

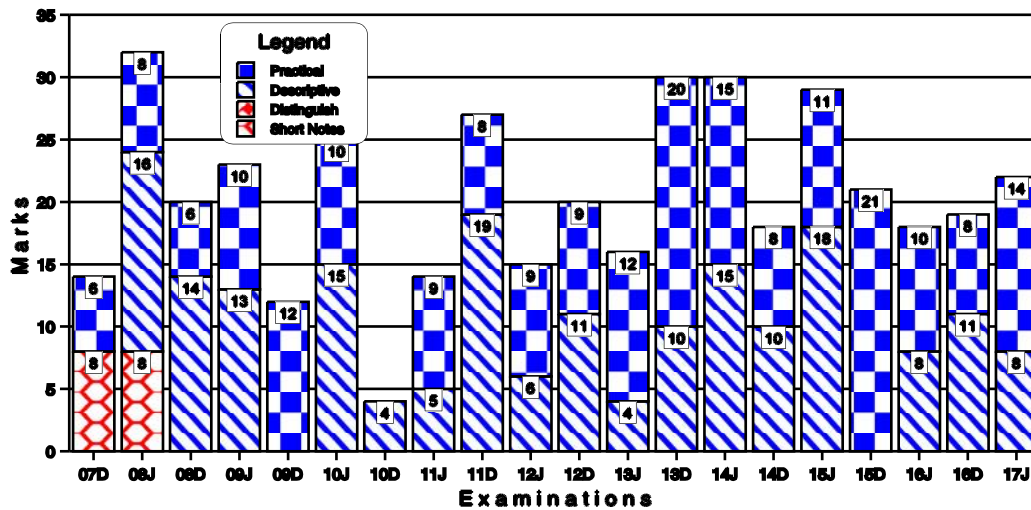
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CENTRAL EXCISE

THIS CHAPTER INCLUDES

- Central Excise Act, 1944
- Levy, Collection & Exemptions from Excise Duty
- Manufacture
- Classification of Goods
- Valuation of Goods
- Assessable Value
- Value Based on RSP and MRP
- Audit u/s 14A and 14AA
- Export Benefits
- Small Scale Industries Demands, Refunds
- Appeals and Penalties

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



SHORT NOTES

2007 - Dec [4] Write short notes on the following:

- (a) Computerization of invoices for central excise purposes.
- (b) Supplementary invoice for differential central excise duty.

(4 marks each)

Answer:

(a) Computerization of Invoice for central excise purpose:

No permission is required under the tax laws for computerization of invoices and is freely permitted. Under this, if the running stationery is used, the stationery should be printed with distinctive names and marks of the assessed. After invoices are prepared, triplicate copy shall be retained in bound book form. If invoices are prepared on computer, generation of serial number by computer at the time of printing of invoice on blank stationery of computer is permitted. However, this is so only if the software is such that computer automatically generates number and same number cannot be generated more than once. In case of computerization invoices, authentication at top and signing of invoice at bottom can be done simultaneously. As per earlier instructions, estimated serial number of invoices likely to be used should be intimated.

Answer:

(b) Supplementary invoice for differential central excise duty:

Assessee may have to pay differential duty as his assessment was provisional or he got price escalation from buyer, later or duty was short paid through mistake or for any other reason. Often buyer grants prices after negotiations etc, with retrospective effect. In such cases, differential duty is paid by way of supplementary invoice at a later date. In such cases, he has to pay differential duty by preparing supplementary invoice, except when such differential duty payment was on account of fraud, suppression of facts, collusion or willful misstatement. Though rules do not specify such supplementary invoice should be from same series of invoice. It should give cross reference to the original invoice under which the goods were cleared.

2008 - June [8] Write short notes on the following:

(b) Dutiability of waste and scrap.

(e) "Manufacture" under Central Excise Act.

(4 marks each)

Answer:

(b) Dutiability of waste and scrap:

Excise duty is a levy on production or manufacture of excisable goods. Excisable goods means all goods listed in the central excise tariff and subject to excise duty. So waste or scrap may be liable to duty of excise only if such waste or scrap arises in the course of manufacture or production of goods i.e. movable and marketable and listed in the Tariff and is subject to duty of excise in the tariff.

Case law:

Khandelwal metal and Engineering Works (SC): In this case it was held that levying excise duty on waste and scrap is not *ultra vires* Section 3 of Central Excise Act. Waste and scrap can be dutiable if marketable and is covered in the Tariff.

Answer:

(e) Manufacture under Central Excise Act:

As per Section 2 (f) of Central Excise Act, 1944 manufacture includes any process

- (i) incidental or ancillary to the completion of manufactured product OR
- (ii) which is specified in relation to any goods in a Section or chapter notes of First Schedule to the **Central Excise Tariff Act, 1985** as amounting to manufacture or
- (iii) Which in relation to the goods specified in third schedule of **Central Excise Act** involves packing or re-packing of such goods in a container or labelling or re-labelling of container including declaration or alteration of retail sale price on it.

Case law:

UOI vs Delhi Cloth & General Mills Co. Ltd (sc): In this case it was held that manufacture implies a change but every change is not manufacture even though every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be some transformation a new and different article must emerge having a distinctive name, character or use.

DESCRIPTIVE QUESTIONS

2008 - June [6] (a) Explain the non-applicability of "transaction value" with reference to Section 4 of the Central Excise Act, 1944. **(8 marks)**

(b) Discuss various circumstances where the small scale exemption will be available to the manufacturer of excisable goods bearing the brand name of another person. **(8 marks)**

Answer:

(a) The concept of transaction value is applicable only in the circumstance where:

- (i) There is a sale of goods,
- (ii) The sale of goods is for delivery at the time and place of the removal,
- (iii) The assessee and the buyer are not related persons,
- (iv) The price is the sole consideration for the sale,

In cases where any of the above mentioned requirements are missing, the concept of transaction value does not apply and the assessable value is determined on the basis of the Central Excise Valuation (Determination of Price under Excisable Goods) Rules 2000.

Answer:

(b) Excise duty exemption is available to branded goods if the brand belongs to SSI manufacturer himself or has been assigned to him. In other cases, if brand name belongs to another person, SSI exemption is available only in following cases:

1. **If goods bearing brand of Khadi Board, NSIC, SSIDC etc:** The provision regarding brand name belongs to (i) Khadi and Village Industries Commission (ii) State Khadi and Village Industries Board (iii) National Small Industries Corporation (iv) State Small Industries Development Corporation or (v) State Small Industries Corporation.
2. **Manufacture of Original Equipment Parts:** If the SSI manufactures Original Equipment which is used in manufacture of final products; he will be entitled to SSI exemption as per SSI notification. He should follow procedure as prescribed in central Excise (Removal at Concessional Rate of Duty for Manufacture of

Excisable Goods) Rules, 2016 while dispatching the goods to the large unit if his turnover exceeds ₹150 lakhs.

3. **Goods manufactured in rural area:** Excise duty on goods manufactured under others brand name will be exempt if the goods are manufactured in rural areas. 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, 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.
4. Goods are in nature of packing material.
5. Where specified goods are A/c Book, register, file, folders.

2008 - Dec [1] {C} (a) Provide brief answer to the following:

- (ii) Can the valuation of goods manufactured and cleared as free samples be done on the basis of MRP for excise purposes? If not, how should they be valued? **(2 marks)**

Answer:

CBEC has clarified that in case of sample distributed free, valuation should be done on basis of Rule 4. Since samples are to be distributed free, MRP is not necessary if clear making as free samples is made on package.

2008 - Dec [5] (a) What are the items of turnover which are required to be included while calculating the excise duty exemption limits for SSI Units?

(5 marks)

Answer:

Following are the items that are required to be included while calculating the excise duty exemption limits for SSI Units:

- (a) **Turnover of goods exempted under other notification to be included:** If goods are exempt under any other notification, it will be included for purpose of calculating exemption limit.
- (b) **Clearance to EOU, SEZ, and EHTP etc.:** Further, clearance to EOU, SEZ, EHTP, STP, UN or other international agency without payment of excise duty will not be considered for calculating exemption limit.
- (c) **Goods manufactured in rural area with other brand name to be included:** If goods are manufactured in rural area with other's brand name, these are exempt up to ₹150 lakhs. In such case, that turnover

which is cleared without payment of duty will have to be included for calculating exemption limit of ₹400 lakhs.

- (d) **Captive consumption not exempt if used in manufacture of final product which is exempt under any other notification:** Some intermediate goods are produced which are captively consumed for manufacture of final product. If final product is eligible under SSI exemption notification, no duty is payable on intermediate product. However, it may happen that the final product may be fully exempt from duty without any ceiling under a notification other than general SSI exemption notification. In such case, the value of the intermediate products has to be considered for purpose of SSI exemption, if it is marketable.
- (e) **Exports to Bhutan:** Export to Bhutan will have to be included even if export is without payment of duty under international contract.
(Note: Till 1.3.2016 export to Nepal were includible.)

2008 - Dec [6] (a) A SSI manufacturer may like to pay full duty even when he is eligible for SSI exemption. (i) Can he do so? (ii) Why he would like to pay full duty? (iii) What is the duty payable? **(1+2+1= 4 marks)**

Answer:

- (i) Yes, the SSI manufacturer can do so.
- (ii) He would like to do so if his customer wants to avail Cenvat Credit for their inputs and if duty paid on his inputs is high. In such case, even if he pays duty on the final product, the same will be offset by the input credit which he can avail; also his sales will improve as he will be issuing Cenvatable invoices to his customers.
- (iii) Duty payable will be normal rate, less concession available, if under any exemption notification.

2008 - Dec [8] (a) Where from bulk packing, re-packing of small packets is done for being marketed, is there "manufacture" as per Central Excise Act? Can it be said that there is 'deemed manufacture', where in respect of ready to market imported packs, affixing a sticker containing importer's details, MRP, etc. is done? **(3 marks)**

Answer:

In CCE v Johnson & Johnson the Supreme Court held that mere packing for being marketed is not manufacture for purpose of the Chapter Note. Re-packing has to be from bulk packs to retail packs so as to render the product marketable directly to consumer. Hence, this constitutes manufacture. It was also held by the apex court that if product is imported as ready to market retail packs, mere affixing the sticker containing information like names and address of importer, MRP etc will not be deemed manufacture.

2009 - June [4] (b) Briefly explain:

- (i) What is the date of removal of excisable goods in case of captive consumption?
- (ii) Is it required to issue invoice for removal of goods even for captive consumption? If so, why **(1 + 2 = 3 marks)**

Answer:

- (i) As per Rule 5(2) of Central Excise Rules, if excisable goods are used within factory as captive consumption, then the date of removal will be the date on which the goods are issued for such captive consumption within the factory.

Answer:

- (ii) Yes, it is required to issue the invoice against the goods used for captive consumption. Generally one invoice may be issued per day. Rule 11 enjoins that an invoice is required to be issued for removal from factory. Though captive consumption is not removal from factory, invoice is the only valid duty paying document which is required to be issued for the payment of duty.

2009 - June [6] (b) Can the valuation of goods manufactured and cleared as free samples be done on the basis of MRP for excise purpose? If not, how should they be valued? **(4 marks)**

Answer:

Please refer 2008 - Dec [1] {C} (a) (ii) on page no. 15

2009 - June [8] (b) What are the various bond which are required to be executed for Central Excise purposes? State briefly the purpose of each bond. **(6 marks)**

Answer:**Bonds executed for excise purposes:**

Bonds are of different nature and for various purposes. Form of bonds etc. have been standardized. The main bonds are as follows:

- (i) **B-1 General Bonds:** The bonds are for due dispatch of excisable goods removed for export without payment of duty. The bond can be with surety or security. New form of B-1 bond has been given in annexure -1 of notification issued by central excise.
- (ii) **B-2 Bond:** This is general bond for provisional assessment. It can be with security or surety. Bond equal to difference between the duty payable on provisional assessment basis and the probable applying the highest rate/value applicable to such goods for a period of 3 months has to be furnished.
- (iii) **B-4 Bond:** Often goods are seized by excise officer, if there is reason to believe that goods are liable to confiscation. The goods are actually confiscated only after adjustment. This may take a long time. Hence, the assessee can get the seized goods released after execution of bonds in form B-4/B-11. The bond should be for whole value of seized goods.
- (iv) **B-8 Bond:** This bond is for obtaining goods at Nil or confessional rate of duty under Central Excise (Removal of goods at Confessional rate of duty for manufacture of excisable goods) Rules. A bond is required to be executed under these rules. Since no form of bond has been prescribed, earlier form B-8, which was prescribed under earlier Chapter X procedure may be used after making necessary changes.
- (v) **B-11 Bond:** This is a general surety/ security bond to be executed by EOU, EHTP/STP units. It is for provisional assessment of goods for export of goods to foreign countries without payment of duty and for accounting/disposal of excisable goods procured without payment of duty.

2010 - June [2] (a) Is it correct to say that mandatory levy of penalty under section 11AC of the Central Excise Act, 1944 is not applicable to every case of non-payment or short payment of duty? **(5 marks)**

(c) Who are the persons not eligible for compounding of offence as per the provisions of the Central Excise Act, 1944? **(4 marks)**

Answer:

- (a) Section 11AC provide for amount of Penalty payable in cases mentioned in Section 11A. New Section 11AC is substituted to provide for penalty in more rationalized way in the following manner:
1. In cases not involving fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Central Excise Act or rules with the intent to evade payment of excise duty:
 - (a) In addition to the duty as determined under sec. 11A (10) a penalty not exceeding 10% of the duty so determined or 5,000, whichever is higher, shall be payable.
 - (b) If duty and interest payable thereon under sec. 11AA is paid either before issue of show cause notice or within 30 days of issue of show cause notice, no penalty shall be payable and all preceding in respect of said duty and interest shall be deemed to be concluded.
 - (c) If duty as determined under sec. 11A (10) and interest thereon under sec. 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the penalty so imposed, provided that such reduced penalty is also paid within 30 days of the date of communication of such order.
 2. In cases involving fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Central Excise Act or rules with the intent to evade payment of excise duty:
 - (a) in addition to the duty as determined under sec. 11A(10), a penalty equal to the duty shall be payable i.e. 100% of amount of duty .
 - (b) if duty and interest payable thereon under sec. 11AA is paid within 30 days of communication of show cause notice, the amount of penalty payable shall be 15% of the duty demanded, provided that such reduced penalty is also paid within 30 days of communication of show cause notice and all proceeding in respect of said duty, interest shall be deemed to be concluded.

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- (c) if duty as determined under sec. 11A(10) and interest payable thereon under sec. 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty shall be equal to 25% of the duty so determined, provided that such reduced penalty is also paid within 30 days of the date of communication of such order.
3. If the duty amount gets modified in any appellate proceeding, then the penalty amount mentioned in (2) (a) above and interest shall also stand modified accordingly. Where the duty amount is increased in the appellate proceedings, the benefit of reduced penalty as specified shall be admissible if duty, interest and reduced penalty in relation to such increased amount is paid within 30 days of such appellate order.

Answer:

- (c) Finance Act provides that the following mentioned persons shall not be eligible for compounding under section 9A(2):
1. Person who has been allowed to compound once in respect of any of the offences under the provisions of section 9(1).
 2. A Person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.
 3. A person who has been allowed to compound once in respect of any offence under this chapter for goods of value exceeding rupees one crore.
 4. A person who has been convicted by the court under this Act or after 30.12.2005.

2010 - June [3] (c) State the cases under which the Central Government is empowered under Rule 12CC of the Central Excise Rules, 2002 to withdraw facilities or impose restrictions on a manufacturer, first stage or second stage dealer, or an exporter. **(6 marks)**

Answer:

Notification issued specifies that member (Central Excise); CBEC may order for withdrawal of facilities or impose restrictions where a manufacturer, first stage dealer, or an exporter including a merchant export is *prima facie* found to be knowingly involved in any of the following:

- (a) Removal of goods without the cover of an invoice and without payment of duty.
- (b) Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price is received by him or on his behalf but not accounted for in the books of account.
- (c) Taking of CENVAT credit without the receipt of goods specified in the document based on which the said credit has been taken.
- (d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine.
- (e) Issue of excise duty invoice without delivery of goods specified in the said invoice.
- (f) Claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine.
- (g) Removal of inputs as such on which CENVAT credit has been taken without paying an amount equal to credit availed on such inputs in term of CENVAT Credit Rules, 2004.

2010 - Dec [1] {C} (b) Answer the following questions in brief:

- (i) What is a Large Tax Payer Unit? **(2 marks)**
- (iii) Is *mens rea* essential for imposing penalty under Central Excise Act/Customs Act? **(2 marks)**

Answer:

- (i) Large Tax Payer unit means a person who has one or more registered premises under CEA and satisfies conditions notified by the Central Government. It has been introduced for large payers of direct and indirect taxes. Eg. ₹ 5 crores or more as excise duty/service tax, Advance tax under income tax law of ₹ 10 crores etc. Such units get all facilities for payments, filing of returns, assessments, rebates etc. at one place. It will be a single window clearance for all Central Excise matters. This scheme shall not apply to manufacturer of tobacco and Pan Masala.
- (iii) *Mens rea* is not essential; penalty is leviable for violation of rules. It does not matter whether it is a genuine mistake, lack of knowledge, negligence or intentional violation of rules.

2011 - June [3] (b) Briefly explain the following with reference to Central Excise Laws:

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- (i) Is it compulsory to pay tax through PLA after forfeiture of facility of payment by installments ? **(2 marks)**
- (ii) Can an assessee claim refund of money deposited in PLA, when there is a provision of unjust enrichment ? **(2 marks)**
- (c) (i)** An exemption notification under Central Excise Act was issued on 22nd December, 2016. The same was published in Official Gazette on 2nd January, 2017. From which date the notification is effective ? **(1 mark)**

Answer:

- (b) (i)** Yes it is compulsory to pay tax through PLA after forfeiture of facility of payment by installments; the assessee will have to pay through clearance of goods and cannot utilize cenvat credit for payment of duty for that period.
- (ii) Money deposited in PLA is only for payment of duty. The assessee is required to make debit entry in PLA on monthly basis. So the money belongs to the assessee. He can get refund of duty at any time. There is no time limit for such refund and no unjust enrichment is applicable to such deposits.

Answer:

- (c) (i)** The effective date of exemption notification is 22nd December, 2016 that is the date of issue & not the date of publication

2011 - Dec [1] {C} (b) Provide brief answers (not exceeding three or four sentences) for the following:

- (i) State the type of goods and the situations in which packing, re-packing, etc. constitutes deemed manufacture under the Central Excise Act, 1944. **(2 marks)**
- (ii) Briefly discuss about excise duty based on production capacity. **(2 marks)**

Answer:

- (i)** In respect of goods specified in the 3rd Schedule to Central Excise Act, any process which involves packing or re-packing of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on the container or adoption of any other treatment on the goods to render the product marketable to consumer will be manufacture.

(ii) Section 3A of Central Excise Act provide for levy and collection of duty of excise on notified goods on the basis of annual production capacity. Sec. 3A has an overriding effect over Sec. 3.

Central Government may to safeguard the impress of revenue specify the goods by notification in the Official Gazette in respect of which duty shall be levied on basis of production capacity of factory.

For Example: Pan Masala Gutkha, Branded manufactured tobacco, chewing tobacco etc. are notified u/s 3A.

2011 - Dec [6] (c) State the excise duty exemptions conferred to SSI units. (7 marks)

Answer :

Excise Duty Exemption under Central Excise Act

- Any unit whose turnover does not exceed ₹ 400 lakh in preceding financial year is entitled to SSI exemption in the current year.
- SSI unit are eligible for exemption from duty under Notification No. 8/2003.
- Notification No. 8/2003 provides for fees exemption of duty for
 - First aggregate value of clearance for home consumption upto ₹ 150 lakh of specified goods.
 - Act clearance of the specified intermediate goods which are used for further manufacture of any specified final product within the factory.
- Clearance for home consumption shall include clearance for export to Nepal.
- Notification No. 28/2016 dt. 26.7.2016 provide for SSI exemption for Jewellery manufacturer. It provides that jewellery manufacturer will be eligible for exemption from excise duty on 1st clearance upto ₹ 10 crores during Financial Year if aggregate domestic clearance in preceding Financial Year did not exceed ₹ 15 crores.
- SSI units manufacturing goods under brand name of others are not eligible for exemption unless the goods are manufacture in rural area.
- Specified goods bearing brand name or Trade name of Khadi & Village industry commission, state small industries corporation, national small industries corporation are considered for computing limit of ₹ 150 lakh/ 400 lakh.

2011 - Dec [7] (a) Who are the persons not eligible for compounding of offence as per the provisions of the Central Excise Act, 1944? **(4 marks)**

Answer:

Persons not eligible for compounding under section 9A(2)

The following mentioned persons shall not be eligible for compounding under Section 9A(2):

1. Person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of section 9(1).
2. A person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. A person who has been allowed to compound once in respect of any offences under this Chapter for goods of value exceeding rupees one crore.
4. Persons who have been convicted by the court under this Act on or after 30.12.2005.

2011 - Dec [8] (c) Achdha Castings Ltd. is manufacturing a product (which is captively consumed) to produce a final product, which is exempt from the payment of excise duty.

The intermediary product is having a distinct market of its own. The company is of the view that since the final product is exempt, no duty liability arises on the intermediary product also. The Department objected to the view of the assessee.

Discuss, with reference to a decided case law, if any, whether the view of company is justified. **(4 marks)**

Answer:

The duty of excise is a duty on manufactured goods which are movable and marketable. If any manufactured goods satisfy the movability and marketability conditions, it will become dutiable even if it is an intermediate product and the final product is not dutiable. Therefore, in the given case the intermediate product would be dutiable even though it is captively consumed and the final product is not dutiable as it has a distinct market of its own and is marketable.

The Supreme Court's view in the case of *White Machine v CCE* was also the same. The Apex Court opined that since the final product was exempt the captively consumed goods would become dutiable if they satisfied the marketability condition. Therefore, the company's view is not justified and the Department's view is acceptable.

2012 - June [2] (b) Discuss whether remission of duty will be granted under the Central Excise Rules in the following cases:

- (i) Loss of molasses due to auto combustion in sugar factory.
- (ii) There was natural calamity in the factory, but the department was not intimated in time. **(1 + 1 = 2 marks)**

Answer:

- (i) Yes. Loss of molasses due to auto combustion in sugar factory is an unavoidable accident and hence, remission is admissible (*Shankar Sugar Mills v. CCE 1994 (71) ELT 753 (Tri)*).
- (ii) Yes. Remission cannot be denied simply because there was delay in giving intimation to the Department. If there is a natural calamity in the factory, procedural lapse cannot come in the way of benefit (*Bengal Chem. & Pharmaceuticals Ltd. v. CCE 2003 (158) ELT (327)*).

2012 - June [3] (a) Discuss whether assembling of machinery at customer's site will amount to manufacture under excise law, if such machinery is bolted and can be shifted? Will your answer be different if such machinery cannot be sold without dis-assembling? **(4 marks)**

Answer:

If machine (generating set in this case) is only bolted on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property - *Mallur Siddeswara Spinning Mills. v. CCE 2004 (166) ELT 154 (SC)*. This will amount to manufacture.

In *Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC)*, it was observed. 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied.' (Thus, if machine has to be disassembled for removal, it is not 'goods' and duty cannot be levied).

Following aspects are also clear:

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- (a) Duty cannot be levied on immovable property.
- (b) If plant is so embedded to earth that it is not possible to move it without dismantling, no duty can be levied
- (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable.
- (d) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

2012 - Dec [2] (a) Who are the persons not eligible for compounding of offence as per the provisions of the Central Excise Act, 1944? **(4 marks)**

Answer:

Please refer 2011 - Dec [7] (a) on page no. 24

2012 - Dec [4] (c) Do you agree with the statement that liability under the Central Excise Act is the first charge on the property of the defaulter?

(5 marks)

Answer:

Yes. I fully agree with the statement that liability under the Central Excise Act is the first charge on the property of the defaulter.

Section 11E enjoins that notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall, save as otherwise provided in section 326 of the Companies Act, 2013, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.

2012 - Dec [5] (c) Input cleared as such to a job worker on dt. 1st September 2016, was not returned by 1st March, 2017. How you will deal with such transaction under central excise provisions. Is it different if tools & jigs cleared to job worker in place of Inputs? **(2 marks)**

Answer:

Inputs removed to job worker must come back within 180 days. If inputs are not returned within 180 days, actual cenvat credit availed on inputs is immediately payable. In this situation if job work is not completed within 180

days, it is advisable to bring back the materials and send it again to job worker. In case of capital goods like tools and jigs sent to Job worker can be received back within 2 years.

2013 - June [4] (c) In the context of marketability test under excise law, test the veracity of the following statements:

- (i) A product with a low shelf life of 3-5 days does not fulfill the marketability test; **(2 marks)**
- (ii) Theoretical possibility of product being sold is not sufficient to establish the marketability of a product. **(2 marks)**

Answer:

- (i) The statement is incorrect. The Apex Court has ruled that short shelf-life of 3-5 days could not be equated with no shelf-life. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. It applies to foods, beverages, pharmaceutical drugs, chemicals and many other perishable items. Shelf-life of a product would not be relevant factor to test the marketability of a product unless it was shown that the product has absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.

Hence, product with the shelf life of 2 to 3 days was marketable and hence, excisable (*Nicholas Piramal India Ltd. v CCE 2010 (260) ELT 338 (SC)*).

- (ii) Theoretical possibility alone insufficient

The statement is correct.

It means to say that a product known in the market with a nomenclature is not sufficient for marketability unless for the said product there is a buyer to buy it.

Example: M/s X Ltd. Manufactured Double Textured Rubberized Fabric (i.e. upper lace of the shoe) and removed from the factory for job work, it has no marketability, because the said product known in the market with no buyer [*Bata India Ltd. v CCE 2010 (252) ELT 492 (SC)*].

2013 - Dec [2] (a) Explain whether the following items can be included in/excluded from the transaction value under section 4 of the Central Excise Act, 1944:

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- (i) Collection expenses incurred in respect of empty bottles for filling aerated waters from the premises of buyers to the manufacturer.
 - (ii) Delivery and collection charges of gas cylinders and collection of empty cylinders.
 - (iii) Interest, notional or real, accruing on deposits for sales return of gas cylinders as well as rentals.
 - (iv) Cash discount known at the time of clearance of goods, but not availed by the customers. **(5 marks)**
- (c) What is the procedure to be followed for export of goods free from taxes and duties? **(5 marks)****

Answer:

- (a)**
- (i) Transaction value includes any amount charged in addition to the price of the goods by reason of or in connection with the sale. Since collection expenses are incurred by reason of or in connection with the sale, it would be included in the transaction value.
 - (ii) CBEC has vide circular No.643/34/2002 dated 1.7.2002 clarified that delivery and collection charges of gas cylinders are by reason of or in connection with the sale of goods and therefore the same would be included in the transaction value.
 - (iii) The interest on advances taken from the customers would not be included in the assessable value, unless the receipt of such advance had no effect of depressing the wholesale price. *In VST Industries Ltd. vs. C.C. Ex. Hyderabad 1998 (97) ELT 395 (SC)* where interest free deposits were taken because of commercial consideration of covering the risk of credit sales, no special consideration flowing from the assessee to the buyer keeping the deposit was found and the Supreme Court held that notional interest cannot be included in the assessable value.
However in such case, the burden of proof lies on the Department to prove a nexus between the fact of advance taken and the depression in the value.
 - (iv) The transaction value is the price actually paid or payable for the goods. In the given situation as the case of cash discount had not been passed on to the customer, it will not be allowed as deduction.

Answer :

(c) Export procedure:

- (i) Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18 of Central Excise Rules, 2002.
- (ii) Excisable goods should be exported under cover of invoice and ARE-1 Form.
- (iii) Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue letter of undertaking.
- (iv) Export to Bhutan are required to be made on payment of excise duty.
- (v) EOU has to issue CT-3 Certificate for obtaining inputs without payment of excise duty.

2014 - June [1] Answer sub-divisions:

- (a)** An assessee submitted an application under section 32E of the Central Excise Act, 1944 to the Settlement Commission. Pointing out that the applicant had not made a true and full disclosure of its duty liability and the manner in which same was arrived at was also not correct, the Commission rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not prior to that. Is plea taken by the assessee, tenable in law? **(5 marks)**
- (c)** The assessee was running a fast-food restaurant in which “soft-serves” were dispensed through vending machines. Such softy ice-creams in fast food chain outlets contain just 5 per cent milk fat, whereas hardened ice-creams served as dessert must mandatorily contain more than 8 percent. According to the assessee, soft-serve will not fall in the definition of “ice-cream” as understood under the Prevention of Food Adulteration Act. Assume that while ice-creams attracted 16 percent excise duty, edible preparations not specified elsewhere enjoyed complete exemption. The assessee contended that it dealt with only the latter. Is such claim correct? **(5 marks)**

Answer:**(a) Correctness of order of the Settlement Commission**

The contention of the applicant is not correct.

The matter of the case is similar to the case of *Customs & Central Excise Settlement Commission v. Mars Therapeutics & Chemicals Ltd. 2008 (223) ELT 363 (HC)*.

The High Court held that the application made u/s 32E of the Central Excise Act, 1944 could be admitted and proceeded with, only when Settlement Commission is satisfied that

- the application has made true and full disclosure of the duty liability, and
- the manner in which the same was arrived at.

The High Court also clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at and the Settlement Commission will admit the application only when it is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at. Further, the object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all. It is not a forum to challenge the legality of the order passed under the provisions of the Act. The High Court opined that the view that the obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not before that, was devoid of merit.

Answer:**(c) Classification: Is softy classified as ice cream?**

The situation resembles the one considered by the *Apex Court in CCE vs. Connaught Plaza Restaurant P Ltd. 2012 (286) ELT 321 (SC)*.

In this case, the assessee - respondent was engaged in the business of selling burgers, nuggets, shakes, soft-serves, etc., through its fast food chain of restaurants, under the brand name McDonalds. According to the Supreme Court, the definition as of ice cream, as contained in the Prevention of Food Adulteration Act (PFA) should not be taken for excise purposes, since the object of enactment of PFA Act was different. The definition as given in PFA Act should not be mechanically applied for interpreting another Central legislation, having a different object. The

Supreme Court also held that marketing the product as “soft serve” will not make it a commercially different product from “ice cream”.

The Supreme Court rejected the argument that in matters relating to classification of a commodity, scientific or technical meaning should be preferred to common parlance meaning. In common parlance, soft serve will be understood only as ice cream.

The Supreme Court held that in the market, ice creams both hard and soft were known as ice creams, hence levied to excise duty as such i.e. at 16 per cent. Hence, the claim of the assessee is incorrect.

2014 - June [2] (a) Briefly discuss the Central Excise procedures to be followed by an EOU in respect of its DTA sales. **(5 marks)**

Answer:

Procedure for removal by 100% EOU to DTA [Rule 17]

- (i) **Invoice U/R 11:** Goods removed from a 100% EOU to DTA, shall be made under an Invoice specified in Rule 11.
- (ii) **Payment of duty:** Duty shall be paid before removal of goods by utilizing the CENVAT Credit or PLA Payment.
- (iii) **Maintenance of Records:** Unit shall maintain in Form AC1 details relating to Production, Description of Goods, Quantity Removed, and the Duty paid.
- (iv) **Monthly Return:** The unit shall submit a monthly return in Form ER 2 to the superintendent of Central Excise, in respect of Excisable Goods manufactured in, and receipt of Inputs and Capital Goods in, the unit.
- (v) **Time Limit:** Return shall be submitted within 10 days from the close of the month to which the return relates.

2014 - Dec [7] (a) Vaibhav Chemicals Ltd., are putting up a plant wherein two additives are to be added to the bitumen to improve its quality.

The Managing Director wants to know whether such process will be treated as manufacture under excise law.

As the Cost Accountant of the company, your views are solicited on the issue. Advise the Managing Director in an appropriate manner. **(5 marks)**

(b) Srinivas Surgiments Ltd., has received a huge order from a chain of hospitals for manufacture and supply of antiseptic cleansing solution, which will be used for degerming or scrubbing the skin of the patients

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prior to a surgical operation.

The company wants to know whether the aforesaid solution can be classified as a “medicament” under excise law. Please guide them suitably. (5 marks)

Answer:

Improvement of quality using additives, whether amounts to manufacture. As the Cost Accountant of the company, I will draw the attention of the MD to the decision of the Apex Court in *CCE vs Oscar Chemical P Ltd.* (2012) 276 ELT 162 (SC). In this case, the Supreme Court had to consider an identical situation.

The Supreme Court pointed out that "Manufacture" could be said to have taken place, when there was transformation of raw materials into a new and different article having different identity, character and use.

The Court was of the opinion that it was a settled principle that a mere improvement in quality will not amount to manufacture.

Only when there is a change or series of changes to the original commodity takes place to such an extent that commercially, it can no longer remain as the original commodity that a manufacture can said to have taken place. The Court noted that in the impugned process, there was a mere improvement of quality of the bitumen and bitumen remained as bitumen only.

The Court further pointed that it was not specified as manufacture in Section 2(f) of the CE Act, 1944 or in Chapter notes of First Schedule to the Tariff Act.

Advice will be given on above lines to the Managing Director.

Answer:

(b) The Supreme Court dealt with an identical situation in *CCE vs Workhardt Life Sciences Ltd.* (2012) 271 ELT 299 (SC).

Facts of the Case:

Workhardt Life Sciences Ltd. was the manufacturer of Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub. The only difference between these two products was that Wokadine was a branded product whereas Povidone Iodine Cleansing Solution was a generic name.

The Revenue contended that the said products were not medicament in terms of Chapter Note 2(i) of the Tariff Act as it neither had “Prophylactic” nor “Therapeutic” usage. The Revenue said that in order to qualify as a medicament, the goods must be capable of curing or preventing some

disease or ailment. Therefore, the said products cannot be classified under Chapter Heading 3003 of Tariff Act. They submitted that the product in dispute, namely Povidone Iodine Solution or its patent and proprietary equivalent Wokadine surgical scrub, was essentially used as a medicated detergent.

The assessee stated that the Revenue, in their show cause notices, had admitted that the products in issue were antiseptic and used by surgeons for cleaning or de-germing their hands and scrubbing surface of skin of patient before operation. They further submitted that the products were medicament in which some carriers were added and therefore, it would fall under chapter sub-heading 3003 and not under chapter 34.

Point of Dispute:

The assessee's claim before the authorities and also before the Tribunal was that the aforesaid products were medicaments and, therefore, required to be classified under Chapter sub-heading 3003 of the Tariff, whereas the Revenue's stand was that the products in question are detergents and, therefore, to be classified under chapter subheading 3402.90.

Decision of the Case:

The Supreme Court observed that it is the specific case of the assessee that the products in question are primarily used for external treatment of the human-beings for the purpose of the prevention of the disease. This is not disputed by the Revenue. Revenue's stand is that since the products in question are primarily used as detergents/cleansing preparation, they cannot be brought under the definition of medicaments. Medicaments are products which can be used either for therapeutic or prophylactic usage. The Court said that since the product in question is basically and primarily used for the prophylactic uses, the Tribunal was justified in coming to a conclusion that the product was a medicament. The minuscule quantity of the prophylactic ingredient is not a relevant factor.

The Court said that the combined factor that requires to be taken note of, for the purpose the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put. In the instant case, it is not in dispute that this is used by the surgeons for the purpose of cleaning or de-germing their hands and scrubbing the surface of the skin of the patient that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in

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question can be safely classified as “medicament” which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residuary entry. Thus, on the basis of the above observation by the Court the Revenue’s appeal was rejected.

2015 - June [4] (c) Vasudha Automobiles Pvt Ltd., the assessee, assembled a machinery at its factory, to be used as testing equipment. There were clear disclosures in its financial statements, as well as in the Directors’ Report that the impugned machine was added as testing equipment. It was further stated by the assessee that such assembling was done to save precious foreign exchange, if a similar machine is to be imported.

The management seeks your advice as to whether such assembling will be regarded as manufacture for the purposes of excise duty.

Advise the assessee suitable, with the help of recent decisions. **(5 marks)**

Answer:

Assembling of machinery in factory for use as testing equipment:

The given situation is similar to the facts of the case in *Usha Rectifier Corpn. (i) Ltd. Vs. CCEx., 2011 (263) E.L. T. 655 (S.C.)*, decided by the Apex Court. The assessee-appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products. The appellant had stated in their balance sheet that the addition to the plant and machinery included testing equipments. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own.

The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it was clear that the machine assembled could be used as testing equipment. Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable. Hence, the Apex Court held that excise duty was payable on such testing equipments.

Advice should be given on the above lines to the management.

2015 - June [7] (a) A manufacturer's units were subjected to a search by the Excise Department. Thereafter, the manufacturer got his units registered a few days after the search. A consolidated return was filed for all the units subsequently, including for the period prior to the search. When proceedings were initiated by the Commissioner, a Settlement application was filed. The same was rejected by the Settlement Commission on the ground that the required conditions has not been fulfilled.

Is the rejection of the Settlement application justified in law? (5 marks)

Answer:

Rejection of application for settlement:

Section 32E(1) of the Central Excise Act lays down certain conditions to be fulfilled for entertaining an application for settlement with the Settlement Commission. One of the conditions is that the applicant has filed a return showing, inter alia, the production details of all units.

In the case of *Icon Industries Ltd. Vs. UOI (2012) 273 ELT 487 (del)*, the Delhi High Court had to consider an identical situation. The High Court pointed out these aspects:

- (i) Sec. 32E(1) of the Central Excise Act does not refer to rule 12 of the Central Excise Rules, 2002 under which ER1/ER 3 returns have been prescribed; however, the said returns can be deemed to be returns referred to section 32E(1), as these returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner. Hence, the concept of return has to be understood in the manner referred to in rule 12.
- (ii) Returns are to be filed on a monthly or quarterly basis. There is no provision for filing consolidated return for several periods. However, there is no ban for filing belated monthly/quarterly returns.
- (iii) Even if returns are filed belatedly after obtaining Central Excise Registration number, it will not be possible to indicate in any manner, leave alone in the prescribed manner, the duty paid.

The High Court hence held that the consolidated return filed by the applicant for all the units covering the pre-application period, will not serve the requirements of law and hence the Settlement Commission was justified in rejecting the application for settlement.

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2015 - June [9] (b) Latha Footwears Ltd., is a manufacturer of footwear. In the course of manufacture of the final product, it produces and captively uses a fabric called “double texturised fabric”, which is never marketed anywhere. The Department contends that this is a distinct and separate product and there is a theoretical possibility of it being marketable, and that hence excise duty is leviable. Is the contention of the Department justified in law? **(5 marks)**

(c) The assessee mistakenly paid higher excise duty in March, 2015, even though the same had been reduced by way of a notification. The buyer of the assessee however refused to pay the duty at higher rate and paid only at the correct/reduced rate and raised debit notes on the assessee for the difference. Based on this, the assessee applied for refund of excess duty paid.

Will the assessee succeed in getting the refund?

(3 marks)

Answer:

(b) Theoretical possibility of marketability is not sufficient to levy excise duty:

The given situation closely resembles the facts of the case before the Supreme Court in *Bata India Ltd. Vs. CCE 2010 (252) ELT 492 (SC)*.

For levy of excise duty, one of the conditions is that the product must be marketable. The Supreme Court opined that the question of marketability is one of fact and that there can be no generalization in this aspect.

The test of marketability for levy of duty on a product is that the product should be marketable in the condition in which it emerges.

Mere theoretical possibility of a product being marketable is not sufficient. There should be sufficient proof that the impugned product is commercially known. Theory and practice do not go together when to come to the question of marketability of a product.

According to the Apex Court, the burden of showing that the product was marketable is on the revenue. The intermediary product was hence held to be not dutiable. Thus, in the given situation also, excise duty is not leviable.

Answer:

(c) Refund of excise duty:

For deciding this issue, we can refer to the decision of the Karnataka High Court in **CCE Vs. Techno Rubber Industries P. Ltd. (2011) 272 ELT 19 (Kar)**.

The High Court opined that once the Department had received excise duty in excess, it was bound to refund the excess duty to the person making the excess payment.

Had the buyer made the excess payment, he would have been entitled to the refund of the excess money paid. Here the buyer refused to pay the excess money and issued debit note to the assessee for the difference amount. The Department was bound to refund the same to the assessee.

Applying this ratio, it can be concluded that the assessee will succeed in the refund claim.

2016 - June [5] (a) (ii) State the 'due date' of return under the Central Excise Act/Rules in respect of the following cases:

- (A) A manufacturing company not eligible for SSI concession.
- (B) Manufacturing company eligible for SSI concession even if it does not avail the concession.
- (C) Half yearly return, in the case of persons liable to pay service tax.
- (D) Quarterly return of CENVAT-able invoices issued by registered dealers.

(4 marks)

Answer:

- (A) **Monthly return in ER-1:** Must be filed on or before 10th of the following month.
- (B) **Quarterly return in ER-3:** On or before 10th of the next month following the quarter.
- (C) Within 25 days from the close of financial year or half year, as the case may be in ST - 3.
- (D) By 15th day of the following month after the quarter by registered dealers of CENVATable invoices issued.

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2016 - June [7] (a) (ii) Do you agree that the circulars issued by the Central Board of Excise and Customs (CBEC) contrary to the judgments of Supreme Court and High Courts are not binding on the authorities under the respective statutes? **(4 marks)**

Answer:

I do not agree with the Statement.

The Supreme Court in *Ratan Melting & Wire Industries Vs. CCE (2008) 231 ELT 22* has held that the Circulars and Instructions of the Board i.e. CBEC is binding in law on the authorities under respective statutes. However, when the Supreme Court or the High Court declares the law on the question arising for consideration it would not be appropriate for the court to direct that the circulars be given precedence and not the view expressed by the Courts. The CBEC in Circular No.1006 dated 21.09.2015 has instructed its officers not to follow the Board's Circular which are contrary to the judgments of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

2016 - Dec [3] (a) Sanvitha Medicos Pvt. Ltd., proposes to manufacture a skin ointment, which will be available in all stores and super markets, across the counter, without a prescription of a doctor or medical practitioner.

The company wishes to know whether the product will be classified as a cosmetic or medicament, for central excise purposes, merely on this ground. Advise the company suitably. **(8 marks)**

(b) (ii) Alpha Ltd. has awarded a turnkey contract to Beta Ltd. for erection, installation and commissioning of a Central Air Conditioning Plant. The Central Excise Department raises a demand for excise duty on Beta Ltd. in respect of the aforesaid installed plant.

Discuss whether such demand is justified in law.

(3 marks)

Answer:

(a) For classification of skin ointment as cosmetic or medicament availability of it in stores or super market is not relevant. The relevant thing for classification is the function of ointment i.e. whether it is used for cure or care.

For classification of skin ointment or cosmetic or medicament the Supreme Court in case of CCE vs. Ciens Laboratories has laid down following guidelines.

1. The relevant factor for deciding whether the product is to be treated as cosmetic or medicament its curative attributes is to be seen.
2. The product sold without prescription of medical practitioner does not mean that it is cosmetics because they can be treated as medicaments.
3. Prior to adjudicating upon whether a product is a medicament or not, it ought to be seen as to how do the people who actually use the product, understand it to be. If a product's primary function is "care" and not "cure", it is not a medicament. Medicinal products are used to treat or cure some medical condition whereas cosmetic products are used in enhancing or improving a person's appearance or beauty.
4. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients, even in small quantities, it to be treated as a medicament. Based upon the above observations, the Supreme Court held that presence of pharmaceutical ingredients in the cream (in the instant case the impugned cream had pharmaceutical content) showed that it was used for prophylactic and therapeutic purposes namely, for curing dry skin conditions of the human skin and was not primarily intended to protect the skin; therefore, the same was classifiable as a medicament.

Advice should be tendered on the above lines to the company.

- (b) (ii)
1. As per Sec 3 of Central Excise Act, 1944, Excise Duty shall get attracted on all excisable goods manufactured or produced in India.
 2. The term "Goods" represent all products which satisfy the following 2 conditions-
 - Movability at the time of creation of the product.
 - Marketability.
 3. The goods should be capable of being moved from one place to another without causing substantial damage.
In the given case, the product is Central Air Conditioning Plant. Though the individual components of such AC Plant are movable, product as such is not movable at the time of its

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creation. [CCE v. Viridi Brothers 2007 (207) ELT 321 (SC)]. In the given situation, Beta Ltd. is not liable for Excise Duty, as the product is not goods.

2017 - June [7] (b) Yamunna Assemblers are getting various components from customers. These were assembled by them to make water purification plant. This was done on job work basis only. Yamuna Assemblers received notice from excise department to pay excise duty on the plant. Advise the assessee with the help of case law, if any. **(8 marks)**

PRACTICAL QUESTIONS

2007 - Dec [6] (a) Big Ltd., supplies raw material to a job worker Small Ltd. After completing the job-work, the finished product of 5,000 packets are returned by Small Ltd. to Big Ltd., putting the retail sale price as ₹20 on each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central excise law from the following details:* Cost of Raw material supplied ₹ 30,000/-* Job worker's charges including profit ₹10,000/-* Transportation charges for sending the raw material to the job worker ₹3,000/-* Transportation charges for returning the finished packets to Big Ltd. ₹ 4,000/- **(6 marks)**

Answer:

Provisions of section 4A are overriding provisions i.e. if a product is covered under provisions of section 4A, valuation will be on the basis of provisions of section 4A and not on the basis of material cost plus job charges. Hence, in this case assessable value will be ₹12 per piece after allowing 40% abatement from MRP. Hence, assessable value for 5,000 packets is ₹ 60,000.

2008 - June [5] (b) Deepak Bazar Ltd., a trading company, supplies fabrics to an independent processor. The cost of fabrics supplied is ₹ 8,150. The job worker charges ₹ 4,500 which includes ₹ 3,500 as processing charges and ₹ 1,000 as its profit. Deepak Bazar Ltd. sells the goods from the factory of job worker at ₹ 18,000. The rate of excise duty is 12.5%. Determine the

assessable value of the goods.

(8 marks)

Answer:

Determination of assessable value of goods:

With effect from 1.4.2007, rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rule, 2000 to provide for valuation in case of job-work. The rule states that where the excisable goods are produced or manufactured by a job-worker, on behalf of a person, then in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer.

2008 - Dec [1] {C} (a) Provide brief answer to the following:

- (iii) Vasudha Spinners Ltd., supplies yarn to a job worker for dyeing. The cost of yarn is ₹ 2,000. Dyeing charges are ₹ 300/. After receipt of dyed yarn from job worker, the finished product is sold at ₹ 2,500/ excluding VAT. The rate of duty is 12.5%. Find out the assessable value and duty payable.

(2 marks)

Answer:

AV is the price at which the assessee sells the end product i.e. ₹ 2,500
Excise Duty is 2,500@ 12.5% 312.50

2008 - Dec [7] (a) Hema Pipes Ltd. a manufacturer of PVC Pipes, removed goods from its factory from 01.06.2016 onwards after payment of excise duty under protest. Raghu Pipes, a sole trader and a customer of Hema Pipes Ltd. had purchased goods on 15.06.2016; in the sale bill issued to Raghu Pipes excise duty was charged. Hema Pipes Ltd., have appealed against the levy of excise duty on 25.06.2016. Hema Pipes Ltd. informs Raghu Pipes about the factum of their having filed appeal. On the same day, Raghu Pipes seek you advice relating to filing of refund claim and want to know whether the same can be filed after 3 months, by which time the appeal of Hema Pipes Ltd., will be decided. Advise Raghu Pipes as to the period of limitation and documents to be adduced in proof relating to the refund claim.

(4 marks)

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Raghu Pipes should file the refund claim within one year. The extended period for filing the return refund claim is available only to manufacturer who has remitted excise duty under protest and not to be customer purchasing from the manufacturer, as was held by the Supreme Court in CCE v Allied Photographic. If the refund claim is filed beyond one year the same will be rejected on the grounds that it is time barred. In the refund claim application Raghu Pipes should adduce evidence to the effect that they have not passed on the incidence of duty to their buyers. The burden of proof is on them. If adequate proof is not furnished, the refund claim is liable to be rejected on the grounds of unjust enrichment.

2009 - June [4] (a) Ms. Akshaya Processors Ltd. supplies raw material to a job worker B. Ltd. After completing the job, work, the finished products of 5,000 packets are returned to M/s. Akshaya Processors Ltd., putting the retail price as ₹20 in each packet. The product in the packet is covered under MRP provisions and 40% abatement is available on it. Determine the assessable value under Central Excise law from the following details:

Cost of raw material supplied	₹ 30,000
Payment made to job workers including profit	₹ 10,000
Transportation charges for sending the raw material to B.Ltd.	₹ 5,000
Transportation charges for returning the finished products factory	₹ 5,000
Who is liable to pay excise duty in the above situation ?	(5 marks)

Answer:

As per new rule 10 A of the Central Valuation (Determination of Price of Excisable Goods) Rule 2000 where the goods are manufactured by a job worker on behalf of a person excise duty would be based on sale value at which the principal manufacturer sells the goods. But if goods are covered under section 4A i.e. MRP basis valuation those provisions would apply. Section 4A i.e. MRP basis valuation provisions are overriding over section. In the present case assessable value under central excise is as follows:

Maximum Retail Price per packet = ₹ 20

Since abatement is available @40%, the net value of each packet is ₹12.

Assessable value for 5,000 packets = ₹ 12*5000 = ₹ 60,000

Where the job work results in manufacture the liability to pay excise duty is on job worker. So in this case B Ltd. is liable.

2009 - June [5] (a) M/s Khusub, a SSI unit can avail full benefit of exemption from payment of duty up to turnover of ₹ 150 lakhs and exercised the option to get the benefit of exemption for the year 2016-17 on 15th August, 2016. You are required to answer the following:

- (i) To get the exemption benefit, the turnover of what will be taken?
- (ii) What will happen if 5(a) M/s. Khusub has more than one factory?
- (iii) M/s Khusub cleared goods of ₹ 90 lakhs up to 15th August, 2016, On 16th August, 2016, they cleared goods and issued invoice of ₹ 100 lakhs. Can they exemption of balance amount ₹ 60 lakh as a part of invoice? **(2 + 1 + 2 = 5 marks)**

Answer:

- (i) Turnover from 1.4.2016 will be considered.
- (ii) Turnover of all factories is to be clubbed together for calculating SSI exemption limit of ₹ 150 lakhs.
- (iii) Yes, exemption of the balance amount of ₹ 60 lakhs will be available.

2009 - Dec [5] (c) The value of clearance from four units of Janak Corporation Limited (JCL) during 2016-17 are as follows:

<i>Units situated at</i>	<i>Value of clearances (₹ in lakhs)</i>
Noida	110
Kolkata	90
Salem	120
Chennai	140

JCL sought your advice as a consultant whether benefit under Excise Notification No. 8/2003 shall be available to JCL during 2017-18. You are required to indicate your advice in this context. **(4 marks)**

Answer:

No the benefit under Excise Notification No.8/2003 shall not be available to JCL during the year. In order to claim benefit of exemption Notification No. 8/2003, the total turnover of a unit should not exceed ₹ 400 in the preceding year. The turnover of all the 4 unit shall be clubbed. The aggregate value of clearance during last year is $110+90+120+140 = ₹ 460$ lakhs.

2009 - Dec [8] (a) M/s. XYZ Ltd. sold machinery to Mr. K at a price of ₹ 5 lakhs on 15th June, 2015 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 10% on the date of removal. Mr. K refused to take delivery of the machine when it reached his destination. In the meantime, M/s. XYZ Ltd. increased the prices of the similar type of machinery to ₹ 6 lakhs with effect from 16th June, 2016. The machinery as

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refused by Mr. K. has been sold on 20th June 2016 to Mr. L at the revised price of ₹ 6 lakhs. The excise duty including education cess is 12.5% applicable with effect from 10th June, 2016.

Explain the following with reasons:

- (i) What is the value to be taken as assessable value? **(2 marks)**
- (ii) What is the rate of excise duty applicable and duty payable on above transaction? **(2 marks)**
- (iii) The Central Excise Officer is demanding duty on the price of ₹ 6 lakhs at the time of sale to Mr. L. Is he right in his approach ? **(2 marks)**
- (iv) Does cost of production have any bearing on the assessable value? **(2 marks)**

Answer:

- (i) Goods are to be assessed at the time of removal from the assessee's factory. Price and excise duty as on date of removal from factory is relevant for excise valuation. Subsequent price change does not affect assessable value or rate of duty, therefore ₹ 5 lakhs will be the assessable value.
- (ii) Price and excise duty as on date of removal from factory is relevant for excise valuation. Subsequent price change does not affect assessable value or rate of duty, hence the rate of duty is 10% and duty payable = ₹ 50,000 (10% on 5,00,000)
- (iii) Price and excise duty as on date of removal from factory is relevant for excise valuation. Subsequent price change does not affect assessable value or rate of duty; hence Central Excise Officer cannot demand the duty on ₹ 6 lakhs at the time of sale.
- (iv) Cost of production is not relevant for assessable value. Central Excise Valuation can be below cost. However, if sales are below cost, doubt about genuineness of price can be raised by Excise Officer.

2010 - June [2] (b) LMN Aluminum Ltd. is engage in manufacture of aluminium sheets and allied products. The assessee noticed some difference at the time of physical verification of stock, as compared to book records, due to several reasons like rain seepage, weightment differences, accounting method employed, etc. The assessee applied under rule 21 of the Central Excise Rules, 2002, seeking remission of duty. This claim is resisted by the Department on the ground that the reasons for the differences were neither due to natural causes, nor due to unavoidable accident. The assessee's request was hence turned down, though there was

clear evidence to the effect that the assessee has suffered loss of stock. Is the action of the Department justified? Advise the assessee suitably.

(6 marks)

Answer:

No the action of the department is not justified.

2010 - June [3] (a) VSK Motors manufactures Light Motor Vehicles (LMV). The practice followed is that the chassis of the LCV is sent to Nathan Ltd. for building the body as per design and specifications furnished. The LCV chassis is not sold but is transferred after payment of excise duty on stock transfer basis. Nathan Ltd. avails CENVAT credit on the excise duty on chassis; after completing the body building, Nathan Ltd. discharges the duty on the assessable value comprising the value of chassis and the job charges.

After receipt of the body-built LMV from Nathan Ltd. VSK Motors sells the same at a higher price.

You are required to examine whether the practice followed is correct in terms of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

(4 marks)

Answer:

As per rule 10A (ii) of the Central Valuation (Determination of Price of Excisable Goods) Rule 2000 the assessable value for the purpose of charging central excise duty, in cases where the job-worker transfers the excisable goods to the Depot/ sale official/distributors and/or any point of sale the principal manufacturer shall be the transaction value on which goods are sold by the principal manufacturer from such a place. Accordingly after the insertion of Rule 10A, the practice of discharging the duty on cost construction method by Nathan Ltd. Is not legally correct. It also clarifies that wherever goods are manufactured by a person on job work basis on behalf of a principal then value for the purpose of payment of excise duty may be determined in terms of the provisions of Rule 10A of the Central Valuation (Determination of Price of Excisable Goods) Rule 2000 subject to fulfillment of the requirements of the said rule. Thus, Nathan Ltd should pay duty on the transaction value on which vehicles are sold by VSK Motors from its depot.

2011 - June [3] (a) An excisable product is covered under provision of the Standards of Weights & Measures Act, 1976 and falls in the category of

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specified goods subject to excise duty on the basis of retail price. From the particulars compute (rounded to nearest rupee).

(i) Assessable value. **(5 marks)**

(ii) Excise duty & Cess payable. **(4 marks)**

MRP printed on the package is ₹ 10,640. The price is inclusive of excise duty @ 12.5%. The product is eligible for an abatement of 38%.

Answer:

(i) And (ii) Assessable value and duty payable

For levying Central Excise duty on the basis of MRP value under section 4A of the Central Excise Act works out as follows:

MRP printed on the package = ₹ 10,640 per unit

Excise duty is 12.5% on assessable value

Education and Secondary & Higher Education Cess is 2% and 1% of Central Excise Duty

Assessable Value = (100% - 38%) = 62% of MRP

Central Excise duty = 12.5% * 62% = 0.0775

MRP for section 4A = $\frac{₹ 10,640}{1.0775}$ = ₹ 9,875

Abatement permitted @ 38% = ₹ 2,962

Assessable value = ₹ 6,903

Excise Duty @ 12.5% = ₹ 863

2011 - Dec [3] (b) Anantha, the assessee sold certain goods to Govinda Co. Ltd. for ₹ 17,000 on 29.02.2017. The buyer is a related person as defined under section 4(3)(b) of the Central Excise Act, 1944. The buyer did not sell the goods but used it as intermediary product. The cost of production of the goods was ₹ 16,000. What should be the assessable value?

What should be the assessable value, if the goods were sold to an unrelated person for ₹ 20,000, who also used it as intermediary product?

You may assume that the price charged from the buyer is excluding excise duty and other taxes. **(4 marks)**

Answer:

Excise valuation of goods sold to related persons

The proviso to rule 9 of the Central Excise Valuation (Determination of Excisable Goods) Rules, 2000 lays down that in a case where the related person does not sell the goods but uses or consumes such goods in the

production or manufacture of articles, the value thereof shall be determined in the manner specified in rule 8.

Rule 8 provides that where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten percent of the cost of production or manufacture of such goods.

Therefore, when the goods are sold to a related person, the assessable value shall be 110% of ₹ 16,000 (₹ 16,000 + ₹ 1,600) i.e., ₹ 17,600.

However, when the goods are sold to unrelated buyer, the assessable value will be ₹ 20,000.

2011 - Dec [4] (a) Johar Engineering Industries are selling a component for gross price of ₹ 80 per unit. The price includes packing charges of ₹ 2, loading charges within the factory of ₹ 1, excise duty @ 12.5% and State Vat @ 5%. Calculate excise duty and Vat payable per unit. **(4 marks)**

Answer:

Let Assessable value = Y

Excise Duty @ 12.5% = 0.125 x Y

Sub Total = 1.125 x Y

Add: VAT@5% = 0.05625 x Y

Total Price = 1.18125 x Y

Now,

1.18125 x Y = 80

Y = 67.72

Excise duty @12.5% of Y = 8.47

Sub Total = 76.19

Add: VAT@5% of 76.196 = 3.81

Total = 80

2012 - June [8] (b) Y & Co. is a small scale Unit, eligible for exemption in terms of Notification No. 8/2003 - CE dated 1.3.2003 for the year 2015-16. It provides the following particulars with regard to the clearances of goods effected during the said year:

Aggregate

₹

(in lakhs)

Value of domestic clearance of goods with own brand name 120

Value of clearance of goods with the brand name of others 100

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(including ₹ 30 lakh in respect of goods manufactured in rural area)

Value of clearances for exports 50

Value of clearances for captive consumption 40

Value of clearances of exempted goods 20

(i) Determine the Excisable turnover and excise duty payable.

(4 + 2 = 6 marks)

(ii) Explain in detail, the reasons in support of exclusion or inclusion in computing the turnover. **(3 marks)**

Answer:

Computation of excisable turnover and excise duty payable during the year 2016-17:

Particulars	₹ In lakh
Turnover to be excluded /considered separately:	
Value of clearances for export	50
Value of clearances for captive consumption:	40
Value of clearances for exempted goods:	20
Value of domestic clearance of goods with brand name of other (exceeding goods manufactured in rural area);	70
Turnover to be included:	
Value of domestic clearances with own brand name:	120
Value of clearance of goods with brand name of others manufactured in rural area:	30
Total	150

Tax liability	
On 1st clearance of 150 lakh duty is	Nil
On clearance with brand name of others worth 70 lakh (excluding rural area clearance) duty @ 12.5%	8,75,000

(ii) Reasons along relevant provisions in Excise Law in support of inclusion and exclusion from computing turnover are given below.

- As per Notification No. 8/2003 CE dated 01.03.2003, export clearance, captive, consumption and exempted clearance are not

- included in determining the limit of first ₹ 150 lakh for SSI exemption.
2. As per Notification No. 8/2003 CE dated 01.03.2003, the clearance with the brand name of others which are ineligible for SSI exemption has to be excluded while determining the limit of ₹ 150 lakh. However, clearance with the brand name of others manufactured in rural area are eligible for SSI exemption and hence, such clearances are included while determining the limit of ₹ 150 lakh.
 3. Export clearance, captive consumption and exempted clearances are exempted from excise duty. Thus, duty will be payable only in respect of the goods manufactured with brand name of others. (excluding rural area clearance).

2012 - Dec [6] (b) M/S White Cement Ltd. is a manufacturer of white cement. They repaired their worn-out machineries/parts of the cement manufacturing plant at its workshop such as damaged rollers, shaft etc with the help of the welding electrodes, mild steel cutting tools, Ms Angle, Ms Chenel, Ms Beam etc. In this process of repair, Ms Scrap & Iron Scraps were generated. M/S White Cement Ltd. cleared their metal scrap and waste, without paying any excise duty the department has issued a show cause notice demanding duty on said waste contending that the process of generation of scrap and waste amount to manufacture in terms of section 2(f) on Central Excise Act. M/s White Cement Ltd. approached you for an opinion on sustainability of the show cause notice under Central Excise Law. PI Advice. **(4 marks)**

Answer:

In the present case of M/S White Cement Ltd, the show cause notice was issued by Central Excise Departments not sustainable in law. As per Section 2(f) of Central Excise Act which includes any process incidental or ancillary to the completion of the manufactured product. Any process can be a process in manufacture or process in relation to manufacture of the end product which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means process which is so integrally connected to the manufacturing of the end product without which the manufacture of end product would be impossible commercially.

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In the present case of repair of machines where MS Scrap & Iron Scrap arise has no contribution or effect on manufacturing process of the end product that is cement. So it cannot be called as a part of manufacturing activity in relation to end product. MS Scrap & Iron Scrap cannot be said to be by product of the final product & does not amount to manufacturing. A similar issue was decided by *Hon'ble Apex Court in case of Grasim Industries Ltd. V Union of India.*

2012 - Dec [7] (a) M/s Aurobind Ltd. is a small scale Industrial Unit which is producing glass fibre an excisable Product. As per financial statement for the year 2016-17, it shows a gross sales turnover of ₹ 205.10 lakhs inclusive of excise Duty & VAT. There Product glass fibre attract Duty @ 12.5% and VAT @ 1%. It may be noted that for the year 2015-16, the taxable clearance of M/s Aurobind Ltd. SSI Unit was ₹ 160.00 lakhs. Please calculate the excise duty liability under Notification No. 8/2003 dt. 01.03.2003 as the gross sales turnover ₹ 205.10 lakhs is eligible for examination. **(5 marks)**

Answer:

Particulars	Amount (₹)
Gross Sales turnover including ED@ 12.5% and VAT@ 1%	2,05,10,000
Upto ₹ 150 lacs Clearance: Rate of Excise Duty	Nil
Upto ₹ 150 lacs Clearance: Rate of VAT	1%
VAT on 1st ₹ 150 lacs Clearance	1,50,000
Balance Sales including VAT	53,60,000
VAT (53,60,000 × 1/101)	53,069
Sales on which Excise Duty leviable (53,60,000 - 53,069)	53,06,931
Excise Duty (53,06,931×12.5/112.5)	5,89,659

2013 - June [2] (c) M/s. Akash Ltd. manufactured an Intermediate Product 'A' using the raw material 'X' on 28th Feb., 2017. Product 'A' is movable, marketable and excisable. Intermediate Product 'A' is issued for captive consumption to manufacture Product 'B' on dt. 02.03.2017. Product 'B' was manufactured on dated 05.03.2017 and is exempt from duty. The value of product 'A' is ₹ 15 lakhs and product 'B' is ₹ 18 lakhs. The rate of excise duty

on product 'A' on dated 28.02.2017, dated 02.03.2017 and on dated 05.03.2017 was 5%, 6% and 10% respectively. Explain in detail:

- (i) Whether any Excise Duty is payable by M/s. Akash Ltd. ? If yes, on which product? **(2 marks)**
- (ii) Is it required to issue invoice for intermediate product 'A'? **(1 mark)**
- (iii) Is there any VAT applicable on Captive Consumption? **(1 mark)**
- (iv) What is the date of removal of intermediate product 'A' for Captive Consumption? **(2 marks)**
- (v) What is the excise duty payable? **(1 mark)**

Answer:

- (i) Product A is movable, marketable & excisable. If excise duty is payable on final product, then excise duty is not payable on intermediate product used in manufacture of such final product. Intermediate product A is used for manufacture of Product B which is exempted from duty as per notification. So, Excise Duty is payable by M/s Akash Ltd. on Product A only.
- (ii) Invoice is required for removal of excisable goods if it is dutiable, even for captive consumption. So it is required to issue invoice for intermediate product A, as it is excisable.
- (iii) Captive Consumption does not mean sale. Hence, captive consumption of product A is not covered under VAT.
- (iv) As per rule 5 of Central Excise Rules 2002, in case of captive consumption, the date of issue of intermediate product for use within factory is deemed to be the date of removal. So, in this case the intermediate product A was issued for captive consumption for manufacture of product B on date 2nd March 2017, which is to be treated as date of removal.
- (v) The excise duty payable is as follows:
The Rate of duty applicable on the deemed date of removal i.e., on 2nd March, 2017 is 6%.
Duty payable is ₹ 15 lakh × 6% = ₹ 90,000.

2013 - June [4] (a) Determine the transaction value and the excise duty payable from the following information:

- (i) Total invoice price is ₹ 36,000
- (ii) The invoice price includes the following:
 - (a) Sales Tax = ₹ 2,000

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- (b) Surcharge on ST = ₹ 200
 (c) Octroi = ₹ 200
 (d) Insurance from factory to depot = ₹ 200
 (e) Freight from factory to depot = ₹ 900
 (f) Rate of Basic excise duty = 12.5% advalorem **(5 marks)**

Answer:

Determination of transaction value

It is assumed that the Invoice price of ₹ 36,000 is depot price. Hence, deduction of Insurance and Transport charges from factory to depot will not be available.

Particulars	(₹)	(₹)
Invoice Price		36,000
(Less) Sales tax	2,000	
Surcharge on ST	200	
Octroi	200	(2,400)
Net price excluding taxes on final product (but inclusive of excise duty)		33,600

Hence, duty payable is as follows:

$$\text{Duty payable} = = \frac{33,600 \times 12.5}{112.5} = 3,733$$

Assessable Value for Excise duty = 33,600 – 3,733 = 29,867.

2013 - Dec [1] (a) Techno Pvt. Ltd. manufactures microwave ovens of 15 litres capacity. The following dispatches were made from its factory in Nagpur on 29-12-2016:

- 10 units were sold to a customer in Delhi at an ex-factory agreed sale price of ₹ 15,000 each.
- 100 units were sent to its depot in Chennai. As per the price list of the company in respect of the Chennai depot valid for the month of December, 2016, the per unit price was ₹ 15,750. 5 units had been sold from Chennai depot on 28-12-2016 at the aforesaid ex-depot price of ₹ 15,750 each.
- 50 units were sent to its other factory in Indore for fitment of further

attachments and subsequent sale to various customers. The cost of production of the microwave ovens (worked out as per CAS-4) was ₹ 12,000 each.

With effect from 01-01-2016, the ex-factory price was revised to ₹ 15,500 each and the ex-depot price of Chennai depot was revised to ₹ 16,500 each. From the same date the rate of Central Excise duty on microwave ovens was increased to 12% from 10%. All the above dispatches reached their destinations after 01-01-2017. Accordingly the ovens sent to Chennai depot were sold to customers at the revised price of ₹ 16,500 each.

Calculate the excise duty payable by the Nagpur factory of Techno Pvt. Ltd. on the above transactions along with suitable explanations on the basis of calculation. Ignore application cess and Cenvat credit.

(5 marks)

- (b)** A is a manufacturer of weighing machines. Its value of clearances is above the exemption limit. During February, 2017, A obtained a large order for ₹ 50 lacs from a customer X. Since it did not have facilities in its factory for executing the order, A outsourced the entire job to a job worker B. For this purpose, it was arranged that A would instruct the suppliers of all raw materials in respect of X's order to send them directly to B's factory. B would manufacture the completed weighing machines in its factory and dispatch them directly to X on payment of appropriate excise duty as applicable. The order was duly executed within February, 2017.

For executing the above order, the following transactions took place during February, 2017:

Raw materials supplied to B worth ₹ 30 lacs.

Processing charges charged by B from A (including profit margin)—₹ 10 lacs.

Excise duty rate on the raw materials and the finished goods is 10% (ignore cess).

Assuming that the above were the only transactions carried out by B during the month, calculate the excise duty payable by B for February, 2016 along with suitable explanations on the basis of calculation.

Ignore opening balance of Cenvat credit and Education Cess.

(5 marks)

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- (c) (i) Excel Ltd. started business on 01-04-2016. Its clearances during the year 2016-17 were ₹ 350 lacs which include exports of ₹ 200 lacs (including export of ₹ 150 lacs to Bhutan) and sales ₹ 100 lacs to 100% EOU. Excel Ltd. (which fulfills all other conditions of small scale exemption as required under Notification 8/2003-CE dated 01-03-2003), is of the view that it is not liable to pay any excise duty on its clearances in the financial year 2016-17 since it would opt for the aforesaid exemption and that the value of its clearances during the said year is below the exemption limit. Is the view taken by Excel Ltd. correct? **(3 marks)**
- (ii) The Commissioner (Appeals) has passed an order confirming denial of an export rebate claim of ₹ 60 lacs. What is the appellate remedy available to the assessee? **(2 marks)**

Answer :**(a) Excise duty payable by Nagpur factory of Techno Pvt. Ltd.**

Particulars	(₹)
Ex-factory sale to customers in Delhi: ₹ 15,000 x 10 = ₹ 1,50,000 @10%	15,000
Transfer to Chennai Depot: ₹ 15,750 x 100 = ₹ 15,75,000 @ 10%	1,57,500
Transfer to Indore factory; ₹ [(12,000 x 50) x 110%] = ₹ 6,60,000 @10%	66,000
Total Duty Payable	2,38,500

Notes:

- As per Rule 5 of the Central Excise Rules, 2002, the rate of duty and assessable value of final products shall be the rate and value in force as on the date of removal from the factory. Any subsequent change in rate or value shall not be relevant. Hence, the increase in rate of duty and value w.e.f. 01-01-2014 shall not have any effect on any of the removals, since it is subsequent to the date of removal from the factory.
- As per Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, goods transferred to depots are to be valued at the price prevailing at the depot on or nearest to the date of removal from factory. Accordingly, the assessable value for depot transfer has been taken at ₹ 15,750 each.

3. As per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the assessable value of goods consumed captively (including inter-factory transfers within the same organization) shall be 110% of the cost of production or manufacture of such goods. The value of goods transferred to Indore factory has been calculated accordingly.

Answer:

(b) Excise duty payable by B for February 2017

Particulars	(₹)
Value of goods cleared as job-worker for A: ₹50 lacs @ 10%	5,00,000
Less: Cenvat credit on raw materials: ₹30 lacs @ 10%	3,00,000
Net duty payable	2,00,000

Notes:

- As per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rule, 2000, where a principal manufacturer gets goods manufactured by a job worker on his behalf and sells those goods ex the job worker's factory, the assessable value of such goods shall be the price at which the principal manufacturer sells such goods to its customer. Since A' sale price to X is ₹ 50 lacs, the goods in this case has been valued at ₹ 50 lacs irrespective of its intrinsic value comprising value of raw materials and processing charges.
- Cenvat credit on raw materials is available to B even if it has not purchased them, so long as it is supported by excise invoices from suppliers mentioning B as the consignee.

Answer:

- (c) (i) As per Notification No. 8/2003-CE dated 01-03-2003 (As amended) exemption as small scale industry is available up to first clearance of ₹150 lacs during a year, provided that the value of clearances during the previous financial year is ₹ 400 lacs or below. While calculating the limit of ₹ 150 lacs, the value of exports (except to Bhutan) and supplies to 100% EOU are to be excluded.

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Accordingly, in the instant case the value of clearance during 2015-16 for the purpose of SSI exemption is ₹ 200 lacs ₹ [350 – (200 – 150) – 100] lacs. It may be noted that since the business started on 01-04-2016, the value of clearances during the year 2015-16 is NIL i.e. below ₹ 400 lacs.

Thus the assessee can avail exemption of ₹ 150 lakhs and will have to pay duty on balance ₹ 50 lakhs (₹ 200 lakhs – ₹ 150 lakhs). Therefore, the view of Excel Ltd. as not to pay any excise duty during 2016-17 is not correct.

- (ii) As per section 35EE of the Central Excise Act, 1944 if an assessee is aggrieved by an order of the Commissioner (Appeals) relating to excise duty rebate on exports, he shall make an application to the Revisionary Authority of the Central Government. It may be noted that appeal on such matter shall not lie before the Central Excise & Service Tax Appellate Tribunal as down in the first Proviso to section 35B of the Central Excise Act.

2013 - Dec [2] (b) Snow White Ltd., manufactures paper and in the course of such manufacture, waste paper is also produced (paper being the main product and a dutiable good). Assume that the Central Excise Tariff Act, 1985 (CETA) was amended w.e.f. 01-03-2014, so as to include waste paper also. The assessee was issued show cause notice (SCN) by the central excise officer, demanding duty of ₹ 2 lacs on waste paper produced during October, 2016 to February, 2017, but cleared during April to May, 2017. A reply is due to be filed immediately to the notice. As the Cost Accountant of Snow White Ltd., you are required to advise the company suitably for the SCN received from the Department. **(5 marks)**

Answer :

The issue involved in the given case is determination of taxable event for the purpose of levy of excise duty. As per section 3 of the Central Excise Act 1944, the taxable event for levy of Central Excise is 'manufacture of excisable goods'. The date for determination for rate of duty and tariff valuation is the date of actual removal of the goods from the factory or warehouse. However, there must be a levy of duty of excise at the time of manufacture and only then, the duty can be collected at the time of removal

as "has already been held in Vazir Sultan Tobacco Industry's case 1996(83) ELT3(SC). Therefore, the waste paper produced prior to the levy will not be chargeable to duty of excise even though it has been cleared after such levy and the proposed show cause notice demanding ₹ 2 lakhs of excise duty on such waste paper is invalid and illegal and liable to be quashed.

2014 - June [1] (d) (i) A SSI unit has purchased new machinery in April, 2016, on which excise duty of ₹ 2 lacs has been paid.

The monthly clearances for home consumption from this unit are as under:

Month	Value (₹ in lacs)
April, 2016	30
May, 2016	40
June, 2016	60
July, 2016	52
August, 2016	55

Can the unit avail Cenvat credit for new machinery purchased? If so, how much and in which month can it avail the same?

- (ii) A SSI unit has paid excise duty of ₹ 15,450 during the year ended 31-3-2016. Is it required to submit its return of excise duty electronically during the subsequent year? **(5 marks)**

Answer:

(i) SSI: Cenvat credit on machinery

The SSI can claim Cenvat credit in respect of the capital inputs.

The entire sum of ₹ 2 lacs can be claimed in the financial year.

The SSI unit can avail the same only in the month in which it exceeds the limit of ₹ 150 lacs. Hence, it can be availed in the month of July, 2016.

(ii) Filing of excise return by SSI unit

The Central Excise (Fourth Amendment) Rules, 2011 has been issued vide Notification No. 21/2011-CE (NT) dated 14.09.2011, amending Rule 12 and Rule 17 of the Central Excise Rules, 2002., w.e.f. 1-10-2011.

ER-3 Return, filed under the proviso to Rule 12(1) of the Central Excise Rules, 2002, will be required to be filed by the concerned assesseees including SSI units electronically irrespective of the duty paid in the preceding financial year.

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(b) Compute the Assessable Value and Excise Duty payable u/s 4 of the Central Excise Act, 1944 from the following information:

Particulars	Amount (in ₹)
Price of machinery excluding taxes and duties	6,00,000
Installation and erection expenses	25,000
Packing charges (primary and secondary)	13,000
Design and engineering charges	4,000
Cost of material supplied by buyer free of charge	10,000
Pre-delivery inspection charges	850

Other information:

- (i) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.
 - (ii) Bought out accessories supplied along with machinery valued at ₹ 7,250.
 - (iii) Central Excise Duty rate 12.5%.
- (c) M/s Action Ltd. is a manufacturer having its factory situated in Mumbai. During the financial year 2016-17, the total value of clearances from the factory was ₹ 520/- lakhs. The detailed break up of clearances are as follows:
- Clearances without payment of duty to a unit in Software Technology Park - ₹ 100/ lakhs.
 - Clearances of non-excisable goods ₹ 110 lakhs.
 - Clearances worth ₹ 60 lakh which are used captively to manufacture finished products that are exempt under notification other than Notification No. 8/2003.
 - Clearances of excisable goods in normal course ₹ 250 lakhs.

Part of the factory at Mumbai is used by M/s Action Ltd. and another part of the same factory is used by M/s Passion Ltd. M/s Passion Ltd. has cleared the goods worth ₹ 100 lakhs during FY 2016-17, which were exempted under notification other than SSI exemption notification.

Briefly explain whether M/s Action Ltd. will be eligible to the benefits of exemption under Notification No. 8/2003 for the year 2017-18.

(5 × 2 = 10 marks)

Answer:

(b) Computation of Assessable Value and Excise Duty Payable

Particulars	Amount (₹)	Reason in support of the computation
Price of machine	6,00,000	Net of taxes and duties
Machine installation expenses	0	Installation expenses are not includible in AV. Hence not added. <i>Thermax Ltd. v. CCE, 99 ELT 481 (SC)</i>
Packing charges (primary and secondary)	13,000	Packing charges are includible in AV
Design and engineering charges	4,000	Essential for purpose of manufacture and hence included in AV
Cost of material supplied by buyer free of charge	10,000	Deemed to be money value of additional charge consideration
Pre-delivery inspection charges	850	Included in AV. Costs can be incurred at any time as per the definition of Transaction value. Therefore, cost incurred just before removal also covered.
Bought out accessories supplied along with the machine	0	Supply of optional bought out accessory is a trading activity and hence duty is not payable on it.
Total	6,27,850	
Less: Cash discount (2% x 6,00,000)	12,000	Deductible if actually passed on to buyer. Circular No. 643/34/2002 - CX dated 01.07.2002
Assessable value	6,15,850	
Excise duty @ 12.5%	76,981	

Note: It is assumed that the bought out accessories supplied along with machinery is optional.

(c) Computation of Annual Turnover of M/S Action Ltd for determination of SSI exemption for the year 2016 -17:

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Particulars	Amount (₹ in lakhs)
Total clearance of M/S Action Ltd. during the year 2016-17	520
Less: (i) Clearances without payment of duty to a Unit in Software Technology Park	(100)
(ii) Clearances of non-excisable goods	(110)
Turnover of Action Ltd. during the year 2016-17	310
Add: Turnover of M/S Passion Ltd. during 2016-17	100
Total Turnover for the year 2016-17	410

Action Ltd. is not eligible to avail the benefit under Notification 8/2003 for the year 2017 -18, since the previous year (2016 -17) turnover was exceeded ₹ 400 lakhs (as the above remained as ₹ 410 lakhs).

It may be noted that while calculating for SSI exemption of ₹ 150/ ₹ 400 lakhs total clearance from the factory shall be taken even if part of the factory may be used by one manufacturer and other part of the same factory may be used by another manufacturer.

2014 - Dec [2] (b) M/s. Ajanta Ltd. Incorporated on 1st April 2016, is engaged in the manufacture of a product covered by Notification No. 8/2003-CE dated 1st March, 2004. It expects the following during the year 2016-2017.

- (i) Clearances of such manufacturing products: ₹ 700 lakhs (Excise Duty @ 12.5%)
- (ii) Value of inputs to be used in manufacture : ₹ 140 lakhs (Excise Duty @ 12.5%)
- (iii) Value of input services to be used in manufacture : ₹ 150 lakhs (Service Tax @ 15%)
- (iv) Value of capital goods purchased and received : ₹ 20 lakhs (Excise Duty @ 10%)

All amounts are exclusive of duties/taxes. Discuss whether M/s. Ajanta Ltd. should opt for the SSI-exemption during the year 2017-18. Show your workings and cite relevant case-laws, if any. **(8 marks)**

Answer:

Computation of duty liability in alternative situations for availing SSI Exemption by M/s. Ajanta Ltd. during the year 2016-17:

Particulars	With SSI Exemption (₹ in lakh)	Without SSI Exemption (₹ in lakh)
Value of clearance, of the final product	700	700
Less: First clearance upto ₹ 150 lakhs exempt	150	0
Dutiable clearances	550	700
Excise duty @ 12.5%	68.75	87.5
CENVAT CREDIT AVAILABLE:		
Less: Cenvat credit of inputs:		
Under SSI exemption, the inputs used in exempt clearances shall not be eligible for credit. The inputs used in dutiable clearances shall only be eligible as follows:		
Total Duty on input: ₹ 140 lakhs × 12.5% = ₹ 17.5 lakhs		17.5
For SSI Exemption- ₹ 17.5 lakhs × ₹ 550 lakhs/₹ 700 lakhs	13.75	
CENVAT credit of input services:		
₹ 150 lakhs × 15% = ₹ 22.50 lakhs (Ret Note-1)	22.50	22.50
CENVAT credit of capital goods 100% credit is available in the year of receipt = ₹ 20 lakhs & 10% = ₹ 2 lakhs	2	2
Total CENVAT Credit Available	38.50	42
Total Excise Duty Payable	30.50	45.50

Suggestion: Since the net excise duty payable shall be less in the case of SSI-exemption, hence, it is suggested that M/s. Ajanta Ltd should opt for the SSI- exemption during the year 2016 -17.

Note:

(1) Input service credit available even during SSI-exemption [Vallabh Vidyanagar Concrete Factory v. CCEx. [2010]18 STR 271

The Notification No. 8/2003 – CE specifically provides for denial of credit of duty paid on inputs, but does not provide for denial of Cenvat credit on input service. In respect of capital goods also, the credit is allowed even during the period of exemption to SSI manufacturers and this is because notification does not provide for denial of Cenvat credit on capital goods. In absence of any such restriction in the Notification No. 8/2003-CE in respect of input services, a unit availing of SSI- Exemption is eligible for the cenvat credit of service tax paid on input services.

2015 - June [1] (a) Sarath Dtergents Ltd., suffered heavy losses due to a fire accident which happened in their factory on 01-05-2016.

The following particulars are furnished to you:

	₹
(i) Excise duty on finished product is 12.5%.	
(ii) Transaction value of finished goods destroyed in fire	8,00,000
(iii) Value of input services used in the manufacture of finished products (including total service tax of ₹ 37,080)	3,37,080
(iv) Value of input goods used in the manufacture of finished products (Including Cenvat credit of ₹ 20,600)	2,20,600
(v) Insurance compensation received from the insurance company on 1-12-2016 for loss of stocks	8,00,000

You are required to:

(i) Compute the amount to remission of duty granted to the assessee under Rule 21, of the Central Excise Rules, 2002 assuming that the necessary conditions stand fulfilled. **(2 marks)**

(ii) Compute, the quantum of Cenvat credit to be reversed, if any. **(3 marks)**

Will your answer change, if the amount of insurance compensation received is ₹ 8,50,000? **(2 marks)**

Answer:

Rule 21 of the Central Excise Rules, 2002 *inter alia* provides that where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time

before removal, the Commissioner may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing.

Remission is available if the amount of insurance compensation does not include the excise portion of the value of finished goods. Here, the insurance compensation is ₹ 8,00,000 i.e. value of goods destroyed without including any excise element. Hence, the company can claim remission of ₹ 1,00,000 (12.5% of ₹ 8,00,000).

According to Rule 3(5C) of the Cenvat Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs or input services used in the manufacture or production of said goods shall be reversed.

Hence, assuming that the duty on destroyed goods is ordered to be remitted, the amount of Cenvat credit on inputs and input services, (₹ 37,080 + ₹ 20,600) i.e. ₹ 57,680 shall be required to be reversed.

Where the insurance compensation received is ₹ 8,50,000

In case the amount of insurance compensation is ₹ 8,50,000, then the remission of duty shall stand reduced by ₹ 48,880, as insurance compensation is inclusive of excise element on finished goods, to the said extent.

Reversal of Cenvat Credit:

As per Rule 3(5C) of Cenvat Credit Rules, 2014, Cenvat Credit reversal should be ₹ 57,680, i.e. the entire amount of Cenvat Credit in inputs and inputs services.

2015 - June [3] (b) Hema Chemicals Pvt. Ltd., was a manufacturer of goods falling under Chapter headings 32 and 84 of the First Schedule to the Central Excise Tariff Act. The goods falling under Chapter heading 84 were wholly exempt from duty vide an exemption notification. However, by mistake, duty was paid by the assessee in respect of such goods. For claiming SSI exemption, the assessee excluded such exempted turnover, but the same is opposed by the Department on the ground that the assessee had paid duty on the goods falling under one Chapter heading and the turnover attributable to it cannot be excluded. The assessee has otherwise fulfilled all the necessary conditions for SSI exemption.

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Test the veracity of the rival contentions, with the help of decided case law.
(4 marks)

Answer:

Eligibility for SSI exemption:

Facts of the case are similar to the one decided by the Apex Court in *Bonanzo Engg. & Chemical P. Ltd. Vs. CCEx. 2012 (277) E.L.T. 145 (SC)*. In this case, the appellant was a manufacturer of goods falling under Chapter headings 32 and 84 of the first schedule to the Central Excise Tariff Act. The goods falling under Chapter heading 84 were wholly exempt from duty vide an exemption notification, but the appellant by mistake paid the excise duty on it and did not even claim refund of the same. For goods falling under Chapter heading 32, the appellant wanted to claim SSI exemption. It satisfied all the conditions for claiming the said exemption.

For the purposes of computing the eligible turnover for SSI exemption, the assessee excluded the goods which were exempted although duty was paid mistakenly on them. However, the Revenue contended that clearances of such goods should be included while computing the eligible turnover.

Decision of the Case:

The Supreme Court in the case of *Bonanzo Engg. & Chemical P. Ltd. Vs. CCEx. 2012 (277) E.L.T. 145 (SC)* opined that SSI exemption would be allowable to the assessee, as they meet all the conditions thereof.

The amount of clearances in the SSI exemption notification needs to be computed after excluding the value of exempted goods. Merely because the assessee by mistake paid duty on the goods which were exempted from the duty payment under some other notification, did not mean that the goods would become goods liable for duty under the Act. Secondly, merely because the assessee had not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the SSI exemption. Accordingly the appeal was allowed in the favor of the appellant-assessee. The Court directed the adjudicating authority to apply the SSI exemption notification in the assessee's case without taking into consideration the excess duty paid by the assessee under the other exemption notification.

2015 - Dec [1] (b) Fig Ltd. is engaged in manufacture of both excisable and non-excisable goods in its factory from 01.11.2016 which was occupied by it as tenant. The following particulars are pertaining to the period from November 1, 2016 to March 31, 2017:

Sl. No.	Particulars	₹ in lakhs
(i)	Clearances of branded goods of another company	70
(ii)	Export sales to Bhutan	60
(iii)	Export sales to UK and Russia	120
(iv)	Clearance of goods (duty paid based on annual capacity of production under Section 3A of the Central Excise Act, 1944)	50
(v)	Clearance of goods subject to valuation based on retail sale price under Section 4A of the Central Excise Act, 1944 (said goods are eligible for 30% abatement)	300
(vi)	Job-work under Notification No. 214/86-CE	80

During the period from 01.04.2016 to 31.10.2016, the previous tenant of the building which is presently occupied by Fig Ltd. had cleared excisable goods of the aggregate value of ₹ 105 lakhs.

Your advice is sought as to whether Fig Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003-CE dated 01.03.2003 for the Financial Year 2017-18.

Advice suitably, showing the necessary computation and working notes/explanations. **(7 marks)**

Answer:

Computation of value of clearances for home consumption in the financial year 2016-17.

Sl. No.	Particulars	Working Note	₹ in Lakh
(i)	Clearances of branded goods	1	Nil
(ii)	Export sales to Bhutan	1	60
(iii)	Export sales to UK and Russia	1	Nil
(iv)	Clearance of goods (duty paid) based on annual		

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	capacity of production under section 3A of the Central Excise Act, 1944		50
(v)	Clearance of goods subject to valuation based on retail sale price under section 4A of the Central Excise Act, 1944.	2	210
(vi)	Job work under Notification No. 214/86 – CE	1	Nil
(vii)	Clearance of previous tenant of the building occupied by Fig Ltd.	3	105
	Total		425

Working Notes:

1. In order to claim the benefit of exemption under Notification No. 8/2003–CE in a financial year, the total turnover should not exceed ₹ 400 Lakhs in the immediately preceding financial year.
For computing the turnover of ₹ 400 Lakhs the Notification No. 8/2003 seeks exclusion of the following:
 - (a) Clearances bearing the brand name or trade name of another person are to be excluded.
 - (b) Export turnover is excluded. However, export to Bhutan and Nepal are not excluded and they are treated as “clearance for home consumption”. It is assumed that the goods exported to Bhutan are excisable goods.
 - (c) Clearances under specified job work notification are excluded and Notification No. 214/86 – CE dated 25.03.1986 is one of the specified notifications.
2. In the case of goods subject to valuation under section 4A of the Central Excise Act, 1944, the value for the purpose of SSI exemption would mean the retail price less abatement. Hence, the value of such clearances would be ₹ 300 lakhs × 70% = ₹ 210 lakhs.
3. For the purpose of computing the turnover of ₹ 400 lakhs, all the clearances made by different manufacturers from the same factory are to be clubbed together. The clearances worth ₹ 105 lakhs of previous tenant of the building occupied by Fig Ltd. hence is added.

Advice:

Since the value of clearances for home consumption exceeds ₹ 400 lakhs in the financial year 2016-17, Fig Ltd. is not eligible to claim the benefit of exemption under Notification No. 8/2003 – CE dated 01.03.2003 in the financial year 2016-17.

2015 - Dec [4] (b) Akash Ltd., started manufacturing excisable goods in September, 2016 Small scales exemption in terms of Notification No. 8/2003 as amended has been availed for the Financial Year 2016-17.

The following details are provided by Akash Ltd.:

Particulars	(₹)
1800 MT of inputs purchase @ ₹ 10,000 per MT (inclusive of central excise duty @ 12.5%)	1,80,000
Capital goods purchased on 20 th October, 2014 (inclusive of excise duty at 12.5%)	50,00,000
Finished goods sold (excluding excise duty @ 12.5%) (At uniform transaction value exclusive of excise duty throughout the year)	3,00,000

There is neither any processing loss nor any inventory of input and output. Compute the amount of excise duty payable in cash, if any, during the year 2016-17. Show your working and notes with suitable assumption as may be required. **(7 marks)**

Answer:**Computation of central excise duty payable in cash by M/S AKASH Ltd.**

Particulars	Amount (in ₹)
Finished goods sold during the year	3,00,00,000
Less: Exemption of ₹ 150 Lakhs under Notification No. 8/2003 CE Dated 01-03-2003.	1,50,00,000
Dutiable clearances	1,50,00,000
Excise duty payable @ 12.5% (₹ 1,50,00,000 x 12.5%)	18,75,000

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Less: CENVAT Credit available on inputs (Note 2) Proportion of inputs consumed in dutiable clearances ₹ 1,50,00,000/ ₹ 3,00,00,000 = 50%		
(a) Excise duty paid on such inputs = ₹ 1,80,00,000 X(12.5/112.5 x 50%)	10,00,000	
(b) CENVAT credit available on capital goods (Note 3) (50,00,000 x 12.5/112.5)	5,55,556	15,55,556
Excise Duty Payable in cash		3,19,444

Notes and Assumptions forming part of computation are as follows:

1. Since there is neither any processing loss nor inventory of inputs and output, it implies that all goods manufactured have been sold and entire quantity of inputs has been used in manufacturing these goods.
2. In respect of units availing SSI exemption no CENVAT Credit is available on inputs consumed in exempted clearances of ₹ 150 Lakhs (Notification No. 8/2003 CE Dated 01.03.2003).
3. In respect of units availing SSI Exemption, CENVAT credit on capital goods can be availed but Utilized only after clearance of ₹ 150 Lakhs (Notification No.8/2003/CE Dated 01.03.2003). Further, entire credit on capital goods can be taken in the same financial year by such units (Third Proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004).

2015 - Dec [7] (a) Poorni Cars Ltd., is engaged in manufacture of cars in the State of Tamil Nadu. Being a prestigious unit, certain VAT concessions were conferred by the High Power Committee (HPC) of the State Government, consequent to which only 60% of the VAT collected was remitted during the year to the State Government. According to the Central Excise Department, the VAT retained by the assessee and not remitted to the State Government, amounting to ₹ 40 lakhs during the year ended 31.03.2017, would form part of the "Transaction value", since the HPC has not stated anything about the retained VAT amount against any scheme of capital subsidy. The entitlement certificate also did not give any indication of deferment of tax or capital subsidy.

Is the contention of the Department tenable in law?

(7 marks)

Answer:

As per Section 4(3)(d) of the Central Excise Act, transaction value “means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.”

In the given situation, since the VAT collected was not remitted to the Govt., the issue is whether it is to be included in the transaction value. The VAT has been actually paid by the customers, but not remitted to the State Govt.

Similar issue came up before the Supreme Court in the case of CCE Vs. Maruti Suzuki Ltd. 2014 (307) ELT 625 (SC).

The Supreme Court agreed with the Revenue that there was no mention in the decision of the HPC about adjustment of this amount of sales tax concession against any scheme or any capital subsidy. The entitlement certificate also did not give any indication of deferment of tax or capital subsidy.

The Apex Court held that since assessee retained 50% of the sales tax collected from customers which was neither actually paid to nor actually payable to the Government, transaction value under section 4(3)(d) of the Central Excise Act, 1944, would include the amount of sales tax.

The contention of the Department is hence tenable in law.

2016 - June [1] {C} (c) Answer the following with brief reason:

- (i) An SSI unit omitted to file its return for the quarter ended 31.12.2016. It filed the return ER-3 on 10.02.2017. What is the maximum amount that can be collected as late fee for filing the return after the due date?

(2 marks)

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- (i) The due date for filing the quarterly return by SSI unit is 10th day of the next month following the quarter. The due date is 10.01.2017.
As per Rule 12(6) of the Central Excise Rules if the return is filed after 'due date' the assessee shall pay ₹ 100 per day subject to a maximum of ₹ 20,000 for such delay.
Therefore, for the delay of 31 days (11.01.2017 to 10.02.2017) the late fee leviable is ₹ 100 per day aggregating to ₹ 3,100.

2016 - June [2] (a) AFB Ltd. manufactures water heaters and has its factory in Pune. During March, 2017, it stock transferred its entire production to its central depot in Nagpur from where the products are sold to customers. The relevant particulars are as follows:

No. of water heaters transferred to depot	1,000 nos.
Sale price to independent buyers ex-depot as prevailing during the month	₹ 5,000 per piece.
The following are included in ex-depot sale price:	
Freight cost from factory to depot	₹ 5 lakhs
Freight cost from depot to customers	₹ 10 lakhs
Packing cost	₹ 1 lakh

The company increased the sale price of water heaters to ₹ 5,500 per piece with effect from 10.04.2017.

Out of the 1,000 nos. water heaters transferred to depot during the month, 700 nos. were sold to customers from the depot on or after 14.3.2017 at the increased price of ₹ 5,500 per piece.

Calculate the Central Excise Duty payable by AFB Ltd. for the month of March, 2017.

Assume excise duty rate at 12.5%. Ignore Cess.

(8 marks)

Answer:

**Calculation of excise duty payable by AFB Ltd.
for the month of March, 2017**

Particulars	(₹)
Ex-depot sale price (1000 pieces @ ₹ 5000 each)	50,00,000
Less: freight cost from depot to customers	10,00,000
Assessable value	40,00,000
Excise duty @ 12.5%	5,00,000

Notes:

1. The cost of transportation from the place of removal to the place of delivery should be excluded in arriving at the assessable value. [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
2. The cost of transportation from factory to depot is to be included in arriving at the assessable value. [Rule 5, Explanation 2 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
3. Cost of packing is includible in arriving at the assessable value of excisable goods. [Rule 6, Explanation 1 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].
4. The assessable value in case of transfer to depot shall be the normal transaction value at the depot prevailing at the time of removal from the factory, i.e. the ex-depot price at which the greatest aggregate quantity of such goods are sold from the depot at or about the time of removal from the factory. In this case, the ex-depot price on the dates of removal from the factory was ₹ 5,000 per piece. Accordingly the assessable value has been arrived at on the basis of such price. Hence, despite the fact that 700 pieces of March delivery were sold from depot on after 10-4-2017 at the increased price of ₹ 5,500 per piece, the value has to be taken at ₹ 5,000 per piece, being the depot price prevailing on the date and time of removal from the factory. [Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000].

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2016 - Dec [2] (a) Padmaja Granular Ltd., engaged in manufacture of generators, sold generators to Gautam Cotton Mills Ltd. for ₹ 45 lakhs. The following amounts were not included /adjusted in the above said amount:

- (i) Transit insurance from depot to buyer's premises ₹ 70,000
- (ii) Optional bought out accessories ₹ 50,000
- (iii) Delayed payment charges collected from the buyer ₹ 1,00,000
- (iv) Consultancy charges relating to design, layout of final product upto the place of removal ₹ 1,50,000
- (v) Special packing expenses for protecting the generator ₹ 3,00,000
- (vi) Notional interest on deposit taken from the buyer ₹ 1,25,000 which is reduced from sale price
- (vii) Trade discount ₹ 2,75,000.

Compute the transaction value under the Excise Act, 1944, adducing brief note for the treatment of each item above. **(8 marks)**

Answer:

The term transaction value is defined in Section 4 of the Central Excise Act, 1944. The items in the definition are only illustrative and many more are includible.

	Nature	Reason	
	Sale price before adjustment of the following amounts		45,00,000
(i)	Transit insurance from depot to buyer's premises.	It would not form part of the transaction value.	—
(ii)	Optional bought out accessories.	It would not form part of the transaction value. [Only bought out essential items fitted to the main article at the time of removal is to be included.	—
(iii)	Delayed payment charges collected from the buyer.	It is not to be included in the transaction value.	—

(iv)	Consultancy charges relating to design, layout of final product upto the place of removal.	It is to be included in the transaction value.	1,50,000
(v)	Special packing expenses for protecting the goods.	All forms of packing whether general, special or protective are to be included for arriving at the transaction value.	3,00,000
(vi)	Notional interest on deposit taken from the buyer and the price is reduced by applying interest on advance.	Since the price has been lowered on account of such advance it has to be included in the transaction value.	1,25,000
			50,75,000
(vii)	Trade discount.	All forms of discount actually passed on to the buyer has to be excluded from transaction value.	(-) 2,75,000
	Transaction Value		48,00,000

2017 - June [1] Comment on the following question along with valid reasons:

- (a) JK Engineering Co. manufactured a machinery on 20.01.2017, when excise duty was 8%, these were entered in Daily Stock Account on 20.01.2017. These were sold from factory on 16.02.2017. On that date, rate of excise duty was 12.50%. At what rate excise duty is payable? **(2 marks)**
- (f) A demand of ₹ 8,50,000 of excise duty plus penalty was confirmed by Joint Commissioner, Assessee filed appeal and the demand was set aside by Commissioner (Appeals). Department is of the view that order of Commissioner (Appeals) is not proper. Advise department on action that can be initiated by them. **(2 marks)**

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2017 - June [6] (a) Nayar Machinery Manufacturers Ltd. sold a special machine to a customer. The details contract are as follows:

- (i) Net price – ₹ 10,00,000
- (ii) Packing Charges charged extra – ₹ 12,000
- (iii) Erection and commissioning charged extra by separate debit note, for erection at the place of customer's factory – ₹ 60,000
- (iv) Charges for designing the special machinery by separate debit note – ₹ 50,000
- (v) Insurance Charges for despatch of machinery from factory to the place customer at actuals – ₹ 12,000
- (vi) Outward freight of machinery from factory to customer's place charged at actuals – ₹ 20,000 extra
- (vii) CST charged extra at applicable rates against C form.
- (viii) Cash discount @ 2% was allowable on basic price if customer paid total amount before despatch of goods. The customer had made full advance payment.

Excise duty rate is 12.5% which was charged extra.

Calculate :

- (A) Assessable Value of the machine
- (B) Excise duty payable
- (C) CST payable

(5 + 1 + 4 = 10 marks)

Repeatedly Asked Questions

No.	Question	Frequency
1	Can the valuation of goods manufactured and cleared as free samples be done in the basis of MRP for excise purpose? If not, how should they be valued? 08 - Dec [1] {C} (a) (ii), 09 - June [6] (b)	2 Times

Table Showing Marks of Compulsory Questions

Year	12 D	13 J	13 D	14 J	14 D	15 J	15 D	16 J	16 D	17 J
Practical								2		
Total								2		