: Electronic filing is mandatory
(1)	SSIs: An assessee eligible to avail of SSI-exemption under Not. No. 8/2003-CE due to its clearances during preceding financial year for home consumption being upto ₹400 lakhs. The filing of returns as specified herein shall be available to the SSI-assessee for the whole of the financial year.	Quarterly (ER - 3)	10 days after close of relevant quarter E-filing: Electronic filing is mandatory
(1)	Assessee availing exemption under Not. No. 49/2003-CE or 50/2003-CE (area-based exemption to units situated in Uttarakhand and Himachal Pradesh)	Quarterly (ER-3)	20 days after close of relevant quarter E-filing: Electronic filing not required
(1)	An assessee is availing the exemption,- <ul style="list-style-type: none"> ➤ under Not. No. 1 /2011 -CE; or ➤ in respect of goods falling under Sl. Nos. 67, 128, 199(1) and 200(I) of Not. No. 12/2012-CE, and does not manufacture any other excisable goods other than those specified in the said notifications.	Quarterly (ER - 8)	10 days after close of relevant quarter E-filing: Electronic filing is mandatory
(2)	Every assessee shall submit an Annual Financial Information Statement (AFIS) for the preceding financial year to which the statement relates Exemptions: Following are exempt from filing this return - <ul style="list-style-type: none"> ➤ assessee who paid excise duty less than ₹100 lakh (through PL A or CENVAT credit or both) during the financial year to which such AFIS relates ; and ➤ Indian ordnance factories, Department of Defence Production, Ministry of Defence. 	Annual (ER - 4)	30th November of succeeding year. E-filing: Electronic filing is mandatory



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(2A)	<p>Every assessee shall submit an Annual Installed Capacity Statement (AICS) declaring annual production capacity of the factory for the financial year to which statement relates.</p> <p><i>Exemptions:</i> Manufacturers of following goods are exempt from filing this return -</p> <ul style="list-style-type: none"> ➤ biris, manufactured without the aid of machines ➤ matches manufactured without the aid of power ➤ reinforced cement concrete pipes. <p>Amendments [Instructions to Form ER-7]: In case, any substantial expansion/addition of machineries is carried out during the year resulting into increase in the installed capacity by more than 25% of one class of product, an amendment to the declaration should be filed within 30 days of commencement of production of these new machineries.</p>	<p>Annual (ER - 7)</p>	<p>30th April of succeeding financial year</p> <p>E-filing: Electronic filing is mandatory</p>
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Other returns:

- (i) **ER-2:** Monthly - Electronically - Due date is 10th of next month - Rule 17(2) of CER, 2002 - Filed by 100% EOUs clearing goods in DTA
- (ii) **ER-5:** Annual Declaration in respect of principal inputs (viz. inputs valuing 10% or more of total input consumption) - Rule 9A of CCR, 2004 - Due date is 30th April of each financial year - Electronically
- (iii) **ER-6:** Monthly Return in respect of principal inputs - Rule 9A of CCR, 2004 - Due date is 10th of next month - Electronically

General penalty for non-filing or delayed filing [Rule 27 read with Rule 15A of the CENVAT Credit Rules, 2004]: Any non-compliance with provisions relating to filing of returns under Central Excise Rules, 2002 or the CENVAT Credit Rules, 2004 shall result in penalty of upto ₹5,000.