

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

Nil

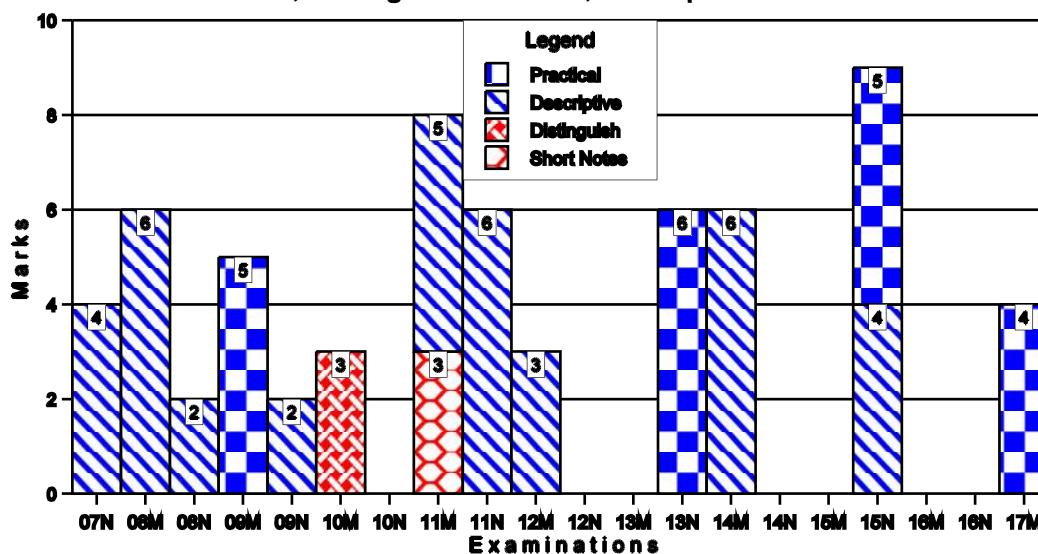
On the basis of Compulsory questions from a chapter

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1 Basic Concepts of Central Excise

This Chapter Includes: Constitution of India, Direct & Indirect Taxes, Central Excise Law: History, Body, Exemption Notifications, Departmental Circulars, Definitions; Levy & Collection of duty, Goods & Excisable goods, Manufacture, Intermediate products/Captive Consumption, Site related activities/captive consumption, assembly, waste & scrap, Packing, Labeling, branding, Change in tariff heading/ sub-heading, Taxable event.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CA Final Gr. II**DESCRIPTIVE QUESTIONS**

2007 - Nov [1] {C} (a) Briefly explain any **two** of the following with reference to the provisions of the Central Excise Act, 1944:

- (i) Manufacture and processing
- (ii) Dutiability of site related activities
- (iii) Labeling and branding activities. (2×2=4 marks)

Answer:

(i) Manufacturing: It means one or more processes, through which, the original (input) commodity loses its existence and a new commodity comes into existence, having separate name, character or use. For Example, it was held in the case of **A.P. Products V State of Andhra Pradesh**, that when spices & condiments are processed giving output, known as “Masala Powder”, then the process of grinding & mixing held as manufacture.

Processing:- It means one or more activity, necessary for manufacturing, but it doesn't mean that every processing is manufacturing. For Eg. Painting of goods is just processing and not manufacturing.

Answer:

(ii) Dutiability of site related activities: Dutiability of site related activity is conditional. If following conditions are satisfied, then site related activities will attract levy of duty:

1. The assembled product should have distinct name, character and use, a part from components that have gone into its production;
2. Such assembled product is specified in schedule to Central Excise Tariff Act-1985;
3. Such product should be movable and
4. Such product shall be marketable.

So, if assembly results into immovable property, which can't be removed as such i.e. without being dismantled into its components & parts, then it will not attract excise duty.

Answer:

(iii) Labeling & branding activities:

Presently labeling & branding is covered under the concept of deemed manufacture". As per Sec. 2(f) (iii) of Central Excise Act-1944, manufacturing includes the process of labeling or re-labeling as well as branding of any goods specified under 3rd schedule i.e. MRP based valuation.

For Example, putting brand on unbranded goods, covered under 3rd schedule of Central Excise Act, 1944, will amount to manufacture.

2008 - May [1] {C} (d) State briefly whether the following circumstances would constitute "manufacture" for purposes of Sec. 2(f) of the Central Excise Act, 1944:

- (i) Both inputs and the final product fall under the same tariff heading under the first schedule to the Central Excise Tariff Act, 1985 (Tariff Act).
- (ii) Inputs and final product fall under different tariff headings of the Tariff Act. (3×2 = 6 marks)

Answer:

- (i) MANUFACTURE:** Manufacture means bringing into existence a new product having distinct, name and use. Even if the input and transformed final product fall under the same tariff heading under Central Excise Tariff Act-1985.

IN KAPRI INTERNATIONAL-2002-SC, the issue was properly settled by the Apex Court. It was held that even running Cotton fabrics and bed sheets, table cloths etc fall under the same tariff entry but the final product will attract duty, due to change in **use**.

- (ii) NOT MANUFACTURE:** For deciding manufacturing, change in tariff heading is irrelevant. For manufacturing "transformation" is necessary i.e. input results into different output having distinct name, character or use.

It was also held by Supreme-Court in the case of S R TISSUES-2005-SC, that "change in tariff-heading will not amount to **manufacture**."

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SHORT NOTES

2011 - May [5] (a) (i) Write a short note with reference to the Central Excise Act, 1944 and Cenvat Credit Rules 2004 on "goods" and "exempted goods".
(3 marks)

Answer:

- (i) **Goods:** Sec. 2(d) of the Central Excise Act, 1944 carries an explanation which states that the expression "goods", for purpose of the said clause, includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.
- (ii) **Exempted Goods:** Rule 2(d) of the CENVAT Credit Rules, 2004 defines exempted goods as excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to nil rate of duty.

DISTINGUISH BETWEEN

2010 - May [3] (a) Differentiate between "non-excisable goods" and "non-dutiable goods".
(3 marks)

Answer:

Sec. 2(d) of the Central Excise Act, 1944 defines 'excisable goods' as goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. Goods which are not listed in Tariff or goods which are mentioned in Tariff, but the column of rate of duty is blank are non-excisable goods, e.g. water (there is no entry in Tariff). Excise law is not applicable on non excisable goods.

Non dutiable goods are excisable goods listed in Excise Tariff. Excise law is applicable to them, but these are not liable to excise duty. Non dutiable goods may be of two types:

- (i) Nil duty goods, i.e. Tariff rate is nil, and
- (ii) Exempted goods, i.e. 100% exemption under Sec. 5A.

DESCRIPTIVE QUESTIONS

2008 - Nov [3] (a) Discuss briefly whether Excise duty is attracted on the excisable goods manufactured in the following cases:

- (i) in the State of Jammu and Kashmir;
- (ii) by or on behalf of the Government. (2 marks)

Answer:

- (i) As per Sec. 1 of Central Excise Act, 1944, the Act shall be applicable to **whole of India**, including the state of Jammu & Kashmir. Again charging Sec. 3(1), Excise Duty is levied on all excisable goods which are produced or **manufactured in India**.

So, excise duty is **attracted** on the excisable goods manufactured in the State of J&K.

- (ii) As per Sec. 3(1A) of the Central Excise Act, 1944, excise duty shall be levied and collected on all excisable goods, manufactured/produced in India
- by the Government or
 - on behalf of the Government.
- So, there is no discrimination between Government manufacturer & other manufacturer under Central Excise. So, Government is also liable to pay excise-duty.

2009 - Nov [3] (a) Explain briefly the concept of “excisable goods” as amended by the Finance Act, 2008. (2 marks)

Answer:

Excisable goods are defined under Sec. 2(d) of the Central Excise Act-1944. Accordingly “Excisable goods” means goods specified in the first schedule and the second schedule of Central Excise Tariff Act-1985 as being subject to duty of excise and includes salt.

However, by Finance Act-2008, an explanation is inserted to define “goods” and deemed marketability. According to explanation, “goods” include any article, material or substance which is capable of being sold and such goods shall necessarily be **deemed to be marketable**. So, presently dross/skimming, ashes and residues etc. shall be deemed as marketable, making them excisable goods, liable for excise-duty.

2011 - May [3] (a) PQR & Co. is engaged in the business of fabrication and erection of structures of various types on contract basis. They entered into a contract with M/s. XYZ Co. for fabrication, assembly and erection on turn key basis of a waste water treatment plant. This activity involved procurement, supply, fabrication, transportation of various duty paid components and finally putting up a civil construction and erection of the waste water treatment plant and commissioning the same. The entire fabrication is done at site. The pressure testing was carried out as such until it was wholly built. The excise department has issued a show cause notice that the fabrication at site amounted to manufacture of excisable goods since the plant came into existence in an unassembled form as per drawings and designs approved by the client, M/s. XYZ Co. before the fabrication activity was undertaken. Therefore according to the department excise duty was payable on the value of the plant excluding the value of the civil work. Briefly discuss with reference to case law whether the show cause notice is sustainable in law. (5 marks)

Answer:

No, the show cause notice is not sustainable in law. The facts of the case are similar to the case of **Larsen & Toubro Ltd. v. UOI 2009 (243) E.L.T. 662 (Bom.)**. The High Court opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site, does not amount to manufacture of a plant. Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts.

In the present case, as the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work. Waste water treatment plant did not become a plant until the process which included the civil work, was

completed. Thus, the Court/Tribunal held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Accordingly, since waste water treatment plant was not a separate movable marketable good and came into existence only on assembly of parts in the civil work, there was no question of levying excise duty on it.

2011 - Nov [4] (a) The assessee M/s. T & Co. Ltd. were engaged in the manufacture of 'tarpaulin made ups'. This was nothing but tarpaulin cloth prepared by making a solution of wax, aluminium stearate and pigments that were mixed. The solution was heated in a vessel and was transferred to a tank. Grey cotton canvas fabric was then dipped into the solution and passed through two rollers, where after the canvas was dried by exposure to sun. The tarpaulin made ups were prepared by cutting the cloth into various sizes and stitched and eyelets were fitted. The central excise department has issued a show cause notice to M/s. T & Co. Ltd. that the tarpaulin made ups prepared by means of cutting, stitching and fixing eyelets amounts to manufacture under the Central Excise Act, 1944. Write a brief note with reference to decided case law if any whether the department's view in the matter is legally sustainable. (6 marks)

Answer:

The facts of the given case are similar to the one decided by the Apex Court in the case of *CCE v. Tarpaulin International*. 2010 (256) E.L.T. 481 (S.C.) in this case, the Apex Court has observed that stitching of tarpaulin sheets and making eyelets does not change the basic characteristic of the raw material as the process does not bring into existence a new and distinct product different from the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made ups even after undergoing the said process. Hence, the Supreme Court has held that process of making tarpaulin made ups by cutting, stitching the tarpaulin fabric and fixing eyelets therein cannot be said to be a manufacturing process liable to excise duty.

Therefore, in view of the above mentioned judgement, the Department's view in the matter is not legally sustainable.

2012 - May [5] (a) (i) Explain briefly whether "assembly" would tantamount to 'manufacture' under the Central Excise Act, 1944. (3 marks)

Answer:

Assembly is a process of putting together a number of items or their parts to make a product. All cases of assembly may not amount to manufacture as an already manufactured item may also be assembled to put it in a readily usable form.

However, assembly of various parts and components may tantamount to manufacture if a new product which is and marketable emerges out of such assembly. Therefore, if an "immovable property" emerges after such assembly, it will not be consideration as manufacture.

The Apex Court in the case of Name *Tulaman Manufactures Pvt. V CCE 1988 (38) E.L.T. 566 (S.C)* held that if the assembly results in new commercial commodity with a distinct name, character and use, then it would amount to manufacture.

2014 - May [3] (a) (i) M/s. Healthcare Ltd. is manufacturer of patent and proprietary medicines. Physician samples were distributed to medical practitioners as free samples. The Central Excise Department raised the demand of excise duty on such samples.

The assessee contended that since the sale of the physician samples was prohibited under the Drugs and Cosmetics Act, 1940 and the rules made thereunder, the same could not be considered to be marketable and hence were not liable to excise duty.

Examine with the help of a decided case law whether the contention of the assessee is valid in law. (3 marks)

Answer:

No the contention of assessee is not valid in law because on the identical matter in the case of *Medley Pharmaceuticals Ltd. Vs CCE & C., Daman [2011]* the Supreme Court held that the assessee is liable to pay excise duty. Excise duty is leviable on the manufacture or production of excisable goods, whether or not such goods are actually sold. Marketability is essence of chargeability, but marketability means suitable for sale and goods need not, in fact, be marketed or sold. The Supreme Court also held that the prohibition on sale of physicians' sample under Drugs and Cosmetics Act, 1940 and the rules made there under has no effect on marketability of the medicines.

So the assessee was held liable to pay the excise duty and demand of excise duty on samples distributed by the assessee was valid in law.

2014 - May [4] (a) (ii) The respondent assessee was carrying on construction of metro railway. He manufactured pre-fabricated components of metro rail at one site to be used at different inter-connected metro construction sites. The assessee claimed exemption under Notification No. 1/2011-C.E.(N.T.) dated 17-02-2011 which exempts the goods covered under specified chapter headings for a specified period, manufactured at the site of construction for use in construction work at such site.

Department contended that the assessee was not entitled to exemption as he did not fulfil the condition of manufacture at the site of the construction. Examine the validity of the departmental contention citing a decided case, if any. (3 marks)

Answer:

The given case is similar to the case of *CP Meier Vs CCEX [2012]*. In the case respondent assessee was carrying on construction of pre-fabricated components for Delhi Metro Rail Corporation Ltd at a separate off road site, away from main site, to avoid traffic jams. The components were exempt from excise duty vide special notification, if it is manufactured at the site of construction for use in construction work at such site. Since, in this case the component was manufactured at separate off road site, away from main site, so the department denied benefits of exemption to the assessee. But it was held that exemption can't be denied on the grounds that the off road site which is used for manufacture is not the site of construction. The said goods so manufactured at off road site was ultimately used for construction work at site and the condition of exemption notification of use at construction site is satisfied.

2015 - Nov [5] (a) Briefly explain whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty? You may take the help of decided case law, if any. (4 marks)

Answer:

No, bagasse can't subjected to excise duty, because goods do not become excisable goods merely on satisfying the condition of marketability, they need to be manufactured as well.

8.10

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In a case named “ Hindalco Industries Limited V. UOI [2015], it was held that the dross and skimming of aluminium, zinc or other non-ferrous metal which arise as by product during manufacturing of aluminium are “not manufactured goods” and hence not liable to excise duty.

PRACTICAL QUESTIONS

2009 - May [2] (b) A Port Trust used cement concrete armour units in the harbour for keeping water calm. Each unit weighed about 50 tons and is like a tripod and keeps water calm and tranquil. These units are essentially in prismoid form and were made to order. They are harbour or location specific. The Central Excise Department contended that the armour units are excisable goods and chargeable to duty. Examine the validity of the Department’s contention in the light of decided case law. (5 marks)

Answer:

As given in the question, Port Trust has manufactured cement armour units as per order. These cement armour units are location specific. The Department charges excise duty in respect of manufacture of units of cement armour.

The issue involved in the given question is determination about validity of Demand by the Department.

As per landmark decision of “Delhi-cloth Mills-1977-SC” for being goods the article must satisfy twin test i.e. movability and marketability. If any of these two conditions, is not satisfied there will be no question of excise-duty.

Similar matter was brought before Apex Court in case named “BOARD OF TRUSTEES-2007-SC” in which it was held that the process of preparation of cement concrete armour block was manufacture, but these are not marketable because

- the units of cement armour were location specific, so can’t be used in any other harbour and
- the units were not capable of being bought & sold in the market as commodity.

So, the marketability test was not fulfilled, so units of cement armour will not qualify as goods for the purpose of excise.

Finally, on the basis of above cases, it can be concluded that “Department” contention is not tenable in law, because cement armours are not even goods.

2013 - Nov [3] (a) M/s. Amar Ltd. is manufacturer of cement. It carried out repair and maintenance of its worn out cement manufacturing plant by use of welding electrodes, mild steel, cutting tools, angles etc. In this process of repair/maintenance, some metal scrap and waste were generated, which were cleared by the assessee without paying any excise duty.

The Department issued a notice demanding excise duty on such metal scrap and waste contending that these were ‘excisable goods’ as these were marketable and movable and since it arose during a process incidental/ancillary to manufacture viz. repair of plant, the process of generation of scrap and waste amounted to manufacture in terms of Sec. 2 (f) of the Central Excise Act, 1944.

You are required to answer the following questions:

- (i) What is ‘manufacture’ in Central Excise as per Sec. 2(f)(i) and (ii) of the Act?
- (ii) What are the major conditions for levy of duty on waste & scrap?
- (iii) Whether waste & scrap resulting from repair/maintenance of plant is excisable and liable to duty? (2 marks each)

Answer briefly citing case law, if any.

Answer:

The facts of the given case are similar to the case of *Grasim Industries Ltd. v. UOI 2011 (SC)* decided by the Supreme Court.

- (i) As per clause (i) and (ii) of Sec. 2(f) of the Central Excise Act, 1944, manufacture included any process-
 - incidental or ancillary to the completion of a manufactured product;
 - which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.
- (ii) The Supreme Court in the case of *Grasim Industries Ltd.*, held that the following conditions must be satisfied conjunctively for levy of excise duty on waste and scrap:-

- Waste and scrap ought to be excisable goods under Sec. 2(d) of the Central Excise Act, 1944; and
- Waste and scrap should be manufactured goods i.e., they should arise as a result of manufacture in terms of Sec. 2(f) of the Central Excise Act, 1944. In other words, it ought to be a by-product of the final product.

(iii) The Supreme Court in the *Grasim Industries Ltd.* case observed that a process incidental or ancillary to manufacture can be a process in manufacture or process in relation to manufacture of the excisable end product, which involves bringing some kind of change to the raw material at various stages by different operations.

The Apex Court held that since the repair and maintenance of plant has no contribution/ effect on the process of manufacturing of cement (the end product), the same cannot be called as part of manufacturing activity in relation to the production of end-product. Thus, the metal scrap and waste generated from repair/ maintenance of plant cannot be said to be a by-product of the final product but the by-product or repairing process.

Therefore, in view of the above discussion, it can be inferred that waste and scrap resulting from repair/ maintenance of plant (not being a process incidental to the manufacture of end-product) is not liable to excise duty.

2015 - Nov [1] {C} (c) OPQ Ltd. purchased a pollution control equipment for ₹ 14,62,500 which is inclusive of excise duty at 12.5% (education cess 2% plus secondary and higher education cess 1% are exempt). The equipment was purchased on 24-08-2015 and was disposed of as second hand equipment on 16-12-2017 for a price of ₹ 10,00,000. The excise duty rate on the date of disposal was 12.5%.

You are required to calculate the amount payable on disposal of the equipment

- (i) if the equipment is removed as waste/scrap.
- (ii) if the equipment is removed otherwise than as waste and scrap.

OPQ Ltd. is not eligible for SSI exemption and the pollution control equipment has been received in the factory on 24-08-2015. The disposal price of the equipment is the transaction value which is exclusive of excise duty. (5 marks)

Answer:

- (i) **Reversal of CENVAT credit when capital goods are removed as waste and scrap:** When capital goods i.e. pollution control equipment is removed as waste or scrap, then amount to be reversed will be an amount equal to the duty leviable on transaction value as per Rule 3 (5A)(b) of Cenvat Credit Rules, 2004. So, the amount which will be reversed will be ₹ 1,25,000 i.e. 12.5% of ₹ 10,00,000.
- (ii) **Reversal of CENVAT credit when capital goods are removed otherwise than as waste and scrap:** When capital goods i.e. pollution control equipment is removed otherwise than as waste or scrap, then amount to be reversed will be higher of these two as per Rule 3 (5A)(a) of Cenvat Credit Rules, 2014:

| Particulars | For First 50% | For Balance |
|--|---------------|-------------|
| Amount of Cenvat Credit on pollution control equipment already taken | 81,250 | 81,250 |
| Date of taking the credit | 24-08-2015 | 1-04-2016 |
| Date of removal of capital goods | 16-12-2017 | 16-12-2017 |
| Number of quarters from date of taking the credit to the date of removal | 9 | 7 |
| Percentage computed @ 2.5% per quarter for used period | 22.50% | 17.50% |
| Credit required to be reversed = 100% percentage for used period | 77.50% | 82.50% |
| Credit required to be reversed | 62,968.75 | 67,031.25 |
| (A) Total reversal | | 1,30,000 |
| (B) Reversal based upon T.V. of sales (10,00,000 × 12.5%) | | 1,25,000 |

| | |
|---------------------------------------|----------|
| Reversal will be higher of (A) or (B) | 1,30,000 |
|---------------------------------------|----------|

2017 - May [3] (a) M/s. Vishwas Packers purchased duty paid GI paper from the market and carried out printing on it according to the design and specifications of the customer. The printing was done on jumbo rolls of GIP twist wrappers. Logo and name of the product was printed on the paper in colourful form and the same was delivered to the customers in jumbo rolls without slitting.

The customer intended to use this paper as a wrapping/packing paper for packing of their goods.

Department issued a demand-cum show cause notice claiming that “printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amounts to manufacture” and Vishwas Packers is liable to pay excise duty thereon.

Examine with the help of decided case law, if any, whether the Department is justified in issuing show cause notice for the recovery of duty. (4 marks)

| Table Showing Marks of Compulsory Questions | | | | | | | | | | |
|---|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Year | 12 N | 13 M | 13 N | 14 M | 14 N | 15 M | 15 N | 16 M | 16 N | 17 M |
| Practical | | | | | | | 5 | | | |
| Total | | | | | | | 5 | | | |