

Excise and Small Scale Industries

Provisions of General SSI exemption

Various concessions are given to small scale industries to encourage their growth and also on account of administrative convenience. Since Excise is a duty on manufacture, it is payable even by a small unit manufacturing the goods. However, it is Government's policy to encourage growth of small units. Moreover, it is administratively inconvenient and costly to collect revenue from numerous small units. Applying ABC principle, the revenue collected from small units would be negligible compared to the efforts and administrative costs involved. The Govt. has therefore, given various concessions to small scale industries (SSI). The most important notification giving these concessions is notification No. 8/2003 dated 1-3-2003. SSI units whose turnover is less than Rs. 4 crores are eligible for the concessions. If SSI unit does not avail Cenvat on inputs, turnover upto Rs 150 lakhs is fully exempt (The limit was Rs 150 lakhs upto 31-3-2007). If SSI unit avails Cenvat on inputs, it has to pay full normal duty on all its clearances.

Goods not Eligible for SSI concession - Many of goods manufactured by SSI are eligible for the concession. However, some items are not eligible (some of the items not eligible for SSI exemption are eligible for exemption under different notifications. Some are not exempt at all). Thus, SSI exemption is available only if the item is covered in this notification.

Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, some textile products, tobacco products, etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible, but anyway, these are beyond capacity of SSI unit to manufacture.

Goods with other's brand name not eligible - Goods manufactured by an SSI unit with brand name of others are not eligible for SSI concession, unless goods are manufactured in a rural area. These provisions are discussed later in this Chapter.

Duty payable on goods manufactured for captive consumption, if not eligible for SSI concession - If goods which are not eligible for SSI concession are manufactured by SSI unit for captive consumption, duty will be payable, even if final product is eligible for SSI concession, as correctly held in *Super Polyfabriks Ltd. v. CCE 1999(114) ELT 1019 (CEGAT)*.

SSI units eligible for SSI concession - All industries irrespective of their investment or number of employees are eligible for concession. In fact, even a large industry will be eligible for the concession if its annual turnover is less than Rs. 4 crores. The SSI unit need not be registered with any authority.

Exemption available only if turnover in previous year was less than Rs 4 crores - A unit is entitled for exemption only if its turnover in previous year was less than Rs. 4 crores. Units whose turnover was over Rs. 4 crores in 2004-05 are not eligible to any SSI concession in 2005-06. They have to pay full normal duty from 1st April, 2005.

Goods with other's brand name not eligible - Goods manufactured with other's brand name are not eligible.

Clubbing of turnover - (a) If the manufacturer has more than one factories (even at different places), the turnover of all factories (belonging to same manufacturer) have to be clubbed together for calculating the SSI exemption limits of Rs 150 or 400 lakhs. (b) It is also possible that more than one manufacturers may clear the goods from the same factory e.g. part of factory may be used by one manufacturer and another part of same factory may be used by another manufacturer. In such cases, all clearances from the factory has to be considered even if the clearance is of different manufacturers for calculating the SSI exemption limits of 150 or 400 lakhs. (c) Some times, a manufacturer may use the factory for part of the year and then another manufacturer may use the same factory for remaining part of the year. In such cases, the turnover of different manufacturers has to be clubbed for calculating the SSI exemption limits of 150 or 400 lakhs, if it is from the same factory. (d) Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one.

Exemption to be availed for all factories - If a manufacturer has more than one factories, he has to avail the option in respect of all factories. He cannot opt to avail Cenvat in respect of one factory and avail SSI exemption in respect of other factory, as the slab-wise exemption is for all factories of manufacturer together. - CBE&C Circular No. 172/6/96-CX dated 6-2-1996.

Choice of various types of exemption - SSI units have been given two types of exemptions -

(a) Unit can avail full exemption upto Rs 150 lakhs and pay normal duty thereafter. Such units can avail Cenvat credit on inputs only after reaching turnover of Rs 150 lakhs in the financial year. [The full exemption limit of Rs 150 lakhs was increased to Rs 150 lakhs w.e.f. 1-3-2007].

(b) Unit intending to avail Cenvat credit on inputs on all its turnover have to pay normal duty without any concession.

When second option suitable - Option of payment of duty may be suitable in following cases - (a) When buyer intends to claim Cenvat credit. In such cases, the effective cost will be lower as SSI unit can claim Cenvat on inputs (b) When SSI unit intends to export the products and has huge balance in Cenvat credit account. In such cases, he can pay duty and claim rebate after export of goods. Otherwise, the balance may remain unutilised. There is provision to get refund of balance lying in credit in Cenvat Credit account. However, such refund can be only of Cenvat on inputs and not of capital goods.

Option must be indicated, if SSI unit intends to avail Cenvat credit - The first option, i.e. Nil duty upto Rs 150 lakhs and normal duty for subsequent clearances is automatic. However, if assessee wants to avail second option, he must inform option to department. He should inform in writing to Assistant Commissioner with a copy to Superintendent of Central Excise, the following - (a) Name and address of manufacturer (b) Location / locations of factory / factories (c) Description of specified goods produced (d) date from which option under the SSI exemption notification has been exercised. (e) Aggregate value of clearances of specified goods (excluding the value of clearances not covered under SSI exemption notification e.g. goods exempted under any other notification, goods with brand name of other, intermediate products and strips of plastics used for manufacture of sacks or bags). The second option (of paying 150% duty) is available any time during the year, but the option once availed cannot be withdrawn during the financial year.

Cenvat to be reversed if unit decides to opt for exemption - If the unit was availing Cenvat credit prior to 31st March, it will have to pay an amount equivalent to Cenvat credit allowed to him on the inputs lying in stock or used in finished excisable goods lying in stock as on 1st April. If any Cenvat credit on inputs is balance on 31st March, it will lapse on 1st April [Rule 9(2) of Cenvat Credit Rules]. The 'amount' is not 'duty' and hence, strictly, Cenvat credit of such 'amount' paid will not be available.

Cenvat on stock when unit decides to start availing Cenvat credit - The SSI unit can decide to start availing and utilising Cenvat on inputs during middle of the year. When it decides to start availing Cenvat on inputs, it should do following - (a) Submit a letter that it intends to avail Cenvat on inputs lying in stock or contained in finished products on date of declaration. (c) Submit a statement giving stock of inputs lying in stock on date of declaration and duty paid on such stock. [These are not legally prescribed conditions, but it is highly advisable to follow them].

Board has confirmed that Cenvat credit will be available in respect of duty on inputs contained in on stock of raw material, WIP and finished goods when SSI unit crosses the turnover limit and starts paying duty. SSI unit should keep proper records.

The SSI unit cannot avail Cenvat credit in respect of inputs which are already used in manufacture and final product from such inputs is already cleared.

Slabs in SSI excise exemption - Following are slabs in SSI excise exemption.

First slab of 150 lakhs - There is full exemption from excise upto the first clearances of Rs. 150 lakhs, starting from 1st April every year, if the SSI unit does not avail Cenvat credit on inputs. If an SSI unit manufactures goods of different varieties, falling under different Chapter heads and/or in different factories, total exemption considering clearances of all Chapters together and all factories of same manufacturer together, will be Rs. 150 lakhs. An SSI unit can opt for paying full normal duty also.

Second slab after initial 150 lakhs - After the turnover crosses Rs. 150 lakhs, full normal duty is payable. The SSI unit can avail Cenvat credit on inputs in respect of inputs used after turnover crosses Rs 150 lakhs. - . - . - Even if an assessee crosses turnover of Rs. 4 crores, he has to only pay duty at normal rate. The SSI manufacturer does not have to pay duty on earlier turnover for which he had availed concession. [confirmed in Searsole Chemicals v. CCE 1999(113) ELT 435 (CEGAT)]. However, in next year, he will not be able to avail any concession and he has to pay normal rate of duty from 1st April itself.

Excluded turnover for calculating exemption limit of Rs 150 lakhs - While calculating exemption limit of Rs. 150 lakhs, some of turnover of SSI is not to be considered, as explained below. [Note the differences in provisions in calculating limits of Rs 150 lakhs and Rs 400 lakhs].

Clearances of goods exempted under any other notification to be excluded – Some goods may be exempt under some other notification, i.e. other than SSI exemption notification. In some cases, duty may not be payable on such goods for some other reason. Turnover of such goods is not to be considered for calculating exemption limit of Rs 150 lakhs. However, if some intermediate product gets produced, its turnover may be held as includible. [However, this turnover (except clearances to EOU, SEZ, STP, EHTP, UN etc.) will have to be considered for calculating exemption limit of Rs 400 lakhs].

Export turnover to be excluded - The limit of Rs 150 lakhs is of clearance for home consumption, i.e. within India. Export turnover should not be considered for the purpose of calculating the turnover of 150 lakhs.

Exports to Nepal and Bhutan cannot be excluded, i.e. export turnover to Nepal and Bhutan will have to be considered while calculating limit of Rs 150 lakhs. It will be treated as 'clearance for home consumption', even if actually it is 'export'. Exports to Nepal and Bhutan will have to be included whether payment is received in Indian Rupees or in free foreign currency. [Same provision for calculating limit of Rs 400 lakhs].

Export under bond through merchant exporter to be excluded - If the exports are under bond without payment of duty through an export house, these will not be considered for SSI exemption limit i.e. it will be excluded for calculating exempted turnover. This is because, in such case, the clearance is not for 'home consumption'. [Same provision for calculating limit of Rs 400 lakhs].

Turnover of non-excisable goods should be excluded – Some goods are non-excisable, i.e. these are not included in Tariff at all. In such case, its turnover cannot be considered for purpose of exemption limit. [Same provision for calculating limit of Rs 400 lakhs].

Goods manufactured with other's brand name not to be included - A SSI unit can manufacture goods with brand name belonging to others. Such goods are not exempt from duty and full duty is payable on such goods. This turnover has to be ignored for calculating SSI exemption limits of Rs 150 lakhs. [However, if these goods are manufactured in rural area with other's brand name, these are exempt upto Rs 150 lakhs.

In such case, that turnover will have to be considered for calculating exemption limit of Rs 150 lakhs]. [Same provision for calculating limit of Rs 400 lakhs].

Intermediate products - Value of intermediate products manufactured while producing final products which are eligible for SSI exemption cannot be considered for calculating limits of Rs 150 lakhs, if both intermediate product and final product are eligible for SSI concession. Such intermediate product is fully exempt from duty. - - However, if final product is exempt under any other notification, the value of intermediate product will have to be considered, i.e. included for considering SSI exemption [Same provision for calculating limit of Rs 400 lakhs].

Strips of plastics used within factory - Clearance of strips of plastics used within factory of production for weaving of fabrics or manufacture of sacks or bags made of polymers of ethylene or propylene are exempt. [Same provision for calculating limit of Rs 400 lakhs].

Job work which does not amount to manufacture to be excluded - Job work of test, repairs, reconditioning etc. as this does not amount to 'manufacture' i.e. where new and identifiable product does not emerge. [Same provision for calculating limit of Rs 400 lakhs].

Partial exemption if Cenvat on input availed - The full exemption upto Rs 150 lakhs is available only if the unit does not avail Cenvat credit on inputs. However, once the SSI unit starts to avail Cenvat credit and pay duty, he cannot then avail SSI concessional rate of duty for the whole year. However, option to avail Cenvat and pay duty can be availed any time during the year. - CBE&C circular No B-41/2/97-TRU dated 14.7.1997.

Cenvat on capital goods permissible - The SSI unit can avail Cenvat credit on capital goods even if it is availing SSI exemption and not availing Cenvat on inputs. However, the Cenvat credit on capital goods can be utilised only after the turnover reaches 150 lakhs. Even if the capital goods are received during the period when his turnover was less than Rs 150 lakhs, he can take credit only after his turnover crosses Rs 150 lakhs (He should make suitable entries in Cenvat credit on capital goods account, but actually start debiting the account only after turnover crosses Rs 150 lakhs). If the unit pays duty, it can avail and utilise Cenvat both on inputs and capital goods without any restrictions.

How to calculate the SSI exemption limit of Rs 400 lakhs - While calculating turnover of Rs. 400 lakhs, some of turnover of SSI is not to be considered, while some has to be considered, as discussed below. [Note the differences in provisions in calculating limits of Rs 150 lakhs and Rs 400 lakhs].

Turnover to be excluded – While calculating limit of Rs 400 lakhs, following is to be excluded –

Export turnover to be excluded - The limit of Rs 400 lakhs is of clearance for home consumption, i.e. within India. Export turnover should not be considered for the purpose of calculating the turnover of Rs 400 lakhs.

Export under bond through merchant exporter to be excluded - If the exports are under bond without payment of duty through an export house, these will not be considered for SSI exemption limit i.e. it will be excluded for calculating exempted turnover. This is because, in such case, the clearance is not for 'home consumption'.

Deemed exports to be excluded – Goods can be cleared to EOU, SEZ, EHTP or STP unit or to UN or an international organisation without payment of duty. Such clearances are not to be considered for calculating the exemption limit of Rs 400 lakhs. [Same provision for calculating limit of Rs 150 lakhs].

Turnover of non-excisable goods should be excluded – Some goods are non-excisable, i.e. these are not included in Tariff at all. In such case, its turnover cannot be considered for purpose of exemption limit.

Goods manufactured with other's brand name not to be included - A SSI unit can manufacture goods with brand name belonging to others. Such goods are not exempt from duty and full duty is payable on such goods. This turnover has to be ignored for calculating SSI exemption limits.

However, goods manufactured in rural area under other's brand name will have to be included.

Intermediate products - Value of intermediate products manufactured while producing final products which are eligible for SSI exemption cannot be considered for calculating limits of Rs 400 lakhs, if both intermediate product and final product are eligible for SSI concession. However, if final product is exempt under any other notification, the value of intermediate products will have to be considered. [Same provision for calculating limit of Rs150 lakhs].

Job work or any process which does not amount to manufacture to be excluded - Job work of test, repairs, reconditioning etc. is not to be included, as this does not amount to 'manufacture' i.e. where new and identifiable product does not emerge. Similarly, if any processing or operation is done which does not amount to manufacture, its value will not be included. - - Goods returned and cleared after processing are not includible as value of goods for clearances can be considered only once and not twice over. – Kusum Chemicals v. CCE 2002(144) ELT 346 (CEGAT).

Strips of plastics used within factory - Clearance of strips of plastics used within factory of production for weaving of fabrics or manufacture of sacks or bags made of polymers of ethylene or propylene are exempt. [Same provision for calculating limit of Rs150 lakhs].

Inputs brought by assessee and cleared as such not to be considered - A unit can clear inputs as such on payment of duty under rule 3(4) of Cenvat Credit Rules [That time rule 57AB(1)(b) - earlier 57F(1)(ii)]. This turnover is not to be considered for calculating clearances of Rs. 150/400 lakhs - Board circular No. 263/30/88-CX.8 dated 27-10-88.

Turnover to be included – While calculating limit of Rs 400 lakhs, following is to be included -

Turnover of goods exempted under other notification to be included – If SSI unit clears goods under some other exemption notification, its turnover will have to be considered i.e. included for calculating exemption limit of Rs 400 lakhs. - - Thus, job work done by SSI unit is exempt under notification No. 214/86-CE or 83/94-CE. This turnover will have to be considered i.e. included for considering exemption limit of Rs 400 lakhs. The valuation will have to be done on basis of material cost plus job charges. - - Similarly, goods exempted under any other notification i.e. other than SSI exemption notification will have to be included. - - However, clearances to EOU, SEZ, EHTP, STP, UN or other international agency without payment of excise duty will not be considered for calculating exemption limit of Rs 400 lakhs. [If goods are excluded under any notification other than SSI exemption notification, that turnover has to be excluded for calculating limit of Rs 150 lakhs].

Goods manufactured in rural area with other's brand name to be included - If goods are manufactured in rural area with other's brand name, these are exempt upto Rs 150 lakhs. In such case, that turnover will have to be included for calculating exemption limit of Rs 400 lakhs [Same provision for calculating limit of Rs150 lakhs].

Option to pay full duty to SSI without availing concession - An SSI unit is allowed to pay full duty even if it is entitled to pay concessional duty. He can avail and utilise Cenvat on inputs as well as capital goods. Option once exercised cannot be changed during the year. It is not permissible to pay full duty on part clearance and concessional duty on part of the clearance. The option must be informed in writing to Assistant Commissioner with copy to Superintendent.

This option is useful to SSI units which supply goods to other units which can avail Cenvat of duty paid by SSI. If such option is not available to SSI, the duty paid on inputs used by SSI units is not available for Cenvat credit.

No concession if previous year's turnover was over four crores - SSI exemption is available only to those units whose turnover was less than Rs. 4 crores in previous financial year (i.e. April to March). If turnover had exceeded Rs. 4 crores in previous year, there is no excise exemption at all and full excise is payable right from the beginning. If turnover exceeds four crores in current year, concession availed during current year need not be refunded, but next year, there will be no SSI concession - confirmed in Searsole Chemicals v. CCE 1999(113) ELT 435 (CEGAT). [Note : the ceiling was Rs. 2 crores in 94-95, which has been increased to Rs. 4 crores in 95-96.

Thus, SSI units whose turnover was less than Rs. 4 crores in 2000-01 can avail SSI exemption in 2001-02.]

Only previous year's turnover relevant - In *Karnataka Gears v. CCE* 1999(110) ELT 529 = 29 RLT 543 (CEGAT), it was held that only previous year's turnover is relevant for purposes of SSI exemption. Turnover in respect of any other past year is not to be considered.

SSI exemption available in respect of goods exported to Nepal & Bhutan - The SSI exemption is available for home consumption, i.e. for consumption within India. However, explanation to SSI exemption notifications make it clear that clearances for home consumption shall also include clearances for export to Bhutan & Nepal. Thus, exports to Nepal & Bhutan will qualify for SSI exemption. In *Unitherm Inductoweld v. CCE* 2000(123) ELT 1162 (CEGAT), it was held that exports to Nepal will be includible even if the export is under bond without payment of excise duty.

Other Exemptions to small sector - Besides the aforesaid general exemption, there are specific exemptions.

Goods manufactured without aid of power - Some goods are exempt if no process in or in relation to manufacture of these goods is ordinarily carried on with aid of power. Some of these are mentioned in CETA itself and some in a Notification No. 167/86 dated 1-3-86. Apex Court in *CCE v. Rajasthan State Chemical Works* - 1991 (55) ELT 444 (SC) = (1991) 4 SCC 473 = 1991(2) SCALE 602 have held that process in manufacture or in relation to manufacture implies various stages through which the raw material is subjected to change by different operations. Thus, handling of raw materials or filling of pans are so interrelated that without these manufacturing process is impossible to be completed. Hence, if power is used in any of these operations, it is a case where, in or in relation to the manufacture, the process is carried on 'with aid of power'.

Goods in rural area by cooperatives - Some goods manufactured by registered cooperatives or institutions recognized by Khadi and Village Commission or Board are exempt. These are : preparations of vegetable or fruits, sauces, laundry soap, foot-wears, calculators, cassettes, radios, black and white TV sets, electric iron and toaster, electronic clocks and watches, synthetic detergents, jute yarn and fabrics. This exemption is available to un-branded goods. If the goods are branded, the exemption is available only if the brand or trade name belongs to (a) the manufacturer producing the goods himself or (b) if it belongs to Khadi & Village Industries Commission or Board, (c) National Small Industries Corporation or State Industries Development Corporation or (d) a State Small Industries Development Corporation. In other words, the exemption is not available if the brand name belongs to a private trader who is not manufacturing those goods (Notification No. 88/88 dated 1-3-88 as amended).

Genuine specified products of village industry - Certain items produced by village industry and marketed by or with assistance of Khadi & Village Industries Commission are exempt from duty. The products include - lac, gum, vegetable products, fireworks,

resin acids, articles of vulcanised rubber, articles of leather, articles of wood, ceramic products, furniture etc. [Notification No 198/87-CE dated 28.8.1987].

Procedural concessions to SSI - Following are some procedural concessions to SSI.

quarterly return - The SSI unit availing SSI concession need not submit monthly ER-1 return. They have to submit a quarterly ER-1 return, by 20th of following month.

Payment by 15th of following Month - SSI units have to pay duty by 15th of following month, while large units have to pay duty by 5th of following month. Both have to pay duty in March by end of the month.

Export procedures for SSI - The SSI units not covered under excise provisions have to follow simplified export procedures. They do not have to prepare ARE-1 form etc. The procedure has been discussed in a previous chapter.

Sending material for job work by exempt SSI unit - SSI unit can send his raw materials or semi-finished material to another unit for job work. Such another unit can carry out job work and return to SSI unit without payment of duty. The SSI unit can do further processing on these inputs and clear his final product without duty if his total turnover is below Rs. 150 lakhs.

The SSI unit has to file two declarations with Assistant / Deputy Commissioner for this purpose. The job worker may be a small unit or large unit. The job worker does not have to pay duty if the SSI unit sending goods for job work follows prescribed procedure. - refer notification Nos 83/94 and 84/94 dated 11.4.1994.

Exempted small units Exempt from registration - Exempted small units, having turnover below Rs. 150 lakhs, which are exempt from duty, are also exempt from provisions of registering their unit with excise authorities.

These small units, which are exempt from registration, do not have to follow any other excise formality. However, they have to maintain their own records of manufacture and clearance, to prove that their turnover is less than Rs. 150 lakhs per year.

While calculating the turnover, the export turnover is not to be considered. Thus, even if the export turnover exceeds Rs 150 lakhs, no registration is necessary if domestic turnover ('home consumption' in excise terminology) is less than Rs 150 lakhs - [MF(DR) circular No 284/118/96-CX dated 31.12.1996].

Visit of officers only with prior approval - Excise inspectors, preventive parties and audit parties can visit SSI unit only with specific permission of Assistant Commissioner and for a specific purpose. They have to enter relevant particulars in Visitors book maintained by registered person - CBE&C Circular No. 19/92-Cx.6 dated 18-12-1992. - similar earlier telex F No 233/17/86-CX dated 10.3.1986.

Audit of SSI unit once in two to five years - Audit of SSI units should be done only as per following frequency - (a) Units paying duty of Rs one crore or above (PLA) in financial year should be audited every year. (b) Audit of units paying duty of Rs 10 lakhs (PLA) and above but less than Rs one crore (PLA) in financial year, should be normally audited once in two years. (c) Not more than 20% of units paying duty less than Rs 10 lakhs in a financial year shall be audited every year. Selection will be based on risk pattern as above. [Thus, such small units may be audited only once in five years]. – CBE&C circular No. 580/17/2001-CX dated 29-6-2001.

Branded Goods and SSI

Some large units get their goods manufactured from small unit under their brand name or trade name. For example, Bata gets many of their Chappals made from small units. Similarly, Bajaj Electricals/Philips India etc. get many electrical goods made from small units with Bajaj/Philips brand name. In such cases, the small unit will not be eligible for excise exemption. However, if the small unit manufactures goods under his own brand name, SSI exemption is available. If he manufactures goods bearing brand name of any other person, SSI exemption is not available.

In CCE v. Fine Industries 2002(146) ELT 53 (CEGAT 3 member bench), it was observed that the exemption to SSI is designed to enable the small manufacturer to survive in the market in competition with the ineligible manufacturer (i.e. who sales under a brand name). But if he (i.e. small scale manufacturer) joins or identifies himself with the ineligible manufacturer, his goods become one with the goods of such ineligible manufacturer. In the market they will be understood as one and the same goods. They no longer need the benefit under (SSI exemption) notification. [In this case, it was held that SSI exemption can be denied only if he uses brand name of another manufacturer on the same goods, but he will be eligible to SSI exemption if he manufactures different goods under the same brand name].

SSI exemption is not available if brand name or trade name belongs to a foreign person or a non-manufacturing trader - Namtech Systems Ltd. v. CCE 2000(115) ELT 238 = 36 RLT 35 (CEGAT 5 member bench - 3 v. 2 order). – followed in Ashwin Enterprises v. CCE 2002(147) ELT 1143 (CEGAT) – assessee's appeal admitted by SC but no stay – 151 ELT A183.

SSI exemption is not available if brand name belongs to a company belonging brother of appellatant company's director. – Alaska Tyres v. CCE 2002(145) ELT 329 (CEGAT).

SSI units manufacturing goods bearing a brand name of another are exempt from duty, if these goods are manufactured in rural area.

SSI exemption is not available only if the brand name or trade is of another person. Thus, if the brand name or trade name does not belong to any another person, SSI exemption will be available to the manufacturer. It is not requirement that the brand name must

belong to the SSI manufacturer. The only requirement is that it should not be of another person.

Distinction between house-mark and trade mark - A 'house mark' indicates the name of person manufacturing the goods while a trade mark indicates the product by which it is identified or sold. For example, 'Hindustan Lever' has a logo identifying it with the company, while it has various brands like 'Lux' to identify various products manufactured by it. Of course, some times, both can be same e.g. 'Godrej' is house mark, which is also used as brand name on the steel furniture of the company.

A 'house mark' is an emblem of manufacturer projecting the image of manufacturer generally. Such 'house mark' may be in the form of emblem, word or both. It is used on all the products of manufacturer. On the other hand, a 'product mark' or 'brand name' is used which is invariably a word or combination of word and letter or numerical by which the product is identified and asked for.

Provisions in respect of brand name - Brand name or trade name means any name or mark such as symbol, monogram, label, signature, or invented word or writing which is used in relation to the goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such goods and some person using such name or mark. The name or mark may or may not indicate identity of that person. The brand name or mark or trade name may or may not be registered. [Definition as per SSI exemption notifications].

Thus, the definition is very wide. Even name of person who markets the goods, if used on the product, may attract the provision, as such name or mark indicates the connection between the goods and person using that name or mark.

Provision applicable in respect of Brand name of final product only - Some SSI units manufacture a component or part which bears the brand name or trade name. These parts are for use by the large manufacturer as a part (Original Equipment part) e.g. (a) a glass bottle may be manufactured by an SSI unit where the name 'Pepsi' or 'Coca-Cola' is engrossed (b) a SSI unit may manufacture a small component bearing 'Telco' mark, where the part will be used by Telco while manufacturing their truck (c) a SSI bag manufacturer may make bags with 'ACC' or 'L&T' mark and supply it to ACC/ L&T. (d) A small manufacturer may manufacture lock with 'VIP' mark, which will be used by manufacturer of VIP Bags as a part of the bag. In such cases, the manufacturer of such parts/components will be eligible for SSI concession.

Brand name is of the goods, not its part - Goods which are only part of an article sold as OE (Original Equipment) to the manufacturer of final product are not covered under the provision of 'branded goods', as the brand name is in relation to the goods and not to its component or part e.g. 'Coca-Cola' is trade name of the cold drink and not of the bottle.

Brand name should be 'in course of trade' - There are two conditions to bring goods in the mischief of SSI exemption notification (a) such brand name must indicate connection

with the branded goods and (b) Such connection should be in course of trade. If there is no 'trade' of such goods, the brand name provisions will not apply.

Goods bearing foreign brand name not eligible - Use of foreign brand name would disentitle the manufacturer of the SSI concession - India Reprographic Systems (P.) Ltd. v. CCE 1995 (75) ELT 112 (CEGAT) - quoted and followed in Sonoma Aromatics (P.) Ltd. v. CCE 1995 (78) ELT 285 (CEGAT) - finally confirmed in Namtech Systems Ltd. v. CCE 2000(115) ELT 238 = 36 RLT 35 (CEGAT 5 member bench - 3 v. 2 order).

Mere marking 'in technical collaboration with - - -' or 'under licence from - - -' is not branding - In Weigand India (P) Ltd. v. CCE 1997(94) ELT 124 (CEGAT), the assessee was manufacturing goods showing his name as manufacturer. The name plate declared that the goods were manufactured in technical collaboration with 'GEA Wiegand GMBH Ltd., West Germany'. This was as per terms of technical collaboration agreement. It was held that this does not amount to use of brand name of another person and SSI exemption is available. - followed in Sonnenflex Abrasives v. CCE 2002(145) ELT 165 (CEGAT), where in fact, 'Sonnenflex' was the name of Indian manufacturer as well as foreign collaborator. However, logo of foreign collaborator was not adopted.

Putting name and address of Marketer / distributor - In DCI Pharmaceuticals P Ltd. v. Superintendent 2000(115) ELT 45 (Bom HC DB), it has been held that if SSI unit manufactures goods under his brand name, he will be entitled to SSI concession even if distributor's name and logo are printed on cartons, unless it is established that the distributor also manufactures goods under same brand.

Putting name of service agency - In Demech Erectors v. CCE 1999(110) ELT 831 (CEGAT), it was held that putting name of service agent is not branding. In this case, the manufacturer was putting his own brand 'Pride' on the washing machine. In addition a plate marked 'Serviced by Racold' was put.

Brand name for a particular product can be used by another for other product only if registered - If a brand name is registered for a particular product, other manufacturer can use it for another product and in such cases, he will be eligible for normal SSI concession only if the brand name is registered. Similarly, it may happen that a person may be using a brand name or trade name, (belonging to other), for a different product with same brand name. In such cases, the provisions regarding 'brand name' will not apply e.g. 'Maruti' is brand name of car, but same brand name may be used by some independent person for oil or soap. In such case, manufacture of oil or soap by an SSI unit under 'Maruti' brand name will be eligible for SSI concession only if his brand name is registered.

Assignee of brand name is eligible for SSI concession - In P&B Pharmaceuticals v. CCE 2003(153) ELT 14 (SC), it was held that once a logo is assigned, the assignee is entitled to SSI exemption, even if third party or assignor is also using the logo. There is no obligation on owner of a logo to make a roving enquiry to ascertain whether any other person is using his logo and then disclose it to department to avert a possible allegation of suppression of facts.

Concession if goods under brand of Khadi Board - The provision regarding brand name is not applicable if the brand belongs to Khadi and Village Industries Commission or State Khadi and Village Industries Board. Thus, SSI unit making goods under brand name of Khadi and Village Board or Commission will be entitled to the SSI concession.

Brand name not belonging to any one eligible for SSI concession - In lock industry, there is a practice to use a mark or name even though it is not owned by any particular person. Provision of brand name apply if the trade name indicates a connection between specified goods and some person using such name or mark. If there is no person to claim ownership of that mark or name, it does not belong to any person and any body is free to use the name or mark. In such case, units using trade name or brand name, not belonging to any person, are eligible for SSI exemption. - MF(DR) Circular No. 52/52/94-CX dated 1-9-1994]. The principle should be applicable to all goods which are eligible for SSI concession.

Valuation in respect of branded goods manufactured by SSI - The valuation aspect has been discussed in an earlier chapter. However, the summary is highlighted here - (a) If the brand name does not belong to the manufacturing unit, it is not entitled to any SSI concession. It has to pay full normal duty. (b) The duty is payable on the basis of price charged by SSI unit to the brand name owner, if the relationship between the SSI manufacturer and the brand name owner is on 'principal to principal' basis. (c) If the goods are covered under section 4A, i.e. valuation on basis of Maximum Retail Price printed on the carton, the manufacturing unit has to pay duty on basis of MRP printed on the product package, irrespective of the price at which he is selling the product. (d) Brand name owner will not be treated as manufacturer if relations between actual manufacturer and brand name owner are on 'principal to principal' basis.

Exemption if branded goods manufactured in rural area - Excise duty on goods manufactured under other's brand name will be exempt if these are manufactured in rural area. 'Rural area' means the area comprised in a village as defined in the land revenue records, excluding (i) Area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee or (ii) Any area that may be notified as an urban area by State Government or Central Government.

It is highly advisable to obtain certificate from State Government Revenue Authorities that the factory is within the 'rural area' as per land revenue records.

It must be noted that this exemption is only in respect of first turnover of Rs 150 lakhs. Full duty is payable for subsequent clearances. Further, if turnover of the SSI manufacturer during previous year was over Rs four crores, he is not entitled to SSI exemption at all and full duty is payable on all clearances during the following financial year without availing exemption.

Clubbing of Clearances of SSI

If the same manufacturer (i.e. firm with same partners or same limited company or same proprietor) has more than one factories, turnover of all the factories will be clubbed together for calculating the limit of Rs. 150 lakhs or 4 crores. Thus, if a manufacturer has one unit at Mumbai with 1.2 crores turnover and another unit at Delhi with 2.1 crores turnover, he will not be entitled to Excise exemption in any of the factories.

Some times, as a tax planning, a manufacturer may start another unit, instead of increasing production in his own factory, so that both units can avail SSI concession. If the other unit belongs to same proprietor or same company or same partnership firm, the turnover of both these units will be added together for purpose of SSI concession. To avoid this, the other unit may be started under different partnership or under different companies. If such other unit is genuinely separate and independent, their turnover will not be clubbed. However, if the other unit is a 'sham' or a 'facade i.e. deceptive front' or a 'bogus unit', the turnover of these two units will be clubbed i.e. considered in total for calculating SSI exemption limit. This is called 'clubbing of turnover'.

No clubbing of units belonging to Government, Khadi and Village Commission etc. - Central Government, State Government, State Industries Corporation, State Khadi and Village Industries Board, National Small Industries Corporation, State Small Industries Development Corporation or Khadi and Village Industries Commission may hold more than one factories. However, their turnover will not be clubbed and turnover of each factory will be considered separately for calculating the limit of 150/400 lakhs.

Clubbing if more than one manufacturer in same factory - In some cases, more than one manufacturer manufactures the goods in one factory. This usually happens in following cases -

One manufacturer manufactures for part of year and then other - One manufacturer manufactures goods for some part of the year and then sells/transfers the unit. The other manufacturer manufactures in remaining part of the year in the same factory.

More than one manufacturers in one shed - One large shed is hired by numerous small units for manufacturing purposes and each small manufacturer uses a small portion of it. In such case, clubbing provisions will apply. [However, in case of small textile units, such clubbing provision will not apply – see discussions later].

Facilities of one factory used on sharing basis - Facilities of one factory are shared by different manufacturers on time sharing or other basis. In such cases, turnover of all those manufacturers will be clubbed together for calculating the excise exemption limits. - *Indica Laboratories v. UOI* - 1990 (50) ELT 210 (Guj).

Clubbing if change of ownership during the year - If ownership of factory changes during the year, clearances of previous owner as well as new owner during the year will be clubbed for calculating the value of clearances for purpose of SSI exemption - *Gaurav Equipments (P.) Ltd. v. CCE* - 1993 (66) ELT 438 (CEGAT).

No Clubbing provisions if two factories belong to different owners - There are various forms of ownership of an industrial unit i.e. (a) proprietorship (b) partnership firm (c) limited or private limited Company (d) Hindu Undivided Family (HUF) (e) Family Trust. All these forms of ownership have separate and distinct existence. Clubbing provisions are applicable if two or more SSI units belong to same proprietor or to same partnership firm or to same private limited company. However, if one unit 'A' belongs to a proprietor 'P' and other unit 'B' belongs to a partnership firm where 'P' is one of the partners, turnover of 'A' and 'B' cannot be clubbed as the partnership has independent legal status different from its partners. Similarly, if 'A' belongs to one partnership firm and 'B' belongs to another partnership firm where some partners are common in both firms, both the units i.e. 'A' and 'B' will be entitled to separate excise exemption. Same thing holds true if one unit is a firm and other is a limited Company where some partners of the firm are directors.

No Clubbing if two units are independent and no financial flow back - Clubbing provisions do not apply if both units namely 'A' and 'B' are genuinely independent units. Often more than one factories are established to avail of excise concession and real owner is same. As explained above, if there are more than one factories and various combinations of ownership are : (a) one belonging to a Proprietor and other to a partnership firm, where proprietor is one of the partners (b) One belongs to a partnership firm and other also to another partnership firm, where some partners are common and some are close relatives (c) One to partnership firm and other to limited Company, where relatives of some partners of the firm are directors in the limited Company. (d) one belongs to HUF and other to firm where Karta of HUF is a partner - Shakti Engg Works v. CCE - 1989 (40) ELT 95 (CEGAT). (e) two belong to limited companies with some common directors - Cosmos (India) Rubber Works (P.) Ltd. v. UOI - 1988 (36) ELT 102 (Bom HC) * ITEC (P.) Ltd. v. CCE - 1992 (57) ELT 639 (CEGAT) (f) Two companies with related directors and common product Padma Packages P Ltd. v. CCE 1997(90) ELT 175 (CEGAT).

Other similar combinations are possible. In all these and similar cases, if these two units are truly independent their turnover cannot be clubbed. However, if the two units are formed with sole or main purpose of saving on excise, these would be sham i.e. bogus units.

Totality of circumstances should be seen - Tribunal has held that the most important test is that if there is no financial control by one over the other and if there is no flow back of profits, the two units will be treated as independent units. Other tests to establish that the two factories are independent are : separate power connection, separate financial arrangements, separate material procurement, separate registration with Government authorities like sales tax, income-tax etc., separate employees etc. In short, if the two units are really independent, their turnover will not be clubbed solely because some partners/directors/their relatives are common.

Common funding and financial flow back are important. Mere circumstance of functioning in adjacent premises and partners being related to one another is not

sufficient to warrant clubbing. The factors which would be necessary to consider clubbing are common control of production and sales, management control and special financial inter-linking other than normal commercial transactions. If the combination of circumstances create a pattern indicative of clearances from plurality of units being made by a manufacturer, clubbing would be warranted.- Vir Industries v. CCE 1999(109) ELT 322 (CEGAT). [The decision summarizes major case law in this regard].

Identity of interest should be considered - In H T Bhavnani Chemicals P Ltd. v. CCE 1997(92) ELT 502 (CEGAT), it was held that it is not that financial flow back should be established to justify clubbing of clearance, but the identity of interest among the firms and the intention of partners. In this case, another firm was started when the turnover limit of existing unit was reaching the limit. There was no other reason for establishing another unit.

In Naresh Shroff v. CCE 1997(92) ELT 180 (CEGAT), it was held that two units can be regarded as one only when there is mutuality of interest and both units are functioning as one and also financial flow back and integrity of operations between the two units. Unless these factors are established by evidence on record, it cannot be held that both the units are one and the same entity. In CCE v. Kesharbai Electronic P Ltd. 2000(122) ELT 851 (CEGAT), it was held that two private companies having some common directors cannot be treated as 'related persons' unless there is mutuality of interest.